HB
848

COMMITTEE REPORT

SENATE

4/19/82

FURTHER: Finance

Date: April 12, 1982

Mr. President:

The Committee on JUDICIARY has had HB 848

reenacting the law relating to the marital deduction in testamentary transfers

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Neb A. Anderson / No Rec

CHAIRMAN

S 60 (Rev. 12/78)

For minutes of Senate Judiciary Committee,
April 12, 1982

See Sen. Jud. '82 file on HB2.

JH 9/82

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 28, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

HJR 77 - Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.

HB 848 - "An Act reenacting the law relating to the marital deduction in testamentary transfers; and providing for an effective date."

SJR 61 - Proposing amendments to the Constitution of the State of Alaska relating to appropriations and the retention, investment and expenditure of certain state revenues; and superseding the amendments proposed by Legislative Resolve No. 1, First Special Session of the Twelfth Legislature (FSS FCCS SJR 4).

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:40 P.M. Committee members present were: Senators Rodey, Ray, Parr, and Anderson. Senator Bennett was absent.

003 - Call to order.

008 - Chairman Rodey brought HJR 77 before the committee.

019 - Phil Holdsforth, representing Miners Assoc., & Coal Operators, testified in favor of HJR 77.

045 - Art Peterson, Assistant Attorney General, testified in opposition of HJR 77.

415 - Mr. Peterson proposed the following amendments: On Page 1, Line 15 delete "on" and insert "30 days after". On Page 1, Line 16, after the word "by" insert "a 2/3 vote of each house". On Page 1, Line 17 after "." add the following sentences: Every such resolution must be restricted to a single subject. The vote on such resolutions shall be recorded.

565 - Representative Malone testified in favor of HJR 77.

600 - Senator Ray moved to adopt 30 day clause offered by Mr. Peterson. There was no objection.

649 - HJR 77 laid on the table.

654 - HB 848 was brought before the committee.

665 - Steve Levi, of Speaker Hayes office, testified in favor of HB 848.

754 - HB 848 was laid on the table.

805 - Senator Ray distributed an amendment to SJR 61 for committee member's consideration. There was no objection to the amendment and it was adopted.

991 - Ron Lorenson, Deputy Attorney General, offered an amendment to Page 1, Line 9, after ";" insert "providing for effective date for those amendments". There was no objection to the amendment.

048 - Senator Rodey offered an amendment to Page 2, Line 10, to insert a "." after the word "investment".

085 - After discussion, Senator Rodey reconsidered his amendment.

243 - The meeting was adjourned at 2:50 P.M.

March 15, 1982

The Honorable Joseph L. Hayes
Speaker
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: HB 848, Estate Tax Marital Deductions

Dear Speaker Hayes:

Mr. Levi of your staff has asked this office to review the February 1, 1982 memorandum to you on this subject by legislative counsel Thomas Sofo. We have also reviewed HB 848, which you introduced in response to that memorandum.

As we have discussed with Mr. Levi by telephone several times, we agree generally with the conclusions drawn by Mr. Sofo. We agree that, to be conservative and to ensure that Alaskans can rely on the new "unlimited marital deduction" from estate taxes. AS 13.11.277 should be amended as § 403(e)(3)(D) of the Economic Recovery Act of 1981 apparently requires. We also agree that the only way to be sure that such an amendment is not necessary is to obtain a ruling from the Internal Revenue Service. It is very unlikely that such a ruling could be obtained in time to enact a bill this session if that were made clearly necessary by the ruling.

The approach chosen by the drafter of HB 848 appears to satisfy the language of § 403(e)(3)(D), even though it does not refer specifically to the amendments made by the 1981 Act. Regardless of whether the repeal and reenact method is used in a version of HB 848, its efficacy could be assured by a letter of intent which clearly states that it is intended to satisfy § 403(e)(3)(D).

Please let me know if I can provide further assistance on this matter.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: Peter B. Froehlich
Peter B. Froehlich
Assistant Attorney General

PBF/ph

LETTER OF INTENT
HB 848

Dear Mr. Speaker:

Your Judiciary Committee has under consideration HB 848, "An Act reenacting the law relating to the marital deduction in testamentary transfers; and providing for an effective date.".

At the present time there is a potential gap between the Federal Economic Recovery Act of 1981 and the Alaska Statutes. Specifically, Section 403(a) of the Economic Recovery Act allows for an unlimited marital deduction for estate tax purposes. However, AS 13.11.277 provides that wills which refer to the federal marital deduction are construed to mean the maximum deduction allowed by federal law.

Section 403 (e)(3) of the Economic Recovery Act of 1981 provides that the new unlimited marital deduction does not apply to wills executed before September 12, 1981, unless the State enacts a statute referring to the new unlimited marital deduction allowable under Section 403(a) of the Act. This bill will enact such a statute as required by section 403(e)(3)(D) of the Economic Recovery Act of 1981.

Legislative Counsel and the Attorney General's office agree that the enactment of HB 848 will remedy any gap between Federal and State Statutes.

