

**§ 25.2512-7**

**26 CFR Ch. I (4-1-12 Edition)**

an annuity contract providing for the payment of \$1,200 annually for the life of a person 50 years of age.

*Example (3).* A donor owning a life insurance policy on which no further payments are to be made to the company (e.g., a single premium policy or paid-up policy) makes a gift of the contract. The value of the gift is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured.

*Example (4).* A gift is made four months after the last premium due date of an ordinary life insurance policy issued nine years and four months prior to the gift thereof by the insured, who was 35 years of age at date of issue. The gross annual premium is \$2,811. The computation follows:

Terminal reserve at end of tenth year .....	\$14,601.00
Terminal reserve at end of ninth year .....	12,965.00
	1,636.00
Increase .....	1,636.00
One-third of such increase (the gift having been made four months following the last preceding premium due date), is .....	545.33
Terminal reserve at end of ninth year .....	12,965.00
	13,510.33
Interpolated terminal reserve at date of gift .....	13,510.33
Two-thirds of gross premium (\$2,811) .....	1,874.00
	15,384.33
Value of the gift .....	15,384.33

*Example (5).* A donor purchases from a life insurance company for \$15,198, a joint and survivor annuity contract which provides for the payment of \$60 a month to the donor during his lifetime, and then to his sister for such time as she may survive him. The premium which would have been charged by the company for an annuity of \$60 monthly payable during the life of the donor alone is \$10,690. The value of the gift is \$4,508 (\$15,198 less \$10,690).

(b) *Valuation of shares in an open-end investment company.* (1) The fair market value of a share in an open-end investment company (commonly known as a "mutual fund") is the public redemption price of a share. In the absence of an affirmative showing of the public redemption price in effect at the time of the gift, the last public redemption price quoted by the company for the date of the gift shall be presumed to be the applicable public redemption price. If there is no public redemption price quoted by the company for the date of the gift (e.g., the date of the gift is a Saturday, Sunday, or holiday), the fair market value of the mutual fund share is the last public redemption price quoted by the company for the first day preceding the date of the gift for which there is a quotation. As used in this paragraph the term "open-end in-

vestment company" includes only a company which on the date of the gift was engaged in offering its shares to the public in the capacity of an open-end investment company.

(2) The provisions of this paragraph shall apply with respect to gifts made after December 31, 1954.

[T.D. 6680, 28 FR 10872, Oct. 10, 1963, as amended by T.D. 7319, 39 FR 26723, July 23, 1974]

**§ 25.2512-7 Effect of excise tax.**

If jewelry, furs or other property, the purchase of which is subject to an excise tax, is purchased at retail by a taxpayer and made the subject of gifts within a reasonable time after purchase, the purchase price, including the excise tax, is considered to be the fair market value of the property on the date of the gift, in the absence of evidence that the market price of similar articles has increased or decreased in the meantime. Under other circumstances, the excise tax is taken into account in determining the fair market value of property to the extent, and only to the extent, that it affects the price at which the property would change hands between a willing buyer and a willing seller, as provided in § 25.2512-1.

**§ 25.2512-8 Transfers for insufficient consideration.**

Transfers reached by the gift tax are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration to the extent that the value of the property transferred by the donor exceeds the value in money or money's worth of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth. A consideration not reducible to a value in money or money's worth, as love and affection, promise of marriage, etc., is to be wholly disregarded, and the entire value of the property

transferred constitutes the amount of the gift. Similarly, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the spouse's property or estate, shall not be considered to any extent a consideration "in money or money's worth." See, however, section 2516 and the regulations thereunder with respect to certain transfers incident to a divorce. See also sections 2701, 2702, 2703 and 2704 and the regulations at §§ 25.2701-0 through 25.2704-3 for special rules for valuing transfers of business interests, transfers in trust, and transfers pursuant to options and purchase agreements.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958; 25 FR 14021, Dec. 31, 1960; as amended by T.D. 8395, 57 FR 4255, Feb. 4, 1992]

**§ 25.2513-1 Gifts by husband or wife to third party considered as made one-half by each.**

(a) A gift made by one spouse to a person other than his (or her) spouse may, for the purpose of the gift tax, be considered as made one-half by his spouse, but only if at the time of the gift each spouse was a citizen or resident of the United States. For purposes of this section, an individual is to be considered as the spouse of another individual only if he was married to such individual at the time of the gift and does not remarry during the remainder of the "calendar period" (as defined in § 25.2502-1(c)(1)).

(b) The provisions of this section will apply to gifts made during a particular "calendar period" (as defined in § 25.2502-1(c)(1)) only if both spouses signify their consent to treat all gifts made to third parties during that calendar period by both spouses while married to each other as having been made one-half by each spouse. As to the manner and time for signifying consent, see § 25.2513-2. Such consent, if signified with respect to any calendar period, is effective with respect to all gifts made to third parties during such calendar period except as follows:

(1) If the consenting spouses were not married to each other during a portion of the calendar period, the consent is not effective with respect to any gifts made during such portion of the cal-

endar period. Where the consent is signified by an executor or administrator of a deceased spouse, the consent is not effective with respect to gifts made by the surviving spouse during the portion of the calendar period that his spouse was deceased.

(2) If either spouse was a nonresident not a citizen of the United States during any portion of the calendar period, the consent is not effective with respect to any gift made during that portion of the calendar period.

(3) The consent is not effective with respect to a gift by one spouse of a property interest over which he created in his spouse a general power of appointment (as defined in section 2514(c)).

(4) If one spouse transferred property in part to his spouse and in part to third parties, the consent is effective with respect to the interest transferred to third parties only insofar as such interest is ascertainable at the time of the gift and hence severable from the interest transferred to his spouse. See § 25.2512-5 for the principles to be applied in the valuation of annuities, life estates, terms for years, remainders and reversions.

(5) The consent applies alike to gifts made by one spouse alone and to gifts made partly by each spouse, provided such gifts were to third parties and do not fall within any of the exceptions set forth in subparagraphs (1) through (4) of this paragraph. The consent may not be applied only to a portion of the property interest constituting such gifts. For example, a wife may not treat gifts made by her spouse from his separate property to third parties as having been made one-half by her if her spouse does not consent to treat gifts made by her to third parties during the same calendar period as having been made one-half by him. If the consent is effectively signified on either the husband's return or the wife's return, all gifts made by the spouses to third parties (except as described in subparagraphs (1) through (4) of this paragraph), during the calendar period will be treated as having been made one-half by each spouse.

(c) If a husband and wife consent to have the gifts made to third party donees considered as made one-half by