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UNITED STATES SAVINGS BONDS, SERIES E, F, AND G*

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Probably no other security is so widely held at the present time as are the various issues of United States Savings Bonds. First offered to the public in 1935, these bonds are owned by millions of wage earners, professional men, business men, fiduciaries, corporations, and partnerships. It has been estimated that "for a good many years to come almost every deceased person's estate will involve holdings of United States Savings Bonds."¹ The impact of such widespread holdings on our financial and legal systems will, of necessity, be tremendous. Every lawyer, from the country practitioner to the legal counsel for large corporate trustees, will be faced with the problems raised by ownership of these securities and must familiarize himself with them.

I. GENERAL EFFECT OF REGULATIONS

Although these bonds were not issued until 1935, the experience of the Treasury during World War I, in the sale of Liberty Bonds and war savings stamps, and the experience of the Post Office with postal savings certificates, furnished

* Series A to D inclusive are not widely held, are no longer available, and, therefore, are not included in this discussion. However, the citations include some cases in which bonds of Series A to D are involved; this is because the regulations are identical with, or similar to, those governing bonds of Series E, F, and G. In a few cases the facts do not indicate the type of bond involved.

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¹ Lynch, *Legal Problems affecting the use of United States Savings Bonds in Estate and Trust Planning* (1948), reprinted from the Proceedings of the Section of Real Property, Probate and Trust Law, American Bar Association, Sept. 6-7, 1948, p. 13.

the background upon which the plans for the present savings bonds were based. In fact the authorization for the savings bonds consists of an amendment to the Second Liberty Bond Act.² This section confers very broad powers on the Secretary of the Treasury, authorizing him to issue savings bonds in such manner and subject to such terms and conditions as he may prescribe. Under this authority the Treasury Department has issued various circulars which contain the terms and regulations controlling the offerings of savings bonds. Circular No. 653, Second Revision, as supplemented and amended, offers Series E bonds; Circular No. 654, Third Revision, offers Series F and G bonds; while Circular No. 530, Sixth Revision, as amended, contains the regulations governing all savings bonds. The rules and regulations contained in these circulars are controlling in so far as they cover the problem³ and, therefore, constitute the starting point in any attempt to determine the rights of persons claiming an interest in savings bonds. The supremacy of the regulations over both the statutory and common law of the states was not established without opposition,⁴ and was settled only after the treasury department intervened in many of the cases and presented the government's position. Two theories have been used to uphold the regulations: One is based on the power of the government to borrow money and to control the terms of its obligations.

"The statutory right, afforded by the State, to dispose of property by will is not paramount to the power of the federal government to borrow money. If such a

² 49 Stat. 21, c. 5, Sec. 6, Feb. 4, 1935, 31 U. S. C. A. 757c.

³ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.2, 31 C. F. R. 315.2 (1949), expressly states that the registration must express the actual ownership of and interest in the bond and will be considered conclusive of such ownership and interest, and that no other claims or designation of persons to receive payment will be recognized except as provided in the regulations.

⁴ See, for example, the dissent in *Succession of Tanner*, 24 So. 2d 642 (La. App. 1946). In several states (for example Cal., Mich., N. Y., Wash., Wis.), statutes were passed in order to settle the question after early decisions were rendered adverse to the surviving co-owner or beneficiary. All such statutes support the right of the co-owner and beneficiary under the regulations. For a good discussion of the early cases and statutes see Note, 32 Minn. L. Rev. 158 (1948).

statutory power can render nugatory the provisions of the bonds and the rules and regulations of the Treasury Department, upon which purchasers of the bonds rely, the power of the federal government to raise money will be impaired. The capacity of the federal government to borrow money depends on the inviolability of its obligation, and on its ability to carry it out strictly in accordance with its terms. If the State may treat the bonds as the property of some person other than the one whom the contract has designated the federal government will be prevented from carrying out its agreement."⁵

The other proceeds on the theory the bonds constitute a contract with the government which is subject to Federal law and which determines the rights of the parties.

"... these cases are decided on the theory that there is here a contract with the United States for the benefit of a third person whose rights arise solely from the contract and in no sense by reason of a grant or gift; that this contract which gives the beneficiary a present, vested, though defeasible interest, is governed by Federal law and must be enforced in accordance with its letter and its spirit uniformly throughout the United States; and that no state statute or rule of law may stand in the way of such enforcement."⁶

The contract theory seems to be the one most used by the courts in upholding and explaining the interests acquired in savings bonds, although both theories are frequently used, often in the same case.⁷

⁵ *Davies v. Beach*, 74 Cal. App. 2d 304, 309-310, 168 P. 2d 452, 456 (1946).

⁶ *Harvey v. Rackliffe*, 141 Me. 169, 178, 41 A. 2d 455, 458 (1945).

⁷ See the following cases which uphold the validity of the regulations on one or the other, or both, of the theories: *U. S. v. Dauphin Deposit Trust Co.*, 50 F. Supp. 73 (1943); *Myers v. Hardin*, 208 Ark. 505, 186 S. W. 2d 925 (1945); *In re Briley's Estate*, 155 Fla. 798, 21 So. 2d 595 (1945); *Stephens v. First Nat. Bank of Nevada*, 196 P. 2d 756 (Nev. 1948); *In re Ballard's Estate*, 161 Misc. 785, 293 N. Y. S. 31 (1937); *Franklin Washington Trust Co. v. Beltram*, 133 N. J. Eq. 11, 29 A. 2d 854 (1943); *Conrad v. Conrad*, 66 Cal. App. 2d 280, 152 P. 2d 221 (1944); *Reynolds v. Reynolds*, 90 N. E. 2d 338 (Mass. 1950); *In re Deyo's Estate*, 180 Misc. 32, 42 N. Y. S. 2d 379 (1943); *Laufersweiler v. Richmond*, 22 Ohio Ops. 265 (1942).

II. ORIGINAL ISSUE

Series E bonds are issued in registered form in denominations of \$10,⁸ \$25, \$50, \$100, \$200, \$500, and \$1000 maturity values. No interest, as such, is paid on these bonds; instead, the bonds are sold at a discount, at seventy-five percent of their maturity value,⁹ and the increment in value represented by the difference between the purchase price and the redemption value (whether before or at maturity) is considered as interest. If the bonds are held to maturity (10 years from date of issue) the yield is approximately 2.9 percent; for shorter periods the yield is proportionately less.¹⁰ Bonds of this series are registered only in the names of natural persons in three authorized forms: (1) in the name of one person as sole owner; (2) in the name of two (but not more than two) persons as co-owners; and (3) in the name of one person payable on death to one (but not more than one) other designated person as beneficiary.¹¹

Bonds of Series F are issued in denominations of \$25, \$100, \$500, \$1000, \$5000, and \$10,000 maturity values.¹² Like bonds of Series E, these bonds do not bear interest but are sold at a discount, at seventy-four percent of their maturity value,¹³ the increment in value representing the investment yield; if held to maturity (12 years from date of issue) the yield is approximately 2.53 percent.¹⁴ Series

⁸ Bonds of this denomination may be purchased only by persons in the Military and Naval Forces of the United States. U. S. Treas. Dept. Cir. No. 653, Second Revision, First Supplement, June 7, 1944, 31 C. F. R. 316.12 (1949). These bonds may not be obtained by partial redemption of bonds of a higher denomination, but only by original purchase. Except for such restrictions on purchase and issue the provisions governing these bonds are the same as for those of other bonds of Series E. *Ibid.*

⁹ The issuing prices for the various bonds of Series E are as follows: \$7.50, \$18.75, \$37.50, \$75, \$150, \$375, \$750. U. S. Treas. Dept. Cir. No. 653, Second Revision, Part III, Sec. 4, First Supplement, June 7, 1944, Second Supplement, July 2, 1945, 31 C. F. R. 316.3(d), 316.12, 316.13 (1949).

¹⁰ See the table of redemption values and investment yields, U. S. Treas. Dept. Cir. No. 653, Second Revision, p. 4, First Supplement, June 7, 1944, Second Supplement, July 2, 1945, 31 C. F. R. 316.11, 316.12, 316.13 (1949).

¹¹ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part V, 31 C. F. R. 316.5 (1949); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.4(a), 31 C. F. R. 315.4(a) (1949).

¹² U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.2(a).

¹³ The issuing prices for the various bonds of Series F are as follows: \$18.50, \$74, \$370, \$740, \$3700, \$7400. U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.3(e).

¹⁴ See the table of redemption values and investment yields, U. S. Treas. Dept. Cir. No. 654, Third Revision, Appendix A, p. 7.

G bonds are issued in denominations of \$100, \$500, \$1000, \$5000, and \$10,000 maturity values, are sold at par and bear interest at the rate of 2½ percent per annum payable semi-annually, beginning six months after the issue date.¹⁵ However, the redemption values for these bonds are such that if the bonds are redeemed prior to maturity (12 years from date of issue) the investment yield will be less than the interest rate on the bond.¹⁶ Bonds of Series F and G may be registered in any of the forms authorized for Series E; and in addition may be registered (1) in the name of an incorporated or unincorporated body in its own right, but not in the name of a commercial bank, except as specifically provided; (2) in the name of a fiduciary; (3) in the name of the owner or custodian of public funds.¹⁷ The bonds of these series, therefore, offer a wider range of investment opportunities than those of Series E and are the only types which may be held by institutions or trustees.

There are, however, certain limitations on the amount of savings bonds which may be issued to an owner during any one year. In the case of Series E bonds the limitation is \$5000 (maturity value) for each calendar year up to and including 1947, and \$10,000 (maturity value) for each year thereafter.¹⁸ For Series F and G the limitation is \$100,000 (issue price) of bonds of either series or the aggregate

¹⁵ U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.2(a, d). The interest is payable by check drawn to the order of the registered owner or owners. *Ibid.*; U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.21(a), 31 C. F. R. 315.21(a) (1949). Interest ceases at maturity, or, in the case of redemption or reissue prior to maturity, at the end of the interest period next preceding the date of redemption or reissue; and in the case of reissue interest on the new bond begins on the day following the termination of interest on the old bond. U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.21(c, d), 31 C. F. R. 315.21(c, d) (1949).

