

Counties, California, shall be eligible for price support.

(b) *States outside the commercial wheat-producing area.* Any producer in States outside of the commercial wheat-producing area shall be eligible for price support without regard to wheat acreage allotments in accordance with other regulations issued by Commodity Credit Corporation governing eligibility for price support. However, wheat produced in violation of a restrictive lease on Federally-owned land or produced on any newly irrigated or drained lands within any Federal irrigation or drainage project as provided in section 211 of the Agricultural Act of 1956 shall not be eligible for price support.

§ 421.3030 *Effect of unknowingly exceeding farm wheat acreage allotment; method of determination.* The wheat acreage on a farm shall not be deemed to be in excess of the wheat acreage allotment for the purpose of price support unless the operator knowingly exceeded such allotment. If the wheat acreage allotment is in fact exceeded, such allotment shall be considered as having been knowingly exceeded unless the operator of the farm establishes to the satisfaction of the county committee in accordance with paragraphs (a), (b), or (c) of this section that he has not knowingly exceeded his allotment and the determination of the county committee is approved on review by the State committee. The State administrative officer may act in behalf of the State committee with respect to review of determinations under paragraphs (a) and (b) of this section.

(a) *Erroneous notice of acreage allotment.* The wheat acreage allotment for the farm will not be considered to be knowingly exceeded in any case where through error in a county or State office the farm operator was officially notified in writing of a wheat acreage allotment for the 1958 crop which was larger than the finally approved acreage allotment, the farm operator or any producer on the farm, acting solely on the information contained in the erroneous notice, planted an acreage to wheat in excess of the finally approved acreage allotment, and where the other conditions of this paragraph are satisfied. The determination of eligibility for price support for the farm under the foregoing circumstances will be based on the acreage allotment contained in the erroneous notice, and if the acreage planted to wheat on the farm is adjusted to the allotment contained in the erroneous notice within the time limits for disposal of excess acreage as provided in 7 CFR 728.855, Wheat Marketing Quota Regulations for 1958 and Subsequent Crop Years (7 CFR 728.850 to 728.895; 23 F. R. 2549) and any amendments thereto, the farm will not be considered to be overplanted. Before the farm operator or any producer on the farm can be said to have relied upon the erroneous notice, the circumstances must have been such that he had no cause to believe that the acreage allotment notice was in error.

To determine this fact, the date of any corrected notice in relation to the time of planting; the size of the farm; the amount of wheat customarily planted; and all other pertinent facts should be taken into consideration.

(b) *Erroneous notice of measured acreage.* The wheat acreage allotment for the farm will not be considered to be knowingly exceeded in any case where (1) the lack of compliance was caused by reliance in good faith by the farm operator on an erroneous notice of measured acreage issued in accordance with applicable regulations; (2) neither the farm operator nor any producer on the farm had actual knowledge of the error in time to adjust the excess acreage in accordance with applicable regulations; (3) the incorrect notice was the result of an error made by an employee of the county or State office in reporting, computing, or recording the allotment crop acreage for the farm; (4) neither the farm operator nor any producer on the farm was in any way responsible for the error; and (5) the extent of the error in the erroneous notice was such that the farm operator would not reasonably be expected to question the acreage of which he was erroneously notified.

(c) *Failure to measure acreage or notify operator.* The wheat acreage allotment for the farm will not be considered to be knowingly exceeded in any case where through no fault of the farm operator or any producer on the farm, the wheat acreage was not measured or the farm operator was not notified of the measured acreage in time to dispose of the excess acreage prior to the final date for the disposition of excess acreage: *Provided*, That the excess acreage was relatively small and the farm operator establishes that because of the relative smallness of the excess and the unavailability to him of any recent measurements of the field acreages on the farm, he had no reason to believe the wheat acreage was in excess of the farm acreage allotment. Nothing in this paragraph shall affect any producer's liability for penalties on excess wheat determined under the Wheat Marketing Quota Regulations for 1958 and Subsequent Crop Years (7 CFR 728.850 to 728.895; 23 F. R. 2549), and any amendments thereto.

§ 421.3031 *Application for review and request for reconsideration.* Any producer who is dissatisfied with any determination with respect to compliance with his wheat acreage allotment may, within 15 days after the date of mailing to him Form MQ-24, "Notice of Farm Acreage Allotment and Marketing Quota", or Form MQ-93—Wheat, "Notice of Farm Marketing Quota and Farm Marketing Excess of Wheat", file a written application for review of such determination by a review committee: *Provided*, That such application for review is based on a determination which the producer has the right to have reviewed under 7 CFR 711.13, Marketing Quota Review Regulations as issued by the Secretary of Agriculture (7 CFR Part 711; 21 F. R. 9365), and amendments thereto. Unless application for review

is made within such 15-day period, such determination shall be final.

Issued this 18th day of June 1958.

[SEAL]

TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 58-4748; Filed, June 23, 1958;
8:48 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

PART 81—REGULATIONS RELATING TO ESTATE TAX

SUPERSEDE OF PART

CROSS REFERENCE: For supersede of this part, see Title 26 (1954), Chapter I, Part 20, *infra*.

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

[T. D. 6298]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

PURCHASE OF STOCK

On March 29, 1958, notice of proposed rule making regarding an amendment to the regulations under section 334 (b) (2) of the Internal Revenue Code of 1954 was published in the FEDERAL REGISTER (23 F. R. 2104). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the amendment set forth below is hereby adopted:

Section 1.334-1 (c) of the Income Tax Regulations (26 CFR Part 1) is amended by striking subparagraph (3) and inserting in lieu thereof the following:

(3) (i) Except as provided in subdivision (ii) of this subparagraph, in the case of a series of purchases of stock, the two-year period specified in section 334 (b) (2) (A) shall begin on the day following the earliest date which is the end of a period of twelve months or less within which the amount of stock required by section 334 (b) (2) (B) was acquired. For example, assume that 20 percent of the stock of corporation A is purchased on each of the following dates: April 1, 1956, June 30, 1956, September 30, 1956, December 31, 1956, and June 1, 1957. The two-year period shall begin on January 1, 1957. However, if the first purchase of 20 percent of the stock occurs on November 1, 1955 (instead of April 1, 1956), then the two-year period shall begin on June 2, 1957.

(ii) If a plan of liquidation is adopted on or before December 24, 1958, subdivision (i) of this subparagraph shall not apply and the rule of subdivision (iii) of this subparagraph shall apply unless the parent corporation elects to have the rule of subdivision (i) of this subparagraph apply. Such election shall be

made by the parent corporation either in a statement attached to its return (filed within the time prescribed for filing, including any extensions of time) for the taxable year within which such plan is adopted, or in a statement filed on or before September 22, 1958, with the district director with whom such corporation's return for such taxable year was filed. The election, once made, shall be irrevocable.

(iii) The rule referred to in subdivision (ii) of this subparagraph is as follows:

(a) In the case of a series of purchases of stock, the two-year period specified in section 334 (b) (2) (A) shall begin on the day following the date of the last such purchase if the amount of stock specified in section 334 (b) (2) (B) is purchased during the preceding twelve months.

(b) Application of the rule prescribed in (a) of this subdivision may be illustrated by the following example:

Example. Twenty percent of the stock of corporation A is purchased on each of the following dates: April 1, 1954, June 30, 1954, September 30, 1954, December 31, 1954, and April 1, 1955. Although 80 percent of the stock of corporation A had been purchased as of December 31, 1954, the date of the last transaction of the series of transactions described in section 334 (b) (2) (B) is April 1, 1955, and therefore the two-year period shall begin on April 2, 1955.

(Sec. 7805, 68A Stat. 917; 26 U. S. C. 7805)

[SEAL] RUSSELL C. HARRINGTON,
Commissioner of Internal Revenue.

Approved: June 18, 1958.

FRED C. SCHIBNER, Jr.,
Acting Secretary of the Treasury.

[P. R. Doc. 58-4715; Filed, June 23, 1958;
8:45 a. m.]

[T. D. 6296]

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

PART 301—PROCEDURE AND ADMINISTRATION

On October 16, 1956, notice of proposed rule making regarding (1) the Estate Tax Regulations (26 CFR Part 20) under chapter 11 of subtitle B of the Internal Revenue Code of 1954 and under certain sections of subtitle F of the Internal Revenue Code of 1954, and (2) amendments to conform the Regulations on Procedure and Administration (26 CFR Part 301) to section 2 of the Act of August 6, 1956 (Public Law 1011, 84th Cong., 70 Stat. 1075), was published in the FEDERAL REGISTER (21 F. R. 7850). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted. Except as specifically provided otherwise, such regulations are applicable to estates of decedents dying after August 16, 1954:

PARAGRAPH 1. The following Estate Tax Regulations are hereby prescribed under Chapter 11 of Subtitle B of the Internal Revenue Code of 1954 and under certain sections of Subtitle F of the Internal Revenue Code of 1954:

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AUTHORITY: §§ 20.0-1 to 20.7404 issued under sec. 7805, I. R. C. 1954; 68A Stat. 917; 26 U. S. C. 7805.

INTRODUCTION

§ 20.0-1 Introduction—(a) In general. The regulations in this part are

designated "Estate Tax Regulations". The regulations in this part pertain to (1) the Federal estate tax imposed by chapter 11 of subtitle B of the Internal Revenue Code on the transfer of estates of decedents dying after August 16, 1954, and (2) certain related administrative provisions of subtitle F of the Code. It should be noted that the application of many of the provisions of the regulations in this part may be affected by the provisions of an applicable death tax convention with a foreign country. Unless otherwise indicated, references in the regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, and references to a section or other provision of law are references to a section or other provision of the Internal Revenue Code of 1954, as amended. Unless otherwise provided, the Estate Tax Regulations are applicable to the estates of decedents dying after August 16, 1954, and supersede the regulations contained in Part 81, Subchapter B, Chapter I, Title 26, Code of Federal Regulations (1939) (Regulations 105, Estate Tax), as prescribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 F. R. 5167, Aug. 17, 1954).

(b) *Scope of regulations*—(1) *Estates of citizens or residents*. Subchapter A of chapter 11 of the Code pertains to the taxation of the estate of a person who was a citizen or a resident of the United States at the time of his death. The term "resident" means a decedent who, at the time of his death, had his domicile in the United States. The term "United States", as used in the Estate Tax Regulations, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia (see section 7701 (a) (9)). A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal. The regulations pursuant to subchapter A are set forth in §§ 20.2001-1 to 20.2056 (e)-3.

(2) *Estates of nonresidents not citizens*. Subchapter B of chapter 11 of the Code pertains to the taxation of the estate of a person who was a nonresident not a citizen of the United States at the time of his death. A "nonresident" is a decedent who, at the time of his death, had his domicile outside the United States under the principles set forth in subparagraph (1) of this paragraph. (See, however, section 2202 with respect to missionaries in foreign service.) The regulations pursuant to subchapter B are set forth in §§ 20.2101-1 to 20.2106-2.

(3) *Miscellaneous substantive provisions*. Subchapter C of chapter 11 of the Code contains a number of miscellaneous substantive provisions. The regulations pursuant to subchapter C are set forth in §§ 20.2201-1 to 20.2207-1.

(4) *Procedure and administration provisions*. Subtitle F of the Internal Revenue Code contains some sections

which are applicable to the Federal estate tax. The regulations pursuant to those sections are set forth in §§ 20.6001-1 to 20.7101-1. Such regulations do not purport to be all the regulations on procedure and administration which are pertinent to estate tax matters. For the remainder of the regulations on procedure and administration which are pertinent to estate tax matters, see Part 301 of this chapter.

(c) *Arrangement and numbering.* Each section of this part (except this section and § 20.0-2) is preceded by the section or subsection of the Internal Revenue Code which it interprets. The sections of the regulations can readily be distinguished from sections of the Code since—

(1) The sections of the regulations in this part are printed in larger type;

(2) The sections of the regulations in this part are preceded by a section symbol and the part number, arabic number 20 followed by a decimal point (§ 20.); and

(3) The sections of the Code are preceded by "Sec.". Each section of the regulations setting forth law or regulations is designated by a number composed of the part number followed by a decimal point (20.) and the number of the corresponding provision of the Internal Revenue Code. In the case of a section setting forth regulations, this designation is followed by a hyphen (-) and a number identifying such section. By use of these designations one can ascertain the sections of the regulations relating to a provision of the Code. Thus, the section of the regulations setting forth section 2012 of the Internal Revenue Code is designated § 20.2012 and the regulations pertaining to section 2012 are designated § 20.2012-1.

§ 20.0-2 General description of tax—

(a) *Nature of tax.* The Federal estate tax is neither a property tax nor an inheritance tax. It is a tax imposed upon the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share. Escheat of a decedent's property to the State for lack of heirs is a transfer which causes the property to be included in the decedent's gross estate.

(b) *Method of determining tax; estate of citizen or resident.*—(1) *In general.* Subparagraphs (2) to (5) of this paragraph contain a general description of the method to be used in determining the Federal estate tax imposed upon the transfer of the estate of a decedent who was a citizen or resident of the United States at the time of his death.

(2) *Gross estate.* The first step in determining the tax is to ascertain the total value of the decedent's gross estate. The value of the gross estate includes the value of all property (except real property situated outside of the United States) to the extent of the interest therein of the decedent at the time of his death. However, the gross estate also may include property in which the decedent did not have an interest at the time of his death. A decedent's gross estate for Federal estate tax purposes may therefore be very different from the same decedent's estate for local pro-

bate purposes. Examples of items which may be included in a decedent's gross estate and not in his probate estate are the following: certain property transferred by the decedent during his lifetime without adequate consideration; property held jointly by the decedent and others; property over which the decedent had a general power of appointment; proceeds of certain policies of insurance on the decedent's life; annuities; and dower or curtesy of a surviving spouse or a statutory estate in lieu thereof. For a detailed explanation of the method of ascertaining the value of the gross estate, see sections 2031 through 2044, and the regulations thereunder.

(3) *Taxable estate.* The second step in determining the tax is to ascertain the value of the decedent's taxable estate. The value of the taxable estate is determined by subtracting from the value of the gross estate the authorized exemption and deductions. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. For a detailed explanation of the method of ascertaining the value of the taxable estate, see sections 2051 through 2056, and the regulations thereunder.

(4) *Gross estate tax.* The third step is the determination of the gross estate tax. This is accomplished by the application of certain rates to the value of the decedent's taxable estate. In this connection, see section 2001 and the regulations thereunder.

(5) *Net estate tax payable.* The final step is the determination of the net estate tax payable. This is done by subtracting from the gross estate tax the authorized credits against tax. Under certain conditions and limitations, credits are allowable for the following (computed in the order stated below):

(i) State death taxes paid in connection with the decedent's estate (section 2011);

(ii) Gift taxes paid on inter-vivos transfers by the decedent of property

included in his gross estate (section 2012);

(iii) Foreign death taxes paid in connection with the decedent's estate (section 2014); and

(iv) Federal estate taxes paid on transfers of property to the decedent (section 2013).

Sections 2015 and 2016 contain certain further rules for the application of the credits for State and foreign death taxes. For a detailed explanation of the credits against tax, see sections 2011 through 2016, and the regulations thereunder.

(c) *Method of determining tax; estate of nonresident not a citizen.* In general, the method to be used in determining the Federal estate tax imposed upon the transfer of an estate of a decedent who was a nonresident not a citizen of the United States is similar to that described in paragraph (b) of this section with respect to the estate of a citizen or resident. Briefly stated, the steps are as follows: first, ascertain the value of that part of the decedent's "entire gross estate" which at the time of his death was situated in the United States (see §§ 20.2103-1 and 20.2104-1); second, determine the value of the taxable estate by subtracting from the value of that part of the "entire gross estate" which was situated in the United States at the time of the decedent's death the amount of the allowable deductions (see § 20.2106-1); third, compute the gross estate tax on the taxable estate, using the rates set forth in section 2001 (see § 20.2101-1); and fourth, subtract from the gross estate tax the total amount of any allowable credits in order to arrive at the net estate tax payable (see § 20.2102-1).

ESTATES OF CITIZENS OR RESIDENTS

TAX IMPOSED

§ 20.2001 Statutory provisions; rate of tax.

Sec. 2001. *Rate of tax.* A tax computed in accordance with the following table is hereby imposed on the transfer of the taxable estate, determined as provided in section 2051, of every decedent, citizen or resident of the United States dying after the date of enactment of this title:

<i>If the taxable estate is—</i>	<i>The tax shall be—</i>
Not over \$5,000.....	3 percent of the taxable estate.
Over \$5,000 but not over \$10,000.....	\$150, plus 7 percent of excess over \$5,000.
Over \$10,000 but not over \$20,000.....	\$500, plus 11 percent of excess over \$10,000.
Over \$20,000 but not over \$30,000.....	\$1,600, plus 14 percent of excess over \$20,000.
Over \$30,000 but not over \$40,000.....	\$3,000, plus 18 percent of excess over \$30,000.
Over \$40,000 but not over \$50,000.....	\$4,800, plus 22 percent of excess over \$40,000.
Over \$50,000 but not over \$60,000.....	\$7,000, plus 25 percent of excess over \$50,000.
Over \$60,000 but not over \$100,000.....	\$9,500, plus 28 percent of excess over \$60,000.
Over \$100,000 but not over \$250,000.....	\$20,700, plus 30 percent of excess over \$100,000.
Over \$250,000 but not over \$500,000.....	\$65,700, plus 32 percent of excess over \$250,000.
Over \$500,000 but not over \$750,000.....	\$145,700, plus 35 percent of excess over \$500,000.
Over \$750,000 but not over \$1,000,000.....	\$233,200, plus 37 percent of excess over \$750,000.
Over \$1,000,000 but not over \$1,250,000.....	\$325,700, plus 39 percent of excess over \$1,000,000.
Over \$1,250,000 but not over \$1,500,000.....	\$423,200, plus 42 percent of excess over \$1,250,000.
Over \$1,500,000 but not over \$2,000,000.....	\$528,200, plus 45 percent of excess over \$1,500,000.
Over \$2,000,000 but not over \$2,500,000.....	\$753,200, plus 49 percent of excess over \$2,000,000.
Over \$2,500,000 but not over \$3,000,000.....	\$993,200, plus 53 percent of excess over \$2,500,000.
Over \$3,000,000 but not over \$3,500,000.....	\$1,263,200, plus 56 percent of excess over \$3,000,000.
Over \$3,500,000 but not over \$4,000,000.....	\$1,543,200, plus 59 percent of excess over \$3,500,000.
Over \$4,000,000 but not over \$5,000,000.....	\$1,838,200, plus 63 percent of excess over \$4,000,000.
Over \$5,000,000 but not over \$6,000,000.....	\$2,468,200, plus 67 percent of excess over \$5,000,000.
Over \$6,000,000 but not over \$7,000,000.....	\$3,138,200, plus 70 percent of excess over \$6,000,000.
Over \$7,000,000 but not over \$8,000,000.....	\$3,838,200, plus 73 percent of excess over \$7,000,000.
Over \$8,000,000 but not over \$10,000,000.....	\$4,568,200, plus 76 percent of excess over \$8,000,000.
Over \$10,000,000.....	\$6,088,200, plus 77 percent of excess over \$10,000,000.

§ 20.2001-1 Rate of tax. (a) The gross estate tax is computed by the application of progressively graduated rates to the value of the decedent's taxable estate in accordance with the following table:

TABLE FOR COMPUTATION OF GROSS ESTATE TAX

(A) Taxable estate equal to or more than—	(B) Taxable estate less than—	(C) Tax on amount in column (A)—	(D) Rate of tax on excess over amount in column (A) Percent
-----	\$5,000	-----	3
\$5,000	10,000	\$150	7
10,000	20,000	500	11
20,000	30,000	1,600	14
30,000	40,000	3,000	18
40,000	50,000	4,800	22
50,000	60,000	7,000	25
60,000	100,000	9,500	28
100,000	250,000	20,700	30
250,000	500,000	65,700	32
500,000	750,000	145,700	35
750,000	1,000,000	233,200	37
1,000,000	1,250,000	325,700	39
1,250,000	1,500,000	423,200	42
1,500,000	2,000,000	528,200	45
2,000,000	2,500,000	753,200	49
2,500,000	3,000,000	998,200	53
3,000,000	3,500,000	1,263,200	56
3,500,000	4,000,000	1,543,200	59
4,000,000	5,000,000	1,838,200	63
5,000,000	6,000,000	2,468,200	67
6,000,000	7,000,000	3,138,200	70
7,000,000	8,000,000	3,838,200	73
8,000,000	10,000,000	4,568,200	76
10,000,000	-----	6,088,200	77

(b) The application of the table may be illustrated by the following example:

Example. The decedent died January 1, 1955, having a gross estate of \$800,000. The exemption and authorized deductions amount to \$75,000, thus leaving a taxable estate of \$725,000. Reference to the table discloses that the specified amount in column (A) nearest to and less than the value of the decedent's taxable estate is \$500,000. The tax upon this amount, as indicated in column (C), is \$145,700. The amount by which the taxable estate exceeds the same specified amount is \$225,000. The tax upon this amount, computed at the rate of 35 percent indicated in column (D), is \$78,750. Thus, the total gross estate tax upon a taxable estate of \$725,000 is \$145,700. From this amount, the credits authorized by sections 2011 through 2014 are subtracted in order to determine the net estate tax payable.

§ 20.2002 Statutory provisions; liability for payment.

Sec. 2002. Liability for payment. The tax imposed by this chapter shall be paid by the executor.

§ 20.2002-1 Liability for payment of tax. The Federal estate tax imposed both with respect to the estates of citizens or residents and with respect to estates of nonresidents not citizens is payable by the executor or administrator of the decedent's estate. This duty applies to the entire tax, regardless of the fact that the gross estate consists in part of property which does not come within the possession of the executor or administrator. If there is no executor or administrator appointed, qualified and acting in the United States, any person in actual or constructive possession

of any property of the decedent is required to pay the entire tax to the extent of the value of the property in his possession. See section 2203, defining the term "executor". The personal liability of the executor or such other person is described in section 3467 of the Revised Statutes (31 U. S. C. 192) as follows:

Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

As used in said section, the word "debt" includes a beneficiary's distributive share of an estate. Thus, if the executor pays a debt due by the decedent's estate or distributes any portion of the estate before all the estate tax is paid, he is personally liable, to the extent of the payment or distribution, for so much of the estate tax as remains due and unpaid. In addition, section 6324 (a) (2) provides that if the estate tax is not paid when due, then the spouse, transferee, trustee (except the trustee of an employee's trust which meets the requirements of section 401 (a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise,

or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 through 2042, is personally liable for the tax to the extent of the value, at the time of the decedent's death, of such property. See also the following related sections of the Internal Revenue Code: Section 2204, discharge of executor from personal liability; section 2205, reimbursement out of estate; sections 2206 and 2207, liability of life insurance beneficiaries and recipients of property over which decedent had power of appointment; sections 6321 through 6325, concerning liens for taxes; and section 6901 (a) (1), concerning the liabilities of transferees and fiduciaries.

CREDITS AGAINST TAX

§ 20.2011 Statutory provisions; credit for State death taxes.

Sec. 2011. Credit for State death taxes—(a) In general. The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or Territory or the District of Columbia, or any possession of the United States, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

(b) **Amount of credit.** The credit allowed by this section shall not exceed the appropriate amount stated in the following table:

If the taxable estate is—	The maximum tax credit shall be—
Not over \$90,000.....	1/60th of 1 percent of the amount by which the taxable estate exceeds \$40,000.
Over \$90,000 but not over \$140,000.....	\$400 plus 1.6 percent of the excess over \$90,000.
Over \$140,000 but not over \$240,000.....	\$1,200 plus 2.4 percent of the excess over \$140,000.
Over \$240,000 but not over \$440,000.....	\$3,600 plus 3.2 percent of the excess over \$240,000.
Over \$440,000 but not over \$640,000.....	\$10,000 plus 4 percent of the excess over \$440,000.
Over \$640,000 but not over \$840,000.....	\$18,000 plus 4.8 percent of the excess over \$640,000.
Over \$840,000 but not over \$1,040,000.....	\$27,600 plus 5.6 percent of the excess over \$840,000.
Over \$1,040,000 but not over \$1,540,000.....	\$38,800 plus 6.4 percent of the excess over \$1,040,000.
Over \$1,540,000 but not over \$2,040,000.....	\$70,800 plus 7.2 percent of the excess over \$1,540,000.
Over \$2,040,000 but not over \$2,540,000.....	\$106,800 plus 8 percent of the excess over \$2,040,000.
Over \$2,540,000 but not over \$3,040,000.....	\$146,800 plus 8.8 percent of the excess over \$2,540,000.
Over \$3,040,000 but not over \$3,540,000.....	\$190,800 plus 9.6 percent of the excess over \$3,040,000.
Over \$3,540,000 but not over \$4,040,000.....	\$238,800 plus 10.4 percent of the excess over \$3,540,000.
Over \$4,040,000 but not over \$5,040,000.....	\$290,800 plus 11.2 percent of the excess over \$4,040,000.
Over \$5,040,000 but not over \$6,040,000.....	\$402,800 plus 12 percent of the excess over \$5,040,000.
Over \$6,040,000 but not over \$7,040,000.....	\$522,800 plus 12.8 percent of the excess over \$6,040,000.
Over \$7,040,000 but not over \$8,040,000.....	\$650,800 plus 13.6 percent of the excess over \$7,040,000.
Over \$8,040,000 but not over \$9,040,000.....	\$786,800 plus 14.4 percent of the excess over \$8,040,000.
Over \$9,040,000 but not over \$10,040,000.....	\$930,800 plus 15.2 percent of the excess over \$9,040,000.
Over \$10,040,000.....	\$1,082,800 plus 16 percent of the excess over \$10,040,000.

(c) **Period of limitations on credit.** The credit allowed by this section shall include only such taxes as were actually paid and credit therefor claimed within 4 years after the filing of the return required by section 6018, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Tax Court

within the time prescribed in section 6213 (a), then within such 4-year period or before the expiration of 60 days after the decision of the Tax Court becomes final.

(2) If, under section 6161, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such 4-year period or before the

date of the expiration of the period of the extension.

Refund based on the credit may (despite the provisions of sections 6511 and 6512) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

(d) *Basic estate tax.* The basic estate tax and the estate tax imposed by the Revenue Act of 1926 shall be 125 percent of the amount determined to be the maximum credit provided by subsection (b). The additional estate tax shall be the difference between the tax imposed by section 2001 or 2101 and the basic estate tax.

(e) *Limitation in cases involving deduction under section 2053 (d).* In any case where a deduction is allowed under section 2053 (d) for an estate, succession, legacy, or inheritance tax imposed upon a transfer for public, charitable, or religious uses described in section 2055 or 2105 (a) (2), the allowance of the credit under this section shall be subject to the following conditions and limitations:

(1) The taxes described in subsection (a) shall not include any estate, succession, legacy, or inheritance tax for which a deduction is allowed under section 2053 (d).

(2) The credit shall not exceed the lesser of—

(A) The amount stated in subsection (b) on a taxable estate determined by allowing the deduction authorized by section 2053 (d), or

(B) That proportion of the amount stated in subsection (b) on a taxable estate determined without regard to the deduction authorized by section 2053 (d) as (i) the amount of the taxes described in subsection (a), as limited by the provisions of paragraph (1) of this subsection, bears to (ii) the amount of the taxes described in subsection (a) before applying the limitation contained in paragraph (1) of this subsection.

(3) If the amount determined under subparagraph (B) of paragraph (2) is less than the amount determined under subparagraph (A) of that paragraph, then for purposes of subsection (d) such lesser amount shall be the maximum credit provided by subsection (b).

[Sec. 2011 as amended by sec. 3, Act of Feb. 20, 1956 (Pub. Law 414, 84th Cong., 70 Stat. 24)]

§ 20.2011-1 *Credit for State death taxes—(a) In general.* A credit is allowed under section 2011 against the Federal estate tax for estate, inheritance, legacy or succession taxes actually paid to any State, Territory, or possession of the United States, or the District of Columbia (hereafter referred to as "State death taxes"). The credit, however, is allowed only for State death taxes paid (1) with respect to property included in the decedent's gross estate, and (2) with respect to the decedent's estate. The amount of the credit is subject to the limitation described in paragraph (b) of this section. It is subject to further limitations described in § 20.2011-2 if a deduction is allowed under section 2053 (d) for State death taxes paid with respect to a charitable gift.

(b) *Amount of credit.* (1) If the decedent's taxable estate does not exceed \$40,000, the credit for State death taxes is zero. If the decedent's taxable estate does not exceed \$40,000, the credit for State death taxes is limited to an amount computed in accordance with the following table:

TABLE FOR COMPUTATION OF MAXIMUM CREDIT FOR STATE DEATH TAXES

(A) Taxable estate equal to or more than—	(B) Taxable estate less than—	(C) Credit on amount in column (A)	(D) Rates of credit on excess over amount in column (A)
\$40,000	\$40,000	-----	Percent
50,000	140,000	\$400	0.8
140,000	240,000	1,200	1.6
240,000	440,000	3,600	2.4
440,000	640,000	10,000	3.2
640,000	840,000	18,000	4.0
840,000	1,040,000	27,000	4.8
1,040,000	1,240,000	38,800	5.6
1,240,000	2,040,000	70,800	6.4
2,040,000	2,540,000	106,800	7.2
2,540,000	3,040,000	146,800	8.0
3,040,000	3,540,000	190,800	8.8
3,540,000	4,040,000	238,800	9.6
4,040,000	4,540,000	290,800	10.4
4,540,000	5,040,000	342,800	11.2
5,040,000	5,540,000	394,800	12.0
5,540,000	6,040,000	446,800	12.8
6,040,000	6,540,000	498,800	13.6
6,540,000	7,040,000	550,800	14.4
7,040,000	7,540,000	602,800	15.2
7,540,000	8,040,000	654,800	16.0
8,040,000	10,040,000	1,082,800	

(2) Subparagraph (1) of this paragraph may be illustrated by the following example:

Example. (1) The decedent died January 1, 1955, leaving a taxable estate of \$150,000. On January 1, 1956, inheritance taxes totaling \$2,500 were actually paid to a State with respect to property included in the decedent's gross estate. Reference to the table discloses that the specified amount in column (A) nearest to but less than the value of the decedent's taxable estate is \$140,000. The maximum credit in respect of this amount, as indicated in column (C), is \$1,200. The amount by which the taxable estate exceeds the same specified amount is \$10,000. The maximum credit in respect of this amount, computed at the rate of 2.4 percent indicated in column (D), is \$240. Thus, the maximum credit in respect of the decedent's taxable estate of \$150,000 is \$1,440, even though \$2,500 in inheritance taxes was actually paid to the State.

(2) If, in subdivision (1) of this example, the amount actually paid to the State was \$950, the credit for State death taxes would be limited to \$950. If, in subdivision (1) of this example, the decedent's taxable estate was \$35,000, no credit for State death taxes would be allowed.

(c) *Miscellaneous limitations and conditions to credit—(1) Period of limitations.* The credit for State death taxes is limited under section 2011 (c) to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the estate tax return for the decedent's estate. If, however, a petition has been filed with The Tax Court of the United States for the redetermination of a deficiency within the time prescribed in section 6213 (a), the credit is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the return or within 60 days after the decision of The Tax Court becomes final, whichever period is the last to expire. Similarly, if an extension of time has been granted under section 6161 for payment of the tax shown on the return, or of a deficiency, the credit is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the return, or before the date of expiration of the period of the extension, whichever period is last to expire. See

section 2015 for the applicable period of limitations for credit for State death taxes on reversionary or remainder interests if an election is made under section 6163 (a) to postpone payment of the estate tax attributable to reversionary or remainder interests. If a claim for refund based on the credit for State death taxes is filed within the applicable period described in this subparagraph, a refund may be made despite the general limitation provisions of sections 6511 and 6512. Any refund based on the credit described in this section shall be made without interest.

(2) *Submission of evidence.* Before the credit for State death taxes is allowed, evidence that such taxes have been paid must be submitted to the district director. The district director may require the submission of a certificate from the proper officer of the taxing State, Territory, or possession of the United States, or the District of Columbia, showing: (i) The total amount of tax imposed (before adding interest and penalties and before allowing discount); (ii) the amount of any discount allowed; (iii) the amount of any penalties and interest imposed or charged; (iv) the total amount actually paid in cash; and (v) the date or dates of payment. If the amount of these taxes has been redetermined, the amount finally determined should be stated. The required evidence should be filed with the return, but if that is not convenient or possible, then it should be submitted as soon thereafter as practicable. The district director may require the submission of such additional proof as is deemed necessary to establish the right to the credit. For example, he may require the submission of a certificate of the proper officer of the taxing jurisdiction showing (vi) whether a claim for refund of any part of the State death tax is pending and (vii) whether a refund of any part thereof has been authorized, and if a refund has been made, its date and amount, and a description of the property or interest in respect of which the refund was made. The district director may also require an itemized list of the property in respect of which State death taxes were imposed certified by the officer having custody of the records pertaining to those taxes. In addition, he may require the executor to submit a written statement (containing a declaration that it is made under penalties of perjury) stating whether, to his knowledge, any person has instituted litigation or taken an appeal (or contemplates doing so), the final determination of which may affect the amount of those taxes. See section 2016 concerning the redetermination of the estate tax if State death taxes claimed as credit are refunded.

(d) *Definition of "basic estate tax".* Section 2011 (d) provides definitions of the terms "basic estate tax" and "additional estate tax", used in the Internal Revenue Code of 1939, and "estate tax imposed by the Revenue Act of 1926", for the purpose of supplying a means of computing State death taxes under local statutes using those terms, and for use in determining the exemption provided for in section 2201 for estates of certain

members of the Armed Forces. See section 2011 (e) (3) for a modification of these definitions if a deduction is allowed under section 2053 (d) for State death taxes paid with respect to a charitable gift.

§ 20.2011-2 Limitation on credit if a deduction is allowed under section 2053 (d). If a deduction is allowed under section 2053 (d) for State death taxes paid with respect to a charitable gift, the credit for State death taxes is subject to special limitations. Under these limitations, the credit cannot exceed the least of the following:

- The amount of State death taxes paid other than those for which a deduction is allowed under section 2053 (d);
- The amount indicated in section 2011 (b) to be the maximum credit allowable with respect to the decedent's taxable estate; or
- An amount, A, which bears the same ratio to B (the amount which would be the maximum credit allowable under section 2011 (b) if the deduction under section 2053 (d) were not allowed in computing the decedent's taxable estate) as C (the amount of State death taxes paid other than those for which a de-

duction is allowed under section 2053 (d)) bears to D (the total amount of State death taxes paid). For the purpose of this computation, in determining what the decedent's taxable estate would be if the deduction under section 2053 (d) were not allowed, adjustment must be made for the decrease in the deduction for charitable gifts under section 2055 or 2106 (a) (2) (for estates of nonresidents not citizens) by reason of any increase in Federal estate tax which would be charged against the charitable gifts.

The application of this section may be illustrated by the following example:

Example. The decedent died January 1, 1955, leaving a gross estate of \$925,000. Expenses, indebtedness, etc., amounted to \$25,000. The decedent bequeathed \$400,000 to his son with the direction that the son bear the State death taxes on the bequest. The residuary estate was left to a charitable organization. Except as noted above, all Federal and State death taxes were payable out of the residuary estate. The State imposed death taxes of \$60,000 on the son's bequest and death taxes of \$75,000 on the bequest to charity. The decedent's taxable estate (determined without regard to the limitation imposed by section 2011 (e) (2) (B)) is computed as follows:

Gross estate.....				\$925,000.00
Expenses, indebtedness, etc.....	\$25,000.00			
Exemption.....	60,000.00			
Deduction under section 2053 (d).....	75,000.00			
Charitable deduction:				
Gross estate.....		\$925,000.00		
Expenses, etc.....	\$25,000.00			
Bequest to son.....	400,000.00			
State death tax paid from residue.....	75,000.00			
Federal estate tax paid from residue.....	122,916.67	622,916.67	302,083.33	462,083.33
Taxable estate.....				462,916.67

If the deduction under section 2053 (d) were not allowed, the decedent's taxable estate would be computed as follows:

Gross estate.....				\$925,000.00
Expenses, indebtedness, etc.....	\$25,000.00			
Exemption.....	60,000.00			
Charitable deduction:				
Gross estate.....		\$925,000.00		
Expenses, etc.....	\$25,000.00			
Bequest to son.....	400,000.00			
State death tax paid from residue.....	75,000.00			
Federal estate tax paid from residue.....	155,000.00	655,000.00	270,000.00	355,000.00
Taxable estate.....				570,000.00

On a taxable estate of \$570,000, the maximum credit allowable under section 2011 (b) would be \$15,200. Under these facts, the credit for State death taxes is determined as follows:

- Amount of State death taxes paid other than those for which a deduction is allowed under section 2053 (d) (\$135,000—\$75,000)..... \$60,000.00
- Amount indicated in section 2011 (b) to be the maximum credit allowable with respect to the decedent's taxable estate of \$462,916.67..... 10,916.67
- Amount determined by use of the ratio described in paragraph (c) above

$$\left(\frac{\$60,000}{\$135,000} \times \$15,200 \right)$$
..... 6,755.56
- Credit for State death taxes (least of subparagraphs (1) through (3) above)..... 6,755.56

§ 20.2012 Statutory provisions; credit for gift tax.

Sec. 2012. Credit for gift tax—(a) In general. If a tax on a gift has been paid under chapter 12 (sec. 2501 and following), or under corresponding provisions of prior laws, and thereafter on the death of the donor any amount in respect of such gift is required to be included in the value of the gross estate of the decedent for purposes of this chapter, then there shall be credited against

the tax imposed by section 2001 the amount of the tax paid on a gift under chapter 12, or under corresponding provisions of prior laws, with respect to so much of the property which constituted the gift as is included in the gross estate, except that the amount of such credit shall not exceed an amount which bears the same ratio to the tax imposed by section 2001 (after deducting from such tax the credit for State death taxes provided by section 2011) as the value (at the time of the gift or at the time of the

death, whichever is lower) of so much of the property which constituted the gift as is included in the gross estate bears to the value of the entire gross estate reduced by the aggregate amount of the charitable and marital deductions allowed under sections 2055, 2056, and 2106 (a) (2).

(b) In applying, with respect to any gift, the ratio stated in subsection (a), the value at the time of the gift or at the time of the death, referred to in such ratio, shall be reduced—

(1) By such amount as will properly reflect the amount of such gift which was excluded in determining (for purposes of section 2503 (a)), or of corresponding provisions of prior laws, the total amount of gifts made during the year in which the gift was made;

(2) If a deduction with respect to such gift is allowed under section 2056 (a) (relating to marital deduction)—then by an amount which bears the same ratio to such value (reduced as provided in paragraph (1) of this subsection) as the aggregate amount of the marital deductions allowed under section 2056 (a) bears to the aggregate amount of such marital deductions computed without regard to subsection (c) thereof; and

(3) If a deduction with respect to such gift is allowed under sections 2055 or 2106 (a) (2) (relating to charitable deduction)—then by the amount of such value, reduced as provided in paragraph (1) of this subsection.

(c) Where the decedent was the donor of the gift but, under the provisions of section 2513, or corresponding provisions of prior laws, the gift was considered as made one-half by his spouse—

(1) The term "the amount of the tax paid on a gift under chapter 12", as used in subsection (a), includes the amounts paid with respect to each half of such gift, the amount paid with respect to each being computed in the manner provided in subsection (d); and

(2) In applying, with respect to such gift, the ratio stated in subsection (a), the value at the time of the gift or at the time of the death, referred to in such ratio, includes such value with respect to each half of such gift, each such value being reduced as provided in paragraph (1) of subsection (b).

(d) (1) For purposes of subsection (a), the amount of tax paid on a gift under chapter 12, or under corresponding provisions of prior laws, with respect to any gift shall be an amount which bears the same ratio to the total tax paid for the year in which the gift was made as the amount of such gift bears to the total amount of taxable gifts (computed without deduction of the specific exemption) for such year.

(2) For purposes of paragraph (1), the "amount of such gift" shall be the amount included with respect to such gift in determining (for the purposes of section 2503 (a), or of corresponding provisions of prior laws) the total amount of gifts made during such year, reduced by the amount of any deduction allowed with respect to such gift under section 2522, or under corresponding provisions of prior laws (relating to charitable deduction), or under section 2523 (relating to marital deduction).

§ 20.2012-1 Credit for gift tax—(a) In general. A credit is allowed under section 2012 against the Federal estate tax for gift tax paid under chapter 12 of the Internal Revenue Code, or corresponding provisions of prior law, on a gift by the decedent of property subsequently included in the decedent's gross estate. The credit is allowable even though the gift tax is paid after the decedent's death and the amount of the gift tax is deductible from the gross estate as a debt of the decedent.

puted as described in subparagraph (2) of this paragraph) bears to H (the value of entire gross estate, reduced by the total deductions allowed under sections 2055 or 2106 (a) (2) (charitable deduction) and 2056 (marital deduction)). Stated algebraically, the "second limitation" (E) equals

$$\frac{\text{"Value of the gift" (G)}}{\text{Value of gross estate, less marital and charitable deductions (H)}} \times$$

Gross estate tax, less credit for State death taxes (F).

(2) For purposes of the ratio stated in subparagraph (1) of this paragraph, the "value of the gift" referred to as factor "G" is the value of the property transferred by gift and included in the gross estate, as determined for the purpose of the gift tax or for the purpose of the estate tax, whichever is lower, and adjusted as follows:

(i) The appropriate value is reduced by all or a portion of any annual exclusion allowed for gift tax purposes under section 2503 (b) of the Internal Revenue Code or corresponding provisions of prior law. If the gift tax value is lower than the estate tax value, it is reduced by the entire amount of the exclusion. If the estate tax value is lower than the gift tax value, it is reduced by an amount which bears the same ratio to the estate tax value as the annual exclusion bears to the total value of the property as determined for gift tax purposes. To illustrate: In 1955, a donor, in contemplation of death, transferred certain property to his five children which was valued at \$300,000 for the purpose of the gift tax. Thereafter, the same property was included in his gross estate at a value of \$270,000. In computing his gift tax, the donor was allowed annual exclusions totalling \$15,000. The reduction provided for in this subdivision is

$$\frac{\$15,000 \text{ (annual exclusions allowed)}}{\$300,000 \text{ (value of transferred property for the purpose of the gift tax)}} \times \frac{\$270,000 \text{ (value of transferred property for the purpose of the estate tax)}}{\$300,000 \text{ (value of transferred property for the purpose of the gift tax)}} = \$13,500.$$

(ii) The appropriate value is further reduced if any portion of the value of the property is allowed as a marital deduction under section 2056 or as a charitable deduction under section 2055 or section 2106 (a) (2) (for estates of nonresidents not citizens). The amount of the reduction is an amount which bears the same ratio to the value determined under subdivision (i) of this subparagraph as the portion of the property allowed as a marital deduction or as a charitable deduction bears to the total value of the property as determined for the purpose of the estate tax. Thus, if a gift is made solely to the decedent's surviving spouse and is subsequently included in the decedent's gross estate as having been made in contemplation of death, but a marital deduction is allowed under section 2056 for the full value of the gift, no credit for gift tax on the gift will be allowed since the reduction under this subdivision together with the reduction under subdivision (i) of this subparagraph will have the effect of reducing the factor "G" of the ratio in subparagraph (1) of this paragraph to zero. However, if by reason of the limitation on the aggregate marital deduction to 50 percent of the value of the adjusted gross estate (see section 2056

(c)) the aggregate marital deduction allowed is less than the aggregate marital deduction computed without regard to that limitation, then the reduction under this subdivision is an amount, I, which bears the same ratio to J (the value determined in subdivision (i) of this subparagraph) as K (the aggregate marital deduction allowed) bears to L (the aggregate marital deduction computed without regard to the 50 percent limitation). For an illustration, see subparagraph (3) of this paragraph.

(3) The application of this paragraph may be illustrated by the following example:

Example. (i) In 1955, a donor, in contemplation of death, transferred certain property to his wife which was valued, for the purpose of the gift tax, at \$86,000. In computing his gift tax the donor was allowed an annual exclusion of \$3,000. In 1956, the donor died leaving a gross estate of \$350,000. Expenses, indebtedness, etc., amounted to \$30,000. The gross estate included the property transferred by the decedent to his wife in 1955. This property was valued, for the purpose of the estate tax, at \$100,000 and was property for which a marital deduction may be taken. The decedent was survived by his wife to whom he left the major part of his estate. The estate was allowed an aggregate marital deduction of \$150,000. The amount of the marital deduction computed

the gift is wholly included in the decedent's gross estate for the purpose of the estate tax, the credit with respect to the gift is limited to the amount of the gift tax paid for that calendar year. On the other hand, if more than one gift was made during a certain calendar year, which is included in the decedent's gross estate is limited under section 2012 (d) to an amount, A, which bears the same ratio to B (the total gift tax paid for that calendar year) as C (the "amount of the gift", computed as described below) bears to D (the total taxable gifts for the year, computed without deduction of the gift tax specific exemption). Stated algebraically, the "first limitation" (A) equals

$$\frac{\text{"Amount of the gift" (C)}}{\text{Total taxable gifts, plus specific exemption allowed (D)}} \times \text{Total gift tax paid (B)}.$$

For purposes of the ratio stated above, the "amount of the gift" referred to as factor "C" is the value of the gift reduced by any portion excluded or deducted under sections 2503 (b) (annual exclusion), 2522 (charitable deduction), or 2523 (marital deduction) of the Internal Revenue Code or corresponding provisions of prior law. In making the computations described in this paragraph, the values to be used are those finally determined for the purpose of the gift tax, irrespective of the values determined for the purpose of the estate tax. A similar computation is made in case only a portion of any gift is included in the decedent's gross estate. The application of this paragraph may be illustrated by the following example:

Example. The donor made gifts during the calendar year 1955 on which a gift tax was determined as shown below:

Gift of property to son on February 1	\$13,000
Gift of property to wife on May 1	\$8,000
Gift of property to charitable organization on May 15	10,000
Total gifts	109,000
Less exclusions (\$3,000 for each gift)	9,000
Total included amount of gifts	100,000
Marital deduction (for gift to wife)	\$43,000
Charitable deduction	7,000
Specific exemption (\$30,000 less \$20,000 used in prior years)	10,000
Total deductions	60,000
Taxable gifts	40,000
Total gift tax paid for calendar year 1955	3,600
The donor's gift to his wife was made in contemplation of death and was thereafter included in his gross estate. Under the "first limitation", the credit with respect to that gift cannot exceed	
\$86,000 - \$3,000 - \$43,000 (gift to wife, less annual exclusion and marital deduction)	
\$40,000 ÷ \$10,000 (taxable gifts, plus specific exemption allowed) ×	
\$3,600 (total gift tax paid) = \$2,880.	

(d) "Second limitation". (1) The amount of the estate tax attributable to the inclusion of the gift in the gross estate is the "second limitation". Thus, the credit with respect to any gift of property included in the gross estate is limited to an amount, E, which bears the same ratio to F (the gross estate tax, reduced by any credit for State death taxes under section 2011) as G (the "value of the gift", com-

without regard to the 50 percent limitation in section 2056 (c) would have been \$250,000. The gross estate tax was \$17,900, and the credit for State death taxes was \$400.

(ii) Factor "G" of the ratio which is used in computing the "second limitation" is computed as follows (see paragraph (d) (2) of § 20.2012-1):

Value of gift to wife for the purpose of the gift tax or for the purpose of the estate tax, whichever is lower	\$86,000
Less: Portion of annual exclusion allowed in determining the gift tax (see § 20.2012-1 (d) (2) (i))	3,000
Net value	83,000
Less: Portion of the net value allowed as a marital deduction under section 2056 (see § 20.2012-1 (d) (2) (ii))	
\$150,000 (aggregate marital deduction allowed for the purpose of the estate tax)	
\$250,000 (aggregate marital deduction computed without regard to the limitation stated in section 2056 (c))	
$\times (\$86,000 - \$3,000)$ (value of gift to wife for the purpose of the gift tax or for the purpose of the estate tax, whichever is lower, less portion of annual exclusion allowed in determining the gift tax (see § 20.2012-1 (d) (2) (i)))	49,800
Factor "G" of the ratio	33,200

(iii) Under the "second limitation", the credit for gift tax on the donor's gift to his wife cannot exceed (see § 20.2012-1 (d) (1)).

\$33,200 (factor "G" of the ratio; see subdivision (ii) of this example) $\times$
 \$350,000 - \$150,000 (value of gross estate, less marital deduction allowed) $\times$
 (\$17,900 - \$400) (gross estate tax, less credit for State death taxes) = \$2,905.

The lesser of the "first limitation" as computed in paragraph (c) of this section and the "second limitation" as computed in this paragraph is the credit for gift tax.

(e) *Credit for "split gifts"*. If a decedent made a gift of property which is thereafter included in his gross estate, and, under the provisions of section 2513 of the Internal Revenue Code of 1954 or section 1000 (f) of the Internal Revenue Code of 1939, the gift was considered as made one-half by the decedent and one-half by his spouse, credit against the estate tax is allowed for the gift tax paid with respect to both halves of the gift. The "first limitation" is to be separately computed with respect to each half of the gift in accordance with the principles stated in paragraph (c) of this section. The "second limitation" is to be computed with respect to the entire gift in accordance with the principles stated in paragraph (d) of this section. To illustrate: A donor, in contemplation of death, transferred property valued at \$106,000 to his son on January 1, 1955, and he and his wife consented that the gift should be considered as made one-half by him and one-half by her. The property was thereafter included in the donor's gross estate. Under the "first limitation", the amount of the gift tax of the donor paid with respect to the one-half of the gift considered as made by him is determined to be \$11,250, and the amount of the gift tax of his wife paid with respect to the one-half of the gift considered as made by her is determined to be \$1,200. Under the "second limitation", the amount of the estate tax attributable to the property is determined to be \$28,914. Therefore, the credit for gift tax allowed is \$12,450 (\$11,250 plus \$1,200).

