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A NEW GENERATION OF UNITED STATES SAVINGS BONDS—SERIES EE AND HH

PAUL S. DALTON*

INTRODUCTION

Beginning January 1, 1980, the Secretary of the Treasury offered a new generation of bonds, Series EE and HH, to the people of the United States.¹ As successors to the Series E and H bonds, these securities are intended to accomplish the dual purpose of providing funding for the functions of the federal government and encouraging savings by the small investor.² The new series of bonds are also designed to reduce the administrative expenses and record keeping costs associated with the seventy-nine billion dollars of bonds currently outstanding.³ These goals are accomplished in part by eliminating the \$25 denomination previously available with Series E bonds⁴ and by providing new procedures for the administrative processing of claims for relief of lost or stolen bonds.⁵

Pursuant to the authority granted by article I, section 8 of the Constitution,⁶ Series E savings bonds were first sold on May 1, 1941, and Series H bonds were introduced in June of 1952.⁷ Series E and H bonds differ in that Series E bonds were sold at a discount paying face value upon maturity whereas Series H bonds

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¹ 44 Fed. Reg. 72,826 (1979) (to be codified in 31 C.F.R. § 351); 44 Fed. Reg. 72,832 (1979) (to be codified in 31 C.F.R. § 352).

² *Moore's Adm'r v. Marshall*, 302 Ky. 729, 196 S.W.2d 369 (1946).

³ U.S. DEP'T OF THE TREASURY, MONTHLY STATEMENT OF THE PUBLIC DEBT OF THE UNITED STATES (November, 1979). The Bureau of the Public Debt maintains 4.1 billion registration and 4.1 billion bond serial number records of bond issues, and 3.5 billion records of bond retirements. Except for 500 million retired bonds, the basic records are on 2.9 million reels of microfilm, partially supplemented by 6,562 reels of magnetic tape. For a discussion of the cost savings by the introduction of the new bond series see notes 75, 76, *infra*.

⁴ 31 C.F.R. § 316 (1979).

⁵ 44 Fed. Reg. 76,440, 76,447 (1979) (to be codified in 31 C.F.R. § 353.29).

⁶ U.S. CONST. art. I, § 8, cl. 2; see *McCulloch v. Maryland*, 14 U.S. (4 Wheat.) 316, 411-15, 421 (1819).

⁷ U.S. DEP'T OF THE TREASURY, PUBLIC DEBT REPORTS (Summer, 1979).

were sold at face amount paying interest semiannually. The new Series EE and HH bonds retain these fundamental differences. Depending on the prevailing political atmosphere at the time of their issuance, savings bonds have, over the years, acquired various designations such as "Defense Bonds," "War Bonds," and "Victory Bonds."⁸ The new Series EE and HH bonds do not have any official designation, as the proceeds from their sale are designed to meet any public expenditure authorized by law. The Series EE bonds will offer an interest bonus of one-half of one percent to bondowners who hold their bonds until maturity.⁹

Savings bonds are unlike any other medium of investment, and comparisons to other forms of investment often reflect a lack of knowledge or misunderstanding of the purpose and nature of this type of security. Savings bonds are not intended to be the glamour investment of the rich or a medium by which those with large amounts of capital can realize a high return on their investment. Rather, marketable securities, such as ninety day Treasury Bills issued by the United States Government, are the means by which financial advisors can provide customers a high rate of interest, recently as high as 13%, on their investments. Beyond marketable securities, there are a number of other types of investments which can serve the special or unique demands of investors. Examples include the so-called "Flower Bonds" which are accepted at par in payment of Federal estate taxes assessed against the estate of the owner and Individual Retirement Bonds which provide a medium to furnish a retirement for those individuals not covered by a retirement plan. Monies invested in these bonds are exempt, within prescribed limits, from current income tax.

Savings bonds, although quite different from the above-mentioned bonds, do perform a unique function which is not designed to compete with the goals achieved by other forms of investment. For many investors the primary consideration in any investment

⁸ *Id.*

⁹ The bonus interest is equal to one-half of one percent over that previously offered on Series E and H bonds. Series EE bonds will mature in 11 years after their issuance. 44 Fed. Reg. 72,826 (1979) (to be codified in 31 C.F.R. § 351). Series E bonds will also receive the one-half percent bonus if they are held for 11 years from the date of the first semiannual interest period that begins on or after January 1, 1980.

is its security. As United States Savings Bonds are backed by the general credit of the government, they are the most secure investment available. Furthermore, the registered, nontransferable nature of savings bonds makes replacement of lost or stolen bonds a relatively easy task when compared with the litigation, expense, or other problems which may be associated with other forms of investment. One of the many additional benefits of savings bonds is the tax treatment of the interest on the bonds. The interest is exempt from state and local income taxes and, if the taxpayer uses the cash method of accounting, he may elect not to report the interest earned on Series E or EE bonds until the bonds are redeemed, or disposed of, or reach final maturity.

There are also noneconomic reasons for an investor to purchase savings bonds. Many investors like the right to exchange Series E and EE bonds for Series HH bonds. This exchange allows an investor to accumulate interest and at some point, normally after retirement, convert the principal and accumulated interest, through a tax-free exchange, into Series HH bonds which offer interest income while preserving the bondowner's principal. Another benefit is the convenience of transferring bond proceeds at the investor's death. By registering the savings bonds in coownership form, for example, a bondowner can quickly and easily transfer the interest to heirs or legatees without the delay and expense of probate.

In spite of the many benefits derived by investing in savings bonds, several problems may still surround their use, largely stemming from the continued use by attorneys and the public alike, of the bonds as currency or marketable securities. In light of these practices, the legal aspects of savings bonds have, for the most part, been either ignored, unknown, or misunderstood by the public and the Bar. These practices cause a variety of problems, both legal and administrative, resulting in lawsuits, expense, and delay. Evidence of this experience has been observed by the Bureau of the Public Debt¹⁰ in the recurrence, over the past thirty years, of many similar issues, questions, and conflicts.

¹⁰ The Bureau of the Public Debt [hereinafter referred to as the Bureau] is part of the Fiscal Service of the Department of the Treasury. The Bureau is responsible for administering transactions in the public debt securities of the United States. The Bureau's primary office for the administration of transactions involving savings bonds is located at 200 Third Street, Parkersburg, WV 26101.

Clearly, if the regulations¹¹ are considered, these bonds cannot be treated as either currency or marketable securities. They must, instead, be considered a unique type of property.

This article attempts to outline some of the major legal issues which have arisen and have been adjudicated in connection with the administration and payment of savings bonds. An understanding of these issues and the rationale of the decisions is helpful in considering the regulations governing savings bonds, and is a necessary foundation for an understanding of the discussions contained in later sections of this article.

The administrative practices of the Bureau are also discussed, focusing upon the Bureau's responsibility for administering transactions in the public debt securities of the United States. A brief overview is offered of selected procedures which have been followed by the Bureau in handling the many requests for payment, reissue, and exchange of the millions of outstanding savings bonds. The last section of this article highlights the major differences between the old and new series of bonds, focusing on the current legal framework, with the view of providing an increased awareness of the unique contractual nature of these bonds.

I. LEGAL ISSUES

A host of legal problems concerning savings bonds has found its way into the courts due to either a lack of knowledge about the regulations or inherent conflicts between the regulations and state laws. In order to understand the nature and legal attributes of savings bonds, they must be viewed in the context of the regulations promulgated for their issuance.¹² The regulations govern

¹¹ See 31 C.F.R. § 315 (1979); 31 C.F.R. § 316 (1979); 31 C.F.R. § 332 (1979); 44 Fed. Reg. 72,826 (1979) (to be codified in 31 C.F.R. § 351); 44 Fed. Reg. 72,832 (1979) (to be codified in 31 C.F.R. § 352); 44 Fed. Reg. 76,440 (1979) (to be codified in 31 C.F.R. § 353).

¹² The statutory authority for the promulgation of regulations is contained in 31 U.S.C. § 757(c)(a) (1976) which provides:

The Secretary of the Treasury, with the approval of the President, is authorized to issue from time to time, through the Postal Service or otherwise, United States savings bonds and United States Treasury savings certificates, the proceeds of which shall be available to meet any public expenditures authorized by law, and to retire any outstanding obligations of the United States bearing interest or issued on a discount

every aspect of the bonds from sale and reissuance to payment or exchange,¹³ thus providing the exclusive means by which the bonds may be bought, held, and redeemed by the public. Furthermore, the existence of the regulations cannot be ignored as they have the force and effect of federal law.¹⁴

It has been suggested that the regulations, at least with regard to the method of payment prescribed, are merely a matter of convenience, and where appropriate, state law should control.¹⁵ However, the United States Supreme Court in *Free v. Bland*¹⁶ held that where state laws are inconsistent with Federal law, as expressed in the Treasury Regulations, state laws must yield.¹⁷ The only exception noted by the Court was where "the regulations are not intended to be a shield for fraud, and relief would be available in a case where the circumstances manifest fraud or a breach of trust tantamount thereto."¹⁸

The *Free* case involved a common situation in which bonds, registered in coownership form,¹⁹ were the subject of a dispute between the surviving coowner and the beneficiary under the will of the deceased coowner. Section 315.61 of the regulations in effect at the time provided that when either coowner dies, "the sur-

basis. The various issues and series of the savings bonds and the savings certificates shall be in such forms, shall be offered in such amounts, subject to the limitation imposed by Section 7576 of this title, and shall be issued in such manner and subject to such terms and conditions consistent with subsections (b) to (d) of this section, and including any restrictions on their transfer, as the Secretary of the Treasury may from time to time prescribe.