¹⁶ See the table of redemption values and investment yields. U. S. Treas. Dept. Cir. No. 654, Third Revision, Appendix B, p. 5. In certain cases Series G bonds may be redeemed at par: (1) Upon the death of an owner or co-owner, if a natural person, or (2) as to bonds held by a trustee or other fiduciary, upon the death of any person which results in termination of the trust or fiduciary estate. U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.2(d); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.23(c), as amended July 25, 1947 and Jan. 4, 1950, 31 C. F. R. 315.23(c) (1949), as amended Jan. 4, 1950.

¹⁷ U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.5(a); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.5, 31 C. F. R. 315.5 (1949).

¹⁸ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part IV, as amended March 18, 1948, 31 C. F. R. 316.4 (1949); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.8(b), as amended June 25, 1948 and Sept. 12, 1950, 31 C. F. R. 315.8(b) (1949), as amended Sept. 12, 1950.

amount of both series issued during any one calendar year.¹⁹ In determining the holdings of an owner for the purposes of these limitations only those bonds originally issued to him are counted, as distinguished from bonds in which he acquired an interest in some other manner, such as the death of another person or the termination of a trust, which are not counted unless he became entitled to them in his own right prior to March 1, 1941.²⁰ However, in computing the holdings of co-owners there is a distinction between Series E bonds and those of Series F and G. In the case of Series E bonds registered in co-ownership form the holdings may be applied to either owner or apportioned between them, but will not be counted against both owners. On the other hand when bonds of Series F and G are registered in co-ownership form the total holdings are charged against both owners.²¹ Any holdings in excess of the permitted amounts must be surrendered for refund of the purchase price, less, in the case of Series G bonds, any interest which has been paid thereon, or some other adjustment must be made.²² These limitations were imposed because the sav-

¹⁹ U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.4; U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.8(c), as amended June 25, 1948, 31 C. F. R. 315.8(c) (1949). For the year 1941 the limit was \$50,000 (issue price). *Ibid.* Special regulations control purchases by commercial banks and institutional investors and have at times permitted holdings at variance with the above stated limits. See U. S. Treas. Dept. Cir. No. 654, Second Revision, Part IV, as amended Nov. 17, 1944 and June 25, 1948; U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.8(d, e).

²⁰ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.9(c, d), as amended June 25, 1948, Feb. 21, 1949, and Jan. 4, 1950, 31 C. F. R. 315.9(c, d) (1949), as amended Jan. 4, 1950.

²¹ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part IV, as amended March 18, 1948, 31 C. F. R. 316.4(a) (1949); U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.4; U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.9(c, d), as amended June 25, 1948, Feb. 21, 1949, and Jan. 4, 1950, 31 C. F. R. 315.9(c, d) (1949), as amended Jan. 4, 1950; Lynch, *Legal Problems affecting the use of United States Savings Bonds in Estate and Trust Planning* (1948) p. 7, Proceedings of the Section of Real Property, Probate and Trust Law, American Bar Association, Sept. 6-7, 1948, p. 16.

²² U. S. Treas. Dept. Cir. No. 653, Second Revision, Part IV, as amended March 18, 1948, 31 C. F. R. 316.4(a) (1949); U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.4; U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.10, as amended June 25, 1948, 31 C. F. R. 315.10 (1949). It may be possible, in some instances, by reissuing the bonds to correct the excessive holdings without any substantial loss to the parties. For example, in the case of Series F and G bonds it may be possible to reissue the bonds in beneficiary form rather than co-ownership form, naming each co-owner as the new owner of one-half the bonds with the other co-owner as beneficiary. Lynch, *op. cit.*, *supra*, n. 21, at 8 and 16.

ings bonds were designed primarily for the small investor and it was felt desirable that the holdings should be widespread, particularly in view of the fact that they are virtually demand obligations.²³

There are also restrictions on who may be named as owners, co-owners, or beneficiaries. In general only residents of the United States (including its territories, insular possessions, and the Canal Zone), citizens of the United States temporarily residing abroad, and nonresident aliens employed in the United States by the Federal Government or an agency thereof may be named owner, co-owners, or beneficiaries of savings bonds originally issued after April 1, 1940, or of authorized reissues thereof.²⁴ However, American citizens permanently residing abroad and nonresident aliens who are not citizens of enemy nations may be named as co-owners or designated beneficiaries.²⁵

1. *Sole Ownership Form*

Bonds of all three series may be registered in the names of individuals, whether adults or minors, in their own right as sole owners.²⁶ A minor may be named as owner whether or not he is under legal guardianship and regardless of whether the bonds are purchased with his own funds or the funds of another; however, if he is under legal guardianship an appropriate reference may be made to that fact in the registration.²⁷ Incompetents, other than minors, may not be registered as owners unless a legal representative of their estate has been appointed.²⁸ In the case of Series E bonds registration is limited to natural persons, but bonds of Series F and G may in addition be registered in the names of incorporated or unincorporated associations, including clubs, lodges, partnerships, states,

²³ Lynch, *op. cit.*, *supra*, n. 21, at 8 and 16; Moore's *Adm'r v. Marshall*, 302 Ky. 729, 196 S. W. 2d 369 (1946).

²⁴ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part V, 31 C. F. R. 315.5; U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 315.5(b); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.3, 31 C. F. R. 315.3 (1949).

²⁵ *Ibid.*

²⁶ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.4(a)(1) and (b), 315.5, 31 C. F. R. 315.4(a)(1) and (b), 315.5 (1949).

²⁷ *Ibid.*, Sec. 315.4(b)(2,4), 315.5(a).

²⁸ *Ibid.*, Sec. 315.4(b)(3,4).

public corporations, and other organizations regardless of the manner in which they are organized or governed or title to their property is held.²⁹ In addition Series F and G bonds may be registered in the names of fiduciaries, such as executors, administrators, guardians, or other properly appointed representatives of a single estate, and trustees of a single duly constituted trust estate, or a lodge, church, society, or similar organization, or in the names of public officers, corporations, or other bodies acting as trustees under authority of law.³⁰ For the ownership of savings bonds such estates, trusts, and other organizations are, in effect, treated as an entity.

Registration in this form permits the single named owner to retain complete control over the bonds and to assert all the incidents of ownership. His rights as owner, however, are limited by the nature of the bonds; thus he cannot transfer the bonds by gift or bequest or in any other manner than provided in the regulations.³¹ The purchaser may, when the bonds are originally issued, have them registered in the name of another as owner and in that way make a gift (donation) of the bonds to the registered owner. Such a transaction does not involve a gift in the technical sense; thus the elements of a common law gift need not be present. The regulations are controlling and the form of the registration is conclusive as to the rights of the parties.³² If the owner holds the bond until maturity he is entitled to receive payment upon presentation and

²⁹ *Ibid.*, Sec. 315.4 (a), 315.5 (c, d).

³⁰ *Ibid.*, Sec. 315.5 (a, b).

³¹ The question of the transferability of savings bonds is considered in detail *infra*, pp. 282-283. See the following cases all of which refused to give effect to attempted transfers of bonds by way of gift and recognized the registered owner (donor) as still retaining title: *In re Nettle's Estate*, 91 N. Y. S. 2d 255 (1949), *aff'd* 276 App. Div. 929, 94 N. Y. S. 2d 704 (1950); *In re Tonkin's Estate*, 65 N. Y. S. 2d 484 (1946); *Brown v. Vinson*, 188 Tenn. 120, 216 S. W. 2d 748 (1949); *In re Owens' Estate*, 177 Misc. 1006, 32 N. Y. S. 2d 747 (1941).

³² In the following cases bonds purchased by one person and registered in the name of another were held to belong to the latter; the regulations and the form of the registration were held conclusive of the interests of the parties without regard to the requirements of the common law as to gifts: *In re Murray's Estate*, 236 Ia. 807, 20 N. W. 2d 49 (1945); *Parkinson v. Wood*, 320 Mich. 143, 30 N. W. 2d 813 (1948); *Inheritance Tax Division v. Chamberlain's Estate*, 121 Wash. 2d 756, 153 P. 2d 305 (1944); *In re Owens' Estate*, *supra*, n. 31.

surrender of the bond accompanied by a properly certified request for payment.³³ In the case of Series E bonds the procedure usually followed is extremely simple; by presenting the bond to any qualified paying agent (most banks and trust companies are such agents), establishing his identity, and signing the request for payment printed on the back of the bond the registered owner may receive immediate payment.³⁴ These bonds may also be presented to any Federal Reserve Bank or the Treasurer of the United States after having the request for payment properly certified. Payment is then made by check to the registered owner.³⁵ Series F and G bonds, on the other hand, must be presented and surrendered to a Federal Reserve Bank or the Treasury Department, Division of Loans and Currency, after having the request for payment form properly certified.³⁶ Payment is then made by check to the registered owner; in the case of Series F and G bonds payment is made only on the first day of a calendar month and only after at least one full calendar month following actual receipt of the notice of intention to redeem.³⁷

Savings bonds may also be redeemed in whole or in part prior to maturity. Again the procedure for redeeming Series E bonds is simple; the owner may receive immediate payment of the current redemption value (indicated in the table printed on the bond) by presenting the bond to any authorized paying agent as in the case of matured bonds.³⁸ No advance notice of intent to redeem is necessary; how-

³³ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.22, 31 C. F. R. 315.22 (1949).

³⁴ *Ibid.*, Sec. 315.29.

³⁵ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part VII, 31 C. F. R. 316.7 (1949); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.22 and 315.28, 31 C. F. R. 315.22 and 315.28 (1949). See U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.24-315.27, 31 C. F. R. 315.24-315.27 (1949) for regulations governing the form and execution of requests for payment and the certification thereof.

³⁶ U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.7; U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.22 and 315.28, 31 C. F. R. 315.22 and 315.28 (1949). See U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.24-315.27, 31 C. F. R. 315.24-315.27 (1949) for regulations governing the form and execution of requests for payment and the certification thereof.

³⁷ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.31, 31 C. F. R. 315.31 (1949).