§ 20.2013 Statutory provisions; credit for tax on prior transfers.

SEC. 2013. Credit for tax on prior transfers.—(a) *General rule*. The tax imposed by section 2001 shall be credited with all or a

part of the amount of the Federal estate tax paid with respect to the transfer of property (including property passing as a result of the exercise or non-exercise of a power of appointment) to the decedent by or from a person (herein designated as a "transferor") who died within 10 years before, or within 2 years after, the decedent's death. If the transferor died within 2 years of the death of the decedent, the credit shall be the amount determined under subsections (b) and (c). If the transferor predeceased the decedent by more than 2 years, the credit shall be the following percentage of the amount so determined—

- (1) 80 percent, if within the third or fourth years preceding the decedent's death;
- (2) 60 percent, if within the fifth or sixth years preceding the decedent's death;
- (3) 40 percent, if within the seventh or eighth years preceding the decedent's death; and
- (4) 20 percent, if within the ninth or tenth years preceding the decedent's death.

(b) *Computation of credit*. Subject to the limitation prescribed in subsection (c), the credit provided by this section shall be an amount which bears the same ratio to the estate tax paid (adjusted as indicated hereinafter) with respect to the estate of the transferor as the value of the property transferred bears to the taxable estate of the transferor (determined for purposes of the estate tax) decreased by any death taxes paid with respect to such estate and increased by the exemption provided for by section 2052 or section 2106 (a) (3), or the corresponding provisions of prior laws, in determining the taxable estate of the transferor for the purposes of the estate tax. For purposes of the preceding sentence, the estate tax paid shall be the Federal estate tax paid increased by any credits allowed against such estate tax under section 2012, or corresponding provisions of prior laws, on account of gift tax, and for any credits allowed against such estate tax under this section on account of prior transfers where the transferor acquired property from a person who died within 10 years before the death of the decedent.

(c) *Limitation on credit*—(1) *In general*. The credit provided in this section shall not exceed the amount by which—

(A) The estate tax imposed by section 2001 or section 2101 (after deducting the credits for State death taxes, gift tax, and foreign

death taxes provided for in sections 2011, 2012, and 2014) computed without regard to this section, exceeds

(B) Such tax computed by excluding from the decedent's gross estate the value of such property transferred and, if applicable, by making the adjustment hereinafter indicated.

If any deduction is otherwise allowable under section 2055 or section 2106 (a) (2) (relating to charitable deduction) then, for the purpose of the computation indicated in subparagraph (B), the amount of such deduction shall be reduced by that part of such deduction which the value of such property transferred bears to the decedent's entire gross estate reduced by the deductions allowed under sections 2053 and 2054, or section 2106 (a) (1) (relating to deduction for expenses, losses, etc.). For purposes of this section, the value of such property transferred shall be the value as provided for in subsection (d) of this section.

(2) *Two or more transferors*. If the credit provided in this section relates to property received from 2 or more transferors, the limitation provided in paragraph (1) of this subsection shall be computed by aggregating the value of the property so transferred to the decedent. The aggregate limitation so determined shall be apportioned in accordance with the value of the property transferred to the decedent by each transferor.

(d) *Valuation of property transferred*. The value of property transferred to the decedent shall be the value used for the purpose of determining the Federal estate tax liability of the estate of the transferor but—

(1) There shall be taken into account the effect of the tax imposed by section 2001 or 2101, or any estate, succession, legacy, or inheritance tax, on the net value to the decedent of such property;

(2) Where such property is encumbered in any manner, or where the decedent incurs any obligation imposed by the transferor with respect to such property, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to the decedent of such property was being determined; and

(3) If the decedent was the spouse of the transferor at the time of the transferor's death, the net value of the property transferred to the decedent shall be reduced by the amount allowed under section 2056 (relating to marital deductions), or the corresponding provision of prior law, as a deduction from the gross estate of the transferor.

(e) *Property defined*. For purposes of this section, the term "property" includes any beneficial interest in property, including a general power of appointment (as defined in section 2041).

§ 20.2013-1 Credit for tax on prior transfers.—(a) *In general*. A credit is allowed under section 2013 against the Federal estate tax imposed on the present decedent's estate for Federal estate tax paid on the transfer of property to the present decedent from a transferor who died within ten years before, or within two years after, the present decedent's death. See § 20.2013-5 for definition of the terms "property" and "transfer". There is no requirement that the transferred property be identified in the estate of the present decedent or that the property be in existence at the time of the decedent's death. It is sufficient that the transfer of the property was subjected to Federal estate tax in the estate of the transferor and that the transferor died within the prescribed period of time. The executor must submit such proof as may be requested by the district director in order to establish the right of the estate to the credit.

(b) *Limitations on credit.* The credit for tax on prior transfers is limited to the smaller of the following amounts:

- (1) The amount of the Federal estate tax attributable to the transferred property in the transferor's estate, computed as set forth in § 20.2013-2; or
- (2) The amount of the Federal estate tax attributable to the transferred property in the decedent's estate, computed as set forth in § 20.2013-3.

Rules for valuing property for purposes of the credit are contained in § 20.2013-4.

(c) *Percentage reduction.* If the transferor died within the two years before, or within the two years after, the present decedent's death, the credit is the smaller of the two limitations described in paragraph (b) of this section. If the transferor predeceased the present decedent by more than two years, the credit is a certain percentage of the smaller of the two limitations described in paragraph (b) of this section, determined as follows:

- (1) 80 percent, if the transferor died within the third or fourth years preceding the present decedent's death;
- (2) 60 percent, if the transferor died within the fifth or sixth years preceding the present decedent's death;
- (3) 40 percent, if the transferor died within the seventh or eighth years preceding the present decedent's death; and

(4) 20 percent, if the transferor died within the ninth or tenth years preceding the present decedent's death.

The word "within" as used in this paragraph means "during". Therefore, if a death occurs on the second anniversary of another death, the first death is considered to have occurred within the two years before the second death. If the credit for tax on prior transfers relates to property received from two or more transferors, the provisions of this paragraph are to be applied separately with respect to the property received from each transferor. See paragraph (d) of example (2) in § 20.2013-6.

(d) *Examples.* For illustrations of the application of this section, see examples (1) and (2) set forth in § 20.2013-6.

§ 20.2013-2 "First limitation". (a) The amount of the Federal estate tax attributable to the transferred property in the transferor's estate is the "first limitation." Thus, the credit is limited to an amount, A, which bears the same ratio to B (the "transferor's adjusted Federal estate tax", computed as described in paragraph (b) of this section) as C (the value of the property transferred (see § 20.2013-4)) bears to D (the "transferor's adjusted taxable estate", computed as described in paragraph (c) of this section). Stated algebraically, the "first limitation" (A) equals

$$\frac{\text{Value of transferred property (C)}}{\text{"Transferor's adjusted taxable estate" (D)}} \times \text{"Transferor's adjusted Federal estate tax" (B)}.$$

(b) For purposes of the ratio stated in paragraph (a) of this section, the "transferor's adjusted Federal estate tax" referred to as factor "B" is the amount of the Federal estate tax paid with respect to the transferor's estate plus:

(1) Any credit allowed the transferor's estate for gift tax under section 2012, or the corresponding provisions of prior law; and

(2) Any credit allowed the transferor's estate, under section 2013, for tax on prior transfers, but only if the transferor acquired property from a person who died within 10 years before the death of the present decedent.

(c) For purposes of the ratio stated in paragraph (a) of this section, the "transferor's adjusted taxable estate" referred to as factor "D" is the amount of the transferor's taxable estate (or net estate) decreased by the amount of any "death taxes" paid with respect to his gross estate and increased by the amount of the exemption allowed in computing his taxable estate (or net estate). The amount of the transferor's taxable estate (or net estate) is determined in accordance with the provisions of § 20.2051-1 (or the corresponding provisions of prior regulations). The term "death taxes" means the Federal estate tax plus all other estate, inheritance, legacy, succession, or similar death taxes imposed by and paid to any taxing authority, whether within or without the United States. However, only the net amount of such taxes paid is taken into consideration. The amount of the exemp-

tion depends upon the citizenship and residence of the transferor at the time of his death. If he was a citizen or resident of the United States, the exemption is the \$60,000 authorized by section 2052 (or the corresponding provisions of prior law). If he was not a citizen or resident of the United States, the exemption is the \$2,000 authorized by section 2106 (a) (3) (or the corresponding provisions of prior law), or such larger amount as may have been allowed as an exemption pursuant to the prorated exemption provisions of an applicable death tax convention.

(d) If the credit for tax on prior transfers relates to property received from two or more transferors, the provisions of this section are to be applied separately with respect to the property received from each transferor. See paragraph (b) of example (2) in § 20.2013-6.

(e) For illustrations of the application of this section, see examples (1) and (2) set forth in § 20.2013-6.

§ 20.2013-3 "Second limitation". (a) The amount of the Federal estate tax attributable to the transferred property in the present decedent's estate is the "second limitation." Thus, the credit is limited to the difference between—

(1) The net estate tax payable (see paragraph (b) (5) of § 20.0-2) with respect to the present decedent's estate, determined without regard to any credit for tax on prior transfers under section 2013 or any credit for foreign death taxes claimed under the provisions of a death tax convention, and

(2) The net estate tax determined as provided in paragraph (1) of this section, but computed by subtracting from the present decedent's gross estate the value of the property transferred (see § 20.2013-4), and by making only the adjustment indicated in paragraph (b) of this section if a charitable deduction is allowable to the estate of the present decedent.

(b) If a charitable deduction is allowable to the estate of the present decedent under the provisions of section 2055 or section 2106 (a) (2) (for estates of non-residents not citizens), for purposes of determining the tax described in paragraph (a) (2) of this section, the charitable deduction otherwise allowable is reduced by an amount, E, which bears the same ratio to F (the charitable deduction otherwise allowable) as G (the value of the transferred property (see § 20.2013-4)) bears to H (the value of the present decedent's gross estate reduced by the amount of the deductions for expenses, indebtedness, taxes, losses, etc., allowed under the provisions of sections 2053 and 2054 or section 2106 (a) (1) (for estates of nonresidents not citizens)). See paragraph (c) (2) of example (1) and paragraph (c) (2) of example (2) in § 20.2013-6.

(c) If the credit for tax on prior transfers relates to property received from two or more transferors, the property received from all transferors is aggregated in determining the limitation on credit under this section (the "second limitation"). However, the limitation so determined is apportioned to the property received from each transferor in the ratio that the property received from each transferor bears to the total property received from all transferors. See paragraph (c) of example (2) in § 20.2013-6.

(d) For illustrations of the application of this section, see examples (1) and (2) set forth in § 20.2013-6.

§ 20.2013-4 *Valuation of property transferred.* (a) For purposes of section 2013 and §§ 20.2013-1 to 20.2013-6, the value of the property transferred to the decedent is the value at which such property was included in the transferor's gross estate for the purpose of the Federal estate tax (see sections 2031, 2032, and the regulations thereunder) reduced as indicated in paragraph (b) of this section. If the decedent received a life estate or remainder or other limited interest in property included in the transferor's gross estate, the value of the interest is determined as of the date of the transferor's death on the basis of recognized valuation principles (see especially § 20.2031-7). The application of this paragraph may be illustrated by the following examples:

Example (1). A died on January 1, 1953, leaving Blackacre to B. The property was included in A's gross estate at a value of \$100,000. On January 1, 1955, B sold Blackacre to C for \$150,000. B died on February 1, 1955. For purposes of computing the credit against the tax imposed on B's estate, the value of the property transferred to B is \$100,000.

Example (2). A died on January 1, 1953, leaving Blackacre to B for life and, upon B's death, remainder to C. At the time of A's death, B was 56 years of age. The property was included in A's gross estate at a value of \$100,000. The part of that value attributable to the life estate is \$44,688 (see paragraph (c) of § 20.2031-7), and the part of that value attributable to the remainder is \$55,312 (see paragraph (d) of § 20.2031-7). B died on January 1, 1955, and C died on January 1, 1956. For purposes of computing the credit against the tax imposed on B's estate, the value of the property transferred to B is \$44,688. For purposes of computing the credit against the tax imposed on C's estate, the value of the property transferred to C is \$55,312.

(b) In arriving at the value of the property transferred to the decedent, the value at which the property was included in the transferor's gross estate (see paragraph (a) of this section) is reduced as follows:

(1) By the amount of the Federal estate tax and any other estate, inheritance, legacy, or succession taxes which were payable out of the property transferred to the decedent or which were payable by the decedent in connection with the property transferred to him. For example, if under the transferor's will or local law all death taxes are to be paid out of other property with the result that the decedent receives a bequest free and clear of all death taxes, no reduction is to be made under this subparagraph;

(2) By the amount of any marital deduction allowed the transferor's estate under section 2056 (or under section 812 (e) of the Internal Revenue Code of 1939) if the decedent was the spouse of the transferor at the time of the transferor's death; and

(3) (i) By the amount of any encumbrance on the property or by the amount of any obligation imposed by the transferor and incurred by the decedent with respect to the property, to the extent such charges would be taken into account if the amount of a gift to the decedent of such property were being determined.

(ii) For purposes of this subparagraph, an obligation imposed by the transferor and incurred by the decedent with respect to the property includes a bequest, etc., in lieu of the interest of the surviving spouse under community property laws, unless the interest was, immediately prior to the transferor's death, a mere expectancy. (As to the circumstances under which the interest of a surviving spouse is regarded as a mere expectancy, see the provisions of paragraph (d) of § 20.2056 (c)-2 which are equally applicable here.) However, an obligation imposed by the transferor and incurred by the decedent with respect to the property does not include a bequest, devise, or other transfer in lieu of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the transferor's property or estate.

(iii) The application of this subparagraph may be illustrated by the following examples:

Example (1). The transferor devised to the decedent real estate subject to a mortgage. The value of the property transferred to the decedent does not include the amount of the mortgage. If, however, the transferor by his will directs the executor to pay off the mortgage, such payment constitutes an additional amount transferred to the decedent.

Example (2). The transferor bequeathed certain property to the decedent with a direction that the decedent pay \$1,000 to X. The value of the property transferred to the decedent is the value of the property reduced by \$1,000.

Example (3). The transferor bequeathed certain property to his wife, the decedent, in lieu of her interest in property held by them as community property under the law of the State of their residence. The wife elected to relinquish her community property interest and to take the bequest. The value of the property transferred to the decedent is the value of the property reduced by the value of the community property interest relinquished by the wife.

Example (4). The transferor bequeathed to the decedent his entire residuary estate, out of which certain claims were to be satisfied. The entire distributable income of the transferor's estate (during the period of its administration) was applied toward the satisfaction of these claims and the remaining portion of the claims was satisfied by the decedent out of his own funds. Thus, the decedent received a larger sum upon settlement of the transferor's estate than he was actually bequeathed. The value of the property transferred to the decedent is the value at which such property was included in the transferor's gross estate, reduced by the amount of the estate income and the decedent's own funds paid out in satisfaction of the claims.

§ 20.2013-5 "Property" and "transfer" defined. (a) For purposes of section 2013 and §§ 20.2013-1 to 20.2013-6, the term "property" means any beneficial interest in property, including a general power of appointment (as defined in section 2041) over property. Thus, the term does not include an interest in property consisting merely of a bare legal title, such as that of a trustee. Nor does the term include a power of appointment over property which is not a general power of appointment (as defined in section 2041). Examples of property, as described in this paragraph, are annuities, life estates, estates for terms of years, vested or contingent remainders and other future interests.

(b) In order to obtain the credit for tax on prior transfers, there must be a transfer of property described in paragraph (a) of this section by or from the transferor to the decedent. The term "transfer" of property by or from a transferor means any passing of property or an interest in property under circumstances which were such that the property or interest was included in the gross estate of the transferor. In this connection, if the decedent receives property as a result of the exercise or nonexercise of a power of appointment, the donee of the power (and not the creator) is deemed to be the transferor of the property if the property subject to the power is includible in the donee's gross estate under section 2041 (relating

to powers of appointment). Thus, notwithstanding the designation by local law of the capacity in which the decedent takes, property received from the transferor includes interests in property held by or devolving upon the decedent: (1) As spouse under dower or curtesy laws or laws creating an estate in lieu of dower or curtesy; (2) as surviving tenant of a tenancy by the entirety or joint tenancy with survivorship rights; (3) as beneficiary of the proceeds of life insurance; (4) as survivor under an annuity contract; (5) as donee (possessor) of a general power of appointment (as defined in section 2041); (6) as appointee under the exercise of a general power of appointment (as defined in section 2041); or (7) as remainderman under the release or nonexercise of a power of appointment by reason of which the property is included in the gross estate of the donee of the power under section 2041.

(c) The application of this section may be illustrated by the following example:

Example. A devises Blackacre to B, as trustee, with directions to pay the income therefrom to C, his son, for life. Upon C's death, Blackacre is to be sold. C is given a general testamentary power, to appoint one-third of the proceeds, and a testamentary power, which is not a general power, to appoint the remaining two-thirds of the proceeds, to such of the issue of his sister D as he should choose. D has a daughter, E, and a son, F. Upon his death, C exercised his general power by appointing one-third of the proceeds to D and his special power by appointing two-thirds of the proceeds to E. Since B's interest in Blackacre as a trustee is not a beneficial interest, no part of it is "property" for purpose of the credit in B's estate. On the other hand, C's life estate and his testamentary power over the one-third interest in the remainder constitute "property" received from A for purpose of the credit in C's estate. Likewise, D's one-third interest in the remainder received through the exercise of C's general power of appointment is "property" received from C for purpose of the credit in D's estate. No credit is allowed E's estate for the property which passed to her from C since the property was not included in C's gross estate. On the other hand, no credit is allowed in E's estate for property passing to her from A since her interest was not susceptible of valuation at the time of A's death (see § 20.2013-4).

§ 20.2013-6 Examples. The application of §§ 20.2013-1 to 20.2013-5 may be further illustrated by the following examples:

Example (1). (a) A died December 1, 1953, leaving a gross estate of \$1,000,000. Expenses, indebtedness, etc., amounted to \$90,000. A bequeathed \$200,000 to B, his wife, \$100,000 of which qualifies for the marital deduction. B died November 1, 1954, leaving a gross estate of \$500,000. Expenses, indebtedness, etc., amounted to \$40,000. B bequeathed \$150,000 to charity. A and B were both citizens of the United States. The estates of A and B both paid State death taxes equal to the maximum credit allowable for State death taxes. Death taxes were not a charge on the bequest to B.

(b) "First limitation" on credit for B's estate (§ 20.2013-2):

Example (2). (a) The facts are the same as those contained in example (1) of this paragraph with the following additions. C died December 1, 1950, leaving a gross estate of \$250,000. Expenses, indebtedness, etc., amounted to \$50,000. C bequeathed \$50,000 to B. C was a citizen of the United States. His estate paid State death taxes equal to the maximum credit allowable for State death taxes. Death taxes were not a charge on the bequest to B.

(b) "First limitation" on credit for B's estate (\$20,2013-2 (d))—

(1) With respect to the property received from A:
"First limitation" = \$36,393.90 (this computation is identical with the one contained in paragraph (b) of example (1) of this section).

(2) With respect to the property received from C:

C's gross estate	\$250,000.00
Expenses, indebtedness, etc.	\$50,000.00
Exemption	60,000.00
	110,000.00

C's taxable estate

140,000.00

C's gross estate tax

32,700.00

Credit for State death taxes

1,300.00

C's net estate tax payable

31,500.00

"First limitation" = \$31,500.00 (\$20,2013-2 (b)) ×

\$50,000.00 (\$20,2013-4)

\$140,000.00—\$31,500.00—\$100,000.00 (\$20,2013-2 (c))

(c) "Second limitation" on credit for B's estate (\$20,2013-3 (c)):

(1) B's net estate tax payable as described in § 20,2013-3 (a) (1) (previously taxed trans-

fers included) = \$61,780.00 (this computation is identical with the one contained in paragraph

(c) (1) of example (1) of this section).

(2) B's net estate tax payable as described in § 20,2013-3 (a) (2) (previously taxed trans-

fers excluded):

B's gross estate

\$350,000.00

Expenses, indebtedness, etc.

\$40,000.00

Charitable deduction (\$20,2013-3 (b)) = \$150,000.00—

\$200,000.00—\$100,000.00+\$50,000.00

(150,000.00) ×

\$500,000.00—\$40,000.00

Exemption

60,000.00

201,000.00

B's taxable estate

148,913.04

B's gross estate tax

85,373.91

Credit for State death taxes

1,413.91

B's net estate tax payable

83,960.00

(3) "Second limitation":

Subparagraph (1)

\$61,780.00

Less: Subparagraph (2)

33,960.00

27,820.00

(4) Apportionment of "second limitation" on credit:

Transfer from A (\$20,2013-4)

100,000.00

Transfer from C (\$20,2013-4)

50,000.00

Total

150,000.00

Portion of "second limitation" attributable to transfer from A (100% of

\$27,820.00)

18,546.67

Portion of "second limitation" attributable to transfer from C (100% of

\$27,820.00)

9,273.33

A's gross estate

\$1,000,000.00

Expenses, indebtedness, etc.

90,000.00

A's adjusted gross estate

910,000.00

Marital deduction

\$100,000.00

Exemption

60,000.00

150,000.00

A's taxable estate

750,000.00

A's gross estate tax

233,200.00

Credit for State death taxes

23,280.00

A's net estate tax payable

209,920.00

"First limitation" = \$209,920.00 (\$20,2013-2 (b)) ×

\$200,000.00—\$100,000.00 (\$20,2013-4)

\$750,000.00—\$209,920.00—\$540,080.00 (\$20,2013-2 (c))

(c) "Second limitation" on credit for B's estate (\$20,2013-3):

(1) B's net estate tax payable as described in § 20,2013-3 (a) (1) (previously taxed transfer

included):

B's gross estate

\$500,000.00

Expenses, indebtedness, etc.

\$40,000.00

Charitable deduction

150,000.00

Exemption

60,000.00

250,000.00

B's taxable estate

250,000.00

B's gross estate tax

65,700.00

Credit for State death taxes

8,920.00

B's net estate tax payable

61,780.00

(2) B's net estate tax payable as described in § 20,2013-3 (a) (2) (previously taxed transfer

excluded):

B's gross estate

\$400,000.00

Expenses, indebtedness, etc.

\$40,000.00

Charitable deduction (\$20,2013-3 (b)) = \$150,000.00—(\$150,000.00) ×

(\$200,000.00—\$100,000.00)

(\$500,000.00—\$40,000.00)

Exemption

117,391.30

217,391.30

B's taxable estate

182,608.70

B's gross estate tax

45,432.61

Credit for State death taxes

2,221.61

B's net estate tax payable

43,260.00

(3) "Second limitation":

Subparagraph (1)

\$61,780.00

Less: Subparagraph (2)

43,260.00

18,520.00

(d) Credit of B's estate for tax on prior transfers (\$20,2013-1 (c)):

Credit for tax on prior transfers = \$18,520.00 (lower of paragraphs (b) and (c)) ×

100 percent (percentage to be taken into account under § 20,2013-1 (c))

\$18,520.00

(d) Credit of B's estate for tax on prior transfers (§ 20.2013-1 (c)):

Credit for tax on transfer from A =
\$18,546.67 (lower of "first limitation" computed in paragraph (b) (1) and "second limitation" apportioned to A's transfer in paragraph (c) (4)) × 100 percent (percentage to be taken into account under § 20.2013-1 (c)) ----- \$18,546.67

Credit for tax on transfer from C =
\$9,273.33 (lower of "first limitation" computed in paragraph (b) (2) and "second limitation" apportioned to B's transfer in paragraph (c) (4)) × 80 percent (percentage to be taken into account under § 20.2013-1 (c)) ----- 7,418.66

Total credit for tax on prior transfers ----- 25,965.33

§ 20.2014 Statutory provisions; credit for foreign death taxes.

Sec. 2014. Credit for foreign death taxes—
(a) *In general.* The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property situated within such foreign country and included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent). If the decedent at the time of his death was not a citizen of the United States, credit shall not be allowed under this section unless the foreign country of which such decedent was a citizen or subject, in imposing such taxes, allows a similar credit in the case of a citizen of the United States resident in such country. The determination of the country within which property is situated shall be made in accordance with the rules applicable under subchapter B (sec. 2101 and following) in determining whether property is situated within or without the United States.

(b) *Limitations on credit.* The credit provided in this section with respect to such taxes paid to any foreign country—

(1) Shall not, with respect to any such tax, exceed an amount which bears the same ratio to the amount of such tax actually paid to such foreign country as the value of property which is—

- (A) Situated within such foreign country,
- (B) Subjected to such tax, and
- (C) Included in the gross estate

bears to the value of all property subjected to such tax; and

(2) Shall not, with respect to all such taxes, exceed an amount which bears the same ratio to the tax imposed by section 2001 (after deducting from such tax the credits provided by sections 2011 and 2012) as the value of property which is—

- (A) Situated within such foreign country,
- (B) Subjected to the taxes of such foreign country, and
- (C) Included in the gross estate

bears to the value of the entire gross estate reduced by the aggregate amount of the deductions allowed under sections 2055 and 2056.

(c) *Valuation of property.* (1) The values referred to in the ratio stated in subsection (b) (1) are the values determined for purposes of the tax imposed by such foreign country.

(2) The values referred to in the ratio stated in subsection (b) (2) are the values determined under this chapter; but, in applying such ratio, the value of any property described in subparagraphs (A), (B), and (C) thereof shall be reduced by such amount as will properly reflect, in accordance with

regulations prescribed by the Secretary or his delegate, the deductions allowed in respect of such property under sections 2055 and 2056 (relating to charitable and marital deductions).

(d) *Proof of credit.* The credit provided in this section shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary or his delegate—

(1) The amount of taxes actually paid to the foreign country,

(2) The amount and date of each payment thereof,

(3) The description and value of the property in respect of which such taxes are imposed, and

(4) All other information necessary for the verification and computation of the credit.

(e) *Period of limitation.* The credit provided in this section shall be allowed only for such taxes as were actually paid and credit therefor claimed within 4 years after the filing of the return required by section 6018, except that—

(1) If a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213 (a), then within such 4-year period or before the expiration of 80 days after the decision of the Tax Court becomes final.

(2) If, under section 6161, an extension of time has been granted for payment of the tax shown on the return, or of a deficiency, then within such 4-year period or before the date of the expiration of the period of the extension.

Refund based on such credit may (despite the provisions of sections 6511 and 6512) be made if claim therefor is filed within the period above provided. Any such refund shall be made without interest.

§ 20.2014-1 Credit for foreign death taxes—

(a) *In general.* (1) A credit is allowed under section 2014 against the Federal estate tax for any estate, inheritance, legacy, or succession taxes actually paid to any foreign country (hereinafter referred to as "foreign death taxes"). The credit is allowed only for foreign death taxes paid (i) with respect to property situated within the country to which the tax is paid, (ii) with respect to property included in the decedent's gross estate, and (iii) with respect to the decedent's estate. The credit is allowable to the estate of a decedent who was a citizen of the United States at the time of his death. The credit is also allowable to the estate of a decedent who was a resident but not a citizen of the United States at the time of his death if the country of which the decedent was a national, in imposing death taxes, allows a similar credit to the estates of citizens of the United States resident in that country. See paragraph (b) (1) of § 20.0-1 for definition of the term "resident". The credit is not allowable to the estate of a decedent who was neither a citizen nor a resident of the United States at the time of his death. The credit is allowable not only for death taxes paid to foreign countries which are states in the international sense, but also for death taxes paid to possessions or political subdivisions of foreign states. No credit is allowable for interest or penalties paid in connection with foreign death taxes.

(2) In addition to the credit for foreign death taxes under section 2014, similar credits are allowed under death tax conventions with certain foreign

countries. If credits against the Federal estate tax are allowable under section 2014, or under section 2014 and one or more death tax conventions, for death taxes paid to more than one country, the credits are combined and the aggregate amount is credited against the Federal estate tax, subject to the limitation provided for in paragraph (c) of § 20.2014-4. For application of the credit in cases involving a death tax convention, see § 20.2014-4.

(3) No credit is allowable under section 2014 in connection with property situated outside of the foreign country imposing the tax for which credit is claimed. However, such a credit may be allowable under certain death tax conventions. In the case of a tax imposed by a political subdivision of a foreign country, credit for such tax shall be allowed with respect to property having a situs in that foreign country, even though, under the principles described in this subparagraph, such property has a situs in a political subdivision different from the one imposing the tax. Whether or not particular property of a decedent is situated in the foreign country imposing the tax is determined in accordance with the same principles that would be applied in determining whether or not similar property of a nonresident decedent not a citizen of the United States is situated within the United States for Federal estate tax purposes. See §§ 20.2104-1 and 20.2105-1. For example, under § 20.2104-1, a bond for the payment of money is not within the United States unless it is physically located in the United States. Accordingly, a bond is deemed situated in the foreign country imposing the tax only if it is physically located in that country. Similarly, under § 20.2104-1, shares of stock are deemed to be situated in the United States only if issued by a domestic (United States) corporation. Thus, a share of corporate stock is regarded as situated in the foreign country imposing the tax only if the issuing corporation is incorporated in that country. Further, under § 20.2105-1, moneys deposited with any person carrying on the banking business by or for a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of death are not deemed situated in the United States. Therefore, an account with a foreign bank in the country imposing the tax is not considered to be situated in that country under corresponding circumstances.

(b) *Limitations on credit.* The credit for foreign death taxes is limited to the smaller of the following amounts:

(1) The amount of a particular foreign death tax attributable to property situated in the country imposing the tax and included in the decedent's gross estate for Federal estate tax purposes, computed as set forth in § 20.2014-2; or

(2) The amount of the Federal estate tax attributable to particular property situated in a foreign country, subjected to foreign death tax in that country, and included in the decedent's gross estate for Federal estate tax purposes, computed as set forth in § 20.2014-3.

"First limitation" with respect to inheritance tax of son:
 \$60,000 (factor C of the ratio stated at § 20.2014-2 (a)) X
 \$90,000 (factor D of the ratio stated at § 20.2014-2 (a))

\$18,000 (factor B of the ratio stated at § 20.2014-2 (a)) = \$12,000.

Total "first limitation" on the credit for foreign death taxes.----- 14,000

§ 20.2014-3 "Second limitation". (a) The amount of the Federal estate tax attributable to particular property situated in a foreign country, subjected to foreign death tax in that country, and included in the decedent's gross estate for Federal estate tax purposes is the "second limitation." Thus, the credit is limited to an amount, E, which bears the same ratio to F (the gross Federal estate tax, reduced by any credit for State death taxes under section 2011 and by any credit for gift tax under section 2012) as G (the "adjusted value of the property situated in the foreign country, subjected to foreign death tax, and included in the gross estate", computed as described in paragraph (b) of this section) bears to H (the value of the entire gross estate, reduced by the total amount of the deductions allowed under sections 2055 (charitable deduction) and 2056 (marital deduction)). Stated algebraically, the "second limitation" (E) equals

"Adjusted value of the property situated in the foreign country, subjected to foreign death taxes, and included in the gross estate" (G) X

Value of entire gross estate, less charitable and marital deductions (H)

Gross Federal estate tax, less credits for State death taxes and gift tax (F)

The values used in this proportion are the values determined for the purpose of the Federal estate tax.

(b) Adjustment is required to factor "G" of the ratio stated in paragraph (a) of this section if a charitable deduction under section 2055 or a marital deduction under section 2056 is allowed with respect to the foreign property. In such case, factor "G" is the value of the property situated in the foreign country, subjected to foreign death tax, and included in the gross estate reduced as follows:

(1) If a charitable deduction or a marital deduction is allowed to a decedent's estate with respect to any part of the foreign property specifically bequeathed, devised, or otherwise specifically passing to a charitable organization or to the decedent's spouse, the value of the foreign property is reduced by the amount of the charitable deduction or marital deduction allowed with respect to such specific transfer. See example (1) of paragraph (c) of this section.

(2) If a charitable deduction or a marital deduction is allowed to a decedent's estate with respect to a bequest, devise, or other transfer of an interest in a group of assets including both the foreign property and other property, the value of the foreign property is reduced by an amount, I, which bears the same ratio to J (the amount of the charitable deduction or marital deduction allowed with respect to such transfer of an interest in a group of assets) as K (the value of the foreign property included in the group of assets) bears to L (the value of the entire group of assets). As used in this subparagraph, the term "group of assets" has reference to those assets which, under applicable law, are chargeable with the charitable or marital transfer. See example (2) of paragraph (c) of this section.

Any reduction described in subparagraphs (1) or (2) of this paragraph on account of the marital deduction must proportionately take into account the 50 percent limitation on the aggregate amount of the marital deduction contained in section 2056 (c), if applicable. See example (3) of paragraph (c) of this section.

(c) The application of paragraphs (a) and (b) of this section may be illustrated by the following examples. In each case, the computations relate to the amount of credit under section 2014 without regard to the amount of credit which may be allowable under an applicable death tax convention.

Example (1). (1) Decedent, a citizen and resident of the United States at the time of his death, left a gross estate of \$1,000,000 which includes: shares of stock issued by a United States corporation, valued at \$750,000; bonds issued by the government of Country X physically located in the United States, valued at \$30,000; and shares of stock issued by a Country X corporation, valued at \$200,000. Expenses, indebtedness, etc., amounted to

§ 20.2014-2 "First limitation". (a) The amount of a particular foreign death tax attributable to property situated in the country imposing the tax and included in the decedent's gross estate for Federal estate tax purposes is the "first limitation." Thus, the credit for any foreign death tax is limited to an amount, A, which bears the same ratio to B (the amount of the foreign death tax credit without allowance of the same ratio to B (the amount of the foreign death tax credit without allowance of the credit, if any, for Federal estate tax) as C (the value of the property situated in the country imposing the foreign death tax, subjected to the foreign death tax, and included in the gross estate) bears to D (the value of all property subjected to the foreign death tax). Stated algebraically, the "first limitation" (A) equals

Value of property in foreign country subjected to foreign death tax and included in gross estate (C) X Amount of foreign death tax (B).

Value of all property subjected to foreign death tax (D)

The values used in this proportion are the values determined for the purpose of the foreign death tax. The amount of the foreign death tax for which credit is allowable must be converted into United States money. The application of this paragraph may be illustrated by the following example:

Example. At the time of his death, the decedent, a citizen of the United States, owned real property in Country X valued at \$80,000 and stock in Y Corporation (a corporation organized under the laws of Country X) valued at \$90,000. Decedent left by will \$50,000 of the real property and \$20,000 of the Y Corporation stock to his surviving spouse. He left the rest of the real property and Y Corporation stock to his son. The real property was not included in his gross estate (see section 2031). There is no death tax convention in existence between the United States and Country X. Under the laws of Country X, the inheritance taxes are computed as follows:

Inheritance tax of surviving spouse:

Value of real property in Country X----- \$80,000

Value of stock in Corporation Y----- 20,000

Total value----- 100,000

Tax (16 percent rate)----- 16,000

Inheritance tax of son:

Value of real property in Country X----- \$80,000

Value of stock in Y Corporation----- 60,000

Total value----- 140,000

Tax (16 percent rate)----- 22,400

The "first limitation" on the credit for foreign death taxes is:

\$20,000 + \$60,000 (factor C of the ratio stated at § 20.2014-2 (a)) X

\$70,000 + \$90,000 (factor D of the ratio stated at § 20.2014-2 (a))

(\$11,200 + \$14,400) (factor B of the ratio stated at § 20.2014-2 (a)) = \$12,800.

(b) If a foreign country imposes more than one kind of death tax or imposes

taxes at different rates upon the several shares of an estate, or if a foreign country and a political subdivision or possession thereof each imposes a death tax, a "first limitation" is to be computed separately for each tax or rate and the results added in order to determine the total "first limitation." The application of this paragraph may be illustrated by the following example:

Example. The facts are the same as those contained in the example set forth in paragraph (a) of this section, except that the tax of the surviving spouse was computed at a 10 percent rate and amounted to \$7,000, and the tax of the son was computed at a 20 percent rate and amounted to \$18,000. In this case, the "first limitation" on the credit for foreign death taxes is computed as follows:

"First limitation" with respect to inheritance tax of surviving spouse:

\$20,000 (factor C of the ratio stated at § 20.2014-2 (a)) X

\$70,000 (factor D of the ratio stated at § 20.2014-2 (a))

\$7,000 (factor B of the ratio stated at § 20.2014-2 (a)) = \$2,000.

\$60,000. Decedent specifically bequeathed \$40,000 of the stock issued by the Country X corporation to a United States charity and left the residue of his estate, in equal shares, to his son and daughter. The gross Federal estate tax is \$266,500 and the credit for State death taxes is \$27,600. Under the situs rules referred to in paragraph (a) (3) of § 20.2014-1, the shares of stock issued by the Country X corporation comprise the only property deemed to be situated in Country X.

(ii) The "second limitation" on the credit for foreign death taxes is:

\$200,000—\$40,000 (factor G of the ratio stated at § 20.2014-3 (a); see also § 20.2014-3 (b) (1))

$\frac{\$1,000,000 - \$40,000}{(\$266,500 - \$27,600)} \times$
(factor H of the ratio stated at § 20.2014-3 (a)) = \$39,816.67.

The lesser of this amount and the amount of the "first limitation" (computed under § 20.2014-2) is the credit for foreign death taxes.

Example (2). (i) Decedent, a citizen and resident of the United States at the time of his death, left a gross estate of \$1,000,000 which includes: shares of stock issued by a United States corporation, valued at \$650,000; shares of stock issued by a Country X corporation, valued at \$200,000; and life insurance, in the amount of \$150,000, payable to a son. Expenses, indebtedness, etc., amounted to \$40,000. The decedent made a specific bequest of \$25,000 of the Country X corporation stock to Charity A and a general bequest of \$100,000 to Charity B. The residue of his estate was left to his daughter. The gross Federal estate tax is \$242,450 and the credit for State death taxes is \$24,480. Under these facts and applicable law, neither the stock of the Country X corporation specifically bequeathed to Charity A nor the insurance payable to the son could be charged with satisfying the bequest to Charity B. Therefore, the "group of assets" which could be so charged is limited to stock of the Country X corporation valued at \$175,000 and stock of the United States corporation valued at \$650,000.

(ii) Factor "G" of the ratio which is used in determining the "second limitation" is computed as follows:

Value of property situated in Country X.....	\$200,000.00
Less:	
Reduction described in § 20.2014-3 (b) (1).....	\$25,000.00
Reduction described in § 20.2014-3 (b) (2) =	
\$175,000 (factor K of the ratio stated at § 20.2014-3 (b) (2))	
$\frac{\$175,000 + \$650,000}{\$100,000} \times$	
\$100,000 (factor J of the ratio stated at § 20.2014-3 (b) (2)) =	21,212.12
	46,212.12
Factor "G" of the ratio.....	153,787.88

(iii) In this case, the "second limitation" on the credit for foreign death taxes is:

\$153,787.88 (factor G of the ratio stated at § 20.2014-3 (a); see also subdivision (ii) above)

$\frac{\$1,000,000 - \$125,000}{(\$242,450 - \$24,480)} \times$
(factor F of the ratio stated at § 20.2014-3 (a)) = \$38,309.88.

Example (3). (i) Decedent, a citizen and resident of the United States at the time of his death, left a gross estate of \$850,000 which includes: shares of stock issued by United States corporations, valued at \$440,000; real estate located in the United States, valued at \$110,000; and shares of stock issued by Country X corporations, valued at \$300,000. Expenses, indebtedness, etc., amounted to \$50,000. Decedent devised \$40,000 in real estate to a United States charity. In addition, he bequeathed to his wife \$200,000 in United States stocks and \$300,000 in Country X stocks. The residue of his estate passed to his children. The gross Federal estate tax is \$81,700 and the credit for State death taxes is \$5,520.

(ii) Decedent's adjusted gross estate is \$800,000 (i. e., \$850,000, gross estate less \$50,000, expenses, indebtedness, etc.). The aggregate marital deduction allowed to his estate is limited by section 2056 (c) to one-half of this amount, or \$400,000. Factor "G" of the ratio which is used in determining the "second limitation" is computed as follows:

Value of property situated in Country X.....	\$300,000
Less: Reduction described in § 20.2014-3 (b) (1) determined as follows (see also end of § 20.2014-3 (b))—	
Total amount of bequests which qualify for the marital deduction:	
Specific bequest of Country X stock.....	\$300,000
Specific bequest of United States stock.....	200,000
	500,000
Limitation on aggregate marital deduction under section 2056 (c).....	400,000
Part of specific bequest of Country X stock with respect to which the marital deduction is allowed— $\left(\frac{\$400,000}{\$500,000} \times \$300,000\right)$	240,000
Factor "G" of the ratio.....	60,000

(iii) Thus, the "second limitation" on the credit for foreign death taxes is

\$60,000 (factor G of the ratio stated at § 20.2014-3 (a); see also subdivision (ii) above)
 $\frac{\$850,000 - \$40,000 - \$400,000}{(\$81,700 - \$5,520)} \times$
(factor F of the ratio stated at § 20.2014-3 (a)) = \$11,148.29.

(d) If the foreign country imposes more than one kind of death tax or imposes taxes at different rates upon the several shares of an estate, or if the foreign country and a political subdi-

vision or possession thereof each imposes a death tax, the "second limitation" is still computed by applying the ratio set forth in paragraph (a) of this section. Factor "G" of the ratio is determined by

taking into consideration the combined value of the foreign property which is subjected to each different tax or different rate. The combined value, however, cannot exceed the value at which such property was included in the gross estate for Federal estate tax purposes. Thus, if Country X imposes a tax on the inheritance of a surviving spouse at a 10-percent rate and on the inheritance of a son at a 20-percent rate, the combined value of their inheritances is taken into consideration in determining factor "G" of the ratio, which is then used in computing the "second limitation." However, the "first limitation" is computed as provided in paragraph (b) of § 20.2014-2. The lesser of the "first limitation" and the "second limitation" is the credit for foreign death taxes.

§ 20.2014-4 Application of credit in cases involving a death tax convention—(a) In general. (1) If credit for a particular foreign death tax is authorized by a death tax convention, there is allowed either the credit provided for by the convention or the credit provided for by section 2014, whichever is the more beneficial to the estate. The application of this paragraph may be illustrated by the following example:

Example. (i) Decedent, a citizen of the United States and a domiciliary of Country X at the time of his death, left a gross estate of \$1,000,000 which includes: shares of stock issued by a Country X corporation, valued at \$400,000; bonds issued by a Country X corporation physically located in the United States, valued at \$350,000; and real estate located in the United States, valued at \$250,000. Expenses, indebtedness, etc., amounted to \$50,000. Decedent left his entire estate to his son. There is in effect a death tax convention between the United States and Country X which provides for allowance of credit by the United States for succession duties imposed by the national government of Country X. The gross Federal estate tax is \$307,200 and the credit for State death taxes is \$33,760. Country X imposed a net succession duty on the stocks and bonds of \$180,000. Under the situs rules described in paragraph (a) (3) of § 20.2014-1, the shares of stock comprise the only property deemed to be situated in Country X. Under the convention, both the stocks and the bonds are deemed to be situated in Country X.

(ii) (a) The credit authorized by the convention for death taxes imposed by Country X is computed as follows:

(1) Country X tax attributable to property situated in Country X and subjected to tax by both countries	
$\left(\frac{\$750,000}{\$750,000} \times \$180,000\right)$	\$180,000
(2) Federal estate tax attributable to property situated in Country X and subjected to tax by both countries	
$\left(\frac{\$750,000}{\$1,000,000} \times \$273,440\right)$	205,000
(3) Credit (subdivision (1) or (2), whichever is less).....	180,000

(b) The credit authorized by section 2014 for death taxes imposed by Country X is computed as follows:

(i) "First limitation" computed under § 20.2014-2
 $\left(\frac{\$400,000}{\$750,000} \times \$180,000\right)$ \$96,000

- (2) "Second limitation" computed under § 20.2014-3

$$\left(\frac{\$400,000}{\$1,000,000} \times \$273,440 \right) = \$109,376$$
- (3) Credit (subdivision (1) or (2), whichever is less) 96,000

(iii) On the basis of the facts contained in this example, the credit of \$180,000 authorized by the convention is the more beneficial to the estate.

(2) It should be noted that the greater of the treaty credit and the statutory credit is not necessarily the more beneficial to the estate. Such is the situation, for example, in those cases which involve both a foreign death tax credit and a credit under section 2013 for tax on prior transfers. The reason is that the amount of the credit for tax on prior transfers may differ depending upon whether the credit for foreign death tax is taken under the treaty or under the statute. Therefore, under certain circumstances, the advantage of taking the greater of the treaty credit and the statutory credit may be more than offset by a resultant smaller credit for tax on prior transfers. The solution is to compute the net estate tax payable first on the assumption that the treaty credit will be taken and then on the assumption that the statutory credit will be taken. Such computations will indicate whether the treaty credit or the statutory credit is in fact the more beneficial to the estate.

(b) *Taxes imposed by both a foreign country and a political subdivision thereof.* If a foreign death tax is imposed by both a foreign country with which the United States has entered into a death tax convention and one of its possessions or political subdivisions, there is allowed either the credit provided for by the convention or the credit provided for by section 2014, whichever is the more beneficial to the estate. Thus, if a portion of the estate of a United States citizen is situated in X (a country with which the United States has entered into a death tax convention providing for allowance of credit by the United States for death tax imposed by the national government of X) and is subjected to death taxes imposed by both the national government of X and the government of Y, a province of X, there is allowed either a credit for the national death tax computed under the convention or a credit for the combined national and provincial death taxes computed under section 2014, whichever is the more beneficial to the estate. It should be noted that, unless the convention provides otherwise, credit may not be claimed separately under the convention for the national tax and under section 2014 for the provincial tax. The application of this paragraph is illustrated in greater detail in the following example:

Example. (1) Decedent, a citizen of the United States and a domiciliary of Country X at the time of his death, left a gross estate of \$225,000 which includes: bonds issued by a United States corporation physically located in Y, a province of Country X, valued at \$100,000; bonds issued by a Country X corporation physically located in the United States, valued at \$75,000; and shares of stock issued by a Country X corporation, valued at \$50,000. Expenses, indebtedness, etc., amounted to \$10,000. Decedent left his en-

tire estate to his son. There is in effect a death duty convention between the United States and Country X which provides for allowance of credit by the United States for succession duties imposed by the national government of Country X. The gross Federal estate tax is \$55,200 and the credit for State death taxes is \$3,000. Country X imposed a net succession duty on the Country X stock and the Country X bonds of \$18,000. Province Y imposed a net succession duty on the United States bonds of \$16,000. Under the situs rules described in paragraph (a) (3) of § 20.2014-1, the United States bonds and the Country X stock are deemed to be situated in Country X. Under the convention, the Country X bonds and the Country X stock are deemed to be situated in Country X.

(2) (i) The credit authorized by the convention for death taxes imposed by Country X is computed as follows:

- (a) Country X tax attributable to property situated in Country X and subjected to tax by both countries

$$\left(\frac{\$125,000}{\$125,000} \times \$18,000 \right) = \$18,000$$
- (b) Federal estate tax attributable to property situated in Country X and subjected to tax by both countries

$$\left(\frac{\$125,000}{\$225,000} \times \$52,200 \right) = 29,000$$
- (c) Credit (subdivision (a) or (b), whichever is less) 18,000

(ii) The credit authorized by section 2014 for death taxes imposed by Country X (which includes death taxes imposed by Province Y according to § 20.2014-1 (a) (1)) is computed as follows:

- (a) "First limitation" with respect to tax imposed by national government of Country X computed under § 20.2014-2 (b)

$$\left(\frac{\$50,000}{\$125,000} \times \$18,000 \right) = \$7,200$$
- (b) "First limitation" with respect to tax imposed by Province Y computed under § 20.2014-2 (b)

$$\left(\frac{\$100,000}{\$100,000} \times \$16,000 \right) = 16,000$$
- (c) Total "first limitation" 23,200
- (d) "Second limitation" computed under § 20.2014-3 (d)

$$\left(\frac{\$150,000}{\$225,000} \times \$52,200 \right) = 34,800$$
- (e) Credit (subdivision (c) or (d), whichever is less) 23,200

(3) On the basis of the facts contained in this example, the credit of \$23,200 authorized by section 2014 is the more beneficial to the estate.

