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Notes

Taxation: Disclaimers Under Federal and Minnesota Law

I. INTRODUCTION

A disclaimer is an affirmative act, declaration, or document by which a person refuses to accept a beneficial interest offered or imputed to him. An effective disclaimer prevents title to the interest disclaimed from vesting in the disclaimant, thus allowing the disclaimant to release his right to the interest without making a transfer.¹

Under present law the validity of an attempted disclaimer is determinative of tax consequences.² An effective disclaimer allows a disclaimant to release his right to an interest, thus permitting the interest to pass to the person entitled to take in the event of disclaimer, without producing a taxable event.³ However, if a purported disclaimer is ineffective, the act of disclaiming becomes a gratuitous transfer subject to the gift tax.⁴ Thus, two taxes are imposed—an estate or gift tax when the interest is created and a gift tax resulting from the attempted disclaimer. Similarly, two taxes may be imposed if a disclaimant dies within three years of an ineffective disclaimer. In such a case the act of disclaiming is subject to attack as a transfer made in contemplation of death and the value of the interest may be included in the disclaimant's gross estate.⁵ Consequently, there would be one tax at creation of the interest and another at the disclaimant's death.⁶

¹. “Disclaimer” is synonymous with “renunciation.” See 1 ABBOTT, DICTIONARY OF TERMS AND PHRASES 382 (1879); 2 id. 408; BLACK, LAW DICTIONARY 550, 1462 (4th ed. 1951); 12A WORDS AND PHRASES 272 (1954); 36A id. 705 (1962).
². See notes 23–24 infra and accompanying text.
³. E.g., Brown v. Routzahn, 63 F.2d 914 (6th Cir. 1933). See INT. REV. CODE OF 1954, §§ 2511(a), 2035(a); Treas. Reg. § 25.2511-1(c) (1958); 2 MERTENS, FEDERAL GIFT & ESTATE TAXATION § 14.04, at p. 94 (1959); 5 id. 67–80 [hereinafter cited as MERTENS].
⁵. See INT. REV. CODE OF 1954, §§ 2035(a), (b).
⁶. The validity of an attempted disclaimer in a state with an inheritance tax poses an additional problem. An effective disclaimer shifts the inheritance tax liability to the person taking as a result of the disclaimer. This may affect the amount of the tax because the tax rate in most states varies with the relationship the taker of the interest has to the decedent.
II. SHOULD DISCLAIMERS BE GIVEN TAX EFFECT?

It has been argued that it would be unconstitutional to tax the act of disclaiming as a transfer. However, it is well settled that the power to control the ultimate disposition of property is a sufficient basis for imposition of a transfer tax. Under income tax laws, for example, there is a tax on the right to receive income even though there is no actual receipt. Consequently a disclaimant's control over the ultimate disposition of the property would seem constitutionally sufficient to support a tax, despite the fact that his control is limited to a choice between taking the property or allowing it to pass to those who take as a result of his disclaimer.

The traditional argument for allowing tax-insulated disclaimers is that a person should not be forced to accept property with the concomitant burdens and responsibilities inherent in ownership. Therefore, he should have the right of rejection without being subject to a gift tax liability. Since any tax on a disclaimer would have to be predicated on control over the property rather than enjoyment or possession, it is arguably unfair to predicate tax liability on control limited to the choice of accepting an interest or allowing it to pass to those entitled to

7. See Higgins v. Commissioner, 129 F.2d 237 (1st Cir. 1942); Commissioner v. Prouty, 115 F.2d 331 (1st Cir. 1940); Lasser, The Tax Clinic, 96 J. Accountancy 350 (1953) (the right to refuse property is as much a part of our liberty as the right to own property); Roehner & Roehner, Renunciation as Taxable Gift—An Unconstitutional Federal Tax Decision, 8 Tax L. Rev. 289 (1953) (inconsistency between income and gift tax results dictates a conclusion of unconstitutionality). But clearly there is no constitutional requirement that the income tax and gift tax law be consistent.

8. See Fernandez v. Wiener, 326 U.S. 340, 353 (1945): "It [Congress] may tax the exercise, non-exercise, or relinquishment of a power of disposition of property, where other important indicia of ownership are lacking." See, e.g., Burnet v. Guggenheim, 288 U.S. 280 (1933); Int. Rev. Code of 1954, § 2038 (power to control beneficiaries of a trust); id. § 2041(a)(2) (general power of appointment taxed even when not exercised).

9. E.g., Corliss v. Bowers, 281 U.S. 376 (1930); Loose v. United States, 74 F.2d 147 (8th Cir. 1934); J. D. Amend, 13 T.C. 178 (1949).


The usual basis for attacking the constitutionality of a tax is the due process requirement of the fifth amendment. See, e.g., United States v. Kahriger, 345 U.S. 22 (1953); Helvering v. City Bank Farmers Trust Co., 296 U.S. 85 (1935).

take as a result of the disclaimer. Moreover, it is questionable whether it is desirable to subject such property to two taxes merely because, in many instances, it will skip a generation. Further, it could be argued that since a disclaimer shows nothing more than the unwillingness of the disclaimant to take the property, the disclaimant does not have the donative intent necessary to subject the transfer to gift tax liability.

However, there are several justifications for treating a disclaimer as a taxable event. In most cases, the recipient of the interest in event of disclaimer can be easily determined, and the disclaimant knows to whom the interest will pass. Practically speaking, the recipient upon disclaimer usually will be an heir of the disclaimant, and a disclaimant who does not need the property for his personal sustenance can readily appreciate the tax advantages of disclaiming. Thus, the motive behind disclaimers is very likely to be tax avoidance, as a person is able to pass more property by disclaiming than by accepting and subse-

12. Note that taxing a disclaimer would be particularly harsh in a state having an inheritance tax. Not only would the disclaimant be subject to a gift tax liability, he would be liable for the inheritance tax without having any rights against the property disclaimed.

13. A person who keeps his will up to date, or has a discretionary trust wherein the trustee is given the power to control the ultimate disposition of the property, or creates a substantial lifetime interest for one generation with the property then passing to the next, is allowed to skip a generation when disposing of his property without the imposition of a second tax. But see ALI, FED. ESTATE AND GIFT TAX PROJECT at xxxi-xxxii, xxxviii-xlii, § X41, at 110-20, § A44, at 335-36 (Nov. 1966 Draft) (proposing imposition of an additional tax on generation skipping transfers). It is arguable that there is no reason for distinguishing these cases and the disclaimed property situation; disclaimers should be allowed tax effect to avoid different tax consequences when the result is identical in substance.

Possibly a tax could be justified as another method of preventing undue accumulations of wealth. See note 21 infra. However, it is arguable that imposing a second tax in the disclaimer situation would place too high a premium on expert estate planning.

14. See generally ALI, FED. INCOME, ESTATE, AND GIFT TAX. STAT. § X1007(h) at 38-40 (April 1956 Draft); Comment, 33 COLUM. L. REV. 1269 (1933); Note, 63 HARV. L. REV. 1047 (1950).

15. Due to the presence in most states of an anti-lapse statute, the disposition in event of disclaimer is very likely to be to the disclaimant's issue. See, e.g., MINN. STAT. § 525.203 (1965).

16. Note that the real potential for tax evasion is not when the taker in event of disclaimer is a person in a higher generation or one of the same generation, but rather only when the creator of the interest is of a higher and the taker is of a lower generation than the disclaimant. See ALI, FED. ESTATE AND GIFT TAX PROJECT at xxxi-xxxii, xxxviii-xlii, § X41, at 110-20, § A44, at 335-36 (Nov. 1966 Draft), which imposes an additional tax only on a generation skipping transfer of the nature described above.
quentely passing the property inter vivos or through his estate.\(^{17}\)

Moreover, a cogent argument may be advanced that an interest passing due to a disclaimer fulfills the requirements for the imposition of a gift tax. Since the disclaimant will normally determine to whom the interest will pass if he disclaims before deciding whether to disclaim or accept, upon disclaimer it seems reasonable to impute an intention to make a gift to the taker. The essence of a transfer is the passage of control over the economic benefits of property rather than technical changes in title.\(^{18}\) Given these two elements, the disclaimer, in effect, becomes a gift.\(^{19}\) Since the gift tax statute was enacted to prevent estate tax avoidance through the voluntary inter vivos disposition of property, the power to channel the economic benefits of an interest so as to effect tax avoidance is sufficient reason to justify treating the disclaimer as a taxable transfer.\(^{20}\)

Further, to allow a person to pass property received from a prior generation to his heirs by use of a disclaimer without imposing a transfer tax seems inconsistent with the purpose of the estate and gift taxes—the reduction of economic inequality produced by inherited wealth.\(^{21}\) To favor such a person over one

\(^{17}\) If disclaimers are given tax effect and the beneficiary of an interest wants the taker in event of disclaimer eventually to get some of his property, he can accomplish this either by disclaiming or by first accepting the interest and then making a gift. In the latter case, the beneficiary will have made a taxable transfer while he would not have in the former. See Int. Rev. Code of 1954, § 2511(a). Clearly the only difference is the tax consequence.


\(^{20}\) It has been contended that taxing a disclaimer as a gift on the theory the disclaimant had control over the interest would produce startling results in other areas of the law. See Note, 63 Harv. L. Rev. 1047, 1048 (1950); Comment, 31 Texas L. Rev. 599, 601 (1953). For example, a wife who does not elect against her husband's will when the statutory share is larger than the portion received would be deemed to have made a gift of the difference. However, it seems clear this is not the type of control which lends itself to tax avoidance, and thus there is no justification for a tax. See note 16 supra and accompanying text.

who works to accumulate wealth during his lifetime and cannot escape being taxed on what he passes, only encourages the perpetuation of wealth once it is accumulated. Although the justifications for not taxing the act of disclaiming seem unpersuasive, existing provisions in the Internal Revenue Code sanction the use of disclaimers. Congress has recently shown its intention to allow disclaimers to affect federal tax consequences by amending the estate tax law to allow a disclaimer by a third party to increase the marital deduction share. Thus, it would seem that disclaimers are to be given tax effect, and the only question is what limitations are to be placed on the right.