³⁸ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part VII, 31 C. F. R. 316.7 (1949); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.29, 31 C. F. R. 315.29 (1949).

ever, redemption is not allowed until after sixty days from the issue date of the bond.³⁹ But since the issue date of all savings bonds is the first day of the month in which the bond is purchased, the actual elapsed time between the purchase of the bond and redemption may be less than sixty days.⁴⁰ Redemption prior to maturity is also allowed in the case of bonds of Series F and G, and the procedure to be followed is similar to that used in redeeming matured bonds. However, one month's notice in writing of the owner's intention to redeem is required and no redemption is possible until six months after the issue date of the bond.⁴¹ Again the issue date is the first of the month in which the bond is purchased, and, therefore, the time when redemption is permitted may be less than six months from the actual date of purchase.⁴² Payment is made on the first day of the first month following at least one full calendar month from the date of receipt of the notice.⁴³ As bonds of Series F and G are not eligible for redemption at local paying agencies, the notice must be given to and the bond must be surrendered to a Federal Reserve Bank or the Treasury Department, Division of Loans and Currency.⁴⁴

Bonds in denominations greater than \$25 (maturity value) may be redeemed in part in amounts corresponding to authorized denominations of not less than \$25 (maturity value) and the balance will then be reissued in bonds of the same series bearing the same issue date and having the same rights and privileges as the original bonds.⁴⁵

³⁹ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part VII, Sec. 1, 31 C. F. R. 316.7(a) (1949); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.23(a), as amended July 25, 1947, 31 C. F. R. 315.23(a) (1949).

⁴⁰ See U. S. Treas. Dept. Cir. No. 653, Second Revision, Part II, Sec. 2, 31 C. F. R. 316.2(b) (1949) which states:

"The issue date is the basis for determining the redemption or maturity period of the bond, and the date appearing in the issuing agent's stamp should not be confused therewith."

⁴¹ U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.7; U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.23(b), as amended July 25, 1947, 31 C. F. R. 315.23(b) (1949).

⁴² U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.2(b).

⁴³ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.23(b), as amended July 25, 1947, 31 C. F. R. 315.23(b) (1949).

⁴⁴ *Ibid* and U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.28, 31 C. F. R. 315.28 (1949).

⁴⁵ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part VII, Sec. 7, 31 C. F. R. 316.7(g) (1949); U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.7(h); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.30

Partial redemption may not be affected at local paying agencies; in such cases the bonds must be surrendered to a Federal Reserve Bank, the Treasurer of the United States, or the Treasury Department, Division of Loans and Currency, depending on the type of bond.⁴⁶

Bonds of Series E, F, and G originally issued in the name of one person as sole owner may be reissued for the purpose of adding the name of another person as a co-owner or beneficiary, or in the case of bonds of Series F or G, in the name of a trustee of a living trust created by the owner for his own benefit in whole or in part.⁴⁷ In general bonds may be reissued in any form of registration permitted by the regulations in effect on the date of original issue with respect to bonds of that series.⁴⁸ When bonds are reissued in co-ownership form they are, for the purposes of determining the amount of bonds allowed to be issued to any one owner under the limitations discussed above, considered as originally issued in both names, and no reissue will be permitted which results in any person holding bonds in excess of the established limit for the series to which the bonds belong.⁴⁹

2. Co-Ownership Form

Bonds of all series may be registered in the names of two (but not more than two) natural persons (individuals) as co-owners.⁵⁰ Fiduciaries, corporations, associations, and partnerships may not be named as co-owners; except that bonds of Series F and G may be registered in the names of the executors, administrators, guardians, or other repre-

and Sec. 315.36-7, 31 C. F. R. 315.30 and 315.36-7 (1949). Partial redemption of Series G bonds is permitted only in bonds of a denomination higher than \$100.

⁴⁶ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.30 and Sec. 315.33, 31 C. F. R. 315.30 and 315.33 (1949).

⁴⁷ *Ibid.*, Sec. 315.32 and Sec. 315.44. Only by having the bond reissued, may a valid gift be made of a bond after it has been originally issued. See *Brown v. Vinson*, 188 Tenn. 120, 216 S. W. 2d 748 (1949) and discussion at pp. 282-284.

⁴⁸ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.7 and 315.22, 31 C. F. R. 315.7 and 315.22 (1949).

⁴⁹ *Ibid.*, Sec. 315.44 (a).

⁵⁰ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part V, Sec. 1, 31 C. F. R. 316.5(a) (1949); U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.5(a) (1) (ii); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.4(a) (2) and Sec. 315.5, 31 C. F. R. 315.4(a) (2) and 315.5 (1949).

sentatives of a single estate,⁵¹ or in the names of the trustees of a single duly constituted trust estate.⁵² Registration in this form permits either co-owner to exercise most of the incidents of ownership during the lives of both co-owners and provides for survivorship, upon the death of one owner, in favor of the co-owner. It creates, therefore, an interest in the co-owners which is similar to the interests of joint tenants or tenants by the entireties, but which differs from those interests in that the rights of the parties are determined entirely by the terms of the applicable regulations rather than by the statutory or common law of any state.⁵³ According to those regulations either co-owner may secure payment of the bond upon his separate request without securing the assent of the other, and such payment completely terminates the interest of the co-owner in the bond.⁵⁴ But during the lives of both co-owners a bond will be reissued only upon the request of both owners, and then only for the following purposes: (1) If one of the owners is married after the time of the original issue the bond may be reissued in the name of either co-owner, alone or with a new co-owner or beneficiary. (2) If the co-owners are divorced from each other after the date of the original issue, the bond may be reissued in the name of either co-owner, alone or with a new co-owner or beneficiary. (Such request must be supported by a certified copy of the divorce decree.) (3) If the bond is the type which originally could have been issued in the name of a trustee, it may be reissued in the name of a trustee of a living trust created by both co-owners for the benefit of both, in whole or in part, during their lifetime.⁵⁵ Thus, although one co-owner may

⁵¹ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.5(a), 31 C. F. R. 315.5(a) (1949).

⁵² U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.5(b), 31 C. F. R. 315.5(b) (1949).

⁵³ In *Ruben v. Ruben*, 95 Pittsb. Leg. J. 65 (1946), Series E and G bonds registered in co-ownership form in the names of a husband and wife were held not to create an estate by the entireties under Pennsylvania law, and thus the husband could cash the bonds without having his wife join with him. See also *Hart v. Hart*, 194 Misc. 162, 81 N. Y. S. 2d 764 (1948), which recognized the supremacy of the regulations over state law.

⁵⁴ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.45(a), 31 C. F. R. 315.45(a) (1949).

⁵⁵ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.45(b), as amended Feb. 21, 1949, 31 C. F. R. 315.45(b) (1949).

not directly cut off the other co-owner by having the bond reissued, he may, in effect, do so indirectly by cashing the bond and having a new one issued.

Upon the death of either co-owner the survivor becomes the sole and absolute owner of the bond, and payment or reissue will be made to him alone.⁵⁶ This right of the surviving co-owner has been questioned in many cases but he has, in nearly all instances, won out over the claims of the estate of the deceased co-owner,⁵⁷ or the legatees under the will of the deceased owner.⁵⁸ In sustaining the co-owner the courts have denied that the purpose of the regulations is merely to protect the Treasury Department in making payment, and have instead taken the position that the regulations are a part of the obligation of the bonds and determine the rights of the parties to the proceeds. Thus the Iowa court in *In re Murray's Estate* said:⁵⁹

"We are also of the opinion that the regulations . . . have the effect of determining the legal rights of the parties in regard to ownership of bonds issued pursuant thereto. . . . These regulations must be given a reasonable interpretation. Obviously, these provisions . . . do more than protect the Treasury Department in the matter of payment. They limit the ownership that may be contracted for and require that the actual ownership be expressed."

Similar language is found in a North Carolina case:⁶⁰

"The suggestion of the appellants that the provisions, here considered as conferring the absolute right

⁵⁶ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.45(c), 31 C. F. R. 315.45(c) (1949). Where the survivor requests reissue, he must, of course, present proof of the death of the other co-owner. *Ibid.*

⁵⁷ *Chambless v. Black*, 250 Ala. 604, 35 So. 2d 348 (1948); *Conrad v. Conrad*, 66 Cal. App. 2d 280, 152 P. 2d 221 (1944); *Knight v. Wingate*, 205 Ga. 133, 52 S. E. 2d 604 (1949); *Franklin v. Pope*, 81 Ga. App. 729, 59 S. E. 2d 726 (1950); *In re Murray's Estate*, 236 Ia. 807, 20 N. W. 2d 49 (1945); *Lemon v. Foulston*, 219 P. 2d 388 (Kan. 1950); *Stephens v. First Nat. Bank of Nevada*, 196 P. 2d 756 (Nev. 1948); *Ervin v. Conn.*, 225 N. C. 267, 34 S. E. 2d 402 (1945).

⁵⁸ *In re Stanley's Estate*, 102 Colo. 422, 80 P. 2d 332 (1938); *In re Fliegelman's Will*, 184 Misc. 792, 55 N. Y. S. 2d 139 (1945); *In re Huhn's Will*, 58 N. Y. S. 2d 287 (1945); *In re Willoughby's Will*, 45 N. Y. S. 2d 177 (1943), aff'd 52 N. Y. S. 2d 793 (1945). But see *Chase v. Leiter*, 215 P. 2d 756 (Cal. 1950).

⁵⁹ *Supra*, n. 57, at 819 and 55-6.

⁶⁰ *Ervin v. Conn.*, *supra*, n. 57, at 275 and 407.

of ownership on the survivor, merely constitute the designated persons as agents to make the collection, or receive payment of the bonds, must be rejected. The character of the instruments, the circumstances under which they are issued and sold, as well as the phraseology employed with reference to the final payment, negative the suggestion."