Sincerely,

Ramona Barnes, Chairperson
House Judiciary Committee

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution Number: HB 848
Title: An Act reenacting the law relating to the marital deduction in testimentary transfers; and providing for an effective date.
Requested by: Hayes Date: April 1, 1982

II. FISCAL DETAIL
Agency Affected: Department of Revenue
Program Category Affected: Revenue Collection and Management
SRU, Program, or Subprogram(s) Affected: Audit Division
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS,CLAIMS,ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

FUNDING (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-

POSITIONS

FULL TIME	-	-	-	-	-	-
PART TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

See attached memo to Denna Cline dated April 1, 1982.

IV. DATE: April 1, 1982

PREPARED BY: Robert R. Kessel
AGENCY: Audit Division
PHONE: 465-2320

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

M E M O R A N D U M

TO: Denna Cline

FROM: Robert R. Kessel
Director, Audit Division

DATE: April 1, 1982

RE: HB 848

The State of Alaska collects less than 1/2 million dollars a year from estate taxes. That, in itself, implies a limited fiscal impact.

Secondly, our estate taxes (Chapter 31) are based upon the amount of the credit allowed per the Federal Reserve Code. HB 848 should not impact that credit.

Thirdly, I believe the bill relates only to distribution of property and does not impact taxation.

I have briefly researched Chapter 31 Alaska Estate Taxes and Title 13 Decedents Estates, Guardianships and Trusts. Therefore, this memo is subject to that qualification.

RRK/gb

M E M O R A N D U M

February 1, 1982

SUBJECT: Marital deduction under Economic Recovery Act of 1981 (Work Order No. 12-2240)

TO: Representative Joe L. Hayes
Attn: Seven Levi

FROM: Thomas A. Sofo
Legislative Counsel

You have asked whether the State of Alaska needs to enact a statute construing the existing formula clause under the Economic Recovery Act of 1981 as applying to the unlimited marital deduction rule even though the will is executed prior to September 12, 1981. The short answer to your question appears to be no. However, in order to understand the basis for that answer and the possible need for a different type of amendment, it will be necessary to briefly summarize the applicable law.

The term "marital deduction" refers to the deduction allowed under the federal gift and estate tax laws for transfers of property between spouses. As it applies to testamentary transfers, the federal law used to allow a minimum marital deduction of $250,000 or 50 percent of the deceased spouse's adjusted gross estate whichever was greater See, Internal Revenue Code, Sec. 2056 (26 U.S.C.A. 2056). This means that at least $250,00 would escape estate taxation if bequeathed to your spouse. Since the amount allowed for this deduction was forseen as changing with time (and in fact has changed), it became an accepted practice to merely refer to the maximum deduction allowed rather than a precise figure. The purpose behind that drafting mechanism was to insure that the estate of the deceased received maximum protection from estate taxes for transfers to the surviving spouse.

The Alaska law regarding the interpretation of such a clause in a will is contained in AS 13.11.277 (copy attached). AS 13.11.277 states:

> MARITAL DEDUCTION. A provision or reference in any testamentary gift relating to the marital deduction provided for in the federal Internal Revenue Code and regulations under it is construed to contemplate the maximum marital deduction allowable under the Internal Revenue Code and regulations on the date of the death of the decedent making the gift.

Under Alaska law, reference in a will to the marital deduction allowed under the Internal Revenue Code refers to the amount allowed at the time of the testator's death, even though the will is of course, often prepared months or years in advance of that time.

The Economic Recovery Tax Act of 1981 (P.L. 97-34) had the broad goal of reducing taxes and one of the means used was to eliminate the payment of gift and estate taxes on transfers between spouses. In other words, the act provides for an unlimited marital deduction. See Sec. 403, Economic Recovery Tax Act of 1981, (26 U.S.C.A. 2056) [copy attached]. As a general proposition the act applies to the estates of decedents who die after December 31, 1981. There is however, a special provision which more narrowly addresses the marital deduction in a case such as the one raised by this request. The act provides that the unlimited marital deduction does not apply if (a) the will was executed before September 12, 1981; (b) the will has a formula referring to the maximum marital deduction allowed under the Internal Revenue Code; (c) the will was not amended after September 12, 1981 to specifically refer to an unlimited marital deduction; and (d) the state does not enact a statute which construes the formula contained in the will as referring to the unlimited marital deduction, i.e., the new law.

