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# United States v. Chandler: The Requirements for Valid Inter Vivos Gifts of United States Savings Bonds

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statutory policy of affording broad public protection to investors should be applied [to] situations where an investor is not inactive, but participates to a limited degree in the operation of the business."<sup>53</sup>

The Ninth Circuit was convinced that the *Turner* holding did not diverge from the Supreme Court's definition of "investment contract" in *Howey*.<sup>54</sup> In contrast, however, was the recent case of *SEC v. Koscot Interplanetary, Inc.*,<sup>55</sup> which considered the *Turner* decision as a "different and more expansive standard" in light of *Howey* and subsequent cases.<sup>56</sup> Irrespective of either viewpoint, *Turner* attempted to adhere to the policy considerations and remedial nature of the federal securities statutes. The *Turner* case avoided the establishment of a rigid and arbitrary definition for an investment contract, and chose instead, a "flexible rather than a static principle"<sup>57</sup> in order to protect investors through the requirement of full disclosure by issuers of securities. Since the Supreme Court denied certiorari in *Turner*,<sup>58</sup> there is a reason for optimism that the courts of appeal will resurrect the spirit in which the securities acts were legislated, and thus, apply *Turner* as the lawful standard for an investment contract.<sup>59</sup>

*Robert Emil Feiger*

### **United States v. Chandler: The Requirements for Valid Inter Vivos Gifts of United States Savings Bonds**

Decedent purchased series E United States savings bonds issued in co-ownership form, and subsequently manually delivered these bonds to the respective co-owners, her granddaughters, with the intention of making irrevocable *inter vivos* gifts to them. Decedent had furnished the entire purchase price of the bonds, and the time of her death the Internal Revenue Service included the bonds in her gross estate for federal estate tax purposes under section 2040<sup>1</sup> because the bonds had not been reissued solely in the name of each granddaughter, but rather the decedent's name remained on each bond as co-owner. The estate paid the estate tax and brought suit for a refund in federal district court. The court ruled that an *inter vivos* gift had been effected by the decedent, and, therefore, the bonds were not includable in her gross estate.<sup>2</sup> The Ninth Circuit Court of Appeals affirmed per curiam for the reasons set

<sup>53</sup> SEC Securities Act Release No. 5211, Exchange Act Release No. 9387, at 3 (Nov. 30, 1971), quoting State Comm'r of Sec. v. Hawaii Mkt. Center, Inc., 485 P.2d 105, 108 (Hawaii 1971).

<sup>54</sup> SEC v. Glenn W. Turner Enterprises, Inc., 474 F.2d 476, 483 (9th Cir.), cert. denied, 42 U.S.L.W. 3194 (U.S. Oct. 9, 1973).

<sup>55</sup> CCH FED. SEC. L. REP. ¶ 93,960 (N.D. Ga., filed Apr. 19, 1973).

<sup>56</sup> *Id.* at 93,846.

<sup>57</sup> SEC v. W.J. Howey Co., 328 U.S. 293, 299 (1946).

<sup>58</sup> 42 U.S.L.W. 3194 (U.S. Oct. 9, 1973).

<sup>59</sup> See note 52 *supra*.

<sup>1</sup> INT. REV. CODE of 1954, § 2040.

<sup>2</sup> Chandler v. United States, 312 F. Supp. 1263 (N.D. Cal. 1970).

forth in the district court's opinion.<sup>3</sup> The United States Supreme Court granted certiorari.<sup>4</sup> *Held, reversed*: A co-owner of United States savings bonds cannot effectively exclude the bonds from his gross estate at death for federal estate tax purposes solely by making an *inter vivos* manual delivery of the bonds to the other registered co-owner, but rather the bonds must be reissued to the donee. *United States v. Chandler*, 410 U.S. 257 (1973).