If a co-owner dies after he has presented and surrendered the bond for payment, payment will be made to his estate; likewise, if a co-owner dies after the bond has been presented and surrendered for reissue, the bond will be treated as if such reissue had been completed prior to the death of the co-owner.⁶¹ If a surviving co-owner dies without having presented and surrendered the bond for payment or reissue, the bond will be considered as belonging to his estate; in such case proof of death of both co-owners and of the order in which they died will be required.⁶² Where both co-owners die in a common disaster under such conditions that it cannot be established, either by presumption of law or otherwise, which owner died first, the bond will be considered as belonging to the estates of both owners.⁶³ This regulation would seem to allow the introduction of evidence tending to prove survivorship as a matter of fact or, in the absence of such, the use of common law or statutory rules to determine survivorship as a matter of law; and if there is no evidence or rule for determining survivorship to divide the bond equally between the estates of both co-owners. The Uniform Simultaneous Death Act, if applicable, would seem to reach the same result.⁶⁴

3. *Beneficiary Form*

Bonds of all series may be registered in the name of one person as owner, payable on death to another person as beneficiary. However, registration in this form is limited

⁶¹ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.45(c), 31 C. F. R. 315.45(c) (1949).

⁶² *Ibid.*, Sec. 315.45(e); *In re Taylor*, 27 Ohio Ops. 434 (1943).

⁶³ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.45(d), 31 C. F. R. 315.45(d) (1949).

⁶⁴ This act has been adopted in at least 38 states including Maryland (Md. Code Supp. (1947) Art. 35, Secs. 89-96).

to two individuals both of whom must be natural persons, except that the Treasurer of the United States may be named as beneficiary.⁶⁵ During the lifetime of the registered owner he retains most of the incidents of ownership, including the right to have the bond paid to him, upon his request, as if no beneficiary had been named.⁶⁶ The owner may also have the bond reissued, upon his request, for the purpose of having the person designated as beneficiary changed to a co-owner, subject to the limitations on holdings previously mentioned.⁶⁷ Upon the request of the owner together with the consent of the beneficiary, the bond will be reissued so as to eliminate the beneficiary,⁶⁸ or to substitute another person as beneficiary, or to name another person as co-owner.⁶⁹ And if the bond is of a series (F or G) which may be originally issued in the name of a trustee, it may be reissued in the name of a trustee of a living trust created by the owner for his benefit, in whole or in part, during his lifetime.⁷⁰ It thus appears that once a beneficiary has been named, he acquires an interest in the bond which cannot be cut off without his consent except by the owner cashing the bond.⁷¹ His position in this respect is similar to that of a co-owner.

⁶⁵ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part V, Sec. 1, 31 C. F. R. 316.5(a) (1949); U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.5(a) (1) (iii); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.4(a) (3), 31 C. F. R. 315.4(a) (3) (1949).

⁶⁶ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.46(a), 31 C. F. R. 315.46(a) (1949). In *Hatfield v. Buck*, 193 Misc. 1041, 85 N. Y. S. 2d 613 (1948), the registered owner (father) recovered possession of a savings bond, registered in beneficiary form, in an action against the beneficiary (son) and his mother, to whom the bond had been given for safe keeping; the beneficiary claimed an interest in the bond as the result of an *inter vivos* transfer but the court held the form of the registration controlling as to the rights of the parties.

⁶⁷ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.46(b) (1), 31 C. F. R. 315.46(b) (1) (1949).

⁶⁸ Bonds registered in the name of an owner and payable on death to the Treasurer of the United States may not be reissued to eliminate the beneficiary. U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.4(a) (3) and 315.46(b) (2) n. 6, 31 C. F. R. 315.4(a) (3) and 315.46(b) (2) n. 1 (1949).

⁶⁹ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.46(b) (2), 31 C. F. R. 315.46(b) (2) (1949).

⁷⁰ *Ibid.*

⁷¹ In the following cases the courts recognized that although the owner could cash the bonds he could not change the beneficiary; the interest of the latter was characterized as vested subject to being divested, defeasible, conditional, or contingent. In *re Deyo's Estate*, 180 Misc. 32, 42 N. Y. S. 2d 379 (1943); In *re Hager's Estate*, 181 Misc. 431, 45 N. Y. S. 2d 468 (1943); In *re*

If during the lifetime of the owner the beneficiary should die, the owner may have the bond reissued as though it were registered in his name alone.⁷² Should the owner die without having presented and surrendered the bond for payment or reissue, the beneficiary not surviving, the bond will be considered as belonging to the estate of the owner.⁷³ On the other hand if the registered owner dies without having presented and surrendered the bond for payment or reissue and is survived by the beneficiary, the latter becomes the sole and absolute owner of the bond as though the bond were registered in his name alone.⁷⁴ The rights of the surviving beneficiary were questioned in some of the early cases on the theory that there was no present gift by the owner to the beneficiary, and if the transaction was not valid as a gift it was a testamentary transfer and invalid for failure to comply with the applicable statute of wills.⁷⁵ As previously indicated the law of gifts, in the technical sense, is not involved; the rights of the parties depend entirely on the terms of the bonds and the regulations governing them. For the same reason the fact that the transaction is in effect testamentary makes no difference.⁷⁶ That this is true is established in the later cases which have upheld the validity of the bonds and sustained the interest of the beneficiary as against claims of

Di Santo's Estate, 142 Ohio St. 223, 51 N. E. 2d 639 (1943) ; Decker v. Fowler, 199 Wash. 549, 92 P. 2d 254 (1939) (dissenting opinion).

⁷² U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.46(b) (3), 31 C. F. R. 315.46(b) (3) (1949).

⁷³ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.47, as amended July 25, 1947, 31 C. F. R. 315.47 (1949) ; Myers v. Hardin, 208 Ark. 505, 186 S. W. 2d 925 (1945) ; In re Taylor, 27 Ohio Ops. 434 (1943).

⁷⁴ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.46(c), 31 C. F. R. 315.46(c) (1949) ; Franklin v. Pope, 81 Ga. App. 729, 59 S. E. 2d 726 (1950) ; Reynolds v. Reynolds, 90 N. E. 2d 338 (Mass. 1950) ; In re Deyo's Estate, *supra*, n. 71 ; In re Hager's Estate, *supra*, n. 71 ; In re Stahel's Will, 57 N. Y. S. 2d 185 (1945), *aff'd* 66 N. Y. S. 2d 271 (1946) ; In re Di Santo's Estate, *supra*, n. 71 ; U. S. v. Dauphin Deposit Trust Co., 50 F. Supp. 73 (1943) ; Application of Laundree (2 cases), 100 N. Y. S. 2d 145 and 146 (1950). The rights of creditors of the owner are considered, *infra*, pp. 285-288.

⁷⁵ Decker v. Fowler, 199 Wash. 549, 92 P. 2d 254 (1939) ; Deyo v. Adams, 178 Misc. 859, 36 N. Y. S. 2d 734 (1942) ; In re Karlinski's Estate, 38 N. Y. S. 2d 297 (1942), rehearing 40 N. Y. S. 2d 22 (1943).

⁷⁶ Reynold v. Danko, 134 N. J. Eq. 560, 36 A. 2d 420 (1944) ; Hatfield v. Bück, *supra*, n. 66 ; In re Kalina's Will, 184 Misc. 367, 53 N. Y. S. 2d 775 (1945) ; Inheritance Tax Division v. Chamberlin's Estate, 121 Wash. 2d 756, 153 P. 2d 305 (1944).

the estate of the deceased owner and legatees under his will.⁷⁷ In a leading case the court said:⁷⁸

"The rights of the beneficiary . . . arise solely from . . . contract and not from sale, devise or gift. . . . Because the Federal Government is a party to the contract this is a Federal contract which is necessarily controlled by the Federal law. It is based upon the exercise of the power delegated to Congress to borrow money on the credit of the United States. . . . The borrowing power necessarily includes the power to fix the terms of the Government's obligations. . . . The Treasury regulations are within the authority given the Secretary of the Treasury by the Congress and have the force of Federal law. . . . These savings bonds are issued and sold throughout the United States. Application to the issue and sale of these securities of state law would lead to a great diversity of rules regulating title and redemption and would subject the entire financing plan of the Federal Government to exceptional uncertainty by making identical transactions subject to the vagaries of the several states."

In another case the New Jersey court stated:⁷⁹

"The Treasury regulations . . . were not devised solely for the protection of the Treasury, to simplify its task of determining whom to pay in case of the death of the registered owner. The regulations have the further effect of defining the rights of the registered owner and the beneficiary as between themselves, for these rights inter sese are the reflection of the contract obligation of the United States to the owner and to the beneficiary severally. The title of the registered owner, his cause of action against the United States, is cut off by his death; the beneficiary thereupon becomes

⁷⁷ The beneficiary prevailed over the estate of the deceased owner in *In re Briley's Estate*, 155 Fla. 798, 21 So. 2d 595 (1945); *Franklin v. Pope*, 81 Ga. App. 729, 59 S. E. 2d 726 (1950); *In re Amols' Will*, 47 N. Y. S. 2d 636 (1944); *Laufersweiler v. Richmond*, 22 Ohio Ops. 265 (1942); *Makinen v. George*, 19 Wash. 2d 340, 142 P. 2d 910 (1943). The beneficiary prevailed over the legatee in the will of the owner in *Myers v. Hardin*, *supra*, n. 73; *Davies v. Beach*, 74 Cal. App. 2d 304, 168 P. 2d 452 (1946). Compare *Mitchell v. Edds*, 143 Tex. 307, 181 S. W. 2d 323 (1944); *Union Nat. Bank v. Jessell*, 338 Mo. 467, 215 S. W. 2d 474 (1948); *Chase v. Leiter*, 215 P. 2d 756 (Cal. App. 1950).

⁷⁸ *U. S. v. Dauphin Deposit Trust Co.*, *supra*, n. 74 at 75-77.

⁷⁹ *Franklin Washington Trust Co. v. Beltram*, 133 N. J. Eq. 11, 13-14, 29 A. 2d 854, 856 (1943).

sole and absolute owner. . . . There is nothing of a testamentary character in such a contract. It is an instance of a contract partially for the benefit of a third party, and on which a right of action accrues to the third party . . ."