¹³ See 31 C.F.R. § 315 (1979); 44 Fed. Reg. 76,440 (1979) (to be codified in 31 C.F.R. § 353).

¹⁴ *United States v. Chandler*, 410 U.S. 257 (1973).

¹⁵ *Silverman v. McGinnes*, 259 F.2d 731 (3d Cir. 1958). For a good discussion of the *Silverman* decision see Note, *Estate Tax—Validity of Inter Vivos Gifts of Jointly-Held United States Government Savings Bonds*, 28 U. CIN. L. REV. 387 (1959).

¹⁶ 369 U.S. 663 (1962). For a more detailed discussion of the *Free* decision see Note, *United States Savings Bonds: Federal Regulations versus State Law*, 46 MARQ. L. REV. 374 (1962-63).

¹⁷ 369 U.S. at 669. See *Bank of America National Trust & Savings Ass'n. v. Parnell*, 352 U.S. 29 (1956).

¹⁸ 369 U.S. at 670.

¹⁹ See notes 22, 23 and accompanying text *infra*.

vivor will be recognized as the sole and absolute owner."²⁰ The beneficiary in *Free* argued that under state community property laws, he was entitled to one-half of the bonds or reimbursement for the loss of one-half of the community property in the bonds even though the conditions printed upon the bonds stated that the bonds were nontransferable and specific reference was made to the controlling regulations.²¹ This conflict had been administratively resolved many times, using the regulations as guidelines, but the problem did not reach prominence until it was litigated before the Supreme Court in *Free*. The Court chose to follow the regulations and denied the beneficiary's request for payment of one-half of the bonds.

As evidenced by *Free*, registration is conclusive as to ownership. This is not to say that the bondowner could not alter, through reissuance, the form of registration. Through its regulations, the Department of the Treasury has established a specific form of registration for all savings bonds. The actual interest and ownership in the bonds must be expressed and the expression is normally conclusive.²² For individuals there are three basic forms of registration permitted: single ownership, coownership (issued to A or B, the form A and B is not permitted), and beneficiary form (issued to A payable on death to B).²³ In the case of bonds registered in beneficiary form, the beneficiary's property interest in the bonds is contingent upon the death of the owner²⁴ who may

²⁰ This specific regulation will now be found at 44 Fed. Reg. 76,440, 76,452 (1979) (to be codified at 31 C.F.R. § 353.70(b)(1)).

²¹ The statement on the back of the Series EE bond is:

This bond is issued pursuant to Department of the Treasury Circular, Public Debt Series No. 1-80, which contains full particulars concerning the offering, including redemption value information. The bond is subject to the terms and conditions set forth in that circular and in the governing regulations, Department of the Treasury Circular, Public Debt Series No. 3-80. Both circulars may be obtained from a Federal Reserve Bank or Branch or the Bureau of the Public Debt, Parkersburg, WV 26101. THE BOND IS NOT TRANSFERABLE and may not be used as collateral.

A similar statement appears on all Series E, H, and HH bonds.

²² 44 Fed. Reg. 76,440, 76,442 (1979) (to be codified in 31 C.F.R. § 353.5); 44 Fed. Reg. 76,440, 76,450 (1979) (to be codified in 31 C.F.R. § 353.49).

²³ 44 Fed. Reg. 76,440, 76,443 (1979) (to be codified in 31 C.F.R. § 353.7).

²⁴ See notes 27-30 and accompanying text *infra*.

cash the bonds at any time without the beneficiary's consent.²⁵ However, once the death of the owner has been established, the beneficiary, absent fraud, is presumed to be the sole and absolute owner.²⁶ This is true even where state community property laws would create a different result.

The ability to register a bond in beneficiary form, while having the advantage of vesting absolute ownership of the bond in the beneficiary upon the owner's death, has resulted in a number of administrative and legal confrontations over whether the regulations control or whether state law governs the distribution of the bond proceeds. An example is the issue of whether a bondowner can name a sibling as beneficiary in violation of certain community property rights of the spouse. The Court, in *Yiatchos v. Yiatchos*,²⁷ held that under the federal regulations, the beneficiary was entitled to the proceeds of the bonds unless the deceased owner's actions amounted to fraud or a breach of trust tantamount to fraud.²⁸ The question of what constitutes fraud under these circumstances was determined by applicable federal law.²⁹ The Court in *Yiatchos* awarded one-half of the bonds to the beneficiary with the remaining amount to be settled by a factual determination on remand to the lower court as to the issue of fraud or breach of trust in derogation of the widow's property rights under state law.³⁰

This type of conflict has also arisen in a number of other areas. One notable example is the so called "Slayer's Acts," enacted

²⁵ As to the question of whether a bondowner can request reissue of Series E and H bonds without the beneficiary's consent, see notes 97, 98 and accompanying text, *infra*. For a comparison of the provisions on reissue of Series EE and HH bonds registered in beneficiary form see note 99 and accompanying text *infra*.

²⁶ 44 Fed. Reg. 76,440, 76,452 (1979) (to be codified in 31 C.F.R. § 353.70).

²⁷ 376 U.S. 306 (1964).

²⁸ *Id.* at 309.

²⁹ *Id.* See *Clearfield Trust Co. v. United States*, 318 U.S. 363 (1943), where the Court held that federal law must determine the rights and liabilities of the United States upon its commercial paper. The Supreme Court went on to reject a contention that the Erie Doctrine (*Erie R.R. v. Tompkins*, 304 U.S. 64 (1938)) required the application of state law. The Court's reasoning was that to hold otherwise would subject the rights and liabilities of the United States to considerable uncertainty. 318 U.S. at 367.

³⁰ This was necessary because while the Court applied federal law to resolve the issue of fraud, it expressly provided that it would be guided by state law insofar as the property interests of the widow were concerned. 376 U.S. at 309.

in many states, which prohibit a person from benefiting, by inheritance or otherwise, from his or her killing of another person.³¹ The effect of such state laws is that property of the victim eventually passes or is payable to the heirs notwithstanding any agreement between the parties or the applicability of laws governing the distribution of the decedent's estate. The conflict arises in this area because of the position taken by the Treasury Department with regard to the applicability of such state laws. For example, if a bond is registered in the name of A payable on death to B and B is convicted of killing A, then in a state which has a "Slayer's Act," the property would remain in A's estate. However, under the regulations payment would be made to B. This decision is based on several key provisions of the bond contract as set forth in the regulations. First, savings bonds are nontransferable and payable only to the registered owner.³² Second, in the case of beneficiary bonds, if the bonds have not been surrendered for payment or reissue, the surviving beneficiary, upon proof of the owner's death, will be recognized as the "sole and absolute owner."³³ This requirement is further emphasized by the fact that the regulations provide, "[n]o judicial determination will be recognized . . . which would defeat or impair the rights of survivorship conferred by [the] regulations."³⁴ Again, the governing principle is that property interests created by savings bonds do not come into existence under the laws of the state where the owners reside; rather, they are created by the regulations and controlled by federal law.³⁵ In any event, given the provisions of the regulations and the absence of any Supreme Court ruling or Congressional action regarding this problem, the Treasury Department has no authority to recognize state laws in this area.

Another area of concern involves situations where bondowners die under conditions where it is impossible to determine the

³¹ At least 25 states have enacted such legislation. The statutes vary with some states' laws applying only to first degree murder, while other states extend the application to cases involving acts less than first degree murder. The basic philosophy behind such legislation is that a murderer should not profit from his act. See, e.g., OHIO REV. CODE ANN. § 2105.19 (Page 1976); D.C. CODE ANN. § 19-320 (1973).

³² 44 Fed. Reg. 76,440, 76,446 (1979) (to be codified in 31 C.F.R. § 353.15).

³³ 44 Fed. Reg. 76,440, 76,452 (1979) (to be codified in 31 C.F.R. § 353.70).

³⁴ 31 C.F.R. § 315.20(a) (1979).