III. FEDERAL LAW ON DISCLAIMERS

The federal gift tax statute is silent on the issue of whether a disclaimer is a “transfer” within the meaning of the statute. The issue was raised for the first time in Brown v. Routzahn, where the court held that a beneficiary may disclaim a testate interest without incurring gift tax liability if the disclaimer is valid under state law. It could be contended that Brown was improperly decided. When Congress passed the gift tax statute, it was aware that the essence of a transfer is the passage of control over the economic benefits of property rather than any technical changes in title, and its intention was to reach every gratuitous transfer. Since a disclaimant controls the ultimate position that the only purpose behind the estate tax is the production of revenue.

22. Notice the latter person has no way to refuse ownership of any wealth attributable to his work and thus can not avoid either a gift or estate tax when disposing of such wealth.
23. E.g., Int. Rev. Code of 1954, §§ 678(d), 2041(a), 2055, 2056(d), 2514(a).
24. Int. Rev. Code of 1954, § 2056(d) (2). Further, Congress has provided that the person ultimately benefiting will bear the tax burden in two analogous situations. See Int. Rev. Code of 1954, §§ 2206, 2207. It is arguable that the failure of Congress to provide for payment of the tax by the ultimate taker in the disclaimer situation is further evidence of its unwillingness to treat a disclaimer as a taxable event.
25. See ALI, FED. ESTATE AND GIFT TAX PROJECT § X11a at 23-28 (Nov. 1966 Draft), which also allows disclaimers tax effect. But note the real tax advantages are lessened since there is an additional tax imposed on generation skipping transfers. See note 13 supra.
27. 63 F.2d 914 (6th Cir. 1933).
28. Id. at 917.
30. Robinette v. Helvering, 318 U.S. 184 (1943). Further, when de-
disposition of the property\textsuperscript{31} and it is reasonable to impute to him an intention to benefit the ultimate taker,\textsuperscript{32} it is arguable that the disclaimant in Brown made a gratuitous transfer within the meaning of the gift tax statute. However, the Brown court relied on the technical argument that the disclaimer prevented the beneficiary from becoming the owner, and thus no taxable transfer could have occurred.\textsuperscript{33}

The reluctance of the court to tax a disclaimer might be explained by an examination of the tax law pertaining to powers of appointment in existence at that time. Brown was decided when general powers were not taxed unless they were exercised.\textsuperscript{34} The donee of a power could allow the power to lapse and the interest to pass as provided for in default of appointment without incurring a tax. The disclaimer situation seems analogous as the disclaimant is merely refusing to exercise affirmatively control over the property, thus allowing it to pass as provided in event of disclaimer. However, congressional policy regarding taxation of powers has been revised,\textsuperscript{35} a general power is now taxed even if not affirmatively exercised.\textsuperscript{36} But, despite this change in congressional attitude toward general powers,\textsuperscript{37} existing provisions in the Internal Revenue Code\textsuperscript{38} and the federal regulations\textsuperscript{39} afford tax insulation to disclaimers.

Two subsequent decisions firmly established that the disclaimer must be valid under state law to be effective for federal

\textsuperscript{31} See note 20 supra and accompanying text.
\textsuperscript{32} See notes 18-19 supra and accompanying text.
\textsuperscript{33} 63 F.2d at 917.
\textsuperscript{34} Revenue Act of 1918, ch. 18, § 402(e), 40 Stat. 1097. Prior to this it had been held in United States v. Field, 255 U.S. 257 (1921), that a power of appointment was not includible in the gross estate under the Revenue Act of 1916, ch. 463, § 202, 39 Stat. 777.
\textsuperscript{35} See Int. Rev. Code of 1939, ch. 2, § 811(f), 53 Stat. 122, as amended, ch. 619, § 403(a), 56 Stat. 942 (1942), where the taxability of powers depends almost entirely on the type of power the donee had rather than upon whether or not he affirmatively exercised it.
\textsuperscript{36} Int. Rev. Code of 1954, § 2041(a).
\textsuperscript{37} The donee of a general power seems to have more control than a disclaimant. He has to accept the power, an affirmative exercise of control, before he possesses the power for tax purposes. Further, he has unlimited time, at least until death, to make disposition of the property. On the other hand, even under the most lenient local law a disclaimant would have only fourteen years to make his decision. See note 80 infra and accompanying text.
\textsuperscript{38} See notes 23–24 supra and accompanying text.
\textsuperscript{39} Treas. Reg. § 25.2511-1(c) (1958).
In each case, state law provided that the interest vested in the beneficiary at the death of the decedent, thereby denying to him the option of accepting or refusing the interest. In each case the disclaimer was denied tax effect on the rationale that the beneficiary was powerless to prevent title to the interest from vesting in him; hence the act of disclaimer was a transfer subject to the gift tax. The above three cases established that the validity of a disclaimer for federal tax purposes was determined by ownership and that the fact of ownership was solely dependent upon state law.

A 1958 regulation sets out three conditions to be fulfilled before a disclaimer will be effective for federal tax purposes. It provides that the disclaimer must be valid under local law; that the disclaimer must be made within a reasonable time after the disclaimant knows of the interest; and that the disclaimant must be effective under local law.

40. Hardenbergh v. Commissioner, 198 F.2d 63 (8th Cir.), cert. denied, 344 U.S. 836 (1952); William J. Maxwell, 17 T.C. 1589 (1952). In Maxwell, the disclaimant was the beneficiary under the decedent's will and was seemingly allowed to disclaim as legatee. But, since no provision was made in the will in event of disclaimer, he took as heir under the intestacy laws, and he could not effectively disclaim that interest.

41. This distinction has been effectively discredited by text writers on various grounds. See, e.g., Boger, Taxation of Renunciations of Interests in Decedents' Estates Under the Federal Estate and Gift Taxes, 2 Duke L.J. 5 (1951); Lauritzen, Only God Can Make an Heir, 48 Nw. U.L. Rev. 589 (1954); Comment, 31 Texas L. Rev. 599 (1953); Comment, 5 Vand. L. Rev. 852 (1952). See also New York Law Revision Commission 239-58 (1950). Further, it would seem that such a distinction clearly places an undue and unjustifiable premium on technical estate planning.

42. To be effective under state law, a disclaimant must have "... a right to completely and unqualifiedly refuse to accept ownership of property transferred from a decedent ... [and such refusal] must be unequivocal and effective under the local law...." Treas. Reg. § 25.2511-1(c) (1958).

The question of whether the words "completely and unqualifiedly" in the regulation call for a disqualification of disclaimers made in states where a beneficiary cannot disclaim to the detriment of his creditors has been raised in 5 Mertens § 34.14, at 70 n.75; cf. Annot., 133 A.L.R. 1428 (1938). Compare Schoonover v. Osborne, 193 Iowa 474, 187 N.W. 20 (1922), with In the Matter of Estate of Kalt, 16 Cal. 2d 807, 108 P.2d 401 (1940). However, William J. Maxwell, 17 T.C. 1589 (1952), seems to indicate such disclaimers would be given effect. This result does not allow a person to disclaim to defeat the rights of his creditors, but does allow him to disclaim to deprive the government of a tax on the passage of the property.

43. Treas. Reg. § 25.2511-1(c) (1958). Inasmuch as a disclaimer must be effective under local law, see note 42 supra and accompanying text, it clearly cannot increase the time within which a person may disclaim. Thus, the only situation in which this condition can operate is one in
can not have accepted the interest prior to disclaiming. This regulation is a departure from prior interpretations of "transfer" under the gift tax statute. Under prior law, ownership was the test of whether a disclaimer was a "transfer." Under that test, state laws determining property rights had to be given sole and conclusive effect in affixing federal tax liability. The new regulation, by formulating two conditions in addition to state law, adopts a test encompassing more than ownership. Consequently, the disclaimer may be ineffective for federal tax purposes even though the disclaimant is not deemed to have ownership of the interest under the local law.

The effect these two additional conditions will have on existing law is not altogether clear. Only one case, Fuller v. Commissioner, considers what is a "reasonable time" or "acceptance" within the meaning of the regulation. The court there held that the disclaimer was not made within a reasonable time and that acceptance had occurred within the meaning of the which the local law would permit a disclaimer beyond the time interpreted as a reasonable time under the regulation. Although this concept of timeliness should be used to equalize disparate results due to different state laws on disclaimers, see MERTENS 92, it has not as yet had this effect. But see Kathryn S. Fuller, 37 T.C. 147 (1961), which indicates that such a result would be achieved, at least in part. For an example of congressional intention not to allow disclaimers to affect tax effect when the disclaimant has retained his control for too long a period of time, see INT. REV. CODE of 1954, § 678(d).

45. INT. REV. CODE of 1954, § 2511(a).
46. See notes 27-28, 33 and 40 supra and accompanying text.
47. Ibid.
48. When Congress has chosen to make the incident of taxation dependent upon state property concepts, the local law determines the taxpayers' rights in such property, and the federal taxing authorities are bound by such determination. See Freuler v. Helvering, 291 U.S. 35 (1934); Poe v. Seaborn, 262 U.S. 101 (1930); Gallagher v. Smith, 223 F.2d 218 (3d Cir. 1955); United States v. McCrackin, 189 F. Supp. 632 (D. Ohio 1960); In re Krakoff, 18 Ohio Op. 2d 116, 179 N.E.2d 568 (P. Ct. 1961); 1 PAUL, FEDERAL ESTATE AND GIFT TAXATION § 1.11 (1942). However, when Congress has imposed its own criteria of taxability, state law is immaterial when determining federal tax liability. See Commissioner v. Greene, 119 F.2d 363 (9th Cir. 1941); Buck v. Helvering, 78 F.2d 780 (9th Cir. 1935); PAUL, op. cit. supra; cf. Guarantee Trust Co. v. Commissioner, 98 F.2d 62 (2d Cir. 1938).