(c) *Taxes imposed by two foreign countries with respect to the same property.* It is stated as a general rule in paragraph (a) (2) of § 20.2014-1 that if credits against the Federal estate tax are allowable under section 2014, or under section 2014 and one or more death tax conventions, for death taxes paid to more than one country, the credits are combined and the aggregate amount is credited against the Federal estate tax. This rule may result in credit being allowed for taxes imposed by two different countries upon the same item of property. If such is the case, the total amount of the credits with respect to such property is limited to the amount of the Federal estate tax attributable to the property, determined in accordance with the rules prescribed for computing

the "second limitation" set forth in § 20.2014-3. The application of this section may be illustrated by the following example:

Example. The decedent, a citizen of the United States and a domiciliary of Country X at the time of his death, left a taxable estate which included bonds issued by Country X corporations, physically located in Country Z. Each of the three countries involved imposed death taxes on the Country X bonds. Assume that under the provisions of a treaty between the United States and Country X, the estate is entitled to a credit against the Federal estate tax for death taxes imposed by Country X on the Country X bonds in the maximum amount of \$20,000. Assume, also, that under the provisions of section 2014, the estate is entitled to a credit against the Federal estate tax for death taxes imposed by Country Z on the Country X bonds in the maximum amount of \$10,000. Finally, assume that the Federal estate tax attributable to the Country X bonds is \$25,000. Under such circumstances, the credit allowed the estate with respect to the Country X bonds would be limited to \$25,000.

§ 20.2014-5 *Proof of credit.* (a) If the foreign death tax has not been determined and paid by the time the Federal estate tax return required by section 6018 is filed, credit may be claimed on the return in an estimated amount. However, before credit for the foreign death tax is finally allowed, satisfactory evidence, such as a statement by an authorized official of each country, possession or political subdivision thereof imposing the tax, must be submitted on Form 706CE certifying: (1) The full amount of the tax (exclusive of any interest or penalties), as computed before allowance of any credit, remission, or relief; (2) the amount of any credit, allowance, remission, or relief, and other pertinent information, including the nature of the allowance and a description of the property to which it pertains; (3) the net foreign death tax payable after any such allowance; (4) the date on which the death tax was paid, or if not all paid at one time, the date and amount of each partial payment; and (5) a list of the property situated in the foreign country and subjected to its tax, showing a description and the value of the property. Satisfactory evidence must also be submitted showing that no refund of the death tax is pending and none is authorized or, if any refund is pending or has been authorized, its amount and other pertinent information. See also section 2016 and § 20.2016-1 for requirements if foreign death taxes claimed as a credit are subsequently recovered.

(b) The following information must also be submitted whenever applicable:

(1) If any of the property subjected to the foreign death tax was situated outside of the country imposing the tax, the description of each item of such property and its value.

(2) If more than one inheritance or succession is involved with respect to which credit is claimed, or if the foreign country, possession or political subdivision thereof imposes more than one kind of death tax, or if both the foreign country and a possession or political subdivision thereof each imposes a death tax, a separate computa-

tion with respect to each inheritance or succession tax.

(c) In addition to the information required under paragraphs (a) and (b) of this section, the district director may require the submission of any further proof deemed necessary to establish the right to the credit.

§ 20.2014-6 Period of limitations on credit. The credit for foreign death taxes under section 2014 is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the estate tax return for the decedent's estate. If, however, a petition has been filed with The Tax Court of the United States for the redetermination of a deficiency within the time prescribed in section 6213 (a), the credit is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the return, or before the expiration of 60 days after the decision of the Tax Court becomes final, whichever period is the last to expire. Similarly, if an extension of time has been granted under section 6161 for payment of the tax shown on the return, or of a deficiency, the credit is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the return, or before the date of the expiration of the period of the extension, whichever period is the last to expire. See section 2015 for the applicable period of limitations for credit for foreign death taxes on reversionary or remainder interests if an election is made under section 6163 (a) to postpone payment of the estate tax attributable to reversionary or remainder interests. If a claim for refund based on the credit for foreign death taxes is filed within the applicable period described in this section, a refund may be made despite the general limitation provisions of sections 6511 and 6512. Any refund based on the credit for foreign death taxes shall be made without interest.

§ 20.2015 Statutory provisions; credit for death taxes on remainders.

Sec. 2015. Credit for death taxes on remainders. Where an election is made under section 6163 (a) to postpone payment of the tax imposed by section 2001 or 2101, such part of any estate, inheritance, legacy, or succession taxes allowable as a credit under section 2011 or 2014, as is attributable to a reversionary or remainder interest may be allowed as a credit against the tax attributable to such interest, subject to the limitations on the amount of the credit contained in such sections, if such part is paid, and credit therefor claimed, at any time before the expiration of 60 days after the termination of the precedent interest or interests in the property.

§ 20.2015-1 Credit for death taxes on remainders. (a) If the executor of an estate elects under section 6163 (a) to postpone the time for payment of any portion of the Federal estate tax attributable to a reversionary or remainder interest in property, credit is allowed under sections 2011 and 2014 against such portion of the Federal estate tax for State death taxes and foreign death taxes attributable to the reversionary or

remainder interest if such State death taxes or foreign death taxes are paid and if credit therefor is claimed either—

(1) Within the time provided for in sections 2011 and 2014, or

(2) Within 60 days after the termination of the precedent interest or interests in the property.

The allowance of credit, however, is subject to the other limitations contained in sections 2011 and 2014.

(b) In applying the rule stated in paragraph (a) of this section, credit for State death taxes or foreign death taxes paid within the time provided in sections 2011 and 2014 is applied first to the portion of the Federal estate tax payment of which is not postponed, and any excess is applied to the balance of the Federal estate tax. However, credit for State death taxes or foreign death taxes not paid within the time provided in section 2011 or 2014 is allowable only against the portion of the Federal estate tax attributable to the reversionary or remainder interest, and only for State or foreign death taxes attributable to that interest. If a State death tax or a foreign death tax is imposed upon both a reversionary or remainder interest and upon other property, without a definite apportionment of the tax, the amount of the tax deemed attributable to the reversionary or remainder interest is an amount which bears the same ratio to the total tax as the value of the reversionary or remainder interest bears to the value of the entire property with respect to which the tax was imposed. In applying this ratio, adjustments consistent with those required under paragraph (c) of § 20.6163-1 must be made.

(c) The application of this section may be illustrated by the following examples:

Example (1). One-third of the Federal estate tax was attributable to a remainder interest in real property located in State Y, and two-thirds of the Federal estate tax was attributable to other property located in State X. The payment of the tax attributable to the remainder interest was postponed under the provisions of section 6163 (a). The maximum credit allowable for State death taxes under the provisions of section 2011 is \$12,000. Therefore, of the maximum credit allowable, \$4,000 is attributable to the remainder interest and \$8,000 is attributable to the other property. Within the 4-year period provided for in section 2011, inheritance tax in the amount of \$9,000 was paid to State X in connection with the other property. With respect to this \$9,000, \$8,000 (the maximum amount allowable) is allowed as a credit against the Federal estate tax attributable to the other property, and \$1,000 is allowed as a credit against the postponed tax. After the expiration of the 4-year period but before expiration of 60 days after termination of the life estate or other precedent interest, inheritance tax in the amount of \$5,000 was paid to State Y in connection with the remainder interest. As the maximum credit allowable with respect to the remainder interest is \$4,000 and \$1,000 has already been allowed as a credit, an additional \$3,000 will be credited against the Federal estate tax attributable to the remainder interest.

Example (2). The facts are the same as in example (1), except that within the 4-year period inheritance tax in the amount of \$2,500 was paid to State Y with respect to the remainder interest and inheritance tax

in the amount of \$7,500 was paid to State X with respect to the other property. The amount of \$8,000 is allowed as a credit against the Federal estate tax attributable to the other property and the amount of \$2,000 is allowed as a credit against the postponed tax. After the expiration of the 4-year period but before the expiration of 60 days after the termination of the life estate or other precedent interest, the estate pays additional inheritance taxes of \$5,000 to State Y in connection with the remainder interest. Thus, additional credit will be allowed in the amount of \$2,000 (\$4,000, maximum credit allowable, less \$2,000, credit previously allowed) against the Federal estate tax attributable to the remainder interest.

Example (3). The facts are the same as in example (2), except that no payment was made to State Y within the 4-year period. The amount of \$7,500 is allowed as a credit against the Federal estate tax attributable to the other property. After termination of the life interest additional credit will be allowed in the amount of \$4,000 against the Federal estate tax attributable to the remainder interest. Since the payment of \$5,000 was made to State Y following the expiration of the 4-year period, no part of the payment may be allowed as a credit against the Federal estate tax attributable to the other property.

§ 20.2016 Statutory provisions; recovery of taxes claimed as credit.

Sec. 2016. Recovery of taxes claimed as credit. If any tax claimed as a credit under section 2011 or 2014 is recovered from any foreign country, any State, any Territory or possession of the United States, or the District of Columbia, the executor, or any other person or persons recovering such amount, shall give notice of such recovery to the Secretary or his delegate at such time and in such manner as may be required by regulations prescribed by him, and the Secretary or his delegate shall (despite the provisions of section 6501) redetermine the amount of the tax under this chapter and the amount, if any, of the tax due on such redetermination, shall be paid by the executor or such person or persons, as the case may be, on notice and demand. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary or his delegate, resulting from a refund to the executor of tax claimed as a credit under section 2014, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country on such refund.

§ 20.2016-1 Recovery of death taxes claimed as credit. In accordance with the provisions of section 2016, the executor (or any other person) receiving a refund of any State death taxes or foreign death taxes claimed as a credit under section 2011 or section 2014 shall notify the district director of the refund within 30 days of its receipt. The notice shall contain the following information:

- The name of the decedent;
- The date of the decedent's death;
- The property with respect to which the refund was made;
- The amount of the refund, exclusive of interest;
- The date of the refund; and
- The name and address of the person receiving the refund.

If the refund was in connection with foreign death taxes claimed as a credit under section 2014, the notice shall also contain a statement showing the amount of interest, if any, paid by the foreign country on the refund. Finally, the per-

son filing the notice shall furnish the district director such additional information as he may request. Any Federal estate tax found to be due by reason of the refund is payable by the person or persons receiving it, upon notice and demand, even though the refund is received after the expiration of the period of limitations set forth in section 6501 (see section 6501 (c) (5)). If the tax found to be due results from a refund of foreign death tax claimed as a credit under section 2014, such tax shall not bear interest for any period before the receipt of the refund, except to the extent that interest was paid by the foreign country on the refund.

GROSS ESTATE

§ 20.2031 Statutory provisions; definition of gross estate.

Sec. 2031. Definition of gross estate—(a) General. The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States.

(b) Valuation of unlisted stock and securities. In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

§ 20.2031-1 Definition of gross estate; valuation of property—(a) Definition of gross estate. The value of the gross estate of a decedent who was a citizen or resident of the United States at the time of his death is the total value of the interests described in sections 2033 through 2044, other than real property situated outside of the United States (as defined in paragraph (b) (1) (i) of § 20.0-1) valued as described in §§ 20.2031-1 to 20.2031-9 and § 20.2032-1. The contents of sections 2033 through 2044 are, in general, as follows:

(1) Sections 2033 and 2034 are concerned mainly with interests in property passing through the decedent's probate estate. Section 2033 includes in the decedent's gross estate any interest that the decedent had in property at the time of his death. Section 2034 provides that any interest of the decedent's surviving spouse in the decedent's property, such as dower or curtesy, does not prevent the inclusion of such property in the decedent's gross estate.

(2) Sections 2035 through 2038 deal with interests in property transferred by the decedent during his life under such circumstances as to bring the interests within the decedent's gross estate. Section 2035 includes in the decedent's gross estate property transferred in contemplation of death, even though the decedent had no interest in, or control over, the property at the time of his death. Section 2036 provides for the inclusion of transferred property with respect to which the decedent retained the income or the power to designate who shall en-

joy the income. Section 2037 includes in the decedent's gross estate certain transfers under which the beneficial enjoyment of the property could be obtained only by surviving the decedent. Section 2038 provides for the inclusion of transferred property if the decedent had at the time of his death the power to change the beneficial enjoyment of the property. It should be noted that there is considerable overlap in the application of sections 2036 through 2038 with respect to reserved powers, so that transferred property may be includible in the decedent's gross estate in varying degrees under more than one of those sections.

(3) Sections 2039 through 2042 deal with special kinds of property and powers. Sections 2039 and 2040 concern annuities and jointly held property, respectively. Section 2041 deals with powers held by the decedent over the beneficial enjoyment of property not originating with the decedent. Section 2042 concerns insurance under policies on the life of the decedent.

(4) Section 2043 concerns the sufficiency of consideration for transfers made by the decedent during his life. This has a bearing on the amount to be included in the decedent's gross estate under sections 2035 through 2038, and 2041. Section 2044 deals with retroactivity.

(b) Valuation of property in general. The value of every item of property includible in a decedent's gross estate under sections 2031 through 2044 is its fair market value at the time of the decedent's death, except that if the executor elects the alternate valuation method under section 2032, it is the fair market value thereof at the date, and with the adjustments, prescribed in that section. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includible in the decedent's gross estate is not to be determined by a forced sale price. The value is generally to be determined by ascertaining as a basis the fair market value as of the applicable valuation date of each unit of the property. For example, in the case of shares of stock or bonds, such unit of property is generally a share of stock or a bond. Livestock, farm machinery, harvested and growing crops must generally be itemized and the value of each item separately returned. Property shall not be returned at the value at which it is assessed for local tax purposes unless that value represents the fair market value as of the applicable valuation date. All relevant facts and elements of value as of the applicable valuation date shall be considered in every case. See §§ 20.2031-2 to 20.2031-8 for further information concerning the valuation of particular kinds of property.

§ 20.2031-2 Valuation of stocks and bonds—(a) In general. The value of stocks and bonds is the fair market value

per share or bond on the applicable valuation date.

(b) Based on selling prices. If there is a market for stocks or bonds, on a stock exchange, in an over-the-counter market, or otherwise, the mean between the highest and lowest quoted selling prices on the valuation date is the fair market value per share or bond. If there were no sales on the valuation date, but there were sales on dates within a reasonable period both before and after the valuation date, the fair market value is determined by taking a weighted average of the means between the highest and lowest sales on the nearest date before and the nearest date after the valuation date. The average is to be weighted inversely by the respective numbers of trading days between the selling dates and the valuation date. For example, assume that sales of stock nearest the valuation date (Friday, June 15) occurred two trading days before (Wednesday, June 13) and three trading days after (Wednesday, June 20) and that on these days the mean sale prices per share were \$10 and \$15, respectively. The price of \$12 is taken as representing the fair market value of a share of the stock as of the valuation date

$$\left(\frac{(3 \times 10) + (2 \times 15)}{5} \right)$$
. If, instead, the mean

sale prices per share on June 13 and June 20 were \$15 and \$10, respectively, the price of \$13 is taken as representing the fair market value

$$\left(\frac{(3 \times 15) + (2 \times 10)}{5} \right)$$
. As a further ex-

ample, assume that the decedent died on Sunday, October 7, and that Saturday and Sunday were not trading days. If sales of stock occurred on Friday, October 5, at mean sale prices per share of \$20 and on Monday, October 8, at mean sale prices per share of \$23, then the fair market value per share of stock as of the valuation date is \$21.50. If stocks or bonds are listed on more than one exchange, the records of the exchange where the stocks or bonds are principally dealt in should be employed. In valuing listed securities, the executor should be careful to consult accurate records to obtain values as of the applicable valuation date. If quotations of unlisted securities are obtained from brokers, or evidence as to their sale is obtained from officers of the issuing companies, copies of the letters furnishing such quotations or evidence of sale should be attached to the return.

(c) Based on bid and asked prices. If the provisions of paragraph (b) of this section are inapplicable because actual sales are not available during a reasonable period beginning before and ending after the valuation date, the fair market value may be determined by taking the mean between the bona fide bid and asked prices on the valuation date, or if none, by taking a weighted average of the means between the bona fide bid and asked prices on the nearest trading date before and the nearest trading date after the valuation date, if both such nearest dates are within a reasonable period. The average is to be deter-

mined in the manner described in paragraph (b) of this section.

(d) *Based on incomplete selling prices or bid and asked prices.* If the provisions of paragraphs (b) and (c) of this section are inapplicable because no actual sale prices or bona fide bid and asked prices are available on a date within a reasonable period before the valuation date, but such prices are available on a date within a reasonable period after the valuation date, or vice versa, then the mean between the highest and lowest available sale prices or bid and asked prices may be taken as the value.

(e) *Where selling prices or bid and asked prices do not reflect fair market value.* If it is established that the value of any bond or share of stock determined on the basis of selling or bid and asked prices as provided under paragraphs (b), (c), and (d) of this section does not reflect the fair market value thereof, then some reasonable modification of that basis or other relevant facts and elements of value are considered in determining the fair market value. Where sales at or near the date of death are few or of a sporadic nature, such sales alone may not indicate fair market value. In certain exceptional cases, the size of the block of stock to be valued in relation to the number of shares changing hands in sales may be relevant in determining whether selling prices reflect the fair market value of the block of stock to be valued. If the executor can show that the block of stock to be valued is so large in relation to the actual sales on the existing market that it could not be liquidated in a reasonable time without depressing the market, the price at which the block could be sold as such outside the usual market, as through an underwriter, may be a more accurate indication of value than market quotations. Complete data in support of any allowance claimed due to the size of the block of stock being valued shall be submitted with the return. On the other hand, if the block of stock to be valued represents a controlling interest, either actual or effective, in a going business, the price at which other lots change hands may have little relation to its true value.

(f) *Where selling prices or bid and asked prices are unavailable.* If the provisions of paragraphs (b), (c), and (d) of this section are inapplicable because actual sale prices and bona fide bid and asked prices are lacking, then the fair market value is to be determined by taking the following factors into consideration:

(1) In the case of corporate or other bonds, the soundness of the security, the interest yield, the date of maturity, and other relevant factors; and

(2) In the case of shares of stock, the company's net worth, prospective earning power and dividend-paying capacity, and other relevant factors.

Some of the "other relevant factors" referred to in subparagraphs (1) and (2) of this paragraph are: the good will of the business; the economic outlook in the particular industry; the company's position in the industry and its management; the degree of control of the business represented by the block of stock to

be valued; and the values of securities of corporations engaged in the same or similar lines of business which are listed on a stock exchange. However, the weight to be accorded such comparisons or any other evidentiary factors considered in the determination of a value depends upon the facts of each case. Complete financial and other data upon which the valuation is based should be submitted with the return, including copies of reports of any examinations of the company made by accountants, engineers, or any technical experts as of or near the applicable valuation date.

(g) *Pledged securities.* The full value of securities pledged to secure an indebtedness of the decedent is included in the gross estate. If the decedent had a trading account with a broker, all securities belonging to the decedent and held by the broker at the date of death must be included at their fair market value as of the applicable valuation date. Securities purchased on margin for the decedent's account and held by a broker must also be returned at their fair market value as of the applicable valuation date. The amount of the decedent's indebtedness to a broker or other person with whom securities were pledged is allowed as a deduction from the gross estate in accordance with the provisions of § 20.2053-1 or § 20.2106-1 (for estates of nonresidents not citizens).

(h) *Securities subject to an option or contract to purchase.* Another person may hold an option or a contract to purchase securities owned by a decedent at the time of his death. The effect, if any, that is given to the option or contract price in determining the value of the securities for estate tax purposes depends upon the circumstances of the particular case. Little weight will be accorded a price contained in an option or contract under which the decedent is free to dispose of the underlying securities at any price he chooses during his lifetime. Such is the effect, for example, of an agreement on the part of a shareholder to purchase whatever shares of stock the decedent may own at the time of his death. Even if the decedent is not free to dispose of the underlying securities at other than the option or contract price, such price will be disregarded in determining the value of the securities unless it is determined under the circumstances of the particular case that the agreement represents a bona fide business arrangement and not a device to pass the decedent's shares to the natural objects of his bounty for less than an adequate and full consideration in money or money's worth.

(i) *Stock sold "ex-dividend."* In any case where a dividend is declared on a share of stock before the decedent's death but payable to stockholders of record on a date after his death and the stock is selling "ex-dividend" on the date of the decedent's death, the amount of the dividend is added to the ex-dividend quotation in determining the fair market value of the stock as of the date of the decedent's death.

§ 20.2031-3 *Valuation of interests in businesses.* The fair market value of

any interest of a decedent in a business, whether a partnership or a proprietorship, is the net amount which a willing purchaser, whether an individual or a corporation, would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The net value is determined on the basis of all relevant factors including—

(a) A fair appraisal as of the applicable valuation date of all the assets of the business, tangible and intangible, including good will;

(b) The demonstrated earning capacity of the business; and

(c) The other factors set forth in paragraphs (f) and (h) of § 20.2031-2 relating to the valuation of corporate stock, to the extent applicable.

Special attention should be given to determining an adequate value of the good will of the business in all cases in which the decedent has not agreed, for an adequate and full consideration in money or money's worth, that his interest passes at his death to, for example, his surviving partner or partners. Complete financial and other data upon which the valuation is based should be submitted with the return, including copies of reports of examinations of the business made by accountants, engineers, or any technical experts as of or near the applicable valuation date.

§ 20.2031-4 *Valuation of notes.* The fair market value of notes, secured or unsecured, is presumed to be the amount of unpaid principal, plus interest accrued to the date of death, unless the executor establishes that the value is lower or that the notes are worthless. However, items of interest shall be separately stated on the estate tax return. If not returned at face value, plus accrued interest, satisfactory evidence must be submitted that the note is worth less than the unpaid amount (because of the interest rate, date of maturity, or other cause), or that the note is uncollectible, either in whole or in part (by reason of the insolvency of the party or parties liable, or for other cause), and that any property pledged or mortgaged as security is insufficient to satisfy the obligation.

§ 20.2031-5 *Valuation of cash on hand or on deposit.* The amount of cash belonging to the decedent at the date of his death, whether in his possession or in the possession of another, or deposited with a bank, is included in the decedent's gross estate. If bank checks outstanding at the time of the decedent's death and given in discharge of bona fide legal obligations of the decedent incurred for an adequate and full consideration in money or money's worth are subsequently honored by the bank and charged to the decedent's account, the balance remaining in the account may be returned, but only if the obligations are not claimed as deductions from the gross estate.

§ 20.2031-6 *Valuation of household and personal effects—(a) General rule.* The fair market value of the decedent's household and personal effects is the

price which a willing buyer would pay to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. A room by room itemization of household and personal effects is desirable. All the articles should be named specifically, except that a number of articles contained in the same room, none of which has a value in excess of \$100, may be grouped. A separate value should be given for each article named. In lieu of an itemized list, the executor may furnish a written statement, containing a declaration that it is made under penalties of perjury, setting forth the aggregate value as appraised by a competent appraiser or appraisers of recognized standing and ability, or by a dealer or dealers in the class of personality involved.

(b) *Special rule in cases involving a substantial amount of valuable articles.* Notwithstanding the provisions of paragraph (a) of this section, if there are included among the household and personal effects articles having marked artistic or intrinsic value of a total value in excess of \$3,000 (e. g., jewelry, furs, silverware, paintings, etchings, engravings, antiques, books, statuary, vases, oriental rugs, coin or stamp collections), the appraisal of an expert or experts, under oath, shall be filed with the return. The appraisal shall be accompanied by a written statement of the executor containing a declaration that it is made under the penalties of perjury as to the completeness of the itemized list of such property and as to the disinterested character and the qualifications of the appraiser or appraisers.

(c) *Disposition of household effects prior to investigation.* If it is desired to effect distribution or sale of any portion of the household or personal effects of the decedent in advance of an investigation by an officer of the Internal Revenue Service, information to that effect shall be given to the district director. The statement to the district director shall be accompanied by an appraisal of such property, under oath, and by a written statement of the executor, containing a declaration that it is made under the penalties of perjury, regarding the completeness of the list of such property and the qualifications of the appraiser, as heretofore described. If a personal inspection by an officer of the Internal Revenue Service is not deemed necessary, the executor will be so advised. This procedure is designed to facilitate disposition of such property and to obviate future expense and inconvenience to the estate by affording the district director an opportunity to make an investigation should one be deemed necessary prior to sale or distribution.

(d) *Additional rules if an appraisal involved.* If, pursuant to paragraphs (a), (b), and (c) of this section, expert appraisers are employed, care should be taken to see that they are reputable and of recognized competency to appraise the particular class of property involved. In the appraisal, books in sets by standard authors should be listed in separate groups. In listing paintings having

artistic value, the size, subject, and artist's name should be stated. In the case of oriental rugs, the size, make, and general condition should be given. Sets of silverware should be listed in separate groups. Groups or individual pieces of silverware should be weighed and the weights given in troy ounces. In arriving at the value of silverware, the appraisers should take into consideration its antiquity, utility, desirability, condition, and obsolescence.

§ 20.2031-7 *Valuation of annuities, life estates, terms for years, remainders and reversions—(a) In general.* (1) The fair market value of annuities, life estates, terms for years, remainders and reversions is their present value, determined under this section, except in the case of annuities under contracts issued by companies regularly engaged in their sale. The valuation of such commercial annuity contracts, and of insurance policies on the lives of persons other than the decedent, is determined under § 20.2031-8. (See § 20.2042-1 with respect to insurance policies on the decedent's life.)

(2) The present value of an annuity, life estate, remainder or reversion determined under this section which is dependent on the continuation or termination of the life of one person is computed by the use of Table I in paragraph (f) of this section. The present value of an annuity, term for years, remainder or reversion dependent on a term certain is computed by the use of Table II in paragraph (f) of this section. If the interest to be valued is dependent upon more than one life or there is a term certain concurrent with one or more lives, see paragraph (e) of this section. For purposes of the computations described in this section, the age of a person is to be taken as the age of that person at his nearest birthday.

(b) *Annuities—(1) Payable annually at end of year.* If an annuity is payable annually at the end of each year during the life of an individual (as, for example, if the first payment is due one year after decedent's death), the amount payable annually is multiplied by the figure in column 2 of Table I opposite the number of years in column 1 nearest the age of the individual whose life measures the duration of the annuity. If the annuity is payable annually at the end of each year for a definite number of years, the amount payable annually is multiplied by the figure in column 2 of Table II opposite the number of years in column 1 representing the duration of the annuity. The application of this subparagraph may be illustrated by the following examples:

Example (1). The decedent received, under the terms of his father's will an annuity of \$10,000 a year payable annually for the life of his elder brother. At the time he died, an annual payment had just been made. The brother at the decedent's death was 40 years 8 months old. By reference to Table I, the figure in column 2 opposite 41 years, the number nearest to the brother's actual age, is found to be 17.6853. The present value of the annuity at the date of the decedent's death is, therefore, \$176,853 (\$10,000 × 17.6853).

Example (2). The decedent was entitled to receive an annuity of \$10,000 a year payable annually throughout a term certain. At the time he died, an annual payment had just been made and five more annual payments were still to be made. By reference to Table II, it is found that the figure in column 2 opposite 5 years is 4.5151. The present value of the annuity is, therefore, \$45,151 (\$10,000 × 4.5151).

(2) *Payable at the end of semiannual, quarterly, monthly, or weekly periods.* If an annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods during the life of an individual (as for example if the first payment is due one month after the decedent's death), the aggregate amount to be paid within a year is first multiplied by the figure in column 2 of Table I opposite the number of years in column 1 nearest the age of the individual whose life measures the duration of the annuity. The product so obtained is then multiplied by whichever of the following factors is appropriate:

1.0087 for semiannual payments,
1.0130 for quarterly payments,
1.0159 for monthly payments,
1.0171 for weekly payments.

If the annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods for a definite number of years, the aggregate amount to be paid within a year is first multiplied by the figure in column 2 of Table II opposite the number of years in column 1 representing the duration of the annuity. The product so obtained is then multiplied by whichever of the above factors is appropriate. The application of this subparagraph may be illustrated by the following example:

Example. The facts are the same as those contained in example (1) set forth in subparagraph (1) of this paragraph, except that the annuity is payable semiannually. The aggregate annual amount, \$10,000, is multiplied by the factor 1.0087, and the product multiplied by 1.0087. The present value of the annuity at the date of the decedent's death is, therefore, \$178,391.62 (\$10,000 × 1.0087 × 1.0087).

(3) *Payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods.* (1) If the first payment of an annuity for the life of an individual is due at the beginning of the annual or other payment period rather than at the end (as, for example, if the first payment is to be made immediately after the decedent's death), the value of the annuity is the sum of (a) the first payment plus (b) the present value of a similar annuity, the first payment of which is not to be made until the end of the payment period, determined as provided in subparagraph (1) or (2) of this paragraph. The application of this subdivision may be illustrated by the following example:

Example. The decedent was entitled to receive an annuity of \$50 a month during the life of another. The decedent died on a day the payment was due. At the date of the decedent's death, the person whose life measures the duration of the annuity was 50 years of age. The value of the annuity at the date of the decedent's death is \$50 plus the product of \$50 × 12 × 14.8486 (see Table I) × 1.0159 (see subparagraph (2) of this paragraph), or \$9,100.82.

(ii) If the first payment of an annuity for a definite number of years is due at the beginning of the annual or other payment period, the applicable factor is the product of the factor shown in Table II multiplied by whichever of the following factors is appropriate:

- 1.0350 for annual payments,
- 1.0262 for semiannual payments,
- 1.0218 for quarterly payments,
- 1.0189 for monthly payments,
- 1.0177 for weekly payments.

The application of this subdivision may be illustrated by the following example:

Example. The decedent was the beneficiary of an annuity of \$50 a month. On the day a payment was due, the decedent died. There were 300 payments to be made, including the payment due. The value of the annuity as of the date of decedent's death is the product of $\$50 \times 12 \times 16.4615$ (see Table II) $\times 1.0189$, or \$10,075.80.

(c) *Life estates and terms for years.* If the interest to be valued is the right of a person for his life, or for the life of another person, to receive the income of certain property or to use nonincome-producing property, the value of the interest is the value of the property multiplied by the figure in column 3 of Table I opposite the number of years nearest to the actual age of the measuring life. If the interest to be valued is the right to receive income of property or to use nonincome-producing property for a term of years, column 3 of Table II is used. The application of this paragraph may be illustrated by the following example:

Example. The decedent or his estate was entitled to receive the income from a fund of \$50,000 during the life of his elder brother. Upon the brother's death, the remainder is to go to X. The brother was 31 years 5 months old at the time of decedent's death. By reference to Table I, the figure in column 3 opposite 31 years is found to be 0.71068. The present value of decedent's interest is, therefore, \$35,534 ($\$50,000 \times 0.71068$).

(d) *Remainders or reversionary interests.* If a decedent had, at the time of his death, a remainder or a reversionary interest in property to take effect after an estate for the life of another, the present value of his interest is obtained by multiplying the value of the property by the figure in column 4 of Table I opposite the number of years nearest to the actual age of the person whose life measures the preceding estate. If the remainder or reversion is to take effect at the end of a term for years, column 4 of Table II is used. The application of this paragraph may be illustrated by the following example:

Example. The decedent was entitled to receive certain property worth \$50,000 upon the death of his elder brother, to whom the income was bequeathed for life. At the time of the decedent's death, the elder brother was 31 years 5 months old. By reference to Table I, the figure in column 4 opposite 31 years is found to be 0.28932. The present value of the remainder interest at the date of decedent's death is, therefore, \$14,460 ($\$50,000 \times 0.28932$).

(e) *Actuarial computations by the Internal Revenue Service.* If the valuation of the interest involved is dependent

upon the continuation or the termination of more than one life or upon a term certain concurrent with one or more lives, a special factor must be used. The factor is to be computed upon the basis of the Makehamized mortality table appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-1941, published by the United States Department of Commerce, Bureau of Census, and interest at the rate of $3\frac{1}{2}$ percent a year, compounded annually. Many such factors may be found in, or readily computed with the use of the tables contained in, a pamphlet entitled "Actuarial Values for Estate and Gift Tax." This pamphlet may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington 25, D. C. However, if a special factor is required in the case of an actual decedent, the Commissioner will furnish the factor to the executor upon request. The request must be accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the interest, and by copies of the relevant instruments.

(f) The following tables shall be used in the application of the provisions of this section:

TABLE I

TABLE, SINGLE LIFE, 3% PERCENT, SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE INTEREST, AND OF A REMAINDER INTEREST

(1) Age	(2) Annuity	(3) Life estate	(4) Remainder
0	23.9685	0.83890	0.16110
1	24.9035	0.81162	0.18838
2	24.8920	0.81122	0.18878
3	24.8246	0.80886	0.19114
4	24.7378	0.80582	0.19418
5	24.6392	0.80237	0.19763
6	24.5326	0.79864	0.20136
7	24.4188	0.79466	0.20534
8	24.2982	0.79044	0.20956
9	24.1713	0.78600	0.21400
10	24.0387	0.78135	0.21865
11	23.9008	0.77653	0.22347
12	23.7600	0.77160	0.22840
13	23.6161	0.76656	0.23344
14	23.4693	0.76143	0.23857
15	23.3194	0.75618	0.24382
16	23.1665	0.75083	0.24917
17	23.0103	0.74536	0.25464
18	22.8511	0.73979	0.26021
19	22.6870	0.73404	0.26596
20	22.5179	0.72813	0.27187
21	22.3438	0.72203	0.27797
22	22.1646	0.71576	0.28424
23	21.9801	0.70930	0.29070
24	21.7902	0.70265	0.29734
25	21.5960	0.69582	0.30418
26	21.3942	0.68880	0.31120
27	21.1878	0.68157	0.31843
28	20.9759	0.67416	0.32584
29	20.7581	0.66653	0.33347
30	20.5345	0.65871	0.34129
31	20.3052	0.65078	0.34922
32	20.0699	0.64275	0.35725
33	19.8288	0.63461	0.36539
34	19.5816	0.62635	0.37364
35	19.3285	0.61796	0.38204
36	19.0695	0.60943	0.39061
37	18.8044	0.60075	0.39925
38	18.5334	0.59193	0.40807
39	18.2566	0.58298	0.41702
40	17.9738	0.57389	0.42611
41	17.6853	0.56466	0.43534
42	17.3911	0.55529	0.44471
43	17.0913	0.54578	0.45422
44	16.7860	0.53613	0.46387
45	16.4754	0.52635	0.47364
46	16.1596	0.51643	0.48354
47	15.8388	0.50636	0.49354
48	15.5133	0.49613	0.50367
49	15.1831	0.48575	0.51392
50	14.8486	0.47522	0.52428
51	14.5101	0.46455	0.53475
52	14.1678	0.45375	0.54532

TABLE I—Continued

TABLE, SINGLE LIFE, 3% PERCENT, SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE INTEREST, AND OF A REMAINDER INTEREST—continued

(1) Age	(2) Annuity	(3) Life estate	(4) Remainder
53	13.8221	0.44377	0.55623
54	13.4734	0.43157	0.56843
55	13.1218	0.41926	0.58074
56	12.7679	0.40688	0.59312
57	12.4120	0.39442	0.60558
58	12.0546	0.38191	0.61809
59	11.6960	0.36936	0.63064
60	11.3369	0.35677	0.64323
61	10.9776	0.34412	0.65587
62	10.6186	0.33155	0.66852
63	10.2594	0.31891	0.68119
64	9.9006	0.30633	0.69387
65	9.5416	0.29370	0.70656
66	9.1820	0.28105	0.71926
67	8.8224	0.26842	0.73196
68	8.4631	0.25579	0.74466
69	8.1038	0.24312	0.75736
70	7.7440	0.23040	0.77006
71	7.3841	0.21768	0.78276
72	7.0242	0.20496	0.79546
73	6.6643	0.19224	0.80816
74	6.3044	0.17952	0.82086
75	5.9445	0.16680	0.83356
76	5.5846	0.15408	0.84626
77	5.2247	0.14136	0.85896
78	4.8648	0.12864	0.87166
79	4.5049	0.11592	0.88436
80	4.1450	0.10320	0.89706
81	3.7851	0.09048	0.90976
82	3.4252	0.07776	0.92246
83	3.0653	0.06504	0.93516
84	2.7054	0.05232	0.94786
85	2.3455	0.03960	0.96056
86	1.9856	0.02688	0.97326
87	1.6257	0.01416	0.98596
88	1.2658	0.00144	0.99866
89	0.9059	0.00000	1.00000
90	0.5460	0.00000	1.00000
91	0.1861	0.00000	1.00000
92	0.0262	0.00000	1.00000
93	0.0063	0.00000	1.00000
94	0.0000	0.00000	1.00000
95	0.0000	0.00000	1.00000
96	0.0000	0.00000	1.00000
97	0.0000	0.00000	1.00000
98	0.0000	0.00000	1.00000
99	0.0000	0.00000	1.00000
100	0.0000	0.00000	1.00000
101	0.0000	0.00000	1.00000
102	0.0000	0.00000	1.00000
103	0.0000	0.00000	1.00000
104	0.0000	0.00000	1.00000
105	0.0000	0.00000	1.00000

TABLE II

TABLE SHOWING THE PRESENT WORTH AT 3% PERCENT OF AN ANNUITY FOR A TERM CERTAIN, OF AN INCOME INTEREST FOR A TERM CERTAIN, AND OF A REMAINDER INTEREST POSTPONED FOR A TERM CERTAIN

(1) Number of years	(2) Annuity	(3) Term certain	(4) Remainder
1	0.9662	0.033816	0.966184
2	1.8967	0.064489	0.935511
3	2.8016	0.096057	0.904443
4	3.6731	0.128538	0.872962
5	4.5151	0.162027	0.841035
6	5.3286	0.196519	0.808616
7	6.1145	0.240009	0.775607
8	6.8740	0.280588	0.742019
9	7.6077	0.319269	0.707750
10	8.3166	0.356054	0.672696
11	8.9918	0.391046	0.636850
12	9.6343	0.424357	0.599203
13	10.2451	0.456090	0.559753
14	10.8242	0.486357	0.518500
15	11.3717	0.515169	0.475331
16	11.8876	0.542536	0.430245
17	12.3719	0.568569	0.383276
18	12.8246	0.593279	0.334407
19	13.2457	0.616676	0.283631
20	13.6342	0.638771	0.230950
21	14.0001	0.659576	0.177365
22	14.3434	0.679001	0.122866
23	14.6641	0.697156	0.067451
24	14.9612	0.714051	0.011120
25	15.2347	0.729796	0.000000
26	15.4846	0.744391	0.000000
27	15.7101	0.757846	0.000000
28	15.9112	0.770171	0.000000
29	16.0877	0.781376	0.000000
30	16.2396	0.791471	0.000000

§ 20.2031-8 Valuation of certain life insurance and annuity contracts. (a) The value of a contract for the payment of an annuity, or an insurance policy on the life of a person other than the decedent, issued by a company regularly engaged in the selling of contracts of that character is established through the sale by that company of comparable contracts. An annuity payable under a combination annuity contract and life insurance policy on the decedent's life (e. g., a "retirement income" policy with death benefit) under which there was no insurance element at the time of the decedent's death (see paragraph (d) of § 20.2039-1) is treated like a contract for the payment of an annuity for purposes of this section.

(b) As valuation of an insurance policy through sale of comparable contracts is not readily ascertainable when, at the date of the decedent's death, the contract has been in force for some time and further premium payments are to be made, the value may be approximated by adding to the interpolated terminal reserve at the date of the decedent's death the proportionate part of the gross premium last paid before the date of the decedent's death which covers the period extending beyond that date. If, however, because of the unusual nature of the contract such an approximation is not reasonably close to the full value of the contract, this method may not be used.

(c) The application of this section may be illustrated by the following examples. In each case involving an insurance contract, it is assumed that there are no accrued dividends or outstanding indebtedness on the contract.

Example (1). X purchased from a life insurance company a joint and survivor annuity contract under the terms of which X was to receive payments of \$1,200 annually for his life and, upon X's death, his wife was to receive payments of \$1,200 annually for her life. Five years after such purchase, when his wife was 50 years of age, X died. The value of the annuity contract at the date of X's death is the amount which the company would charge for an annuity providing for the payment of \$1,200 annually for the life of a female 50 years of age.

Example (2). Y died holding the incidents of ownership in a life insurance policy on the life of his wife. The policy was one on which no further payments were to be made to the company (e. g., a single premium policy or a paid-up policy). The value of the insurance policy at the date of Y's death is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured.

Example (3). Z died holding the incidents of ownership in a life insurance policy on the life of his wife. The policy was an ordinary life policy issued nine years and four months prior to Z's death and at a time when Z's wife was 35 years of age. The gross annual premium is \$2,811 and the decedent died four months after the last premium due date. The value of the insurance policy at the date of Z's death is computed as follows:

Terminal reserve at end of tenth year	\$14,601.00
Terminal reserve at end of ninth year	12,965.00
Increase	1,636.00

One-third of such increase (Z having died four months following the last preceding premium due date) is	\$545.33
Terminal reserve at end of ninth year	12,965.00
Interpolated terminal reserve at date of Z's death	13,510.33
Two-thirds of gross premium ($\frac{2}{3} \times \$2,811$)	1,874.00
Value of the insurance policy	15,384.33

§ 20.2031-9 Valuation of other property. The valuation of any property not specifically described in §§ 20.2031-2 to 20.2031-8 is made in accordance with the general principles set forth in § 20.2031-1. For example, a future interest in property not subject to valuation in accordance with the actuarial principles set forth in § 20.2031-7 is to be valued in accordance with the general principles set forth in § 20.2031-1.

§ 20.2032 Statutory provisions; alternate valuation.

Sec. 2032. Alternate valuation.—(a) *General.* The value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 1 year after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 1 year after the decedent's death such property shall be valued as of the date 1 year after the decedent's death.

(3) Any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

(b) *Special rules.* No deduction under this chapter of any item shall be allowed if allowance for such item is in effect given by the alternate valuation provided by this section. Wherever in any other subsection or section of this chapter reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this section, then—

(1) For purposes of the charitable deduction under section 2055 or 2106 (a) (2), any bequest, legacy, devise, or transfer enumerated therein, and

(2) For the purpose of the marital deduction under section 2056, any interest in property passing to the surviving spouse,

shall be valued as of the date of the decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date 1 year after the decedent's death (substituting, in the case of property distributed by the executor or trustee, or sold, exchanged, or otherwise disposed of, during such 1-year period, the date thereof).

(c) *Time of election.* The election provided for in this section shall be exercised by the executor on his return if filed within the time prescribed by law or before the expiration of any extension of time granted pursuant to law for the filing of the return.

§ 20.2032-1 Alternate valuation.—(a) *In general.* In general, section 2032 provides for the valuation of a decedent's

gross estate at a date other than the date of the decedent's death. More specifically, if an executor elects the alternate valuation method under section 2032, the property included in the decedent's gross estate on the date of his death is valued as of whichever of the following dates is applicable:

(1) Any property distributed, sold, exchanged, or otherwise disposed of within one year after the decedent's death is valued as of the date on which it is first distributed, sold, exchanged, or otherwise disposed of;

(2) Any property not distributed, sold, exchanged, or otherwise disposed of within one year after the decedent's death is valued as of the date one year after the date of the decedent's death;

(3) Any property, interest, or estate which is affected by mere lapse of time is valued as of the date of the decedent's death, but adjusted for any difference in its value not due to mere lapse of time as of the date one year after the decedent's death, or as of the date of its distribution, sale, exchange, or other disposition, whichever date first occurs.

(b) *Method and effect of election.* (1) While it is the purpose of section 2032 to permit a reduction in the amount of tax that would otherwise be payable if the gross estate has suffered a shrinkage in its aggregate value in the year following the decedent's death, the alternate valuation method is not automatic but must be elected. Furthermore, the alternate valuation method may be elected whether or not there has been a shrinkage in the aggregate value of the estate. However, the election is not effective for any purpose unless the value of the gross estate at the time of the decedent's death exceeded \$60,000, so that an estate tax return is required to be filed under section 6018.

(2) If the alternate valuation method under section 2032 is to be used, section 2032 (c) requires that the executor must so elect on the estate tax return required under section 6018, filed within 15 months from the date of the decedent's death or within the period of any extension of time granted by the district director under section 6081. In no case may the election be exercised, or a previous election changed, after the expiration of such time. If the election is made, it applies to all the property included in the gross estate, and cannot be applied to only a portion of the property.

(c) *Meaning of "distributed, sold, exchanged, or otherwise disposed of."* (1) The phrase "distributed, sold, exchanged, or otherwise disposed of" comprehends all possible ways by which property ceases to form a part of the gross estate. For example, money on hand at the date of the decedent's death which is thereafter used in the payment of funeral expenses, or which is thereafter invested, falls within the term "otherwise disposed of." The term also includes the surrender of a stock certificate for corporate assets in complete or partial liquidation of a corporation pursuant to section 331. The term does not, however, extend to transactions which are mere changes in form. Thus, it does not include a transfer of assets

to a corporation in exchange for its stock in a transaction with respect to which no gain or loss would be recognizable for income tax purposes under section 351. Nor does it include an exchange of stock or securities in a corporation for stock or securities in the same corporation or another corporation in a transaction, such as a merger, recapitalization, reorganization or other transaction described in section 368 (a) or 355, with respect to which no gain or loss is recognizable for income tax purposes under section 354 or 355.

(2) Property may be "distributed" either by the executor, or by a trustee of property included in the gross estate under sections 2035 through 2038, or section 2041. Property is considered as "distributed" upon the first to occur of the following:

(i) The entry of an order or decree of distribution, if the order or decree subsequently becomes final;

(ii) The segregation or separation of the property from the estate or trust so that it becomes unqualifiedly subject to the demand or disposition of the distributee; or

(iii) The actual paying over or delivery of the property to the distributee.

(3) Property may be "sold, exchanged, or otherwise disposed of" by: (i) The executor; (ii) a trustee or other donee to whom the decedent during his lifetime transferred property included in his gross estate under sections 2035 through 2038, or section 2041; (iii) an heir or devisee to whom title to property passes directly under local law; (iv) a surviving joint tenant or tenant by the entirety; or (v) any other person. If a binding contract for the sale, exchange, or other disposition of property is entered into, the property is considered as sold, exchanged, or otherwise disposed of on the effective date of the contract, unless the contract is not subsequently carried out substantially in accordance with its terms. The effective date of a contract is normally the date it is entered into (and not the date it is consummated, or the date legal title to the property passes) unless the contract specifies a different effective date.

(d) "Included property" and "excluded property". If the executor elects the alternate valuation method under section 2032, all property interests existing at the date of decedent's death which form a part of his gross estate as determined under sections 2033 through 2044 are valued in accordance with the provisions of this section. Such property interests are hereinafter referred to in this section as "included property". Furthermore, such property interests remain "included property" for the purpose of valuing the gross estate under the alternate valuation method even though they change in form during the alternate valuation period by being actually received, or disposed of, in whole or in part, by the estate. On the other hand, property earned or accrued (whether received or not) after the date of the decedent's death and during the alternate valuation period with respect to any property interest existing at the date of the decedent's death, which does

not represent a form of "included property" itself or the receipt of "included property", is excluded in valuing the gross estate under the alternate valuation method. Such property is hereinafter referred to in this section as "excluded property". Illustrations of "included property" and "excluded property" are contained in the subparagraphs (1) to (4) of this paragraph:

(1) *Interest-bearing obligations.* Interest-bearing obligations, such as bonds or notes, may comprise two elements of "included property" at the date of the decedent's death, namely, (i) the principal of the obligation itself, and (ii) interest accrued to the date of death. Each of these elements is to be separately valued as of the applicable valuation date. Interest accrued after the date of death and before the subsequent valuation date constitutes "excluded property". However, any part payment of principal made between the date of death and the subsequent valuation date, or any advance payment of interest for a period after the subsequent valuation date made during the alternate valuation period which has the effect of reducing the value of the principal obligation as of the subsequent valuation date, will be included in the gross estate, and valued as of the date of such payment.

(2) *Leased property.* The principles set forth in subparagraph (1) of this paragraph with respect to interest-bearing obligations also apply to leased realty or personalty which is included in the gross estate and with respect to which an obligation to pay rent has been reserved. Both the realty or personalty itself and the rents accrued to the date of death constitute "included property", and each is to be separately valued as of the applicable valuation date. Any rent accrued after the date of death and before the subsequent valuation date is "excluded property". Similarly, the principle applicable with respect to interest paid in advance is equally applicable with respect to advance payments of rent.

(3) *Noninterest-bearing obligations.* In the case of noninterest-bearing obligations sold at a discount, such as savings bonds, the principal obligation and the discount amortized to the date of death are property interests existing at the date of death and constitute "included property". The obligation itself is to be valued at the subsequent valuation date without regard to any further increase in value due to amortized discount. The

additional discount amortized after death and during the alternate valuation period is the equivalent of interest accruing during that period and is, therefore, not to be included in the gross estate under the alternate valuation method.

(4) *Stock of a corporation.* Shares of stock in a corporation and dividends declared to stockholders of record on or before the date of the decedent's death and not collected at the date of death constitute "included property" of the estate. On the other hand, ordinary dividends out of earnings and profits (whether in cash, shares of the corporation, or other property) declared to stockholders of record after the date of the decedent's death are "excluded property" and are not to be valued under the alternate valuation method. If, however, dividends are declared to stockholders of record after the date of the decedent's death with the effect that the shares of stock at the subsequent valuation date do not reasonably represent the same "included property" of the gross estate as existed at the date of the decedent's death, the dividends are "included property", except to the extent that they are out of earnings of the corporation after the date of the decedent's death. For example, if a corporation makes a distribution in partial liquidation to stockholders of record during the alternate valuation period which is not accompanied by a surrender of a stock certificate for cancellation, the amount of the distribution received on stock included in the gross estate is itself "included property", except to the extent that the distribution was out of earnings and profits since the date of the decedent's death. Similarly, if a corporation, in which the decedent owned a substantial interest and which possessed at the date of the decedent's death accumulated earnings and profits equal to its paid-in capital, distributed all of its accumulated earnings and profits as a cash dividend to shareholders of record during the alternate valuation period, the amount of the dividends received on stock includible in the gross estate will be included in the gross estate under the alternate valuation method. Likewise, a stock dividend distributed under such circumstances is "included property".