#### I. THE TRANSFER PROBLEM AND THE TREASURY REGULATIONS

The validity of a physical transfer of savings bonds from one co-owner to the other co-owner has long been a source of conflict in state and federal courts.<sup>5</sup> This conflict arose primarily in the context of the federal estate tax, with the dispute centering around the proper interpretation of the Treasury Regulations governing United States savings bonds.<sup>6</sup> In calculating the federal estate tax, section 2040 of the Internal Revenue Code requires the entire value of jointly owned property which carries survivorship rights to be included in the decedent's gross estate unless the surviving co-owner can show that he contributed a portion of the acquisition cost of the property.<sup>7</sup> When the deceased co-owner has contributed the full purchase price of the bond, the Internal Revenue Service has invoked section 2040 even though a valid *inter vivos* gift had been effected under state property laws.<sup>8</sup> The Internal Revenue Service has argued that a decedent's manual *inter vivos* delivery of the bonds without reissuance is insufficient to divest him of all incidents of ownership since the Treasury Regulations governing savings bonds require that the bonds be submitted for reissuance solely in the name of the donee to accomplish such a transfer of the interest.<sup>9</sup> Estates placed in this position have contended that the Treasury Regulations do not prescribe the only manner in which a valid *inter vivos* gift between co-owners can be made, but rather that a valid *inter vivos* gift can also be made in accordance with state property laws.<sup>10</sup> With approximately seventy-five percent of the 500 million series E bonds outstanding registered in co-ownership form,<sup>11</sup> this conflict was of significant dimensions.

However, ownership interests in United States savings bonds are controlled by federal law.<sup>12</sup> Further, Congress has authorized the Secretary of the Treasury

<sup>3</sup> 460 F.2d 1281 (9th Cir. 1972).

<sup>4</sup> *United States v. Chandler*, 410 U.S. 257 (1973).

<sup>5</sup> See Comment, *The Effect of Savings Bond Regulations on Inter Vivos Gifts Between Co-owners*, 4 CREIGHTON L. REV. 339 (1971); Comment, *Estate Tax Consequences of Inter Vivos Gifts Between Co-owners of United States Savings Bonds*, 23 SYRACUSE L. REV. 933 (1972). See also Annot., 40 A.L.R.2d 788 (1955).

<sup>6</sup> 31 C.F.R. §§ 315.0-93 (1972). The Regulations were originally promulgated December 30, 1964, 29 Fed. Reg. 19034, codifying and amending Treasury Dept. Circular No. 350, 31 C.F.R. § 315 (1957).

<sup>7</sup> INT. REV. CODE of 1954, § 2040: "The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants by the decedent and any other person . . . in their joint names and payable to either or the survivor . . . ."

<sup>8</sup> See, e.g., *Estate of Curry v. United States*, 409 F.2d 671 (6th Cir. 1969).

<sup>9</sup> *Estate of Mae Elliott*, 57 T.C. 152 (1971).

<sup>10</sup> *Estate of Curry v. United States*, 409 F.2d 671 (6th Cir. 1969); *Estate of Oliver B. Avery*, 40 T.C. 392 (1963); *Estate of John H. Boogher*, 22 T.C. 1167 (1954).

<sup>11</sup> 410 U.S. at 262 n.4.

<sup>12</sup> *Guldager v. United States*, 204 F.2d 487, 489 (6th Cir. 1953).

to issue United States savings bonds and to promulgate regulations governing their issuance, including any restrictions on their transferability.<sup>13</sup> The Supreme Court has held that the Regulations have the force and effect of federal law, and that, at least in the one instance of survivorship rights in savings bonds, the Regulations preempt an inconsistent state property law.<sup>14</sup>

*The Treasury Regulations.* The Regulations<sup>15</sup> provide that the form of "registration used on issue or reissue must express the actual ownership of and interest in the bond and . . . will be considered as conclusive of such ownership and interest."<sup>16</sup> Savings bonds may be registered in single ownership form, beneficiary form, or co-ownership form. Only one form of registration establishing co-ownership is authorized: a registration in the names of two persons only, stated in in the alternative.<sup>17</sup> Crucial to the problem of a co-ownership so created is the Regulations' limitation on the transfer of savings bonds. The Regulations specify that the bonds are nontransferable and are payable only to the registered owners.<sup>18</sup> This prohibition on the transfer of savings bonds has been further extended to judicial determinations which would result in a transfer of bonds without reissuance, as the Regulations provide that "[n]o judicial determination will be recognized which would give effect to an attempted voluntary transfer inter vivos of a bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving co-owner . . . ."<sup>19</sup> The Regulations prescribe an important distinction between requests for payment of a bond and requests for reissuance of a bond. When the bond is registered in co-ownership form, payment during the lives of both co-owners will be made to either upon his separate request, and upon such payment the other co-owner ceases to have any interest in the bond.<sup>20</sup> However, a bond registered in co-ownership form will be reissued during the co-owners' lives only upon the request of both co-owners.<sup>21</sup> After the death of one co-

<sup>13</sup> 31 U.S.C. § 757c(a) (1970).