More straightforwardly, the general statement in a will that a transfer to a surviving spouse be equal to the maximum marital deduction allowed under the IRC, does not qualify the transfer for the unlimited marital deducation allowed by the new law if the clause is contained in a will executed before September 12, 1981 unless (1) the will is amended after that date to specifically refer to the unlimited marital deduction; or (2) the state enacts a statute which construes that general statement as referring to the unlimited marital deduction. Thus in the absence of an

amendment to a pre-September 12, 1981 will, there seems to be a requirement for the state to enact legislation. The caveat to this conclusion is that AS 13.11.277 (supra) already provides that the general statement, or formula, as it is often called, will be taken to refer to the maximum deduction allowed under the IRC on the date of death. The interesting question is whether the federal statute requires yet another amendment to our state law in order to specifically refer to the unlimited marital deduction now available. The general rule, even in the absence of AS 13.11.277, is that the time of death is the relevant point for determining the nature of the marital deduction. Jackson v. U.S., 376 U.S. 503, 11 L.Ed.2d 871 (1964). Nevertheless the relevant language in Sec. 403(e)(3)(D) of the Economic Recovery Act of 1981 (copy attached) states that the unlimited marital deduction does not apply to existing wills if "the State does not enact a statute" which refers to the "marital deduction allowable by Federal law as amended by subsection (a)" (emphasis added). The use of the word "enact" seems to indicate a requirement for legislation since it does not refer to whether the state "has" an existing statute which is construed as accomplishing this. The conservative conclusion seems to be that an amendment should be pursued since it is at least arguable that the federal statute contemplates such an amendment.

Our own AS 13.11.277 appears to have been a response to a very similar situation concerning an increased marital deduction provided by Sec. 2002 of the Tax Reform Act of 1976 (P.L. 94-455, 90 Stat. 1956) [copy attached]. Whether the 1978 enactment of AS 13.11.277 in response to amendments made in the 1976 Tax Reform Act has continuing vitality is difficult to say with certainty. Technically speaking, the state has not enacted a statute construing the formula as referring to the marital deduction as amended by the Economic Recovery Act of 1981. On the other hand, the statute which was enacted in 1978 seems to have prospectively taken care of the need to constantly reenact or revise our statues on this point. Since it is difficult to believe that the federal law contemplates such a repetitive legislative effort on the occasion of the enactment of each federal tax law and our own statute is clear on its face, my conclusion would be that an amendment to the Alaska Statutes is unnecessary.

Since it is the interpretation given AS 13.11.277 by the IRS which is of primary significance, it would be useful to get an informal opinion from that agency concerning the question you have raised. I would be happy to discuss this matter further at your convenience.

TAS:ljb

Sec. 13.11.225. Choice of law as to meaning and effect of wills. The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the provisions relating to the elective share described in AS 13.11.070 — 13.11.100, the provisions relating to exempt property and allowances described in AS 13.11.125 — 13.11.140, or any other public policy of this state otherwise applicable to the disposition. (§ 1 ch 78 SLA 1972; am § 9 ch 56 SLA 1973)

Effect of amendments. — The 1973 amendment inserted the language beginning "provisions relating" and ending "or any other."

Legislative history reports. — For report on ch. 56, SLA 1973 (HCS SB 140), see 1973 Senate Journal Supplement No. 9; 1973 House Journal, p. 819.

Sec. 13.11.255. Nonademption of specific devises in certain cases; sale by conservator; unpaid proceeds of sale, condemnation or insurance.

Legislative history reports. — For 1976 Senate Journal Supplement No. 9 and 1976 House Journal, p. 1569.

Sec. 13.11.277. Marital deduction. A provision or reference in any testamentary gift relating to the marital deduction provided for in the federal Internal Revenue Code and regulations under it is construed to contemplate the maximum marital deduction allowable under the Internal Revenue Code and regulations on the date of the death of the decedent making the gift. (§ 1 ch 47 SLA 1978)

Article 8. General Provisions.

Section

Sec. 13.11.295. Renunciation of succession. (a) A person or the representative of an incapacitated or protected person, who is an heir, devisee, person succeeding to a renounced interest, beneficiary under a testamentary instrument, or appointee under a power of appointment exercised by a testamentary instrument, may renounce in whole or in part the right of succession to any property or interest in it, including a future interest, by filing a written renunciation under this section. The right to renounce does not survive the death of the person having it. The instrument shall

(1) describe the property or interest renounced;

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after, and gifts made after, December 31, 1981.

SEC. 403. UNLIMITED MARITAL DEDUCTION.

(a) ESTATE TAX DEDUCTION.—

(1) IN GENERAL.—Section 2056 (relating to bequests, etc., to surviving spouses) is amended

(A) by striking out subsection (c) and redesignating subsection (d) as subsection (c); and

(B) by striking out "subsections (b) and (c)" in subsection (a) and inserting in lieu thereof "subsection (b)".

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (2) of section 2012(b) (relating to credit for gift tax) is amended to read as follows:

"(2) if a deduction with respect to such gift is allowed under section 2056(a) (relating to marital deduction), then by the amount of such value, reduced as provided in paragraph (1); and".

(B) Paragraph (5) of section 2602(c) (relating to coordination with estate tax) is amended by striking out subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(C) Subparagraph (A) of section 691(c)(3) (relating to special rules for generation-skipping transfers) is amended by striking out "section 2602(c)(5)(C)" and inserting in lieu thereof "section 2602(c)(5)(B)".