(e) *Illustrations of "included property" and "excluded property".* The application of paragraph (d) of this section may be further illustrated by the following example in which it is assumed that the decedent died on January 1, 1955:

Description	Subsequent valuation date	Alternate value	Value at date of death
Bond, par value \$1,000, bearing interest at 4 percent payable quarterly on Feb. 1, May 1, Aug. 1, and Nov. 1. Bond distributed to legatee on Mar. 1, 1955.	Mar. 1, 1955	\$1,000.00	\$1,000.00
Interest coupon of \$10 attached to bond and not cashed at date of death although due and payable Nov. 1, 1954. Cashed by executor on Feb. 1, 1955.	Feb. 1, 1955	10.00	10.00
Interest accrued from Nov. 1, 1954, to Jan. 1, 1955, collected on Feb. 1, 1955.	Feb. 1, 1955	6.67	6.67
Real estate, not disposed of within year following death. Rent of \$300 due at the end of each quarter, Feb. 1, May 1, Aug. 1, and Nov. 1.	Jan. 1, 1956	11,000.00	12,000.00
Rent due for quarter ending Nov. 1, 1954, but not collected until Feb. 1, 1955.	Feb. 1, 1955	300.00	300.00
Rent accrued for November and December 1954, collected on Feb. 1, 1955.	Feb. 1, 1955	200.00	200.00
Common stock, X Corporation, 500 shares, not disposed of within year following decedent's death.	Jan. 1, 1956	47,500.00	50,000.00
Dividend of \$2 per share declared Dec. 10, 1954, and paid on Jan. 10, 1955, to holders of record on Dec. 30, 1954.	Jan. 10, 1955	1,000.00	1,000.00

(1) *Mere lapse of time.* In order to eliminate changes in value due only to mere lapse of time, section 2032 (a) (3) provides that any interest or estate "affected by mere lapse of time" is included in a decedent's gross estate under the alternate valuation method at its value as of the date of the decedent's death, but with adjustment for any difference in its value as of the subsequent valuation date not due to mere lapse of time. Properties, interests, or estates which are "affected by mere lapse of time" include patents, estates for the life of a person other than the decedent, remainders, reversions, and other like properties, interests, or estates. The phrase "affected by mere lapse of time" has no reference to obligations for the payment of money, whether or not interest-bearing, the value of which changes with the passing of time. However, such an obligation, like any other property, may become affected by lapse of time when made the subject of a bequest or transfer which itself is creative of an interest or estate so affected. The application of this paragraph is illustrated in subparagraphs (1) and (2) of this paragraph:

(1) *Life estates, remainders, and similar interests.* The values of life estates, remainders, and similar interests are to be obtained by applying the methods prescribed in § 20.2031-7, using (i) the age of each person, the duration of whose life may affect the value of the interest, as of the date of the decedent's death, and (ii) the value of the property as of the alternate date. For example, assume that the decedent or his estate was entitled to receive property upon the death of his elder brother who was entitled to receive the income therefrom for life. At the date of the decedent's death, the property was worth \$50,000 and the elder brother was 31 years old. The value of the decedent's remainder interest at the date of his death would, as explained in § 20.2031-7 (d), be \$14,466 (\$50,000 x 0.28932). If, because of economic conditions, the property declined in value and was worth only \$40,000 one year after the date of the decedent's death, the value of the remainder interest as of the alternate date would be \$11,572.80 (\$40,000 x 0.28932).

(2) *Patents.* To illustrate the alternate valuation of a patent, assume that the decedent owned a patent which, on the date of the decedent's death, had an unexpired term of ten years and a value of \$78,000. Six months after the date of the decedent's death, the patent was sold, because of lapse of time and other causes, for \$60,000. The alternate value thereof would be obtained by dividing \$60,000 by 0.95 (ratio of the remaining life of the patent at the alternate date to the remaining life of the patent at the date of the decedent's death), and would, therefore, be \$63,157.89.

(3) *Effect of election on deductions.* If the executor elects the alternate valuation method under section 2032, any deduction for administration expenses under section 2053 (b) (pertaining to property not subject to claims)

or losses under section 2054 (or section 2106 (a) (1), relating to estates of non-residents not citizens) is allowed only to the extent that it is not otherwise in effect allowed in determining the value of the gross estate. Furthermore, the amount of any charitable deduction under section 2055 (or section 2106 (a) (2), relating to the estates of nonresidents not citizens) or the amount of any marital deduction under section 2056 is determined by the value of the property with respect to which the deduction is allowed as of the date of the decedent's death, adjusted, however, for any difference in its value as of the date one year after death, or as of the date of its distribution, sale, exchange, or other disposition, whichever first occurs. However, no such adjustment may take into account any difference in value due to lapse of time or to the occurrence or nonoccurrence of a contingency.

§ 20.2033 Statutory provisions; property in which the decedent had an interest.

Sec. 2033. *Property in which the decedent had an interest.* The value of the gross estate shall include the value of all property (except real property situated outside of the United States) to the extent of the interest therein of the decedent at the time of his death.

§ 20.2033-1 *Property in which the decedent had an interest—(a) In general.* The gross estate of a decedent who was a citizen or resident of the United States at the time of his death includes under section 2033 the value of all property, whether real or personal, tangible or intangible, and wherever situated, beneficially owned by the decedent at the time of his death, except real property situated outside of the United States. Real property situated in the United States is included whether it came into the possession and control of the executor or administrator or passed directly to heirs or devisees. Various statutory provisions which exempt bonds, notes, bills, and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation are generally not applicable to the estate tax, since such tax is an excise tax on the transfer of property at death and is not a tax on the property transferred.

(b) *Miscellaneous examples.* A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of that part of the lot which is not designed for the interment of the decedent and the members of his family. Property subject to homestead or other exemptions under local law is included in the gross estate. Notes or other claims held by the decedent are likewise included even though they are cancelled by the decedent's will. Interest and rents accrued at the date of the decedent's death constitute a part of the gross estate. Similarly, dividends which are payable to the decedent or his estate by reason of the fact that on or before the date of the decedent's death he was a stockholder of record (but which have not been collected at death) constitute a part of the gross estate.

§ 20.2034 Statutory provisions; dower or curtesy interests.

Sec. 2034. *Dower or curtesy interests.* The value of the gross estate shall include the value of all property (except real property situated outside of the United States) to the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower or curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy.

§ 20.2034-1 *Dower or curtesy interests.* A decedent's gross estate includes under section 2034 any interest in property of the decedent's surviving spouse existing at the time of the decedent's death as dower or curtesy, or any interest created by statute in lieu thereof (although such other interest may differ in character from dower or curtesy). Thus, the full value of property is included in the decedent's gross estate, without deduction of such an interest of the surviving husband or wife, and without regard to when the right to such an interest arose.

§ 20.2035 Statutory provisions; transactions in contemplation of death.

Sec. 2035. *Transactions in contemplation of death—(a) General rule.* The value of the gross estate shall include the value of all property (except real property situated outside of the United States) to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, in contemplation of his death.

(b) *Application of general rule.* If the decedent within a period of 3 years ending with the date of his death (except in case of a bona fide sale for an adequate and full consideration in money or money's worth) transferred an interest in property, relinquished a power, or exercised or released a general power of appointment, such transfer, relinquishment, exercise, or release shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this section and sections 2038 and 2041 (relating to revocable transfers and powers of appointment); but no such transfer, relinquishment, exercise, or release made before such 3-year period shall be treated as having been made in contemplation of death.

§ 20.2035-1 *Transactions in contemplation of death—(a) In general.* A decedent's gross estate includes under section 2035 the value of any interest in property transferred by a decedent in contemplation of death within 3 years before his death, except to the extent that the transfer was for a full and adequate consideration in money or money's worth (see § 20.2043-1). With the exception noted in the preceding sentence, the decedent's gross estate includes as a transfer in contemplation of death the value of any interest in property transferred within 3 years before the decedent's death, unless the transfer is shown not to have been made in contemplation of death. The result is not affected by the fact that at the time of the transfer the decedent parted absolutely and immediately with his enjoyment of and title to the property.

(b) *Application of other sections.* If a decedent transfers an interest in

property or relinquishes a power in contemplation of death, the decedent's gross estate includes the property subject to the interest or power to the extent that it would be included under section 2036, 2037, or 2038 if the decedent had retained the interest or power until his death. If a decedent exercises or releases a general power of appointment in contemplation of death, the property subject to the power is included in the decedent's gross estate to the extent provided in section 2041 and the regulations thereunder.

(c) *Definition.* The phrase "in contemplation of death", as used in this section, does not have reference to that general expectation of death such as all persons entertain. On the other hand, its meaning is not restricted to an apprehension that death is imminent or near. A transfer "in contemplation of death" is a disposition of property prompted by the thought of death (although it need not be solely so prompted). A transfer is prompted by the thought of death if (1) made with the purpose of avoiding death taxes, (2) made as a substitute for a testamentary disposition of the property, or (3) made for any other motive associated with death. The bodily and mental condition of the decedent and all other attendant facts and circumstances are to be scrutinized in order to determine whether or not such thought prompted the disposition.

(d) *Presumptions.* Any transfer of an interest in property, relinquishment of a power, or exercise or release of a general power of appointment by a decedent within a period of 3 years ending with the date of his death is deemed to have been made "in contemplation of death", unless shown to the contrary. No transfer, relinquishment, exercise, or release made by a decedent more than 3 years before his death is treated as having been made "in contemplation of death".

(e) *Valuation.* The value of an interest in transferred property includible in a decedent's gross estate under this section is the value of the interest as of the applicable valuation date. In this connection, see sections 2031, 2032, and the regulations thereunder. However, if the transferee has made improvements or additions to the property, any resulting enhancement in the value of the property is not considered in ascertaining the value of the gross estate. Similarly, neither income received subsequent to the transfer nor property purchased with such income is considered.

§ 20.2036 Statutory provisions; transfers with retained life estate.

Sec. 2036. Transfers with retained life estate.—(a) General rule. The value of the gross estate shall include the value of all property (except real property situated outside of the United States) to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—

(1) The possession or enjoyment of, or the right to the income from, the property, or

(2) The right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

(b) *Limitation on application of general rule.* This section shall not apply to a transfer made before March 4, 1931; nor to a transfer made after March 3, 1931, and before June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1616).

§ 20.2036-1 *Transfers with retained life estate.—(a) In general.* A decedent's gross estate includes under section 2036 the value of any interest in property transferred by the decedent after March 3, 1931, whether in trust or otherwise, except to the extent that the transfer was for an adequate and full consideration in money or money's worth (see § 20.2043-1), if the decedent retained or reserved (1) for his life, or (2) for any period not ascertainable without reference to his death (if the transfer was made after June 6, 1932), or (3) for any period which does not in fact end before his death—

(i) The use, possession, right to the income, or other enjoyment of the transferred property, or

(ii) The right, either alone or in conjunction with any other person or persons, to designate the person or persons who shall possess or enjoy the transferred property or its income.

If the decedent retained or reserved an interest or right with respect to all of the property transferred by him, the amount to be included in his gross estate under section 2036 is the value of the entire property, less only the value of any outstanding income interest which is not subject to the decedent's interest or right and which is actually being enjoyed by another person at the time of the decedent's death. If the decedent retained or reserved an interest or right with respect to a part only of the property transferred by him, the amount to be included in his gross estate under section 2036 is only a corresponding proportion of the amount described in the preceding sentence. An interest or right is treated as having been retained or reserved if at the time of the transfer there was an understanding, express or implied, that the interest or right would later be conferred.

(b) *Meaning of terms.* (1) A reservation by the decedent "for any period not ascertainable without reference to his death" may be illustrated by the following examples:

(i) A decedent reserved the right to receive the income from transferred property in quarterly payments, with the proviso that no part of the income between the last quarterly payment and the date of the decedent's death was to be received by the decedent or his estate; and

(ii) A decedent reserved the right to receive the income from transferred property after the death of another person who was in fact enjoying the income at the time of the decedent's death. In such a case, the amount to be included

in the decedent's gross estate under this section does not include the value of the outstanding income interest of the other person. It may be noted that if the other person predeceased the decedent, the reservation by the decedent may be considered to be either for his life, or for a period which does not in fact end before his death.

(2) The "use, possession, right to the income, or other enjoyment of the transferred property" is considered as having been retained by or reserved to the decedent to the extent that the use, possession, right to the income, or other enjoyment is to be applied toward the discharge of a legal obligation of the decedent, or otherwise for his pecuniary benefit. The term "legal obligation" includes a legal obligation to support a dependent during the decedent's lifetime.

(3) The phrase "right * * * to designate the person or persons who shall possess or enjoy the transferred property or the income therefrom" includes a reserved power to designate the person or persons to receive the income from the transferred property, or to possess or enjoy nonincome-producing property, during the decedent's life or during any other period described in paragraph (a) of this section. With respect to such a power, it is immaterial (i) whether the power was exercisable alone or only in conjunction with another person or persons, whether or not having an adverse interest; (ii) in what capacity the power was exercisable by the decedent or by another person or persons in conjunction with the decedent; and (iii) whether the exercise of the power was subject to a contingency beyond the decedent's control which did not occur before his death (e. g., the death of another person during the decedent's lifetime). The phrase, however, does not include a power over the transferred property itself which does not affect the enjoyment of the income received or earned during the decedent's life. (See, however, section 2038 for the inclusion of property in the gross estate on account of such a power.) Nor does the phrase apply to a power held solely by a person other than the decedent. But, for example, if the decedent reserved the unrestricted power to remove or discharge a trustee at any time and appoint himself as trustee, the decedent is considered as having the powers of the trustee.

§ 20.2037 Statutory provisions; transfers taking effect at death.

Sec. 2037. Transfers taking effect at death.—(a) General rule. The value of the gross estate shall include the value of all property (except real property situated outside of the United States) to the extent of any interest therein of which the decedent has at any time after September 7, 1916, made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if—

(1) Possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and

(2) The decedent has retained a reversionary interest in the property (but in the case of a transfer made before October 8, 1949, only if such reversionary interest arose by

the express terms of the instrument of transfer), and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

(b) *Special rules.* For purposes of this section, the term "reversionary interest" includes a possibility that property transferred by the decedent—

- (1) May return to him or his estate, or
- (2) May be subject to a power of disposition by him,

but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, under regulations prescribed by the Secretary or his delegate. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate. Notwithstanding the foregoing, an interest so transferred shall not be included in the decedent's gross estate under this section if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a general power of appointment (as defined in section 2041) which in fact was exercisable immediately before the decedent's death.

§ 20.2037-1 *Transfers taking effect at death.*—(a) *In general.* A decedent's gross estate includes under section 2037 the value of any interest in property transferred by the decedent after September 7, 1916, whether in trust or otherwise, except to the extent that the transfer was for an adequate and full consideration in money or money's worth (see § 20.2043-1), if—

(1) Possession or enjoyment of the property could, through ownership of the interest, have been obtained only by surviving the decedent.

(2) The decedent had retained a possibility (hereinafter referred to as a "reversionary interest") that the property, other than the income alone, would return to the decedent or his estate or would be subject to a power of disposition by him, and

(3) The value of the reversionary interest immediately before the decedent's death exceeded 5 percent of the value of the entire property.

However, if the transfer was made before October 8, 1949, section 2037 is applicable only if the reversionary interest arose by the express terms of the instrument of transfer and not by operation of law (see paragraph (f) of this section). See also paragraph (g) of this section with respect to transfers made between November 11, 1935, and January 29, 1940. The provisions of section 2037 do not apply to transfers made before September 8, 1916.

(b) *Condition of survivorship.* As indicated in paragraph (a) of this section, the value of an interest in transferred property is not included in a decedent's gross estate under section 2037 unless possession or enjoyment of the property could, through ownership of such interest, have been obtained only by surviving the decedent. Thus, property is not

included in the decedent's gross estate if, immediately before the decedent's death, possession or enjoyment of the property could have been obtained by any beneficiary either by surviving the decedent or through the occurrence of some other event such as the expiration of a term of years. However, if a consideration of the terms and circumstances of the transfer as a whole indicates that the "other event" is unreal and if the death of the decedent does, in fact, occur before the "other event", the beneficiary will be considered able to possess or enjoy the property only by surviving the decedent. Notwithstanding the foregoing, an interest in transferred property is not includible in a decedent's gross estate under section 2037 if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a general power of appointment (as defined in section 2041) which in fact was exercisable immediately before the decedent's death. See examples (5) and (6) in paragraph (e) of this section.

(c) *Retention of reversionary interest.*

(1) As indicated in paragraph (a) of this section, the value of an interest in transferred property is not included in a decedent's gross estate under section 2037 unless the decedent had retained a reversionary interest in the property, and the value of the reversionary interest immediately before the death of the decedent exceeded 5 percent of the value of the property.

(2) For purposes of section 2037, the term "reversionary interest" includes a possibility that property transferred by the decedent may return to him or his estate and a possibility that property transferred by the decedent may become subject to a power of disposition by him. The term is not used in a technical sense, but has reference to any reserved right under which the transferred property shall or may be returned to the grantor. Thus, it encompasses an interest arising either by the express terms of the instrument of transfer or by operation of law. (See, however, paragraph (f) of this section with respect to transfers made before October 8, 1949.) The term "reversionary interest" does not include rights to income only, such as the right to receive the income from a trust after the death of another person. (However, see section 2036 for the inclusion of property in the gross estate on account of such rights.) Nor does the term "reversionary interest" include the possibility that the decedent during his lifetime might have received back an interest in transferred property by inheritance through the estate of another person. Similarly, a statutory right of a spouse to receive a portion of whatever estate a decedent may leave at the time of his death is not a "reversionary interest".

(3) For purposes of this section, the value of the decedent's reversionary interest is computed as of the moment immediately before his death, without regard to whether or not the executor elects the alternate valuation method under section 2032 and without regard to the fact of the decedent's death. The

value is ascertained in accordance with recognized valuation principles for determining the value for estate tax purposes of future or conditional interests in property. (See §§ 20.2031-1, 20.2031-7, and 20.2031-9.) For example, if the decedent's reversionary interest was subject to an outstanding life estate in his wife, his interest is valued according to the actuarial rules set forth in § 20.2031-7. On the other hand, if the decedent's reversionary interest was contingent on the death of his wife without issue surviving and if it cannot be shown that his wife is incapable of having issue (so that his interest is not subject to valuation according to the actuarial rules in § 20.2031-7), his interest is valued according to the general rules set forth in § 20.2031-1. A possibility that the decedent may be able to dispose of property under certain conditions is considered to have the same value as a right of the decedent to the return of the property under those same conditions.

(4) In order to determine whether or not the decedent retained a reversionary interest in transferred property of a value in excess of 5 percent, the value of the reversionary interest is compared with the value of the transferred property, including interests therein which are not dependent upon survivorship of the decedent. For example, assume that the decedent, A, transferred property in trust with the income payable to B for life and with the remainder payable to C if A predeceases B, but with the property to revert to A if B predeceases A. Assume further that A does, in fact, predecease B. The value of A's reversionary interest immediately before his death is compared with the value of the trust corpus, without deduction of the value of B's outstanding life estate. If, in the above example, A had retained a reversionary interest in one-half only of the trust corpus, the value of his reversionary interest would be compared with the value of one-half of the trust corpus, again without deduction of any part of the value of B's outstanding life estate.

(d) *Transfers partly taking effect at death.* If separate interests in property are transferred to one or more beneficiaries, paragraphs (a) to (c) of this section are to be separately applied with respect to each interest. For example, assume that the decedent transferred an interest in Blackacre to A which could be possessed or enjoyed only by surviving the decedent, and that the decedent transferred an interest in Blackacre to B which could be possessed or enjoyed only on the occurrence of some event unrelated to the decedent's death. Assume further that the decedent retained a reversionary interest in Blackacre of a value in excess of 5 percent. Only the value of the interest transferred to A is includible in the decedent's gross estate. Similar results would obtain if possession or enjoyment of the entire property could have been obtained only by surviving the decedent, but the decedent had retained a reversionary interest in a part only of such property.

(e) *Examples.* The provisions of paragraphs (a) to (d) of this section may be further illustrated by the following ex-

amples. It is assumed that the transfers were made on or after October 8, 1949; for the significance of this date, see paragraphs (f) and (g) of this section:

Example (1). The decedent transferred property in trust with the income payable to his wife for life and, at her death, remainder to the decedent's then surviving children, or if none, to the decedent or his estate. Since each beneficiary can possess or enjoy the property without surviving the decedent, no part of the property is includible in the decedent's gross estate under section 2037, regardless of the value of the decedent's reversionary interest. (However, see section 2033 for inclusion of the value of the reversionary interest in the decedent's gross estate.)

Example (2). The decedent transferred property in trust with the income to be accumulated for the decedent's life, and at his death, principal and accumulated income to be paid to the decedent's then surviving issue, or, if none, to A or A's estate. Since the decedent retained no reversionary interest in the property, no part of the property is includible in the decedent's gross estate, even though possession or enjoyment of the property could be obtained by the issue only by surviving the decedent.

Example (3). The decedent transferred property in trust with the income payable to his wife for life and with the remainder payable to the decedent or, if he is not living at his wife's death, to his daughter or her estate. The daughter cannot obtain possession or enjoyment of the property without surviving the decedent. Therefore, if the decedent's reversionary interest immediately before his death exceeded 5 percent of the value of the property, the value of the property, less the value of the wife's outstanding life estate, is includible in the decedent's gross estate.

Example (4). The decedent transferred property in trust with the income payable to his wife for life and with the remainder payable to his son or, if the son is not living at the wife's death, to the decedent or, if the decedent is not then living, to X or X's estate. Assume that the decedent was survived by his wife, his son, and X. Only X cannot obtain possession or enjoyment of the property without surviving the decedent. Therefore, if the decedent's reversionary interest immediately before his death exceeded 5 percent of the value of the property, the value of X's remainder interest (with reference to the time immediately after the decedent's death) is includible in the decedent's gross estate.

Example (5). The decedent transferred property in trust with the income to be accumulated for a period of 20 years or until the decedent's prior death, at which time the principal and accumulated income was to be paid to the decedent's son if then surviving. Assume that the decedent does, in fact, die before the expiration of the 20-year period. If, at the time of the transfer, the decedent was 30 years of age, in good health, etc., the son will be considered able to possess or enjoy the property without surviving the decedent. If, on the other hand, the decedent was 70 years of age at the time of the transfer, the son will not be considered able to possess or enjoy the property without surviving the decedent. In this latter case, if the value of the decedent's reversionary interest (arising by operation of law) immediately before his death exceeded 5 percent of the value of the property, the value of the property is includible in the decedent's gross estate.

Example (6). The decedent transferred property in trust with the income to be accumulated for his life and, at his death, the principal and accumulated income to be paid to the decedent's then surviving children. The decedent's wife was given the

unrestricted power to alter, amend, or revoke the trust. Assume that the wife survived the decedent but did not, in fact, exercise her power during the decedent's lifetime. Since possession or enjoyment of the property could have been obtained by the wife during the decedent's lifetime under the exercise of a general power of appointment, which was, in fact, exercisable immediately before the decedent's death, no part of the property is includible in the decedent's gross estate.

(f) Transfers made before October 8, 1949. (1) Notwithstanding any provisions to the contrary contained in paragraphs (a) to (e) of this section, the value of an interest in property transferred by a decedent before October 8, 1949, is included in his gross estate under section 2037 only if the decedent's reversionary interest arose by the express terms of the instrument and not by operation of law. For example, assume that the decedent, on January 1, 1947, transferred property in trust with the income payable to his wife for the decedent's life and, at his death, remainder to his then surviving descendants. Since no provision was made for the contingency that no descendants of the decedent might survive him, a reversion to the decedent's estate existed by operation of law. The descendants cannot obtain possession or enjoyment of the property without surviving the decedent. However, since the decedent's reversionary interest arose by operation of law, no part of the property is includible in the decedent's gross estate under section 2037. If, in the above example, the transfer had been made on or after October 8, 1949, and if the decedent's reversionary interest immediately before his death exceeded 5 percent of the value of the property, the value of the property would be includible in the decedent's gross estate.

(2) The decedent's reversionary interest will be considered to have arisen by the express terms of the instrument of transfer and not by operation of law if the instrument contains an express disposition which affirmatively creates the reversionary interest, even though the terms of the disposition do not refer to the decedent or his estate, as such. For example, where the disposition is, in its terms, to the next of kin of the decedent and such a disposition, under applicable local law, constitutes a reversionary interest in the decedent's estate, the decedent's reversionary interest will be considered to have arisen by the express terms of the instrument of transfer and not by operation of law.

(g) Transfers made after November 11, 1935, and before January 29, 1940. The provisions of paragraphs (a) to (f) of this section are fully applicable to transfers made after November 11, 1935 (the date on which the Supreme Court decided *Helvering v. St. Louis Union Trust Co.* (296 U. S. 39) and *Becker v. St. Louis Union Trust Co.* (296 U. S. 48)), and before January 29, 1940 (the date on which the Supreme Court decided *Helvering v. Hallock* and companion cases (309 U. S. 106)), except that the value of an interest in property transferred between these dates is not included in a

decedent's gross estate under section 2037 if—

(1) The Commissioner, whose determination shall be final, determines that the transfer is classifiable with the transfers involved in the *St. Louis Union Trust Co.* cases, rather than with the transfer involved in the case of *Klein v. United States* (283 U. S. 231), previously decided by the Supreme Court, and

(2) The transfer shall have been finally treated for all gift tax purposes, both as to the calendar year of the transfer and as to subsequent calendar years, as a gift in an amount measured by the value of the property undiminished by reason of a provision in the instrument of transfer by which the property, in whole or in part, is to revert to the decedent should he survive the donee or another person, or the reversion is conditioned upon some other contingency terminable by the decedent's death.

§ 20.2038 Statutory provisions; revocable transfers.

Sec. 2038. Revocable transfers—(a) In general. The value of the gross estate shall include the value of all property (except real property situated outside of the United States)—

(1) *Transfers after June 22, 1936.* To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished in contemplation of decedent's death.

(2) *Transfers on or before June 22, 1936.* To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power in contemplation of his death. Except in the case of transfers made after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph.

(b) *Date of existence of power.* For purposes of this section, the power to alter, amend, revoke, or terminate shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice of even though the alteration, amendment, revocation, or termination takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose, if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given; or the power exercised, on the date of his death.

§ 20.2038-1 Revocable transfers—(a) In general. A decedent's gross estate includes under section 2038 the value of any interest in property transferred by the decedent, whether in trust or otherwise, if the enjoyment of the interest was subject at the date of the decedent's death to any change through the exercise of a power by the decedent to alter, amend, revoke, or terminate, or if the decedent relinquished such a power in contemplation of death. However, section 2038 does not apply—

(1) To the extent that the transfer was for an adequate and full consideration in money or money's worth (see § 20.2043-1);

(2) If the decedent's power could be exercised only with the consent of all parties having an interest (vested or contingent) in the transferred property, and if the power adds nothing to the rights of the parties under local law; or

(3) To a power held solely by a person other than the decedent. But, for example, if the decedent had the unrestricted power to remove or discharge a trustee at any time and appoint himself trustee, the decedent is considered as having the powers of the trustee. However, this result would not follow if he only had the power to appoint himself trustee under limited conditions which did not exist at the time of his death. (See last two sentences of paragraph (b) of this section.)

Except as provided in this paragraph, it is immaterial in what capacity the power was exercisable by the decedent or by another person or persons in conjunction with the decedent; whether the power was exercisable alone or only in conjunction with another person or persons, whether or not having an adverse interest (unless the transfer was made before June 2, 1924; see paragraph (d) of this section); and at what time or from what source the decedent acquired his power (unless the transfer was made before June 23, 1936; see paragraph (c) of this section). Section 2038 is applicable to any power affecting the time or manner of enjoyment of property or its income, even though the identity of the beneficiary is not affected. For example, section 2038 is applicable to a power reserved by the grantor of a trust to accumulate income or distribute it to A, and to distribute corpus to A, even though the remainder is vested in A or his estate, and no other person has any beneficial interest in the trust. However, only the value of an interest in property subject to a power to which section 2038 applies is included in the decedent's gross estate under section 2038.

(b) **Date of existence of power.** A power to alter, amend, revoke, or terminate will be considered to have existed at the date of the decedent's death even though the exercise of the power was subject to a precedent giving of notice or even though the alteration, amendment, revocation, or termination would have taken effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice had been given or the power had been exercised. In determining the value of the

gross estate in such cases, the full value of the property transferred subject to the power is discounted for the period required to elapse between the date of the decedent's death and the date upon which the alteration, amendment, revocation, or termination could take effect. In this connection, see especially § 20.2031-7. However, section 2038 is not applicable to a power the exercise of which was subject to a contingency beyond the decedent's control which did not occur before his death (e. g., the death of another person during the decedent's life). See, however, section 2036 (a) (2) for the inclusion of property in the decedent's gross estate on account of such a power.

(c) **Transfers made before June 23, 1936.** Notwithstanding anything to the contrary in paragraphs (a) and (b) of this section, the value of an interest in property transferred by a decedent before June 23, 1936, is not included in his gross estate under section 2038 unless the power to alter, amend, revoke, or terminate was reserved at the time of the transfer. For purposes of this paragraph, the phrase "reserved at the time of the transfer" has reference to a power (arising either by the express terms of the instrument of transfer or by operation of law) to which the transfer was subject when made and which continued to the date of the decedent's death (see paragraph (b) of this section) to be exercisable by the decedent alone or by the decedent in conjunction with any other person or persons. The phrase also has reference to any understanding, express or implied, had in connection with the making of the transfer that the power would later be created or conferred.

(d) **Transfers made before June 2, 1924.** Notwithstanding anything to the contrary in paragraphs (a) to (c) of this section, if an interest in property was transferred by a decedent before the enactment of the Revenue Act of 1924 (June 2, 1924, 4:01 p. m., eastern standard time), and if a power reserved by the decedent to alter, amend, revoke, or terminate was exercisable by the decedent only in conjunction with a person having a substantial adverse interest in the transferred property, or in conjunction with several persons some or all of whom held such an adverse interest, there is included in the decedent's gross estate only the value of any interest or interests held by a person or persons not required to join in the exercise of the power plus the value of any insubstantial adverse interest or interests of a person or persons required to join in the exercise of the power.

(e) **Powers relinquished in contemplation of death—(1) In general.** If a power to alter, amend, revoke, or terminate would have resulted in the inclusion of an interest in property in a decedent's gross estate under section 2038 if it had been held until the decedent's death, the relinquishment of the power in contemplation of the decedent's death within 3 years before his death results in the inclusion of the same interest in property in the decedent's gross estate, except to the extent that the power was relinquished for an adequate and full con-

sideration in money or money's worth (see § 20.2043-1). For the meaning of the phrase "in contemplation of death", see paragraph (c) of § 20.2035-1.

(2) **Transfers before June 23, 1936.** In the case of a transfer made before June 23, 1936, section 2038 applies only to a relinquishment made by the decedent. However, in the case of a transfer made after June 22, 1936, section 2038 also applies to a relinquishment made by a person or persons holding the power in conjunction with the decedent, if the relinquishment was made in contemplation of the decedent's death and had the effect of extinguishing the power.

§ 20.2039 Statutory provisions; annuities.

Sec. 2039. Annuities—(a) General. The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than an insurance under policies on the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

(b) **Amount includible.** Subsection (a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement (whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit sharing plan) shall be considered to be contributed by the decedent if made by reason of his employment.

(c) **Exemption of annuities under certain trusts and plans.** Notwithstanding the provisions of this section or of any provision of law, there shall be excluded from the gross estate the value of an annuity or other payment receivable by any beneficiary (other than the executor) under—

(1) An employee's trust (or under a contract purchased by an employee's trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 401 (a); or

(2) A retirement annuity contract purchased by an employer (and not by an employee's trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of section 401 (a) (3).

If such amounts payable after the death of the decedent under a plan described in paragraph (1) or (2) are attributable to any extent to payments or contributions made by the decedent, no exclusion shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bears to the total payments or contributions made. For purposes of this subsection, contributions or payments made by the decedent's employer or former employer under a trust or plan described in this subsection shall not be considered to be contributed by the decedent. This subsection shall apply to all decedents dying after December 31, 1953.

§ 20.2039-1 Annuities—(a) In general. A decedent's gross estate includes under section 2039 (a) and (b) the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under certain agreements or plans to the extent that the value of the annuity or other payment is attributable to contributions made by the decedent or his employer. Section 2039 (a) and (b), however, has no application to an amount which constitutes the proceeds of insurance under a policy on the decedent's life. Paragraph (b) of this section describes the agreements or plans to which section 2039 (a) and (b) applies; paragraph (c) of this section provides rules for determining the amount includible in the decedent's gross estate; and paragraph (d) of this section distinguishes proceeds of life insurance. The fact that an annuity or other payment is not includible in a decedent's gross estate under section 2039 (a) and (b) does not mean that it is not includible under some other section of part III of subchapter A of chapter 11. However, see section 2039 (c) and § 20.2039-2 for rules relating to the exclusion from a decedent's gross estate of annuities and other payments under certain "qualified plans".

(b) *Agreements or plans to which section 2039 (a) and (b) applies.* (1) Section 2039 (a) and (b) applies to the value of an annuity or other payment receivable by any beneficiary under any form of contract or agreement entered into after March 3, 1931, under which—

(i) An annuity or other payment was payable to the decedent, either alone or in conjunction with another person or persons, for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death, or

(ii) The decedent possessed, for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death, the right to receive such an annuity or other payment, either alone or in conjunction with another person or persons.

The term "annuity or other payment" as used with respect to both the decedent and the beneficiary has reference to one or more payments extending over any period of time. The payments may be equal or unequal, conditional or unconditional, periodic or sporadic. The term "contract or agreement" includes any arrangement, understanding or plan, or any combination of arrangements, understandings or plans arising by reason of the decedent's employment. An annuity or other payment "was payable" to the decedent if, at the time of his death, the decedent was in fact receiving an annuity or other payment, whether or not he had an enforceable right to have payments continued. The decedent "possessed the right to receive" an annuity or other payment if, immediately before his death, the decedent had an enforceable right to receive payments at some time in the future, whether or not, at the time of his death, he had a present right to receive payments. In connection with the preceding sentence, the decedent

will be regarded as having had "an enforceable right to receive payments at some time in the future" so long as he had complied with his obligations under the contract or agreement up to the time of his death. For the meaning of the phrase "for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death", see section 2036 and § 20.2036-1.

(2) The application of this paragraph is illustrated and more fully explained in the following examples. In each example: (i) It is assumed that all transactions occurred after March 3, 1931, and (ii) the amount stated to be includible in the decedent's gross estate is determined in accordance with the provisions of paragraph (c) of this section.

Example (1). The decedent purchased an annuity contract under the terms of which the issuing company agreed to pay an annuity to the decedent for his life and, upon his death, to pay a specified lump sum to his designated beneficiary. The decedent was drawing his annuity at the time of his death. The amount of the lump sum payment to the beneficiary is includible in the decedent's gross estate under section 2039 (a) and (b).

Example (2). Pursuant to a retirement plan, the employer made contributions to a fund which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which was to provide the employee's wife, upon his death after retirement, with a similar annuity for life. The benefits under the plan were completely forfeitable during the employee's life, but upon his death after retirement, the benefits to the wife were forfeitable only upon her remarriage. The employee had no right to originally designate or to ever change the employer's designation of the surviving beneficiary. The retirement plan at no time met the requirements of section 401 (a) (relating to qualified plans). Assume that the employee died at age 61 after the employer started payment of his annuity as described above. The value of the wife's annuity is includible in the decedent's gross estate under section 2039 (a) and (b). Includibility in this case is based on the fact that the annuity to the decedent "was payable" at the time of his death. The fact that the decedent's annuity was forfeitable is of no consequence since, at the time of his death, he was in fact receiving payments under the plan. Nor is it important that the decedent had no right to choose the surviving beneficiary. The element of forfeitability in the wife's annuity may be taken into account only with respect to the valuation of the annuity in the decedent's gross estate.

Example (3). Pursuant to a retirement plan, the employer made contributions to a fund which was to provide the employee, upon his retirement at age 60, with an annuity of \$100 per month for life, and which was to provide his designated beneficiary, upon the employee's death after retirement, with a similar annuity for life. The plan also provided that (a) upon the employee's separation from service before retirement, he would have a nonforfeitable right to receive a reduced annuity starting at age 60, and (b) upon the employee's death before retirement, a lump sum payment representing the amount of the employer's contributions credited to the employee's account would be paid to the designated beneficiary. The plan at no time met the requirements of section 401 (a) (relating to qualified plans). Assume that the employee died at age 49 and that the designated beneficiary was paid the specified lump sum payment. Such amount is includible in the decedent's gross estate under section 2039 (a) and (b). Since,

immediately before his death, the employee had an enforceable right to receive an annuity commencing at age 60, he is considered to have "possessed the right to receive" an annuity as that term is used in section 2039 (a). If, in this example, the employee would not be entitled to any benefits in the event of his separation from service before retirement for any reason other than death, the result would be the same so long as the decedent had complied with his obligations under the contract up to the time of his death. In such case, he is considered to have had, immediately before his death, an enforceable right to receive an annuity commencing at age 60.

Example (4). Pursuant to a retirement plan, the employer made contributions to a fund which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which was to provide his designated beneficiary, upon the employee's death after retirement, with a similar annuity for life. The plan provided, however, that no benefits were payable in the event of the employee's death before retirement. The retirement plan at no time met the requirements of section 401 (a) (relating to qualified plans). Assume that the employee died at age 59 but that the employer nevertheless started payment of an annuity in a slightly reduced amount to the designated beneficiary. The value of the annuity is not includible in the decedent's gross estate under section 2039 (a) and (b). Since the employee died before reaching the retirement age, the employer was under no obligation to pay the annuity to the employee's designated beneficiary. Therefore, the annuity was not paid under a "contract or agreement" as that term is used in section 2039 (a). If, however, it can be established that the employer has consistently paid an annuity under such circumstances, the annuity will be considered as having been paid under a "contract or agreement".

Example (5). The employer made contributions to a retirement fund which were credited to the employee's individual account. Under the plan, the employee was to receive one-half the amount credited to his account upon his retirement at age 60, and his designated beneficiary was to receive the other one-half upon the employee's death after retirement. If the employee should die before reaching the retirement age, the entire amount credited to his account at such time was to be paid to the designated beneficiary. The retirement plan at no time met the requirements of section 401 (a) (relating to qualified plans). Assume that the employee received one-half the amount credited to his account upon reaching the retirement age and that he died shortly thereafter. Since the employee received all that he was entitled to receive under the plan before his death, no amount was payable to him for his life or for any period not ascertainable without reference to his death, or for any period which did not in fact end before his death. Thus, the amount of the payment to the designated beneficiary is not includible in the decedent's gross estate under section 2039 (a) and (b). If, in this example, the employee died before reaching the retirement age, the amount of the payment to the designated beneficiary would be includible in the decedent's gross estate under section 2039 (a) and (b). In this latter case, the decedent possessed the right to receive a lump sum payment for a period which did not in fact end before his death.

Example (6). The employer made contributions to two different funds set up under two different plans. One plan was to provide the employee, upon his retirement at age 60, with an annuity for life, and the other plan was to provide the employee's designated beneficiary, upon the employee's death, with a similar annuity for life. Each plan was

established at a different time and each plan was administered separately in every respect. Neither plan at any time met the requirements of section 401 (a) (relating to qualified plans). The value of the designated beneficiary's annuity is includible in the employee's gross estate. All rights and benefits accruing to an employee and to others by reason of the employment (except rights and benefits accruing under certain plans meeting the requirements of section 401 (a) (see § 20.2039-2)) are considered together in determining whether or not section 2039 (a) and (b) applies. The scope of section 2039 (a) and (b) cannot be limited by indirection.

(c) *Amount includible in the gross estate.* The amount to be included in a decedent's gross estate under section 2039 (a) and (b) is an amount which bears the same ratio to the value at the decedent's death of the annuity or other payment receivable by the beneficiary as the contribution made by the decedent, or made by his employer (or former employer) for any reason connected with his employment, to the cost of the contract or agreement bears to its total cost. In applying this ratio, the value at the decedent's death of the annuity or other payment is determined in accordance with the rules set forth in §§ 20.2031-1, 20.2031-7, 20.2031-8, and 20.2031-9. The application of this paragraph may be illustrated by the following examples:

Example (1). On January 1, 1945, the decedent and his wife each contributed \$15,000 to the purchase price of an annuity contract under the terms of which the issuing company agreed to pay an annuity to the decedent and his wife for their joint lives and to continue the annuity to the survivor for his life. Assume that the value of the survivor's annuity at the decedent's death (computed under § 20.2031-8) is \$20,000. Since the decedent contributed one-half of the cost of the contract, the amount to be included in his gross estate under section 2039 (a) and (b) is \$10,000.

Example (2). Under the terms of an employment contract entered into on January 1, 1945, the employer and the employee made contributions to a fund which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which was to provide his designated beneficiary, upon the employee's death after retirement, with a similar annuity for life. The retirement fund at no time formed part of a plan meeting the requirements of section 401 (a) (relating to qualified plans). Assume that the employer and the employee each contributed \$5,000 to the retirement fund. Assume, further, that the employee died after retirement at which time the value of the survivor's annuity was \$8,000. Since the employer's contributions were made by reason of the decedent's employment, the amount to be included in his gross estate under section 2039 (a) and (b) is the entire \$8,000. If, in the above example, only the employer made contributions to the fund, the amount to be included in the gross estate would still be \$8,000.

(d) *Insurance under policies on the life of the decedent.* If an annuity or other payment receivable by a beneficiary under a contract or agreement is in substance the proceeds of insurance under a policy on the life of the decedent, section 2039 (a) and (b) does not apply. For the extent to which such an annuity or other payment is includible in a decedent's gross estate, see section 2042 and § 20.2042-1. A combination annuity

contract and life insurance policy on the decedent's life (e.g., a "retirement income" policy with death benefits) which matured during the decedent's lifetime so that there was no longer an insurance element under the contract at the time of the decedent's death is subject to the provisions of section 2039 (a) and (b). On the other hand, the treatment of a combination annuity contract and life insurance policy on the decedent's life which did not mature during the decedent's lifetime depends upon the nature of the contract at the time of the decedent's death. The nature of the contract is generally determined by the relation of the reserve value of the policy to the value of the death benefit at the time of the decedent's death. If the decedent dies before the reserve value equals the death benefit, there is still an insurance element under the contract. The contract is therefore considered, for estate tax purposes, to be an insurance policy subject to the provisions of section 2042. However, if the decedent dies after the reserve value equals the death benefit, there is no longer an insurance element under the contract. The contract is therefore considered to be a contract for an annuity or other payment subject to the provisions of section 2039 (a) and (b) or some other section of part III of subchapter A of chapter 11. Notwithstanding the relation of the reserve value to the value of the death benefit, a contract under which the death benefit could never exceed the total premiums paid, plus interest, contains no insurance element.

Example. Pursuant to a retirement plan established January 1, 1945, the employer purchased a contract from an insurance company which was to provide the employee, upon his retirement at age 65, with an annuity of \$100 per month for life, and which was to provide his designated beneficiary, upon the employee's death after retirement, with a similar annuity for life. The contract further provided that if the employee should die before reaching the retirement age, a lump sum payment of \$20,000 would be paid to his designated beneficiary in lieu of the annuity described above. The plan at no time met the requirements of section 401 (a) (relating to qualified plans). Assume that the reserve value of the contract at the retirement age would be \$20,000. If the employee died after reaching the retirement age, the death benefit to the designated beneficiary would constitute an annuity, the value of which would be includible in the employee's gross estate under section 2039 (a) and (b). If, on the other hand, the employee died before reaching his retirement age, the death benefit to the designated beneficiary would constitute insurance under a policy on the life of the decedent since the reserve value would be less than the death benefit. Accordingly, its includibility would depend upon section 2042 and § 20.2042-1.

§ 20.2039-2 *Annuities under "qualified plans"*—(a) *In general.* Section 2039 (c) excludes from a decedent's gross estate the value of an annuity or other payment receivable under certain "qualified plans" to the extent provided in paragraph (c) of this section. Section 2039 (c) applies to estates of all persons dying after December 31, 1953.

(b) *Plans to which section 2039 (c) applies.* Section 2039 (c) excludes from a decedent's gross estate, to the extent

provided in paragraph (c) of this section, the value of an annuity or other payment receivable by any beneficiary (except the value of an annuity or other payment receivable by or for the benefit of the decedent's estate) under—

(1) An employee's trust (or under a contract purchased by an employee's trust) forming part of a pension, stock bonus, or profit-sharing plan which, at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of the earlier termination of the plan, met the requirements of section 401 (a), or

(2) A retirement annuity contract purchased by an employer (and not by an employee's trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of the earlier termination of the plan, met the requirements of section 401 (a) (3) through (6).

For the meaning of the term "annuity or other payment", see paragraph (b) of § 20.2039-1. For the meaning of the phrase "receivable by or for the benefit of the decedent's estate", see paragraph (b) of § 20.2042-1. The application of this paragraph may be illustrated by the following examples in each of which it is assumed that the amount stated to be excludable from the decedent's gross estate is determined in accordance with paragraph (c) of this section:

Example (1). Pursuant to a pension plan, the employer made contributions to a trust which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which was to provide his wife, upon the employee's death after retirement, with a similar annuity for life. At the time of the employee's retirement, the pension trust formed part of a plan meeting the requirements of section 401 (a). Assume that the employee died at age 61 after the trustee started payment of his annuity as described above. Since the wife's annuity was receivable under a qualified pension plan, no part of the value of such annuity is includible in the decedent's gross estate by reason of the provisions of section 2039 (c). If, in this example, the employer provided other benefits under nonqualified plans, the result would be the same since the exclusion under section 2039 (c) is confined to the benefits provided for under the qualified plan.

Example (2). Pursuant to a profit-sharing plan, the employer made contributions to a trust which were allocated to the employee's individual account. Under the plan, the employee would, upon his retirement at age 60, receive a distribution of the entire amount credited to his account. If he should die before reaching the retirement age, the amount credited to his account would be distributed to his designated beneficiary. Assume that the employee died before reaching the retirement age and that at such time the plan met the requirements of section 401 (a). Since the designated beneficiary's lump sum payment was receivable under a qualified profit-sharing plan, no part of such lump sum payment is includible in the decedent's gross estate by reason of the provisions of section 2039 (c).

Example (3). Pursuant to a pension plan, the employer made contributions to a trust which were used by the trustee to purchase a contract from an insurance company for the benefit of an employee. The contract was to provide the employee, upon his retirement at age 65, with an annuity of \$100 per month for life, and was to provide his designated beneficiary, upon the employee's death after retirement, with a similar annuity for life.

The contract further provided that if the employee should die before reaching the retirement age, a lump sum payment equal to the greater of (a) \$10,000 or (b) the reserve value of the policy would be paid to his designated beneficiary in lieu of the annuity described above. Assume that the employee died before reaching the retirement age and that at such time the plan met the requirements of section 401 (a). Since the designated beneficiary's lump sum payment was receivable under a qualified pension plan, no part of such lump sum payment is includable in the decedent's gross estate by reason of the provisions of section 2039 (c). It should be noted that for purposes of the exclusion under section 2039 (c), it is immaterial whether or not such lump sum payment constitutes the proceeds of life insurance under the principles set forth in paragraph (d) of § 20.2039-1.

Example (4). Pursuant to a profit-sharing plan, the employer made contributions to a trust which were allocated to the employee's individual account. Under the plan, the employee would, upon his retirement at age 60, be given the option to have the amount credited to his account (a) paid to him in a lump sum, (b) used to purchase a joint and survivor annuity for him and his designated beneficiary, or (c) left with the trustee under an arrangement whereby interest would be paid to him for his lifetime with the principal to be paid, at his death, to his designated beneficiary. The plan further provided that, if the third method of settlement were selected, the employee would retain the right to have the principal paid to himself in a lump sum up to the time of his death. At the time of the employee's retirement, the profit-sharing plan met the requirements of section 401 (a). Assume that the employee, upon reaching his retirement age, elected to have the amount credited to his account left with the trustee under the interest arrangement. Assume, further, that the employee did not exercise his right to have such amount paid to him before his death. Under such circumstances, the employee is considered as having constructively received the amount credited to his account upon his retirement. Thus, such amount is not considered as receivable by the designated beneficiary under the profit-sharing plan and the exclusion of section 2039 (c) is not applicable.

(c) **Amount excludable from the gross estate.** (1) The amount to be excluded from a decedent's gross estate under section 2039 (c) is an amount which bears the same ratio to the value at the decedent's death of the annuity or other payment receivable by the beneficiary as the employer's contribution (or a contribution made on his behalf) to the plan on the employee's account bears to the total contributions to the plan on the employee's account. In applying this ratio, the value at the decedent's death of the annuity or other payment is determined in accordance with the rules set forth in §§ 20.2031-1, 20.2031-7, 20.2031-8, and 20.2031-9.