<sup>14</sup> *Free v. Bland*, 369 U.S. 663, 668 (1962).

<sup>15</sup> Pursuant to Congress' authorization, the Treasury has issued Regulations governing savings bonds and has periodically revised these. The eighth revision was in effect in 1961 when the decedent delivered the bonds to her granddaughters, 31 C.F.R. § 315 (1957). The pertinent sections of the Regulations presently in effect remain substantially unchanged from those in effect in 1961.

<sup>16</sup> 31 C.F.R. § 315.5 (1972).

<sup>17</sup> *Id.* § 315.7(a). *Id.* § 315.7(a)(2) defines the co-ownership form as follows: "Co-ownership form—two persons (only). In the alternative as coowners. Examples: John A. Jones 123-45-6789 or Mrs. Ella S. Jones. Mrs. Ella S. Jones or John A. Jones 123-45-9876. No other form of registration establishing coownership is authorized."

<sup>18</sup> *Id.* § 315.15.

<sup>19</sup> *Id.* § 315.20(a). Two exceptions to this limitation on judicial determinations resulting in the transfer of bonds are set forth in the Regulations. A court order may be entered requiring payment of bond proceeds to a judgment creditor, trustees in bankruptcy and receivers. *Id.* § 315.21. A judicial decree in a divorce action may be entered requiring payment or reissuance of savings bonds. *Id.* § 315.22.

<sup>20</sup> *Id.* § 315.60.

<sup>21</sup> *Id.* § 315.61(a). If reissuance is to be to one of the former co-owners, in addition to requiring a request for reissuance from both co-owners, this section also requires that the co-owner whose name is to remain on the bond be related to the co-owner whose name is to be eliminated. The section enumerates certain acceptable relationships, one of which is grandparent and grandchild. If the degree of relationship requirement cannot be met, one of the following occurrences after original issuance of the bond will be sufficient: marriage of one of the co-owners, divorce or legal separation of the co-owners from each other, or annulment of the co-owners' marriage.

owner, the Regulations provide that the survivor shall be recognized as the sole and absolute owner of the bond. Thereafter, payment or reissuance of the bond will be carried out as if it were registered in the name of the survivor alone, provided a request for reissuance is supported by proof of death of the other co-owner.<sup>22</sup> The fact that under this provision of the Regulations the bond automatically becomes the sole property of the surviving co-owner does not relieve the decedent's estate of possible federal estate tax liability.

## II. JUDICIAL CONFLICT: INTERPRETATION AND APPLICATION OF THE TREASURY REGULATIONS

The vast majority of courts have held that attempted gifts of savings bonds from a registered co-owner to a person not named on the bond are prohibited by the Treasury Regulations.<sup>23</sup> However, as to gifts of bonds between co-owners, the courts were sharply divided. While the highest state courts were not immune from the division of opinion,<sup>24</sup> the federal courts became the focal point of the controversy after the Third Circuit's decision in *Silverman v. McGinnes*.<sup>25</sup> In *Silverman*, as well as the remainder of cases to be discussed in this section, the fact situations were essentially the same as in the principal case. Actual or constructive delivery of savings bonds between co-owners, without reissuance, was attacked as insufficient to divest the co-owner making the gift of ownership for purposes of federal estate taxation of the bonds in his estate. The district court in *Silverman*<sup>26</sup> included the bonds in the donor's gross estate, concluding that the Treasury Regulations were an integral part of the terms of the contract made with the Government by the decedent when he bought the bonds. Therefore, pursuant to the court's interpretation of the Regulations, the decedent's previous *inter vivos* manual delivery of the bonds to the respective co-owners without reissuance was insufficient to exclude the bonds from his estate. The Third Circuit reversed, finding a valid gift under state property law, but the court did not rely primarily on the Regulations for its decision.<sup>27</sup> Instead, the court viewed the transaction in terms of the creation of a trust relationship under state property law whereby the donee became the equitable owner and the donor became a trustee of the proceeds. With the donee as equitable owner of the bonds and the donor having no right of

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<sup>22</sup> *Id.* § 315.62.