³⁵ Estate of Curry v. United States, 409 F.2d 671 (6th Cir. 1969).

order of death. The issue of who died first is a primary consideration in approval or denial of requests for payment of bonds registered in either coownership or beneficiary form. The regulations provide that, as to bonds registered in coownership form, if it cannot be established which coowner died first, the bonds become the property of both equally, and payment or reissue will be one-half to each coowner's estate.³⁶ Where the bonds are registered in beneficiary form and the order of death cannot be determined or the beneficiary dies before or simultaneously with the registered owner, payment or reissue will be made as though the bonds were registered in the owner's name alone.³⁷ Many states have laws different from this approach but courts have held that simultaneous death cases involving coowners of savings bonds are not controlled by state statutes of descent and distribution or local rules which fix the order of death by some arbitrary factor such as age difference or timing between their deaths.³⁸

The foregoing should alert bondowners and attorneys to the peculiarities of survivorship provisions regarding savings bonds. This is important in regard to two transactions: first, when a person buys a bond and is deciding on the form of registration; second, at any point where the bondowner would request a reissuance of bond holdings. Since the form of registration will control the disposition of the bonds upon the death of the owner (should the bonds not be cashed or reissued during the lives of the owner(s)), one can appreciate the necessity for informed advice regarding the effects of such registration.

One further misconception is the belief that state law controls a physical transfer of savings bonds from one person to another, especially where the parties are named coowners. This situation typically occurs when a friend or family member physically transfers bonds to another without complying with the reissuance requirements of the regulations.³⁹ The failure to comply with the

³⁶ 44 Fed. Reg. 76,440, 76,452 (1979) (to be codified in 31 C.F.R. § 353.70).

³⁷ *Id.*

³⁸ *In re Gilger's Estate*, 109 N.E.2d 333 (P. Ct. of Portage County, Ohio 1952). This case involved a statute which provided that if the surviving spouse died within 30 days of the decedent then the estate of the first to die would pass as though the decedent had survived the heir-at-law or legatee. *See* OHIO REV. CODE ANN. § 2105.21 (Page 1976), *c.f.* W. VA. CODE § 42-5-1 (1966).

³⁹ 44 Fed. Reg. 76,440, 76,450 (1979) (to be codified in 31 C.F.R. § 353.47).

regulations on reissuance can have effects which may have been unintentional and unforeseen. An example is the case of *United States v. Chandler*,⁴⁰ where a bond coowner, by a physical *inter vivos* delivery to the other registered coowner, attempted to divest herself of all ownership in certain United States savings bonds. The trial court ruled on behalf of the owner-estate, holding that the coowner had accomplished the divestiture. This decision was upheld on appeal but because of a conflict between two circuit courts of appeal on this issue, the Supreme Court granted certiorari. The bondowner had owned certain Series E bonds registered in her name with two of her granddaughters as coowners and had made delivery to the granddaughters with the intention of making a complete, irrevocable gift.⁴¹ The primary issue to be resolved by the Court was whether the bonds were includable in the gross estate of the bondowner under the joint interests provisions of section 2040 of the Internal Revenue Code of 1954. The respondents, executors of the decedent's estate, argued that the decedent, under state law, had made a valid gift and even if the regulations controlled, they were not applicable to transactions between registered coowners.⁴² The Court, in looking to various provisions of the regulations, concluded that divestiture could only have been accomplished by reissuing the bonds pursuant to the regulations, citing the provisions on registration, transferability, judicial determination, and payment upon the death of one coowner.⁴³ The Court in *Chandler* made its decision even though

For a more complete discussion of this topic see notes 101-03 and accompanying text *infra*.

⁴⁰ 410 U.S. 257 (1973).

⁴¹ The parties stipulated that the deliveries were not made in contemplation of death and therefore 26 U.S.C. § 2035, relating to transfers in contemplation of death, had no application. 410 U.S. at 258 n.1. It should be noted that the regulations do provide for the making of a *causa mortis* gift in the case of single ownership bonds. 44 Fed. Reg. 76,440, 76,447 (1979) (to be codified in 31 C.F.R. § 353.22).

⁴² Respondents also relied heavily on the case of *Silverman v. McGinnes*, 259 F.2d 731 (3d Cir. 1958), which was on point regarding both the facts and the issue. The court in *Silverman* concluded that the regulations properly construed did not preclude the *inter vivos* gift as between registered coowners. For a discussion of the development of case law in this area see Note, *United States v. Chandler: The Requirements for Valid Inter Vivos Gifts of United States Savings Bonds*, 27 Sw. L.J. 561 (1973).

⁴³ 31 C.F.R. §§ 315.5, -.15, -.20(a), -.62 (1979).

the granddaughters, as coowners, validly could have cashed in the bonds during the decedent's lifetime.⁴⁴

The *Free*, *Yiatchos*, and *Chandler* decisions confirm that savings bonds can only be dealt with on the basis of the treasury regulations. While it may appear obvious that rights between bondowners and third parties would be governed by federal law, the consequences of registration, even as between individuals named on the bonds, should not be overlooked. If they are, it can lead to results which are both unintended and, in some cases, effect a financial hardship on the parties involved.

II. ADMINISTRATIVE PRACTICES

There are a variety of non-legal factors often present in each case. Unfortunately, in the vast majority of situations only the legal factors are determinative of the outcome. Because of the great number of people who hold bonds, the same types of situations frequently arise. One problem that appears quite often is how to dispose of bonds when the owner's relationship changes because of death or a change in family status. The following situations are presented with the view of providing a better understanding of some common transactions in savings bonds and the pitfalls present for those who ignore, are unaware of, or do not understand the regulations.

The majority of savings bonds are held either in coownership or beneficiary, form with only four percent of all bonds being held in single ownership form. Naturally, situations develop which cause a change in personal relationships that existed when the bonds were purchased. Frequently, these occurrences require a change in the form of ownership. Problems arise because a great number of people fail to adhere to the requirements of the bond contract when attempting to alter the form of ownership.⁴⁵ A typical example is a divorce between coowners. The parties desiring a division of their property may have included the bonds in a property settlement approved by a court, but because of ambiguities or a lack of specificity, it cannot be determined from the agreement who is to get the bonds. An example is the following settle-

⁴⁴ 31 C.F.R. § 315.60 (1979).

⁴⁵ See notes 99-101 and accompanying text *infra*, for a discussion of the resale requirements as set forth in the regulations.

ment language: "the parties shall retain as their separate property those items of personalty which are now in their possession." Also present in many agreements are divisions of the bonds according to a specific amount (*i.e.*, \$500 to A; \$1000 to B.). These agreements, if clearly written, can provide the intended distribution because they are specifically recognized as an exception to the general rule that no judicial determination will be recognized which would give effect to a voluntary *inter vivos* transfer.⁴⁶

Problems arise in interpreting the above examples because one party will often remarry and have the bonds reissued to add their new spouse as a coowner or beneficiary. In the case where the agreement specifies a dollar amount and Series E bonds are involved, it is often difficult to determine if the amount indicated is the face amount or the redemption value. It has been the practice of the Bureau to accept bonds only up to the amount set forth in the decree, requiring further evidence be submitted for amounts above those specified in the decree.⁴⁷ In the case of agreements which contain ambiguous language, determinations become difficult, if not impossible, absent a voluntary agreement among the parties. In such cases the practice is to request some

⁴⁶ The general rule is:

The Department of the Treasury will not recognize a judicial determination that gives effect to an attempted voluntary transfer *inter vivos* of a bond, or a judicial determination that impairs the rights of survivorship conferred by these regulations upon a coowner or beneficiary. All provisions of the Subpart are subject to these restrictions.

44 Fed. Reg. 76,440, 76,446 (1979) (to be codified in 31 C.F.R. § 353.20(a)).

The exception is contained in § 353.22(a) and is as follows

The Department of the Treasury will recognize a divorce decree that ratifies or confirms a property settlement agreement disposing of bonds or that otherwise settles the interests of the parties in a bond. Reissue of a savings bond may be made to eliminate the name of one spouse as owner, coowner, or beneficiary or to substitute the name of one spouse for that of the other spouse as owner, coowner, or beneficiary pursuant to the decree. However, if the bond is registered in the name of one spouse with another person as coowner, there must be submitted either (1) a request for reissue by the other person or (2) a certified copy of a judgment, decree, or court order entered in proceedings to which the other person and the spouse named on the bond are parties, determining the extent of the interest of that spouse in the bond. Reissue will be permitted only to the extent of that spouse's interest

44 Fed. Reg. 76,440, 76,447 (1979) (to be codified in 31 C.F.R. § 353.22(a)).

⁴⁷ U.S. DEPT OF THE TREASURY, PUBLIC DEBT REPORTS (Spring, 1978).

sort of judicial clarification, which can frequently result in delay and expense. These problems can be avoided by clearly drafting property settlement agreements with a listing of each party's bonds by serial number.