(b) GIFT TAX DEDUCTION.—

(1) IN GENERAL.—Subsection (a) of section 2523 (relating to gift to spouse) is amended to read as follows:

"(a) ALLOWANCE OF DEDUCTION.—Where a donor who is a citizen or resident transfers during the calendar year by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar year an amount with respect to such interest equal to its value."

(2) TECHNICAL AMENDMENT.—Section 2523 is amended by striking out subsection (f).

(3) CONFORMING AMENDMENTS.—

(A) So much of section 6019 (relating to gift tax returns) as follows the heading and precedes subsection (b) is amended to read as follows:

"Any individual who in any calendar year makes any transfer by gift other than—

"(1) a transfer which under subsection (b) or (e) of section 2503 is not to be included in the total amount of gifts for such year, or

"(2) a transfer of an interest with respect to which a deduction is allowed under section 2523,

shall make a return for such year with respect to the gift tax imposed by subtitle B."

(B) Paragraph (2) of section 2035(b) is amended by inserting "(other than by reason of section 6019(a)(2))" after "section 6019".

(c) ESTATE TAX ON PROPERTY HELD JOINTLY BY HUSBAND AND WIFE.

(1) IN GENERAL.—Paragraph (2) of section 2040(b) (defining qualified joint interest) is amended to read as follows:

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d as follows:

"(2) QUALIFIED JOINT INTEREST DEFINED.—For purposes of paragraph (1), the term 'qualified joint interest' means any interest in property held by the decedent and the decedent's spouse as—

"(A) tenants by the entirety, or

"(B) joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants."

(2) TECHNICAL AMENDMENT.—Subsection (a) of section 2040 is amended by striking out "joint tenants" each place it appears and inserting in lieu thereof "joint tenants with right of survivorship".

(3) CONFORMING AMENDMENTS.—

(A) Subsections (c), (d), and (e) of section 2040 are hereby repealed.

(B) Section 2515 (relating to tenancies by the entirety in real property), section 2515A (relating to tenancies by the entirety in personal property), and subsection (c) of section 6019 (relating to gift tax return) are hereby repealed.

(C) The table of sections for subchapter B of chapter 12 (relating to transfers) is amended by striking out the items relating to sections 2515 and 2515A.

(d) ELECTION TO HAVE CERTAIN LIFE INTERESTS QUALIFY FOR MARITAL DEDUCTION.—

(1) ESTATE TAX.—Subsection (b) of section 2056 is amended by adding at the end thereof the following new paragraphs:

"(7) ELECTION WITH RESPECT TO LIFE ESTATE FOR SURVIVING SPOUSE.—

"(A) IN GENERAL.—In the case of qualified terminable interest property—

"(i) for purposes of subsection (a), such property shall be treated as passing to the surviving spouse, and

"(ii) for purposes of paragraph (1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

"(B) QUALIFIED TERMINABLE INTEREST PROPERTY DEFINED.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualified terminable interest property' means property—

"(I) which passes from the decedent,

"(II) in which the surviving spouse has a qualifying income interest for life, and

"(III) to which an election under this paragraph applies.

"(ii) QUALIFYING INCOME INTEREST FOR LIFE.—The surviving spouse has a qualifying income interest for life if—

"(I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, and

"(II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Subclause (II) shall not apply to a power exercisable only at or after the death of the surviving spouse.

"(iii) PROPERTY INCLUDES INTEREST THEREIN.—The term 'property' includes an interest in property.

"(iv) SPECIFIC PORTION TREATED AS SEPARATE PROPERTY.—A specific portion of property shall be treated as separate property.

"(v) ELECTION.—An election under this paragraph with respect to any property shall be made by the executor on the return of tax imposed by section 2001. Such an election, once made, shall be irrevocable.

"(8) SPECIAL RULE FOR CHARITABLE REMAINDER TRUSTS.—

"(A) IN GENERAL.—If the surviving spouse of the decedent is the only noncharitable beneficiary of a qualified charitable remainder trust, paragraph (1) shall not apply to any interest in such trust which passes or has passed from the decedent to such surviving spouse.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) NONCHARITABLE BENEFICIARY.—The term 'noncharitable beneficiary' means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c).

"(ii) QUALIFIED CHARITABLE REMAINDER TRUST.—The term 'qualified charitable remainder trust' means a charitable remainder annuity trust or charitable remainder unitrust (described in section 664)."

(2) GIFT TAX.—Section 2523 is amended by adding at the end thereof the following new subsections:

"(f) ELECTION WITH RESPECT TO LIFE ESTATE FOR DONEE SPOUSE.—

"(1) IN GENERAL.—In the case of qualified terminable interest property—

"(A) for purposes of subsection (a), such property shall be treated as transferred to the donee spouse, and

"(B) for purposes of subsection (b)(1), no part of such property shall be considered as retained in the donor or transferred to any person other than the donee spouse.

"(2) QUALIFIED TERMINABLE INTEREST PROPERTY.—For purposes of this subsection, the term 'qualified terminable interest property' means any property—

"(A) which is transferred by the donor spouse,

"(B) in which the donee spouse has a qualifying income interest for life, and

"(C) to which an election under this subsection applies.

