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Cover Page Footnote
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DISCLAIMING THE SURVIVORSHIP INTEREST IN JOINT TENANCY PROPERTY

— by Neil E. Harl

For decades, joint tenancy property has been a popular form of co-ownership for farm and ranch property. Although a gradual shift occurred in the 1960s and 1970s to tenancy in common ownership, as joint tenancies were severed into tenancy in common ownership and as title to newly acquired assets was taken in tenancy in common, joint tenancy continued to be used widely, particularly for those with modest estates, those desiring to minimize probate expense and those who had given little thought to planning for the disposition of their estates at death.

Recent developments have clarified the rules governing the disclaimer of the survivorship interest in joint tenancy property. A "Revocable" joint tenancies. When a person establishes a joint bank with another, there is no gift tax liability even if that person is the only depositor. By the IRS view, the creator and sole contributor to a joint brokerage account is treated similarly; a gift does not occur until the one not providing the consideration draws on the account for his or her benefit without any obligation to account to the other joint owner. For such "revocable" joint tenancies in joint bank or brokerage accounts, a gift occurs only when one of the joint tenants withdraws more than he or she contributed to the account.

For disclaimer purposes, a non-contributing joint tenant can disclaim his or her interest in a joint bank or brokerage account within nine months of the depositor's death. There is considered to be no acceptance of the benefit so a disclaimer may be made within the usual nine month period for disclaimers. Thus, IRS has ruled favorably on disclaimers of joint tenancy interests in savings certificates, joint stock brokerage accounts, mutual funds, and U.S. Government series E and H bonds owned in joint tenancy.

IRS has also approved a disclaimer of a joint tenancy interest in a house acquired by a husband and wife before 1982. Through 1981, for a joint tenancy in real property created after December 31, 1954, in a husband and wife by

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FOOTNOTES

1 See generally 5 Harl, Agricultural Law § 43.02[2](1991).
2 See 6 Harl, supra note 1, § 46.08.
3 Treas. Reg. § 25.2511-1(h)(4). See Ltr. Rul. 8302020, Oct. 5, 1982 (either mother (the contributor) or daughter as joint tenants could withdraw from savings account; gift occurred on withdrawal by daughter).
5 See notes 3 and 4 supra.
7 Est. of Dancy v. Comm'r, 872 F.2d 84 (4th Cir. 1989), rev'g, 89 T.C. 550 (1987) (disclaimers of "revocable" interests were qualified; disclaimer of interest in tenancy by entirety interest in real property not permitted).
8 Ltr. Rul. 8208069, Nov. 25, 1981.
9 Ltr. Rul. 8916070, Jan. 25, 1989 (decedent made all contributions to account and surviving spouse never made withdrawals from account, thus no completed gift to spouse during decedent's lifetime).
15 Treas. Reg. § 25.2515-1(b).
18 See notes 3-16 supra.
19 Treas. Reg. § 25.2518-2(c)(4) (qualified disclaimer of joint tenancy or tenancy by the entirety interests must be made no later than nine months after creation of the joint interest, except for interests created before 1982). See Ltr. Rul. 7829008, April 14, 1978.
20 e.g., Est. of O'Brien v. Comm'r, T.C. Memo. 1988-240 (disclaimer of joint tenancy interest ineffective where not made within nine months of creation of joint tenancy).
21 Kennedy v. Comm'r, 804 F.2d 1332 (7th Cir. 1986), rev'g, T.C. Memo. 1986-3 (period for reasonable time to disclaim surviving spouse's interest in joint tenancy interest held by decedent runs from date of death and not creation of joint tenancy).
22 McDonald v. Comm'r, T.C. Memo. 1989-140, on rem. from 853 F.2d 1494 (8th Cir. 1988), rev'g, 89 T.C. 293 (1987), on remand, T.C. Memo. 1989-140 (disclaimer timely where surviving joint tenant made disclaimer within nine months of joint tenant's death but more than nine months after creation of joint tenancy). See also Ltr. Rul. 9135043, June 3, 1991 p. 165 infra.

CASES, REGULATIONS AND STATUTES
by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL

AUTOMATIC STAY. The court held that the conversion of a Chapter 13 case to Chapter 7 after a creditor had obtained relief from the automatic stay did not affect the relief from the automatic stay and the creditor could continue with foreclosure against the debtor's property. In re Campos, 128 B.R. 790 (Bankr. C.D. Cal. 1991).

AVOIDABLE LIENS. The debtor's residence was subject to a first mortgage in excess of the residence's fair market value and an IRS tax lien. The trustee abandoned the house and the debtors were granted a discharge. The debtors petitioned for avoidance of the IRS claim as an unsecured claim, under Section 506(d). The court examined the competing authority of Gaglia v. First Federal Savings & Loan Ass'n, 889 F.2d 1304 (3rd Cir. 1989) (avoidance allowed) and In re Dewsnup, 908 F.2d 588 (10th Cir. 1990), cert. granted, 111 S. Ct. 949 (1991) (avoidance not allowed), and held that avoidance of the unsecured claim was not allowed after the property subject to the lien was abandoned. The court stated that avoidance was not necessary because the discharge effectively prevented a deficiency judgment against the debtors on the lien in a post-bankruptcy foreclosure. In re Elam, 129 B.R. 137 (Bankr. N.D. Ohio 1991).

AVOIDABLE TRANSFERS. Prior to filing bankruptcy, the debtors fraudulently transferred their homestead to third parties. One of the debtors' creditors filed suit in state court and received a judgment of fraudulent transfer which was filed prior to the debtors' bankruptcy filing. In the bankruptcy case, the trustee also moved for avoidance of the transfer as fraudulent. The trustee objected to the creditor's judgment lien claim against the homestead, arguing that the judgment lien did not attach to the property because the debtors did not have ownership and possession of the property when the lien was recorded. The court held that under state law, the judgment attached to the property when filed and remained a senior interest against the property after the bankruptcy filing and during the trustee's avoidance of the transfer. In re Mathiason, 129 B.R. 173 (Bankr. D. Minn. 1991).

ESTATE PROPERTY. The debtor was a cotton merchant who purchased several truck loads of cotton from a seller but which failed to pay for four truck loads before filing bankruptcy. The seller claimed a priority