If the owner dies after having presented and surrendered the bond for payment, payment will be made to his estate; likewise, if death of the owner occurs after the bond is presented and surrendered for reissue, the bond is treated as if such reissue had been made prior to the death of the owner.⁸⁰ But once the beneficiary survives the registered owner his rights in the bond become fixed, and his subsequent death without having presented and surrendered the bond for payment or reissue does not affect his interest; the bond is considered as part of his estate and will be paid or reissued accordingly.⁸¹ In such case proof of the order of death is required.

III. TRANSFERABILITY (INCLUDING CREDITORS' RIGHTS)

Once bonds of any series are duly issued they are not transferable, with certain limited exceptions;⁸² accordingly it is expressly stated that they may not be sold, discounted, hypothecated as collateral for a loan or the performance of a service, or disposed of in any manner other than as provided in the regulations.⁸³ Yet in spite of these limitations a good deal of litigation has arisen involving attempted transfers of bonds. A number of cases have involved attempts to transfer bonds by means of a gift, either *inter vivos* or *causa mortis*.⁸⁴ The courts in a few

⁸⁰ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.46(c), 31 C. F. R. 315.46(c) (1949).

⁸¹ *Ibid.*, Sec. 315.46(d).

⁸² Savings bonds may be pledged as security with the Secretary of the Treasury or a Federal Reserve Bank as provided in Department Circulars Nos. 154 and 657. U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.12, 31 C. F. R. 315.12 (1949).

⁸³ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part II. Sec. 3, 31 C. F. R. 316.2(c) (1949); U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.2(b); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.11, 31 C. F. R. 315.11 (1949).

⁸⁴ As previously indicated a gift (donation) of a bond may be made, by the purchaser, by having the bond originally issued in the name of another as owner, or by having the bond reissued in the name of another as owner; likewise a limited interest as co-owner or beneficiary may be created at the

cases, mostly early decisions, ignored the regulations and held the gifts valid,⁸⁵ but the majority of the cases have established the supremacy of the restrictions and have refused to recognize attempted transfers by way of gifts.⁸⁶ As stated in one of the cases:⁸⁷

"The Act of Congress and the Treasury regulations had two objectives: (1) To obtain money for the United States Government; and (2) to encourage thrift and savings by small investors. The nontransferability feature was intended to accomplish the second objective, and for that reason the limitation on transfer was made all inclusive. . . . A holding that these United States Savings Bonds are transferable by gift *inter vivos* would defeat the purposes of the Act of Congress and the Treasury regulations, and would open the door for evasion of plainly expressed restrictions on transfer."

Although some cases have attempted to distinguish gifts *causa mortis* from gifts *inter vivos*, there seems to be no sound basis for such distinction; both types of gifts involve prohibited transfers.

"The purport of the regulations indicates a clear intention that 'E' Savings Bonds shall not be transferable except by the prescribed process of registration. . . . Such bonds have a peculiar status, for they are intended for issue in every state, are backed by the credit of the federal government, and are offered for sale subject to conditions which it must be assumed were intended to enhance the borrowing power of the

time of original issue or by means of a reissue. However, such transactions do not depend on the law of gifts for their validity. *Ibey v. Ibey*, 93 N. H. 434, 43 A. 2d 157 (1945); *Reynold v. Danko*, *supra*, n. 76; *Parkinson v. Wood*, 320 Mich. 143, 30 N. W. 2d 813 (1948); see discussion, *supra*, p. 272.

⁸⁵ *Marshall v. Felker*, 156 Fla. 476, 23 So. 2d 555 (1945); *In re Borchardt's Estate*, 179 Misc. 456, 38 N. Y. S. 2d 987 (1942); *Dietzen v. American Trust & Banking Co.*, 175 Tenn. 49, 131 S. W. 2d 69 (1939).

⁸⁶ *Bunch v. Hulsey*, 302 Ky. 763, 196 S. W. 2d 373 (1946); *Moore's Adm'r. v. Marshall*, 302 Ky. 729, 196 S. W. 2d 369 (1946); *Fidelity Union Trust Co. v. Tezyk*, 140 N. J. Eq. 474, 55 A. 2d 26 (1947); *In re Ballard's Estate*, 161 Misc. 785, 293 N. Y. S. 31 (1937); *Bergman v. Greenwich Sav. Bank*, 74 N. Y. S. 2d 638 (1947); *In re Nettle's Estate*, 91 N. Y. S. 2d 255 (1949), *aff'd* 94 N. Y. S. 2d 704 (1950); *In re Owens' Estate*, 177 Misc. 1006, 32 N. Y. S. 2d 747 (1941); *In re Tonkin's Estate*, 65 N. Y. S. 2d 484 (1946); *Brown v. Vinson*, 188 Tenn. 120, 216 S. W. 2d 748 (1949); *In re Bartlett*, 71 F. Supp. 514 (D. C., N. D. N. Y. 1947).

⁸⁷ *Moore's Adm'r. v. Marshall*, *supra*, n. 86, at 734-5 and 372.

federal government. Conversely, it reasonably cannot be assumed that these conditions, made known to purchasers throughout the country, were intended to be subject to rules pertaining to the devolution of personal property in the various states, or to varying interpretations which might be accorded by the different state courts. . . . It seems quite clear that the conditions under which these bonds were issued makes registration the sole evidence of ownership with the one necessary exception of recognizing formal procedures for the administration of estates. If any further exception is to be made for gifts *causa mortis*, then this action should be taken by the federal government, so that there might be a consistency in the terms of these obligations throughout the states."⁸⁸

Thus once a bond is registered the owner cannot by an attempted gift cut off the rights of a co-owner or beneficiary. Even when the bond is registered in sole ownership form the gift fails, leaving the bond an asset of the estate of the owner.

Neither may an owner cut off the rights of a co-owner or beneficiary by providing in his will for some other disposition of bonds registered in co-ownership or beneficiary form.⁸⁹ However, the courts in two cases have held that mutual wills executed by a husband and wife may control the right to the proceeds of bonds. In one case the bonds were owned by the parties prior to the execution of the wills, while in the other the bonds were purchased by the survivor and registered in a form inconsistent with the agreement in the wills. In both cases the surviving spouse was, in effect, asserting rights in property in opposition to the mutual wills. There was, therefore, an attempt to commit a fraud on the deceased spouse through the use of the bonds, and this the courts refused to allow. In neither case did the court directly deny the named co-owner or beneficiary the right to the bonds, but in both instances they imposed a trust on the bonds and the proceeds and directed

⁸⁸ *Fidelity Union Trust Co. v. Tezyk*, *supra*, n. 86, at 477-9 and 27-8; see also *Bergman v. Greenwich Sav. Bank*, *supra*, n. 86; *In re Ballard's Estate*, *supra*, n. 86. *Contra In re Borchardt's Estate*, *supra*, n. 85.

⁸⁹ *Davies v. Beach*, 74 Cal. App. 2d 304, 168 P. 2d 452 (1946); *In re Stanley's Estate*, 102 Colo. 422, 80 P. 2d 332 (1933).

the co-owner or beneficiary to dispose of the proceeds in accordance with the terms of the wills.⁹⁰ The result is in accord with similar situations involving the rights of creditors and surviving spouses where fraud is involved. If the bond is registered in sole ownership form, or if the co-owner or beneficiary does not survive the owner, it is considered as belonging to the estate of the deceased owner and will be paid or reissued to the person, or persons, entitled to the estate.⁹¹ Such person may be the administrator or executor, the heirs or next of kin, or a devisee or legatee.⁹²

Although the regulations expressly prohibit the use of savings bonds as security for a loan or other obligation, they do provide that the rights of certain claimants (judgment creditors, trustees in bankruptcy, receivers of insolvents' estates, and conflicting claims between co-owners or an owner and a beneficiary) will be recognized when established by valid judicial proceedings.⁹³ However, no such proceedings will be recognized if they would give effect to an attempted voluntary transfer *inter vivos* or would de-

⁹⁰ Chase v. Leiter, 215 P. 2d 756 (Cal. 1950); Union Nat. Bank v. Jessell, 358 Mo. 467, 215 S. W. 2d 474 (1948).

⁹¹ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part II, Sec. 3, 31 C. F. R. 316.2(c) (1949); U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.2(f); U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.47, as amended July 25, 1947 and Feb. 21, 1949, 31 C. F. R. 315.47 (1949). The payment or reissue may be made either during the course of administration of the estate, after settlement through court proceedings, or, under some circumstances, without administration. *Ibid.*

⁹² *Ibid.* In the following cases the bonds were held to be assets of the estate of the deceased owner as opposed to claims made by donees: Moore's Adm'r. v. Marshall, *supra*, n. 86; Bergman v. Greenwich Sav. Bank, *supra*, n. 86; In re Nettle's Estate, *supra*, n. 86; In re Tonkin's Estate, *supra*, n. 86; Brown v. Vinson, *supra*, n. 86. In Fidelity Union Trust Co. v. Tezyk, *supra*, n. 86, the bonds were held to be assets of the estate of the deceased owner and to pass according to his will rather than by an attempted gift *causa mortis*.