<sup>23</sup> *See, e.g.*, *Moore's Adm'r v. Marshall*, 302 Ky. 729, 196 S.W.2d 369 (1946); *Connell v. Bauer*, 240 Minn. 280, 61 N.W.2d 177 (1953); *Fidelity Union Trust Co. v. Tezyk*, 140 N.J. Eq. 474, 55 A.2d 26 (Ct. Err. & App. 1947); *O'Dell v. Garrett*, 82 N.M. 240, 478 P.2d 568 (1970); *Hatfield v. Buck*, 193 Misc. 1041, 85 N.Y.S.2d 613 (Sup. Ct. 1948); *Collins v. Jordan*, 65 Ohio L. Abs. 242, 110 N.E.2d 825 (1949); *Brown v. Vinson*, 188 Tenn. 120, 216 S.W.2d 748 (1949).

<sup>24</sup> *See, e.g.*, *Weeks v. Johnson*, 146 Me. 371, 82 A.2d 416 (1951), a state inheritance tax matter, wherein the court held against the taxpayer on the issue of the validity of his *inter vivos* gift of savings bonds without reissuance. *But see* *Littlejohn v. County Judge*, 79 N.D. 550, 58 N.W.2d 278 (1953), in which the court determined that the Regulations did not prohibit *inter vivos* gifts between co-owners without reissuance.

<sup>25</sup> 259 F.2d 731 (3d Cir. 1958).

<sup>26</sup> 57-2 U.S. Tax Cas. 58,746 (E.D. Pa. 1957).

<sup>27</sup> 259 F.2d 731 (3d Cir. 1958). The court stated: "The point is that with regard to payment by the issuer, the United States Government, the provisions of the contract including the regulations, govern. But the regulations do not apply to individual rights of persons who under the state law of property have become equitably entitled to the proceeds." *Id.* at 733.

beneficial enjoyment, the donor's state was not liable for the federal estate tax on the value of the bonds since "[t]he Estate Tax attaches to the economic benefit to be derived from property rather than the technical ramifications of title."<sup>28</sup>

A division of opinion in the circuit courts arose when the Sixth Circuit in *Estate of Curry v. United States*<sup>29</sup> refused to follow *Silverman*. The court in *Curry* determined the bonds to be includable in the donor's gross estate, basing its decision on the finding that interests in series E bonds are "created by federal contract and controlled by federal law,"<sup>30</sup> and a further determination that "[t]he Treasury Regulations . . . provide that the bonds cannot be transferred but can be surrendered and reissued."<sup>31</sup> However, the court failed to elaborate further on its interpretation and analysis of the Regulations. Moreover, the cases primarily relied on by the Sixth Circuit did not involve transfers between co-owners, but rather transfers from a co-owner to a person not registered on the bond.<sup>32</sup>

In three early decisions,<sup>33</sup> the Tax Court appeared to take a position similar to that taken by the Third Circuit in *Silverman*. In none of these cases did the Tax Court find that it was barred by the Treasury Regulations from considering whether a valid gift of savings bonds could be made from one co-owner to the other co-owner. However, in all three cases, the Tax Court included the bonds in the donor's gross estate, basing the inclusion on the absence of all the requirements necessary to establish a valid gift.<sup>34</sup>

In a 1971 decision, *Estate of Mae Elliott*,<sup>35</sup> the Tax Court changed its position and adopted that of the Sixth Circuit as stated in *Curry*. The Tax Court in *Elliott* thoroughly analyzed the Treasury Regulations and concluded that surrender and reissuance represented the only manner in which to effectuate a gift of savings bonds between co-owners, and, therefore, the bonds remained in the donor's gross estate despite a previous *inter vivos* constructive delivery. The court based its decision upon a presumption in the Regulations that the bond registration conclusively reflects actual ownership,<sup>36</sup> and upon the gen-

<sup>28</sup> *Id.* at 734.