(2) In certain cases, the employer's contribution (or a contribution made on his behalf) to a plan on the employee's account and thus the total contributions to the plan on the employee's account cannot be readily ascertained. In order to apply the ratio stated in subparagraph (1) of this paragraph in such a case, the method outlined in the following two sentences must be used unless a more precise method is presented. In such a case, the total contributions to the plan on the employee's account is the value of any annuity or other pay-

ment payable to the decedent and his survivor computed as of the time the decedent's rights first mature (or as of the time the survivor's rights first mature if the decedent's rights never mature) and computed in accordance with the rules set forth in §§ 20.2031-1, 20.2031-7, 20.2031-8, and 20.2031-9. By subtracting from such value the amount of the employee's contribution to the plan, the amount of the employer's contribution to the plan on the employee's account may be obtained. The application of this paragraph may be illustrated by the following example:

Example. Pursuant to a pension plan, the employer and the employee contributed to a trust which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which was to provide his wife, upon the employee's death after retirement, with a similar annuity for life. At the time of the employee's retirement, the pension trust formed part of a plan meeting the requirements of section 401 (a). Assume the following: (i) that the employer's contributions to the fund were not credited to the accounts of individual employees; (ii) that the value of the employee's annuity and his wife's annuity computed as of the time of the decedent's retirement, was \$40,000; (iii) that the employee contributed \$10,000 to the plan; and (iv) that the value at the decedent's death of the wife's annuity was \$16,000. On the basis of these facts, the total contributions to the fund on the employee's account are presumed to be \$40,000 and the employer's contribution to the plan on the employee's account is presumed to be \$30,000 (\$40,000 less \$10,000). Since the wife's annuity was receivable under a qualified pension plan, that part of the value of such annuity which is attributable to the employer's contributions ($\frac{\$30,000}{\$40,000} \times \$16,000$, or \$12,000) is excludable from the decedent's gross estate by reason of the provisions of section 2039 (c). Compare this result with the results reached in the examples set forth in paragraph (b) of this section in which all contributions to the plans were made by the employer.

§ 20.2040-1 Statutory provisions; joint interests.

Sec. 2040. Joint interests. The value of the gross estate shall include the value of all property (except real property situated outside of the United States) to the extent of the interest therein held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other

person as joint tenants and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants.

§ 20.2040-1 **Joint interests—(a) In general.** A decedent's gross estate includes under section 2040 the value of property held jointly at the time of the decedent's death by the decedent and another person or persons with right of survivorship, as follows:

(1) To the extent that the property was acquired by the decedent and the other joint owner or owners by gift, devise, bequest, or inheritance, the decedent's fractional share of the property is included.

(2) In all other cases, the entire value of the property is included except such part of the entire value as is attributable to the amount of the consideration in money or money's worth furnished by the other joint owner or owners. See § 20.2043-1 with respect to adequacy of consideration. Such part of the entire value is that portion of the entire value of the property at the decedent's death (or at the alternate valuation date described in section 2032 which the consideration in money or money's worth furnished by the other joint owner or owners bears to the total cost of acquisition and capital additions. In determining the consideration furnished by the other joint owner or owners, there is taken into account only that portion of such consideration which is shown not to be attributable to money or other property acquired by the other joint owner or owners from the decedent for less than a full and adequate consideration in money or money's worth.

The entire value of jointly held property is included in a decedent's gross estate unless the executor submits facts sufficient to show that property was not acquired entirely with consideration furnished by the decedent, or was acquired by the decedent and the other joint owner or owners by gift, bequest, devise, or inheritance.

(b) **Meaning of "property held jointly."** Section 2040 specifically covers property held jointly by the decedent and any other person (or persons); property held by the decedent and spouse as tenants by the entirety, and a deposit of money, or a bond or other instrument, in the name of the decedent and any other person and payable to either or the survivor. The section applies to all classes of property, whether real or personal, and regardless of when the joint interests were created. Furthermore, it makes no difference that the survivor takes the entire interest in the property by right of survivorship and that no interest therein forms a part of the decedent's estate for purposes of administration. The section has no application to property held by the decedent and any other person (or persons) as tenants in common.

(c) **Examples.** The application of this section may be explained in the following examples in each of which it is assumed that the other joint owner or owners survived the decedent:

(1) If the decedent furnished the entire purchase price of the jointly held property, the value of the entire property is included in his gross estate;

(2) If the decedent furnished a part only of the purchase price, only a corresponding portion of the value of the property is so included;

(3) If the decedent furnished no part of the purchase price, no part of the value of the property is so included;

(4) If the decedent, before the acquisition of the property by himself and the other joint owner, gave the latter a sum of money or other property which thereafter became the other joint owner's entire contribution to the purchase price, then the value of the entire property is so included, notwithstanding the fact that the other property may have appreciated in value due to market conditions between the time of the gift and the time of the acquisition of the jointly held property;

(5) If the decedent, before the acquisition of the property by himself and the other joint owner, transferred to the latter for less than an adequate and full consideration in money or money's worth other income-producing property, the income from which belonged to and became the other joint owner's entire contribution to the purchase price, then the value of the jointly held property less that portion attributable to the income which the other joint owner did furnish is included in the decedent's gross estate;

(6) If the property originally belonged to the other joint owner and the decedent purchased his interest from the other joint owner, only that portion of the value of the property attributable to the consideration paid by the decedent is included;

(7) If the decedent and his spouse acquired the property by will or gift as tenants by the entirety, one-half of the value of the property is included in the decedent's gross estate; and

(8) If the decedent and his two brothers acquired the property by will or gift as joint tenants, one-third of the value of the property is so included.

§ 20.2041 Statutory provisions; powers of appointment.

Sec. 2041. Powers of appointment.—(a) In general. The value of the gross estate shall include the value of all property (except real property situated outside of the United States) —

(1) Powers of appointment created on or before October 21, 1942. To the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent —

(A) By will, or

(B) By a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive;

but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the exercise of such power shall not be deemed to be the exercise of a general power of appointment if —

(i) Such partial release occurred before November 1, 1951, or

(ii) The donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than 6 months after the termination of such legal disability.

(2) Powers created after October 21, 1942. To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive. A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power. For purposes of this paragraph (2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

(3) Creation of another power in certain cases. To the extent of any property with respect to which the decedent —

(A) By will, or

(B) By a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includible in the decedent's gross estate under section 2035, 2036, or 2037,

exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

(b) Definitions. For purposes of subsection (a) —

(1) General power of appointment. The term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that —

(A) A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

(B) A power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment.

(C) In the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person —

(i) If the power is not exercisable by the decedent except in conjunction with the creator of the power — such power shall not be deemed a general power of appointment.

(ii) If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent — such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an

interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

(iii) If (after the application of clauses (i) and (ii)) the power is a general power of appointment and is exercisable in favor of such other person — such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.

For purposes of clauses (ii) and (iii), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(2) Lapse of power. The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property, which could have been appointed by exercise of such lapsed powers, exceeded in value, at the time of such lapse, the greater of the following amounts:

(A) \$5,000, or

(B) 5 percent of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied.

(3) Date of creation of power. For purposes of this section, a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

§ 20.2041-1 Powers of appointment; in general.—(a) Introduction. A decedent's gross estate includes under section 2041 the value of property in respect of which the decedent possessed, exercised, or released certain powers of appointment. This section contains rules of general application; § 20.2041-2 contains rules specifically applicable to general powers of appointment created on or before October 21, 1942; and § 20.2041-3 sets forth specific rules applicable to powers of appointment created after October 21, 1942.

(b) Definition of "power of appointment".—(1) In general. The term "power of appointment" includes all powers which are in substance and effect powers of appointment regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment. Similarly, a power given to a decedent to affect the beneficial enjoyment of trust property or its income by altering, amending, or revoking the trust instrument or terminating the trust is a power of appointment. If the community property laws of a State confer upon the wife a power of testamentary disposition over property in which she does not have a vested interest she is considered as having a power of appointment. A power in a donee to remove or discharge a trustee and appoint himself may be a power of appointment. For example, if

under the terms of a trust instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment. However, the decedent is not considered to have a power of appointment if he only had the power to appoint a successor, including himself, under limited conditions which did not exist at the time of his death, without an accompanying unrestricted power of removal. Similarly, a power to amend only the administrative provisions of a trust instrument, which cannot substantially affect the beneficial enjoyment of the trust property or income, is not a power of appointment. The mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of such fiduciary duties is not a power of appointment. Further, the right in a beneficiary of a trust to assent to a periodic accounting, thereby relieving the trustee from further accountability, is not a power of appointment if the right of assent does not consist of any power or right to enlarge or shift the beneficial interest of any beneficiary therein.

(2) *Relation to other sections.* For purposes of §§ 20.2041-1 to 20.2041-3, the term "power of appointment" does not include powers reserved by the decedent to himself within the concept of sections 2036 through 2038. (See §§ 20.2036-1 to 20.2038-1.) No provision of section 2041 or of §§ 20.2041-1 to 20.2041-3 is to be construed as in any way limiting the application of any other section of the Internal Revenue Code or of these regulations. The power of the owner of a property interest already possessed by him to dispose of his interest, and nothing more, is not a power of appointment, and the interest is includible in his gross estate to the extent it would be includible under section 2033 or some other provision of part III of subchapter A of chapter 11. For example, if a trust created by S provides for payment of the income to A for life with power in A to appoint the remainder by will and, in default of such appointment for payment of the income to A's widow, W, for her life and for payment of the remainder to A's estate, the value of A's interest in the remainder is includible in his gross estate under section 2033 regardless of its includibility under section 2041.

(3) *Powers over a portion of property.* If a power of appointment exists as to part of an entire group of assets or only over a limited interest in property, section 2041 applies only to such part or interest. For example, if a trust created by S provides for the payment of income to A for life, then to W for life, with power in A to appoint the remainder by will and in default of appointment for

payment of the remainder to B or his estate, and if A dies before W, section 2041 applies only to the value of the remainder interest excluding W's life estate. If A dies after W, section 2041 would apply to the value of the entire property. If the power were only over one-half the remainder interest, section 2041 would apply only to one-half the value of the amounts described above.

(c) *Definition of "general power of appointment."*—(1) *In general.* The term "general power of appointment" as defined in section 2041 (b) (1) means any power of appointment exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, except (i) joint powers, to the extent provided in §§ 20.2041-2 and 20.2041-3, and (ii) certain powers limited by an ascertainable standard, to the extent provided in subparagraph (2) of this paragraph. A power of appointment exercisable to meet the estate tax, or any other taxes, debts, or charges which are enforceable against the estate, is included within the meaning of a power of appointment exercisable in favor of the decedent's estate, his creditors, or the creditors of his estate. A power of appointment exercisable for the purpose of discharging a legal obligation of the decedent or for his pecuniary benefit is considered a power of appointment exercisable in favor of the decedent or his creditors. However, for purposes of §§ 20.2041-1 to 20.2041-3, a power of appointment not otherwise considered to be a general power of appointment is not treated as a general power of appointment merely by reason of the fact that an appointee may, in fact, be a creditor of the decedent or his estate. A power of appointment is not a general power if by its terms it is either—

(a) Exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of his estate, or

(b) Expressly not exercisable in favor of the decedent or his creditors, or the decedent's estate or the creditors of his estate.

A decedent may have two powers under the same instrument, one of which is a general power of appointment and the other of which is not. For example, a beneficiary may have a power to withdraw trust corpus during his life, and a testamentary power to appoint the corpus among his descendants. The testamentary power is not a general power of appointment.

(2) *Powers limited by an ascertainable standard.* A power to consume, invade, or appropriate income or corpus, or both, for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent is, by reason of section 2041 (b) (1) (A), not a general power of appointment. A power is limited by such a standard if the extent of the holder's duty to exercise and not to exercise the power is reasonably measurable in terms of his needs for health, education, or support (or any combination of them).

As used in this subparagraph, the words "support" and "maintenance" are synonymous and their meaning is not limited to the bare necessities of life. A power to use property for the comfort, welfare, or happiness of the holder of the power is not limited by the requisite standard. Examples of powers which are limited by the requisite standard are powers exercisable for the holder's "support," "support in reasonable comfort," "maintenance in health and reasonable comfort," "support in his accustomed manner of living," "education, including college and professional education," "health," and "medical, dental, hospital and nursing expenses and expenses of invalidism." In determining whether a power is limited by an ascertainable standard, it is immaterial whether the beneficiary is required to exhaust his other income before the power can be exercised.

(3) *Certain powers under wills of decedents dying between January 1 and April 2, 1948.* Section 210 of the Technical Changes Act of 1953 provides that if a decedent died after December 31, 1947, but before April 3, 1948, certain property interests described therein may, if the decedent's surviving spouse so elects, be accorded special treatment in the determination of the marital deduction to be allowed the decedent's estate under the provisions of section 812 (e) of the Internal Revenue Code of 1939. See § 81.47a (h) of Regulations 105 (26 CFR (1939) 81.47a (h)). The section further provides that property affected by the election shall, for the purpose of inclusion in the surviving spouse's gross estate, be considered property with respect to which she has a general power of appointment. Therefore, notwithstanding any other provision of law or of §§ 20.2041-1 to 20.2041-3, if the present decedent (in her capacity as surviving spouse of a prior decedent) has made an election under section 210 of the Technical Changes Act of 1953, the property which was the subject of the election shall be considered as property with respect to which the present decedent has a general power of appointment created after October 21, 1942, exercisable by deed or will, to the extent it was treated as an interest passing to the surviving spouse and not passing to any other person for the purpose of the marital deduction in the prior decedent's estate.

(d) *Definition of "exercise."* Whether a power of appointment is in fact exercised may depend upon local law. For example, the residuary clause of a will may be considered under local law as an exercise of a testamentary power of appointment in the absence of evidence of a contrary intention drawn from the whole of the testator's will. However, regardless of local law, a power of appointment is considered as exercised for purposes of section 2041 even though the exercise is in favor of the taker in default of appointment, and irrespective of whether the appointed interest and the interest in default of appointment are identical or whether the appointee renounces any right to take under the appointment. A power of appointment is

also considered as exercised even though the disposition cannot take effect until the occurrence of an event after the exercise takes place, if the exercise is irrevocable and, as of the time of the exercise, the condition was not impossible of occurrence. For example, if property is left in trust to A for life, with a power in B to appoint the remainder by will, and B dies before A, exercising his power by appointing the remainder to C if C survives A, B is considered to have exercised his power if C is living at B's death. On the other hand, a testamentary power of appointment is not considered as exercised if it is exercised subject to the occurrence during the decedent's life of an express or implied condition which did not in fact occur. Thus, if in the preceding example, C dies before B, B's power of appointment would not be considered to have been exercised. Similarly, if a trust provides for income to A for life, remainder as A appoints by will, and A appoints a life estate in the property to B and does not otherwise exercise his power, but B dies before A, A's power is not considered to have been exercised.

(e) *Time of creation of power.* A power of appointment created by will is, in general, considered as created on the date of the testator's death. However, section 2041 (b) (3) provides that a power of appointment created by a will executed on or before October 21, 1942, is considered a power created on or before that date if the testator dies before July 1, 1949, without having republished the will, by codicil or otherwise, after October 21, 1942. Whether or not a power of appointment created by an *intervivos* instrument executed on or before October 21, 1942, is considered a power created on or before that date depends upon the facts and circumstances of the particular case. For example, assume that A created a revocable trust before October 21, 1942, providing for payment of income to B for life with remainder as B shall appoint by will. If A dies after October 21, 1942, without having exercised his power of revocation, B's power of appointment is considered a power created after October 21, 1942. On the other hand, assume that C created an irrevocable *intervivos* trust before October 21, 1942, naming T as trustee and providing for payment of income to D for life with remainder to E. Assume further that T was given the power to pay corpus to D and the power to appoint a successor trustee. If T resigns after October 21, 1942, and appoints D as successor trustee, D is considered to have a power of appointment created before October 21, 1942. As another example, assume that F created an irrevocable *intervivos* trust before October 21, 1942, providing for payment of income to G for life with remainder as G shall appoint by will, but in default of appointment income to H for life with remainder as H shall appoint by will. If G dies after October 21, 1942, without having exercised his power of appointment, H's power of appointment is considered a power created before October 21, 1942, even though it was only a contingent interest until G's death. If, in this last example, G had exercised his power of appointment by creating a

similar power in I, I's power of appointment would be considered a power created after October 21, 1942. A power of appointment is not considered as created after October 21, 1942, merely because the power is not exercisable or the identity of its holders is not ascertainable until after that date.

§ 20.2041-2 Powers of appointment created on or before October 21, 1942—

(a) *In general.* Property subject to a general power of appointment created on or before October 21, 1942, is includible in the gross estate of the holder of the power under section 2041 only if he exercised the power under specified circumstances. Section 2041 (a) (1) requires that there be included in the gross estate of a decedent the value of property subject to such a power only if the power is exercised by the decedent either (1) by will, or (2) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, the property would be includible in the decedent's gross estate under section 2035 (relating to transfers in contemplation of death), 2036 (relating to transfers with retained life estate), 2037 (relating to transfers taking effect at death), or 2038 (relating to revocable transfers). See paragraphs (b), (c), and (d) of § 20.2041-1 for the definition of various terms used in this section.

(b) *Joint powers created on or before October 21, 1942.* Section 2041 (b) (1) (B) provides that a power created on or before October 21, 1942, which at the time of the exercise is not exercisable by the decedent except in conjunction with another person, is not deemed a general power of appointment.

(c) *Exercise during life.* The circumstances under which section 2041 applies to the exercise other than by will of a general power of appointment created on or before October 21, 1942, are set forth in paragraph (a) of this section. In this connection, the rules of sections 2035 through 2038 which are to be applied are those in effect on the date of the decedent's death which are applicable to transfers made on the date when the exercise of the power occurred. Those rules are to be applied in determining the extent to which and the conditions under which a disposition is considered a transfer of property. The application of this paragraph may be illustrated by the following examples:

Example (1). A decedent in 1951 exercised a general power of appointment created in 1940, reserving no interest in or power over the property subject to the general power. The decedent died in 1956. Since the exercise was not made within three years before the decedent's death, no part of the property is includible in his gross estate. See section 2035 (b), relating to transfers in contemplation of death.

Example (2). S created a trust in 1930 to pay the income to A for life, remainder as B appoints by an instrument filed with the trustee during B's lifetime, and in default of appointment remainder to C. B exercised the power in 1955 by directing that after A's death the income be paid to himself for life with remainder to C. If B dies after A, the entire value of the trust property would be included in B's gross estate, since such a disposition if it were a transfer of property owned by B would cause the prop-

erty to be included in his gross estate under section 2036 (a) (1). If B dies before A, the value of the trust property less the value of A's life estate would be included in B's gross estate for the same reason.

Example (3). S created a trust in 1940 to pay the income to A for life, remainder as A appoints by an instrument filed with the trustee during A's lifetime. A exercised the power in 1955, five years before his death, reserving the right of revocation. The exercise, if not revoked before death, will cause the property subject to the power to be included in A's gross estate under section 2041 (a) (1), since such a disposition if it were a transfer of property owned by A would cause the property to be included in his gross estate under section 2038. However, if the exercise were completely revoked, so that A died still possessed of the power, the property would not be included in A's gross estate for the reason that the power will not be treated as having been exercised.

Example (4). A decedent exercised a general power of appointment created in 1940 by making a disposition in trust under which possession or enjoyment of the property subject to the exercise could be obtained only by surviving the decedent and under which the decedent retained a reversionary interest in the property of a value of more than five percent. The exercise will cause the property subject to the power to be included in the decedent's gross estate, since such a disposition if it were a transfer of property owned by the decedent would cause the property to be included in his gross estate under section 2037.

(d) *Release or lapse.* A failure to exercise a general power of appointment created on or before October 21, 1942, or a complete release of such a power is not considered to be an exercise of a general power of appointment. The phrase "a complete release" means a release of all powers over all or a portion of the property subject to a power of appointment, as distinguished from the reduction of a power of appointment to a lesser power. Thus, if the decedent completely relinquished all powers over one-half of the property subject to a power of appointment, the power is completely released as to that one-half. If at or before the time a power of appointment is relinquished, the holder of the power exercises the power in such a manner or to such an extent that the relinquishment results in the reduction, enlargement, or shift in a beneficial interest in property, the relinquishment will be considered to be an exercise and not a release of the power. For example, assume that A created a trust in 1940 providing for payment of the income to B for life and, upon B's death, remainder to C. Assume further that B was given the unlimited power to amend the trust instrument during his lifetime. If B amended the trust in 1948 by providing that upon his death the remainder was to be paid to D, and if he further amended the trust in 1950 by deleting his power to amend the trust, such relinquishment will be considered an exercise and not a release of a general power of appointment. On the other hand, if the 1948 amendment became ineffective before or at the time of the 1950 amendment, or if B in 1948 merely amended the trust by changing the purely ministerial powers of the trustee, his relinquishment of the power in 1950 will be considered as a release of a power of appointment.

(e) *Partial release.* If a general power of appointment created on or before October 21, 1942, is partially released so that it is not thereafter a general power of appointment, a subsequent exercise of the partially released power is not an exercise of a general power of appointment if the partial release occurs before whichever is the later of the following dates:

- (1) November 1, 1951, or
- (2) If the decedent was under a legal disability to release the power on October 21, 1942, the day after the expiration of 6 months following the termination of such legal disability.

However, if a general power created on or before October 21, 1942, is partially released on or after the later of these dates, a subsequent exercise of the power will cause the property subject to the power to be included in the holder's gross estate, if the exercise is such that if it were a disposition of property owned by the decedent it would cause the property to be included in his gross estate. The legal disability referred to in this paragraph is determined under local law and may include the disability of an insane person, a minor, or an unborn child. The fact that the type of general power of appointment possessed by the decedent actually was not generally releasable under the local law does not place the decedent under a legal disability within the meaning of this paragraph. In general, however, it is assumed that all general powers of appointment are releasable, unless the local law on the subject is to the contrary, and it is presumed that the method employed to release the power is effective, unless it is not in accordance with the local law relating specifically to releases or, in the absence of such local law, is not in accordance with the local law relating to similar transactions.

(f) *Partial exercise.* If a general power of appointment created on or before October 21, 1942, is exercised only as to a portion of the property subject to the power, section 2041 is applicable only to the value of that portion. For example, if a decedent had a general power of appointment exercisable by will created on or before October 21, 1942, over a trust fund valued at \$200,000 at the date of his death, and if the decedent exercised his power either to the extent of directing the distribution of one-half of the trust property to B or of directing the payment of \$100,000 to B, the trust property would be includible in the decedent's gross estate only to the extent of \$100,000.

§ 20.2041-3 *Powers of appointment created after October 21, 1942—(a) In general.* (1) Property subject to a power of appointment created after October 21, 1942, is includible in the gross estate of the holder of the power under varying conditions depending on whether the power is (i) general in nature, (ii) possessed at death, or (iii) exercised or released. See paragraphs (b), (c), and (d) of § 20.2041-1 for the definition of various terms used in this section. See paragraph (c) of this section for the rules applicable to determine the extent

to which joint powers created after October 21, 1942, are to be treated as general powers of appointment.

(2) If the power is a general power of appointment, the value of an interest in property subject to such a power is includible in a decedent's gross estate under section 2041 (a) (2) if either—

(i) The decedent has the power at the time of his death (and the interest exists at the time of his death), or

(ii) The decedent exercised or released the power, or the power lapsed, under the circumstances and to the extent described in paragraph (d) of this section.

(3) If the power is not a general power of appointment, the value of property subject to the power is includible in the holder's gross estate under section 2041 (a) (3) only if it is exercised to create a further power under certain circumstances (see paragraph (e) of this section).

(b) *Existence of power at death.* For purposes of section 2041 (a) (2), a power of appointment is considered to exist on the date of a decedent's death even though the exercise of the power is subject to the precedent giving of notice, or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the decedent's death notice has been given or the power has been exercised. However, a power which by its terms is exercisable only upon the occurrence during the decedent's lifetime of an event or a contingency which did not in fact take place or occur during such time is not a power in existence on the date of the decedent's death. For example, if a decedent was given a general power of appointment exercisable only after he reached a certain age, only if he survived another person, or only if he died without descendants, the power would not be in existence on the date of the decedent's death if the condition precedent to its exercise had not occurred.

(c) *Joint powers created after October 21, 1942.* The treatment of a power of appointment created after October 21, 1942, which is exercisable only in conjunction with another person is governed by section 2041 (b) (1) (C), which provides as follows:

(1) Such a power is not considered a general power of appointment if it is not exercisable by the decedent except with the consent or joinder of the creator of the power.

(2) Such power is not considered a general power of appointment if it is not exercisable by the decedent except with the consent or joinder of a person having a substantial interest in the property subject to the power which is adverse to the exercise of the power in favor of the decedent, his estate, his creditors, or the creditors of his estate. An interest adverse to the exercise of a power is considered as substantial if its value in relation to the total value of the property subject to the power is not insignificant. For this purpose, the interest is to be valued in accordance with the actuarial principles set forth in § 20.2031-7 or, if it is not susceptible to valuation under

those provisions, in accordance with the general principles set forth in § 20.2031-1. A taker in default of appointment under a power has an interest which is adverse to an exercise of the power. A coholder of the power has no adverse interest merely because of his joint possession of the power nor merely because he is a permissible appointee under a power. However, a coholder of a power is considered as having an adverse interest where he may possess the power after the decedent's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate. Thus, for example, if X, Y, and Z held a power jointly to appoint among a group of persons which includes themselves and if on the death of X the power will pass to Y and Z jointly, then Y and Z are considered to have interests adverse to the exercise of the power in favor of X. Similarly, if on Y's death the power will pass to Z, Z is considered to have an interest adverse to the exercise of the power in favor of Y. The application of this subparagraph may be further illustrated by the following additional examples in each of which it is assumed that the value of the interest in question is substantial:

Example (1). The decedent and R were trustees of a trust under the terms of which the income was to be paid to the decedent for life and then to M for life, and the remainder was to be paid to R. The trustees had power to distribute corpus to the decedent. Since R's interest was substantially adverse to an exercise of the power in favor of the decedent the latter did not have a general power of appointment. If M and the decedent were the trustees, M's interest would likewise have been adverse.

Example (2). The decedent and L were trustees of a trust under the terms of which the income was to be paid to L for life and then to M for life, and the remainder was to be paid to the decedent. The trustees had power to distribute corpus to the decedent during L's life. Since L's interest was adverse to an exercise of the power in favor of the decedent, the decedent did not have a general power of appointment. If the decedent and M were the trustees, M's interest would likewise have been adverse.

Example (3). The decedent and L were trustees of a trust under the terms of which the income was to be paid to L for life. The trustees could designate whether corpus was to be distributed to the decedent or to A after L's death. L's interest was not adverse to an exercise of the power in favor of the decedent, and the decedent therefore had a general power of appointment.

(3) A power which is exercisable only in conjunction with another person, and which after application of the rules set forth in subparagraphs (1) and (2) of this paragraph constitutes a general power of appointment, will be treated as though the holders of the power who are permissible appointees of the property were joint owners of property subject to the power. The decedent, under this rule, will be treated as possessed of a general power of appointment over an aliquot share of the property to be determined with reference to the number of joint holders, including the decedent, who (or whose estates or creditors) are permissible appointees. Thus, for example, if X, Y, and Z hold an unlimited power jointly to appoint among a group

of persons, including themselves, but on the death of X the power does not pass to Y and Z jointly, then Y and Z are not considered to have interests adverse to the exercise of the power in favor of X. In this case X is considered to possess a general power of appointment as to one-third of the property subject to the power.

(d) *Releases, lapses, and disclaimers of general powers of appointment.* (1) Property subject to a general power of appointment created after October 21, 1942, is includible in the gross estate of a decedent under section 2041 (a) (2) even though he does not have the power at the date of his death, if during his life he exercised or released the power under circumstances such that, if the property subject to the power had been owned and transferred by the decedent, the property would be includible in the decedent's gross estate under section 2035, 2036, 2037, or 2038. Further, section 2041 (b) (2) provides that the lapse of a power of appointment is considered to be a release of the power to the extent set forth in subparagraph (3) of this paragraph. A release of a power of appointment need not be formal or express in character. The principles set forth in § 20.2041-2 for determining the application of the pertinent provisions of sections 2035 through 2038 to a particular exercise of a power of appointment are applicable for purposes of determining whether or not an exercise or release of a power of appointment created after October 21, 1942, causes the property to be included in a decedent's gross estate under section 2041 (a) (2). If a general power of appointment created after October 21, 1942, is partially released, a subsequent exercise or release of the power under circumstances described in the first sentence of this subparagraph, or its possession at death will nevertheless cause the property subject to the power to be included in the gross estate of the holder of the power.

(2) Section 2041 (a) (2) is not applicable to the complete release of a general power of appointment created after October 21, 1942, whether exercisable during life or by will, if the release was not made in contemplation of death within the meaning of section 2035, and if after the release the holder of the power retained no interest in or control over the property subject to the power which would cause the property to be included in his gross estate under sections 2036 through 2038 if the property had been transferred by the holder.

(3) The failure to exercise a power of appointment created after October 21, 1942, within a specified time, so that the power lapses, constitutes a release of the power. However, section 2041 (b) (2) provides that such a lapse of a power of appointment during any calendar year during the decedent's life is treated as a release for purposes of inclusion of property in the gross estate under section 2041 (a) (2) only to the extent that the property which could have been appointed by exercise of the lapsed power exceeds the greater of (i) \$5,000 or (ii) 5 percent of the aggregate value, at the time of the lapse, of the assets out of

which, or the proceeds of which, the exercise of the lapsed power could have been satisfied. For example, assume that A transferred \$200,000 worth of securities in trust providing for payment of income to B for life with remainder to B's issue. Assume further that B was given a noncumulative right to withdraw \$10,000 a year from the principal of the trust fund (which neither increased nor decreased in value prior to B's death). In such case, the failure of B to exercise his right of withdrawal will not result in estate tax with respect to the power to withdraw \$10,000 which lapses each year before the year of B's death. At B's death there will be included in his gross estate the \$10,000 which he was entitled to withdraw for the year in which his death occurs less any amount which he may have taken during that year. However, if in the above example B had possessed the right to withdraw \$15,000 of the principal annually, the failure to exercise such power in any year will be considered a release of the power to the extent of the excess of the amount subject to withdrawal over 5 percent of the trust fund (in this example, \$5,000, assuming that the trust fund is worth \$200,000 at the time of the lapse). Since each lapse is treated as though B had exercised dominion over the trust property by making a transfer of principal reserving the income therefrom for his life, the value of the trust property (but only to the extent of the excess of the amount subject to withdrawal over 5 percent of the trust fund) is includible in B's gross estate (unless before B's death he has disposed of his right to the income under circumstances to which sections 2035 through 2038 would not be applicable). The extent to which the value of the trust property is included in the decedent's gross estate is determined as provided in subparagraph (4) of this paragraph.

(4) The purpose of section 2041 (b) (2) is to provide a determination, as of the date of the lapse of the power, of the proportion of the property over which the power lapsed which is an exempt disposition for estate tax purposes and the proportion which, if the other requirements of sections 2035 through 2038 are satisfied, will be considered as a taxable disposition. Once the taxable proportion of any disposition at the date of lapse has been determined, the valuation of that proportion as of the date of the decedent's death (or, if the executor has elected the alternate valuation method under section 2032, the value as of the date therein provided), is to be ascertained in accordance with the principles which are applicable to the valuation of transfers of property by the decedent under the corresponding provisions of sections 2035 through 2038. For example, if the life beneficiary of a trust had a right exercisable only during one calendar year to draw down \$50,000 from the corpus of a trust, which he did not exercise, and if at the end of the year the corpus was worth \$300,000, the taxable portion over which the power lapsed is \$10,000 (the excess of \$50,000 over 5 per-

cent of the corpus), or $\frac{1}{10}$ of the total value. On the decedent's death, if the total value of the corpus of the trust (excluding income accumulated after the lapse of the power) on the applicable valuation date was \$1,200,000, \$15,000 ($\frac{1}{10}$ of \$1,200,000) would be includible in the decedent's gross estate. However, if the total value was then \$600,000, only \$7,500 ($\frac{1}{10}$ of \$300,000) would be includible.

(5) If the failure to exercise a power, such as a right of withdrawal, occurs in more than a single year, the proportion of the property over which the power lapsed which is treated as a taxable disposition will be determined separately for each such year. The aggregate of the taxable proportions for all such years, valued in accordance with the above principles, will be includible in the gross estate by reason of the lapse. The includible amount, however, shall not exceed the aggregate value of the assets out of which, or the proceeds of which, the exercise of the power could have been satisfied, valued as of the date of the decedent's death (or, if the executor has elected the alternate valuation method under section 2032, the value as of the date therein provided).

(6) A disclaimer or renunciation of a general power of appointment is not considered to be a release of the power. The disclaimer or renunciation must be unequivocal and effective under local law. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. There can be no disclaimer or renunciation of a power after its acceptance. In any case where a power is purported to be disclaimed or renounced as to only a portion of the property subject to the power, the determination as to whether or not there has been a complete and unqualified refusal to accept the rights to which one is entitled will depend on all the facts and circumstances of the particular case, taking into account the recognition and effectiveness of such a disclaimer under local law. Such rights refer to the incidents of the power and not to other interests of the decedent in the property. If effective under local law, the power may be disclaimed or renounced without disclaiming or renouncing such other interests. In the absence of facts to the contrary, the failure to renounce or disclaim within a reasonable time after learning of its existence will be presumed to constitute an acceptance of the power.

(e) *Successive powers.* (1) Property subject to a power of appointment created after October 21, 1942, which is not a general power, is includible in the gross estate of the holder of the power under section 2041 (a) (3) if the power is exercised, and if both of the following conditions are met:

(i) If the exercise is (a) by will, or (b) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, the property would be includible in the decedent's gross estate under sections 2035 through 2037; and

(ii) If the power is exercised by creating another power of appointment which, under the terms of the instru-

ments creating and exercising the first power and under applicable local law, can be validly exercised so as to (a) postpone the vesting of any estate or interest in the property for a period ascertainable without regard to the date of the creation of the first power, or (b) (if the applicable rule against perpetuities is stated in terms of suspension of ownership or of the power of alienation, rather than of vesting) suspend the absolute ownership or the power of alienation of the property for a period ascertainable without regard to the date of the creation of the first power.

(2) For purposes of the application of section 2041 (a) (3), the value of the property subject to the second power of appointment is considered to be its value unreduced by any precedent or subsequent interest which is not subject to the second power. Thus, if a decedent has a power to appoint by will \$100,000 to a group of persons consisting of his children and grandchildren and exercises the power by making an outright appointment of \$75,000 and by giving one appointee a power to appoint \$25,000, no more than \$25,000 will be includible in the decedent's gross estate under section 2041 (a) (3). If, however, the decedent appoints the income from the entire fund to a beneficiary for life with power in the beneficiary to appoint the remainder by will, the entire \$100,000 will be includible in the decedent's gross estate under section 2041 (a) (3) if the exercise of the second power can validly postpone the vesting of any estate or interest in the property or can suspend the absolute ownership or power of alienation of the property for a period ascertainable without regard to the date of the creation of the first power.

(f) *Examples.* The application of this section may be further illustrated by the following examples, in each of which it is assumed, unless otherwise stated, that S has transferred property in trust after October 21, 1942, with the remainder payable to R at L's death, and that neither L nor R has any interest in or power over the enjoyment of the trust property except as is indicated separately in each example:

Example (1). Income is directed to be paid to L during his lifetime at the end of each year, if living. L has an unrestricted power during his lifetime to cause the income to be distributed to any other person, but no power to cause it to be accumulated. At L's death, no part of the trust property is includible in L's gross estate since L had a power to dispose of only his income interest, a right otherwise possessed by him.

Example (2). Income is directed to be accumulated during L's life but L has a non-cumulative power to distribute \$10,000 of each year's income to himself. Unless L's power is limited by an ascertainable standard (relating to his health, etc.), as defined in paragraph (c) (2) of § 20.2041-1, he has a general power of appointment over \$10,000 of each year's income, the lapse of which may cause a portion of any income not distributed to be included in his gross estate under section 2041. See subparagraphs (3), (4), and (5) of paragraph (d) of this section. Thus, if the trust income during the year amounts to \$20,000, L's failure to distribute any of the income to himself constitutes a lapse as to \$5,000 (i.e., the amount by which \$10,000 exceeds \$5,000). If L's power were

cumulative (i.e., if the power did not lapse at the end of each year but lapsed only by reason of L's death), the total accumulations which L chose not to distribute to himself immediately before his death would be includible in his gross estate under section 2041.

Example (3). L is entitled to all the income during his lifetime and has an unrestricted power to cause corpus to be distributed to himself. L had a general power of appointment over the corpus of the trust, and the entire corpus as of the time of his death is includible in his gross estate under section 2041.

Example (4). Income was payable to L during his lifetime. R has an unrestricted power to cause corpus to be distributed to L. R dies before L. In such case, R has only a power to dispose of his remainder interest, the value of which is includible in his gross estate under section 2033, and nothing in addition would be includible under section 2041. If in this example R's remainder were contingent on his surviving L, nothing would be includible in his gross estate under either section 2033 or 2041. While R would have a power of appointment, it would not be a general power.

Example (5). Income was payable to L during his lifetime. R has an unrestricted power to cause corpus to be distributed to himself. R dies before L. While the value of R's remainder interest is includible in his gross estate under section 2033, R also has a general power of appointment over the entire trust corpus. Under such circumstances, the entire value of the trust corpus is includible in R's gross estate under section 2041.

§ 20.2042 Statutory provisions; proceeds of life insurance.

Sec. 2042. *Proceeds of life insurance.* The value of the gross estate shall include the value of all property—

(1) *Receivable by the executor.* To the extent of the amount receivable by the executor as insurance under policies on the life of the decedent.

(2) *Receivable by other beneficiaries.* To the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. For purposes of the preceding sentence, the term "incident of ownership" includes a reversionary interest (whether arising by the express terms of the policy or other instrument or by operation of law) only if the value of such reversionary interest exceeded 5 percent of the value of the policy immediately before the death of the decedent. As used in this paragraph, the term "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate, or may be subject to a power of disposition by him. The value of a reversionary interest at any time shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, pursuant to regulations prescribed by the Secretary or his delegate. In determining the value of a possibility that the policy or proceeds thereof may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such policy or proceeds may return to the decedent or his estate.

§ 20.2042-1 *Proceeds of life insurance—(a) In general.* (1) Section 2042 provides for the inclusion in a decedent's gross estate of the proceeds of insurance on the decedent's life (i) receivable by

or for the benefit of the estate (see paragraph (b) of this section), and (ii) receivable by other beneficiaries (see paragraph (c) of this section). The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies operating under the lodge system.

(2) Proceeds of life insurance which are not includible in the gross estate under section 2042 may, depending upon the facts of the particular case, be includible under some other section of part III of subchapter A of chapter 11. For example, if the decedent possessed incidents of ownership in an insurance policy on his life but gratuitously transferred all rights in the policy in contemplation of death, the proceeds would be includible under section 2035. Section 2042 has no application to the inclusion in the gross estate of the value of rights in an insurance policy on the life of a person other than the decedent, or the value of rights in a combination annuity contract and life insurance policy on the decedent's life (i.e., a "retirement income" policy with death benefit or an "endowment" policy) under which there was no insurance element at the time of the decedent's death (see paragraph (d) of § 20.2039-1).

(3) The amount to be included in the gross estate under section 2042 is the full amount receivable under the policy. If the proceeds of the policy are made payable to a beneficiary in the form of an annuity for life or for a term of years, the amount to be included in the gross estate is the one sum payable at death under an option which could have been exercised either by the insured or by the beneficiary, or if no option was granted, the sum used by the insurance company in determining the amount of the annuity.

(b) *Receivable by or for the benefit of the estate.* (1) Section 2042 requires the inclusion in the gross estate of the proceeds of insurance on the decedent's life receivable by the executor or administrator, or payable to the decedent's estate. It makes no difference whether or not the estate is specifically named as the beneficiary under the terms of the policy. Thus, if under the terms of an insurance policy the proceeds are receivable by another beneficiary but are subject to an obligation, legally binding upon the other beneficiary, to pay taxes, debts, or other charges enforceable against the estate, then the amount of such proceeds required for the payment in full (to the extent of the beneficiary's obligation) of such taxes, debts, or other charges is includible in the gross estate. Similarly, if the decedent purchased an insurance policy in favor of another person or a corporation as collateral security for a loan or other accommodation, its proceeds are considered to be receivable for the benefit of the estate. The amount of the loan outstanding at the date of the decedent's death, with interest accrued to that date, will be deductible in determining the taxable estate. See § 20.2053-4.

(2) If the proceeds of an insurance policy made payable to the decedent's estate are community assets under the

local community property law and, as a result, one-half of the proceeds belongs to the decedent's spouse, then only one-half of the proceeds is considered to be receivable by or for the benefit of the decedent's estate.

(c) *Receivable by other beneficiaries.*

(1) Section 2042 requires the inclusion in the gross estate of the proceeds of insurance on the decedent's life not receivable by or for the benefit of the estate if the decedent possessed at the date of his death any of the incidents of ownership in the policy, exercisable either alone or in conjunction with any other person. However, if the decedent did not possess any of such incidents of ownership at the time of his death nor transfer them in contemplation of death, no part of the proceeds would be includible in his gross estate under section 2042. Thus, if the decedent owned a policy of insurance on his life and, 4 years before his death, irrevocably assigned his entire interest in the policy to his wife retaining no reversionary interest therein (see subparagraph (3) of this paragraph), the proceeds of the policy would not be includible in his gross estate under section 2042.

(2) For purposes of this paragraph, the term "incidents of ownership" is not limited in its meaning to ownership of the policy in the technical legal sense. Generally speaking, the term has reference to the right of the insured or his estate to the economic benefits of the policy. Thus, it includes the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke an assignment, to pledge the policy for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc. Similarly, the term includes a power to change the beneficiary reserved to a corporation of which the decedent is sole stockholder.

(3) The term "incidents of ownership" also includes a reversionary interest in the policy or its proceeds, whether arising by the express terms of the policy or other instrument or by operation of law, but only if the value of the reversionary interest immediately before the death of the decedent exceeded 5 percent of the value of the policy. As used in this subparagraph, the term "reversionary interest" includes a possibility that the policy or its proceeds may return to the decedent or his estate and a possibility that the policy or its proceeds may become subject to a power of disposition by him. In order to determine whether or not the value of a reversionary interest immediately before the death of the decedent exceeded 5 percent of the value of the policy, the principles contained in paragraph (c) (3) and (4) of § 20.2037-1, insofar as applicable, shall be followed under this subparagraph. In that connection, there must be specifically taken into consideration any incidents of ownership held by others immediately before the decedent's death which would affect the value of the reversionary interest. For example, the decedent would not be considered to have a reversionary interest in the policy of a value in excess of 5 percent if the power to obtain the cash

surrender value existed in some other person immediately before the decedent's death and was exercisable by such other person alone and in all events. The terms "reversionary interest" and "incidents of ownership" do not include the possibility that the decedent might receive a policy or its proceeds by inheritance through the estate of another person, or as a surviving spouse under a statutory right of election or a similar right.

(4) A decedent is considered to have an "incident of ownership" in an insurance policy on his life held in trust if, under the terms of the policy, the decedent (either alone or in conjunction with another person or persons) has the power (as trustee or otherwise) to change the beneficial ownership in the policy or its proceeds, or the time or manner of enjoyment thereof, even though the decedent has no beneficial interest in the trust. Moreover, assuming the decedent created the trust, such a power may result in the inclusion in the decedent's gross estate under section 2036 or 2038 of other property transferred by the decedent to the trust if, for example, the decedent has the power to surrender the insurance policy and if the income otherwise used to pay premiums on the policy would become currently payable to a beneficiary of the trust in the event that the policy were surrendered.

(5) As an additional step in determining whether or not a decedent possessed any incidents of ownership in a policy or any part of a policy, regard must be given to the effect of the State or other applicable law upon the terms of the policy. For example, assume that the decedent purchased a policy of insurance on his life with funds held by him and his surviving wife as community property, designating their son as beneficiary but retaining the right to surrender the policy. Under the local law, the proceeds upon surrender would have inured to the marital community. Assuming that the policy is not surrendered and that the son receives the proceeds on the decedent's death, the wife's transfer of her one-half interest in the policy was not considered absolute before the decedent's death. Upon the wife's prior death, one-half of the value of the policy would have been included in her gross estate. Under these circumstances, the power of surrender possessed by the decedent as agent for his wife with respect to one-half of the policy is not, for purposes of this section, an "incident of ownership", and the decedent is, therefore, deemed to possess an incident of ownership in only one-half of the policy.

§ 20.2043 *Statutory provisions; transfers for insufficient consideration.*

Sec. 2043. *Transfers for insufficient consideration—(a) In general.* If any one of the transfers, trusts, interests, rights, or powers enumerated and described in sections 2035 to 2038, inclusive, and section 2041 is made, created, exercised, or relinquished for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there shall be included in the gross estate only the excess of the fair market value at the time of death of the property

otherwise to be included on account of such transaction, over the value of the consideration received therefor by the decedent.

(b) *Marital rights not treated as consideration.* For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth."

§ 20.2043-1 *Transfers for insufficient consideration—(a) In general.* The transfers, trusts, interests, rights or powers enumerated and described in sections 2035 through 2038 and section 2041 are not subject to the Federal estate tax if made, created, exercised, or relinquished in a transaction which constituted a bona fide sale for an adequate and full consideration in money or money's worth. To constitute a bona fide sale for an adequate and full consideration in money or money's worth, the transfer must have been made in good faith, and the price must have been an adequate and full equivalent reducible to a money value. If the price was less than such a consideration, only the excess of the fair market value of the property (as of the applicable valuation date) over the price received by the decedent is included in ascertaining the value of his gross estate.

(b) *Marital rights and support obligations.* For purposes of chapter 11, a relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in "money or money's worth."

§ 20.2044 *Statutory provisions; prior interests.*

Sec. 2044. *Prior interests.* Except as otherwise specifically provided therein, sections 2034 to 2042, inclusive, shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whenever made, created, arising, existing, exercised, or relinquished.

§ 20.2044-1 *Applicability to pre-existing transfers or interests.* Sections 2034 through 2042 are applicable regardless of when the interests and events referred to in those sections were created or took place, except as otherwise provided in those sections and the regulations thereunder.

TAXABLE ESTATE

§ 20.2051 *Statutory provisions; definition of taxable estate.*

Sec. 2051. *Definition of taxable estate.* For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the exemption and deductions provided for in this part.

§ 20.2051-1 *Definition of taxable estate.* The taxable estate of a decedent who was a citizen or resident (see paragraph (b) (1) (i) of § 20.0-1) of the United States at the time of his death is determined by subtracting the total amount of the deductions authorized by sections 2052 through 2056 from the total amount which must be included in the

gross estate under sections 2031 through 2044. These deductions are in general as follows:

(1) An exemption of \$60,000 (section 2052);

(2) Funeral and administration expenses and claims against the estate (including certain taxes and charitable pledges) (section 2053);

(3) Losses from casualty or theft during the administration of the estate (section 2054);

(4) Charitable transfers (section 2055); and

(5) The marital deduction (section 2056).

See section 2106 and the regulations thereunder for the computation of the taxable estate of a decedent who was not a citizen or resident of the United States. See also § 1.642 (g)-1 of this chapter concerning the disallowance for income tax purposes of certain deductions allowed for estate tax purposes.

§ 20.2052 Statutory provisions; exemption.

Sec. 2052. *Exemption.* For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an exemption of \$60,000.

§ 20.2052-1 *Exemption.* An exemption of \$60,000 is allowed as a deduction under section 2052 from the gross estate of a decedent who was a citizen or resident of the United States at the time of his death. For the amount of the exemption allowed as a deduction from the gross estate of a decedent who was a nonresident not a citizen of the United States, see paragraph (a) (3) of § 20.2106-1.

§ 20.2053 Statutory provisions; expenses, indebtedness, and taxes.

Sec. 2053. *Expenses, indebtedness, and taxes.*—(a) *General rule.* For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate such amounts—

- (1) For funeral expenses,
- (2) For administration expenses,
- (3) For claims against the estate, and
- (4) For unpaid mortgages on, or any indebtedness in respect of, property where the value of the decedent's interest therein, undiminished by such mortgage or indebtedness, is included in the value of the gross estate,

as are allowable by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered.

(b) *Other administration expenses.* Subject to the limitations in paragraph (1) of subsection (c), there shall be deducted in determining the taxable estate amounts representing expenses incurred in administering property not subject to claims which is included in the gross estate to the same extent such amounts would be allowable as a deduction under subsection (a) if such property were subject to claims, and such amounts are paid before the expiration of the period of limitation for assessment provided in section 6501.

(c) *Limitations.*—(1) *Limitations applicable to subsections (a) and (b).*—(A) *Consideration for claims.* The deduction allowed by this section in the case of claims against the estate, unpaid mortgages, or any indebtedness

shall, when founded on a promise or agreement, be limited to the extent that they were contracted bona fide and for an adequate and full consideration in money or money's worth; except that in any case in which any such claim is founded on a promise or agreement of the decedent to make a contribution or gift to or for the use of any donee described in section 2055 for the purposes specified therein, the deduction for such claims shall not be so limited, but shall be limited to the extent that it would be allowable as a deduction under section 2055 if such promise or agreement constituted a bequest.

