

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-81 (4)
Estate and Gift Tax
May 20, 1981

Subject: Guidelines for disposition of property if death occurs simultaneously.

When there is no sufficient evidence that persons have died otherwise than simultaneously, title to property passes in accordance with the rules regarding dispositions contained in the Estates, Powers and Trusts Law which are based on the Uniform Simultaneous Death Act adopted by New York State effective September 1, 1944.

If title to property is held individually:

1. The property of each person shall be disposed of as if each person had survived.
2. If two persons who die simultaneously are named in each others will, or they are entitled to receive the property of each other by intestacy, the property of each is distributed as if he had survived the other person. For example,
 - (a) If it is determined that a husband and wife have died simultaneously and that they died intestate (without, a will), the husband's property would be distributed as if the husband had survived his wife and the property owned by the wife would be distributed as if the wife had survived her husband.

If title to the property is held as joint tenants or as tenants by the entirety and death of the joint tenants occur simultaneously:

1. The property so held shall be distributed one-half as if one had survived and one-half as if the other had survived, provided contributions to the purchase price of the jointly owned property is not a factor.
2. Where property is owned as tenants by the entirety and all of the consideration for the purchase of the property was furnished by the husband, the entire value of the property is includible in the gross estate of the husband and one-half of the value is includible in the gross estate of the wife.
 - (a) Property held as tenants by the entirety would pass by operation of the law to the joint tenant. In a situation such as stated above and where the husband's will contains no provision for the disposition of property in the event of simultaneous death, a marital deduction is allowable for the husband's estate for the value of the includible joint interest that passes to the surviving spouse.

In situations where it has been determined that two or more beneficiaries who were designated to take alternatively by reason of survivorship, a testamentary disposition have died simultaneously, such property shall be divested into as many equal portions as there are alternative beneficiaries.

(a) If 'A' makes a will leaving property to 'B' and 'C' by using the language; "To 'B' and 'C' and upon the death of either, to the survivor," the property will finally vest in the last to die.

On the other hand, if it cannot be determined whether 'B' or 'C' have died otherwise than simultaneously, the property would be distributed one-half to the beneficiaries of 'B' and one-half to the beneficiaries of 'C'.

In the case of a policy of life or accident insurance:

1. Where it has been determined that the insured and the beneficiary has died simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(a) If a decedent had a policy of insurance on his/her life made payable to a named beneficiary and the decedent and beneficiary died simultaneously, the proceeds would be payable to the distributees of the estate in the same manner as if there was no named beneficiary.