Although many cases attach importance to whether a state court adjudication was nonadversary or collusive, see, e.g., Edgar M. Carnrick, 21 B.T.A. 12 (1930), this should be irrelevant. The real question is whether Congress has chosen to make state property concepts determinative of the federal tax consequences. Thus, it is the state law which controls in a proper case rather than the state court judgment. See Gallagher v. Smith, supra (dicta); PAUL, op. cit. supra.
49. 37 T.C. 147 (1961).
regulation. It further held that, regardless of the effectiveness of the disclaimer under local law, the disclaimer was not effective for federal tax purposes because the federal criteria of acceptance and reasonable time must be accorded independent significance.\(^{50}\) In *Fuller*, the beneficiary was given a life estate in her husband's residence, a trust to pay $50,000 a year for maintenance of the residence, and a five-eighths life estate income interest in a residuary trust. Twenty-five years after the death of her husband, she attempted to disclaim three-eighths of her five-eighths interest in the residuary trust. The court first stated that twenty-five years was clearly not a reasonable time within the meaning of the federal regulation. Moreover, the beneficiary had already accepted the interest. During probate, which lasted twenty-five years, no record was kept of the expenditures made on the house, and the income from the estate was used to pay off decedent's debts. The court held that since the beneficiary could not prove that money from the second trust was not used to maintain the house and because she allowed the income to be used to retire debts on the corpus of the residuary trust thus increasing the value of her income interest, she would be deemed to have accepted the five-eighths interest in the residuary trust within the meaning of the federal regulation.

Because the federal regulations do not define acceptance or reasonable time, and because *Fuller* is the only case dealing with the subject,\(^{51}\) it is uncertain how stringent these requirements will be in limiting the right of a beneficiary to effectively disclaim for federal tax purposes.

When the federal criteria of acceptance and timeliness are applied to the disclaimer of present interests in common law jurisdictions, it appears at first blush that the state law is more rigorous than the independent federal criteria—illuminated only by the facts of the *Fuller* case.\(^{52}\) However, the change in prem-

\(^{50}\) On the question of the standards limiting the validity of regulations promulgated by the Commissioner of Internal Revenue, see generally Commissioner v. South Texas Lumber Co., 333 U.S. 496 (1948).

\(^{51}\) With regard to the reasonable time requirement, cases which involve income tax liability would seem to be distinguishable as the timeliness of the disclaimer is keyed to the period preceding the fiscal year in which the income is claimed to be taxable to the beneficiary rather than the date of the creation of the interest. See First Nat'l Bank, 39 B.T.A. 828 (1937). For a discussion of one's ability to disclaim income for income tax purposes, see Tritt, *Renunciation—Income Tax Problems*, U. So. Cal. 1955 Tax Inst. 519.

\(^{52}\) See notes 78-85 infra and accompanying text for the state law criteria.
ises is so great that this result cannot be predicted with confidence. Under the pre-Fuller test, federal gift tax policy underlying the taxation of disclaimers was subordinated to non-tax determinations of ownership under local law. Under the Fuller test, these tax policies are no longer so subordinated but may be given independent significance in determining the regulatory tests of acceptance and timeliness in future federal gift tax litigation. On the other hand, in the context of disclaimers of present interests, it may be argued that the potential divergence between federal gift tax policies and local law criteria of ownership may be at a minimum. If so, it seems unlikely the courts would be prone to deviate from state law due to the tradition and ease of relying entirely upon it.

When the federal criteria of acceptance and timeliness are applied to disclaimers of present interests in jurisdictions where the right to disclaim is controlled by statute, it seems more likely that an independent judgment will be made on whether the disclaimer is effective for federal tax purposes. This is because the motive behind a state disclaimer statute is likely to be the attainment of favorable tax consequences for its citizens whereas a common law determination of the effectiveness of a disclaimer is unlikely to be influenced by that motive. Thus, when a state statute allows disclaimers on a very permissive basis the tendency to invalidate such a disclaimer under the federal criteria, given independent significance by Fuller, would appear to be greater. However, when the purpose and effect of the state statute is not unduly permissive in allowing disclaimers there should be no more tendency to find a disclaimer made

53. See notes 45-48 supra and accompanying text.
54. See notes 27-28, 33, 40-41 supra and accompanying text.
55. The purpose of the gift tax was to prevent avoidance of the estate tax by a system of inter vivos conveyances of property of which a person had the beneficial use during his lifetime. Apparently the policy behind any limitation upon a person's right to disclaim would be that a person should not be permitted to disclaim an interest after having received some benefits from the interest or having the right to receive the interest for a long period of time.
56. E.g., the rights of creditors as against the disclaimant.
57. See note 71 infra and accompanying text.
59. See, e.g., N.C. Gen. Stat. § 29-10 (1965); Ohio Rev. Code Ann. § 2105.061 (Anderson Supp. 1966), where the purpose is obviously to allow disclaimers of intestate shares to avoid the result reached in Hardenbergh v. Commissioner, 198 F.2d 63 (8th Cir.), cert. denied, 344 U.S. 836 (1952). These statutes reflect the feeling that there are no sound reasons for distinguishing for tax purposes between persons who
under such a statute ineffective for federal tax purposes than one made in a jurisdiction where the right to disclaim is controlled by the common law.\textsuperscript{60}

It is unclear how the federal criteria of acceptance or timeliness will be applied to limit the ability to disclaim future interests. Due to the absence of state decisions, it is unknown what restrictions will be placed on the right to disclaim future interests under state law. Because most future interests are such that a beneficiary will not receive any tangible benefit\textsuperscript{61} from the interest for a substantial period of time, the effectiveness of disclaimers under state law are likely to depend solely on the issue of whether the lapse of time from the creation of the interest until the purported disclaimer is sufficient to constitute acceptance.\textsuperscript{62} In the property law context, there seems little necessity for forcing the beneficiary of a future interest to make a choice of accepting or rejecting such interest until he becomes entitled to possession. Thus, it is arguable that, under state law, the mere lapse of time would not be considered acceptance of a future interest.\textsuperscript{63} If this is the case, the policy underlying state property concepts, in this context, would be inconsistent with the motive behind the federal gift tax statute.\textsuperscript{64} The gift tax is aimed at taxing inter vivos gifts which allow the donor to avoid the imposition of an estate tax on property he has had the beneficial enjoyment of during his lifetime. When a gift is made, the donor’s estate avoids the imposition of an estate tax on such

\begin{itemize}
  \item take by intestacy and those who take by inter vivos conveyance or under a testamentary instrument. See note 41 \textit{supra} and accompanying text.
  \item Of course, the same reasoning should apply when disclaimers are made under the common law in states having a disclaimer statute which retains all rights to disclaim already existing under the common law. See, \textit{e.g.}, \textsc{Minn. Stat.} §§ 501.211(8), 525.532(8) (1965).
  \item Traditionally, the only benefits which are considered such for the purpose of determining whether acceptance has taken place are actual benefits, as distinguished from the benefit one derives from knowing, and thereby being able to plan accordingly, that he will receive an interest at some time in the future.
  \item There is no common law requirement that a disclaimer must be made within a reasonable time. However, within the confines of the doctrine of acceptance, time does have some relevance when determining the validity of a purported disclaimer under the common law since the lapse of a lengthy period of time will make the presumption of acceptance of a beneficial interest conclusive. See notes 78–80 \textit{infra} and accompanying text.
  \item State statutes which permit disclaimers of future interests on a very permissive basis, \textit{see, e.g.}, statutes cited note 58 \textit{supra}, would be more suspect that those wherein such rights were declared to be a part of the state common law. See notes 57–60 \textit{supra} and accompanying text.
  \item See note 55 \textit{supra}.
\end{itemize}
property on the theory that the gift was complete at its creation. To disclaim after an extended period of time on the theory that the gift is not yet complete would seem to be inconsistent with the theory under which the interest escaped imposition of an estate tax. It would also seem to subvert the basic policy behind these taxing statutes, particularly when the disclaimant, during this time, had the economic security of the right to receive the interest. Thus, in contrast with local law, it appears that federal criteria are likely to provide a more stringent limitation upon the ability of a beneficiary to effectively disclaim a future interest.

Even if effective and independent standards develop as to what criteria constitute acceptance and reasonable time under the federal regulations, state law would still be relevant, in that a disclaimer, to be effective for federal tax purposes, would have to be valid under local law. Consequently, the variances of local law would still lead to a disparity of results under the federal statute. There is little uniformity in state law as to what constitutes an effective disclaimer. Generally, under common law, a legatee or devisee has the right to disclaim and thus prevent ownership of the interest from vesting in him. But, with the exception of one jurisdiction, in the absence of statute, an heir taking under the intestacy laws does not have the common law option. The ownership of the interest vests in him immediately upon the death of the decedent. However, with at least eleven states having statutes permitting an intestate share to be disclaimed, there would seem to be a significant

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65. See note 21 supra and accompanying text.
67. However, all jurisdictions hold that an inter vivos gift is not complete until acceptance, thus allowing such a donee to effectively disclaim the gift.
split of authority on whether an intestate share may be dis-
claimed. Thus, it is clear that the ability of an heir to effect-
vively disclaim will depend on his domicile.