"(3) CERTAIN RULES MADE APPLICABLE.—For purposes of this subsection, the rules of clauses (ii), (iii), and (iv) of section 2056(b)(7)(B) shall apply.

"(4) ELECTION.—An election under this subsection with respect to any property shall be made on the return of the tax imposed by section 2501 for the calendar year in which the interest was transferred. Such an election, once made, shall be irrevocable.

"(g) SPECIAL RULE FOR CHARITABLE REMAINDER TRUSTS.—

"(1) IN GENERAL.—If, after the transfer, the donee spouse is the only noncharitable beneficiary (other than the donor) of a qualified remainder trust, subsection (b) shall not apply to the interest in such trust which is transferred to the donee spouse.

"(2) DEFINITIONS.—For purposes of paragraph (1), the term 'noncharitable beneficiary' and 'qualified charitable remainder trust' have the meanings given to such terms by section 2056(b)(8)(B)."

(3) TREATMENT OF SPOUSE.—

(A) INCLUSION IN GROSS ESTATE.—

(i) IN GENERAL.—Part III of subchapter A of chapter 11 is amended by redesignating sections 2044 and 2045 as sections 2045 and 2046, respectively, and by inserting after section 2043 the following new section:

"SEC. 2044. CERTAIN PROPERTY FOR WHICH MARITAL DEDUCTION WAS PREVIOUSLY ALLOWED.

"(a) GENERAL RULE.—The value of the gross estate shall include the value of any property to which this section applies in which the decedent had a qualifying income interest for life.

"(b) PROPERTY TO WHICH THIS SECTION APPLIES.—This section applies to any property if—

"(1) a deduction was allowed with respect to the transfer of such property to the decedent—

"(A) under section 2056 by reason of subsection (b)(7) thereof, or

"(B) under section 2523 by reason of subsection (f) thereof, and

"(2) section 2519 (relating to dispositions of certain life estates) did not apply with respect to a disposition by the decedent of part or all of such property."

(ii) The table of sections for part III of subchapter A of chapter 11 is amended by redesignating the items relating to sections 2044 and 2045 as sections 2045 and 2046, respectively, and by inserting after the item relating to section 2043 the following new item:

"Sec. 2044. Certain property for which marital deduction was previously allowed."

(B) GIFT TAX.—

(i) IN GENERAL.—Subchapter B of chapter 11 (relating to transfers) is amended by adding at the end thereof the following new section:

"SEC. 2519. DISPOSITIONS OF CERTAIN LIFE ESTATES.

"(a) GENERAL RULE.—Any disposition of all or part of a qualifying income interest for life in any property to which this section applies shall be treated as a transfer of such property.

"(b) PROPERTY TO WHICH THIS SUBSECTION APPLIES.—This section applies to any property if a deduction was allowed with respect to the transfer of such property to the donor—

"(1) under section 2056 by reason of subsection (b)(7) thereof, or

"(2) under section 2523 by reason of subsection (f) thereof."

(ii) The table of sections for subchapter B of chapter 11 is amended by adding at the end thereof the following new item:

"Sec. 2519. Dispositions of certain life estates."

(4)(A) Subchapter C of chapter 11 is amended by inserting after section 2207 the following new section:

"SEC. 2207A. RIGHT OF RECOVERY IN THE CASE OF CERTAIN MARITAL DEDUCTION PROPERTY.

"(a) RECOVERY WITH RESPECT TO ESTATE TAX.—

"(1) IN GENERAL.—If any part of the gross estate consists of property the value of which is includible in the gross estate by reason of section 2044 (relating to certain property for which marital deduction was previously allowed), the decedent's estate shall be entitled to recover from the person receiving the property the amount by which—

"(A) the total tax under this chapter which has been paid, exceeds

"(B) the total tax under this chapter which would have been payable if the value of such property had not been included in the gross estate.

"(2) DECEDENT MAY OTHERWISE DIRECT BY WILL.—Paragraph (1) shall not apply if the decedent otherwise directs by will.

"(b) RECOVERY WITH RESPECT TO GIFT TAX.—If for any calendar year tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under section 2519, such person shall be entitled to recover from the person receiving the property the amount by which—

"(1) the total tax for such year under chapter 12, exceeds

"(2) the total tax which would have been payable under such chapter for such year if the value of such property had not been taken into account for purposes of chapter 12.

"(c) MORE THAN ONE RECIPIENT OF PROPERTY.—For purposes of this section, if there is more than one person receiving the property, the right of recovery shall be against each such person.

"(d) TAXES AND INTEREST.—In the case of penalties and interest attributable to additional taxes described in subsections (a) and (b), rules similar to subsections (a), (b), and (c) shall apply."

(B) The table of sections for subchapter C of chapter 11 is amended by inserting after the item relating to section 2207 the following new item:

"Sec. 2207A. Right of recovery in the case of certain marital deduction property."

