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Disclaimers in Estate Planning

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DISCLAIMERS IN ESTATE PLANNING

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A 1957 Colorado statute[1] permitting disclaimers of testamentary gifts has aroused sufficient curiosity among Colorado lawyers to justify a brief discussion of the effect of disclaimers and the situations in which they may be used to advantage. The terms "disclaimer" and "renunciation" have been used interchangeably to refer to the refusal to accept a power over, or title to, property so as to prevent its vesting in the disclaimant. A disclaimer must be distinguished from the transfer or release of a power over, or title to, property which has already vested, thereby creating rights and liabilities.

DISCLAIMER BY AN HEIR

Although there is a vociferous dissent,[2] the great majority of text writers and American cases say that the law is well settled that there can be no disclaimer by an heir of property received under the intestacy laws.[3] The reasons for this rule are derived from the feudal real property system, but, nevertheless, the rule is applied to personalty as well as to

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[1] Colo. Laws 1st Reg. Sess. 1957, c. 298. "152-5-44. Disclaimer.—Any person who may be entitled to receive any property or beneficial interest, vested or otherwise, under a devise, bequest, legacy or other testamentary disposition in any will of a decedent dying after the effective date of this act shall have the right to disclaim irrevocably the whole or any part of such property or beneficial interest. Such irrevocable disclaimer must be made in writing and filed in the county court in which such will is admitted to probate not later than six months after such will has been admitted to probate. Any property or beneficial interest so disclaimed shall pass in the same manner as if the person disclaiming had predeceased such decedent, unless otherwise provided by the will in which case the will shall be controlling. Nothing in this section shall prevent a testator from providing in a will for the making of disclaimers and for the disposition of disclaimed property in a manner different from the provisions hereof."

[2] Roehner and Roehner, Renunciation as Taxable Gift—An Unconstitutional Federal Tax Decision, 8 Tax L. Rev. 289 (1953); Roehner, Can Heir Renounce Without Gift Tax?, 96 Trusts and Estates 1158 (1957).

[3] 4 Page, Wills § 1402 (3d ed. 1941); Lauritzen, Only God Can Make an Heir, 48 Nw. U.L. Rev. 568 (1953); Smith, Renunciations and Disclaimers, 96 Trusts and Estates 744 (1957).

realty. Upon death intestate, the title to realty vests in the heir as a matter of law. The legal title to personalty passes to the administrator, but the beneficial interest passes to the next of kin as a matter of law. No act of the heir or next of kin can prevent the vesting of title; consequently, he cannot prevent his creditors' reaching the property.[4] If he attempts to disclaim, he is making a transfer of property owned by him which is taxable as a gift.[5] It logically follows that a disclaimer will not avert an inheritance tax on the property received by the disclaimant, and that, if the attempted disclaimer is made in contemplation of death, it is a transfer subject to inheritance and estate taxes. This would appear to be the law in Colorado.

DISCLAIMER BY A DEVISEE OR LEGATEE

The right to disclaim a testamentary gift is almost universally upheld by the courts, including those of Colorado.[6] Obviously, a legatee or devisee cannot be compelled to accept a burdensome gift, *e.g.*, a devise of land with an obligation to make certain payments or a bequest of bank stock subject to a shareholder's liability. The rationale is that a testamentary gift is not complete until accepted. Therefore, the donee has an election to reject within a reasonable time and the rejection will relate back to the date of death.[7] Even though the title to personal property vests in the executor and the title to land vests in the devisee, the right to disclaim is the same in both instances.[8] Although there is a presumption that a gift is beneficial and that the donee accepts, a donee may disclaim a beneficial gift involving no obligations.

EFFECT AS TO CREDITORS

By the great weight of authority the beneficiary's creditors are defeated by a disclaimer, and the beneficiary may disclaim solely for the purpose of defeating creditors.[9] He is not making a fraudulent "transfer" since he never had title. The effect of the disclaimer is that the gift lapses.

EFFECT AS TO INHERITANCE TAX ON LEGATEE

An inheritance tax is imposed on the person receiving property from a decedent. Since the disclaimant does not receive title to the property (or, on the theory of some of the cases, receives a title at the decedent's death which is divested by a disclaimer that relates back to the decedent's death), there is no inheritance tax on the disclaimant. The tax is imposed on the person actually receiving the property regardless of whether this results in a greater or lesser tax and regardless of whether the disclaimer was made to save taxes.[10]

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[4] Coomes v. Finegan, 233 Iowa 448, 7 N.W.2d 729 (1943); Bostian v. Milens, 239 Mo. App. 555, 193 S.W.2d 797 (1946).