<sup>29</sup> 409 F.2d 671 (6th Cir. 1969).

<sup>30</sup> *Id.* at 673. This position was previously set forth by the Sixth Circuit in its decision of *Guldager v. United States*, 204 F.2d at 489.

<sup>31</sup> 409 F.2d at 673.

<sup>32</sup> *Id.* at 673-74.

<sup>33</sup> *Estate of Jack F. Chrysler*, 44 T.C. 55 (1965); *Estate of Oliver B. Avery*, 40 T.C. 392 (1963); *Estate of John H. Boogher*, 22 T.C. 1167 (1954). The Tax Court's decision in *Estate of Jack F. Chrysler* was reversed on appeal by the Second Circuit. 361 F.2d 508 (2d Cir. 1966). The Second Circuit determined that the decedent's interest in the bonds was purely nominal because he had utilized the co-ownership arrangement in making gifts to his minor children solely to avoid creating formal trusts which otherwise would have been necessary for this purpose prior to the New York custodianship statute. Since the decedent had effectively divested himself of all beneficial interests in the property, including savings bonds, the property was not includable in his gross estate. *Id.*

<sup>34</sup> In *Estate of Oliver B. Avery* and *Estate of John H. Boogher*, the Tax Court based its finding of an invalid gift on the fact that the evidence presented was insufficient to establish that the decedent intended to or did release his interest as potential survivor. 40 T.C. at 402; 22 T.C. at 1172. Important in deciding *Estate of Oliver B. Avery* and *Estate of Jack F. Chrysler* was the fact that following the purported gift, the savings bonds were kept in a safe deposit box to which the donor had the right of access. 40 T.C. at 402; 44 T.C. at 65.

<sup>35</sup> 57 T.C. 152 (1971). The Fifth Circuit affirmed on appeal after the Supreme Court's decision in *Chandler*. 474 F.2d 1008 (5th Cir. 1973).

<sup>36</sup> 57 T.C. at 160; see 31 C.F.R. § 315.5 (1972).

eral proscription against transferability in the Regulations.<sup>37</sup> From these sections and the payment and reissue provisions of the Regulations,<sup>38</sup> the court reasoned that, since the donor-decedent's name remained on the bonds, "it is indisputable that at any time up until the moment prior to the decedent's death, the decedent, if she had presented the series E bonds in question to the United States, would have received the redemption value of the bonds."<sup>39</sup> The court further deemed it desirable to "promote certainty, predictability, and uniformity,"<sup>40</sup> in the results reached among the various jurisdictions as to the problem of savings bond transfers between co-owners.

### III. UNITED STATES V. CHANDLER

Relying on the Treasury Regulations as to the conclusiveness of the registration as reflecting actual ownership,<sup>41</sup> the general proscription of transfers of savings bonds,<sup>42</sup> the prohibition of courts from recognizing transfers,<sup>43</sup> the payment and reissuance requirements,<sup>44</sup> and the recognition of the surviving co-owner as sole and absolute owner,<sup>45</sup> the Supreme Court of the United States in *United States v. Chandler* concluded that "[t]he regulations thus made the jointly issued bond nontransferable in itself and permitted a change in ownership, so long as both co-owners were alive, only through reissuance at the request of both co-owners."<sup>46</sup> The Court considered the scope and applicability of the Regulations to the specific problem of gifts between co-owners, and its summary disposition of this issue would seem to be warranted.<sup>47</sup> In previous decisions questioning the scope and applicability of the Regulations, it had been argued that the Regulations govern only the rights between a bondholder and the Government and do not govern the rights of co-owners as between themselves.<sup>48</sup> This argument overlooks the fact that, while the Government has no further liability or concern once it has paid the bond proceeds to a registered co-owner, as to the outstanding bond itself, the owner or owners take the bond subject to the terms of the Treasury Regulations and on the reverse side of a savings bond it is stated that the bond is subject to the provisions of the Regulations. Therefore, whenever the bond is being dealt with, whether as to

<sup>37</sup> 57 T.C. at 160; see 31 C.F.R. § 315.15 (1972).