Difficulties in receiving payment on bonds may also arise when a bondowner dies or becomes physically disabled. The regulations provide that a single ownership bond becomes the property of the decedent's estate, and payment or reissue, will be made as provided in the regulations.⁴⁸ As stated earlier, the survivorship provisions of the regulations provide that upon the death of one coowner, the surviving coowner will be recognized as the sole and absolute owner.⁴⁹ If both coowners have died, the bond becomes the property of the estate of the coowner who died last.⁵⁰ In the case of bonds registered in beneficiary form, upon the death of the owner, the bonds become the sole property of the surviving beneficiary.⁵¹

When a bondowner dies, if the bonds do not pass to a surviving coowner or beneficiary, payment or reissue is made to the legal representative of the decedent's estate or to the persons entitled to share in the estate. In processing such requests, two main categories exist: estates which are administered and those which are not. During the administration of an estate, the legal representative of the estate may request payment or reissue to those entitled by law to the bonds, but a number of requirements must be observed if the fiduciary is to avoid delay in receiving the requested payment or reissue. If more than one representative is appointed, all must join in the request unless state law provides otherwise or the bond registration indicates the fiduciary's authority to act.⁵² The request for payment must be signed by the

⁴⁸ 44 Fed. Reg. 76,440, 76,452 (1979) (to be codified in 31 C.F.R. § 353.70(a)).

⁴⁹ 44 Fed. Reg. 76,440, 76,452 (1979) (to be codified in 31 C.F.R. § 353.70(b)(1)).

⁵⁰ 44 Fed. Reg. 76,440, 76,452 (1979) (to be codified in 31 C.F.R. § 353.70(b)(2)).

⁵¹ 44 Fed. Reg. 76,440, 76,452 (1979) (to be codified in 31 C.F.R. § 353.70(c)).

⁵² 44 Fed. Reg. 76,440, 76,453 (1979) (to be codified in 31 C.F.R. § 353.71(a)(1)). The regulations state that, except for bonds whose registration indicates a fiduciary relationship, all representatives of the estate must join in the request for payment. However, as a matter of practice, the signature of only one representative is accepted, if provisions for the signature of one representative to act on behalf of the estate are authorized by state law.

administrator (or executor) in his or her fiduciary capacity and evidence of such authority must also be presented.⁵³ If the individual in whose name reissue is requested wants to add a coowner or beneficiary to the bond, the new owner may request reissue as the owner of the bond.⁵⁴

It has been the experience of this writer that requests for payment or reissue before an estate is closed present few, if any, processing problems because of the minimal documentation necessary to support such a request. After an estate is closed, an individual who wants payment or reissue of the decedent's bonds must show entitlement by providing a certified copy of the court-approved final account, decree of distribution, or other pertinent court records.⁵⁵ However, special procedures are available for estates where the aggregate face amount of bonds, excluding interest checks, does not exceed \$1000.⁵⁶

In view of the fact that judicial administration of an estate can often be expensive and in some cases unnecessary, the Bureau has established a number of administrative procedures for the payment or reissue of bonds held by a decedent. This can be particularly important to the small investor whose estate may not be large enough to require administration. The need for an efficient and inexpensive means of handling the affairs of a decedent's estate has also been recognized by several states and incorporated into the procedures of the Bureau in processing requests for payment or reissue from those entitled to the decedent's estate. Many states have what is commonly referred to as summary or small estates administration, typically involving estates under \$10,000. Under these statutes a designated person need only sign an affidavit and have it filed with the clerk of the court to become

⁵³ The evidence includes a certified copy of letters of appointment, dated within six months of the date of presentation of the bonds. This requirement is necessary unless the submitted evidence indicates the appointment was made within one year prior to the presentation of the bond. 44 Fed. Reg. 76,440, 76,453 (1979) (to be codified in 31 C.F.R. § 353.71(a)(2)).

⁵⁴ 44 Fed. Reg. 76,440, 76,453 (1979) (to be codified in 31 C.F.R. § 353.71(a)(3)).

⁵⁵ 44 Fed. Reg. 76,440, 76,453 (1979) (to be codified in 31 C.F.R. § 353.71(b)).

⁵⁶ These procedures and the forms that need to be completed vary with whether the estate is administered, the amount requested, and the person entitled to use the procedures. More complete information may be obtained from the Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26101.

entitled to act as the representative or distributee of the decedent's estate.⁵⁷ Once qualified, the regulations provide that this person may receive payment or reissue of the decedent's bonds

⁵⁷ A typical example is the North Carolina statute which provides:

(a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding five thousand dollars (\$5,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be an heir of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in accordance with subsection (b) and make by or on behalf of the heir stating:

- (1) The name and address of the affiant and the fact that he or she is an heir of the decedent;
- (2) The name of the decedent and his residence at time of death;
- (3) The date and place of death of the decedent;
- (4) That 30 days have elapsed since the death of the decedent;
- (5) That the value of all the personal property owned by the estate of the decedent, less liens and encumbrances thereon, does not exceed five thousand dollars (\$5,000);
- (6) That no application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction;
- (7) The names and addresses of those persons who are entitled, under the provisions of the Intestate Succession Act, to the personal property of the decedent and their relationship, if any, to the decedent; and
- (8) A description sufficient to identify each tract of real property owned by the decedent at the time of his death.

(b) Prior to the recovery of any assets of the decedent, a copy of the affidavit described in subsection (a) shall be filed in the office of the clerk of superior court of the county where the decedent had his domicile at the time of his death . . .

(c) The presentation of an affidavit as provided in subsection (a) shall be sufficient to require the transfer to the affiant or his designee of the title . . . to any other property or contract right owned by decedent at the time of his death.

N.C. GEN. STAT. § 28A-25-1 (1976).

An important factor to be considered in determining whether such a statute can be utilized is a consideration of the current redemption value (C.R.V.) of the bonds in the estate. Particularly with older Series E bonds their C.R.V. may be more than double their face amount, thus bringing the value of the estate beyond the statutory limit.

after providing evidence of authority to act.⁵⁸ In most cases this merely involves sending a copy of the affidavit along with the request for payment or reissue to the Bureau.

If no representative of the decedent's estate is to be appointed, the regulations provide for payment of the proceeds of the decedent's bonds upon the agreement of all persons entitled to them.⁵⁹ This agreement is necessary as the Bureau's procedures do not require the posting of notices or the furnishing of security, as is typically required by many state laws governing the administration of estates. The determination of who is entitled or who has a claim against the assets of the decedent's estate is made in accordance with appropriate state law governing intestate succession and the priority of claims. Creditors of the estate may prove their entitlement to bond proceeds and receive payment, but only to the extent of their claim; reissue in the name of a creditor is not authorized.⁶⁰ Additionally, for those estates which are not administered and where the total face amount of bonds in the estate does not exceed \$1000, special provisions are available for payment or reissue. These procedures are discussed in Section III of this article.

In a few cases the agreement of all persons cannot be obtained. However, the interests of those absent, unwilling or incapable of agreeing to the distribution of the decedent's bonds, are nevertheless protected. Where the bondowner is absent, persons frequently resort to the use of statutes or other procedures for the administration of the absentee's estate.⁶¹ While state laws governing this procedure normally control, these laws must provide sufficient safeguards to protect the interests of the absentee. This is accomplished where the statute or procedure satisfies the constitutional due process tests, as enunciated by the Supreme Court

⁵⁸ 44 Fed. Reg. 76,440, 76,453 (1979) (to be codified in 31 C.F.R. § 353.72(a)).

⁵⁹ 31 C.F.R. § 315.73(b) (1979). The procedures will vary with regard to Series EE and HH bonds. A discussion of the new developments with regard to these bonds is found at notes 104-108 and accompanying text *infra*.

⁶⁰ 44 Fed. Reg. 76,440, 76,453 (1979) (to be codified in 31 C.F.R. § 353.72(c)). Payment rather than reissue is authorized in view of the nontransferability provisions of the regulations.

⁶¹ See CAL. PROB. CODE § 640 (West Cum. Supp. 1979). States differ as to whether the statute is based on a presumption of death or merely the passage of a defined period of time after which the state prescribes a method for the disposition of the absentee's property without an actual determination of death.

in *Cunnius v. Reading School District*⁶² and *Blinn v. Nelson*.⁶³ Through these two decisions the Supreme Court provided a standard by which state statutes regarding the administration of absentee estates would be judged. Basically, a state law would be constitutionally defective if it: (1) created "an arbitrary and unreasonable presumption of death resulting from absence for a brief period," (2) "did not provide adequate notice as prerequisite to proceedings for the administration of the estate of an absentee," or (3) "contained no adequate safeguards concerning property, and amounted, therefore, simply to authorizing the transfer of the property of the absentee to others"⁶⁴

Statutes which have been found to comply with the *Cunnius* and *Blinn* tests normally provide both a notice provision and a provision to insure that if the absentee ever returns, he may reclaim his property.⁶⁵ The statute may also require a bond or surety for those who would receive the property of the absentee. There are, however, a number of state statutes which the Bureau considers inadequate to meet the constitutional requirements set forth by the Court in *Cunnius* and *Blinn*.⁶⁶ If a request for pay-

⁶² 198 U.S. 458 (1905).