In addition, under common law there are at least three views
among the states as to whether and to what degree partial dis-
claimers will be permitted. Although some states do not give
them any effect, the majority allow partial disclaimers when
two gifts are severable, unless the testator’s intention is clearly
shown to be to the contrary. However, a few of the latter
hold that a gift of two or more items is prima facie one gift and
require evidence of the testator’s intention to the contrary before
giving effect to a partial disclaimer. Thus, even though the

§§ 15b-d, ch. 30, §§ 211-13 (1963); Ind. Ann. Stat. § 6-604 (1953); 
§ 474.490 (1956); N.Y. Deced. Est. Law § 87-a (Supp. 1966); N.C. Gen. 
Stat. § 29-10 (1966); Ohio Rev. Code § 2105.061 (Anderson Supp. 1966); 
§ 42-4-3 (1966); Wis. Stat. Ann. § 237.01(8) (Supp. 1967). See also 
La. Civ. Code Ann. art. 1014-31 (West 1952), which is in accord with 
prior statutory laws as interpreted by Aurienne v. Mt. Olivet, Inc., 153 
La. 451, 96 So. 29 (1923); Mont. Probate Code § 58 (1960).

Arguendo, state laws, providing that property passing by will 
vests at the death of the decedent, could produce a split of authority on 
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in the disclaimant. Hardenbergh v. Commissioner, 198 F.2d 63 (8th 
Cir.), cert. denied, 344 U.S. 836 (1952). This rationale would dictate 
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whether title had vested in the disclaimant.

73. See generally Annot., 91 A.L.R. 607 (1934).

74. See, e.g., Oglesby v. Springfield Marine Bank, 385 Ill. 414, 52 
N.E.2d 1000 (1944) (by implication); Bailey v. McLain, 215 N.C. 150, 1 
S.E.2d 372 (1939).

75. See, e.g., Brown v. Routzahn, 63 F.2d 914 (6th Cir. 1933); Town 
of Pepperell v. Whipple, 327 Mass. 688, 100 N.E.2d 844 (1951); In re 
Tisnower, 40 Misc. 2d 778, 244 N.Y.S.2d 169 (Sup. Ct. 1963) (by implic-
ation).

76. See Bacon v. Barber, 110 Vt. 280, 6 A.2d 9 (1939). Contra, 
federal regulation permits partial disclaimers,77 the validity of a partial disclaimer for federal tax purposes will still vary with the domicile of the disclaimant.

Further, although all states presume acceptance of a beneficial interest and hold that the lapse of a long period of time constitutes acceptance,78 there is no agreement on how long this period must be before the presumption becomes conclusive. For example, in one jurisdiction the presumption became conclusive after four months79 while in another the presumption was not conclusive after fourteen years.80 Further, no uniformity exists as to what words or conduct manifest an acceptance which will bar a subsequent disclaimer.81 It is generally held that acceptance may be by express words or declaration, or by other acts or conduct indicating an intention to accept the interest.82 However, there is a split of authority as to what will be the effect of possession of the interest,83 a written renunciation executed while the testator was alive,84 or a parol renunciation.85 Thus, when state law is more stringent than the federal criteria as to what constitutes acceptance, variance dependent on the domicile of the disclaimant is still possible.

Because of the above described disparities, and the federal law's dependence upon a disclaimer's validity under local law,

77. The federal regulation clearly authorizes partial disclaimers. Treas. Reg. § 25.2511-1(c) (1958). The only requirement is that the right to partially disclaim must be recognized under local law.
78. See 6 PAGE, WILLS § 49.8 (rev. ed. 1962); Annot., 93 A.L.R. 2d 15 (1964).
80. Seifner v. Weller, 171 S.W.2d 617 (Mo. 1943).
81. See generally 6 PAGE, WILLS § 49.9 (rev. ed. 1962); Annot., 93 A.L.R.2d 15 (1964).
82. Compare Blake v. Blake, 147 Ore. 43, 31 P.2d 768 (1934), with Seifner v. Weller, 171 S.W.2d 617 (Mo. 1943).
the application of federal tax law to a disclaimer will vary according to the taxpayer's domicile. It seems unfair to impose a federal tax on one person because the law in his state does not allow him to prevent title to an interest from vesting in him, while another person in an identical situation will not be subjected to the tax merely because his state permits him to prevent ownership from vesting. As the test for the validity of a disclaimer is no longer only ownership, the state law concepts which were determinative under the ownership test are no longer the sole criteria for determining the effectiveness of a disclaimer for federal tax purposes. Thus, such a difference in treatment for tax purposes is clearly arbitrary.\textsuperscript{86} Since the power of Congress to tax is not subject to state control when federal criteria are imposed,\textsuperscript{87} and since a federal revenue statute should be interpreted to produce a uniform application of a nation-wide scheme of taxation,\textsuperscript{88} the allowing of the vagaries of state property concepts to control a federal scheme of taxation, to the exclusion of existing federal criteria, would be unreasonable.\textsuperscript{89}

Disclaimers should be taxed in some uniform manner. To effectuate that end, two alternatives are available. First, disclaimers could be uniformly taxed under a control test, whether or not effective under local law. This would call for regulations specifying procedures for effectively disclaiming an interest.\textsuperscript{90}

\textsuperscript{86} Moreover, it is arguable that this is a violation of the due process clause. If the issue of whether a disclaimer is a "transfer" turns on the question of ownership, as under the test prior to the regulation, the consequences must vary with state law which determines ownership. However, when the federal regulations make the decision that taxing policies will no longer be subordinated to determination of ownership for nontax purposes under local law, it seems arbitrary to allow the tax consequences to continue to vary with such state law. The continuation of the requirement that the disclaimer be effective under local law, with its resultant disparities, would seem to have no reasonable relationship to these taxing policies. See note 55 supra; cf. United States v. Manufacturers Nat'l Bank, 363 U.S. 194, 200-01 (1960); Detroit Bank v. United States, 317 U.S. 329, 337-38 (1942).

\textsuperscript{87} See note 48 supra and accompanying text.

\textsuperscript{88} See Burnet v. Harmel, 287 U.S. 103, 110 (1932); Morgan v. Commissioner, 309 U.S. 78, 80-81 (1940) (by implication).

\textsuperscript{89} See Helvering v. Hallock, 309 U.S. 106 (1940); Klein v. United States, 283 U.S. 231 (1913).

It could be contended that there are good administrative reasons for allowing federal tax results to depend on local law since this relieves the necessity of both agencies determining, separately, the validity of a purported disclaimer. However, were the federal government to promulgate one uniform standard, it would seem likely that the states would conform thus relieving the necessity of this double determination.

\textsuperscript{90} See, e.g., ILL. REV. STAT. ch. 3, §§ 15b-d, ch. 30, §§ 211-13 (1961); MINN. STAT. §§ 501.211(4), 525.532(4) (1965).
clearly defining what would be deemed an acceptance, after which a disclaimer would not be permitted, and denoting a reasonable time in which to disclaim.

Second, even though effective standards as to what constitutes reasonable time and acceptance develop, if some dependence on local law remains, there would be a wide area wherein disparity of result is possible. Therefore, it would seem essential to issue regulations aimed at eliminating, as much as is feasible, the inconsistent result possible under the present regulations.

Apparently either of the above alternatives could be accomplished without legislative change. The Commissioner has already taken the difficult step of administratively overruling the judicial interpretation of “transfer” by establishing federal criteria based on ownership and control. This has received judicial approval.

IV. MINNESOTA LAW ON DISCLAIMERS

A. THE LAW PRIOR TO THE NEW DISCLAIMER STATUTE

Prior to the disclaimer statute, it was well settled in Minnesota that an attempted disclaimer of an intestate interest was a taxable transfer on the theory that acceptance was not necessary to the vesting of ownership. However, a testate interest

91. See, e.g., N.Y. DECED. EST. LAW § 87-a (Supp. 1966); N.C. GEN. STAT. § 29-10 (1966).

92. See, e.g., ALI FED. ESTATE AND GIFT TAX PROJECT § X11a, at 25 (Study Draft No. 2, 1966), where a period of fifteen months is set as the maximum time within which to disclaim. See statutes cited note 71 supra.

93. See notes 66-85 supra and accompanying text.

94. One thing that should be done is to eliminate the distinction created under state common law between testate and intestate interests as there is no reason for distinguishing the two situations. See note 41 supra and accompanying text.

The imposition of a maximum time limit beyond which a disclaimer would be ineffective would not eliminate disparity of result in states which impose a shorter time limit. Nor would disparity of result in states having stricter rules on what constitutes acceptance of an interest be eliminated. However, it would seem the states would eventually adopt the federal standards to insure their citizens as favorable treatment under the federal tax laws as the citizens of other states. Thus, it would seem that the promulgation of such regulations would eventually lead to a nationwide uniformity in the area.

95. See Kathryn S. Fuller, 37 T.C. 147 (1961).


could be disclaimer without creating a taxable transfer, accept-
ance being held to be indispensible to the vesting of ownership
in a devisee or legatee. Further, the donee of an inter vivos
gift could disclaim his interest by virtue of the Minnesota rule
that a gift is not complete until accepted by the donee. Moreover,
it appeared that partial disclaimers were effective. One
case indicated that the acceptance of a portion of an interest
coupled with a contemporaneous disclaimer of the remainder
would not be an acceptance of the entire interest. Accept-
ance, however, of the entire interest would seem to bar subse-
quent disclaimer thereof.

Although it was clear which interests could be disclaimed,
only one case considered what constituted an acceptance which
would bar an attempted, subsequent disclaimer. The case held
that acceptance of an interest may be expressed in words or may
be inferred from conduct other than words. The court relied
specifically upon the conduct of the beneficiary in taking posses-
sion and maintaining the property. Unfortunately, due to the
ease with which the court was able to find acceptance on its
facts, this case was of little assistance in formulating a well-
defined test as to what constitutes acceptance in Minnesota. In
addition, there is no case law in Minnesota on what would be a
reasonable time after which the presumption of acceptance be-
comes conclusive. The Minnesota State Tax Department Inheri-
tance and Gift Tax Regulations are of no assistance. They left
the question to the courts by merely stating that a disclaimer or
renunciation of an interest would be given tax effect if the dis-
claimer was in accord with, and effective under Minnesota law,
and was made within a reasonable time after the disclaimant
learned of the interest.