[5] Hardenbergh v. Commissioner, 198 F.2d 63 (8th Cir. 1952), cert. denied, 73 S. Ct. 45; Maxwell v. Commissioner, 17 T.C. 1589 (1952).

[6] Jugoslavia v. Jovanovich, 100 Colo. 406, 69 P.2d 311 (1937); Hale v. Wheeler, 108 Colo. 119, 114 P.2d 566 (1941) (dictum); Proceedings, A.B.A. Section of Real Property, Probate and Trust 28 (1952); Black, The Effect of Renunciations and Compromises on Death and Gift Taxes, 3 Vand. L. Rev. 241 (1950); Howe, Renunciation by the Heir, Devisee or Legatee, 42 Ky. L. J. 605 (1954); Lauritzen, Only God Can Make an Heir, 48 Nw. U. L. Rev. 568 (1953). Lauritzen, The Heir, the Gift Tax and the Constitution, 1 Tax Counsellor's Q. No. 3, 19 (Sept. 1957); Smith, Renunciation and Disclaimers, 96 Trusts and Estates, 744 (1957); Note, 63 Harv. L. Rev. 1047 (1950).

[7] 3 American Law of Property 628 (Casner ed. 1952); 4 Page, Wills § 1404 (3d ed. 1941). This is the same rule that applies to an inter-vivos gift either of realty or personalty.

[8] 4 Page, Wills § 1402 (3d ed. 1941).

[9] E.g., Schoonover v. Osborne, 193 Iowa 474, 187 N.W. 20 (1922). Contra, In re Kalt's Estate, 16 Cal. 2d 807, 108 P.2d 401 (1940).

[10] People v. Flanagin, 331 Ill. 203, 162 N.E. 848 (1928); 4 Page, Wills § 1411 (3d ed. 1941).

INHERITANCE TAX IN CASE OF A COMPROMISE SETTLEMENT

Where an heir contests or threatens to contest a will, and the legatee gives up part of his legacy to settle the heir's claim, the situation is similar to a partial disclaimer. The majority of courts impose the inheritance tax on the legatee as the property would have passed under the will, regardless of any compromise settlement, treating the legatee as having accepted the benefits of the legacy and having contracted to transfer part of the benefits.[11] A minority of courts impose the tax on the actual recipients under the agreement.[12] Colorado has followed the minority view[13] but in a case where the person taking under the compromise with the legatee was the same person who would have taken in case the legatee had disclaimed. This was in essence a partial disclaimer. The fact that there was consideration should make no difference as to the inheritance tax effect if the settlement was bona fide.

TAX ON LEGATEE'S DEATH

If the legatee disclaims and later dies, there may be a contention that the disclaimer was a transfer in contemplation of death resulting in a federal estate tax or Colorado inheritance tax on the disclaimant's death. In the leading case of *Brown v. Routzahn*,[14] the Sixth Circuit held that a disclaiming legatee and devisee had never received title and so had not made a transfer which could be taxed as a transfer in contem-

[11] E.g., Baxter v. Treasurer, 209 Mass. 459, 95 N.E. 854 (1911).
[12] Black, The Effect of Renunciations and Compromises on Death and Gift Taxes, 3 Vand. L. Rev. 241, 253, 257 (1950).
[13] People v. Rice, 40 Colo. 508, 91 Pac. 33 (1907).
[14] 63 F.2d 914 (6th Cir.), cert. denied, 290 U.S. 641 (1933).

plation of death. The same result should be reached under the Colorado inheritance tax law. The disclaimer of a general power of appointment is not treated as a transfer under the present provisions of the federal estate tax law.[15]

GIFT TAX ON DISCLAIMANT

The *Routzahn* case is clear authority that the disclaimer of a testamentary gift is not a transfer; it follows that there can be no gift tax because of the disclaimer, either under federal or Colorado law. The proposed federal regulations expressly provide that the complete renunciation within a reasonable time of a gift, bequest or inheritance, if, under local law title does not immediately vest, is not a gift.[16] Thus it seems to be settled that a complete disclaimer of a legacy made in conformity with the Colorado statute would not be a taxable gift. However, these regulations purport to tax partial disclaimers by legatees and all disclaimers by devisees. Since the reasons for not imposing the tax on complete disclaimers seem equally valid in the case of partial disclaimers, those reasons are worth considering.