⁹³ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.13, 31 C. F. R. 315.13 (1949); Hausfelder v. Security-First Nat. Bank, 77 Cal. App. 2d 478, 176 P. 2d 84 (1946); Tobola v. Wholey, 75 Cal. App. 2d 351, 170 P. 2d 952 (1946); Makinen v. George, 19 Wash. 2d 340, 142 P. 2d 910 (1943). To establish the validity of judicial proceedings there must be submitted a certified copy of a final judgment or decree; a trustee in bankruptcy must submit proof of his authority in the form of certificates from the referee and the clerk of the United States District Court. U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.14, as amended July 25, 1947, 31 C. F. R. 315.14 (1949). Neither the Treasury Department nor any agency for the issue, reissue, or redemption of bonds will accept notices of adverse claims or of pending judicial proceedings, or undertake to protect the interests of litigants not in possession of the bonds. U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.15, 31 C. F. R. 315.15 (1949).

feat or impair the rights of survivorship of a surviving co-owner or beneficiary.⁹⁴ Thus the courts have refused to recognize the validity of an arrangement to use bonds as security for a loan,⁹⁵ or to impose a trust on the beneficiary in accordance with a claimed agreement with the owner.⁹⁶ On the other hand where the purchase of the bonds was found to be a fraud on creditors or the rights of a surviving spouse, relief has been given by imposing a constructive trust on the proceeds of the bonds in the hands of the person entitled thereto under the regulations (owner, co-owner, or beneficiary).⁹⁷ This position has been well stated in a California case:⁹⁸

“While the cases . . . hold that as between the government and the survivor or beneficiary of the bonds and all other claimants the courts will recognize only the survivor or beneficiary, there is no case that holds that where the bonds are the result of fraud, the persons defrauded cannot pursue the proceeds of such bonds in the hands of one who is a party to the fraud. To so hold would be to put a high premium on fraud. . . . There is nothing in the federal regulations or law that requires such a construction. Even in the case of fraud, the contract made by the government with the bond purchaser to pay his survivor cannot be changed or interfered with, but principles of equity and fair dealing require that the person benefiting by such fraud may be required to disgorge the proceeds of such fraud independently of the contract between him and the federal government, and without interference in

⁹⁴ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.13(1), 31 C. F. R. 315.13(1) (1949). But a divorce decree which ratifies or confirms a property agreement between husband and wife, or which otherwise settles their respective interests in savings bonds, will be recognized and will not be regarded as a proceeding giving effect to an attempted voluntary transfer of the bonds. U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.13, 31 C. F. R. 315.13 (1949). If the property agreement does not include the bonds it will not affect the interests of the husband and wife in the bonds; in such a case the rights of the parties are determined by the regulations and the form of the registration. *Franklin v. Pope*, 81 Ga. App. 729, 59 S. E. 2d 726 (1950).

⁹⁵ *Cook v. Marks*, 302 Mich. 55, 4 N. W. 2d 465 (1942).

⁹⁶ *Hatfield v. Buck*, 193 Misc. 1041, 85 N. Y. S. 2d 613 (1948); *Reynolds v. Reynolds*, 90 N. E. 2d 338 (Mass. 1950).

⁹⁷ *Katz v. Driscoll*, 86 Cal. App. 2d 313, 194 P. 2d 822 (1948); *Succession of Geagan*, 212 La. 574, 33 So. 2d 118 (1947); *Reynolds v. Reynolds*, *supra*, n. 96, *dicta*; *In re Kalina's Will*, 184 Misc. 367, 53 N. Y. S. 2d 775 (1945), *dicta*; *In re Laundree's Estate*, 195 Misc. 754, 91 N. Y. S. 2d 482 (1949).

⁹⁸ *Katz v. Driscoll*, *supra*, n. 97, at 320-2 and 827-8.

its performance. . . . These laws and regulations are not intended to confer on the beneficiary the right to retain permanently the proceeds from the bonds irrespective of fraud or any illegality in the manner in which the bonds were obtained. To hold otherwise would, in effect, say that the treasury regulations not only guarantee payment to the named beneficiary, but, thereafter, when he receives the proceeds, follow him around indefinitely, and, like a protective halo, render him completely immune from any ordinarily legitimate claims thereto. For the purpose of payment and performance of the government's contract obligation, the beneficiary is recognized as the 'sole and absolute' owner. But 'the rights of survivorship conferred by these [treasury] regulations upon a surviving co-owner or beneficiary' . . . terminate there."

Another court has gone so far as to hold that when the purchaser, and registered owner, of bonds dies insolvent the bonds constitute assets of his estate, as against the claim of the surviving beneficiary, on the theory that a fraudulent conveyance is involved.

"The fact that the purchase of the bonds produced no diminution of the debtor's assets or affected the creditor's resort thereto does not establish that there was no transfer. The incorporation of the name of the beneficiary in the bond was the act of the purchaser and conferred a right on him. This right, in view of the power of the purchaser to redeem, was destructible and not enforceable until his death. Viewed in the light of the relative rights of the purchaser and the beneficiary it seems to me that there could be no effective or operative transfer of title to the bonds until the death of the purchaser. Up and until that time the transaction was ambulatory. Thus, at the time when he intended the transfer should and did become effective the transferor had thereby rendered himself insolvent. . . . Such a conveyance is fraudulent as to creditors without regard to actual intent. . . . The treasury regulations, as heretofore stated, provide that the surviving beneficiary will be recognized as the sole and absolute owner of the bond. It does not seem to me that the regulations were intended to prevent a legal representative from pursuing, in the interests of

creditors, the proceeds of bonds fraudulently transferred to a beneficiary without consideration."⁹⁹

However, on appeal that decision was reversed, and the beneficiary was held to be entitled to the bonds in the absence of proof that the owner was insolvent at the time he purchased the bonds.^{99a}

Where there is no finding of fraud the cases have disagreed as to whether bonds registered in co-ownership or beneficiary form are assets of the owner or his estate,¹⁰⁰ although the regulations expressly provide that a judgment creditor, trustee in bankruptcy, or a receiver of an insolvent's estate has the right to payment (but not reissue) of bonds owned by the debtor, bankrupt, or insolvent.¹⁰¹ However, if a debtor, bankrupt, or insolvent is not the sole owner of the bond payment will be made only to the extent of his interest therein.¹⁰²

IV. TAXATION

1. State

All series of savings bonds are subject to estate, inheritance, gift, or other excise taxes imposed by a state, but are exempt from all taxation imposed on the principal or interest of such bonds by any state or possession, or by any local taxing authority.¹⁰³ The bonds are, therefore, exempt from state and local income and ad valorem taxes, but, in so far as the Federal law and regulations are concerned,

⁹⁹ In re Laundree's Estate, *supra*, n. 97 at 759-61 and 488-9.

^{99a} Application of Laundree (2 cases), 100 N. Y. S. 2d 145 and 146 (1950).

¹⁰⁰ In re Briley's Estate, 155 Fla. 798, 21 So. 2d 595 (1945); Iowa Methodist Hospital v. Long, 234 Ia. 843, 12 N. W. 2d 171 (1944). A judgment creditor is limited to payment at the redemption value current thirty days after the termination of the proceedings or current at the time the bond is received whichever is smaller. U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.13(2), 31 C. F. R. 315.13(2) (1949).

¹⁰¹ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.13(2), 31 C. F. R. 315.13(2) (1949). The courts have apparently recognized the right of a trustee in bankruptcy to recover bonds owned by the bankrupt and registered in either co-ownership or beneficiary form. Saper v. Sussman, 185 Misc. 278, 56 N. Y. S. 2d 377 (1945); see also Morris Plan Industrial Bank v. Finn, 149 F. 2d 591 (C. C. A. 2d 1945) and In re Wyche, 51 F. Supp. 825 (D. C., W. D. La. 1943).

¹⁰² U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.13(3), 31 C. F. R. 315.13(3) (1949).

¹⁰³ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part II, Sec. 4. 31 C. F. R. 316.2(d) (1949); U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.2(g).

subject to state inheritance and gift taxes.¹⁰⁴ Whether such taxes apply depends on the terms of the state tax statute and on the court's interpretation of the effect of the transactions involved. This is true because the Treasury regulations, although they have the force and effect of Federal law and are controlling in determining the interests of the parties, are not binding on a state court in determining whether or not a taxable event has occurred.¹⁰⁵

Most of the decisions involve the application of state inheritance taxes to situations where bonds have been purchased by one person and registered in his name as owner and in the name of another person as co-owner. In such cases the courts have, with one exception, agreed that upon the death of either the owner or co-owner a taxable event occurs.¹⁰⁶ They have not, however, agreed regarding the amount of bonds so registered which are subject to the

¹⁰⁴ No cases have been found which involved the application of state gift taxes.

In Maryland the Attorney General has ruled that savings bonds registered in either beneficiary or co-ownership form are not considered part of the estate of the registered owner for the purpose of determining executor's commissions and the tax thereon. 30 Opinions of the Attorney General 168 and 171 (Md. 1945).

¹⁰⁵ See the dissenting opinion in *re Brown's Estate*, 206 P. 2d 816, 823 (Mont. 1949), where it is stated:

"The federal regulations . . . treat the alternate owners of such bonds as joint owners with the right of survivorship. The fact that those regulations . . . regard the bonds for federal estate tax purposes as those of the person furnishing the money unless redeemed before his death is immaterial. It is our statute and not federal regulations which controls the taxability of such bonds for state inheritance tax."

¹⁰⁶ In the following cases the owner died first and the courts held the bonds subject to state inheritance taxes: *Hallett v. Bailey*, 54 A. 2d 533 (Me. 1947); *State Board of Equalization v. Cole*, 195 P. 2d 989 (Mont. 1948); *In re Brown's Estate*, *supra*, n. 105; *In re Huhn's Will*, 58 N. Y. S. 2d 287 (1945) *dicta*; *In re Myers' Estate*, 359 Pa. 577, 60 A. 2d 50 (1948); *Mitchell v. Carson*, 186 Tenn. 228, 209 S. W. 2d 20 (1948). In *Succession of Tanner*, 24 So. 2d 642 (La. App. 1946), the court held the inheritance tax was not applicable; but compare *Succession of Raborn*, 210 La. 1033, 29 So. 2d 53 (1946), applying the tax where the bonds were registered in beneficiary form. In the *Raborn* case the court refused to follow the *Tanner* decision.

In the following cases the co-owner died first and the courts held a state tax applicable: *Connelly v. Kellogg*, 136 Conn. 33, 68 A. 2d 170 (1949); *In re Graham's Estate*, 358 Pa. 383, 57 A. 2d 853 (1948).