B. THE NEW DISCLAIMER STATUTE

The statute is of considerable value as it improves, clari-
ifies, and supplements prior Minnesota law in the disclaimer area.

98. Hilton v. Probate Court, 143 Minn. 77, 172 N.W. 902 (1919); see
Brown v. Routzahn, 63 F.2d 914 (6th Cir. 1933).
99. See Werner v. Miller, 248 Minn. 75, 78 N.W.2d 63 (1956);
Davis v. Kuck, 93 Minn. 262, 101 N.W. 165 (1904).
100. Hilton v. Probate Court, 143 Minn. 77, 172 N.W. 902 (1919).
See Minn. Tax Dept. Gift & Inheritance Tax Regs. § 39 (1959), which
also recognizes the validity of partial disclaimers for state tax purposes.
102. Ibid. In addition to possession and maintenance, the city as-
sessed no taxes on the property after the creation of the interest.
It clearly defines which interests can effectively be disclaimed. Reversing the Hardenbergh rule, the statute provides that an interest in the estate of an intestate, if disclaimed under the statute, never vests in the disclaimant. In addition, the statute allows partial disclaimers, augmenting the meager Minnesota authority on the question. Further, in the event of disclaimer, the statute specifies with particularity who is to succeed to a disclaimed interest if no disposition is provided for by the creating instrument, and is also helpful in specifying the circumstances under which a fiduciary for an incompetent beneficiary may disclaim on behalf of the beneficiary. Moreover, the statute sets out with specificity certain procedures to be followed in disclaiming interests and insures that disclaimers made in compliance with the statute will be given tax effect for state tax purposes by amending two sections of the gift and inheritance tax statutes.

Although the statute in many respects is carefully drafted, it has numerous defects which create serious problems in its interpretation. The statute specifically bars an insolvent beneficiary...
from disclaiming under the statute. But, since there is no case law on the question in Minnesota and the statute specifically reserves all valid means of disclaiming an interest under the common law, the question of whether an insolvent beneficiary may disclaim an interest outside the scope of the statute remains unsettled. However, this proviso is sufficient enough expression of legislative intent to allow the courts, in a disclaimer situation, to protect creditors by holding that insolvent beneficiaries are not allowed to disclaim interests even outside the statute.

Unfortunately, the retention of all other valid means of disclaiming an interest under the common law would seem to

114. Minn. Stat. §§ 501.211(6), 525.532(6) (1965). Both subdivisions provide: "The right to disclaim otherwise conferred by this section shall be barred if the beneficiary is insolvent at the time of the event giving rise to the right to disclaim. . . ."

Since a beneficiary may disclaim any interest under Minn. Stat. §§ 501.211(2), 525.532(2) (1965), it seems the "event giving rise to the right to disclaim" would be the creation of the interest for those disclaimable under § 501.211, and the death of the creator of the interest for those disclaimable under § 525.532. Thus, it seems that intervening creditors are not protected, for a beneficiary would not be barred from disclaiming under the statute by these subdivisions if he became insolvent after the event giving rise to the right to disclaim. Apparently, however, such a beneficiary would still be barred under the common law from disclaiming under these circumstances. See note 117 infra and accompanying text.


116. It could be contended that the statute itself bars a disclaimer by an insolvent beneficiary under the common law because this right as given in subdivision 9, and subdivision 6 bars any right of an insolvent beneficiary to disclaim under the statute. However, subdivision 8 merely retains any right to disclaim existing apart from the statute. The proper interpretation would seem to be that the right to disclaim apart from the statute is allowed rather than "conferred by this section" and thus, subdivision 6 is no bar to such a disclaimer.

117. The other jurisdictions are split on the question of whether an insolvent beneficiary may disclaim to the detriment of his creditors. Compare Schoonover v. Osborne, 193 Iowa 474, 187 N.W. 20 (1922), with In the Matter of Estate of Kalt, 16 Cal. 2d 807, 108 P.2d 401 (1941). However, the trend is toward protecting the rights of creditors, and most state disclaimer statutes bar insolvent beneficiaries from disclaiming. See statutes cited note 71 supra.

Further, it would seem absurd to say a beneficiary may not disclaim under the statute, but may disclaim under the common law by merely allowing the time limit for a valid disclaimer under the statute to run or even by disclaiming in a manner not in conformity with the statute during such time. This makes sense only if the legislature does not mind if insolvent beneficiaries disclaim to the detriment of their creditors, but consider such conduct reprehensible enough that they do not want to legislatively sanction it.

preserve the *Hardenbergh* distinction for disclaimers attempted outside the scope of the statute. ¹¹⁰ Although the inequity of *Hardenbergh* is somewhat alleviated by the statute, there is no valid reason for preserving this distinction even for disclaimers attempted outside the statute. ¹²⁰ Thus, some provision reversing the Minnesota rule that title to an intestate share vests immediately upon the death of the decedent ¹²¹ would have been appropriate.

The most obvious defect is that the disclaimer statute says nothing about the effect of an acceptance of the interest upon the beneficiary’s ability to subsequently disclaim that interest. Thus, a question of serious consequence arises as to whether one who, either before or after becoming a beneficiary under the statute, has manifested acceptance of an interest can later change his mind and disclaim, if he does so within the period permitted by the statute. It could be argued, through a literal reading of the statute, that one who has already accepted a particular interest may still effectively disclaim such interest under the statute. Subdivision 2 provides that “a beneficiary may disclaim *any interest* . . . by filing a disclaimer . . .” ¹²² in con-

¹¹⁹. *Arguendo*, the statute also reverses the *Hardenbergh* rule as to disclaimers attempted outside the statute. Subdivision 5 provides that “an interest of any nature in or to the estate of an intestate may be disclaimed, refused or disclaimed as herein provided without ever vesting in the disclaimant.” It could be argued that disclaimers outside the statute are provided for in subdivision 8 and therefore the *Hardenbergh* rule is reversed even for those disclaimers. However, the right to disclaim outside the statute already existed prior to the enactment of the statute, and subdivision 8 merely retains this right. See note ¹¹⁶ supra. Thus, it would seem the proper interpretation is that these rights were not “herein provided” within the meaning of subdivision 5.

Further, it could be argued that the treatment of intestate shares within the statute expresses a legislative intention to make a disclaimer of an intestate share as available as the disclaimer of interests created by will or inter vivos conveyance. In light, however, of the long standing rule that an interest created by intestacy vests immediately in an heir, a Minnesota court would still hold the disclaimer to be a taxable transfer. See note ⁹⁷ supra and accompanying text.

Moreover, even if the Minnesota court were to allow the disclaimer tax effect for state tax purposes, there is a possibility that the disclaimer would not be effective for federal tax purposes as the federal regulations specify the beneficiary must have a “right to completely and unqualifiedly refuse to accept ownership of the property transferred . . .” Treas. Reg. § 25.2511-1(c) (1958). *But see* note ⁴² supra, for reasoning which would indicate that the hypothetical determination of the Minnesota court would be controlling.

¹²⁰. See authorities cited note ⁴¹ supra.
¹²¹. See note ⁹⁷ supra and accompanying text.
formity with the statute. Since subdivision 2 clearly says "any interest" may be disclaimed and the statute contains no qualification regarding acceptance, it could be argued that even if an interest has already been accepted, this does not take it out of the plain meaning of the words "any interest." However, to fit within the meaning of subdivision 2, three conditions must be met: the disclaimant must be a "beneficiary" within the meaning of subdivision 1(a);123 the method such beneficiary employs to effectuate his disclaimer must be a "disclaimer" within the meaning of subdivision 1(c);124 and what is attempted to be disclaimed must be an "interest" within the meaning of subdivision 1(b).125 It is taken as given that he has a qualified interest and has accepted such interest. To show conformity with the other two conditions, it could be argued that the words defining a beneficiary as "any person entitled, but for his disclaimer, to take an interest . . ." mean nothing more than that a person is a beneficiary when entitled to take an interest if his disclaimer is not effective. Assuming he is a beneficiary, the only question is whether the interest was disclaimed by a method which is a "disclaimer" within the meaning of subdivision 1(c), defining such disclaimer as "a written instrument which declines, refuses, releases, renounces or disclaims an interest which would otherwise be succeeded to by a beneficiary . . ."126 It could be contended that a disclaimer executed by a person who has already accepted an interest falls within the meaning of "releases," since the term arguably denotes, in the context of estates in property, the giving up of an interest in the form of conveyance.127 Thus, since the acceptance of an interest produces ownership and there must be ownership of an interest before it can be surrendered, the word "release" provides a method by which a person may disclaim an interest within the meaning of subdivision 1(c) even after acceptance. Therefore, on the basis of the above reasoning, a person who has accepted an interest may, if within the time permitted by the statute, effectively disclaim such interest under the statute.128