⁶³ 222 U.S. 1 (1911).

⁶⁴ 198 U.S. at 476-77.

⁶⁵ The following are examples of state statutes which are considered to provide sufficient safeguards to protect the interests of the absentee: CAL. PROB. CODE §§ 280-294 (West Cum. Supp. 1979); CONN. GEN. STAT. § 45-199 (1979); GA. CODE ANN. §§ 113-2601 to 2607 (Cum. Supp. 1979); ILL. ANN. STAT. ch. 110 ½ § 24-5 (Smith-Hurd 1978); KAN. STAT. ANN. §§ 59-2704 to 2705 (Cum. Supp. 1979); MASS. ANN. LAWS ch. 200, §§ 1-13 (Michie/Law Co-op 1979); MO. ANN. STAT. §§ 473.697-.720 (Vernon Cum. Supp. 1979); N.Y. Surr. Ct. Proc. Act §§ 901-911 (McKinney Cum. Supp. 1979-80); OHIO REV. CODE ANN. §§ 2121.01-.09 (Page 1976); OR. REV. STAT. §§ 117.005-.095 (1977); PA. STAT. ANN. tit. 20, §§ 5701-5705 (Purdon Cum. Supp. 1979-80); VA. CODE §§ 64.1-105 to 115 (1973).

⁶⁶ The following are examples of statutes which are considered not to provide sufficient safeguards to protect the interests of the absentee: FLA. STAT. ANN. § 733.209 (West 1976); IND. CODE ANN. §§ 29-2-5-1 (Burns 1976); ME. REV. STAT. ANN. tit. 18-A, §§ 8-101 to 114 (1979); N.H. REV. STAT. ANN. §§ 553:18-19 (1974); N.J. STAT. ANN. §§ 3A:40-1 to 6 (West Cum. Supp. 1979-80); N.M. STAT. ANN. § 45-1-107 (1978); N.C. GEN. STAT. §§ 28C-1 to 22 (1978); OKLA. STAT. ANN. tit. 58, §§ 941-946 (West 1965); S.D. COMP. LAWS ANN. § 30-5-5 (1977); WIS. STAT. ANN. §§ 813.22-34 (West 1977); WYO. STAT. § 1-12-502 (1977).

The Bureau has no current precedents for the District of Columbia and the following states: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Hawaii, Idaho, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Mon-

ment is received pursuant to such a state's absentee statute, payment usually is made only pursuant to a bond of indemnity. This practice is considered necessary in order to protect the interests of the absentee and the Government.

In addition to the many requests for payment of bonds from representatives of individuals who are deceased, the Bureau also receives a large number of requests for payment of bonds from persons representing bondowners who are either physically or mentally incompetent. The number of such requests has increased in recent years due to the fact that a significant number of savings bonds dating back to World War II are still outstanding, and the bondowners, because of the infirmities of age, are physically unable to make a request for payment. To assist such bondowners in receiving payment of their bonds in order to meet pressing medical or other financial obligations, the Bureau has developed three special redemption procedures. First, the owner's physician can request payment of the bonds on his patient's behalf. The request must be submitted to either a Federal Reserve Bank or the Bureau and should contain a statement that the bondowner is mentally competent but physically unable to request payment. The bonds to be paid should be described and included with the request for payment along with the directions for payment of the proceeds. Second, the request for payment can be signed by mark "X." The owner need not physically make the mark but only touch the pen as the mark is being made. This procedure must be witnessed by a disinterested person who should complete an appropriate form which is available from most banks and other financial institutions. The third procedure is similar to the second but involves the signature "by the hand of another." To utilize this method, the request must be made on a special form provided by the Bureau.

In conjunction with the special redemption procedures described above, the Bureau also provides a unique time savings procedure for handling payment requests from owners who are no longer competent to handle their business affairs. Utilization of the voluntary guardianship provisions of the regulations⁶⁷ avoids,

tana, Nebraska, Nevada, North Dakota, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, and West Virginia.

⁶⁷ 44 Fed. Reg. 76,440, 76,452 (1979) (to be codified in 31 C.F.R. § 353.64).

in most cases, the expense and delay that can occur in the appointment of a legal guardian or committee to administer the incompetent's estate. It should be noted, however, that the provisions of the regulations must be strictly adhered to as the guardian has no independent legal status and, therefore, the procedure may not be satisfactory in all cases. To qualify as a voluntary guardian, a person must be a relative or other person responsible for the bondowner's care and support. The amount of any request for payment cannot exceed expenses incurred, or to be incurred, during any ninety day period for the support of the incompetent or legal dependents. Once this time period has elapsed, the voluntary guardian may redeem additional bonds, but only to the extent necessary for another ninety day period. The ninety day period and the special form required are used to inform the Bureau of the facts and circumstances regarding the incompetent's condition. These safeguards are deemed necessary to protect the owner's interest, inasmuch as the voluntary guardianship procedures, which operate at no cost to the bondowner, are conducted without the supervision of a court which is normally required with formal guardianship.

As with other forms of investments, savings bonds are subject to being lost or stolen. However, unlike other forms of investment, owners of United States savings bonds benefit from the provisions available for the replacement or payment of bonds which have been lost, stolen, mutilated or destroyed⁶⁸ and may even be afforded protection in the case of nonreceipt of a bond.⁶⁹ It should be noted, however, that as a condition of relief, the Bureau may require a bond of indemnity, with or without surety, when conditions necessitate the protection of the interests of the United States. Whenever a bond is lost, the owner must notify the Bureau of the facts surrounding the loss with as complete a bond description as possible (series; year; month of issue; serial number; name and address of owner, coowner, and/or beneficiary, if applicable).⁷⁰

One of the major issues that can develop is a request for relief which is ostensibly based on a claim that the bonds are lost or

⁶⁸ 44 Fed. Reg. 76,440, 76,447 (1979) (to be codified in 31 C.F.R. § 353.26).

⁶⁹ 44 Fed. Reg. 76,440, 76,447 (1979) (to be codified in 31 C.F.R. § 353.27).

⁷⁰ 44 Fed. Reg. 76,440, 76,447 (1979) (to be codified in 31 C.F.R. § 353.25).

stolen but which, in fact, involves a question of possession. A variety of situations can occur: an uncle gives his niece a bond registered in beneficiary form and later decides he wants to cash the bond; two individuals live together and one later decides to terminate the relationship, taking the bonds, which had been registered in their joint names. The primary consideration for the claimant in either situation is that the Government can be of little help because the question of possession, as distinguished from ownership, cannot be resolved by the Treasury. Bonds in the possession of a known person cannot be considered lost or stolen so that relief can be provided under the regulations. Thus, the parties in nearly every case are left to pursue their own legal remedies. This fact is very important and should be considered when choosing the form of registration for a bond or when affording someone an opportunity to gain possession of one's bonds.

One other perception which has been widely misunderstood is that savings bonds, like other forms of property, can be pledged or used as security for a loan. Unfortunately for the lender, this simply is not true. The regulations are quite clear that savings bonds may, in no manner, be hypothecated, pledged, or used as security for the performance of any obligation.⁷¹ Thus, John Doe may not go to his local tavern, order a few drinks, and pay the bartender with his bonds. The result in such a case is that the bartender has bonds for which he cannot lawfully receive payment unless he reduces his claim to a judgment,⁷² and the bondowner cannot obtain payment because he no longer has possession of the bonds.⁷³ A number of other situations can, of course, arise such as using savings bonds as payment for rent, food, clothing, etc. It should be emphasized though, that any lender of such articles or services runs the risk of nonpayment unless he can convince the bondowner to request payment and,

⁷¹ 44 Fed. Reg. 76,440, 76,426 (1979) (to be codified in 31 C.F.R. § 353.16).

⁷² The bartender cannot receive payment because the bond is registered in someone else's name and therefore is nontransferable pursuant to 44 Fed. Reg. 76,440, 76,446 (1979) (to be codified in 31 C.F.R. § 353.15). However, if he reduces his claim to a judgment his request for payment will be recognized pursuant to 44 Fed. Reg. 76,440, 76,446 (1979) (to be codified in 31 C.F.R. § 353.21).

⁷³ The bondowner cannot use the provisions for replacement of lost or stolen bonds because bonds in the possession of a known person cannot be considered lost or stolen. See notes 63-70 and accompanying text *supra*.

upon receiving the proceeds, release them to the creditor.