(e) EFFECTIVE DATES.—

(1) Except as otherwise provided in this subsection, the amendments made by this section shall apply to the estates of decedents dying after December 31, 1981.

(2) The amendments made by paragraphs (1), (2), and (3)(A) of subsection (b), subparagraphs (B) and (C) of subsection (c)(3), and paragraphs (2) and (3)(B) of subsection (d) shall apply to gifts made after December 31, 1981.

(3) If—

(A) the decedent dies after December 31, 1981,

(B) by reason of the death of the decedent property passes from the decedent or is acquired from the decedent under a will executed before the date which is 30 days after the date of the enactment of this Act, or a trust created before such date, which contains a formula expressly providing that the spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by Federal law,

(C) the formula referred to in subparagraph (B) was not amended to refer specifically to an unlimited marital deduction at any time after the date which is 30 days after the date of enactment of this Act and before the death of the decedent, and

(D) the State does not enact a statute applicable to such estate which construes this type of formula as referring to the marital deduction allowable by Federal law as amended by subsection (a),

then the amendment made by subsection (a) shall not apply to the estate of such decedent.

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naval shipping of a country.
vigation and commerce of the sea;
ters. Member of U.S. Marine Corps.
ne.

That portion of the main or open sea, the shores of a given country, over which iction of its municipal laws and local au- extends. Territorial waters, defined by in- nal law as extending out three miles from lore. See also Territorial waters.

ne carrier. By statutes of several states this term applied to carriers plying upon the ocean, arms of the sea, the Great Lakes, and other navigable waters within the jurisdiction of the United States.

Marine contract. One relating to maritime affairs, shipping, navigation, marine insurance, affreightment, maritime loans, or other business to be done upon the sea or in connection with navigation.

Marine court in the city of New York. Formerly, a local court of New York City, originally created as a tribunal for the settlement of causes between seamen. It was the predecessor of the City Court of the city of New York.

Marine insurance. See Insurance.

Marine interest. Interest, allowed to be stipulated for at an extraordinary rate, for the use and risk of money loaned on *respondentia* and bottomry bonds.

Marine league /məríyn liyg/. A measure of distance commonly employed at sea, being equal to one-twentieth part of a degree of latitude, or three geographical or nautical miles.

Mariner. A seaman or sailor; one engaged in navigating vessels upon the sea; persons employed aboard ships or vessels.

Marine risk. The perils of the sea; the perils necessarily incident to navigation.

Mariner's will. A nuncupative or oral will permitted in some jurisdictions for the sailor who is actually at sea at the time of making the will. Generally, such will affects personal property only.

Maris et fœminæ conjunctio est de jure naturæ /mǽris èt fémaniy kənjə̀ŋksh(iy)ow èst diy júriy nəchúriy/. The connection of male and female is by the law of nature.

Maritagio amisso per defaltam /mǽrətéyj(iy)ow əmísow pər dəfóltəm/. An obsolete writ for the tenant in frank-marriage to recover lands, etc., of which he was deforced.

Maritagium /mǽrətéyj(iy)əm/. The portion which is given with a daughter in marriage. Also the power which the lord or guardian in chivalry had of disposing of his infant ward in matrimony.

Maritagium est aut liberum aut servitio obligatum; liberum maritagium dicitur ubi donator vult quod terra

Maritagium habere /mǽrətéyj(iy)əm hábiriy/. To have the free disposal of an heiress in marriage.

Marital /mǽrədəl/məráydəl/. Relating to, or connected with, the *status* of marriage; pertaining to a husband; incident to a husband.

Marital agreements. Contracts between parties who are either on the threshold of marriage or on the verge of separation, though, in general, the term refers to all agreements between married people. Such agreements are primarily concerned with the division and ownership of marital property. In some jurisdictions, the contract must be made through a third person if the law does not permit the spouses to contract directly with each other. See also **Antenuptial settlements; Equitable distribution; Marriage settlement; Postnuptial agreement.**

Marital communications privilege. In most jurisdictions private communications between the spouses during the marriage are privileged at the option of the witness spouse and hence inadmissible in a trial. In some jurisdictions the communications are disqualified, and hence not admissible, even with the consent of the witness spouse. This privilege is subject to certain limitations; *e.g.* prosecutions for crimes committed by one spouse against the other or against the children of either. See also **Husband-wife privilege.**

Marital deduction. A deduction allowed upon the transfer of property from one spouse to another. The deduction is allowed under the Federal gift tax for lifetime (*i.e.*, inter vivos) transfers and also under the Federal estate tax for testamentary transfers. I.R.C. §§ 2056, 2523. See also **Pecuniary formulas.**

Minimum deduction. Under the Tax Reform Act of 1976, a minimum marital deduction of $250,000 is allowed for death tax purposes if this amount of qualifying property passes to the surviving spouse. The previous limitation of 50% of the deceased spouse's adjusted gross estate continues to be in effect when the marital deduction exceeds $250,000. The minimum marital deduction for gift tax purposes is the first $100,000 passing from one spouse to the other spouse. To the extent that the marital deduction allowed for gift tax purposes exceeds one-half of the value of the property transferred, there is a dollar-for-dollar offset to the estate's allowable minimum marital deduction (or the marital deduction computed in accordance with the 50% of the adjusted gross estate rule).