In Maryland the Attorney General has ruled that the inheritance tax is applicable upon the death of either co-owner. 24 Opinions of the Attorney General 811 and 887 (Md. 1939); 27 Opinions of the Attorney General 401 (Md. 1942); 29 Opinions of the Attorney General 208 (Md. 1944); 32 Opinions of the Attorney General 411 (Md. 1947). However, by a statute passed in 1945 "any registered bond of the United States in the names of husband and wife passing to such surviving spouse" is exempt from the inheritance tax. Md. Code Supp. (1947), Art. 81, Sec. 111.

tax. This difference in opinion is due to different interpretations of the effect of the purchase and registration of bonds in co-ownership form. Those courts which treat such registration as an incomplete gift prior to the death of the owner impose the tax on the basis of the entire amount of bonds so held by the owner at the time of his death.¹⁰⁷ On the other hand the courts which treat registration in co-ownership form as a completed gift of a half interest in the bonds, by the owner to the co-owner, impose the tax on the basis of one-half the amount of bonds so held at the time of the death of either the owner or co-owner.¹⁰⁸ Since either co-owner has the power to cash the bonds during his lifetime and completely cut off the interest of the other co-owner, it seems proper to make the measure of the tax depend on the extent of the possession and control of the bonds by the deceased. Thus where the bonds are in the exclusive possession and control of the deceased during his lifetime, the transaction may be considered as incomplete until his death and the tax imposed on the basis of the entire amount of the bonds so held; but where the bonds are in the joint possession and control of both co-owners, the survivor has an interest equal to that of the deceased during his lifetime and the tax should be imposed on the basis of one-half the amount of the bonds so held.¹⁰⁹

¹⁰⁷ *State Board of Equalization v. Cole*, *supra*, n. 106; *In re Brown's Estate*, *supra*, n. 105; *In re Myers' Estate*, *supra*, n. 106. In the following cases the courts merely held the bonds subject to the tax without indicating the basis for assessing the tax, the implication being that the entire amount of bonds owned by the deceased owner were taxable: *Hallett v. Bailey*, *supra*, n. 106; *In re Huhn's Will*, *supra*, n. 106; *Mitchell v. Carson*, *supra*, n. 106.

¹⁰⁸ *Connelly v. Kellogg*, *supra*, n. 106; *In re Graham's Estate*, *supra*, n. 106; see also the dissenting opinion in *In re Brown's Estate*, *supra*, n. 105.

In Maryland the Attorney General has ruled, where savings bonds are registered in co-ownership form, that the inheritance tax should be assessed on the basis of one-half the value of the bonds at the time of the death of either co-owner. 24 Opinions of the Attorney General 811 and 887 (Md. 1939); 27 Opinions of the Attorney General 401 (Md. 1942); 29 Opinions of the Attorney General 208 (Md. 1944); 32 Opinions of the Attorney General 411 (Md. 1947).

¹⁰⁹ In the following cases the courts stressed the fact that the deceased owner had retained possession and control of the bonds during his lifetime as justification for imposing the tax on the entire amount of bonds so held: *State Board of Equalization v. Cole*, *supra*, n. 106; *In re Brown's Estate*, *supra*, n. 105; *In re Myers' Estate*, *supra*, n. 106; *Mitchell v. Carson*, *supra*, n. 106. The dissenting opinion in *In re Brown's Estate*, *supra*, argued that

Where the bonds are registered in beneficiary form it seems clear that the interest of the beneficiary is not complete until the death of the owner and, therefore, a taxable event occurs at that time.¹¹⁰ Since the owner of bonds registered in beneficiary form retains complete control over them during his lifetime, the tax should be imposed on the basis of the entire amount of bonds so held.¹¹¹ On the other hand it has been decided that the death of the beneficiary prior to the owner is not a taxable event.¹¹² But by the death of the beneficiary the interest of the owner becomes absolute, and is relieved from the chance that the beneficiary might, by survival, become entitled to the proceeds of the bonds; therefore, under the doctrine of *Helvering v. Hallock*¹¹³ it seems that a tax might be imposed.¹¹⁴

If the bonds are registered in sole ownership form it seems obvious that the death of the registered owner is a taxable event and that the bonds are considered as a part

since the facts indicated the co-owners had the means available for securing the bonds and asserting their rights of ownership the tax should be imposed on only one-half the bonds. In *Connelly v. Kellogg*, *supra*, n. 106, and *In re Graham's Estate*, *supra*, n. 106, the bonds were kept in safe deposit boxes rented in the names of both co-owners and to which both owners had access: the tax was imposed on the basis of one-half the bonds so held upon the death of the co-owner. *Quære*, if the surviving co-owner has retained exclusive possession and control of the bonds should a tax be imposed upon the death of the other co-owner?

¹¹⁰ *Succession of Raborn*, *supra*, n. 106; *In re Staheli's Will*, 57 N. Y. S. 2d 185 (1945), *aff'd* 66 N. Y. S. 2d 271 (1946), *dicta*; *Mitchell v. Carson*, *supra*, n. 106. Compare *In re Amols' Will*, 47 N. Y. S. 2d 636 (1944).

In Maryland the Attorney General has ruled, where bonds are registered in beneficiary form, that the inheritance tax is applicable upon the death of the registered owner. 27 Opinions of the Attorney General 401 (Md. 1942).

¹¹¹ Although the courts in the following cases did not expressly state the basis for imposing the tax, the implication seems to be that the entire amount of bonds held were taxed: *Succession of Raborn*, *supra*, n. 106; *Mitchell v. Carson*, *supra*, n. 106.

In Maryland the Attorney General has ruled, where savings bonds are registered in beneficiary form, that the inheritance tax should be assessed on the basis of the full value of the bonds at the time of the death of the registered owner. 27 Opinions of the Attorney General 401 (Md. 1942).

¹¹² *Inheritance Tax Division v. Chamberlin's Estate*, 121 Wash. 2d 756, 153 P. 2d 305 (1944).

¹¹³ 309 U. S. 106, 60 S. Ct. 444, 84 L. ed. 604 (1940).

¹¹⁴ See the court's justification of the tax upon the death of a co-owner in *Connelly v. Kellogg*, *supra*, n. 106. In *Inheritance Tax Division v. Chamberlin's Estate*, *supra*, n. 112, the court distinguished the *Hallock* case, saying that the state tax statute did not cover such a remote interest. If a tax were imposed in such a case there might be great difficulty in determining the value of the interest subject to the tax.

of his estate for tax purposes.¹¹⁵ However, when a purchaser donor makes a gift of bonds by registering them in the name of the donee as sole owner, the death of the purchaser is not a taxable event.¹¹⁶ At the death of the donee the bonds would, of course, be part of his estate and subject to tax.

2. Federal

With certain exceptions¹¹⁷ the interest on Series E, F, and G bonds is taxable as income under the Federal income tax laws.¹¹⁸ In the case of appreciation bonds (Series E and F) no interest as such is paid, but the increment in value (the difference between the issue price and the redemption value) represents interest and is taxable.¹¹⁹ In reporting the interest on such bonds for income tax purposes, a taxpayer who makes his return on a cash receipts and disbursements basis normally returns the increment in value as income only for the tax year in which payment of the redemption value of the bonds is received (whether before or after maturity). However, such a taxpayer may elect to treat the interest (increment in value) as income for the year during which it is earned.¹²⁰ But if he makes such an election the taxpayer must report as income for the year the election is made the total increment in value from the date he acquired the bonds (that is, the increment for the current year plus the increment for prior years); and if such an election is made it applies to all increment type bonds owned by the taxpayer and to all such obliga-

¹¹⁵ In Maryland the Attorney General has ruled, where savings bonds are registered in sole ownership form, that the inheritance tax should be assessed on the basis of the full value of the bonds at the time of the death of the registered owner, 27 Opinions of the Attorney General 401 (Md. 1942).

¹¹⁶ *Inheritance Tax Division v. Chamberlin's Estate*, *supra*, n. 112.

¹¹⁷ The interest on bonds issued prior to March 1, 1941, is exempt from income or profits taxes except surtaxes, excess-profits, and war-profits taxes, and is exempt from such taxes to the extent of interest on a principal amount of bonds not in excess of \$5000. Int. Rev. Com.-Mimeograph Coll. No. 6327, R. A. No. 1680.

¹¹⁸ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part II, Sec. 4, 31 C. F. R. 316.2(d) (1949); U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.2(g).

¹¹⁹ *Ibid.*; U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.20, 31 C. F. R. 315.20 (1949).

¹²⁰ Int. Rev. Com.-Mimeograph Coll. No. 6327, R. A. No. 1680. This method may be used for any taxable year beginning after Dec. 31, 1940.

tions thereafter acquired by him, and is binding for all subsequent taxable years, unless upon application the Commissioner of Internal Revenue permits him to change to a different method of making his return.¹²¹ On the other hand a taxpayer who employs the accrual method of accounting should return as income the interest (increment in value) for each tax year to the extent that it is earned during that year.¹²² In the case of current income bonds (Series G) the interest payments are subject to taxation and the return is made in the same manner as other income.

United States Savings Bonds are also subject to the Federal estate and gift taxes.¹²³ Such taxes are excise taxes imposed on the transfer of property and not on the property itself; whether a particular transfer is subject to the tax, and, if so, the amount of the tax, depends upon the value of the property transferred, the rate of the tax, the exemptions allowed by the law, and other factors beyond the scope of this article. However, in the following discussion it is assumed the tax is otherwise applicable.

When the deceased purchased bonds with his own funds and registered them in his own name as sole owner, the redemption value of the bonds at the time of his death constitutes a part of his estate for Federal estate tax purposes. This is also true where the bonds were registered in beneficiary form with the deceased as owner and another as beneficiary, or even where the bonds were registered in co-ownership form with the deceased as owner and another as co-owner, provided the co-owner did not redeem the bonds prior to the death of the owner. On the other hand where bonds are purchased with the separate funds of two individuals and registered in their names as co-owners the

¹²¹ *Ibid.*

¹²² *Ibid.* The table of redemption values on each bond shows the increment in value for each year.