(B) *Certain taxes.* Any income taxes on income received after the death of the decedent, or property taxes not accrued before his death, or any estate, succession, legacy, or inheritance taxes, shall not be deductible under this section.

(2) *Limitations applicable only to subsection (a).* In the case of the amounts described in subsection (a), there shall be disallowed the amount by which the deductions specified therein exceed the value, at the time of the decedent's death, of property subject to claims, except to the extent that such deductions represent amounts paid before the date prescribed for the filing of the estate tax return. For purposes of this section, the term "property subject to claims" means property includible in the gross estate of the decedent which, or the avails of which, would under the applicable law, bear the burden of the payment of such deductions in the final adjustment and settlement of the estate, except that the value of the property shall be reduced by the amount of the deduction under section 2054 attributable to such property.

(d) *Certain State death taxes.*—(1) *General rule.* Notwithstanding the provisions of subsection (c) (1) (B) of this section, for purposes of the tax imposed by section 2001 the value of the taxable estate may be determined, if the executor so elects before the expiration of the period of limitation for assessment provided in section 6501, by deducting from the value of the gross estate the amount (as determined in accordance with regulations prescribed by the Secretary or his delegate) of any estate, succession, legacy or inheritance tax imposed by a State or Territory or the District of Columbia, or any possession of the United States, upon a transfer by the decedent for public, charitable, or religious uses described in section 2055 or 2106 (a) (2). The election shall be exercised in accordance with regulations prescribed by the Secretary or his delegate.

(2) *Condition for allowance of deduction.* No deduction shall be allowed under paragraph (1) for a State death tax specified therein unless the decrease in the tax imposed by section 2001 which results from the deduction provided for in paragraph (1) will inure solely for the benefit of the public, charitable, or religious transferees described in section 2055 or section 2106 (a) (2). In any case where the tax imposed by section 2001 is equitably apportioned among all the transferees of property included in the gross estate, including those described in sections 2055 and 2106 (a) (2) (taking into account any exemptions, credits, or deductions allowed by this chapter), in determining such decrease, there shall be disregarded any decrease in the Federal estate tax which any transferees other than those described in sections 2055 and 2106 (a) (2) are required to pay.

(3) *Effect of deduction on credit for State death taxes.* See section 2011 (e) for the effect of a deduction taken under this subsection on the credit for State death taxes.

(e) *Marital rights.* For provisions that relinquishment of marital rights shall not be deemed a consideration "in money or money's worth," see section 2043 (b).

[Sec. 2053 as amended by sec. 2, Act of Feb. 20, 1956 (Pub. Law 414, 84th Cong., 70 Stat. 23)]

§ 20.2053-1 Deductions for expenses, indebtedness, and taxes; in general.

(a) *General rule.* In determining the taxable estate of a decedent who was a citizen or resident of the United States at the time of his death, there are allowed as deductions under section 2053 (a) and (b) amounts falling within the following two categories (subject to the limitations contained in this section and in §§ 20.2053-2 through 20.2053-9):

(1) *First category.* Amounts which are payable out of property subject to claims and which are allowable by the law of the jurisdiction, whether within or without the United States, under which the estate is being administered for—

- (i) Funeral expenses;
- (ii) Administration expenses;
- (iii) Claims against the estate (including taxes to the extent set forth in § 20.2053-6 and charitable pledges to the extent set forth in § 20.2053-5); and
- (iv) Unpaid mortgages on, or any indebtedness in respect of, property, the value of the decedent's interest in which is included in the value of the gross estate undiminished by the mortgage or indebtedness.

As used in this subparagraph, the phrase "allowable by the law of the jurisdiction" means allowable by the law governing the administration of decedents' estates. The phrase has no reference to amounts allowable as deductions under a law which imposes a State death tax. See further §§ 20.2053-2 through 20.2053-7.

(2) *Second category.* Amounts representing expenses incurred in administering property which is included in the gross estate but which is not subject to claims and which—

- (i) Would be allowed as deductions in the first category if the property being administered were subject to claims; and
- (ii) Were paid before the expiration of the period of limitation for assessment provided in section 6501.

See further § 20.2053-8.

(b) *Provisions applicable to both categories.*—(1) *In general.* If the item is not one of those described in paragraph (a) of this section, it is not deductible merely because payment is allowed by the local law. If the amount which may be expended for the particular purpose is limited by the local law no deduction in excess of that limitation is permissible.

(2) *Effect of court decree.* The decision of a local court as to the amount and allowability under local law of a claim or administration expense will ordinarily be accepted if the court passes upon the facts upon which deductibility depends. If the court does not pass upon those facts, its decree will, of course, not be followed. For example, if the question before the court is whether a claim should be allowed, the decree allowing it will ordinarily be accepted as establishing the validity and amount of the claim. However, the decree will not necessarily

be accepted even though it purports to decide the facts upon which deductibility depends. It must appear that the court actually passed upon the merits of the claim. This will be presumed in all cases of an active and genuine contest. If the result reached appears to be unreasonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary. If the decree was rendered by consent, it will be accepted, provided the consent was a bona fide recognition of the validity of the claim (and not a mere cloak for a gift) and was accepted by the court as satisfactory evidence upon the merits. It will be presumed that the consent was of this character, and was so accepted, if given by all parties having an interest adverse to the claimant. The decree will not be accepted if it is at variance with the law of the State; as, for example, an allowance made to an executor in excess of that prescribed by statute. On the other hand, a deduction for the amount of a bona fide indebtedness of the decedent, or of a reasonable expense of administration, will not be denied because no court decree has been entered if the amount would be allowable under local law.

(3) *Estimated amounts.* An item may be entered on the return for deduction though its exact amount is not then known, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. If the amount of a liability was not ascertainable at the time of final audit of the return by the district director and, as a consequence, it was not allowed as a deduction in the audit, and subsequently the amount of the liability is ascertained, relief may be sought by a petition to the Tax Court or a claim for refund as provided by sections 6213 (a) and 6511, respectively.

(c) *Provision applicable to first category only.* Deductions of the first category (described in paragraph (a) (1) of this section) are limited under section 2053 (a) to amounts which would be properly allowable out of property subject to claims by the law of the jurisdiction under which the decedent's estate is being administered. Further, the total allowable amount of deductions of the first category is limited by section 2053 (c) (2) to the sum of—

(1) The value of property included in the decedent's gross estate and subject to claims, plus

(2) Amounts paid, out of property not subject to claims against the decedent's estate, within 15 months after the decedent's death (the period within which the estate tax return must be filed under section 6075), or within any extension of time for filing the return granted under section 6081.

The term "property subject to claims" is defined in section 2053 (c) (2) as meaning the property includible in the gross estate which, or the avails of which, under the applicable law, would bear the burden of the payment of these deductions in the final adjustment and settlement of the decedent's estate. However, for the purposes of this definition, the

value of property subject to claims is first reduced by the amount of any deduction allowed under section 2054 for any losses from casualty or theft incurred during the settlement of the estate attributable to such property. The application of this paragraph may be illustrated by the following examples:

Example (1). The only item in the gross estate is real property valued at \$250,000 which the decedent and his surviving spouse held as tenants by the entirety. Under the local law this real property is not subject to claims. Funeral expenses of \$1,200 and debts of the decedent in the amount of \$1,500 are allowable under local law. Before the prescribed date for filing the estate tax return, the surviving spouse paid the funeral expenses and \$1,000 of the debts. The remaining \$500 of the debts was paid by her after the prescribed date for filing the return. The total amount allowable as deductions under section 2053 is limited to \$2,200, the amount paid prior to the prescribed date for filing the return.

Example (2). The only two items in the gross estate were a bank deposit of \$20,000 and insurance in the amount of \$150,000. The insurance was payable to the decedent's surviving spouse and under local law was not subject to claims. Funeral expenses of \$1,000 and debts in the amount of \$29,000 were allowable under local law. A son was executor of the estate and before the prescribed date for filing the estate tax return he paid the funeral expenses and \$9,000 of the debts, using therefor \$5,000 of the bank deposit and \$5,000 supplied by the surviving spouse. After the prescribed date for filing the return, the executor paid the remaining \$20,000 of the debts, using for that purpose the \$15,000 left in the bank account plus an additional \$5,000 supplied by the surviving spouse. The total amount allowable as deductions under section 2053 is limited to \$25,000 (\$20,000 of property subject to claims plus the \$5,000 additional amount which, before the prescribed date for filing the return, was paid out of property not subject to claims).

(d) *Disallowance of double deductions.* See section 642 (g) and § 1.642 (g)-1 with respect to the disallowance for income tax purposes of certain deductions unless the right to take such deductions for estate tax purposes is waived.

§ 20.2053-2 *Deduction for funeral expenses.* Such amounts for funeral expenses are allowed as deductions from a decedent's gross estate as (a) are actually expended, (b) would be properly allowable out of property subject to claims under the laws of the local jurisdiction, and (c) satisfy the requirements of paragraph (c) of § 20.2053-1. A reasonable expenditure for a tombstone, monument, or mausoleum, or for a burial lot, either for the decedent or his family, including a reasonable expenditure for its future care, may be deducted under this heading, provided such an expenditure is allowable by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.

§ 20.2053-3 *Deduction for expenses of administering estate—(a) In general.* The amounts deductible from a decedent's gross estate as "administration expenses" of the first category (see paragraphs (a) and (c) of § 20.2053-1) are limited to such expenses as are actually and necessarily incurred in the administration of the decedent's estate; that

is, in the collection of assets, payment of debts, and distribution of property to the persons entitled to it. The expenses contemplated in the law are such only as attend the settlement of an estate and the transfer of the property of the estate to individual beneficiaries or to a trustee, whether the trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; and (3) miscellaneous expenses. Each of these classes is considered separately in paragraphs (b) through (d) of this section.

(b) *Executor's commissions.* (1) The executor or administrator, in filing the estate tax return, may deduct his commissions in such an amount as has actually been paid, or in an amount which at the time of filing the estate tax return may reasonably be expected to be paid, but no deduction may be taken if no commissions are to be collected. If the amount of the commissions has not been fixed by decree of the proper court, the deduction will be allowed on the final audit of the return, to the extent that all three of the following conditions are satisfied:

(i) The district director is reasonably satisfied that the commissions claimed will be paid;

(ii) The amount claimed as a deduction is within the amount allowable by the laws of the jurisdiction in which the estate is being administered; and

(iii) It is in accordance with the usually accepted practice in the jurisdiction to allow such an amount in estates of similar size and character.

If the deduction is disallowed in whole or in part on final audit, the disallowance will be subject to modification as the facts may later require. If the deduction is allowed in advance of payment and payment is thereafter waived, it shall be the duty of the executor to notify the district director and to pay the resulting tax, together with interest.

(2) A bequest or devise to the executor in lieu of commissions is not deductible. If, however, the decedent fixed by his will the compensation payable to the executor for services to be rendered in the administration of the estate, deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice.

(3) Except to the extent that a trustee is in fact performing services with respect to property subject to claims which would normally be performed by an executor, amounts paid as trustees' commissions do not constitute expenses of administration under the first category, and are only deductible as expenses of the second category to the extent provided in § 20.2053-8.

(c) *Attorney's fees.* (1) The executor or administrator, in filing the estate tax return, may deduct such an amount of attorney's fees as has actually been paid, or an amount which at the time of filing may reasonably be expected to be paid.

If on the final audit of a return the fees claimed have not been awarded by the proper court and paid, the deduction will, nevertheless, be allowed, if the district director is reasonably satisfied that the amount claimed will be paid and that it does not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate and the local law and practice. If the deduction is disallowed in whole or in part on final audit, the disallowance will be subject to modification as the facts may later require.

(2) A deduction for attorneys' fees incurred in contesting an asserted deficiency or in prosecuting a claim for refund should be claimed at the time the deficiency is contested or the refund claim is prosecuted. A deduction for reasonable attorneys' fees actually paid in contesting an asserted deficiency or in prosecuting a claim for refund will be allowed even though the deduction, as such, was not claimed in the estate tax return or in the claim for refund. A deduction for these fees shall not be denied, and the sufficiency of a claim for refund shall not be questioned, solely by reason of the fact that the amount of the fees to be paid was not established at the time that the right to the deduction was claimed.

(3) Attorneys' fees incurred by beneficiaries incident to litigation as to their respective interests do not constitute a proper deduction, inasmuch as expenses of this character are incurred on behalf of the beneficiaries personally and are not administration expenses.

(d) *Miscellaneous administration expenses.* Miscellaneous administration expenses include such expenses as court costs, surrogates' fees, accountants' fees, appraisers' fees, clerk hire, etc. Expenses necessarily incurred in preserving and distributing the estate are deductible, including the cost of storing or maintaining property of the estate, if it is impossible to effect immediate distribution to the beneficiaries. Expenses for preserving and caring for the property may not include outlays for additions or improvements; nor will such expenses be allowed for a longer period than the executor is reasonably required to retain the property. A brokerage fee for selling property of the estate is deductible if the sale is necessary in order to (1) pay the decedent's debts, the expenses of administration, or taxes, (2) preserve the estate, or (3) effect distribution. Other expenses attending the sale are deductible, such as the fees of an auctioneer if it is reasonably necessary to employ one.

§ 20.2053-4 Deduction for claims against the estate; in general. The amounts that may be deducted as claims against a decedent's estate are such only as represent personal obligations of the decedent existing at the time of his death, whether or not then matured, and interest thereon which had accrued at the time of death. Only interest accrued at the date of the decedent's death is allowable even though the executor elects the alternate valuation method under section 2032. Only claims enforceable against the decedent's estate

may be deducted. Except as otherwise provided in § 20.2053-5 with respect to pledges or subscriptions, section 2053 (c) (1) (A) provides that the allowance of a deduction for a claim founded upon a promise or agreement is limited to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth. See § 20.2043-1. Liabilities imposed by law or arising out of torts are deductible.

§ 20.2053-5 Deductions for charitable, etc., pledges or subscriptions. A pledge or a subscription, evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible only to the extent that—

(a) Liability therefor was contracted bona fide and for an adequate and full consideration in cash or its equivalent, or

(b) It would have constituted an allowable deduction under section 2055 (relating to charitable, etc., deductions) if it had been a bequest.

§ 20.2053-6 Deduction for taxes—(a) In general. Taxes are deductible in computing a decedent's gross estate only as claims against the estate (except to the extent that excise taxes may be allowable as administration expenses), and only to the extent not disallowed by section 2053 (c) (1) (B) (see the remaining paragraphs of this section). However, see § 20.2053-9 with respect to the deduction allowed for certain State death taxes on charitable, etc., transfers.

(b) *Property taxes.* Property taxes are not deductible unless they accrued before the decedent's death. However, they are not deductible merely because they have accrued in an accounting sense. Property taxes in order to be deductible must be an enforceable obligation of the decedent at the time of his death.

(c) *Death taxes.* No estate, succession, legacy or inheritance tax payable by reason of the decedent's death is deductible, except as provided in § 20.2053-9 with respect to certain State death taxes on charitable, etc., transfers. However, see sections 2011 and 2014 and the regulations thereunder with respect to credits for death taxes.

(d) *Gift taxes.* Unpaid gift taxes on gifts made by a decedent before his death are deductible. If a gift is considered as made one-half by the decedent and one-half by his spouse under section 2513, the entire amount of the gift tax, unpaid at the decedent's death, attributable to a gift in fact made by the decedent is deductible. No portion of the tax attributable to a gift in fact made by the decedent's spouse is deductible except to the extent that the obligation is enforced against the decedent's estate and his estate has no effective right of contribution against his spouse. (See section 2012 and § 20.2012-1 with respect to credit for gift taxes paid upon gifts of property included in a decedent's gross estate.)

(e) *Excise taxes.* Excise taxes incurred in selling property of a decedent's estate are deductible as an expense of administration if the sale is necessary in order to (1) pay the decedent's debts, expenses of administration, or taxes, (2) preserve the estate, or (3) effect distribution. Excise taxes incurred in dis-

tributing property of the estate in kind are also deductible.

(f) *Income taxes.* Unpaid income taxes are deductible if they are on income properly includible in an income tax return of the decedent for a period before his death. Taxes on income received after the decedent's death are not deductible. If income received by a decedent during his lifetime is included in a joint income tax return filed by the decedent and his spouse, or by the decedent's estate and his surviving spouse, the portion of the joint liability for the period covered by the return for which a deduction will be allowed is the amount for which the decedent's estate would be liable under local law, as between the decedent and his spouse, after enforcement of any effective right of reimbursement or contribution. In the absence of evidence to the contrary, the deductible amount is presumed to be an amount bearing the same ratio to the total joint tax liability for the period covered by the return that the amount of income tax for which the decedent would have been liable if he had filed a separate return for that period bears to the total of the amounts for which the decedent and his spouse would have been liable if they had both filed separate returns for that period. Thus, in the absence of evidence to the contrary, the deductible amount equals

$$\frac{\text{Decedent's separate tax}}{\text{Both separate taxes}} \times \text{Joint tax.}$$

However, the deduction cannot in any event exceed the lesser of—

(1) The decedent's liability for the period (as determined in this paragraph) reduced by the amounts already contributed by the decedent toward payment of the joint liability, or

(2) If there is an enforceable agreement between the decedent and his spouse or between the executor and the spouse relative to the payment of the joint liability, the amount which pursuant to the agreement is to be contributed by the estate toward payment of the joint liability.

If the decedent's estate and his surviving spouse are entitled to a refund on account of an overpayment of a joint income tax liability, the overpayment is an asset includible in the decedent's gross estate under section 2033 in the amount to which the estate would be entitled under local law, as between the estate and the surviving spouse. In the absence of evidence to the contrary, the includible amount is presumed to be the amount by which the decedent's contributions toward payment of the joint tax exceeds his liability determined in accordance with the principles set forth in this paragraph (other than subparagraph (1) of this paragraph).

§ 20.2053-7 Deduction for unpaid mortgages. A deduction is allowed from a decedent's gross estate of the full unpaid amount of a mortgage upon, or of any other indebtedness in respect of, any property of the gross estate, including interest which had accrued thereon to the date of death, provided the value of the property, undiminished by the amount of the mortgage or indebtedness,

is included in the value of the gross estate. If the decedent's estate is liable for the amount of the mortgage or indebtedness, the full value of the property subject to the mortgage or indebtedness must be included as part of the value of the gross estate; the amount of the mortgage or indebtedness being in such case allowed as a deduction. But if the decedent's estate is not so liable, only the value of the equity of redemption (or the value of the property, less the mortgage or indebtedness) need be returned as part of the value of the gross estate. In no case may the deduction on account of the mortgage or indebtedness exceed the liability therefor contracted bona fide and for an adequate and full consideration in money or money's worth. See § 20.2043-1. Only interest accrued to the date of the decedent's death is allowable even though the alternate valuation method under section 2032 is selected. Inasmuch as real property outside of the United States does not form a part of the gross estate, no deduction may be taken of any mortgage thereon or any other indebtedness in respect thereof.

§ 20.2053-8 *Deduction for expenses in administering property not subject to claims.* (a) Expenses incurred in administering property included in a decedent's gross estate but not subject to claims fall within the second category of deductions set forth in § 20.2053-1, and may be allowed as deductions if they—

- (1) Would be allowed as deductions in the first category if the property being administered were subject to claims; and
- (2) Were paid before the expiration of the period of limitation for assessment provided in section 6501.

Usually, these expenses are incurred in connection with the administration of a trust established by a decedent during his lifetime. They may also be incurred in connection with the collection of other assets or the transfer or clearance of title to other property included in a decedent's gross estate for estate tax purposes but not included in his probate estate.

(b) These expenses may be allowed as deductions only to the extent that they would be allowed as deductions under the first category if the property were subject to claims. See § 20.2053-3. The only expenses in administering property not subject to claims which are allowed as deductions are those occasioned by the decedent's death and incurred in settling the decedent's interest in the property or vesting good title to the property in the beneficiaries. Expenses not coming within the description in the preceding sentence but incurred on behalf of the transferees are not deductible.

(c) The principles set forth in paragraphs (b), (c), and (d) of § 20.2053-3 (relating to the allowance of executor's commissions, attorney's fees, and miscellaneous administration expenses of the first category) are applied in determining the extent to which trustee's commissions, attorney's and accountant's fees, and miscellaneous administration expenses are allowed in connection with the administration of property not subject to claims.

(d) The application of this section may be illustrated by the following examples:

Example (1). In 1940, the decedent made an irrevocable transfer of property to the X Trust Company, as trustee. The instrument of transfer provided that the trustee should pay the income from the property to the decedent for the duration of his life and, upon his death, distribute the corpus of the trust among designated beneficiaries. The property was included in the decedent's gross estate under the provisions of section 2036. Three months after the date of death, the trustee distributed the trust corpus among the beneficiaries, except for \$6,000 which it withheld. The amount withheld represented \$5,000 which it retained as trustee's commissions in connection with the termination of the trust and \$1,000 which it had paid to an attorney for representing it in connection with the termination. Both the trustee's commissions and the attorney's fees were allowable under the law of the jurisdiction in which the trust was being administered, were reasonable in amount, and were in accord with local custom. Under these circumstances, the estate is allowed a deduction of \$6,000.

Example (2). In 1945, the decedent made an irrevocable transfer of property to Y Trust Company, as trustee. The instrument of transfer provided that the trustee should pay the income from the property to the decedent during his life. If the decedent's wife survived him, the trust was to continue for the duration of her life, with Y Trust Company and the decedent's son as co-trustees, and with income payable to the decedent's wife for the duration of her life. Upon the death of both the decedent and his wife, the corpus is to be distributed among designated remaindermen. The decedent was survived by his wife. The property was included in the decedent's gross estate under the provisions of section 2036. In accordance with local custom, the trustee made an accounting to the court as of the date of the decedent's death. Following the death of the decedent, a controversy arose among the remaindermen as to their respective rights under the instrument of transfer, and a suit was brought in court to which the trustee was made a party. As a part of the accounting, the court approved the following expenses which the trustee had paid within 3 years following the date of death: \$10,000, trustee's commissions; \$5,000, accountant's fees; \$25,000, attorney's fees; and \$2,500, representing fees paid to the guardian of a remainderman who was a minor. The trustee's commissions and accountant's fees were for services in connection with the usual issues involved in a trust accounting as also were one-half of the attorney's and guardian's fees. The remainder of the attorney's and guardian's fees were for services performed in connection with the suit brought by the remaindermen. The amount allowed as a deduction is the \$23,750 (\$10,000, trustee's commissions; \$5,000, accountant's fees; \$12,500, attorney's fees; and \$1,250, guardian's fees) incurred as expenses in connection with the usual issues involved in a trust accounting. The remaining expenses are not allowed as deductions since they were incurred on behalf of the transferees.

Example (3). Decedent in 1950 made an irrevocable transfer of property to the Z Trust Company, as trustee. The instrument of transfer provided that the trustee should pay the income from the property to the decedent's wife for the duration of her life. If the decedent survived his wife the trust corpus was to be returned to him but if he did not survive her, then upon the death of the wife, the trust corpus was to be distributed among their children. The decedent predeceased his wife and the trans-

ferred property, less the value of the wife's outstanding life estate, was included in his gross estate under the provisions of section 2037 since his reversionary interest therein immediately before his death was in excess of 5 percent of the value of the property. At the wife's request, the court ordered the trustee to render an accounting of the trust property as of the date of the decedent's death. No deduction will be allowed the decedent's estate for any of the expenses incurred in connection with the trust accounting, since the expenses were incurred on behalf of the wife.

Example (4). If, in the preceding example, the decedent died without other property and no executor or administrator of his estate was appointed, so that it was necessary for the trustee to prepare an estate tax return and participate in its audit, or if the trustee required accounting proceedings for its own protection in accordance with local custom, trustees', attorneys', and guardians' fees in connection with the estate tax or accounting proceedings would be deductible to the same extent that they would be deductible if the property were subject to claims. Deductions incurred under similar circumstances by a surviving joint tenant or the recipient of life insurance proceeds would also be deductible.

§ 20.2053-9 *Deduction for certain State death taxes—(a) General rule.* A deduction is allowed a decedent's estate under section 2053 (d) for the amount of any estate, succession, legacy, or inheritance tax imposed by a State, Territory, the District of Columbia, or any possession of the United States upon a transfer by the decedent for charitable, etc., uses described in section 2055 or 2106 (a) (2) (relating to the estates of nonresidents not citizens), but only if (1) the conditions stated in paragraph (b) of this section are met, and (2) an election is made in accordance with the provisions of paragraph (c) of this section. See section 2011 (e) and § 20.2011-2 for the effect which the allowance of this deduction has upon the credit for State death taxes.

(b) *Condition for allowance of deduction.* (1) The deduction is not allowed unless either—

(i) The entire decrease in the Federal estate tax resulting from the allowance of the deduction inures solely to the benefit of a charitable, etc., transferee described in section 2055 or 2106 (a) (2), or

(ii) The Federal estate tax is equitably apportioned among all the transferees (including the decedent's surviving spouse and the charitable, etc., transferees) of property included in the decedent's gross estate.

For allowance of the credit, it is sufficient if either of these conditions is satisfied. Thus, in a case where the entire decrease in Federal estate tax inures to the benefit of a charitable transferee, the deduction is allowable even though the Federal estate tax is not equitably apportioned among all the transferees of property included in the decedent's gross estate, the deduction is allowable even though a noncharitable transferee receives some benefit from the allowance of the deduction.

(2) For purposes of this paragraph, the Federal estate tax is considered to be equitably apportioned among all the transferees (including the decedent's surviving spouse and the charitable, etc., transferees) of property included in the decedent's gross estate only if each transferee's share of the tax is based upon the net amount of his bequest subjected to the tax (taking into account any exemptions, credits, or deductions allowed by chapter 11). See examples (2) through (5) of paragraph (e) of this section.

(c) *Exercise of election.* The election to take a deduction for a State death tax imposed upon a transfer for charitable, etc., uses shall be exercised by the executor by the filing of a written notification to that effect with the district director of internal revenue in whose district the estate tax return for the decedent's estate was filed. The notification shall be filed before the expiration of the period of limitation for assessment provided in section 6501 (usually 3 years from the last day for filing the return). The election may be revoked by the executor by the filing of a written notification to that effect with the district director at any time before the expiration of such period.

(d) *Amount of State death tax imposed upon a transfer.* If a State death tax is imposed upon the transfer of the decedent's entire estate and not upon the transfer of a particular share thereof, the State death tax imposed upon a transfer for charitable, etc., uses is deemed to be an amount, E, which bears the same ratio to F (the amount of the State death tax imposed with respect to the transfer of the entire estate) as G (the value of the charitable, etc., transfer, reduced as provided in the next sentence) bears to H (the total value of the properties, interests, and benefits subjected to the State death tax received by all persons interested in the estate, reduced as provided in the last sentence of this paragraph). In arriving at amount G of the ratio, the value of the charitable, etc., transfer is reduced by the amount of any deduction or exclusion allowed with respect to such property in determining the amount of the State death tax. In arriving at amount H of the ratio, the total value of the properties, interests, and benefits subjected to State death tax received by all persons interested in the estate is reduced by the amount of all deductions and exclusions allowed in determining the amount of the State death tax on account of the nature of a beneficiary or a beneficiary's relationship to the decedent.

(e) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). The decedent's gross estate was valued at \$200,000. He bequeathed \$90,000 to a nephew, \$10,000 to Charity A, and the remainder of his estate to Charity B. State inheritance tax in the amount of \$13,500 was imposed upon the bequest to the nephew, \$1,500 upon the bequest to Charity A, and \$15,000 upon the bequest to Charity B. Under the will and local law, each legatee is required to pay the State inheritance tax on his bequest, and the Federal estate tax is to be paid out of the residuary estate. Since the entire burden of

paying the Federal estate tax falls on Charity B, it follows that the decrease in the Federal estate tax resulting from the allowance of deductions for State death taxes in the amounts of \$1,500 and \$15,000 would inure solely for the benefit of Charity B. Therefore, deductions of \$1,500 and \$15,000 are allowable under section 2053 (d). If, in this example, the State death taxes as well as the Federal estate tax were to be paid out of the residuary estate, the result would be the same.

Example (2). The decedent's gross estate was valued at \$350,000. Expenses, indebtedness, etc., amounted to \$50,000. The entire estate was bequeathed in equal shares to a son, a daughter, and Charity C. State inheritance tax in the amount of \$2,000 was imposed upon the bequest to the son, \$2,000 upon the bequest to the daughter, and \$5,000 upon the bequest to Charity C. Under the will and local law, each legatee is required to pay his own State inheritance tax and his proportionate share of the Federal estate tax determined by taking into consideration the net amount of his bequest subjected to the tax. Since each legatee's share of the Federal estate tax is based upon the net amount of his bequest subjected to the tax (note that the deductions under sections 2053 (d) and 2055 will have the effect of reducing Charity C's proportionate share of the tax), the tax is considered to be equitably apportioned. Thus, a deduction of \$5,000 is allowable under section 2053 (d). This deduction together with a deduction of \$95,000 under section 2055 (charitable deduction) will mean that none of Charity C's bequest is subjected to Federal estate tax. Hence, the son and the daughter will bear the entire estate tax.

Example (3). The decedent bequeathed his property in equal shares, after payment of all expenses, to a son, a daughter, and a charity. State inheritance tax of \$2,000 was imposed upon the bequest to the son, \$2,000 upon the bequest to the daughter, and \$15,000 upon the bequest to the charity. Under the will and local law, each beneficiary pays the State inheritance tax on his bequest and the Federal estate tax is to be paid out of the estate as an administration expense. If the deduction for State death tax on the charitable bequest is allowed in this case, some portion of the decrease in the Federal estate tax would inure to the benefit of the son and the daughter. The Federal estate tax is not considered to be equitably apportioned in this case since each legatee's share of the Federal estate tax is not based upon the net amount of his bequest subjected to the tax (note that the deductions under sections 2053 (d) and 2055 will not have the effect of reducing the charity's proportionate share of the tax). Inasmuch as some of the decrease in the Federal estate tax payable would inure to the benefit of the son and the daughter, and inasmuch as there is no equitable apportionment of the tax, no deduction is allowable under section 2053 (d).

Example (4). The decedent bequeathed his entire residuary estate in trust to pay the income to X for life with remainder to charity. The State imposed inheritance taxes of \$2,000 upon the bequest to X and \$10,000 upon the bequest to charity. Under the will and local law, all State and Federal taxes are payable out of the residuary estate and therefore they would reduce the amount which would become the corpus of the trust. If the deduction for the State death tax on the charitable bequest is allowed in this case, some portion of the decrease in the Federal estate tax would inure to the benefit of X since the allowance of the deduction would increase the size of the corpus from which X is to receive the income for life. Also, the Federal estate tax is not considered to be equitably apportioned in this case since each legatee's share of the Federal estate tax is

not based upon the net amount of his bequest subjected to the tax (note that the deductions under sections 2053 (d) and 2055 will not have the effect of reducing the charity's proportionate share of the tax). Inasmuch as some of the decrease in the Federal estate tax payable would inure to the benefit of X, and inasmuch as there is no equitable apportionment of the tax, no deduction is allowable under section 2053 (d).

Example (5). The decedent's gross estate was valued at \$750,000. Expenses, indebtedness, etc., amounted to \$50,000. The decedent bequeathed \$350,000 of his estate to his surviving spouse and the remainder of his estate equally to his son and Charity D. State inheritance tax in the amount of \$7,000 was imposed upon the bequest to the surviving spouse, \$26,250 upon the bequest to the son, and \$26,250 upon the bequest to Charity D. The will was silent concerning the payment of taxes. In such a case, the local law provides that each legatee shall pay his own State inheritance tax. The local law further provides for an apportionment of the Federal estate tax among the legatees of the estate. Under the apportionment provisions, the surviving spouse is not required to bear any part of the Federal estate tax with respect to her \$350,000 bequest. It should be noted, however, that the marital deduction allowed to the decedent's estate by reason of the bequest to the surviving spouse is limited to \$343,000 (\$350,000 bequest less \$7,000 State inheritance tax payable by the surviving spouse). Thus, the bequest to the surviving spouse is subjected to the Federal estate tax in the net amount of \$7,000. If the deduction for State death tax on the charitable bequest is allowed in this case, some portion of the decrease in the Federal estate tax would inure to the benefit of the son. The Federal estate tax is not considered to be equitably apportioned in this case since each legatee's share of the Federal estate tax is not based upon the net amount of his bequest subjected to the tax (note that the surviving spouse is to pay no tax). Inasmuch as some of the decrease in the Federal estate tax payable would inure to the benefit of the son, and inasmuch as there is no equitable apportionment of the tax, no deduction is allowable under section 2053 (d).

§ 20.2054 Statutory provisions; losses.

Sec. 2054. Losses. For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate losses incurred during the settlement of estates arising from fires, storms, shipwrecks, or other casualties, or from theft, when such losses are not compensated for by insurance or otherwise.

§ 20.2054-1 Deduction for losses from casualties or theft. A deduction is allowed for losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualties, or from theft, if the losses are not compensated for by insurance or otherwise. If the loss is partly compensated for, the excess of the loss over the compensation may be deducted. Losses which are not of the nature described are not deductible. In order to be deductible a loss must occur during the settlement of the estate. If a loss with respect to an asset occurs after its distribution to the distributee it may not be deducted. Notwithstanding the foregoing, no deduction is allowed under this section if the estate has waived its right to take such a deduction pursuant to the provisions of section 642 (g) in order to permit its allowance for income tax purposes. See further § 1.642 (g)-1.

§ 20.2055 Statutory provisions; transfers for public, charitable, and religious uses.

Sec. 2055. Transfers for public, charitable, and religious uses.—(a) In general. For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return).—

(1) To or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) To or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(3) To a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, and no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation; or

(4) To or for the use of any veterans' organization incorporated by act of Congress, or of its departments or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

For purposes of this subsection, the complete termination before the date prescribed for the filing of the estate tax return of a power to consume, invade, or appropriate property for the benefit of an individual before such power has been exercised by reason of the death of such individual or for any other reason shall be considered and deemed to be an irrevocable disclaimer with the same full force and effect as though he had filed such irrevocable disclaimer.

(b) **Powers of appointment.—(1) General rule.** Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this section shall, for purposes of this section, be considered a bequest of such decedent.

(2) **Special rule for certain bequests subject to power of appointment.** For purposes of this section, in the case of a bequest in trust, if the surviving spouse of the decedent is entitled for life to all of the net income from the trust and such surviving spouse has a power of appointment over the corpus of such trust exercisable by will in favor of, among others, organizations described in subsection (a) (2), such bequest in trust, reduced by the value of the life estate, shall, to the extent such power is exercised in favor of such organizations, be deemed a transfer to such organizations by the decedent if—

(A) No part of the corpus of such trust is distributed to a beneficiary during the life of the surviving spouse;

(B) Such surviving spouse was over 80 years of age at the date of the decedent's death;

(C) Such surviving spouse by affidavit executed within one year after the death of the decedent specifies the organizations de-

scribed in subsection (a) (2) in favor of which he intends to exercise the power of appointment and indicates the amount or proportion each such organization is to receive; and

(D) The power of appointment is exercised in favor of such organizations and in the amounts or proportions specified in the affidavit required under subparagraph (C).

The affidavit referred to in subparagraph (C) shall be attached to the estate tax return of the decedent and shall constitute a sufficient basis for the allowance of the deduction under this paragraph in the first instance subject to a later disallowance of the deduction if the conditions herein specified are not complied with.

(c) **Death taxes payable out of bequests.** If the tax imposed by section 2001, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this section, then the amount deductible under this section shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

(d) **Limitation on deduction.** The amount of the deduction under this section for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(e) **Disallowance of deductions in certain cases.** For disallowance of certain charitable, etc., deductions otherwise allowable under this section, see sections 504 and 681.

(f) **Other cross references.** (1) For option as to time for valuation for purpose of deduction under this section, see section 2032.

(2) For exemption of bequests to or for benefit of Library of Congress, see section 5 of the Act of March 3, 1925, as amended (56 Stat. 765; 2 U. S. C. 161).

(3) For construction of bequests for benefit of the library of the Post Office Department as bequests to or for the use of the United States, see section 2 of the Act of August 8, 1946 (60 Stat. 924; 5 U. S. C. 393).

(4) For exemption of bequests for benefit of Office of Naval Records and Library, Navy Department, see section 2 of the Act of March 4, 1937 (50 Stat. 25; 5 U. S. C. 419b).

(5) For exemption of bequests to or for benefit of National Park Service, see section 5 of the Act of July 10, 1935 (49 Stat. 478; 16 U. S. C. 19c).

(6) For construction of devises or bequests accepted by the Secretary of State under the Foreign Service Act of 1946 as devises or bequests to or for the use of the United States, see section 1021 (e) of that Act (60 Stat. 1032; 22 U. S. C. 809).

(7) For construction of gifts or bequests of money accepted by the Attorney General for credit to "Commissary Funds, Federal Prisons" as gifts or bequests to or for the use of the United States, see section 2 of the Act of May 15, 1952, 66 Stat. 73, as amended by the Act of July 9, 1952, 66 Stat. 479 (31 U. S. C. 725a-4).

(8) For payment of tax on bequests of United States obligations to the United States, see section 24 of the Second Liberty Bond Act, as amended (59 Stat. 48, § 4; 31 U. S. C. 757e).

(9) For construction of bequests for benefit of or use in connection with the Naval Academy as bequests to or for the use of the United States, see section 3 of the Act of March 31, 1944 (58 Stat. 135; 34 U. S. C. 1115b).

(10) For exemption of bequests for benefit of Naval Academy Museum, see section 4 of the Act of March 26, 1938 (52 Stat. 119; 34 U. S. C. 1119).

(11) For exemption of bequests received by National Archives Trust Fund Board, see

section 7 of the National Archives Trust Fund Board Act (55 Stat. 582; 44 U. S. C. 300gg).

[Sec. 2055 as amended by sec. 1, Act of Aug. 6, 1956 (Pub. Law 1011, 84th Cong., 70 Stat. 1075)]

§ 20.2055-1 Deduction for transfers for public, charitable, and religious uses; in general.—(a) General rule. A deduction is allowed under section 2055 (a) from the gross estate of a decedent who was a citizen or resident of the United States at the time of his death for the value of property included in the decedent's gross estate and transferred by the decedent during his lifetime or by will—

(1) To or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) To or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), if no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual (other than as a legitimate object of such purposes), and no substantial part of its activities is carrying on propaganda, or otherwise attempting, to influence legislation;

(3) To a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, if the transferred property is to be used exclusively for religious, charitable, scientific, literary, or educational purposes (or for the prevention of cruelty to children or animals), and if no substantial part of the activities of such transferee is carrying on propaganda, or otherwise attempting, to influence legislation; or

(4) To or for the use of any veterans' organization incorporated by act of Congress, or of any of its departments, local chapters, or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

The deduction is not limited, in the case of estates of citizens or residents of the United States, to transfers to domestic corporations or associations, or to trustees for use within the United States. Nor is the deduction subject to percentage limitations such as are applicable to the charitable deduction under the income tax. However, sections 503 (e) and 681 (b) (5) provide that no deduction is allowed for transfers to organizations or trusts described in subparagraphs (2) and (3) of this paragraph which have engaged in certain "prohibited transactions" (see § 20.2055-4).

(b) **Powers of appointment.—(1) General rule.** A deduction is allowable under section 2055 (b) for the value of property passing to or for the use of a transferee described in paragraph (a) of this section by the exercise, failure to exercise, release or lapse of a power of appointment by reason of which the property is includible in the decedent's gross estate under section 2041.

(2) **Certain bequests subject to power of appointment.** For the allowance of

a deduction in the case of a bequest in trust where the decedent's surviving spouse (i) was over 80 years of age at the date of decedent's death, (ii) was entitled for life to all of the net income from the trust, and (iii) had a power of appointment over the corpus of the trust exercisable by will in favor of, among others, a charitable organization, see section 2055 (b) (2). See also section 6503 (e) for suspension of the period of limitations for assessment or collection of any deficiency attributable to the allowance of the deduction.

(c) *Submission of evidence.* In establishing the right of the estate to the deduction authorized by section 2055, the executor should submit the following with the return:

(1) A copy of any instrument in writing by which the decedent made a transfer of property in his lifetime the value of which is required by statute to be included in his gross estate, for which a deduction under section 2055 is claimed. If the instrument is of record the copy should be certified, and if not of record, the copy should be verified.

(2) A written statement by the executor containing a declaration that it is made under penalties of perjury and stating whether any action has been instituted to construe or to contest the decedent's will or any provision thereof affecting the charitable deduction claimed and whether, according to his information and belief, any such action is designed or contemplated.

The executor shall also submit such other documents or evidence as may be requested by the district director.

§ 20.2055-2 *Transfers not exclusively for charitable purposes.*—(a) *Remainders and similar interests.* If a trust is created or property is transferred for both a charitable and a private purpose, deduction may be taken of the value of the charitable beneficial interest only insofar as that interest is presently ascertainable, and hence severable from the noncharitable interest. The present value of a remainder or other deferred payment to be made for a charitable purpose is to be determined in accordance with the rules stated in § 20.2031-7. Thus, if money or property is placed in trust to pay the income to an individual during his life, or for a term of years, and then to pay the principal to a charitable organization, the present value of the remainder is deductible. To determine the present value of such remainder use the appropriate factor from column 4 of Table I or Table II of § 20.2031-7, whichever is applicable. If the interest transferred is such that its value is to be determined by a special computation (see paragraph (e) of § 20.2031-7), a request for a specific factor, accompanied by a statement of the date of birth of each person the duration of whose life may affect the value of the remainder, and by copies of the relevant instruments, may be submitted by the executor to the Commissioner who may, if conditions permit, supply the factor requested. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the com-

putation of the present value made in accordance with the principles set forth in the applicable paragraph of § 20.2031-7.

(b) *Transfers subject to a condition or a power.* If, as of the date of a decedent's death, a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an estate or interest has passed to or is vested in charity at the time of a decedent's death and the estate or interest would be defeated by the performance of some act or the happening of some event, the occurrence of which appeared to have been highly improbable at the time of the decedent's death, the deduction is allowable. If the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, the deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of the power. The deduction is not allowed in the case of a transfer in trust conveying to charity a present interest in income if by reason of all the conditions and circumstances surrounding the transfer it appears that the charity may not receive the beneficial enjoyment of the interest. For example, assume that assets placed in trust by the decedent consist of stock in a corporation the fiscal policies of which are controlled by the decedent and his family, that the trustees and remaindermen are likewise members of the decedent's family, and that the governing instrument contains no adequate guarantee of the requisite income to the charitable organization. Under such circumstances, no deduction will be allowed. Similarly, if the trustees are not members of the decedent's family but have no power to sell or otherwise dispose of the closely held stock, or otherwise insure the requisite enjoyment of income to the charitable organization, no deduction will be allowed.

(c) *Disclaimers.* The amount of a bequest, devise, or transfer, for which a deduction is allowable under section 2055, includes an interest which falls into the bequest, devise, or transfer as a result of either—

(1) A disclaimer of a bequest, devise, transfer, or power, if (i) the disclaimer is made within 15 months after the decedent's death (the period of time within which the estate tax return must be filed under section 6075) or within any extension of time for filing the return granted pursuant to section 6081, and (ii) the disclaimer is irrevocable at the time the deduction is allowed, or

(2) The complete termination of a power to consume, invade, or appropriate property for the benefit of an individual (whether the termination occurs by reason of the death of the individual, or otherwise) if the termination occurs (i)

within the period described in subparagraph (1) (i) of this paragraph, and (ii) before the power has been exercised.

Ordinarily, a disclaimer made by a person not under any legal disability will be considered irrevocable when filed with the probate court. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. Thus, if a beneficiary uses these rights for his own purposes, as by receiving a consideration for his formal disclaimer, he has not refused the rights to which he was entitled. There can be no disclaimer after an acceptance of these rights, expressly or impliedly. The disclaimer of a power is to be distinguished from the release or exercise of a power. The release or exercise of a power by the donee of the power in favor of a person or object described in paragraph (a) of § 20.2055-1 does not result in any deduction under section 2055 in the estate of the donor of a power (but see paragraph (b) (1) of § 20.2055-1 with respect to the donee's estate).

(d) *Payments in compromise.* If a charitable organization assigns or surrenders a part of a transfer to it pursuant to a compromise agreement in settlement of a controversy, the amount so assigned or surrendered is not deductible as a transfer to that charitable organization.

§ 20.2055-3 *Death taxes payable out of charitable transfers.* (a) If under the terms of the will or other governing instrument, the law of the jurisdiction under which the estate is administered, or the law of the jurisdiction imposing the particular tax, the Federal estate tax, or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any property the transfer of which would otherwise be allowable as a deduction under section 2055, section 2055 (c) provides that the sum deductible is the amount of the transferred property reduced by the amount of the tax. Section 2055 (c) in effect provides that the deduction is based on the amount actually available for charitable uses, that is, the amount of the fund remaining after the payment of all death taxes. Thus, if \$50,000 is bequeathed for a charitable purpose and is subjected to a State inheritance tax of \$5,000, payable out of the \$50,000, the amount deductible is \$45,000. If a life estate is bequeathed to an individual with remainder over to a charitable organization, and by the local law the inheritance tax upon the life estate is paid out of the corpus with the result that the charitable organization will be entitled to receive only the amount of the fund less the tax, the deduction is limited to the present value, as of the date of the testator's death, of the remainder of the fund so reduced. If a testator bequeaths his residuary estate, or a portion of it, to charity, and his will contains a direction that certain inheritance taxes, otherwise payable from legacies upon which they were imposed, shall be payable out of the residuary estate, the deduction may not exceed the bequest to charity thus reduced pursuant to the direction of the will. If a residuary estate, or a portion of it, is bequeathed to charity, and by the local

law the Federal estate tax is payable out of the residuary estate, the deduction may not exceed that portion of the residuary estate bequeathed to charity as reduced by the Federal estate tax. The return should fully disclose the computation of the amount to be deducted. If the amount to be deducted is dependent upon the amount of any death tax which has not been paid before the filing of the return, there should be submitted with the return a computation of that tax.

(b) It should be noted that if the Federal estate tax is payable out of a charitable transfer so that the amount of the transfer otherwise passing to charity is reduced by the amount of the tax, the resultant decrease in the amount passing to charity will further reduce the allowable deduction. In such a case, the amount of the charitable deduction can be obtained only by a series of trial-and-error computations, or by a formula. If, in addition, interdependent State and Federal taxes are involved, the computation becomes highly complicated. Examples of methods of computation of the charitable deduction and the marital deduction (with which similar problems are encountered) in various situations are contained in supplemental instructions to the estate tax return.

(c) For the allowance of a deduction to a decedent's estate for certain State death taxes imposed upon charitable transfers, see section 2053 (d) and § 20.2053-9.

§ 20.2055-4 *Disallowance of charitable, etc., deductions because of "prohibited transactions"*. (a) Sections 503 (e) and 681 (b) (5) provide that no deduction which would otherwise be allowable under section 2055 for the value of property transferred by the decedent during his lifetime or by will for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals) is allowed if (1) the transfer is made in trust, and, for income tax purposes for the taxable year of the trust in which the transfer is made, the deduction otherwise allowable to the trust under section 642 (c) is limited by section 681 (b) (1) by reason of the trust having engaged in a prohibited transaction described in section 681 (b) (2), or (2) the transfer is made to a corporation, community chest, fund or foundation which, for its taxable year in which the transfer is made, is not exempt from income tax under section 501 (a) by reason of having engaged in a prohibited transaction described in section 503 (c).

(b) For purposes of section 681 (b) (5) and section 503 (e), the term "transfer" includes any gift, contribution, bequest, devise, legacy, or other disposition. In applying such sections for estate tax purposes, a transfer, whether made during the decedent's lifetime or by will, is considered as having been made at the moment of the decedent's death.

(c) The income tax regulations contain the rules for the determination of the taxable year of the trust for which the deduction under section 642 (c) is limited by section 681 (b) and for the

determination of the taxable year of the organization for which an exemption is denied under section 503 (a). Generally, such taxable year is a taxable year subsequent to the taxable year during which the trust or organization has been notified by the Commissioner of Internal Revenue that it has engaged in a prohibited transaction. However, if the trust or organization during or prior to the taxable year entered into the prohibited transaction for the purpose of diverting its corpus or income from the charitable or other purposes by reason of which it is entitled to a deduction or exemption, and the transaction involves a substantial part of the income or corpus, then the deduction of the trust under section 642 (c) for such taxable year is limited by section 681 (b), or exemption of the organization for such taxable year is denied under section 503 (a), whether or not the organization has previously received notification by the Commissioner of Internal Revenue that it is engaged in a prohibited transaction. In certain cases, the limitation of sections 681 or 503 may be removed or the exemption may be reinstated for certain subsequent taxable years under the rules set forth in the income tax regulations under sections 681 and 503. In cases in which prior notification by the Commissioner of Internal Revenue is not required in order to limit the deduction of the trust under section 681 (b) or to deny exemption of the organization under section 503, the deduction otherwise allowable under section 2055 is not disallowed in respect of transfers made during the same taxable year of the trust or organization in which a prohibited transaction occurred or in a prior taxable year unless the decedent or a member of his family was a party to the prohibited transaction. For the purpose of the preceding sentence, the members of the decedent's family include only his brothers and sisters, whether by whole or half blood, spouse, ancestors, and lineal descendants.