123. He may qualify as a beneficiary under either MINN. STAT. § 501.211(1) (a) (1965) or MINN. STAT. § 525.532(1) (a) (1965).
124. MINN. STAT. §§ 501.211(1) (c), 525.532(1) (c) (1965).
125. MINN. STAT. §§ 501.211(1) (b), 525.532(1) (b) (1965).
127. The statute treats the doctrine of acceptance positively in subdivision 6 by enumerating acts of acceptance which will bar an insolvent beneficiary from subsequently disclaiming under the statute. It could be argued that this, coupled with the silence of the rest of the statute on the question of acceptance, infers that the doctrine of acceptance is
But there are three serious defects in this analysis. First, it is arguable that a person who has already accepted an interest can not become a beneficiary within the meaning of subdivision 1(a). The language "any person entitled, but for his disclaimer, to take an interest..." support this conclusion. A person who has already accepted an interest is not a person entitled to take an interest but a person who has already taken the interest. Since the legislature very likely contemplated the time-event sequence of a person becoming entitled to receive an interest and then refusing to accept such interest, it probably intended that the words "entitled to take" would refer to a person who has not already taken the interest. Thus, it seems a person who has accepted an interest prior to becoming entitled to take such interest could never become a beneficiary, and a person who has already become a beneficiary can no longer continue as one after his acceptance of the interest.129

Second, the definition of "disclaimer" in subdivision 1(c) in referring to "an interest which would otherwise be succeeded to by a beneficiary," seems inapplicable to an interest which has already been succeeded to by a person as a result of his prior acceptance of the interest. Therefore, the disclaiming of an in-

130. However, at the end of subdivision 6 the word "beneficiary" seems to be used to refer to a person who has already manifested acceptance of an interest. From this, it could be argued that a person may still be a "beneficiary" after acceptance of an interest. But, it seems the purpose of the sentence is to make explicit the principle that the performance of any one of the enumerated acts will bar even a person entitled to disclaim under the statute, whether or not such conduct would be deemed to be an acceptance. The use, therefore, of "beneficiary" in this context is not sufficient to overcome the sound reasons for construing the statute to mean that a person may not be a beneficiary of an interest after he has accepted it.

Notice also that the word "beneficiary" is again used inconsistently in subdivision 7, as it seems to refer to a person who has already disclaimed his interest and thus is no longer entitled to take such interest. 131. Minn. Stat. §§ 501.211(1)(c), 525.532(1)(c) (1965).
terest already accepted could not be a proper disclaimer under the statute as it is not a “disclaimer” as defined in subdivision 1(c).

Third, due to the fact the definition of disclaimer would appear inapplicable to an interest already accepted, it makes more sense to interpret the word “releases” in the context of subdivision 1(c) as meaning releases a right to succeed to an interest rather than releases an interest which already has been accepted. Besides denoting the giving up of an interest in the form of a conveyance, a release commonly denotes the conveyance of a right possessed. Thus, it is reasonable to construe “releases” as meaning the giving up of a right to accept the interest. Further, due to the fact the word “releases” appears in a conjunctive listing with four other words denoting methods of refusing to accept an interest, to interpret it in any way other than as a release of a right to accept or succeed to a interest would do violence to the context in which the word appears. Moreover, since a disclaimer is generally thought to be an act by which a person refuses to accept an interest, it would be inconsistent to construe the word “releases” in such a way as to allow a person to refuse to accept an interest which he has already accepted.

Hence, under what seems the better construction of the statute, there can be no effective disclaimer of an interest under the statute once a person has manifested acceptance of an interest even though the disclaimer is attempted within the time period permitted by the statute.

Further, even if the two foregoing interpretations were entitled to equal weight, there are sound policy reasons for construing the statute to not allow a person to effectively disclaim an interest after its acceptance. First, it would seem unwise to interpret a statute to completely overrule the well recognized common law doctrine of acceptance on such a literal reading of the statutory language; a more explicit mandate from the legislature should be required to reach such a result. A statute which can, on the latter interpretation, be so easily reconciled with existing common law doctrine surely should be read to give ef-

132. See ibid.
134. See note 1 supra and accompanying text.
135. Note the use of “release” in subdivision 7 where it clearly denotes the giving up of an interest in the form of a conveyance. However, it is in a conjunctive listing with two words having that meaning and thus it should be construed in that context.
fect to such doctrine.

Second, to adopt the former interpretation of the statute would clearly bring Minnesota disclaimer doctrine into direct conflict with the existing federal law as to what constitutes an effective disclaimer for federal tax purposes.\(^{136}\) Although there is no well developed federal doctrine of what constitutes acceptance,\(^{137}\) there cannot be an effective disclaimer of an interest for federal tax purposes after its acceptance, regardless of the effectiveness of such disclaimer under the local law.\(^{138}\) It would seem that, since there is no compelling or even sound policy reason for allowing a person to disclaim an interest he has already accepted,\(^{139}\) the policy of creating uniformity in the law should be accorded some weight.

Assuming there can be no effective disclaimer of an interest after its acceptance, the statute is silent regarding the effect of acceptance of a particular benefit on a subsequent disclaimer of related benefits. For example, if a beneficiary is entitled to income from a trust for life, paid quarterly, it is unclear what the effect of an acceptance of the first quarterly installment will be upon his right to disclaim subsequent installments. The question presented is whether his conduct manifests an acceptance of merely that payment or should be construed as an acceptance of the entire right to income for life, thus preventing a subsequent disclaimer. Of course it may be contended only the first payment was accepted and this does not constitute acceptance of future payments. However, at the time the first payment was accepted there was no indication the beneficiary had any intention of not accepting the entire interest.\(^{140}\) Therefore, since ac-

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\(^{137}\) See notes 42-65 supra and accompanying text.

\(^{138}\) Kathryn S. Fuller, 37 T.C. 147 (1961); Treas. Reg. § 25.2511-1(c) (1958). See notes 42-65 supra and accompanying text.

\(^{139}\) It could be contended that refusing to allow disclaimers tax effect after acceptance could produce harsh results if the beneficiary has accepted the interest without knowledge of the actual facts. However, since intention to take the interest and all the surrounding circumstances are considered in determining whether acceptance has occurred, it is submitted that no such results will occur.

\(^{140}\) See Kathryn S. Fuller, 37 T.C. 147 (1961). In Fuller, the beneficiary was precluded from disclaiming, tax-free, subsequent payments of trust income because she had already accepted some previous payments, and was thereby deemed to have accepted the bequest of the trust income. Her acceptance was imputed from the fact that the income payments were applied to debts of the corpus of the trust which would increase the amount of her income derived from the trust and thus were for her ultimate benefit. But see Brown v. Routzahn, 63 F.2d 714 (1933).
ceptance of a gift is in accord with common sense and experience, such action should be deemed sufficient to show acceptance of the right to income for life, absent evidence of a prior or contemporaneous disclaimer. Moreover, it is reasonable to view conduct manifesting an acceptance of a property interest as conduct whereby a beneficiary acts as the owner of such property. Ordinarily property owners do not have to assert each and every one of the severable rights which they possess in respect to their property in order to act like owners. Accordingly, when it appears that a person has accepted an interest in an asset or fund of assets, such action should be construed as an act of dominion over the property sufficient to manifest an intention to accept the whole rather than just the part over which the actual act of dominion was exercised.

The most significant defect in the statute is that it fails to make clear when the six month period within which a disclaimer is permitted begins. A disclaimer under the statute must be filed within six months after the death of the person creating the interest or the effective date of the instrument creating the interest unless the beneficiary is not “finally ascertained” or the interest has not become “indefeasibly fixed both in quality and quantity.” But in any case the interest must be dis-


142. It is arguable that the presumption of acceptance should be given probative force as proof of acceptance at the time the first payment is received. In Minnesota a presumption has been held to be entitled to no probative force in the face of evidence to the contrary. Kath v. Kath, 238 Minn. 120, 55 N.W.2d 691 (1952). Being merely a device to shift the burden of proof to the person taking a position contrary to the presumption, it drops out of the case when some evidence to the contrary is introduced. Id. at 123-24, 55 N.W.2d at 693-94; Roop v. Greenfield, 352 Pa. 233, 42 A.2d 614 (1945); McCORMICK, EVIDENCE § 313 (1954); 9 WIGMORE, EVIDENCE § 2491 (3d ed. 1940). However, in the absence of a contemporaneous disclaimer, at the time the first payment was accepted there was no contrary evidence. Since this particular presumption is taken from experience and common sense rather than being a presumption raised for merely procedural convenience, see McCORMICK, EVIDENCE §§ 307-18 (1954); 9 WIGMORE, EVIDENCE § 2491 (3d ed. 1940), it seems it should be given probative force at the time the first income payment is accepted as long as there is no evidence to the contrary. 143. Other state disclaimer statutes, with the possible exception of Illinois, impose an absolute time limit which begins to run at the death of decedent or some easily identifiable event such as the time when the interest is admitted to probate or the time the letters of administration are issued. See statutes cited in note 71 supra.

144. MNNN. STAT. §§ 501.211(3), 525.532(3) (1965).

145. Ibid.
claimed within six months after the event which causes the disclaimant to become "finally ascertained" as a beneficiary and his interest to become "indefeasibly fixed both in quality and quantity."146

The meaning of the phrase "finally ascertained as a beneficiary" is unclear. It may refer to final ascertainment of whether the beneficiary will ultimately take something, in which case no holder of a conditional interest could be finally ascertained. Or it may refer to final identification of the individual as a taker of some interest, no matter how indefinite. Subdivision 1(a) of the statute defines a beneficiary as a person "entitled, but for his disclaimer, to take an interest . . . ." Since subdivision 1(b) defines "interest" so broadly as to include interests in property which are obviously conditional,147 it appears that the second construction is proper. Thus, it seems probable that the phrase appears in the statute merely to cover situations in which it cannot be determined whether a particular person is a beneficiary148 or in which the beneficiary is not yet in existence.149

The words "indefeasibly fixed both in quality and quantity," generate more difficulty since they have no well understood, fixed meaning. The proposed Minnesota Inheritance Tax Regulations take the position that an "interest" is "indefeasibly fixed both in quality and quantity" when it is "indefeasibly vested."150 However, since the words "indefeasibly vested" have a well defined legal meaning, the legislature would have inserted "indefeasibly vested" in the statute had this been the intended meaning. The phrase "indefeasibly fixed both in quality and quantity" refers to an attribute which an interest must possess before the six month period within which a person may effectively disclaim begins to run. The word "interest," as defined in the statute, clearly refers to interests in both real and personal property.151 But since most personal property concepts

146. Ibid.
147. Minn. Stat. §§ 501.211(1)(b), 525.532(1)(b) (1965). The words "any estate in any such property" clearly make the definition of "interest" inclusive of conditional interests.
148. An example would be where litigation over an interest makes undeterminable whether or to what extent a person will become a beneficiary.
149. An example is the class gift situation where one born into the class is entitled to take as a beneficiary.
were derived from real property law, it would seem reasonable to use real property concepts when attempting to determine the meaning of "indefeasibly fixed both in quality and quantity." Accordingly, an interest is "indefeasible" when it is not subject to being changed by a condition precedent or subsequent. Something is "fixed" when it is set or decided upon. Therefore, "indefeasibly fixed both in quality and quantity" should mean that the "quality" and "quantity" of the interest are not subject to being changed due to any condition. Thus, the basic question is the meaning of the words "quality" and "quantity."