We have seen that a legatee or devisee who disclaims is treated by the law of most states as never having owned the property. As the gift tax is imposed on "the transfer of propery,"[17] it seems difficult to say that one can be taxed as having made either a direct or indirect transfer of property as to which he never had title under state property law.

It has been suggested that in the field of taxation, property law is unimportant and whoever has "unfettered command"[18] over property should be treated as its owner for gift tax purposes.[19] It is true that if *A* transfers property to *T* in trust to pay the income to *B* and reserves a power of revocation, *A* makes a taxable gift whenever *T* pays income to *B*.[20] While *A* never had title to the income, he did have title to the corpus and is treated as still its owner and, by creating the trust, he caused the income to be paid to *B*. The results are different if *S*, a third person, transfers property to *T* in trust to pay the income to *B* and gives *A* a power to appoint the corpus to himself. While *A* is treated as the owner for income tax purposes and must pay an income tax on the income paid to *B*,[21] *A* is not treated as the owner for gift tax purposes. *A*'s mere failure to exercise his power over the property is not a taxable transfer.[22]

If the income tax doctrine of treating as an owner the person who has been given control over property by someone else[23] is to be carried

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[15] Int. Rev. Code of 1954, § 2041(a)(2).

[16] Proposed U.S. Treas. Reg. 25.2511-1(c) (1957). "The renunciation of a vested property interest, such as the interest of an heir or next-of-kin, or devisee in whom title immediately vests upon a decedent's death under local law, constitutes a gift to those persons who receive the property interest by means of the renunciation. On the other hand the renunciation of a gift, bequest, or inheritance, if under local law title does not immediately vest, is not a gift if the renunciation is complete, and is made within a reasonable time after knowledge of the existence of the interest. The renunciation must be unequivocal and effective under local law. A renunciation is a complete and unqualified refusal to accept the property to which one is entitled. There can be no renunciation of property after its acceptance. A renunciation of only a portion of the property is not a complete and unqualified refusal to accept the property to which one is entitled. In the absence of acts to the contrary, the failure to renounce within a reasonable time after learning of the transfer to him will be presumed to constitute an acceptance of the property."

[17] Int. Rev. Code of 1954, § 2501.

[18] Corliss v. Bowers, 281 U.S. 376 (1930).

[19] Note, 2 Vand. L. Rev. 287 (1949). See also Kay, Renunciations, Disclaimers and Releases, 35 Taxes 767 (1957).

[20] Commissioner v. Warner, 127 F.2d 913 (9th Cir. 1942).

[21] Richardson v. Commissioner, 121 F.2d 1 (2d Cir. 1941).

[22] Mabel F. Grasselli, 7 T.C. 255 (1946).

[23] Int. Rev. Code of 1954, § 677.

over into the gift tax law, it should be done by Congress, not by judicial or administrative legislation. Under the present wording of the statute the question of title and local property law is of vital importance. As the Board of Tax Appeals said, in holding that the relinquishment of a general power by the donee of the power was not a taxable gift, "To regard this as a present transfer of property is, we think, to distort the language of the statute too far to be acceptable."[24] It would seem that a creditor who lets the statute of limitations run against a solvent debtor is not making a taxable gift.[25] Where a testamentary gift to charity is invalid under a state statute as against a widow or children, and the widow and children waive their rights and let the charity take, the charity does not take from them but from the decedent, and the gift is deductible for federal estate tax purposes.[26]

The exercise or release of a general power is a taxable gift, but the code expressly provides, "A disclaimer or renunciation of such a power shall not be deemed a release of such power."[27] Is it likely that Congress intended to tax the disclaimer of a bequest or a devise when the disclaimer of a general power over personalty or realty was expressly exempted?

In attempting to tax a complete disclaimer of a devise, the Commissioner is making a distinction which the cases have not recognized.

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[24] Edith Evelyn Clark, 47 B.T.A. 865, 866 (1942).
[25] Estate of Eleanor Hughes Beggs, 13 T.C. 131 (1949).
[26] Dimock v. Corwin, 99 F.2d 799 (2d Cir. 1938), aff'd, 306 U.S. 363 (1939); Commissioner v. First Nat'l Bank, 102 F.2d 129 (5th Cir. 1939); Humphrey v. Millard, 79 F.2d 107 (2d Cir. 1935).
[27] Int. Rev. Code of 1954, § 2514(b).