III. A COMPARISON OF THE OLD AND NEW SERIES OF BONDS

The new Series EE savings bonds are accompanied by regulations intended to simplify some of the problems associated with the administration of Series E and H bonds. Of course, not all of the issues associated with transactions in savings bonds are solved, but this was not a goal in bringing forth the new bonds. The new series of bonds are intended to provide a medium of investment designed for those individuals who have little money to invest or otherwise find the accumulation of capital a difficult task. There are ample investment vehicles for those individuals who desire a higher return on their investment, but few, if any, forms of investment for the small investor can compete with the advantages that savings bonds offer.

With the introduction of the new bonds, a number of the characteristics of the old bonds were altered in order to provide the small investor with a more attractive investment. The minimum denomination for a Series E bond has always been \$25,⁷⁴ whereas, the smallest denomination for Series EE is \$50. With a purchase price of \$25, the new \$50 Series EE Bond is only \$6.25 more than the amount required for the \$25 Series E bond. The result is that Series EE bonds will double in value when held to maturity in contrast to the 25% appreciation of Series E bonds. To effectuate this appreciation, the length of time to maturity has been increased from five years to eleven years, but annual interest at the rate of six and one-half percent will be paid beginning in the sixth year. The change in the lowest denomination has benefited the government by reducing the total number of bonds issued in relation to the dollars that are borrowed, and has created only a small increase in the actual cash outlays of the individual investor.⁷⁵ Also, the minimum retention period has been increased

⁷⁴ The one exception is the \$10 bond that was made available to servicemen during World War II.

⁷⁵ The changes in the denomination and issue price structure associated with the new bonds will reduce the number of pieces issued. For budget purposes, assuming the same dollar investment, the reduction in bonds issued has been estimated by the Bureau at nine percent. This will produce gross savings of some \$4.7 million in the first year of implementation and annualized savings of \$9.3 million after five years.

from two months to six months on EE bonds to provide an incentive to hold the bonds for a longer time, while at the same time increasing the benefits that the government derives from the use of the invested funds.⁷⁶ Thus, the two basic purposes of savings bonds have been fulfilled. Further, the maximum annual purchase limitation has been raised from a \$10,000 face amount to \$30,000, and a new \$5000 denomination has been added to the Series EE bonds.

Series E bonds, with issue dates from May 1, 1941, through April 1, 1952, will not be extended again.⁷⁷ Therefore, this group of bonds will reach final maturity over an eleven-year period from May, 1981 through April 1, 1992. Of the 1.4 billion dollars in E bonds bought during the period 1941-1952, about \$45 million are still outstanding. An additional ten year extension will be provided to all outstanding Series E bonds bearing issue dates on or after May 1, 1952 and Series H bonds bearing issue dates on or after May 1, 1959.

The Series HH bonds are sold at face amount in denominations of \$500, \$1000, \$5000, and \$10,000 and will mature in ten years, with annual purchase limitations being \$20,000. Series HH bonds, as well as Series EE bonds, are issued only in registered form and are nontransferable. There are two distinguishable types of Series HH bonds, one which is sold for cash and the

⁷⁶ The longer retention period resulting from the six-month restriction would increase the amount of debt financing obtained from short-term savings bond buyers. Assuming the same dollar investment in the Savings Bond Program, the need for high-cost market borrowing would be reduced, and additional savings equivalent to some \$10.5 million would be realized in the form of precluded interest charges. If the amount invested in the Savings Bond Program decreased because of the increased retention period, net savings would still be achieved because of the accompanying reduction in administrative expense. For example, if 75% of the two-month, 50% of the three-month and 25% of the four-month bonds—an average of 50% of the short-term purchases—were not issued, the net savings would be equivalent to about \$13 million. A higher rate of attrition would produce additional administrative savings in amounts that would exceed the interest cost differential for replacement financing through market borrowing.

⁷⁷ The original Series E bonds were to mature after ten years and at the time of their introduction there were no plans to extend their maturity. However, due to a number of political and financial considerations the Treasury Department decided to provide bonds bearing issue dates of May 1, 1941 to April 1, 1952 with three successive extensions of ten years each. At the time of the last extension in 1971, the Treasury announced that this would be the last one.

other which is issued on exchange or through reinvestment.⁷⁸ Series HH bonds available for cash purchase, as distinguished from those purchased by exchange of Series E or EE bonds, will be redeemed at less than face amount during the first five years. The difference between the face amount and redemption value represents an interest adjustment.⁷⁹ Furthermore, the yield is geared to be consistent with that of the Series EE bonds, which must be held for at least five years to provide the return of six and one-half percent.

Given the substantially similar treatment under the regulations it is contemplated that, absent a change in the tax laws unrelated to savings bonds, the tax treatment accorded the new bonds will be equivalent to that given the prior series. For example, interest on Series H and HH bonds is received semiannually by check and is reportable annually for federal income tax purposes. Because of this feature, savings bonds may be utilized for a number of savings programs including the funding of a child's future education. The registration must be in the name of the child or with one of the parents as beneficiary.⁸⁰ An added dimension to the authorized forms of registration is available with the new series of bonds.⁸¹ Both Series EE and HH bonds may now be registered in the name of a child with the name of either parent as

⁷⁸ 44 Fed. Reg. 72,832 (1979) (to be codified in 31 C.F.R. § 352.2). The two types of bonds are distinguishable by "(1) The portraits, color and border design; (2) the tax-deferral legend on the bonds issued on exchange; (3) the word 'CASH' or 'EXCHANGE', as appropriate on the back of the bonds; and (4) the text material." *Id.*

A tax-deferral legend is a statement appearing on a Series H or HH bond which indicates the amount of accrued interest on the savings bond exchanged for the bond on which the statement appears. The amount indicated, because of the exchange, is not taxed until the bond is cashed. An example is:

Accrued interest of \$18.00 on savings bonds/savings notes exchanged for this bond and included in its issue price is reportable, for Federal income tax purposes, for the year of redemption, disposition or final maturity of this bond, whichever is earlier.

⁷⁹ As a practical matter this interest adjustment serves as an interest penalty if the bond is redeemed prior to the beginning of the fifth year from the date of issuance.

⁸⁰ If the bonds are registered in coownership form and the parent supplies the funds for the bonds, then any interest is income to the parent as the person who contributed the purchase price.

⁸¹ The passage in the text is tentative inasmuch as the Internal Revenue Service has issued no rulings on this matter.

natural guardian.⁸² With this form of registration, the child should be considered as the owner so as to produce the desired tax benefit. The problem with this analysis is that the parent may, pursuant to the regulations, request payment of the bonds so registered on behalf of the child and may therefore be considered the "owner" of the bond, negating any possible tax benefits. In addition to possible tax considerations, this form of registration is provided to enable individuals to make a gift to a child, and allow the parent to manage, or be able to manage, the gift for the benefit of the child.

Tax considerations may also arise when a change in ownership occurs through reissuance. Where the principle owner remains on the bond with only a new coowner or beneficiary having been added, no shifting of federal income tax liability for accumulated interest normally results. However, a change in ownership resulting from the death of the owner may shift the income tax liability to the new owner for interest accumulated and not previously reported. An example is the case where the bondowner dies, leaving a surviving coowner or beneficiary. The death of the original owner does not result in a taxable event for federal income tax purposes. The income tax liability would pass, with the bond, to the surviving coowner or beneficiary as would any additional accrual of interest.⁸³ However, if the person filing the income tax return of the decedent elects to include all interest earned on the bond(s) up to the date of death, then the coowner or beneficiary is responsible only for the interest accruing from that date.⁸⁴

Pursuant to the regulations, bondowners may exchange Series E, EE, and matured H bonds for Series HH bonds. Series E bonds are eligible for exchange until one year after their final maturity dates, whereas Series EE bonds do not become eligible for exchange until six months after their issue date.⁸⁵ One interesting aspect of the right to exchange Series EE bonds for Series HH bonds is that the interest penalty associated with the early redemption of Series HH bonds can be circumvented. This can be accomplished because the interest adjustment provided by the

⁸² 44 Fed. Reg. 76,440, 76,443 (1979) (to be codified in 31 C.F.R. § 353.7).

⁸³ Rev. Rul. 64-104, 1964-1 C.B. 223.

⁸⁴ Rev. Rul. 68-145, 1968-1 C.B. 203.

⁸⁵ 44 Fed. Reg. 72,832, 72,833 (1979) (to be codified in 31 C.F.R. § 352.7(a)).

regulations⁸⁶ does not apply to Series HH bonds issued on exchange. The effect is to permit a bondowner to redeem his Series HH bond at face value four and one-half years earlier than possible if he had simply purchased the bond for cash.