<sup>38</sup> 31 C.F.R. §§ 315.60, 315.61(a) (1972).

<sup>39</sup> 57 T.C. at 160-61.

<sup>40</sup> *Id.* at 161.

<sup>41</sup> 31 C.F.R. § 315.5 (1972).

<sup>42</sup> *Id.* § 315.15.

<sup>43</sup> *Id.* § 315.20(a).

<sup>44</sup> *Id.* §§ 315.60, 315.61(a). In the Regulations as in effect at the time of the decedent's purported gift, and, therefore, the revision cited by the Supreme Court, the payment and reissuance provisions were combined into one section in § 315.60. The present revision is substantially the same as to substance with only the numbering of sections changed slightly.

<sup>45</sup> *Id.* § 315.62. In the eighth revision, this provision appeared in § 315.61.

<sup>46</sup> 410 U.S. at 260.

<sup>47</sup> The Court stated: "We have no reason to rule against the integrity and effect of the regulations. . . . No claim is made—and none could be made—that the regulations are unclear or are inapplicable . . . . Nor can we view the regulations as an undue or improper restriction of the transfer rights the decedent would otherwise have. The bonds were issued subject to transfer restrictions, and those restrictions, in the eyes of the law at least, were known to her." *Id.* at 261.

<sup>48</sup> See, e.g., *Silverman v. McGinnes*, 259 F.2d 731 (3d Cir. 1958); *In re Hendricksen's Estate*, 156 Neb. 463, 56 N.W.2d 711 (1953).

attempted transfers between co-owners or presentations of the bond for payment or reissuance, the Treasury Regulations must be considered as regulating and controlling the transaction.

As the basic reason for its interpretation of the Regulations, the Court relied on the fact that the Regulations themselves provide for the retention of certain rights by any donor whose name remains on a bond. The Court noted that the decisions below overlooked "the facts that until her death, the decedent retained the right to redeem each of the bonds in question, the right to succeed to the proceeds if she survived the putative donee, and the right to join or to veto any attempt to have the bonds reissued."<sup>49</sup> Despite the donor's manual delivery of the bonds, her name remained on the bonds as a co-owner, and the Regulations provide that the registration is considered as conclusive of the actual ownership of and interest in a bond.<sup>50</sup> Notwithstanding her present donative intent at the time of the attempted gift, had the donor at a later time regained possession of the bonds, she, acting alone, could have presented the bonds for payment and received the proceeds since the Regulations permit payment to either registered co-owner upon his separate request.<sup>51</sup>

Whether an irrevocable divestiture of all incidents of ownership was accomplished by the donor is at least questionable in light of the above payment provisions, but the survivorship provisions of the Regulations clearly dictate a finding of the non-existence of a valid gift. The Regulations recognize the surviving co-owner as "the sole and absolute owner" and, thereafter, permit payment or reissuance "as though the bond were registered in the name of the survivor alone . . ."<sup>52</sup> In *Chandler*, if one or both of the respective donees had predeceased the donor, then that donee's bonds would automatically have reverted to the donor because the donor's name remained on the bonds and the Regulations would, therefore, recognize her as the surviving co-owner. Any attempt by a court to prevent this automatic reversion of the bonds to the surviving donor would be violative of the Regulations' specific prohibition of any judicial determination defeating or impairing the rights of survivorship conferred by the Regulations.<sup>53</sup> The district court's statement in *Chandler*, that it was fully recognizing the surviving co-owner's rights,<sup>54</sup> was valid under the specific facts presented with the donor predeceasing the donees. However, the Supreme Court realized that no *inter vivos* gift can be considered effective which depends for its validity on a specific order of death of the parties to the gift.

The Supreme Court's point concerning reissuance involves the requirement of the Regulations that reissuance must be at the request of *both* registered co-owners.<sup>55</sup> Had either donee later decided to have her respective bonds reissued solely to herself or to herself and another person, the donor could have at that time refused to join in the reissuance. Thus, no reissuance would have

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<sup>49</sup> 410 U.S. at 261.

<sup>50</sup> 31 C.F.R. § 315.5 (1972).