The *Routzahn* case,[28] involved the disclaimer of both a devise and a bequest; the court held that there was no transfer of either one. While it is true in most states that there is a technical vesting of legal title in the devisee as of the date of death, a disclaimer relates back to the date of death. The regulation does not refer to all devisees, but only to a "devisee in whom title immediately vests upon a decedent's death under local law."[29] Evidently the Commissioner recognizes that local law will govern. If so, in construing the regulation he should consider the local law as to the relation back of a disclaimer and its effect on the vesting of the title. Possibly the regulation was drafted so as to tax disclaimers by devisees in states having statutes expressly vesting devises as of the date of death, such as Texas.[30]

What if there is a complete disclaimer by the beneficiary of a testamentary trust of land? Apparently the regulation does not purport to tax this since legal title does not vest in the beneficiary.

There is one situation in which neither a legatee nor a devisee can disclaim without paying a gift tax. If the legatee or devisee would take as heir or next of kin on failure of the bequest or devise, a disclaimer of all rights will not prevent the title from vesting under the intestacy laws. Consequently, the disclaimant will be subject to a gift tax.[31]

PARTIAL DISCLAIMERS BY LEGATEES AND DEVISEES

The most serious part of the proposed regulation is that which makes every partial disclaimer of a bequest subject to gift tax.[32] Another sub-section of the proposed regulations declares that a partial disclaimer of a general power of appointment is also a taxable gift.[33] It is doubtful that these proposed regulations would be valid in any state. Their validity is obviously questionable in Colorado because our statute, as part of the state's property law, permits partial disclaimers.[34] The reasoning given above to support complete disclaimers is equally applicable to partial disclaimers.

In the absence of statute, a disclaimer of one of several distinct, separate gifts in a will is valid,[35] but many cases hold that there cannot be a partial disclaimer of a single bequest.[36] One reason given for denying partial disclaimers is that the legatee by accepting part of the gift has exercised dominion over the entire subject of the bequest. This seems highly artificial. However it may be sound in some instances. For example, if the beneficiary of an insurance policy elects an option which gives her a life income and then names the person who is to take the remainder interest, she has exercised dominion over the whole gift and should have to pay a gift tax as to the remainder interest.[37] A sounder

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[28] Brown v. Routzahn, 63 F.2d 914 (6th Cir.), cert. denied, 290 U.S. 641 (1933).
[29] Proposed U. S. Treas. Reg. 25.2511-1(c) (1957).
[30] See Rodgers v. United States, 218 F.2d 760 (5th Cir. 1955).
[31] Maxwell v. Commissioner, 17 T.C. 1589 (1952); see note 3 supra.
[32] See note 16 supra.
[33] Proposed U.S. Treas. Reg. 25.2514-3(c)(5).
[34] See note 1 supra.
[35] Brown v. Routzahn, 63 F.2d 914 (6th Cir.), cert. denied, 290 U.S. 641 (1933). Item 2 of the will gave the husband of testatrix one-third of all the real and personal property. Item 2 and a codicil gave him two houses for life. Item 3 created a trust of the residue with the husband as income beneficiary for his life. He renounced the devise and bequest of one-third of the estate under item 2, but accepted the other gifts under items 2 and 3. The court held that all of the gifts were separate gifts and that the renunciation as to part of them was valid. In Town of Pepperell v. Whipple, 327 Mass. 688, 100 N.E.2d 844 (1951) the court permitted the disclaimer of a burdensome legacy and the acceptance of a beneficial legacy on the ground that they were separable gifts.
[36] E.g., Foulkes v. Foulkes, 173 Ark. 188, 293 S.W. 1 (1927).
[37] Estate of Mabel E. Morton, 12 T.C. 380 (1949); see also proposed U.S. Treas. Reg. 20.2056(d)-1.

reason is that, in the absence of express permission in the will to accept part and disclaim part, it is probably contrary to the testator's intent to permit a legatee to accept the beneficial part of a gift and to reject the burdensome part. For example, where stock in two banks was left by will in trust, the trust beneficiary could not disclaim as to the stock of one bank, which was subject to an assessment, and accept as to the stock of the other bank, which was solvent.[38]

On the other hand, where the gift is beneficial, there is no logical reason to hold that, while the legatee may disclaim the entire gift, he may not disclaim a fraction of it. Where a legatee disclaimed $400,000 of a $1,000,000 legacy with the result that the $400,000 disclaimed went to a charity, the partial disclaimer was held valid and only $600,000 was subject to federal estate tax.[39] In a leading New York case, a disclaimer of two-thirds of a legacy was held valid and the legatee had to pay an inheritance tax on only the one-third accepted.[40] If the will expressly authorizes a partial disclaimer, there seems to be no sound reason why such a disclaimer should not be valid.

