

REGULATIONS 105, SECTION 81.37: Taxes.

Liability for Federal income taxes on joint Federal income tax return. See Rev. Rul. 54-382, page 279.

SECTION 812(d).—NET ESTATE: TRANSFERS FOR PUBLIC, CHARITABLE, AND RELIGIOUS USES

REGULATIONS 105, SECTION 81.44: Transfers for public, charitable, religious, etc., uses. Rev. Rul. 54-285

A charitable deduction under section 812(d) of the Internal Revenue Code may be allowed on account of bequests or gifts of remainder interests to charity in cases where the will or instrument authorizes invasion of corpus for the comfortable maintenance and support of life beneficiaries if (1) there is an ascertainable standard covering comfort and support which may be either express or implied, and (2) the probability of invasion is remote or the extent of the invasion is calculable in accordance with some ascertainable standard.

Advice is requested whether the value of the remainder interest in a trust created by the decedent which passes to charity at the death of the decedent's wife, constitutes a deduction from the decedent's gross estate under section 812(d) of the Internal Revenue Code where the trust agreement provides that the trustee is authorized and empowered to pay from the principal of the trust estate to or for the benefit of the settlor's wife, if she should survive him, such amounts, if any, as the trustee in its sole discretion may from time to time deem necessary for her comfort, support, hospital or medical expenses.

At the date of decedent's death his widow, age 79, had substantial means and an independent income which was more than adequate to take care of her moderate needs.

The question involved is whether the present value of the remainder which charity will receive is ascertainable with sufficient accuracy to permit the deduction under section 812(d) of the Code and section 81.44 of Regulations 105.

Where the power of invasion is limited by such words as "comfort and support" with no express standard or limitation in the will or instrument, such words should be interpreted as meaning the comfort and support according to the standard of living enjoyed by the beneficiary prior to the decedent's death, if such interpretation is consistent with applicable local law, and other terminology in the will or instrument does not require some different interpretation. (The inclusion of the words "hospital or medical expenses" does not enlarge the power of invasion as hospital and medical care are included within the broad meaning of comfort and support.) If it is considered that a standard is fixed by the will or instrument, there remains for determination the probability of invasion of corpus for the stated purposes. If there is very little or no probability of invasion, the deduction should be allowed. If the facts indicate the probability of invasion to a limited extent which is calculable in accordance with an ascertainable standard, the deduction should be denied only to such extent.

The trust instrument in the instant case impliedly fixes a definite standard, as the trustee is not authorized to use principal except for

the proper comfort and support of the widow. As of the date of decedent's death the likelihood of any invasion of the principal for the proper comfort and support of the widow was so remote as to be negligible.

In view of the foregoing it is held that a charitable deduction under section 812(d) of the Internal Revenue Code may be allowed on account of bequests or gifts of remainder interests to charity in cases where the will or instrument authorizes invasion of corpus for the comfortable maintenance and support of life beneficiaries if (1) there is an ascertainable standard covering comfort and support which may be either express or implied, and (2) the probability of invasion is remote or the extent of the invasion is calculable in accordance with some ascertainable standard.

**SECTION 812(e).—NET ESTATE: BEQUESTS, ETC.,
TO SURVIVING SPOUSE**

REGULATIONS 105, SECTION 81.47a: Bequests, Rev. Rul. 54-446
etc., to surviving spouse.

Decedent and his wife were parties to an antenuptial agreement whereunder she renounced and relinquished any marital rights she might acquire in his property or estate by reason of their marriage, and he, in turn, agreed to leave her certain property by will at his death. In his will decedent bequeathed his wife property different from but of a much greater value than that to which she was entitled under the antenuptial agreement, specifically providing that such bequests were in lieu of any rights she might have in and to property of his estate under such agreement. Section 812(b) of the Internal Revenue Code of 1939 provides that a relinquishment or promised relinquishment of dower or of a statutory estate created in lieu of dower or other marital rights is not to any extent a consideration in money or money's worth. Accordingly, any claim asserted against the estate by reason of such antenuptial agreement will not be allowable as a deduction under section 812(b) of the Internal Revenue Code. However, the full value of the interest given in satisfaction or in lieu of the wife's rights under the antenuptial agreement is considered as having "passed from the decedent to his surviving spouse," and if such interest otherwise satisfies all statutory requirements, the estate tax marital deduction authorized by section 812(e) of the Code will be allowed.

REGULATIONS 105, SECTION 81.47a: Bequests, Rev. Rul. 54-553
etc., to surviving spouse.

Where the proceeds of insurance on the decedent's life are to be retained by the insurer in a single fund with interest thereon payable to his widow during her life, the power conferred upon the widow under the terms of the insurance policy to at any time withdraw a specified portion of such proceeds did not of itself operate to create a single or separate fund of the portion of the proceeds over which the widow has a power of appointment so as to qualify the entire proceeds, or any portion thereof, for the marital deduction under section 812(e) (1) (G) of the Internal Revenue Code of 1939.

Advice has been requested whether the marital deduction is allowable with respect to the proceeds of a contract of insurance on the