¹²³ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part II, Sec. 4, 31 C. F. R. 316.2(d) (1949); U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.2(g); Int. Rev. Com.-Mimeograph Coll. No. 5202, R. A. No. 1128. But see *Jandorf's Estate v. Commissioner of Internal Revenue*, 171 F. 2d 464 (C. A. 2d 1948) and *Pennsylvania Co. for Banking & Trusts v. United States*, 91 F. Supp. 237 (D. C., E. D. Pa., 1950), holding that the Federal estate tax does not apply to bonds held by a non-resident alien not engaged in business in the United States.

amount taxable as part of the estate of the first co-owner to die is that part of the redemption value which is proportionate to the amount of the purchase price paid by the deceased.¹²⁴

When bonds are purchased by one person and registered in the name of another as sole owner, there is a gift from the purchaser to the registered owner, and the cost of the bonds must be considered in determining the purchaser's gift tax liability for the year in which the bonds are purchased.¹²⁵ Where the purchaser has the bonds registered in beneficiary form with himself as owner and another as beneficiary there is no gift. On the other hand if the bonds are purchased by one person and registered in the name of another as owner and made payable on death to a third person, there has been a gift by the purchaser and the transaction is subject to tax. Similarly where the purchaser has bonds registered in the names of two other persons as co-owners, there is a gift of one-half the purchase price to each owner and the transaction is subject to the Federal gift tax. But where the bonds are registered in co-ownership form in the name of the purchaser as owner and another as co-owner, there is no gift by the purchaser to the co-owner unless and until the latter is allowed to redeem the bonds; at that time there is a gift of the redemption value of the bonds and the purchaser is then liable for the Federal gift tax.¹²⁶

V. MISCELLANY

1. *Minors and Persons Under Other Legal Disabilities*

As previously indicated, savings bonds may be registered in the name of minors and persons otherwise incompetent. If the form of the registration indicates that the owner is a minor or has been judicially declared incompetent and that a guardian or similar representative has been appointed to manage his estate, payment will be made only

¹²⁴ Int. Rev. Com.-Mimeograph Coll. No. 5202, R. A. No. 1128.

¹²⁵ *Ibid.* Bonds so registered, of course, constitute assets of the estate of the owner and the redemption value must be included in determining the amount of the Federal estate tax upon the death of the owner.

¹²⁶ Int. Rev. Com.-Mimeograph Coll. No. 5202, R. A. No. 1128.

to such guardian or representative.¹²⁷ When the registration does not indicate that a guardian or similar legal representative has been appointed, payment will be made to the minor, upon presentation of the bond for payment, if at the time payment is requested he is of sufficient competency and understanding to sign his name to the request and to comprehend the nature of his act.¹²⁸ A bond so registered will also be paid to a legal guardian provided the latter presents proof of his appointment,¹²⁹ or, if the minor is not of sufficient competency and understanding to execute the request for payment, to either parent with whom the minor resides or to the person who furnishes his chief support.¹³⁰ Similarly in the case of an adult owner who is incompetent, and where there is no duly qualified legal representative to act, payment will be made to a member of his family or other person acting as voluntary guardian, provided the entire gross value of the personal estate of the incompetent does not exceed \$500 and there is satisfactory proof that the proceeds of the bond are necessary for the purchase of necessaries for the incompetent, his wife, minor children, or other dependents.¹³¹

2. Deceased Owners

Upon the death of the owner of bonds registered in sole ownership form, or, in the case of bonds registered in co-ownership or beneficiary form, if the owner survives the co-owner or beneficiary, the bonds are considered as belonging to his estate and will be paid or reissued accordingly. In the case of reissue registration is restricted to a form permitted by the regulations in effect on the date of original issue of the bonds, but the person entitled to the bonds may hold them without any change of registration and will have the right to payment either before or at maturity.¹³² If the estate of the deceased owner is being administered

¹²⁷ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.38, 31 C. F. R. 315.38 (1949).

¹²⁸ *Ibid.*, Sec. 315.39.

¹²⁹ *Ibid.*, Sec. 315.38.

¹³⁰ *Ibid.*, Sec. 315.40.

¹³¹ *Ibid.*, Sec. 315.41.

¹³² U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.47, as amended July 25, 1947, 31 C. F. R. 315.47 (1949).

in a court of competent jurisdiction, the bonds will be paid to the qualified representative of the estate or will be re-issued in the names of the persons entitled to share in the estate upon the request of the representative; or if the estate has been settled by the court, the bonds will be paid to or reissued in the name of the person determined by the court to be entitled thereto.¹³³ But if no legal representative of the decedent's estate has been or is to be appointed, the bonds will be paid to or reissued in the name of the person or persons entitled thereto pursuant to an agreement and request executed by all persons entitled to share in the estate in accordance with the form prescribed by the Treasury Department.¹³⁴

3. *Fiduciaries*

A savings bond which is registered in the name of a fiduciary, or belongs to a fiduciary estate, will be paid to the fiduciary upon request. If the request is made prior to maturity it must be signed by all acting fiduciaries unless by statute, decree of court, or the terms of the instrument under which the fiduciaries are acting, less than all have authority to make the request. At maturity a request signed by any acting fiduciary is sufficient, although payment will be made to all the fiduciaries.¹³⁵ If the bond is registered in the name of the fiduciary who makes the request no further evidence of authority is required; but if the registered fiduciary has been succeeded by another,¹³⁶ or if the registration is by title only, without the name of the fiduciary, satisfactory proof must be furnished that the person making the request is authorized to do so.¹³⁷ When the fiduciary is a board, committee, commission, or public

¹³³ *Ibid.*

¹³⁴ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.47(c), as amended July 25, 1947 and Feb. 21, 1949, 31 C. F. R. 315.47(c) (1949). A short form is used for cases in which the amount of savings bonds is not in excess of \$500 maturity value; a long form is used in other cases.

¹³⁵ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.48, 31 C. F. R. 315.48 (1949).

¹³⁶ If a fiduciary in whose name a bond is registered has been succeeded by another, the bond may be reissued in the name of the successor. U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.49, 31 C. F. R. 315.49 (1949).

¹³⁷ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.48, 31 C. F. R. 315.48 (1949).

body, or a public or private corporation, or a political body the request for payment must be signed in the name of the board or corporation by an authorized officer.¹³⁸

If the beneficiary of a trust becomes entitled, in whole or in part, either before or after the termination of the trust, to savings bonds held by the trust estate, such bonds may be reissued in his name, to the extent of his interest, as a distribution in kind of the trust estate.¹³⁹ Similarly savings bonds registered in the name of a guardian or other legal representative of the estate of a minor or incompetent may, if the estate is terminated during the ward's lifetime, be paid to or reissued in the name of the former ward upon satisfactory proof that his disability has been removed.¹⁴⁰

4. *Private Organizations*

A savings bond registered in the name of a private corporation or unincorporated association will be paid to such corporation or association upon a request executed in the name of the corporation or association and signed by a duly authorized officer.¹⁴¹ In the case of a partnership the request should be signed by a general partner.¹⁴² Bonds registered in the name of a church, hospital, school, or similar institution will be paid upon a request signed on behalf of such institution by an authorized representative, such as the pastor of a church, superintendent of a hospital, president of a college, or by any official generally recognized as having authority to conduct the financial affairs of the institution.¹⁴³ Bonds so registered may also be reissued in the name of a bank or trust company as trustee under an agreement whereby the bank or trust company holds the funds of the organization, in whole or in part, in trust, the income to be paid to the corporation or association.¹⁴⁴

¹³⁸ *Ibid.*

¹³⁹ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.50, as amended July 25, 1947, 31 C. F. R. 315.50 (1949).

¹⁴⁰ *Ibid.*

¹⁴¹ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.51, 31 C. F. R. 315.51 (1949).

¹⁴² *Ibid.*, Sec. 315.52.

¹⁴³ *Ibid.*, Sec. 315.53.

¹⁴⁴ *Ibid.*, Sec. 315.54.

If a private corporation, an unincorporated association, or a partnership has been succeeded by another corporation, association, or partnership as the result of a merger, consolidation, reincorporation, conversion, reorganization, or in any other manner so that the business or activities of the original organization are continued without substantial change, savings bonds registered in the name of the original organization will be paid to or reissued in the name of the successor.¹⁴⁵ Upon dissolution a savings bond registered in the name of a private corporation will be paid to the authorized representative of the corporation or reissued in the names of those persons, other than creditors, who are entitled to the assets of the corporation upon proof that the corporation has properly dissolved; in the case of a partnership the bonds will be paid to or reissued in the names of the persons entitled thereto as a result of the dissolution.¹⁴⁶

5. *Public Organizations*

Savings bonds registered in the name of a State, county, city, town, village, or other public corporation, or in the name of a public board or commission will be paid upon a request signed in the name of such organization by a duly authorized officer.¹⁴⁷ If the bonds are registered in the title of an officer of a State or other public corporation, without the name of the officer included, they will be paid upon a request signed by the designated officer.¹⁴⁸

6. *Safekeeping Facilities*

A savings bond will be held in safekeeping, without charge, by the Secretary of the Treasury if the holder so desires; application forms for safekeeping may be secured from postmasters, Federal Reserve Banks, or the Treasury Department.¹⁴⁹

¹⁴⁵ *Ibid.*, Sec. 315.55.

¹⁴⁶ *Ibid.*, Sec. 315.56.

¹⁴⁷ *Ibid.*, Sec. 315.57.

¹⁴⁸ *Ibid.*, Sec. 315.58.

¹⁴⁹ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part VI, 31 C. F. R. 316.6 (1949); U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.6; U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.16, 31 C. F. R. 315.16 (1949).

7. *Lost, Stolen, Mutilated, Defaced, or Destroyed Bonds*

In case of the loss, theft, destruction, mutilation, or defacement of a savings bond after receipt by the owner, relief may be had either by issue of a substitute bond or by payment. In such case immediate notice of the facts, together with a complete description of the bond (including series, year of issue, serial number, and name and address of the registered owner) should be given to the Treasury Department, Division of Loans and Currency; that division will then furnish the proper forms and instructions for presenting the evidence necessary to secure relief.¹⁵⁰ If a savings bond is not received from the issuing agency, the latter should be notified and appropriate instructions will be furnished for reporting the nonreceipt.¹⁵¹

¹⁵⁰ U. S. Treas. Dept. Cir. No. 653, Second Revision, Part IX, 31 C. F. R. 316.9 (1949); U. S. Treas. Dept. Cir. No. 654, Third Revision, Sec. 318.9; U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.17, 31 C. F. R. 315.17 (1949).

¹⁵¹ U. S. Treas. Dept. Cir. No. 530, Sixth Revision, Sec. 315.18, 31 C. F. R. 315.18 (1949).