When considering whether an exchange of bonds is desirable, a number of additional factors must also be considered, particularly the tax consequences and the restrictions on registration of Series HH bonds obtained in exchange for Series E, EE or H bonds.⁸⁷ With regard to the tax aspects of exchange, section 1037(a) of the Internal Revenue Code of 1954 permits a bondowner, who has not been reporting the interest on his Series E or EE bonds, upon exchange for Series HH bonds, to continue to defer reporting the interest on the securities exchanged until the taxable year in which the bonds are either cashed, reach final maturity or are otherwise disposed of. Each bond issued on a tax-deferral basis bears a legend showing how much of its issue price represents interest on the securities exchanged. The amount of any difference between the value of the securities offered and exchanged must be considered income in the year received.⁸⁸

When an exchange or reissuance of bonds has not been per-

⁸⁶ See note 79 and accompanying text *supra*.

⁸⁷ The following rules apply in the case of the exchange of Series E, EE, and H bonds for Series HH bonds: (1) If the securities submitted in exchange are in single ownership form, the owner must be named as owner or first-named coowner on the Series HH bonds. A coowner or beneficiary may be named. (2) If the securities submitted in exchange are in coownership form, and one coowner is the "principal coowner," the "principal coowner" must be named as owner or first-named coowner. A beneficiary or coowner may also be named. The "principal coowner" is a coowner who (i) purchased the securities submitted for exchange with his or her own funds, or (ii) received them as a gift, inheritance, legacy, or as a result of judicial proceedings, and had them reissued in coownership form, provided he or she has received no contribution in money or money's worth for designating the other coowner on the securities. (3) If the securities submitted in exchange are in coownership form and both coowners shared in the purchase of the securities or received them jointly as a gift, inheritance, legacy, or as a result of judicial proceedings, both persons must be named as coowners on the Series HH bonds. (4) If the securities submitted in exchange are in beneficiary form, the owner must be named on the Series HH bonds as owner or first-named coowner. If the owner is deceased, a surviving beneficiary must be named as owner or first-named coowner. In either case, a coowner or beneficiary may be named. 44 Fed. Reg. 72,832, 72,833 (1979) (to be codified in 31 C.F.R. § 352.7(e)).

⁸⁸ 44 Fed. Reg. 72,832, 72,834 (1979) (to be codified in 31 C.F.R. § 352.7(g)(3)).

mitted under the regulations, many bondholders have attempted to utilize a power of attorney to receive payment of the bonds or to accomplish a transfer of ownership. However, the regulations governing Series E and H savings bonds specifically prohibit the use of a general or specific power of attorney in requesting the redemption or reissue of bonds.⁸⁹ In many situations this proves to be a burden for a bondowner but, because of certain legal requirements, this policy has remained in effect.⁹⁰

Because of the problems associated with this policy, a change was made with the advent of the new bond series and the accompanying regulations. Two independent regulatory provisions now permit limited recognition of attorneys-in-fact to cash bonds. The most common situation is where an individual, who does not wish to manage his financial affairs, appoints another to act on his behalf. The power may grant broad general powers to the attorney-in-fact or simply provide that the agent is to carry out a specific task. Normally, if the power enables the holder to act in all financial matters on behalf of the grantor, then it is termed "general" and accepted by most individuals and organizations with whom the grantor has a financial or legal relationship. However, savings bonds are unlike other types of property owned by an individual and only the regulations governing savings bonds can be used in determining whether certain acts will be recognized by the government. The regulations provide that a request for payment signed by an attorney-in-fact will be recognized only if it is accompanied by a copy of a power of attorney that has been executed before a certifying officer⁹¹ and which authorizes the attorney-in-fact to sell or redeem the grantor's Treasury securities.⁹² It is important to emphasize that in order to utilize this procedure, the power must specifically authorize the redemption of government securities *and* be executed before a certifying officer which differs from the normal procedure of executing the power of at-

⁸⁹ 31 C.F.R. § 315.37(c) (1979).

⁹⁰ This policy has its roots in the fact that the regulations specifically provide that savings bonds are nontransferable. To the extent that a power of attorney can be used as a guide to aiding a bondowner in transferring his interest in his securities, the use of the power is prohibited.

⁹¹ Certifying officers are available at most banks and other financial institutions.

⁹² 44 Fed. Reg. 76,440, 76,449 (1979) (to be codified in 31 C.F.R. § 353.40(d)).

torney before a notary public.⁹³

The second procedure is less burdensome but applies only where payment is requested by an attorney-in-fact for an incompetent or physically disabled person. Under this procedure, the power need not be executed before a certifying officer and need only grant the attorney-in-fact authority to sell or redeem the grantor's securities, to sell his or her personal property, or to grant otherwise similar authority.⁹⁴ However, the power must provide that the grantor's subsequent incapacity will not affect the authority granted.⁹⁵

The necessity for these provisions is premised on the prevention of abuse of the power of attorney by creditors. While not affording complete freedom in the exercise of a power of attorney to cash savings bonds, the procedures do provide a method for utilizing this device which was previously impossible except under quite limited circumstances.⁹⁶

With regard to bonds registered in beneficiary form, the regulations governing Series E and H bonds provide that before the bonds can be reissued, the consent of the beneficiary must be obtained.⁹⁷ This position is based on a 1942 opinion of the then General Counsel of the Department of the Treasury. The General Counsel determined that the beneficiary named on a bond acquired a present interest at the time of registration of the bond, and as the regulations made no provisions for a change in the beneficiary, their consent was necessary at any time a reissue was desired, unless the beneficiary was deceased.⁹⁸ While a different rule could have been adopted upon subsequent bond issues, the Treasury Department determined that different rules of bonds of the same issue offered at different times would be confusing and

⁹³ The granting of a power to "sell all my bonds and other financial instruments" will not meet the requirements of 44 Fed. Reg. 76,440, 76,449 (1979) (to be codified in 31 C.F.R. § 353.40).

⁹⁴ 44 Fed. Reg. 76,440, 76,452 (1979) (to be codified in 31 C.F.R. § 353.65.).

⁹⁵ *Id.* Of course, to utilize this procedure the request for payment must be supported by a copy of the power of attorney and evidence of the incapacity of the grantor.

⁹⁶ See notes 89, 90 and accompanying text *supra*.

⁹⁷ 31 C.F.R. § 315.66(c) (1979).

⁹⁸ This position was adopted in *In re Deyo's Estate*, 180 Misc. 32, 42 N.Y.S.2d 379 (1943).

administratively undesirable. With the issuance of the Series EE and HH bonds this position was reexamined and the regulations were changed to bring this aspect of savings bond ownership into conformity with general provisions governing other types of investments. The new regulations provide that Series EE and HH bonds registered in beneficiary form may be reissued to change the name of the beneficiary without the latter's consent.⁹⁹ This change is in line with the expectations of most individuals who own securities and represents a major change in processing reissue requests.

The regulations, in regard to other aspects of the reissue of savings bonds, have also undergone refinement and change. Basically, before reissue of Series E and H bonds registered in coownership form can be accomplished, the coowners must join in the request for reissue. Additionally, the regulations require that the coowners be related by a specified degree of relationship.¹⁰⁰ These provisions are intended to preserve the nontransferability of the bonds. The only exceptions are where either coowner marries or where married coowners are divorced, legally separated, or their marriage is annulled.¹⁰¹ The rationale for these exceptions is a presumption that most individuals will not resort to the exceptions in order to circumvent the reissue restrictions. With the introduction of the Series EE and HH bonds, these requirements have been ameliorated. The specific relationships have been replaced with the concept of relationships by blood (including legal adoption) or marriage, and reissue to a related third person is now authorized, even where the coowners themselves are not related.¹⁰²

Changes have also been made in the processing of payment requests from representatives of deceased coowners. The regulations pertaining to Series EE and HH bonds now provide new procedures for processing requests for payment or reissue from estates not being administered where the total face amount of the bonds does not exceed \$1000.¹⁰³ Under the regulations governing

⁹⁹ 44 Fed. Reg. 76,440, 76,450 (1979) (to be codified in 31 C.F.R. § 353.51).

¹⁰⁰ 31 C.F.R. § 315.61(a)(1)(2) (1979).

¹⁰¹ *Id.*

¹⁰² 44 Fed. Reg. 76,440, 76,450 (1979) (to be codified in 31 C.F.R. § 353.47).

¹⁰³ 44 Fed. Reg. 76,440, 76,453 (1979) (to be codified in 31 C.F.R. § 353.72(d)(2)).