In *People v. Rice*,[41] the Colorado Supreme Court held, where the sole heir contested a will and part of the residuary estate was paid to him in settlement, that the inheritance tax was imposed on the heir as to the settlement he received and on the legatees as to only the net received by them. In essence, this amounted to the recognition of a partial disclaimer. Thus it seems that the recent Colorado disclaimer statute merely reaffirms what has been the law and makes provision as to the time, manner and effect of disclaiming.

It would seem clear that a disclaimer, complete or partial, would not be taxable under the Colorado gift tax law. Since the disclaimant of a devise or legacy is treated in Colorado for all purposes as if title had never vested in him, how can the federal gift tax be collected from him in respect to property which neither the state nor his creditors can touch? We realize that a strong argument can be made for uniformity of tax effects regardless of local law. However we are not here challenging Congress' *power* to tax disclaimers, but rather the Commissioner's application of the existing statute to *partial* disclaimers. In the absence of a United States Supreme Court decision, no one can predict with certainty how disclaimers will ultimately be treated under the federal gift tax law.

DISPOSITION OF DISCLAIMED PROPERTY

The Colorado statute permits the testator to specify a different manner of disclaiming from that set out in the statute and a different disposition of the disclaimed property. Whenever there is a possibility that a future disclaimer may be desirable, it is suggested that the will authorize a complete or partial disclaimer in the manner provided by the Colorado statute or in some other specific manner. Unless some other disposition is desired, the will should provide that the interest disclaimed shall pass in the same manner as if the person disclaiming had predeceased the testator. The expression of an affirmative intent in the will can do no harm and precludes any argument that the testator might have had a contrary intent.

There is very little authority as to whether the beneficiary of a

[38] Bacon v. Barber, 110 Vt. 280, 6 A.2d 9 (1939).
[39] Commissioner v. Macauley's Estate, 150 F.2d 847 (2d Cir. 1945).
[40] In re Merritt's Estate, 155 App. Div. 892, 140 N.Y. Supp. 13 (1st Dep't 1913).
[41] 40 Colo. 508, 91 Pac. 33 (1907).

spendthrift trust may, or may not, disclaim and the Colorado statute makes no express reference to this situation. Whenever a will creates a spendthrift trust, it would be advisable to provide expressly as to the right of the beneficiary to disclaim.

If a descendant of the testator is a legatee and disclaims, will his issue take under the anti-lapse statute? Apparently the issue would take under the Colorado statute, but it would seem advisable to cover this situation by express provision in the will.

As we have seen, there can be no disclaimer in case of property passing by intestacy. If a testator is leaving all his property or his residuary estate to a child who might wish to disclaim, it would be advisable to provide that if the legacy lapses it will pass to the legatee's issue. Thus, if a legatee disclaims, an intestacy would be avoided and the disclaimer would not be subject to gift tax.

PRACTICAL USE OF DISCLAIMERS

Since a legatee, the beneficiary of a trust, and possibly a devisee may make a complete disclaimer without gift tax liability, and possibly may make a partial disclaimer without gift tax liability, it becomes pertinent to inquire as to the situations in which a disclaimer may be used to advantage. Even if there is a certainty or a possibility of gift tax liability, the disclaimer may still, in some circumstances, be useful for non-tax reasons.

An obvious situation in which the legatee might wish to disclaim is one in which the legatee has creditors who could reach his interest and exhaust all or part of it. This is especially true where the legacy would go to the legatee's family in case of a disclaimer. Whatever the morality of disclaiming in such a situation might be—and that might vary according to the total fact situation—the legality is unquestionable except in a few jurisdictions.[42]

Whenever a legatee desires to make a gift of his legacy, or part of it, to the next taker, it may be cheaper to disclaim than to accept and then make a taxable gift. For example, if a will leaves personal property to the testator's surviving children and one child is wealthy and wants his less fortunate brothers and sisters to have his share in equal proportions, a complete disclaimer will accomplish the result with no unfavorable tax effects. Of course, if the wealthy child wishes to divert his legacy in any other manner or to different persons he cannot do so by a disclaimer, but will have to accept the legacy and make a taxable gift.