§ 20.2056 (a) *Statutory provisions; bequests, etc., to surviving spouse; allowance of marital deduction.*

Sec. 2056. *Bequests, etc., to surviving spouse*—(a) *Allowance of marital deduction.* For purposes of the tax imposed by section 2001, the value of the taxable estate shall, except as limited by subsections (b), (c), and (d), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

§ 20.2056 (a)-1 *Marital deduction; in general.* (a) A deduction is allowed under section 2056 from the gross estate of a decedent who was a citizen or resident of the United States at the time of his death for the value of any property interest which passed from the decedent to his surviving spouse, if the interest is a "deductible interest" as defined in § 20.2056 (a)-2, and if the total of such interests does not exceed the percentage limitation set forth in §§ 20.2056 (c)-1 and 20.2056 (c)-2. This deduction is referred to as the "marital deduction".

The marital deduction is generally not available if the decedent's gross estate consists exclusively of property held by the decedent and his surviving spouse as community property under the law of any State, Territory, or possession of the United States, or any foreign country. See § 20.2056 (c)-2. Except as otherwise provided by a death tax convention with a foreign country, the marital deduction is not allowed in the case of an estate of a nonresident who was not a citizen of the United States at the time of his death. However, if the decedent was a citizen or resident, his estate is not deprived of the right to the marital deduction by reason of the fact that his surviving spouse was neither a resident nor a citizen. For convenience, the surviving spouse is generally referred to in the feminine gender, but if the decedent was a woman the reference is to her surviving husband. Sections 20.2056 (b)-1 through 20.2056 (b)-6 contain miscellaneous rules for determining the amount of "deductible interests"; §§ 20.2056 (c)-1 and 20.2056 (c)-2 provide a percentage limitation on the allowable amount of the marital deduction; § 20.2056 (d)-1 states special rules concerning disclaimers of interests in property; and §§ 20.2056 (e)-1 through 20.2056 (e)-3 define various terms used in the aforementioned sections.

(b) In order to obtain the marital deduction with respect to any property interest, the executor must establish the following facts:

(1) That the decedent was survived by his spouse (see paragraph (e) of § 20.2056 (e)-2);

(2) That the property interest passed from the decedent to his spouse (see §§ 20.2056 (b)-5, 20.2056 (b)-6, 20.2056 (d)-1, and 20.2056 (e)-1 through 20.2056 (e)-3);

(3) That the property interest is a "deductible interest" (see § 20.2056 (a)-2);

(4) The value of the property interest (see § 20.2056 (b)-4; and

(5) The value of the decedent's "adjusted gross estate" (see §§ 20.2056 (c)-1 and 20.2056 (c)-2).

The executor must submit such proof as is necessary to establish these facts, including any evidence requested by the district director.

§ 20.2056 (a)-2 *Marital deduction; "deductible interests" and "nondeductible interests"*. (a) Property interests which passed from a decedent to his surviving spouse fall within two general categories: (1) Those with respect to which the marital deduction is authorized, and (2) those with respect to which the marital deduction is not authorized. These categories are referred to in this section and other sections of the regulations under section 2056 as "deductible interests" and "nondeductible interests", respectively (see paragraph (b) of this section). Subject to the percentage limitation set forth in §§ 20.2056 (c)-1 and 20.2056 (c)-2, the marital deduction is equal in amount to the aggregate value of the "deductible interests".

(b) An interest passing to a decedent's surviving spouse is a "deductible inter-

est" if it does not fall within one of the following categories of "nondeductible interests":

(1) Any property interest which passed from the decedent to his surviving spouse is a "nondeductible interest" to the extent it is not included in the decedent's gross estate.

(2) If a deduction is allowed under section 2053 (relating to deductions for expenses and indebtedness) by reason of the passing of a property interest from the decedent to his surviving spouse, such interest is, to the extent of the deduction under section 2053, a "nondeductible interest". Thus, a property interest which passed from the decedent to his surviving spouse in satisfaction of a deductible claim of the spouse against the estate is, to the extent of the claim, a "nondeductible interest" (see § 20.2056 (b)-4). Similarly, amounts deducted under section 2053 (a) (2) for commissions allowed to the surviving spouse as executor are "nondeductible interests". As to the valuation, for the purpose of the marital deduction, of any property interest which passed from the decedent to his surviving spouse subject to a mortgage or other encumbrance, see § 20.2056 (b)-4.

(3) If during settlement of the estate a loss deductible under section 2054 occurs with respect to a property interest, then that interest is, to the extent of the deductible loss, a "nondeductible interest" for the purpose of the marital deduction.

(4) A property interest passing to a decedent's surviving spouse which is a "terminable interest", as defined in § 20.2056 (b)-1, is a "nondeductible interest" to the extent specified in that section.

§ 20.2056 (b) *Statutory provisions; bequests, etc., to surviving spouse; limitation in the case of life estate or other terminable interest.*

SEC. 2056. *Bequests, etc., to surviving spouse.* . . .

(b) *Limitation in the case of life estate or other terminable interest.*—(1) *General rule.* Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed under this section with respect to such interest—

(A) If an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and

(B) If by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse;

and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under subparagraphs (A) and (B))—

(C) If such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For purposes of this paragraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of

which would not have the effect of an annuity for life or for a term.

(2) *Interest in unidentified assets.* Where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

(3) *Interest of spouse conditional on survival for limited period.* For purposes of this subsection, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail on the death of such spouse if—

(A) Such death will cause a termination or failure of such interest only if it occurs within a period not exceeding 6 months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event; and

(B) Such termination or failure does not in fact occur.

(4) *Valuation of interest passing to surviving spouse.* In determining for purposes of subsection (a) the value of any interest in property passing to the surviving spouse for which a deduction is allowed by this section—

(A) There shall be taken into account the effect which the tax imposed by section 2001, or any estate, succession, legacy, or inheritance tax, has on the net value to the surviving spouse of such interest; and

(B) Where such interest or property is encumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such encumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined.

(5) *Life estate with power of appointment in surviving spouse.* In the case of an interest in property passing from the decedent, if his surviving spouse is entitled for life to all the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire interest, or such specific portion (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the interest, or such specific portion, to any person other than the surviving spouse—

(A) The interest or such portion thereof so passing shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) No part of the interest so passing shall, for purposes of paragraph (1) (A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if such power in the surviving spouse to appoint the entire interest, or such specific portion thereof, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(6) *Life insurance or annuity payments with power of appointment in surviving spouse.* In the case of an interest in property passing from the decedent consisting of proceeds under a life insurance, endowment, or annuity contract, if under the terms of the contract such proceeds are payable in installments or are held by the insurer subject to an agreement to pay interest

thereon (whether the proceeds, on the termination of any interest payments, are payable in a lump sum or in annual or more frequent installments), and such installment or interest payments are payable annually or at more frequent intervals, commencing not later than 13 months after the decedent's death, and all amounts, or a specific portion of all such amounts, payable during the life of the surviving spouse are payable only to such spouse, and such spouse has the power to appoint all amounts, or such specific portion, payable under such contract (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), with no power in any other person to appoint such amounts to any person other than the surviving spouse—

(A) Such amounts shall, for purposes of subsection (a), be considered as passing to the surviving spouse, and

(B) No part of such amounts shall, for purposes of paragraph (1) (A), be considered as passing to any person other than the surviving spouse.

This paragraph shall apply only if, under the terms of the contract, such power in the surviving spouse to appoint such amounts, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

§ 20.2056 (b)-1 *Marital deduction; limitation in case of life estate or other "terminable interest".*—(a) *In general.* Section 2056 (b) provides that no marital deduction is allowed with respect to certain property interests, referred to generally as "terminable interests", passing from a decedent to his surviving spouse. The phrase "terminable interest" is defined in paragraph (b) of this section. However, the fact that an interest in property passing to a decedent's surviving spouse is a "terminable interest" makes it nondeductible only (1) under the circumstances described in paragraph (c) of this section, and (2) if it does not come within one of the exceptions referred to in paragraph (d) of this section.

(b) *"Terminable interests".* A "terminable interest" in property is an interest which will terminate or fail on the lapse of time or on the occurrence or the failure to occur of some contingency. Life estates, terms for years, annuities, patents, and copyrights are therefore terminable interests. However, a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity or a term for years, is not a terminable interest.

(c) *Nondeductible terminable interests.* (1) A property interest which constitutes a terminable interest, as defined in paragraph (b) of this section, is nondeductible if—

(i) Another interest in the same property passed from the decedent to some other person for less than an adequate and full consideration in money or money's worth, and

(ii) By reason of its passing, the other person or his heirs or assigns may possess or enjoy any part of the property after the termination or failure of the spouse's interest.

(2) Even though a property interest which constitutes a terminable interest is not nondeductible by reason of the rules stated in subparagraph (1) of this

paragraph, such an interest is nondeductible if—

(i) The decedent has directed his executor or a trustee to acquire such an interest for the decedent's surviving spouse (see further paragraph (f) of this section), or

(ii) Such an interest passing to the decedent's surviving spouse may be satisfied out of a group of assets which includes a nondeductible interest (see further § 20.2056 (b)-2). In this case, however, full nondeductibility may not result.

(d) *Exceptions.* A property interest passing to a decedent's surviving spouse is deductible (if it is not otherwise disqualified under § 20.2056 (a)-2) even though it is a terminable interest, and even though an interest therein passed from the decedent to another person, if it is a terminable interest only because—

(1) It is conditioned on the spouse's surviving for a limited period, in the manner described in § 20.2056 (b)-3;

(2) It is a right to income for life with a general power of appointment, meeting the requirements set forth in § 20.2056 (b)-5; or

(3) It consists of life insurance or annuity payments held by the insurer with a general power of appointment in the spouse, meeting the requirements set forth in § 20.2056 (b)-6.

(e) *Miscellaneous principles.* (1) In determining whether an interest passed from the decedent to some other person, it is immaterial whether interests in the same property passed to the decedent's spouse and another person at the same time, or under the same instrument.

(2) In determining whether an interest in the same property passed from the decedent both to his surviving spouse and to some other person, a distinction is to be drawn between "property", as such term is used in section 2056, and an "interest in property". The term "property" refers to the underlying property in which various interests exist; each such interest is not for this purpose to be considered as "property".

(3) Whether or not an interest is nondeductible because it is a terminable interest is to be determined by reference to the property interests which actually passed from the decedent. Subsequent conversions of the property are immaterial for this purpose. Thus, where a decedent bequeathed his estate to his wife for life with remainder to his children, the interest which passed to his wife is a nondeductible interest, even though the wife agrees with the children to take a fractional share of the estate in fee in lieu of the life interest in the whole, or sells the life estate for cash, or acquires the remainder interest of the children either by purchase or gift.

(4) The terms "passed from the decedent", "passed from the decedent to his surviving spouse", and "passed from the decedent to a person other than his surviving spouse" are defined in §§ 20.2056 (e)-1 through 20.2056 (e)-3.

(f) *Direction to acquire a terminable interest.* No marital deduction is allowed with respect to a property interest which a decedent directs his executor or a trustee to convert after his death into

a terminable interest for his surviving spouse. The marital deduction is not allowed even though no interest in the property subject to the terminable interest passes to another person and even though the interest would otherwise come within the exceptions described in §§ 20.2056 (b)-5 and 20.2056 (b)-6 (relating to life estates and life insurance and annuity payments with powers of appointment). However, a general investment power, authorizing investments in both terminable interests and other property, is not a direction to invest in a terminable interest.

(g) *Examples.* The application of this section may be illustrated by the following examples, in each of which it is assumed that the property interest which passed from the decedent to a person other than his surviving spouse did not pass for an adequate and full consideration in money or money's worth:

Example (1). H (the decedent) devised real property to W (his surviving wife) for life, with remainder to A and his heirs. The interest which passed from H to W is a nondeductible interest since it will terminate upon her death and A (or his heirs or assigns) will thereafter possess or enjoy the property.

Example (2). H bequeathed the residue of his estate in trust for the benefit of W and A. The trust income is to be paid to W for life, and upon her death the corpus is to be distributed to A or his issue. However, if A should die without issue, leaving W surviving, the corpus is then to be distributed to W. The interest which passed from H to W is a nondeductible interest since it will terminate in the event of her death if A or his issue survive, and A or his issue will thereafter possess or enjoy the property.

Example (3). H during his lifetime purchased an annuity contract providing for payments to himself for life and then to W for life if she should survive him. Upon the death of the survivor of H and W, the excess, if any, of the cost of the contract over the annuity payments theretofore made was to be refunded to A. The interest which passed from H to W is a nondeductible interest since A may possess or enjoy a part of the property following the termination of the interest of W. If, however, the contract provided for no refund upon the death of the survivor of H and W, or provided that any refund was to go to the estate of the survivor, then the interest which passed from H to W is (to the extent it is included in H's gross estate) a deductible interest.

Example (4). H, in contemplation of death, transferred a residence to A for life with remainder to W provided W survives A, but if W predeceases A, the property is to pass to B and his heirs. If it is assumed that H died during A's lifetime, and the value of the residence was included in determining the value of his gross estate, the interest which passed from H to W is a nondeductible interest since it will terminate if W predeceases A and the property will thereafter be possessed or enjoyed by B (or his heirs or assigns). This result is not affected by B's assignment of his interest during H's lifetime, whether made in favor of W or another person, since the term "assigns" (as used in section 2056 (b) (1) (B)) includes such an assignee. However, if it is assumed that A predeceased H, the interest of B in the property was extinguished, and, viewed as of the time of the subsequent death of H, the interest which passed from him to W is the entire interest in the property and, therefore, a deductible interest.

Example (5). H transferred real property to A by gift, reserving the right to the rentals

of the property for a term of 20 years. H died within the 20-year term, bequeathing the right to the remaining rentals to a trust for the benefit of W. The terms of the trust satisfy the five conditions stated in § 20.2056 (b)-5, so that the property interest which passed in trust is considered to have passed from H to W. However, the interest is a nondeductible interest since it will terminate upon the expiration of the term and A will thereafter possess or enjoy the property.

Example (6). H bequeathed a patent to W and A as tenants in common. In this case, the interest of W will terminate upon the expiration of the term of the patent, but possession or enjoyment of the property by A must necessarily cease at the same time. Therefore, since A's possession or enjoyment cannot outlast the termination of W's interest, the latter is a deductible interest.

Example (7). A decedent bequeathed \$100,000 to his wife, subject to a direction to his executor to use the bequest for the purchase of an annuity for the wife. The bequest is a nondeductible interest.

Example (8). Assume that pursuant to local law an allowance for support is payable to the decedent's surviving spouse during the period of the administration of the decedent's estate, but that upon her death or remarriage during such period her right to any further allowance will terminate. Assume further that the surviving spouse is sole beneficiary of the decedent's estate. Under such circumstances, the allowance constitutes a deductible interest since any part of the allowance not receivable by the surviving spouse during her lifetime will pass to her estate under the terms of the decedent's will. If, in this example, the decedent bequeathed only one-third of his residuary estate to his surviving spouse, then two-thirds of the allowance for support would constitute a nondeductible terminable interest.

§ 20.2056 (b)-2 *Marital deduction; interest in unidentified assets.* (a) Section 2056 (b) (2) provides that if an interest passing to a decedent's surviving spouse may be satisfied out of assets (or their proceeds) which include a particular asset that would be a nondeductible interest if it passed from the decedent to his spouse, the value of the interest passing to the spouse is reduced, for the purpose of the marital deduction, by the value of the particular asset.

(b) In order for section 2056 (b) (2) to apply, two circumstances must coexist, as follows:

(1) The property interest which passed from the decedent to his surviving spouse must be payable out of a group of assets included in the gross estate. Examples of property interests payable out of a group of assets are a general legacy, a bequest of the residue of the decedent's estate or of a portion of the residue, and a right to a share of the corpus of a trust upon its termination.

(2) The group of assets out of which the property interest is payable must include one or more particular assets which, if passing specifically to the surviving spouse, would be nondeductible interests. Therefore, section 2056 (b) (2) is not applicable merely because the group of assets includes a terminable interest, but would only be applicable if the terminable interest were nondeductible under the provisions of § 20.2056 (b)-1.

(c) If both of the circumstances set forth in paragraph (b) of this section are present, the property interest payable

out of the group of assets is (except as to any excess of its value over the aggregate value of the particular asset or assets which would not be deductible if passing specifically to the surviving spouse) a nondeductible interest.

(d) The application of this section may be illustrated by the following example:

Example. A decedent bequeathed one-third of the residue of his estate to his wife. The property passing under the decedent's will included a right to the rentals of an office building for a term of years, reserved by the decedent under a deed of the building by way of gift to his son. The decedent did not make a specific bequest of the right to such rentals. Such right, if passing specifically to the wife, would be a nondeductible interest (see example (5) of paragraph (g) of § 20.2056 (b)-1). It is assumed that the value of the bequest of one-third of the residue of the estate to the wife was \$85,000, and that the right to the rentals was included in the gross estate at a value of \$60,000. If the decedent's executor had the right under the decedent's will or local law to assign the entire lease in satisfaction of the bequest, the bequest is a nondeductible interest to the extent of \$60,000. If the executor could only assign a one-third interest in the lease in satisfaction of the bequest, the bequest is a nondeductible interest to the extent of \$20,000. If the decedent's will provided that his wife's bequest could not be satisfied with a nondeductible interest, the entire bequest is a deductible interest. If, in this example, the asset in question had been foreign real estate not included in the decedent's gross estate, the results would be the same.

§ 20.2056 (b)-3 *Marital deduction; interest of spouse conditioned on survival for limited period*—(a) *In general.* Generally, no marital deduction is allowable if the interest passing to the surviving spouse is a terminable interest as defined in paragraph (b) of § 20.2056 (b)-1. However, section 2056 (b) (3) provides an exception to this rule so as to allow a deduction if (1) the only condition under which it will terminate is the death of the surviving spouse within 6 months after the decedent's death, or her death as a result of a common disaster which also resulted in the decedent's death, and (2) the condition does not in fact occur.

(b) *Six months' survival.* If the only condition which will cause the interest taken by the surviving spouse to terminate is the death of the surviving spouse and the condition is of such nature that it can occur only within 6 months following the decedent's death, the exception provided by section 2056 (b) (3) will apply, provided the condition does not in fact occur. However, if the condition (unless it relates to death as a result of a common disaster) is one which may occur either within the 6-month period or thereafter, the exception provided by section 2056 (b) (3) will not apply.

(c) *Common disaster.* If a property interest passed from the decedent to his surviving spouse subject to the condition that she does not die as a result of a common disaster which also resulted in the decedent's death, the exception provided by section 2056 (b) (3) will not be applied in the final audit of the return if there is still a possibility that the surviving spouse may be deprived of the property interest by operation of the

common disaster provision as given effect by the local law.

(d) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). A decedent bequeathed his entire estate to his spouse on condition that she survive him by 6 months. In the event his spouse failed to survive him by 6 months, his estate was to go to his niece and her heirs. The decedent was survived by his spouse. It will be observed that, as of the time of the decedent's death, it was possible that the niece would, by reason of the interest which passed to her from the decedent, possess or enjoy the estate after the termination of the interest which passed to the spouse. Hence, under the general rule set forth in § 20.2056 (b)-1, the interest which passed to the spouse would be regarded as a nondeductible interest. If the surviving spouse in fact died within 6 months after the decedent's death, that general rule is to be applied, and the interest which passed to the spouse is a nondeductible interest. However, if the spouse in fact survived the decedent by 6 months, thus extinguishing the interest of the niece, the case comes within the exception provided by section 2056 (b) (3), and the interest which passed to the spouse is a deductible interest. (It is assumed for the purpose of this example that no other factor which would cause the interest to be nondeductible is present.)

Example (2). The facts are the same as in example (1) except that the will provided that the estate was to go to the niece either in case the decedent and his spouse should both die as a result of a common disaster, or in case the spouse should fail to survive the decedent by 3 months. It is assumed that the decedent was survived by his spouse. In this example, the interest which passed from the decedent to his surviving spouse is to be regarded as a nondeductible interest if the surviving spouse in fact died either within 3 months after the decedent's death or as a result of a common disaster which also resulted in the decedent's death. However, if the spouse in fact survived the decedent by 3 months, and did not thereafter die as a result of a common disaster which also resulted in the decedent's death, the exception provided under section 2056 (b) (3) will apply and the interest will be deductible.

Example (3). The facts are the same as in example (1) except that the will provided that the estate was to go to the niece if the decedent and his spouse should both die as a result of a common disaster and if the spouse failed to survive the decedent by 3 months. If the spouse in fact survived the decedent by 3 months, the interest of the niece is extinguished, and the interest passing to the spouse is a deductible interest.

Example (4). A decedent devised and bequeathed his residuary estate to his wife if she was living on the date of distribution of his estate. The devise and bequest is a nondeductible interest even though distribution took place within 6 months after the decedent's death and the surviving spouse in fact survived the date of distribution.

§ 20.2056 (b)-4 *Marital deduction; valuation of interest passing to surviving spouse*—(a) *In general.* The value, for the purpose of the marital deduction, of any deductible interest which passed from the decedent to his surviving spouse is to be determined as of the date of the decedent's death, except that if the executor elects the alternate valuation method under section 2032 the valuation is to be determined as of the date of the decedent's death but with the adjustment described in paragraph (a) (3) of § 20.2032-1. The marital deduction may

be taken only with respect to the net value of any deductible interest which passed from the decedent to his surviving spouse, the same principles being applicable as if the amount of a gift to the spouse were being determined. In determining the value of the interest in property passing to the spouse account must be taken of the effect of any material limitations upon her right to income from the property. An example of a case in which this rule may be applied is a bequest of property in trust for the benefit of the decedent's spouse but the income from the property from the date of the decedent's death until distribution of the property to the trustee is to be used to pay expenses incurred in the administration of the estate.

(b) *Property interest subject to an encumbrance or obligation.* If a property interest passed from the decedent to his surviving spouse subject to a mortgage or other encumbrance, or if an obligation is imposed upon the surviving spouse by the decedent in connection with the passing of a property interest, the value of the property interest is to be reduced by the amount of the mortgage, other encumbrance, or obligation. However, if under the terms of the decedent's will or under local law the executor is required to discharge, out of other assets of the decedent's estate, a mortgage or other encumbrance on property passing from the decedent to his surviving spouse, or is required to reimburse the surviving spouse for the amount of the mortgage or other encumbrance, the payment or reimbursement constitutes an additional interest passing to the surviving spouse. The passing of a property interest subject to the imposition of an obligation by the decedent does not include a bequest, devise, or transfer in lieu of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate. The passing of a property interest subject to the imposition of an obligation by the decedent does, however, include a bequest, etc., in lieu of the interest of his surviving spouse under community property laws unless such interest was, immediately prior to the decedent's death, a mere expectancy. (As to the circumstances under which the interest of the surviving spouse is regarded as a mere expectancy, see § 20.2056 (c)-2.) The following examples are illustrative of property interests which passed from the decedent to his surviving spouse subject to the imposition of an obligation by the decedent:

Example (1). A decedent devised a residence valued at \$25,000 to his wife, with a direction that she pay \$5,000 to his sister. For the purpose of the marital deduction, the value of the property interest passing to the wife is only \$20,000.

Example (2). A decedent devised real property to his wife in satisfaction of a debt owing to her. The debt is a deductible claim under section 2053. Since the wife is obligated to relinquish the claim as a condition to acceptance of the devise, the value of the devise is, for the purpose of the marital deduction, to be reduced by the amount of the claim.

Example (3). A decedent bequeathed certain securities to his wife in lieu of her interest in property held by them as com-

munity property under the law of the State of their residence. The wife elected to relinquish her community property interest and to take the bequest. For the purpose of the marital deduction, the value of the bequest is to be reduced by the value of the community property interest relinquished by the wife.

(c) *Effect of death taxes.* (1) In the determination of the value of any property interest which passed from the decedent to his surviving spouse, there must be taken into account the effect which the Federal estate tax, or any estate, succession, legacy, or inheritance tax, has upon the net value to the surviving spouse of the property interest.

(2) For example, assume that the only bequest to the surviving spouse is \$100,000 and the spouse is required to pay a State inheritance tax in the amount of \$1,500. If no other death taxes affect the net value of the bequest, the value, for the purpose of the marital deduction, is \$98,500.

(3) As another example, assume that a decedent devised real property to his wife having a value for Federal estate tax purposes of \$100,000 and also bequeathed to her a nondeductible interest for life under a trust. The State of residence valued the real property at \$90,000 and the life interest at \$30,000, and imposed an inheritance tax (at graduated rates) of \$4,800 with respect to the two interests. If it is assumed that the inheritance tax on the devise is required to be paid by the wife, the amount of tax to be ascribed to the devise is

$$\frac{90,000}{120,000} \times \$4,800 = \$3,600.$$

Accordingly, if no other death taxes affect the net value of the bequest, the value, for the purpose of the marital deduction, is \$100,000 less \$3,600, or \$96,400.

(4) If the decedent bequeaths his residuary estate, or a portion of it, to his surviving spouse, and his will contains a direction that all death taxes shall be payable out of the residuary estate, the value of the bequest, for the purpose of the marital deduction, is based upon the amount of the residue as reduced pursuant to such direction, if the residuary estate, or a portion of it, is bequeathed to the surviving spouse, and by the local law the Federal estate tax is payable out of the residuary estate, the value of the bequest, for the purpose of the marital deduction, may not exceed its value as reduced by the Federal estate tax. Methods of computing the deduction, under such circumstances, are set forth in supplemental instructions to the estate tax return.

(d) *Remainder interests.* If the income from property is made payable to another individual for life, or for a term of years, with remainder absolutely to the surviving spouse or to her estate, the marital deduction is based upon the present value of the remainder. The present value of the remainder is to be determined in accordance with the rules stated in § 20.2031-7. For example, if the surviving spouse is to receive \$50,000 upon the death of a person aged 31 years, the present value of the remainder is \$14,466. If the remainder is such that its value is to be determined by a special computa-

tion (see paragraph (e) of § 20.2031-7), a request for a specific factor may be submitted to the Commissioner. The request should be accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the remainder, and copies of the relevant instruments. The Commissioner may, if conditions permit, supply the factor requested. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present value made in accordance with the principles set forth in the applicable paragraphs of § 20.2031-7.

§ 20.2056 (b)-5 *Marital deduction: Life estate with power of appointment in surviving spouse*—(a) *In general.* Section 2056 (b) (5) provides that if an interest in property passes from the decedent to his surviving spouse (whether or not in trust) and the spouse is entitled for life to all the income from the entire interest or all the income from a specific portion of the entire interest, with a power in her to appoint the entire interest or the specific portion, the interest which passes to her is a deductible interest, to the extent that it satisfies all five of the conditions set forth below (see paragraph (b) of this section if one or more of the conditions is satisfied as to only a portion of the interest):

(1) The surviving spouse must be entitled for life to all of the income from the entire interest or a specific portion of the entire interest, or to a specific portion of all the income from the entire interest.

(2) The income payable to the surviving spouse must be payable annually or at more frequent intervals.

(3) The surviving spouse must have the power to appoint the entire interest or the specific portion to either herself or her estate.

(4) The power in the surviving spouse must be exercisable by her alone and (whether exercisable by will or during life) must be exercisable in all events.

(5) The entire interest or the specific portion must not be subject to a power in any other person to appoint any part to any person other than the surviving spouse.

(b) *Specific portion; deductible amount.* If either the right to income or the power of appointment passing to the surviving spouse pertains only to a specific portion of a property interest passing from the decedent, the marital deduction is allowed only to the extent that the rights in the surviving spouse meet all of the five conditions described in paragraph (a) of this section. While the rights over the income and the power must coexist as to the same interest in property, it is not necessary that the rights over the income or the power as to such interest be in the same proportion. However, if the rights over income meeting the required conditions set forth in paragraph (a) (1) and (2) of this section extend over a smaller share of the property interest than the share with respect to which the power of appointment requirements set forth in paragraph (a) (3) through (5) of this sec-

tion are satisfied, the deductible interest is limited to the smaller share. Correspondingly, if a power of appointment meeting all the requirements extends to a smaller portion of the property interest than the portion over which the income rights pertain, the deductible interest cannot exceed the value of the portion to which such power of appointment applies. Thus, if the decedent leaves to his surviving spouse the right to receive annually all of the income from a particular property interest and a power of appointment meeting the specifications prescribed in paragraph (a) (3) through (5) of this section as to only one-half of the property interest, then only one-half of the property interest is treated as a deductible interest. Correspondingly, if the income interest of the spouse satisfying the requirements extends to only one-fourth of the property interest and a testamentary power of appointment satisfying the requirements extends to all of the property interest, then only one-fourth of the interest in the spouse qualifies as a deductible interest. Further, if the surviving spouse has no right to income from a specific portion of a property interest but a testamentary power of appointment which meets the necessary conditions over the entire interest, then none of the interest qualifies for the deduction. In addition, if, from the time of the decedent's death, the surviving spouse has a power of appointment meeting all of the required conditions over three-fourths of the entire property interest and the prescribed income rights over the entire interest, but with a power in another person to appoint one-half of the entire interest, the value of the interest in the surviving spouse over only one-half of the property interest will qualify as a deductible interest.

(c) *Definition of "specific portion."* A partial interest in property is not treated as a specific portion of the entire interest unless the rights of the surviving spouse in income and as to the power constitute a fractional or percentile share of a property interest so that such interest or share in the surviving spouse reflects its proportionate share of the increment or decline in the whole of the property interest to which the income rights and the power relate. Thus, if the right of the spouse to income and the power extend to one-half or a specified percentage of the property, or the equivalent, the interest is considered as a specific portion. On the other hand, if the annual income of the spouse is limited to a specific sum, or if she has a power to appoint only a specific sum out of a larger fund, the interest is not a deductible interest. Even though the rights in the surviving spouse may not be expressed in terms of a definite fraction or percentage, a deduction may be allowable if it is shown that the effect of local law is to give the spouse rights which are identical to those she would have acquired if the size of the share had been expressed in terms of a definite fraction or percentage. The following examples illustrate the application of this and the preceding paragraphs of this section:

Example (1). The decedent transferred to a trustee 500 identical shares of X Company stock. He provided that during the lifetime of the surviving spouse the trustee should pay her annually one-half of the trust income or \$6,000, whichever is the larger. The spouse was also given a general power of appointment, exercisable by her last will over the sum of \$100,000 or over three-fourths of the trust corpus, whichever should be of larger value. Since there is no certainty that the trust income will not vary from year to year, for purposes of paragraphs (a) and (b) of this section, an annual payment of a specified sum, such as the \$6,000 provided for in this case, is not considered as representing the income from a definite fraction or a specific portion of the entire interest if that were the extent of the spouse's interest. However, since the spouse is to receive annually at least one-half of the trust income, she will, for purposes of paragraphs (a) and (b) of this section, be considered as receiving all of the income from one-half of the entire interest in the stock. Inasmuch as there is no certainty that the value of the stock will be the same on the date of the surviving spouse's death as it was on the date of the decedent's death, for purposes of paragraphs (a) and (b) of this section, a specified sum, such as the \$100,000 provided for in this case, is not considered to be a definite fraction of the entire interest. However, since the surviving spouse has a general power of appointment over at least three-fourths of the trust corpus, she is considered as having a general power of appointment over three-fourths of the entire interest in the stock.

Example (2). The decedent bequeathed to a trustee an office building and 250 identical shares of Y Company stock. He provided that during the lifetime of the surviving spouse the trustee should pay her annually three-fourths of the trust income. The spouse was given a general power of appointment, exercisable by will, over the office building and 100 shares of the stock. By the terms of the decedent's will the spouse is given all the income from a definite fraction of the entire interest in the office building and in the stock. She also has a general power of appointment over the entire interest in the office building. However, since the amount of property represented by a single share of stock would be altered if the corporation split its stock, issued stock dividends, made a distribution of capital, etc., a power to appoint 100 shares at the time of the surviving spouse's death is not the same necessarily as a power to appoint $100/250$ of the entire interest which the 250 shares represented on the date of the decedent's death. If it is shown in this case that the effect of local law is to give the spouse a general power to appoint not only the 100 shares designated by the decedent but also $100/250$ of any shares or amounts which are distributed by the corporation and included in the corpus, the requirements of this paragraph will be satisfied and the surviving spouse will be considered as having a general power to appoint $100/250$ of the entire interest in the 250 shares.

(d) **Definition of "entire interest".** Since a marital deduction is allowed for each qualifying separate interest in property passing from the decedent to his surviving spouse (subject to the percentage limitation contained in §§ 20.2056(c)-1 and 20.2056(c)-2 concerning the aggregate amount of the deductions), for purposes of paragraphs (a) and (b) of this section, each property interest with respect to which the surviving spouse received some rights is considered separately in determining whether her rights extend to the entire interest or to a spe-

cific portion of the entire interest. A property interest which consists of several identical units of property (such as a block of 250 shares of stock, whether the ownership is evidenced by one or several certificates) is considered one property interest, unless certain of the units are to be segregated and accorded different treatment, in which case each segregated group of items is considered a separate property interest. The bequest of a specified sum of money constitutes the bequest of a separate property interest if immediately following distribution by the executor and thenceforth it, and the investments made with it, must be so segregated or accounted for as to permit its identification as a separate item of property. The application of this paragraph may be illustrated by the following examples:

Example (1). The decedent transferred to a trustee three adjoining farms, Blackacre, Whiteacre, and Greenacre. His will provided that during the lifetime of the surviving spouse the trustee should pay her all of the income from the trust. Upon her death, all of Blackacre, a one-half interest in Whiteacre, and a one-third interest in Greenacre were to be distributed to the person or persons appointed by her in her will. The surviving spouse is considered as being entitled to all of the income from the entire interest in Blackacre, all of the income from the entire interest in Whiteacre, and all of the income from the entire interest in Greenacre. She also is considered as having a power of appointment over the entire interest in Blackacre, over one-half of the entire interest in Whiteacre, and over one-third of the entire interest in Greenacre.

Example (2). The decedent bequeathed \$250,000 to C, as trustee. C is to invest the money and pay all of the income from the investments to W, the decedent's surviving spouse, annually. W was given a general power, exercisable by will, to appoint one-half of the corpus of the trust. Here, immediately following distribution by the executor, the \$250,000 will be sufficiently segregated to permit its identification as a separate item, and the \$250,000 will constitute an entire property interest. Therefore, W has a right to income and a power of appointment such that one-half of the entire interest is a deductible interest.

Example (3). The decedent bequeathed 100 shares of Z Corporation stock to D, as trustee. W, the decedent's surviving spouse, is to receive all of the income of the trust annually and is given a general power, exercisable by will, to appoint out of the trust corpus the sum of \$25,000. In this case the \$25,000 is not, immediately following distribution, sufficiently segregated to permit its identification as a separate item of property in which the surviving spouse has the entire interest. Therefore, the \$25,000 does not constitute the entire interest in a property for the purpose of paragraphs (a) and (b) of this section.

(e) **Application of local law.** In determining whether or not the conditions set forth in paragraph (a) (1) through (5) of this section are satisfied by the instrument of transfer, regard is to be had to the applicable provisions of the law of the jurisdiction under which the interest passes and, if the transfer is in trust, the applicable provisions of the law governing the administration of the trust. For example, silence of a trust instrument as to the frequency of payment will not be regarded as a failure to satisfy the condition set forth in para-

graph (a) (2) of this section that income must be payable to the surviving spouse annually or more frequently unless the applicable law permits payment to be made less frequently than annually. The principles outlined in this paragraph and paragraphs (f) and (g) of this section which are applied in determining whether transfers in trust meet such conditions are equally applicable in ascertaining whether, in the case of interests not in trust, the surviving spouse has the equivalent in rights over income and over the property.

(f) **Right to income.** (1) If an interest is transferred in trust, the surviving spouse is "entitled for life to all of the income from the entire interest or a specific portion of the entire interest", for the purpose of the condition set forth in paragraph (a) (1) of this section, if the effect of the trust is to give her substantially that degree of beneficial enjoyment of the trust property during her life which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust. Such degree of enjoyment is given only if it was the decedent's intention, as manifested by the terms of the trust instrument and the surrounding circumstances, that the trust should produce for the surviving spouse during her life such an income, or that the spouse should have such use of the trust property as is consistent with the value of the trust corpus and with its preservation. The designation of the spouse as sole income beneficiary for life of the entire interest or a specific portion of the entire interest will be sufficient to qualify the trust unless the terms of the trust and the surrounding circumstances considered as a whole evidence an intention to deprive the spouse of the requisite degree of enjoyment. In determining whether a trust evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for the administration of the trust.

(2) If the over-all effect of a trust is to give to the surviving spouse such enforceable rights as will preserve to her the requisite degree of enjoyment, it is immaterial whether that result is effected by rules specifically stated in the trust instrument, or, in their absence, by the rules for the management of the trust property and the allocation of receipts and expenditures supplied by the State law. For example, a provision in the trust instrument for amortization of bond premium by appropriate periodic charges to interest will not disqualify the interest passing in trust even though there is no State law specifically authorizing amortization, or there is a State law denying amortization which is applicable only in the absence of such a provision in the trust instrument.

(3) In the case of a trust, the rules to be applied by the trustee in allocation of receipts and expenses between income and corpus must be considered in relation to the nature and expected productivity of the assets passing in trust, the nature and frequency of occurrence of the expected receipts, and any provisions as to change in the form of invest-

ments. If it is evident from the nature of the trust assets and the rules provided for management of the trust that the allocation to income of such receipts as rents, ordinary cash dividends, and interest will give to the spouse the substantial enjoyment during life required by the statute, provisions that such receipts as stock dividends and proceeds from the conversion of trust assets shall be treated as corpus will not disqualify the interest passing in trust. Similarly, provision for a depletion charge against income in the case of trust assets which are subject to depletion will not disqualify the interest passing in trust, unless the effect is to deprive the spouse of the requisite beneficial enjoyment. The same principle is applicable in the case of depreciation, trustees' commissions, and other charges.

(4) Provisions granting administrative powers to the trustee will not have the effect of disqualifying an interest passing in trust unless the grant of powers evidences the intention to deprive the surviving spouse of the beneficial enjoyment required by the statute. Such an intention will not be considered to exist if the entire terms of the instrument are such that the local courts will impose reasonable limitations upon the exercise of the powers. Among the powers which if subject to reasonable limitations will not disqualify the interest passing in trust are the power to determine the allocation or apportionment of receipts and disbursements between income and corpus, the power to apply the income or corpus for the benefit of the spouse, and the power to retain the assets passing to the trust. For example, a power to retain trust assets which consist substantially of unproductive property will not disqualify the interest if the applicable rules for the administration of the trust require, or permit the spouse to require, that the trustee either make the property productive or convert it within a reasonable time. Nor will such a power disqualify the interest if the applicable rules for administration of the trust require the trustee to use the degree of judgment and care in the exercise of the power which a prudent man would use if he were owner of the trust assets. Further, a power to retain a residence or other property for the personal use of the spouse will not disqualify the interest passing in trust.

(5) An interest passing in trust will not satisfy the condition set forth in paragraph (a) (1) of this section that the surviving spouse be entitled to all the income if the primary purpose of the trust is to safeguard property without providing the spouse with the required beneficial enjoyment. Such trusts include not only trusts which expressly provide for the accumulation of the income but also trusts which indirectly accomplish a similar purpose. For example, assume that the corpus of a trust consists substantially of property which is not likely to be income producing during the life of the surviving spouse and that the spouse cannot compel the trustee to convert or otherwise deal with the property as described in subpara-

graph (4) of this paragraph. An interest passing to such a trust will not qualify unless the applicable rules for the administration require, or permit the spouse to require, that the trustee provide the required beneficial enjoyment, such as by payments to the spouse out of other assets of the trust.

(6) If a trust is created during the decedent's life, it is immaterial whether or not the interest passing in trust satisfied the conditions set forth in paragraph (a) (1) through (5) of this section prior to the decedent's death. If a trust may be terminated during the life of the surviving spouse, under her exercise of a power of appointment or by distribution of the corpus to her, the interest passing in trust satisfies the condition set forth in paragraph (a) (1) of this section (that the spouse be entitled to all the income) if she (i) is entitled to the income until the trust terminates, or (ii) has the right, exercisable in all events, to have the corpus distributed to her at any time during her life.

(7) An interest passing in trust fails to satisfy the condition set forth in paragraph (a) (1) of this section, that the spouse be entitled to all the income, to the extent that the income is required to be accumulated in whole or in part or may be accumulated in the discretion of any person other than the surviving spouse; to the extent that the consent of any person other than the surviving spouse is required as a condition precedent to distribution of the income; or to the extent that any person other than the surviving spouse has the power to alter the terms of the trust so as to deprive her of her right to the income. An interest passing in trust will not fail to satisfy the condition that the spouse be entitled to all the income merely because its terms provide that the right of the surviving spouse to the income shall not be subject to assignment, alienation, pledge, attachment or claims of creditors.

(8) In the case of an interest passing in trust, the terms "entitled for life" and "payable annually or at more frequent intervals," as used in the conditions set forth in paragraph (a) (1) and (2) of this section, require that under the terms of the trust the income referred to must be currently (at least annually; see paragraph (e) of this section) distributable to the spouse or that she must have such command over the income that it is virtually hers. Thus, the conditions in paragraph (a) (1) and (2) of this section are satisfied in this respect if, under the terms of the trust instrument, the spouse has the right exercisable annually (or more frequently) to require distribution to herself of the trust income, and otherwise the trust income is to be accumulated and added to corpus. Similarly, as respects the income for the period between the last distribution date and the date of the spouse's death, it is sufficient if that income is subject to the spouse's power to appoint. Thus, if the trust instrument provides that income accrued or undistributed on the date of the spouse's death is to be disposed of as if it had been received after her death, and if the spouse has a power of appoint-

ment over the trust corpus, the power necessarily extends to the undistributed income.

(9) An interest is not to be regarded as failing to satisfy the conditions set forth in paragraph (a) (1) and (2) of this section (that the spouse be entitled to all the income and that it be payable annually or more frequently) merely because the spouse is not entitled to the income from estate assets for the period before distribution of those assets by the executor, unless the executor is, by the decedent's will, authorized or directed to delay distribution beyond the period reasonably required for administration of the decedent's estate. As to the valuation of the property interest passing to the spouse in trust where the right to income is expressly postponed, see § 20.2056 (b)-4.

(g) *Power of appointment in surviving spouse.* (1) The conditions set forth in paragraph (a) (3) and (4) of this section, that is, that the surviving spouse must have a power of appointment exercisable in favor of herself or her estate and exercisable alone and in all events, are not met unless the power of the surviving spouse to appoint the entire interest or a specific portion of it falls within one of the following categories:

(i) A power so to appoint fully exercisable in her own favor at any time following the decedent's death (as, for example, an unlimited power to invade); or

(ii) A power so to appoint exercisable in favor of her estate. Such a power, if exercisable during life, must be fully exercisable at any time during life, or, if exercisable by will, must be fully exercisable irrespective of the time of her death (subject in either case to the provisions of § 20.2053 (b)-3, relating to interests conditioned on survival for a limited period); or

(iii) A combination of the powers described under subparagraphs (i) and (ii) of this subparagraph. For example, the surviving spouse may, until she attains the age of 50 years, have a power to appoint to herself and thereafter have a power to appoint to her estate. However, the condition that the spouse's power must be exercisable in all events is not satisfied unless irrespective of when the surviving spouse may die the entire interest or a specific portion of it will at the time of her death be subject to one power or the other (subject to the exception in § 20.2053 (b)-3, relating to interests contingent on survival for a limited period).

(2) The power of the surviving spouse must be a power to appoint the entire interest or a specific portion of it as unqualified owner (and free of the trust if a trust is involved, or free of the joint tenancy if a joint tenancy is involved) or to appoint the entire interest or a specific portion of it as a part of her estate (and free of the trust if a trust is involved), that is, in effect, to dispose of it to whomsoever she pleases. Thus, if the decedent devised property to a son and the surviving spouse as joint tenants with right of survivorship and under local law the surviving spouse has a power of severance exercisable without consent

of the other joint tenant, and by exercising this power could acquire a one-half interest in the property as a tenant in common, her power of severance will satisfy the condition set forth in paragraph (a) (3) of this section that she have a power of appointment in favor of herself or her estate. However, if the surviving spouse entered into a binding agreement with the decedent to exercise the power only in favor of their issue, that condition is not met. An interest passing in trust will not be regarded as failing to satisfy the condition merely because takers in default of the surviving spouse's exercise of the power are designated by the decedent. The decedent may provide that, in default of exercise of the power, the trust shall continue for an additional period.

(3) A power is not considered to be a power exercisable by a surviving spouse alone and in all events as required by paragraph (a) (4) of this section if the exercise of the power in the surviving spouse to appoint the entire interest or a specific portion of it to herself or to her estate requires the joinder or consent of any other person. The power is not "exercisable in all events", if it can be terminated during the life of the surviving spouse by any event other than her complete exercise or release of it. Further, a power is not "exercisable in all events" if it may be exercised for a limited purpose only. For example, a power which is not exercisable in the event of the spouse's remarriage is not exercisable in all events. Likewise, if there are any restrictions, either by the terms of the instrument or under applicable local law, on the exercise of a power to consume property (whether or not held in trust) for the benefit of the spouse, the power is not exercisable in all events. Thus, if a power of invasion is exercisable only for the spouse's support, or only for her limited use, the power is not exercisable in all events. In order for a power of invasion to be exercisable in all events, the surviving spouse must have the unrestricted power exercisable at any time during her life to use all or any part of the property subject to the power, and to dispose of it in any manner, including the power to dispose of it by gift (whether or not she has power to dispose of it by will).

(4) The power in the surviving spouse is exercisable in all events only if it exists immediately following the decedent's death. For example, if the power given to the surviving spouse is exercisable during life, but cannot be effectively exercised before distribution of the assets by the executor, the power is not exercisable in all events. Similarly, if the power is exercisable by will, but cannot be effectively exercised in the event the surviving spouse dies before distribution of the assets by the executor, the power is not exercisable in all events. However, an interest will not be disqualified by the mere fact that, in the event the power is exercised during administration of the estate, distribution of the property to the appointee will be delayed for the period of administration. If the power is in existence at all times following the decedent's death, limitations of

a formal nature will not disqualify an interest. Examples of formal limitations on a power exercisable during life are requirements that an exercise must be in a particular form, that it must be filed with a trustee during the spouse's life, that reasonable notice must be given, or that reasonable intervals must elapse between successive partial exercises. Examples of formal limitations on a power exercisable by will are that it must be exercised by a will executed by the surviving spouse after the decedent's death or that exercise must be by specific reference to the power.

(5) If the surviving spouse has the requisite power to appoint to herself or her estate, it is immaterial that she also has one or more lesser powers. Thus, if she has a testamentary power to appoint to her estate, she may also have a limited power of withdrawal or of appointment during her life. Similarly, if she has an unlimited power of withdrawal, she may have a limited testamentary power.

(h) *Requirement of survival for a limited period.* A power of appointment in the surviving spouse will not be treated as failing to meet the requirements of paragraph (a) (3) of this section even though the power may terminate, if the only conditions which would cause the termination are those described in paragraph (a) of § 20.2056 (b)-3, and if those conditions do not in fact occur. Thus, the entire interest or a specific portion of it will not be disqualified by reason of the fact that the exercise of the power in the spouse is subject to a condition of survivorship described in § 20.2056 (b)-3 if the terms of the condition, that is, the survivorship of the surviving spouse, or the failure to die in a common disaster, are fulfilled.

(j) *Existence of a power in another.* Paragraph (a) (5) of this section provides that a transfer described in paragraph (a) is nondeductible to the extent that the decedent created a power in the trustee or in any other person to appoint a part of the interest to any person other than the surviving spouse. However, only powers in other persons which are in opposition to that of the surviving spouse will cause a portion of the interest to fail to satisfy the condition set forth in paragraph (a) (5) of this section. Thus, a power in a trustee to distribute corpus to or for the benefit of a surviving spouse will not disqualify the trust. Similarly, a power to distribute corpus to the spouse for the support of minor children will not disqualify the trust if she is legally obligated to support such children. The application of this paragraph may be illustrated by the following examples:

Example (1). Assume that a decedent created a trust, designating his surviving spouse as income beneficiary for life with an unrestricted power in the spouse to appoint the corpus during her life. The decedent further provided that in the event the surviving spouse should die without having exercised the power, the trust should continue for the life of his son with a power in the son to appoint the corpus. Since the power in the son could become exercisable only after the death of the surviving spouse, the interest is not regarded as failing to

satisfy the condition set forth in paragraph (a) (5) of this section.

Example (2). Assume that the decedent created a trust, designating his surviving spouse as income beneficiary for life and as donee of a power to appoint by will the entire corpus. The decedent further provided that the trustee could distribute 30 percent of the corpus to the decedent's son when he reached the age of 35 years. Since the trustee has a power to appoint 30 percent of the entire interest for the benefit of a person other than the surviving spouse, only 70 percent of the interest placed in trust satisfied the condition set forth in paragraph (a) (5) of this section. If, in this case, the surviving spouse had a power, exercisable by her will, to appoint only one-half of the corpus as it was constituted at the time of her death, it should be noted that only 35 percent of the interest placed in the trust would satisfy the condition set forth in paragraph (a) (3) of this section.