The word "quality" denotes the characteristics, elements, or attributes a thing possesses; it refers to the basic nature of a thing. Thus, when referring to the word "interest" in a legal context, "quality" should mean the legal attributes an interest possesses. In the law of property, "quality" traditionally refers to the period when the right of enjoyment of an estate in property is conferred upon the owner, and to the manner in which the owner's right of enjoyment is to be exercised. Under this construction, no contingent interest would be "indefeasibly fixed" as to "quality" because the period when the right of enjoyment would be conferred would not be certain. Further, any present or future vested interest subject to divestment on condition subsequent would not be "indefeasibly fixed" as to "quality" because the manner in which the beneficiary has the

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152. Further, the statute itself lends support to this interpretation by using the words "or any estate in any such property" to refer to both interests in real and personal property. Ibid.


154. See National Candy Co. v. Miller, 160 Fed. 51, 55 (8th Cir. 1908); WEBSTER'S NEW WORLD DICTIONARY 549 (Coll. ed. 1964).

155. WEBSTER'S NEW WORLD DICTIONARY 1189 (Coll. ed. 1964).

156. Ibid.

157. The word "period" means any point, space, or division in time. BLACK, LAW DICTIONARY 1297 (4th ed. 1951). In the present context, it would seem to mean either the length of time specified or the point in time when enjoyment of the interest will commence, e.g., at the end of a prior estate in the interest, rather than a particular day of commence-

158. Examples of the manner in which the right may be exercised are in fee, tenancy in common, or joint tenancy. BLACK, LAW DICTIONARY 1406 (4th ed. 1951); 2 JOWITT, THE DICTIONARY OF ENGLISH LAW 1451 (1959). See RESTATEMENT, PROPERTY § 9 (1936); cf. Gross v. Keystone Point, Inc., 115 So. 2d 426 (Fla. 1959); Dustin v. Brown, 297 Ill. 499, 130 N.E. 859 (1921); Richardson v. VanGundy, 271 Ill. 476, 111 N.E. 494 (1916).
right of enjoyment can be changed. However, present and future interests which are neither contingent nor vested subject to divestment on condition subsequent would be "indefeasibly fixed" as to "quality" because the period of the right of enjoyment and the manner in which it will be enjoyed would be certain.

The word "quantity," in the property context, denotes the degree or the time of continuance of an interest. This is susceptible of two different interpretations. First, it could denote the actual time of continuance of an interest. Under this interpretation no interest, other than a fee simple, would ever be "indefeasibly fixed" as to "quantity" because the time when the person holding the interest is going to die is never certain. Second, it could be interpreted to mean maximum potential duration of an interest. Thus, an interest would be "indefeasibly fixed" as to "quantity" when it is finally determined that a beneficiary has a particular interest and that his right to such interest is not subject to condition precedent or subsequent which would terminate his interest prior to the end of the maximum potential duration of such interest.

159. Examples are a joint tenancy or class gift subject to open. However, this interest would seem to be "indefeasibly fixed" as to "quality" since the period when the right of enjoyment is conferred on the owner is set as the time from the creation of this interest until the happening of the condition subsequent. See Richardson v. VanGundy, supra note 158.

160. Bouvier, Law Dictionary 1007 (Baldwin ed. 1948); 2 Jowitt, op. cit. supra note 158, at 1452; cf. Bouvier, op. cit. supra at 364. The possibility of death would not prevent a fee simple from being indefeasibly fixed as to quantity, because on death the interest passes to the beneficiary's estate.

However, under this construction a fee simple determinable might not be "indefeasibly fixed" as to "quantity." The fact that the fee simple is subject to divestment if the restriction put on the use of the interest in the conveyance by the original grantor is violated may prevent the interest from being indefeasibly fixed as to quantity because the actual time of enjoyment cannot be finally determined.

162. See 1 Jowitt, op. cit. supra note 158, at 735, which indicates that quantity is synonymous with the extreme limit of the duration of an interest. See also Minn. Stat. § 500.01 (1965), which appears to indicate that "quantity" refers to the type of interest created rather than the actual time it will continue.

163. Cf. Dustin v. Brown, 297 Ill. 499, 130 N.E. 859 (1921), and Richardson v. VanGundy, 271 Ill. 476, 478, 111 N.E. 494, 496 (1916), which use "quantity" as denoting proportional share of the interest. Defining "quantity" in this manner would mean an interest would not be "indefeasibly fixed" as to "quantity" until its value was determined—the quantitative share. See Richardson v. VanGundy, supra at 478, 111 N.E. at 496.

However, both cases deal with the partition of remainder interests
To determine the meaning of "indefeasibly fixed both in quality and quantity," it is necessary to construe those words in light of their relationship to the sections of the statute providing for the disposition of the disclaimed interest. Subdivision 5 of the statute provides that if the instrument creating the interest does not contain a provision disposing of such interest in the event of disclaimer, a disclaimed interest shall be distributed as if the disclaimant had died immediately prior to the "death or other event which causes him to become finally ascertained as a beneficiary and his interest to become indefeasibly fixed both in quality and quantity...." If a beneficiary disclaims after his interest has become "indefeasibly fixed both in quality and quantity," there is no problem. However, if the beneficiary disclaims before the event which causes his interest to become so fixed, difficulties arise.

For example, suppose the common situation where H creates a trust giving W income for life, remainder to S and D or the survivor of the two for life, remainder per stripes in fee to the issue of S and D then living at the death of the survivor of S and D. W disclaims. If "quantity" is construed as meaning the actual time of continuance of an interest, W's life estate would not be indefeasibly fixed as to "quantity" at any time prior to her death. The beneficiaries of the income interest could not be ascertained until her death since the beneficiaries are to be determined as if she had died immediately before the event which caused her interest to be "indefeasibly fixed both in quality and quantity," and her death is the only event which would make her interest indefeasibly fixed as to "quantity." The trustee would not distribute any income since, if S or D should predecease W, he would be liable to the survivor of S or D for all payments of income made to the one predeceasing W. This interpretation leads to the absurd result of the trustee not distributing any income until the death of W. Since the legislature

in the class gift situation where additional children, by birth, would become members of the class. Thus, since the class gift situation is unique and the court was obviously straining to protect the shares of unborn children, it would seem this use of "quantity" is only applicable to that situation. Further, even though the words "indefeasibly fixed both in quality and quantity" were apparently borrowed from the Illinois disclaimer statute, see Ill. Stat. ch. 3, §§ 15b-d; ch. 30, §§ 211–13 (1963), the words of the Minnesota statute should be construed in light of their meaning under the Minnesota law of property. Hence, since there is no indication that Minnesota law attaches this unusual meaning to the word "quantity," it seems the ordinary property law definition of "quantity" would be adopted.

can be presumed not to have intended a result that is absurd, impossible of execution, or unreasonable, the statute should be construed to avoid such a result. Thus, the proper interpretation of “quantity” would be the alternative posed above, i.e., that an interest is indefeasibly fixed as to “quantity” when it is finally determined that a beneficiary has a particular interest and that his right to that interest is not subject to condition precedent or subsequent which would terminate his interest prior to the end of the maximum potential duration of such interest.

The most difficult problem is that subdivision 5, when read in connection with any of the above proposed definitions of “indefeasibly fixed both in quality and quantity,” would seem to prevent disposition of any interest disclaimed prior to the time when the beneficiary’s interest becomes so fixed. For under subdivision 5, the disposition must be made to those persons who are beneficiaries at the death of the disclaimant, who is deemed to have died just before the event “which causes him to become finally ascertained as a beneficiary and his interest to become indefeasibly fixed both in quality and quantity...” However, since he has disclaimed his interest, it would appear that no event can now make his interest so fixed. Thus, the beneficiaries could never be determined and no disposition of the interest would ever be possible. This leads to the conclusion that “indefeasibly fixed in both quality and quantity” must be given a restrictive meaning to make a beneficiary’s interest so fixed when he becomes finally ascertained as a beneficiary. Otherwise it could not be ascertained who will take in the event of disclaimer whenever a beneficiary disclaims an interest prior to the event which causes his interest to become so fixed. This


166. See notes 160-62 supra and accompanying text.

See also In the Matter of Estate of Aylsworth, 74 Ill. App. 2d 375, 219 N.E.2d 779 (1966), where the Illinois Supreme Court, construing the words “indefeasibly fixed both in quality and quantity” in the Illinois disclaimer statute, assumed that a present right to the income of a trust was “indefeasibly fixed” in “quality and quantity” even though the trustee had the right to withhold such income payment in his discretion. 167. *Minn. Stat.* §§ 501.211(5), 525.532(9) (1965). (Emphasis added.)