<sup>51</sup> *Id.* § 315.60.

<sup>52</sup> *Id.* § 315.62.

<sup>53</sup> *Id.* § 315.20(a).

<sup>54</sup> 312 F. Supp. at 1268.

<sup>55</sup> 31 C.F.R. § 315.61(a) (1972).

been possible since the donor retained her status as a registered co-owner as her name remained on the bonds. With absolute control over reissuance retained by the donor, it is difficult to view the transaction as effectively divesting the donor of all incidents of ownership.

The Supreme Court was correct in its statement that the lower courts overlooked these rights retained by the donor to receive the proceeds, to succeed to the sole ownership of the bonds, and to join or defeat any reissuance attempt. As the primary basis for its decision, the district court, with the approval of the Ninth Circuit, had interpreted the Treasury Regulations' proscription that "[s]avings bonds are not transferable and are payable only to the owners named thereon . . ."<sup>56</sup> as only prohibiting transfers between a co-owner and a person not registered on the bond, and not as prohibiting transfers without reissuance between co-owners.<sup>57</sup> In light of this interpretation, the lower courts reasoned that the decision to exclude the bonds from the donor's estate was not in violation of the Regulations' prohibition of judicial determinations resulting in *inter vivos* transfers of savings bonds without reissuance.<sup>58</sup> However, in view of the rights retained by the donor which were noted by the Supreme Court, the lower courts' interpretation of the Regulations as not prohibiting transfers between co-owners is difficult to reconcile with the recognized rights of the donor because the Regulations would then be validating manual transfers between co-owners, and at the same time permitting the transferring co-owner to retain basic incidents of ownership.

The Supreme Court's determination that these three rights were retained by the donor was a sufficient basis for the decision to include the bonds in the donor's estate, notwithstanding the Third Circuit's view in *Silverman* that "[t]he Estate Tax attaches to the economic benefit to be derived from property rather than the technical ramifications of title."<sup>59</sup> These rights retained by the donor cannot, it seems, be considered as mere "technical ramifications of title." Rather, these rights are the essence of the "economic benefit" to be derived from the savings bonds, and their retention required federal estate taxation of the bonds as part of the decedent's estate. The Regulations' prohibition of judicial determinations resulting in transfers<sup>60</sup> provides further support for the result reached, although the Court merely noted this section generally, along with all of the other pertinent sections of the Regulations, and stated a general conclusion as to nontransferability.<sup>61</sup>

The Court's interpretation of the Regulations as requiring reissuance in gifts between co-owners is fully consistent with the purpose of the Treasury Regulations. The Regulations have been described as designed for the convenience and protection of the Government in exercising its power to borrow money and for the purpose of facilitating the handling of matters involving bonds

<sup>56</sup> *Id.* § 315.15.

<sup>57</sup> 312 F. Supp. at 1268.

<sup>58</sup> *Id.* 31 C.F.R. § 315.20(a) (1972) provides: "No judicial determination will be recognized which would give effect to an attempted voluntary transfer *inter vivos* of a bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner . . . ."

<sup>59</sup> 259 F.2d at 734.

<sup>60</sup> 31 C.F.R. § 315.20(a) (1972).

<sup>61</sup> See note 19 *supra*.

and bondholders.<sup>63</sup> They also are to make the bonds attractive to savers and investors<sup>63</sup> and to protect the bondholders' interests.<sup>64</sup> While not specifically stating that it was considering the purpose of the Regulations, the Court expressed its belief that any other rule besides the one announced would result in chaotic conditions. Something less than absolute freedom of transfer of savings bonds seemed justified when the Court considered the requirements of Government for uniformity and for proper recordkeeping, as well as to considerations of safety and an aspect of permanency in the investment.<sup>65</sup> Presently, all that is required for a registered co-owner to receive the proceeds of his bond is presentation of the bond for payment to the Treasury or one of its authorized agents and production by the bondholder of proper identification. If reissuance was not required in gifts between co-owners, then the provision in the Regulations that the registration is conclusive of actual ownership would be defeated since a co-owner who had given his interest in the bond to the other co-owner without reissuance would still appear to be a registered co-owner from the face of the bond. With the registration no longer reflecting actual ownership, the handling of redemptions would be a complex matter for the Treasury and bondholders, making necessary the submission of some form of proof of ownership, besides the registration, to assure payment being received only by the actual owner. Further, with the fairly competitive rate of interest now paid by the Government on savings bonds,<sup>66</sup> any additional handling costs imposed on the Treasury could very well destroy the effectiveness of savings bonds as a device for borrowing money.