Marital deduction trust. In estate planning, a device in the form of a trust utilized to gain the maximum benefit of the marital deduction by dividing the property in half. Commonly, one half of the property is transferred to the marital deduction trust and the other half is disposed of in a trust or like arrangement with a view towards having it escape taxation in the estate of the surviving spouse.

Marital portion. In Louisiana, the name given to that part of a deceased husband's estate to which the widow is entitled.

Marital privileges. Those rights, immunities and ad- which attach to the state of marriage such

(d) EFFECTIVE DATES.—

26 USC 2001 note.

(1) The amendments made by subsections (a) and (c)(1) shall apply to the estates of decedents dying after December 31, 1976; except that the amendments made by subsection (a)(5) and subparagraphs (K) and (L) of subsection (c)(1) shall not apply to transfers made before January 1, 1977.

26 USC 2502 note.

(2) The amendments made by subsections (b) and (c)(2) shall apply to gifts made after December 31, 1976.

SEC. 2002. INCREASE IN LIMITATIONS ON MARITAL DEDUCTIONS; FRACTIONAL INTERESTS OF SPOUSE.

(a) INCREASE IN ESTATE TAX MARITAL DEDUCTION.—Paragraph (1) of section 2056(c) (relating to limitation on marital deduction) is amended to read as follows:

26 USC 2056.

"(1) LIMITATION.—

"(A) IN GENERAL.—The aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed the greater of—

"(i) $250,000, or

"(ii) 50 percent of the value of the adjusted gross estate (as defined in paragraph (2)).

"(B) ADJUSTMENT FOR CERTAIN GIFTS TO SPOUSE.—If a deduction is allowed to the decedent under section 2523 with respect to any gift made to his spouse after December 31, 1976, the limitation provided by subparagraph (A) (determined without regard to this subparagraph) shall be reduced (but not below zero) by the excess (if any) of—

"(i) the aggregate of the deductions allowed to the decedent under section 2523 with respect to gifts made after December 31, 1976, over

"(ii) the aggregate of the deductions which would have been allowable under section 2523 with respect to gifts made after December 31, 1976, if the amount deductible under such section with respect to any gift were 50 percent of its value.

"(C) COMMUNITY PROPERTY ADJUSTMENT.—The $250,000 amount set forth in subparagraph (A)(i) shall be reduced by the excess (if any) of—

"(i) the amount of the subtraction determined under clauses (i), (ii), and (iii) of paragraph (2)(B), over

"(ii) the excess of the aggregate of the deductions allowed under sections 2053 and 2054 over the amount taken into account with respect to such deductions under clause (iv) of paragraph (2)(B)."

(b) INCREASE IN GIFT TAX MARITAL DEDUCTION.—Subsection (a) of section 2523 (relating to deduction for gift to spouse) is amended to read as follows:

26 USC 2523.

"(a) ALLOWANCE OF DEDUCTION.—

"(1) IN GENERAL.—Where a donor who is a citizen or resident transfers during the calendar quarter by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar quarter an amount with respect to such interest equal to its value.

"(2) LIMITATION.—The aggregate of the deductions allowed under paragraph (1) for any calendar quarter shall not exceed the sum of—

"(A) $100,000 reduced (but not below zero) by the aggregate of the deductions allowed under this section for preceding calendar quarters beginning after December 31, 1976; plus

"(B) 50 percent of the lesser of—

"(i) the amount of the deductions allowable under paragraph (1) for such calendar quarter (determined without regard to this paragraph); or

"(ii) the amount (if any) by which the aggregate of the amounts determined under clause (i) for the calendar quarter and for each preceding calendar quarter beginning after December 31, 1976, exceeds $200,000."

(c) FRACTIONAL INTEREST OF SPOUSE.—

(1) IN GENERAL.—Section 2040 (relating to joint interests) is amended by adding at the end thereof the following new subsection: 26 USC 2040.

"(b) CERTAIN JOINT INTERESTS OF HUSBAND AND WIFE.—

"(1) INTERESTS OF SPOUSE EXCLUDED FROM GROSS ESTATE.—Notwithstanding subsection (a), in the case of any qualified joint interest, the value included in the gross estate with respect to such interest by reason of this section is one-half of the value of such qualified joint interest.

"(2) QUALIFIED JOINT INTEREST DEFINED.—For purposes of paragraph (1), the term 'qualified joint interest' means any interest in property held by the decedent and the decedent's spouse as joint tenants or as tenants by the entirety, but only if—

"(A) such joint interest was created by the decedent, the decedent's spouse, or both,

"(B) (i) in the case of personal property, the creation of such joint interest constituted in whole or in part a gift for purposes of chapter 12, or

"(ii) in the case of real property, an election under section 2515 applies with respect to the creation of such joint interest, and

"(C) in the case of a joint tenancy, only the decedent and the decedent's spouse are joint tenants."