The wealthy legatee may wish to divert his legacy for tax reasons. If the legacy, in case of disclaimer, will pass to the legatee's issue, a disclaimer will put the property in the next generation without any income, estate, inheritance or gift tax effects on the legatee. In this situation the legatee may desire to accept part of the legacy to insure his protection in his old age and make only a partial disclaimer. Since the inheritance tax exemptions and rates depend on the number of recipients and their relationship to the decedent, a disclaimer may affect the total amount of inheritance taxes paid as well as determining by whom they are paid.

If a disclaimer of a bequest, legacy, devise or power is made before the time for filing the federal estate tax return, and the disclaimed property passes to charity because of the disclaimer, a charitable deduction may be claimed with a resulting decrease in the amount of the estate tax.[43]

[42] See note 9 supra.
[43] Int. Rev. Code of 1954, § 2055.

Perhaps the most frequent occasion for employing a disclaimer will be in connection with the marital deduction. If the will gives a widow (or widower) more than one-half of the testator's estate in a manner qualifying for the marital deduction, the total estate taxes in the estates of the two spouses will be excessive because the estate of the widow will be thrown into an unnecessarily high bracket. The same unfavorable tax result may occur if the widow has separate property of her own, even if her husband's will leaves her only one-half of his estate. In these situations a partial disclaimer enables the widow to do some advantageous tax planning in the light of the circumstances existing after her husband's death. If a partial disclaimer is used, care must be taken as to what property is disclaimed. Under the usual tax formula clause a disclaimer of non-probate property, such as life insurance, may not reduce the amount of property qualifying for the marital deduction.

There are special provisions in the code as to disclaimers and the marital deduction. If the surviving spouse disclaims, the marital deduction is lost as to the disclaimed property; but if the property passes to the surviving spouse by reason of a disclaimer by a third person there can be no marital deduction, as the property is treated as passing from the third person and not from the decedent.[44] These provisions are inconsistent; they can be explained on the ground that they are not imposing taxes, but are dealing with deductions which are a matter of legislative grace.

At least one authority in this field believes that there is some danger that a partial disclaimer might be subject to gift tax as the exercise of a power of appointment.[45] Professor William J. Bowe has suggested that, instead of the partial disclaimer device, a will might leave to the surviving spouse an election of three gifts of different size, each qualifying for the marital deduction.[46] This would seem to be foolproof so far as a possible tax on the surviving spouse is concerned. Of course, its limit of choices gives less flexibility, but it would undoubtedly be satisfactory in many cases. If so worded that the largest gift passes on failure to elect, it has not avoided the partial disclaimer problem. Because of the possibility of the surviving spouse dying shortly after the testator or being mentally incapacitated, it might be risky not to make some provision for a definite gift to the surviving spouse in the absence of an election. In any event a provision authorizing a partial disclaimer can do no harm in itself and by the time the testator dies the law may be clarified as to whether a partial disclaimer is subject to gift tax.

CONCLUSION

Disclaimers can unquestionably be used in certain circumstances to obtain some tax advantages and sometimes to accomplish other purposes. The 1957 Colorado statute increases the possibility that a complete disclaimer of a devise and a partial disclaimer of a legacy or a devise may be made without subjecting the devisee or legatee to a federal or Colorado gift tax. It is more important than ever for attorneys to consider disclaimer possibilities and effects, in planning estates, in drafting wills[47] and inter-vivos trusts, and in the post-death planning incident to handling the affairs of beneficiaries of a decedent's estate.

[44] Id. § 2056(d)(1) and (2).
[45] Trachtman, Estate Planning 40-44 (1955).
[46] Bowe, Estate Planning and Taxation § 2.20 (1957).
[47] Provisions for disclaimers and partial disclaimers must be drafted to fit the particular facts. The following is a clause which might be satisfactory in some, but not in all, wills creating a marital deduction trust and a non-qualifying trust: "My wife, Mary Doe, shall have the power to disclaim, at any time within six months after this will has been admitted to probate, her interest in and power over, the whole or any part of, the property in the trust created by this paragraph I. In that event, the property, or the portion thereof, to which such disclaimer pertains, shall be added to the John Doe Family Trust created by this will to be disposed of as though it had been a part of said trust from the date of my death. In addition to any method of disclaimer recognized by law, my said wife may disclaim by an instrument in writing signed by her and delivered either to my Executors or to my Trustees hereunder."