One important purpose of the Treasury Regulations which previous decisions, including the district court's decision in *Chandler*, had noted but to which the Supreme Court in *Chandler* failed to refer specifically, is that of the prevention of suits against the Government by adverse claimants to savings bonds.<sup>67</sup> However, whether manual delivery or reissuance had been deemed the proper method of effectuating a gift, it is difficult to envision the Government becoming involved in litigation between claimants to bonds since once the Government pays the proceeds of a properly presented bond to a registered co-owner, regardless of whether he is the actual owner, the Government's liability is fully terminated. The Government is further insulated from litigation under either alternative by the provision in the Regulations that "[n]either the Treasury Department nor any agency for the issue, reissue, or redemption of savings bonds will accept notices of adverse claims or of pending judicial proceedings . . . ."<sup>68</sup> Nevertheless, with a rule which does not require reissuance in gifts between co-owners, registered co-owners receiving

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<sup>63</sup> *Byer v. Byer*, 180 Kan. 258, 303 P.2d 137 (1956).

<sup>64</sup> *Free v. Bland*, 369 U.S. 663, 669 (1962).

<sup>65</sup> *Estate of Mae Elliott*, 57 T.C. 152, 156 (1971).

<sup>66</sup> 410 U.S. at 261-62.

<sup>67</sup> The current rate of interest paid on Series E United States Savings Bonds is 5½% if held to maturity. 31 U.S.C. § 757c(b)(1) (1970); 31 C.F.R. § 316.2(e) (1972).

<sup>68</sup> See, e.g., *Silverman v. McGinnes*, 259 F.2d 731, 733-34 (3d Cir. 1958); *District of Columbia v. Wilson*, 216 F.2d 630, 633 (D.C. Cir. 1954); *Estate of Mae Elliott*, 57 T.C. 152, 156 (1971). See also *Chandler v. United States*, 312 F. Supp. 1263, 1268 (N.D. Cal. 1970).

<sup>69</sup> 31 C.F.R. § 315.20(b) (1972).

the proceeds of bonds would again not necessarily be the actual owners if a transfer between co-owners had occurred, and any rule which permitted the Government to pay proceeds to persons who were not actual owners and then disclaim any further liability or responsibility could certainly lead to nothing but what the Court referred to as chaotic conditions.

#### IV. CONCLUSION

The Supreme Court's decision in *Chandler* clearly resolved the conflict over the proper procedure to be followed in gifts of savings bonds between co-owners. The bondholder need no longer speculate as to the validity of his gift under the Treasury Regulations or state property law. The determination that reissuance represents the only manner in which to effectuate a gift of bonds between co-owners was the only practical and realistic conclusion that the Court could have reached considering the basic incidents of ownership retained by the donor in a transfer without reissuance. The Court's decision recognized the fact that under the Treasury Regulations the donor simply cannot be considered as having divested himself of all incidents of ownership by the gift while his name remains on the bond as a registered co-owner. The decision further achieved uniformity among the jurisdictions in that the diverse property laws of the various states need no longer be considered in gifts of savings bonds between co-owners.

With the Court's specific holding that gifts between co-owners may only be effectuated by reissuance of the bonds, the general conclusion now appears to be warranted that no transfer of savings bonds is ever permissible except when the transfer is accomplished through reissuance. Savings bonds presently have engraved on their face in large capital letters "Not Transferable," and on the reverse side, among other terms and conditions as well as instructions for payment, it is again stated that the bond is "not transferable," with no explanation as to the possibility of reissuance being provided. Upon consideration of the *Chandler* decision it would appear to be appropriate to provide notice of the reissuance requirement on the bond itself by expanding the "not transferable" phrase on the reverse side into a more informative statement providing that no transfer is permissible without surrender of the bond and its subsequent reissuance.

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