(2) AMENDMENT OF RELATED GIFT TAX PROVISION.—Subsection (c) of section 2515 (relating to election with respect to tenancies by the entirety) is amended to read as follows: 26 USC 2515.

"(c) EXERCISE OF ELECTION.—

"(1) IN GENERAL.—The election provided by subsection (a) shall be exercised by including such creation of a tenancy by the entirety as a transfer by gift, to the extent such transfer constitutes a gift (determined without regard to this section), in the gift tax return of the donor for the calendar quarter in which such tenancy by the entirety was created, filed within the time prescribed by law, irrespective of whether or not the gift exceeds the exclusion provided by section 2503(b).

"(2) SUBSEQUENT ADDITIONS IN VALUE.—If the election provided by subsection (a) has been made with respect to the creation of any tenancy by the entirety, such election shall also apply to each addition made to the value of such tenancy by the entirety.

"(3) CERTAIN ACTUARIAL COMPUTATIONS NOT REQUIRED.—In the case of any election under subsection (a) with respect to any property, the retained interest of each spouse shall be treated as one-half of the value of their joint interest."

26 USC 2040. (3) CLERICAL AMENDMENT.—Section 2040 is amended by striking out "The value" and inserting in lieu thereof the following:
"(a) GENERAL RULE.—The value".

(d) EFFECTIVE DATES.—

26 USC 2056 note. (1)(A) Except as provided in subparagraph (B), the amendment made by subsection (a) shall apply with respect to the estates of decedents dying after December 31, 1976.

(B) If—

(i) the decedent dies after December 31, 1976, and before January 1, 1979,

(ii) by reason of the death of the decedent property passes from the decedent or is acquired from the decedent under a will executed before January 1, 1977, or a trust created before such date, which contains a formula expressly providing that the spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by Federal law,

(iii) the formula referred to in clause (ii) was not amended at any time after December 31, 1976, and before the death of the decedent, and

(iv) the State does not enact a statute applicable to such estate which construes this type of formula as referring to the marital deducton allowable by Federal law as amended by subsection (a),

then the amendment made by subsection (a) shall not apply to the estate of such decedent.

26 USC 2523 note. (2) The amendment made by subsection (b) shall apply to gifts made after December 31, 1976.

26 USC 2040 note. (3) The amendments made by subsection (c) shall apply to joint interests created after December 31, 1976.

SEC. 2003. VALUATION FOR PURPOSES OF THE FEDERAL ESTATE TAX OF CERTAIN REAL PROPERTY DEVOTED TO FARMING OR CLOSELY HELD BUSINESSES.

(a) GENERAL RULE.—Part III of subchapter A of chapter 11 (relating to gross estate) is amended by inserting after section 2032 the following new section:

26 USC 2032A. "SEC. 2032A. VALUATION OF CERTAIN FARM, ETC., REAL PROPERTY.

"(a) VALUE BASED ON USE UNDER WHICH PROPERTY QUALIFIES.—

"(1) GENERAL RULE.—If—

"(A) the decedent was (at the time of his death) a citizen or resident of the United States, and

"(B) the executor elects the application of this section and files the agreement referred to in subsection (d)(2),

then, for purposes of this chapter, the value of qualified real property shall be its value for the use under which it qualifies, under subsection (b), as qualified real property.

"(2) LIMITATION.—The aggregate decrease in the value of qualified real property taken into account for purposes of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed $500,000.

"(b) QUALIFIED REAL PROPERTY.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified real property' means real property located in the United States which, on the date of the decedent's death, was being used for a qualified use, but only if—

STATE OF ALASKA

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March 15, 1982

The Honorable Joseph L. Hayes
Speaker
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: HB 848, Estate Tax Marital Deductions

Dear Speaker Hayes:

Mr. Levi of your staff has asked this office to review the February 1, 1982 memorandum to you on this subject by legislative counsel Thomas Sofo. We have also reviewed HB 848, which you introduced in response to that memorandum.

As we have discussed with Mr. Levi by telephone several times, we agree generally with the conclusions drawn by Mr. Sofo. We agree that, to be conservative and to ensure that Alaskans can rely on the new "unlimited marital deduction" from estate taxes, AS 13.11.277 should be amended as § 403(e)(3)(D) of the Economic Recovery Act of 1981 apparently requires. We also agree that the only way to be sure that such an amendment is not necessary is to obtain a ruling from the Internal Revenue Service. It is very unlikely that such a ruling could be obtained in time to enact a bill this session if that were made clearly necessary by the ruling.

The approach chosen by the drafter of HB 848 appears to satisfy the language of § 403(e)(3)(D), even though it does not refer specifically to the amendments made by the 1981 Act. Regardless of whether the

Please let me know if I can provide further assistance on this matter.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: Peter B. Froehlich
Peter B. Froehlich
Assistant Attorney General

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