168. See notes 147-49 supra and accompanying text.

169. Further, it could be contended that unless the phrase is given a restrictive meaning, any distribution of an interest disclaimed prior to the time it becomes “indefeasibly fixed both in quality and quantity” would result in the disclaimant being deemed to have made a transfer subject
reasoning leads to the conclusion that all beneficiaries have six months from the time they become finally ascertained to disclaim their interests.\textsuperscript{170}

One further problem with the phrase is worthy of consideration. Its application to a beneficiary possessing the power to terminate his own interest is not clear.\textsuperscript{171} If such an interest is not "indefeasibly fixed both in quality and quantity" within the meaning of the statute, a tax free disclaimer of such an interest is allowed at any time prior to its termination. It is submitted that such a construction would allow disclaimers on an undeniably permissive basis. No justification is apparent for allowing a person such a long period within which to disclaim on the rationale that his interest is not "indefeasibly fixed both in quality and quantity" when he has it within his power to remove this condition from his interest. To avoid such a result, an interest "indefeasibly fixed both in quality and quantity" except for conditions whose legal effect is within the control of the beneficiary, should be deemed "indefeasibly fixed both in quality and quantity" within the meaning of the statute.\textsuperscript{172}

Unless the period within which a beneficiary can effectively disclaim an interest is found to be six months,\textsuperscript{173} the statute as drawn leads to many undesirable consequences. Regardless of how the words are interpreted, the requirement that an interest be "indefeasibly fixed in both quality and quantity" before the time period within which a person may effectively disclaim be-

to the gift tax. On the federal level, it could be argued that since the person receiving the property did not receive it as the taker in the event of disclaimer, he must have received it by transfer. Thus, since he did not receive it through the process created by the original grantor, he must have received it by a transfer from the disclaimant. Cf. William L. Maxwell, 17 T.C. 1589 (1952).

However, on the state level there is another problem. One section of the disclaimer statute, MINN. STAT. § 292.031 (1965), provides that a person disclaiming pursuant to the statute will not be deemed to have made a transfer for state gift tax purposes. Thus, on the above reasoning it is determined the property was received by transfer and yet there is no person who could have made the transfer.

170. This effectively writes the words "indefeasibly fixed in both quality and quantity" out of the statute. Although all words should be given independent significance whenever possible, this must be done, if subdivision 5 is interpreted as above, in order to avoid results which are absurd and impossible of execution. See note 165 supra.

171. An example is where a donee is given a life estate with power to terminate his estate by the exercise of a power of appointment or a power to appoint the property by deed to the remaindermen.


173. See note 170 supra and accompanying text.
gins to run permits disclaimers on a broadly permissive basis. It is difficult to justify the allowance of a tax free disclaimer long after the creation of an interest. The justification for allowing disclaimers tax effect seems to be that it is unjust to force a man to take something he does not want and then attach tax liability when the disclamant does not in fact obtain possession of, or any direct benefit from, the property. However, the liberality of this statute allows a beneficiary much more than the right to disclaim an interest. He has the benefit of waiting for a long period to see whether he needs the interest before deciding whether to disclaim. Thus, he has control over the property which warrants the imposition of a tax. Yet this statute allows him the economic security of having the interest at his disposal and also the tax advantage of being able to eventually disclaim and pass the interest tax free to, in most instances, the natural objects of his bounty. The adoption of a set period of time within which to disclaim would allow a beneficiary to disclaim an interest without being subject to a tax; but it would also prevent him from exercising control over the interest for a prolonged period of time without being subjected to a tax on the exercise of such control.

Further, in the absence of a composition agreement finally determining state inheritance taxes payable on the interest, it is possible that the disclaimant would be in a position to control the state tax result for an unduly long period. If the high tax is paid, a refund of inheritance taxes would be required if the inheritance tax on the disclaimed interest, when passing to the taker in event of disclaimer, were less than the tax liability originally assessed on the assumption that the disclaimant would succeed to the interest. The state taxing authorities are entitled to some degree of certainty without undue administrative difficulties and there is no good reason for allowing disclaimers on such a permissive basis. Therefore, there appears no justification for allowing a person to control inheritance tax consequences for so long a period.

174. See notes 11-13, 23-25 supra and accompanying text.
175. See Minn. Stat. § 291.30 (1965), which provides that when the tax payable is not definite due to some contingency, the taxpayer has the option of paying the high tax or entering into a final agreement compromising the rate.
176. Minn. Stat. § 291.11(5) (1965). However, where the taxpayer enters into a composition agreement, see note 175 supra, and the person taking, whether or not he is the disclaimant, would be taxed at a higher rate than that settled upon in the agreement, there is no provision allowing the state to recover the tax lost.
Moreover, the statute brings Minnesota law into direct conflict with existing federal law as to what constitutes an effective disclaimer for federal tax purposes. Although there is no well developed federal doctrine as to what constitutes a reasonable time within which a person may disclaim, the Minnesota statute clearly allows beneficiaries, in many instances, to disclaim after what would be deemed an unreasonable time under federal law.\textsuperscript{177} Obviously, the interest in creating uniformity in the law should be given some weight.\textsuperscript{178}

C. Conclusions

Due to the conspicuous omissions from, and the confusing language of the legislation, the disclaimer statute creates many interpretive problems. Since it is unwise and unnecessary to wait for judicial interpretation of the statute and since certain objectionable features of the statute should be corrected, amendment of the statute is warranted. These amendments, at the very least, should make clear what part the common law doctrine of acceptance plays in relation to the statute and when the six month period within which a disclaimer will be permitted under the statute begins to run.\textsuperscript{179}

\textsuperscript{177} See Kathryn S. Fuller, 37 T.C. 147, 155 (1961); Treas. Reg. \$ 25.2511-1(c)(1958); notes 42-65 supra and accompanying text.

The "indefeasibly vested" test proposed by the state regulations, see note 150 supra and accompanying text, also seems to be in conflict with the federal law. For example, a contingent interest need not be disclaimed under this test, regardless of whether the beneficiary knows of the existence of the interest and no matter how long after the creation of the interest the contingency is removed, until six months after the removal of such contingency. In many instances, this could be a period longer than that which would be a reasonable time under the federal regulation since its time limit begins to run after knowledge of the creation of the interest is acquired.

\textsuperscript{178} Further, it is possible, due to the tax motivation behind the statute, that the federal taxing authorities would tend to disregard the fact that the disclaimer is effective under Minnesota law while applying a more strict interpretation of what will be deemed a reasonable time or constitute acceptance within the meaning of the federal regulation. This would result in according a less favorable treatment to Minnesota residents for federal tax purposes than to citizens of other states. See notes 51-65 supra and accompanying text.

\textsuperscript{179} For two other problems which seem to warrant attention, see notes 114-21 supra and accompanying text.

It could be contended that the sections of the statute which provide that disclaimer under the statute will be effective for state tax purposes should be repealed to allow a common law development of the tax result of such disclaimers. However, it appears that this would produce little limitation since the courts would probably find a disclaimer effective under the Minnesota law of property effective for state tax purposes. Further, this would produce some degree of uncertainty as to the
Proposed amendments to the statute were before the 1967 legislature but failed to pass. They were sponsored by the Minnesota Gift and Inheritance Tax Division, and were confined to amending the sections of the statute determining the state tax consequences of a disclaimer. They provided that, regardless of the effectiveness of the disclaimer under the disclaimer sections, there could be no effective disclaimer of an interest for state tax purposes after its acceptance and that an interest must be disclaimed within eighteen months after the beneficiary learns of the existence of such interest. These amendments would have clearly alleviated, on the state level, the major ills created by the statute. They would have avoided confusion by removing the necessity of having to construe, rationalize, and interpret the statute so as not to arrive at results which are clearly undesirable.

Even though it seemed desirable to adopt these amendments, one problem remained. The disclaimer sections were intended to create an effective disclaimer under local law which would then be effective for both federal and state tax purposes. It is questionable whether such a disclaimer would have been effective for federal tax purposes when it would be ineffective for state tax purposes.

Further, there is no justification for a state tax consequence of an attempted disclaimer under the statute. Thus, it seems amendment of the statute is the better solution.

180. Minn. H.F. 868, 870 (1967). Both bills were passed by the Minnesota House of Representatives March 7, 1967 and were referred to the Senate Taxes & Tax Laws Committee. However, the bills were never considered by the Committee.

181. Minn. Stat. §§ 291.11, 292.031 (1965). It is obvious that the department felt that its function was to police and administer tax laws, rather than the law of wills, trusts, conveyances, and the like, and thus confined the amendments to its area of expertise and responsibility.


183. See ULI Fed. Gift and Estate Tax Project § X11(a) at 24-25 (Nov. 1966 Draft), which also suggests that eighteen months be adopted as the maximum time within which the beneficiary of an interest may disclaim after acquiring knowledge of the interest without being subject to an additional tax.

184. See notes 173-78 supra and accompanying text.

185. At first glance it would appear that such a disclaimer would not be ineffective because it did not comply with the local law requirement of the federal regulation. This is so because the regulation requires only that a person be able to refuse to accept ownership of the interest under local law. Treas. Reg. § 25.2511-1(c) (1958). There is no evidence that the local law requirement also means that such disclaimers, to be effective for federal tax purposes, must be effective for state tax purposes. However, it seems unlikely that the federal taxing authorities would look upon a statutory right to disclaim which is ineffective for state tax purposes with much favor when determining whether it is
difference between the effectiveness of a disclaimer under the substantive law of property and under the state tax law when the purpose of the entire statute was originally tax oriented. Thus, all sections of the statute should be amended to effectuate consistency.

effective for federal tax purposes. Thus, it appears unlikely that such a disclaimer would fulfill the federal criteria for an effective disclaimer for tax purposes. See notes 57-65 supra and accompanying text.