Series E and H bonds, representatives of estates not under administration could receive payment of bonds belonging to the decedent only if they qualified under a state's small estate procedure or if the agreement of all persons entitled to the decedent's estate could be obtained.¹⁰⁴ This procedure at times can be somewhat cumbersome, particularly if the estate's assets are subject to the claims of a number of creditors or if the class of individuals entitled to share in the decedent's estate is large. For this reason, the new regulations provide that if the amount of the decedent's bond(s) does not exceed \$500 and no legal representative has been appointed, then the bond will be paid upon the request of the person who paid the burial expenses and who has not been reimbursed.¹⁰⁵ Complementing this procedure, the regulations also provide that if no legal representative of the estate is appointed and the decedent left no will, and if the total face amount of bonds in the estate does not exceed \$1000, the bonds may be paid according to a prescribed order of precedence.¹⁰⁶ The first individual named is the surviving spouse followed by other members of the decedent's family. This order is designed to facilitate the family's ability to pay for the burial and/or other expenses associated with the bondowner's death.

Unlike past procedures, which required those individuals entitled to the decedent's property to show that debts of the estate had been paid, these new procedures are designed to allow payment immediately upon the request of the appropriate party. Where one party is requesting reimbursement because he paid for the burial of the decedent and another party requests pay-

¹⁰⁴ 31 C.F.R. § 315.73(a)(b) (1979).

¹⁰⁵ 44 Fed. Reg. 76,440, 76,453 (1979) (to be codified in 31 C.F.R. § 353.72(d)(1)).

¹⁰⁶ 44 Fed. Reg. 76,440, 76,453 (1979) (to be codified in 31 C.F.R. § 353.72(d)(2)). Section 353.72(d)(2) provides the following order of precedence:

- (i) Surviving spouse;
- (ii) If no surviving spouse, to the child or children of the decedent, and the descendants of deceased children by representation;
- (iii) If none of the above, to the parents of the decedent, or the survivor;
- (iv) If none of the above, to the brothers and sisters, and the descendants of deceased brothers or sisters by representation;
- (v) If none of the above, to other next-of-kin, as determined by the laws of the owner's domicile at death;
- (vi) If none of the above, to persons related to the decedent by marriage.

ments under the order of precedence, consideration will be given first to the individual who paid the funeral expenses, with any remainder going to the other party.¹⁰⁷ Should a request for reimbursement for the decedent's burial expenses be received subsequent to payment and pursuant to the order of precedence, the party is left to proceed in accordance with state law against the person who received the bond payments. These contingencies are, for the most part, theoretical rather than practical, given the amount involved and the likelihood that the person responsible for the burial of the decedent is normally the surviving spouse or other family member. By eliminating the need to seek information on any claims that may be pending against the estate, these procedures should greatly facilitate the ease with which individuals handling the affairs of the decedent's estate can obtain payment.

Beyond the changes in the regulations with regard to payment to representatives of a bondowner's estate, a major goal in introducing the new bond series was a reduction in the tremendous administrative and record keeping costs associated with the millions of Series E and H bonds currently outstanding. As one means of providing substantial administrative savings in terms of both time and money, new requirements were established by the Bureau for servicing claims for bonds believed to be lost or stolen. The new measures will have little effect on the vast majority of cases but will allow the government to reduce the number of years for which records of bonds must be maintained. For example, if a bond has been paid by the government for which no claim for relief has been filed within 10 years of the redemption date, the payment is presumed to be valid. If a subsequent claim is filed, a photographic copy of the bond will not be available to the bondowner to support the disallowance.¹⁰⁸ The practical effect of this regulation will be to deny a bondowner necessary evidence to substantiate ownership of the bond(s) for which relief is now requested. While this requirement may appear inflexible and a disservice to individuals who have purchased bonds in good faith, relying on the fact that if the bonds are ever lost or stolen they

¹⁰⁷ This practice is in accordance with the procedures outlined in many state statutes. See e.g., N.Y. (EST. POWERS & TRUSTS) LAW § 4-1.1 (McKinney Cum. Supp. 1979).

¹⁰⁸ 44 Fed. Reg. 76,440, 76,447 (1979) (to be codified in 31 C.F.R. § 353.29(b)).

will be replaced, it is only a denial of one method of assistance, which in no way prohibits the bondowner from producing evidence indicating his or her ownership of the savings bonds.

It should be noted that the above provisions applies only in the case where the records indicate that the true owner already received payment for the bond some ten years preceding the claim for relief. Additionally, no claim filed more than six years after final maturity will be considered by the Bureau of the Public Debt unless the claimant supplies the serial number of the bond.¹⁰⁹ This requirement was written into the new regulations on the assumption that the vast majority of individuals will redeem their bonds immediately after the time when the bonds cease to earn interest. This contention is supported by the fact that less than one-tenth of one percent of all non-interest bearing public debt is currently outstanding.¹¹⁰ Again, both of these measures actually hinder a bondowner only in the rarest of cases while providing for a more effective and less costly program for payment of bonds due to loss or theft of the security.

A new provision in the regulations pertains to the promotion of savings bonds through the use of certain chain letter schemes. A typical system works on the premise that persons will purchase bonds in the names of individuals on the list and then, after placing their own name on the list, send it to others who will in turn buy bonds in the names of the originators of the list. These schemes are in violation of both postal lottery and fraud laws, even if the "lists" are exchanged by hand, because the bonds or other items are usually mailed.¹¹¹ This type of operation is also in violation of most state or local lottery laws, even where the mails are not involved in any way.¹¹² The chain letter scheme is consid-

¹⁰⁹ 44 Fed. Reg. 76,440, 76,447 (1979) (to be codified in 31 C.F.R. § 353.29(c)).

¹¹⁰ U.S. DEPT OF THE TREASURY, MONTHLY STATEMENT OF THE PUBLIC DEBT OF THE UNITED STATES (December 1979).

¹¹¹ 18 U.S.C. §§ 1302, 1341 (1976).

¹¹² See, e.g., W. VA. CODE §§ 47-15-1 to 5 (1976 Replacement Vol.) which prescribes criminal penalties for any person who promotes a "pyramid promotional scheme." "Pyramid promotional scheme" is defined to include the organization of any chain letter or pyramid club. The word "promote" or "promotion" is defined to include the "initiation, preparation, operation, advertisement, or the recruitment of any person or persons in furtherance of any pyramid promotional scheme." Section 47-15-5 provides that "any person who shall violate the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof,

ered a lottery because whether or not the chain will be broken is simply a matter of chance. The fraud aspect comes in because of the promises or representations of gain which are made in connection with the distribution and promotion of the chain. While banks or other issuing agencies of the Department of the Treasury are authorized to refuse applications for the purchase of Series E bonds where there is reason to believe their purchase is in furtherance of a chain letter scheme, this policy has never been officially recognized in the regulations. With the issuance of the new regulations, this policy came into formal existence. The new regulations expressly prohibit the purchase of bonds in furtherance of chain letter or pyramiding schemes because such practices are considered to be against public interest.¹¹³ Indeed, not only are such actions harmful to the bond program, but individuals participating in such schemes expose themselves to the possibilities of both fines and imprisonment.¹¹⁴

CONCLUSION

From the large numbers of bonds outstanding, it is apparent that savings bonds occupy an important place in the financial affairs of millions of people. It should be equally apparent that these bonds and the transactions related to them should only be conducted with reference to their governing regulations. Savings bonds, while owned by vast numbers of individuals, are largely misunderstood because of either a lack of interest in learning about their legal aspects or because advice concerning these bonds is based on analogies to other forms of financial property. It is, therefore, incumbent upon all persons charged with advising individuals on financial and legal matters to become familiar with and explain the unique properties of savings bonds, particularly the aspects of nontransferability, registration, survivorship, the restrictions on reissue, and the basic nature and purpose these bonds are intended to serve. Treating savngs bonds like currency,

shall be fined not less than three hundred nor more than one thousand dollars, or confined in jail for a period not to exceed six months, or both."

¹¹³ 44 Fed. Reg. 76,440, 76,445 (1979) (to be codified in 31 C.F.R. § 353.8).

¹¹⁴ A violation of 18 U.S.C. § 1302 (1976) (Postal Lottery Law) carries with it a possible fine of up to \$1000 and/or imprisonment of up to two years; a violation of the fraud statute (18 U.S.C. § 1341 (1976)) carries the same fine but the possible prison term is 5 years.

marketable securities or other forms of negotiable properties, unfortunately serves neither the interest of the bondowner nor those giving advice.

With the adoption of the Series EE and HH bonds comes a new opportunity to examine savings bonds in general and to determine if this form of investment can be beneficial to a particular investor. Savings bonds have a number of advantages over other forms of security, but because of their nontransferability and the restrictions on their use as collateral, they are not suitable for all investors. With the change in the requirements affecting bonds registered in beneficiary form, Series EE and HH savings bonds may be reissued in a manner more comparable to other forms of investment, but the other aspects of bond ownership cannot be overlooked nor should considerations of real or potential conflicts with various state laws be ignored. Properly understood, savings bonds can provide a unique and beneficial method of saving while providing some unusual benefits such as ease of replacement when lost or stolen, and exemption from state and local income taxes. However, both benefits and disadvantages can only be appreciated if they are fully understood.