§ 20.2056 (b)-6 *Marital deduction; life insurance or annuity payments with power of appointment in surviving spouse—(a) In general.* Section 2056 (b) (6) provides that an interest in property passing from a decedent to his surviving spouse, which consists of proceeds held by an insurer under the terms of a life insurance, endowment, or annuity contract, is a "deductible interest" to the extent that it satisfied all five of the following conditions (see paragraph (b) of this section if one or more of the conditions is satisfied as to only a portion of the proceeds):

(1) The proceeds, or a specific portion of the proceeds, must be held by the insurer subject to an agreement either to pay the entire proceeds or a specific portion thereof in installments, or to pay interest thereon, and all or a specific portion of the installments or interest payable during the life of the surviving spouse must be payable only to her.

(2) The installments or interest payable to the surviving spouse must be payable annually, or more frequently, commencing not later than 13 months after the decedent's death.

(3) The surviving spouse must have the power to appoint all or a specific portion of the amounts so held by the insurer to either herself or her estate.

(4) The power in the surviving spouse must be exercisable by her alone and (whether exercisable by will or during life) must be exercisable in all events.

(5) The amounts or the specific portion of the amounts payable under such contract must not be subject to a power in any other person to appoint any part thereof to any person other than the surviving spouse.

(b) *Specific portion; deductible interest.* If the right to receive interest or installment payments or the power of appointment passing to the surviving spouse pertains only to a specific portion of the proceeds held by the insurer, the marital deduction is allowed only to the extent that the rights of the surviving spouse in the specific portion meet the five conditions described in paragraph (a) of this section. While the rights to interest, or to receive payment in installments, and the power must coexist as to the proceeds of the same contract, it is not necessary that the rights to each be in the same proportion. If the rights to

interest meeting the required conditions set forth in paragraph (a) (1) and (2) of this section extend over a smaller share of the proceeds than the share with respect to which the power of appointment requirements set forth in paragraph (a) (3) through (5) of this section are satisfied, the deductible interest is limited to the smaller share. Similarly, if the portion of the proceeds payable in installments is a smaller portion of the proceeds than the portion to which the power of appointment meeting such requirements relates, the deduction is limited to the smaller portion. In addition, if a power of appointment meeting all the requirements extends to a smaller portion of the proceeds than the portion over which the interest or installment rights pertain, the deductible interest cannot exceed the value of the portion to which such power of appointment applies. Thus, if the contract provides that the insurer is to retain the entire proceeds and pay all of the interest thereon annually to the surviving spouse and if the surviving spouse has a power of appointment meeting the specifications prescribed in paragraph (a) (3) through (5) of this section, as to only one-half of the proceeds held, then only one-half of the proceeds may be treated as a deductible interest. Correspondingly, if the rights of the spouse to receive installment payments or interest satisfying the requirements extend to only one-fourth of the proceeds and a testamentary power of appointment satisfying the requirements of paragraph (a) (3) through (5) of this section extends to all of the proceeds, then only one-fourth of the proceeds qualifies as a deductible interest. Further, if the surviving spouse has no right to installment payments (or interest) over any portion of the proceeds but a testamentary power of appointment which meets the necessary conditions over the entire remaining proceeds, then none of the proceeds qualifies for the deduction. In addition, if, from the time of the decedent's death, the surviving spouse has a power of appointment meeting all of the required conditions over three-fourths of the proceeds and the right to receive interest from the entire proceeds, but with a power in another person to appoint one-half of the entire proceeds, the value of the interest in the surviving spouse over only one-half of the proceeds will qualify as a deductible interest.

(c) *Applicable principles.* (1) The principles set forth in paragraph (c) of § 20.2056 (b)-5 for determining what constitutes a "specific portion of the entire interest" for the purpose of section 2056 (b) (5) are applicable in determining what constitutes a "specific portion of all such amounts" for the purpose of section 2056 (b) (6). However, the interest in the proceeds passing to the surviving spouse will not be disqualified by the fact that the installment payments or interest to which the spouse is entitled or the amount of the proceeds over which the power of appointment is exercisable may be expressed in terms of a specific sum rather than a fraction or

a percentage of the proceeds provided it is shown that such sums are a definite or fixed percentage or fraction of the total proceeds.

(2) The provisions of paragraph (a) of this section are applicable with respect to a property interest which passed from the decedent in the form of proceeds of a policy of insurance upon the decedent's life, a policy of insurance upon the life of a person who predeceased the decedent, a matured endowment policy, or an annuity contract, but only in case the proceeds are to be held by the insurer. With respect to proceeds under any such contract which are to be held by a trustee, with power of appointment in the surviving spouse, see § 20.2056 (b)-5. As to the treatment of proceeds not meeting the requirements of § 20.2056 (b)-5 or of this section, see § 20.2056 (a)-2.

(3) In the case of a contract under which payments by the insurer commenced during the decedent's life, it is immaterial whether or not the conditions in subparagraphs (1) through (5) of paragraph (a) of this section were satisfied prior to the decedent's death.

(d) *Payments of installments or interest.* The conditions in subparagraphs (1) and (2) of paragraph (a) of this section relative to the payments of installments or interest to the surviving spouse are satisfied if, under the terms of the contract, the spouse has the right exercisable annually (or more frequently) to require distribution to herself of installments of the proceeds or a specific portion thereof, as the case may be, and otherwise such proceeds or interest are to be accumulated and held by the insurer pursuant to the terms of the contract. A contract which otherwise requires the insurer to make annual or more frequent payments to the surviving spouse following the decedent's death, will not be disqualified merely because the surviving spouse must comply with certain formalities in order to obtain the first payment. For example, the contract may satisfy the conditions in subparagraphs (1) and (2) of paragraph (a) of this section even though it requires the surviving spouse to furnish proof of death before the first payment is made. The condition in paragraph (a) (1) of this section is satisfied where interest on the proceeds or a specific portion thereof is payable, annually or more frequently, for a term, or until the occurrence of a specified event, following which the proceeds or a specific portion thereof are to be paid in annual or more frequent installments.

(e) *Powers of appointment.* (1) In determining whether the terms of the contract satisfy the conditions in subparagraph (3), (4), or (5) of paragraph (a) of this section relating to a power of appointment in the surviving spouse or any other person, the principles stated in § 20.2056 (b)-5 are applicable. As stated in § 20.2056 (b)-5, the surviving spouse's power to appoint is "exercisable in all events" only if it is in existence immediately following the decedent's death, subject, however, to the operation of § 20.2056 (b)-3 relating to interests conditioned on survival for a limited period.

(2) For examples of formal limitations on the power which will not disqualify the contract, see paragraph (g) (4) of § 20.2056 (b)-5. If the power is exercisable from the moment of the decedent's death, the contract is not disqualified merely because the insurer may require proof of the decedent's death as a condition to making payment to the appointee. If the submission of proof of the decedent's death is a condition to the exercise of the power, the power will not be considered "exercisable in all events" unless in the event the surviving spouse had died immediately following the decedent, her power to appoint would have been considered to exist at the time of her death, within the meaning of section 2041 (a) (2). See paragraph (b) of § 20.2041-3.

(3) It is sufficient for the purposes of the condition in paragraph (a) (3) of this section that the surviving spouse have the power to appoint amounts held by the insurer to herself or her estate if the surviving spouse has the unqualified power, exercisable in favor of herself or her estate, to appoint amounts held by the insurer which are payable after her death. Such power to appoint need not extend to installments or interest which will be paid to the spouse during her life. Further, the power to appoint need not be a power to require payment in a single sum. For example, if the proceeds of a policy are payable in installments, and if the surviving spouse has the power to direct that all installments payable after her death be paid to her estate, she has the requisite power.

(4) It is not necessary that the phrase "power to appoint" be used in the contract. For example, the condition in paragraph (a) (3) of this section that the surviving spouse have the power to appoint amounts held by the insurer to herself or her estate is satisfied by terms of a contract which give the surviving spouse a right which is, in substance and effect, a power to appoint to herself or her estate, such as a right to withdraw the amount remaining in the fund held by the insurer, or a right to direct that any amount held by the insurer under the contract at her death shall be paid to her estate.

§ 20.2056 (c) *Statutory provisions; bequests, etc., to surviving spouse; limitation on aggregate of deductions.*

Sec. 2056. Bequests, etc., to surviving spouse. * * *

(c) *Limitation on aggregate of deductions.*—(1) *General rule.* The aggregate amount of the deductions allowed under this section (computed without regard to this subsection) shall not exceed 50 percent of the value of the adjusted gross estate, as defined in paragraph (2).

(2) *Computation of adjusted gross estate.*—(A) *General rule.* Except as provided in subparagraph (B) of this paragraph, the adjusted gross estate shall, for purposes of subsection (c) (1), be computed by subtracting from the entire value of the gross estate the aggregate amount of the deductions allowed by sections 2053 and 2054.

(B) *Special rule in cases involving community property.* If the decedent and his surviving spouse at any time, held property as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, then the

adjusted gross estate shall, for purposes of subsection (c) (1), be determined by subtracting from the entire value of the gross estate the sum of—

(i) The value of property which is at the time of the death of the decedent held as such community property; and

(ii) The value of property transferred by the decedent during his life, if at the time of such transfer the property was held as such community property; and

(iii) The amount receivable as insurance under policies on the life of the decedent, to the extent purchased with premiums or other consideration paid out of property held as such community property; and

(iv) An amount which bears the same ratio to the aggregate of the deductions allowed under sections 2053 and 2054 which the value of the property included in the gross estate, diminished by the amount subtracted under clauses (i), (ii), and (iii) of this subparagraph, bears to the entire value of the gross estate.

For purposes of clauses (i), (ii), and (iii), community property (except property which is considered as community property solely by reason of the provisions of subparagraph (C) of this paragraph) shall be considered as not "held as such community property" as of any moment of time, if, in case of the death of the decedent at such moment, such property (and not merely one-half thereof) would be or would have been includible in determining the value of his gross estate without regard to the provisions of section 402 (b) of the Revenue Act of 1942. The amount to be subtracted under clauses (i), (ii), or (iii) shall not exceed the value of the interest in the property described therein which is included in determining the value of the gross estate.

(C) *Community property—conversion into separate property*—(i) After December 31, 1941. If after December 31, 1941, property held as such community property (unless considered by reason of subparagraph (B) of this paragraph as not so held) was by the decedent and the surviving spouse converted, by one transaction or a series of transactions, into separate property of the decedent and his spouse (including any form of coownership by them), the separate property so acquired by the decedent and any property acquired at any time by the decedent in exchange therefor (by one exchange or a series of exchanges) shall, for the purposes of clauses (i), (ii), and (iii) of subparagraph (B), be considered as "held as such community property."

(ii) *Limitation*. Where the value (at the time of such conversion) of the separate property so acquired by the decedent exceeded the value (at such time) of the separate property so acquired by the decedent's spouse, the rule in clause (i) shall be applied only with respect to the same portion of such separate property of the decedent as the portion which the value (as of such time) of such separate property so acquired by the decedent's spouse is of the value (as of such time) of the separate property so acquired by the decedent.

§ 20.2056 (c)-1 Marital deduction; limitation on aggregate of deductions; in general—(a) *In general*. The allowable marital deduction is limited to the smaller of the following amounts:

(1) The aggregate value of the "deductible interests" which passed from the decedent to his surviving spouse (see paragraph (a) of § 20.2056 (a)-2).

(2) Fifty percent of the value of the decedent's "adjusted gross estate."

(b) *Adjusted gross estate*. The "adjusted gross estate" is the entire value of the decedent's gross estate less the ag-

gregate amount of the deductions allowed for expenses, indebtedness, taxes, and losses under sections 2053 and 2054, unless the decedent and his spouse at any time held any property as community property (see § 20.2056 (c)-2). In determining the adjusted gross estate, the gross estate is not reduced by the exemption allowable under section 2052, or by the amount of any charitable deduction allowable under section 2055.

Example. The value of a decedent's gross estate is \$200,000 and the aggregate amount of the deductions allowed by sections 2053 and 2054 for expenses, debts, taxes and losses is \$30,000. (It is assumed for the purpose of this example that the decedent and his spouse never held any property as community property.) The decedent left \$10,000 to a charitable organization for which a deduction is allowable under section 2055, and left the balance of his estate to his surviving spouse. The value of the adjusted gross estate is, therefore, \$200,000 less \$30,000, or \$170,000. It is assumed that the aggregate value of the deductible interests which passed from the decedent to his surviving spouse is \$100,000. The allowable marital deduction is limited to \$85,000 (50 percent of the value of the adjusted gross estate).

§ 20.2056 (c)-2 Marital deduction in cases involving community property. (a) If the decedent and his surviving spouse at any time held property as "community property," as defined in this section, the "adjusted gross estate" referred to in

§ 20.2056 (c)-1 is the entire value of the gross estate less the sum of the following values and amounts:

(1) The value of any property included in the gross estate which was at the time of the decedent's death held by him and his surviving spouse as "community property," as defined in this section.

(2) The value of property (to the extent included in the gross estate) transferred by the decedent during his life, if at the time of such transfer the property was held by him and his surviving spouse as "community property," as defined in this section.

(3) The amount (to the extent included in the gross estate) receivable as insurance under policies upon the life of the decedent, to the extent purchased with premiums or other consideration paid out of property then held by him and his surviving spouse as "community property," as defined in this section.

(4) An amount which bears the same ratio to the aggregate amount of the deductions for expenses, indebtedness, taxes and losses allowed by sections 2053 and 2054 as the value of the gross estate, reduced by the aggregate amount subtracted under subparagraphs (1), (2), and (3) of this paragraph, bears to the entire value of the gross estate. The amount to be subtracted under this subparagraph is

$$\frac{\text{Gross estate, less community property}}{\text{Entire gross estate}} \times \text{Deductions for expenses, indebtedness, taxes, and losses.}$$

(b) If a policy of insurance upon the life of the decedent was purchased partly with property held by him and his surviving spouse as "community property" as defined in this section, and partly with other property, the amount receivable under the policy is considered, for the purpose of paragraph (a) (3) of this section, to have been purchased with such "community property" in the proportion that the payments made with such "community property" bear to the total amount paid.

(c) In determining the "adjusted gross estate" under this section, property held by the decedent and his surviving spouse as "community property", at the time of the death of the decedent (for the purpose of paragraph (a) (1) of this section), at the time of the transfer (for the purpose of paragraph (a) (2) of this section), or at the time of the payment of insurance premiums or other consideration (for the purpose of paragraph (a) (3) of this section), is considered to include—

(1) Any property held by them at such time as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, except property in which the surviving spouse had at such time merely an expectant interest.

(2) Separate property acquired by the decedent as a result of a "conversion" after December 31, 1941, of property held by him and his surviving spouse as community property under the law of any State, Territory, or possession of the United States, or of any for-

eign country (except such property in which the surviving spouse had at the time of the "conversion" merely an expectant interest), into their separate property, subject to the limitation with respect to value contained in paragraph (b) of this section.

(3) Property acquired by the decedent in exchange (by one exchange or a series of exchanges) for separate property acquired as set forth under subparagraph (2) of this paragraph.

The burden of establishing the extent to which separate property of the decedent was acquired other than as described in subparagraphs (2) and (3) of this section rests upon the executor.

(d) The surviving spouse is regarded as having merely an expectant interest in property held as community property under the law of any State, Territory, or possession of the United States, or of any foreign country (1) at the time of the decedent's death, if the entire value of such property (and not merely one-half of it) is includible in the decedent's gross estate, or (2) at the time of any transfer, payment of insurance premiums or other consideration, or "conversion", if, in case of the death of the decedent at such time, the entire value of the property involved in the transfer, payment, or "conversion" (and not merely one-half of it) would have been so includible without regard to the provisions of section 402 (b) of the Revenue Act of 1942 (56 Stat. 942).

(e) The characteristics of property which acquired a noncommunity instead of a community status by reason of an

agreement (whether antenuptial or post-nuptial) are such that section 2056 (c) (2) (C) classifies the property as community property of the decedent and his surviving spouse in the computation of the "adjusted gross estate". In distinguishing property which thus acquired a noncommunity status from property which acquired such a status solely by operation of the applicable property law, section 2056 (c) (2) (C) refers to the former category of property as "separate property" acquired as a result of a "conversion" of "property held as such community property". As used in section 2056 (c) (2) (C), the phrase "property held as such community property" is used to denote the body of property comprehended within the community property system; the term "separate property" includes any noncommunity property (whether held in joint tenancy, tenancy by the entirety, tenancy in common, or otherwise); and the term "conversion" includes any transaction or agreement which transforms property from a community status into a noncommunity status.

(f) The separate property which section 2056 (c) (2) (C) classifies as community property is not limited to that which was in existence at the time of the conversion. The following are illustrative of the scope of section 2056 (c) (2) (C): (1) A partition of community property between husband and wife, in which a portion of such property became the separate property of each, is a conversion of such property; (2) a transfer of community property into some other form of coownership, such as a joint tenancy, is a conversion of such property; (3) an agreement (whether made before or after marriage) that future earnings and gains which would otherwise be community property shall be shared by the spouses as separate property effects a conversion of such earnings and gains; and (4) a change in the form of ownership of property which causes the future rentals therefrom, which would otherwise have been acquired as community property, to be acquired as separate property effects a conversion of the rentals.

(g) The rules of section 2056 (c) (2) (C) are applicable, however, only if the conversion took place after December 31, 1941, and only to the extent stated in this section.

(h) If the value of the separate property acquired by the decedent as a result of a conversion did not exceed the value of the separate property thus acquired by the surviving spouse, the entire separate property thus acquired by the decedent is to be considered, for the purpose of this section, as held by him and his surviving spouse as community property. If the value (at the time of the conversion) of the separate property so acquired by the decedent exceeded the value (at that time) of the separate property so acquired by the spouse, only a part of the separate property so acquired by the decedent (and only the same fractional part of property acquired by him in exchange for such separate property) is to be considered, for the

purposes of this section, as held by him and his surviving spouse as community property. The part of such separate property (or property acquired in exchange therefor) which is considered as so held is the same proportion of it which the value (at the time of the conversion) of the separate property so acquired by the spouse is of the value (at that time) of the separate property so acquired by the decedent.

(j) The application of this section may be illustrated by the following examples:

Example (1). The value of a decedent's gross estate is \$300,000, of which \$200,000 represents his separate property and \$100,000 represents his one-half interest in community property. The decedent's separate property was inherited from his father. The deductions allowed under sections 2053 and 2054 total \$45,000. The adjusted gross estate is computed as follows:

Value of gross estate.....	\$300,000
Reduction under paragraph (a) (1).....	100,000
Reduction under paragraph (a) (4) (\$200,000 / \$300,000 × \$45,000).....	30,000
Total reduction.....	130,000
Adjusted gross estate.....	170,000

The marital deduction will be \$85,000 (one-half the value of the adjusted gross estate) in case the aggregate value of the deductible interests which passed from the decedent to his surviving spouse equals or exceeds that amount.

Example (2). The facts are the same as in example (1) except that the decedent's separate property was not inherited from his father, but was acquired under the following transaction: On November 1, 1942, the decedent and his surviving spouse partitioned certain community property then having a value of \$224,000. A portion of such property, then having a value of \$160,000, was converted into the decedent's separate property, and the remaining portion then having a value of \$64,000, was converted into his spouse's separate property. The portion of the separate property so acquired by the decedent which is considered as held as community property at the time of his death is represented by that proportion of \$200,000 (the value, at the time of death, of such separate property) which \$64,000 (the value, at the time of the conversion, of the separate property so acquired by his spouse) bears to \$160,000 (the value, at the time of the conversion, of the separate property so acquired by the decedent), which proportion equals \$80,000. The adjusted gross estate is computed as follows:

Value of gross estate.....	\$300,000
Reduction under paragraph (a) (1) (\$100,000 + \$80,000).....	180,000
Reduction under paragraph (a) (4) (\$120,000 / \$300,000 × \$45,000).....	18,000
Total reduction.....	198,000
Adjusted gross estate.....	102,000

The marital deduction will be \$51,000 (one-half the value of the adjusted gross estate) in case the aggregate value of the deductible interests which passed from the decedent to his surviving spouse equals or exceeds that amount.

§ 20.2056 (d) *Statutory provisions; bequests, etc., to surviving spouse; disclaimers.*

Sec. 2056. Bequests, etc., to surviving spouse. * * *

(d) *Disclaimers.*—(1) *By surviving spouse.* If under this section an interest would, in the absence of a disclaimer by the surviving spouse, be considered as passing from the decedent to such spouse, and if a disclaimer of such interest is made by such spouse, then such interest shall, for the purposes of this section, be considered as passing to the person or persons entitled to receive such interest as a result of the disclaimer.

(2) *By any other person.* If under this section an interest would, in the absence of a disclaimer by any person other than the surviving spouse, be considered as passing from the decedent to such person, and if a disclaimer of such interest is made by such person and as a result of such disclaimer the surviving spouse is entitled to receive such interest, then such interest shall, for purposes of this section, be considered as passing, not to the surviving spouse, but to the person who made the disclaimer, in the same manner as if the disclaimer had not been made.

§ 20.2056 (d)-1 *Marital deduction; effect of disclaimers.*—(a) *By a surviving spouse.* If a decedent's surviving spouse makes a disclaimer of any property interest which would otherwise be considered as having passed from the decedent to her, the disclaimed interest is to be considered as having passed from the decedent to the person or persons entitled to receive the interest as a result of the disclaimer. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. It is, therefore, necessary to distinguish between the surviving spouse's disclaimer of a property interest and her acceptance and subsequent disposal of a property interest. For example, if proceeds of insurance are payable to the surviving spouse and she refuses them so that they consequently pass to an alternate beneficiary designated by the decedent, the proceeds are considered as having passed from the decedent to the alternate beneficiary. On the other hand, if the surviving spouse directs the insurance company to hold the proceeds at interest during her life and, upon her death, to pay the principal sum to another person designated by her, thus effecting a transfer of a remainder interest, the proceeds are considered as having passed from the decedent to his spouse. See paragraph (c) of § 20.2056 (e)-2 with respect to a spouse's exercise or failure to exercise a right to take against a decedent's will.

(b) *By a person other than a surviving spouse.* It is unnecessary to distinguish, for the purpose of the marital deduction, between a disclaimer by a person other than the surviving spouse and a transfer by such person. If the surviving spouse becomes entitled to receive an interest in property from the decedent as a result of a disclaimer made by some other person, the interest is, nevertheless, considered as having passed from the decedent, not to the surviving spouse, but to the person who made the disclaimer, as though the disclaimer had not been made. If, as a result of a disclaimer made by a person other than the surviving spouse, a property interest passes to the surviving spouse under circumstances which meet the conditions set forth in

§ 20.2056 (b)-5 (relating to a life estate with a power of appointment), the rule stated in the preceding sentence applies, not only with respect to the portion of the interest which beneficially vests in the surviving spouse, but also with respect to the portion over which she acquires a power to appoint. The rule applies also in the case of proceeds under a life insurance, endowment, or annuity contract, which, as a result of a disclaimer made by a person other than the surviving spouse, are held by the insurer subject to the conditions set forth in § 20.2056 (b)-6.

§ 20.2056 (e) Statutory provisions; bequests, etc., to surviving spouse; definition.

Sec. 2056. Bequests, etc., to surviving spouse. * * *

(e) **Definition.** For purposes of this section, an interest in property shall be considered as passing from the decedent to any person if and only if—

- (1) Such interest is bequeathed or devised to such person by the decedent;
- (2) Such interest is inherited by such person from the decedent;
- (3) Such interest is the dower or curtesy interest (or statutory interest in lieu thereof) of such person as surviving spouse of the decedent;
- (4) Such interest has been transferred to such person by the decedent at any time;
- (5) Such interest was, at the time of the decedent's death, held by such person and the decedent (or by them and any other person) in joint ownership with right of survivorship;
- (6) The decedent had a power (either alone or in conjunction with any person) to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default on the release or nonexercise of such power; or
- (7) Such interest consists of proceeds of insurance on the life of the decedent receivable by such person.

Except as provided in paragraph (5) or (6) of subsection (b), where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for purposes of subparagraphs (A) and (B) of subsection (b) (1), be considered as passing from the decedent to a person other than the surviving spouse.

§ 20.2056 (e)-1 Marital deduction; definition of "passed from the decedent".

(a) The following rules are applicable in determining the person to whom any property interest "passed from the decedent":

- (1) Property interests devolving upon any person (or persons) as surviving co-owner with the decedent under any form of joint ownership under which the right of survivorship existed are considered as having passed from the decedent to such person (or persons).
- (2) Property interests at any time subject to the decedent's power to appoint (whether alone or in conjunction with any person) are considered as having passed from the decedent to the appointee under his exercise of the power, or, in case of the lapse, release or nonexercise of the power, as having passed from the decedent to the taker in default of exercise.
- (3) The dower or curtesy interest (or statutory interest in lieu thereof) of the

decedent's surviving spouse is considered as having passed from the decedent to his spouse.

(4) The proceeds of insurance upon the life of the decedent are considered as having passed from the decedent to the person who, at the time of the decedent's death, was entitled to receive the proceeds.

(5) Any property interest transferred during life, bequeathed or devised by the decedent, or inherited from the decedent, is considered as having passed to the person to whom he transferred, bequeathed, or devised the interest, or to the person who inherited the interest from him.

(6) The survivor's interest in an annuity or other payment described in section 2039 (see §§ 20.2039-1 and 20.2039-2) is considered as having passed from the decedent to the survivor only to the extent that the value of such interest is included in the decedent's gross estate under that section. If only a portion of the entire annuity or other payment is included in the decedent's gross estate and the annuity or other payment is payable to more than one beneficiary, then the value of the interest considered to have passed to each beneficiary is that portion of the amount payable to each beneficiary that the amount of the annuity or other payment included in the decedent's gross estate bears to the total value of the annuity or other payment payable to all beneficiaries.

(b) If before the decedent's death the decedent's surviving spouse had merely an expectant interest in property held by her and the decedent under community property laws, that interest is considered as having passed from the decedent to the spouse. As to the circumstances under which the interest of the surviving spouse under community property laws is regarded as merely expectant, see paragraph (d) of § 20.2056 (c)-2.

§ 20.2056 (e)-2 Marital deduction; definition of "passed from the decedent to his surviving spouse"—(a) In general. In general, the definition stated in § 20.2056 (e)-1 is applicable in determining the property interests which "passed from the decedent to his surviving spouse". Special rules are provided, however, for the following:

- (1) In the case of certain interests with income for life to the surviving spouse with power of appointment in her (see § 20.2056 (b)-5);
- (2) In the case of proceeds held by the insurer under a life insurance, endowment, or annuity contract with power of appointment in the surviving spouse (see § 20.2056 (b)-6);
- (3) In case of the disclaimer of an interest by the surviving spouse or by any other person (see § 20.2056 (d)-1);
- (4) In case of an election by the surviving spouse (see paragraph (c) of this section); and
- (5) In case of a controversy involving the decedent's will, see paragraph (d) of this section.

A property interest is considered as passing to the surviving spouse only if it passed to her as beneficial owner, except to the extent otherwise provided in

§§ 20.2056 (b)-5 and 20.2056 (b)-6 in the case of certain life estates and insurance and annuity contracts with powers of appointment. For this purpose, where a property interest passed from the decedent in trust, such interest is considered to have passed from him to his surviving spouse to the extent of her beneficial interest therein. The deduction may not be taken with respect to a property interest which passed to such spouse merely as trustee, or subject to a binding agreement by the spouse to dispose of the interest in favor of a third person. An allowance or award paid to a surviving spouse pursuant to local law for her support during the administration of the decedent's estate constitutes a property interest passing from the decedent to his surviving spouse. In determining whether or not such an interest is deductible, however, see generally the terminable interest rules of § 20.2056 (b)-1 and especially example (8) of paragraph (g) of that section.

(b) **Examples.** The following illustrate the provisions of paragraph (a) of this section:

(1) A property interest bequeathed in trust by H (the decedent) is considered as having passed from him to W (his surviving spouse)—

(i) If the trust income is payable to W for life and upon her death the corpus is distributable to her executors or administrators;

(ii) If W is entitled to the trust income for a term of years following which the corpus is to be paid to W or her estate;

(iii) If the trust income is to be accumulated for a term of years or for W's life and the augmented fund paid to W or her estate; or

(iv) If the terms of the transfer satisfy the requirements of § 20.2056 (b)-5.

(2) If H devised property—
(i) To A for life with remainder absolutely to W or her estate, the remainder interest is considered to have passed from H to W;

(ii) To W for life with remainder to her estate, the entire property is considered as having passed from H to W; or

(iii) Under conditions which satisfy the provisions of § 20.2056 (b)-5, the entire property is considered as having passed from H to W.

(3) Proceeds of insurance upon the life of H are considered as having passed from H to W if the terms of the contract—

(i) Meet the requirements of § 20.2056 (b)-6;

(ii) Provide that the proceeds are payable to W in a lump sum;

(iii) Provide that the proceeds are payable in installments to W for life and after her death any remaining installments are payable to her estate;

(iv) Provide that interest on the proceeds is payable to W for life and upon her death the principal amount is payable to her estate; or

(v) Provide that the proceeds are payable to a trustee under an arrangement whereby the requirements of section 2056 (b) (5) are satisfied.

(c) **Effect of election by surviving spouse.** This paragraph contains rules

applicable if the surviving spouse may elect between a property interest offered to her under the decedent's will or other instrument and a property interest to which she is otherwise entitled (such as dower, a right in the decedent's estate, or her interest under community property laws) of which adverse disposition was attempted by the decedent under the will or other instrument. If the surviving spouse elects to take against the will or other instrument, then the property interests offered thereunder are not considered as having "passed from the decedent to his surviving spouse" and the dower or other property interest retained by her is considered as having so passed (if it otherwise so qualifies under this section). If the surviving spouse elects to take under the will or other instrument, then the dower or other property interest relinquished by her is not considered as having "passed from the decedent to his surviving spouse" (irrespective of whether it otherwise comes within the definition stated in paragraph (a) of this section) and the interest taken under the will or other instrument is considered as having so passed (if it otherwise so qualifies). As to the valuation of the property interest taken under the will or other instrument, see paragraph (b) of § 20.2056 (b)-4.

(d) *Will contests.* (1) If as a result of a controversy involving the decedent's will, or involving any bequest or devise thereunder, his surviving spouse assigns or surrenders a property interest in settlement of the controversy, the interest so assigned or surrendered is not considered as having "passed from the decedent to his surviving spouse."

(2) If as a result of the controversy involving the decedent's will, or involving any bequest or devise thereunder, a property interest is assigned or surrendered to the surviving spouse, the interest so acquired will be regarded as having "passed from the decedent to his surviving spouse" only if the assignment or surrender was a bona fide recognition of enforceable rights of the surviving spouse in the decedent's estate. Such a bona fide recognition will be presumed where the assignment or surrender was pursuant to a decision of a local court upon the merits in an adversary proceeding following a genuine and active contest. However, such a decree will be accepted only to the extent that the court passed upon the facts upon which deductibility of the property interests depends. If the assignment or surrender was pursuant to a decree rendered by consent, or pursuant to an agreement not to contest the will or not to probate the will, it will not necessarily be accepted as a bona fide recognition of the rights of the spouse.

(e) *Survivorship.* If the order of deaths of the decedent and his spouse cannot be established by proof, a presumption (whether supplied by local law, the decedent's will, or otherwise) that the decedent was survived by his spouse will be recognized as satisfying paragraph (b) (1) of § 20.2056 (a)-1, but only to the extent that it has the effect of giving to the spouse an interest in property includible in her gross estate under Part III of subchapter A of chapter 11.

Under these circumstances, if an estate tax return is required to be filed for the estate of the decedent's spouse, the marital deduction will not be allowed in the final audit of the estate tax return of the decedent's estate with respect to any property interest which has not been finally determined to be includible in the gross estate of his spouse.

§ 20.2056 (e)-3 *Marital deduction; definition of "passed from the decedent to a person other than his surviving spouse".* The expression "passed from the decedent to a person other than his surviving spouse" refers to any property interest which, under the definition stated in § 20.2056 (e)-1 is considered as having "passed from the decedent" and which under the rules referred to in § 20.2056 (e)-2 is not considered as having "passed from the decedent to his surviving spouse." Interests which passed to a person other than the surviving spouse include interests so passing under the decedent's exercise, release, or nonexercise of a nontaxable power to appoint. It is immaterial whether the property interest which passed from the decedent to a person other than his surviving spouse is included in the decedent's gross estate. The term "person other than his surviving spouse" includes the possible unascertained takers of a property interest, as, for example, the members of a class to be ascertained in the future. As another example, assume that the decedent created a power of appointment over a property interest, which does not come within the purview of § 20.2056 (b)-5 or § 20.2056 (b)-6. In such a case, the term "person other than his surviving spouse" refers to the possible appointees and possible takers in default (other than the spouse) of such property interest. Whether or not there is a possibility that the "person other than his surviving spouse" (or the heirs or assigns of such person) may possess or enjoy the property following termination or failure of the interest therein which passed from the decedent to his surviving spouse is to be determined as of the time of the decedent's death.

ESTATES OF NONRESIDENTS NOT CITIZENS

§ 20.2101 *Statutory provisions; tax imposed.*

SEC. 2101. *Tax imposed.*—(a) *In general.* A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States dying after the date of enactment of this title.

(b) *Property held by alien property custodian.* For taxes in connection with property or interests transferred to or vested in the Alien Property Custodian, see section 36 of the Trading With the Enemy Act, as added by the act of August 8, 1946 (60 Stat. 929; 50 U. S. C. App. 36).

§ 20.2101-1 *Estates of nonresidents not citizens; tax imposed.* Section 2101 imposes a tax on the transfer of the taxable estate of a nonresident who was not a citizen of the United States at the time of his death. The tax is computed at the same rates as the tax which is

imposed on the transfer of the taxable estate of a citizen or resident of the United States. See section 2001. For a general description of the method to be used in determining the net estate tax payable in the case of an estate of a nonresident not a citizen, see paragraph (c) of § 20.0-2. For the meanings of the terms "resident", "nonresident," and "United States," see paragraph (b) (1) and (2) of § 20.0-1. For the presumption applying to the residence of missionaries, see section 2202. For the liability of the executor for payment of the tax, see section 2002.

§ 20.2102 *Statutory provisions; credits against tax.*

SEC. 2102. *Credits against tax.* The tax imposed by section 2101 shall be credited with the amounts determined in accordance with sections 2011 to 2013, inclusive (relating to State death taxes, gift tax, and tax on prior transfers).

§ 20.2102-1 *Estates of nonresidents not citizens; credits against tax.* In arriving at the net estate tax payable with respect to the transfer of an estate of a nonresident who was not a citizen of the United States at the time of his death, the following credits are subtracted from the tax imposed by section 2101:

(a) The State death tax credit under section 2011;

(b) The gift tax credit under section 2012; and

(c) The credit for tax on prior transfers under section 2013.

The amount of each of these credits is determined in the same manner as that prescribed for its determination in the estates of citizens and residents of the United States. See §§ 20.2011-1 through 20.2013-6. The provisions of sections 2015 and 2016, relating respectively to the credit for death taxes on remainders and the recovery of taxes claimed as a credit, are applicable with respect to the credit for State death taxes in the case of the estates of nonresidents not citizens. However, the credit for foreign death taxes under section 2014 is not allowed.

§ 20.2103 *Statutory provisions; definition of gross estate.*

SEC. 2103. *Definition of gross estate.* For the purpose of the tax imposed by section 2101, the value of the gross estate of every decedent nonresident not a citizen of the United States shall be that part of his gross estate (determined as provided in section 2031) which at the time of his death is situated in the United States.

§ 20.2103-1 *Estates of nonresidents not citizens; "entire gross estate."* The "entire gross estate" wherever situated of a nonresident who was not a citizen of the United States at the time of his death is made up in the same way as the "gross estate" of a citizen or resident of the United States. See §§ 20.2031-1 through 20.2044-1. As in the case of a citizen or resident of the United States, it does not include real property situated outside the United States. However, in the case of a nonresident not a citizen, only that part of the entire gross estate which is situated in the United States is included in his taxable estate. In fact, property situated outside the United States need not be disclosed on the return

unless certain deductions are claimed or information is specifically requested. See §§ 20.2106-1 and 20.2106-2. For a description of property considered to be situated in the United States, see § 20.2104-1. For a description of property considered to be situated outside the United States, see § 20.2105-1.

§ 20.2104 Statutory provisions; property within the United States.

Sec. 2104. Property within the United States—(a) Stock in corporation. For purposes of this subchapter shares of stock owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States only if issued by a domestic corporation.

(b) Revocable transfers and transfers in contemplation of death. For purposes of this subchapter, any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or at the time of the decedent's death.

§ 20.2104-1 Estates of nonresidents not citizens; property within the United States—(a) In general. Property of a nonresident who was not a citizen of the United States at the time of his death is considered to be situated in the United States if it is—

(1) Real property located in the United States.

(2) Tangible personal property located in the United States, except certain works of art on loan for exhibition (see paragraph (b) of § 20.2105-1).

(3) Written evidence of intangible personal property which is treated as being the property itself, such as a bond for the payment of money, if it is physically located in the United States, except obligations of the United States (but not its instrumentalities) issued before March 1, 1941, if the decedent was not engaged in business in the United States at the time of his death.

(4) Except as specifically provided otherwise in this section or in § 20.2105-1, intangible personal property the written evidence of which is not treated as being the property itself, if it is issued by or enforceable against a resident of the United States or a domestic corporation or governmental unit.

(5) Shares of stock issued by a domestic corporation, regardless of the location of the certificates.

(6) Moneys deposited in the United States by or for the decedent with any person carrying on the banking business, if the decedent was engaged in business in the United States at the time of his death.

(b) Transfers. Property of which the decedent has made a transfer taxable under sections 2035 through 2038 is deemed to be situated in the United States if it is determined, under the provisions of paragraph (a) of this section, to be so situated either at the time of the transfer or at the time of the decedent's death. See §§ 20.2035-1 through 20.2038-1.

(c) Death tax convention. It should be noted that the situs rules described in this section may be modified for various purposes under the provisions of an

applicable death tax convention with a foreign country.

§ 20.2105 Statutory provisions; property without the United States.

Sec. 2105. Property without the United States—(a) Proceeds of life insurance. For purposes of this subchapter, the amount receivable as insurance on the life of a nonresident not a citizen of the United States shall not be deemed property within the United States.

(b) Bank deposits. For purposes of this subchapter, any moneys deposited with any person carrying on the banking business, by or for a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of his death shall not be deemed property within the United States.

(c) Works of art on loan for exhibition. For purposes of this subchapter, works of art owned by a nonresident not a citizen of the United States shall not be deemed property within the United States if such works of art are—

(1) Imported into the United States solely for exhibition purposes.

(2) Loaned for such purposes, to a public gallery or museum, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and

(3) At the time of the death of the owner, on exhibition, or en route to or from exhibition, in such a public gallery or museum.

§ 20.2105-1 Estates of nonresidents not citizens; property without the United States. Property of a nonresident who was not a citizen of the United States at the time of his death is considered to be situated outside the United States if it is—

(a) Tangible personal property located outside the United States.

(b) Works of art owned by the decedent if they were—

(1) Imported into the United States solely for exhibition purposes.

(2) Loaned for those purposes to a public gallery or museum, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and

(3) At the time of the death of the owner, on exhibition, or en route to or from exhibition, in such a public gallery or museum.

(c) Written evidence of intangible personal property which is treated as being the property itself, such as a bond for the payment of money, if it is not physically located in the United States.

(d) Obligations of the United States issued before March 1, 1941, even though physically located in the United States, if the decedent was not engaged in business in the United States at the time of his death.

(e) Except as specifically provided otherwise in this section or in § 20.2104-1, intangible personal property the written evidence of which is not treated as being the property itself, if it is not issued by or enforceable against a resident of the United States or a domestic corporation or governmental unit.

(f) Shares of stock issued by a corporation which is not a domestic corporation, regardless of the location of the certificates.

(g) Amounts receivable as insurance on the decedent's life.

(h) Moneys deposited in the United States by or for the decedent with any person carrying on the banking business, if the decedent was not engaged in business in the United States at the time of his death.

§ 20.2106 Statutory provisions; taxable estate.

Sec. 2106. Taxable estate—(a) Definition of taxable estate. For purposes of the tax imposed by section 2101, the value of the taxable estate of every decedent nonresident not a citizen of the United States shall be determined by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) **Expenses, losses, indebtedness, and taxes.** That proportion of the deductions specified in sections 2053 and 2054 (other than the deductions described in the following sentence) which the value of such part bears to the value of his entire gross estate, wherever situated. Any deduction allowable under section 2053 in the case of a claim against the estate which was founded on a promise or agreement but was not contracted for an adequate and full consideration in money or money's worth shall be allowable under this paragraph to the extent that it would be allowable as a deduction under paragraph (2) if such promise or agreement constituted a bequest.

(2) **Transfers for public, charitable, and religious uses—(A) In general.** The amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy, devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return)—

(i) To or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(ii) To or for the use of any domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; or

(iii) To a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, and no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation.

(B) Powers of appointment. Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this paragraph shall, for purposes of this paragraph, be considered a bequest of such decedent.

(C) Death taxes payable out of bequests. If the tax imposed by section 2101, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the be-

quests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

(D) *Limitation on deduction.* The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate.

(E) *Disallowance of deductions in certain cases.* For disallowance of certain charitable, etc., deductions otherwise allowable under this paragraph, see sections 504 and 681.

(F) *Other cross references.* (1) For option as to time for valuation for purpose of deduction under this paragraph, see section 2032.

(2) For exemption of bequests to or for benefit of Library of Congress, see section 5 of the act of March 3, 1925, as amended (56 Stat. 765; 2 U. S. C. 161).

(3) For construction of bequests for benefit of the library of the Post Office Department as bequests to or for the use of the United States, see section 2 of the act of August 8, 1946 (60 Stat. 924; 5 U. S. C. 393).

(4) For exemption of bequests for benefit of Office of Naval Records and Library, Navy Department, see section 2 of the act of March 4, 1937 (50 Stat. 25; 5 U. S. C. 419b).

(5) For exemption of bequests to or for benefit of National Park Service, see section 5 of the act of July 10, 1935 (49 Stat. 478; 16 U. S. C. 19c).

(6) For construction of devises or bequests accepted by the Secretary of State under the Foreign Service Act of 1946 as devises or bequests to or for the use of the United States, see section 1021 (e) of that act (60 Stat. 1032; 22 U. S. C. 809).

(7) For construction of gifts or bequests of money accepted by the Attorney General for credit to "Commissary Funds, Federal Prisons" as gifts or bequests to or for the use of the United States, see section 2 of the act of May 15, 1952, 66 Stat. 73, as amended by the act of July 9, 1952, 66 Stat. 479 (31 U. S. C. 735-4).

(8) For payment of tax on bequests of United States obligations to the United States, see section 24 of the Second Liberty Bond Act, as amended (59 Stat. 48, § 4; 31 U. S. C. 757e).

(9) For construction of bequests for benefit of or use in connection with the Naval Academy as bequests to or for the use of the United States, see section 3 of the Act of March 31, 1944 (58 Stat. 135; 34 U. S. C. 1115b).

(10) For exemption of bequests for benefit of Naval Academy Museum, see section 4 of the Act of March 26, 1938 (52 Stat. 119; 34 U. S. C. 1119).

(11) For exemption of bequests received by National Archives Trust Fund Board, see section 7 of the National Archives Trust Fund Board Act (55 Stat. 582; 44 U. S. C. 300gg).

(3) *Exemption.* An exemption of \$2,000.

(b) *Condition of allowance of deductions.* No deduction shall be allowed under paragraphs (1) and (2) of subsection (a) in the case of a nonresident not a citizen of the United States unless the executor includes in the return required to be filed under section 6018 the value at the time of his death of that part of the gross estate of such nonresident not situated in the United States.

(c) *United States bonds.* For purposes of section 2103, the value of the gross estate (determined as provided in section 2031) of a decedent who was not engaged in business in the United States at the time of his death—

(1) Shall not include obligations issued by the United States before March 1, 1941; and

(2) Shall include obligations issued by the United States on or after March 1, 1941.

§ 20.2106-1 *Estates of nonresidents not citizens; taxable estate; deductions in general.* (a) Section 2106 (a) provides that the taxable estate of a nonresident who was not a citizen of the United States at the time of his death is determined by subtracting from the value of that part of his gross estate which, at the time of his death, is situated in the United States the total amount of the following deductions:

(1) The deductions allowed in the case of estates of decedents who were citizens or residents of the United States under sections 2053 and 2054 (see §§ 20.2053-1 through 20.2053-9 and § 20.2054-1) for expenses, indebtedness and taxes, and for losses, to the extent provided in § 20.2106-2.

(2) A deduction computed in the same manner as the one allowed under section 2055 (see §§ 20.2055-1 through 20.2055-4) for charitable, etc., transfers, except—

(i) That the deduction is allowed only for transfers to corporations and associations created or organized in the United States, and to trustees for use within the United States, and

(ii) That the provisions contained in paragraph (c) (2) of § 20.2055-2 relating to termination of a power to consume are not applicable.

(3) An exemption of \$2,000, unless a death tax convention provides for another amount, such as a prorated part of the exemption allowed in the case of estates of citizens and residents of the United States under section 2052.

(b) Section 2106 (b) provides that no deduction is allowed under paragraph (a) (1) or (2) of this section unless the executor discloses in the estate tax return the value of that part of the gross estate not situated in the United States. See § 20.2105-1. Such part must be valued as of the date of the decedent's death, or if the alternate valuation method under section 2032 is elected, as of the applicable valuation date. No marital deduction under section 2056 is allowed.

(c) In connection with the provisions of section 2106 (c), see paragraph (a) (3) of § 20.2104-1 and paragraph (d) of § 20.2105-1.

§ 20.2106-2 *Estates of nonresidents not citizens; deductions for expenses, losses, etc.* (a) In computing the taxable estate of a nonresident who was not a citizen of the United States at the time of his death, deductions are allowed under sections 2053 and 2054 for expenses, indebtedness and taxes, and for losses, to the following extent:

(1) A pledge or subscription is deductible if it is an enforceable claim against the estate and if it would constitute an allowable deduction under paragraph (a) (2) of § 20.2106-1, relating to charitable, etc., transfers, if it had been a bequest.

(2) That proportion of other deductions under sections 2053 and 2054 is allowed which the value of that part of the decedent's gross estate situated in the United States at the time of his death bears to the value of the decedent's entire gross estate wherever situated.

It is immaterial whether the amounts to be deducted were incurred or expended within or without the United States.

No deduction is allowed under this paragraph unless the value of the decedent's entire gross estate is disclosed in the estate tax return. See paragraph (b) of § 20.2106-1.

(b) In order that the Internal Revenue Service may properly pass upon the items claimed as deductions, the executor should submit a certified copy of the schedule of liabilities, claims against the estate, and expenses of administration filed under any applicable foreign death duty act. If no such schedule was filed, the executor should submit a certified copy of the schedule of these liabilities, claims and expenses filed with the foreign court in which administration was had. If the items of deduction allowable under section 2106 (a) (1) were not included in either such schedule, or if no such schedules were filed, then there should be submitted a written statement of the foreign executor containing a declaration that it is made under the penalties of perjury setting forth the facts relied upon as entitling the estate to the benefit of the particular deduction or deductions.

(c) The application of this section and of § 20.2106-1 may be illustrated by the following example:

Example. The decedent was a nonresident, not a citizen of the United States at the time of his death. His gross estate, wherever situated, amounts to \$1,000,000, of which \$200,000 (or 20 percent) represents the value of the property having its situs within the United States. The funeral expenses, administration expenses, and claims against the estate aggregate \$150,000, and there are charitable bequests, for use within the United States, amounting to \$25,000. The decedent's taxable estate is determined as follows:

That part of the entire gross estate situated in the United States.....	\$200,000
Deductions for expenses and claims (20 percent of \$150,000).....	\$30,000
Charitable deduction.....	25,000
Exemption.....	2,000
	57,000
Taxable estate.....	143,000

For the manner of computing the tax on the taxable estate, see § 20.2001-2.

MISCELLANEOUS

§ 20.2201 *Statutory provisions; members of the Armed Forces dying during an induction period.*

Sec. 2201. *Members of the Armed Forces dying during an induction period.* The additional estate tax as defined in section 2011 (d) shall not apply to the transfer of the taxable estate of a citizen or resident of the United States dying during an induction period (as defined in sec. 112 (c) (5)), while in active service as a member of the Armed Forces of the United States, if such decedent—

(1) Was killed in action while serving in a combat zone, as determined under section 112 (c); or

(2) Died as a result of wounds, disease, or injury suffered, while serving in a combat zone (as determined under section 112 (c)), and while in line of duty, by reason of a hazard to which he was subjected as an incident of such service.

§ 20.2201-1 *Members of the Armed Forces dying during an induction period.* (a) The additional estate tax as defined in section 2011 (d) does not apply to the transfer of the taxable estate of a citizen or resident of the United States dying during an induction period as defined in section 112 (c) (5) (see paragraph (b) of this section) and while in active service as a member of the Armed Forces of the United States, if the decedent—

(1) Was killed in action while serving in a combat zone, as determined under section 112 (c) (2) and (3) (see paragraph (c) of this section), or

(2) Died as a result of wounds, disease, or injury suffered while serving in such a combat zone and while in line of duty, by reason of a hazard to which he was subject as an incident of such service.

(b) Section 112 (c) (5) defines the term "induction period" as meaning any period during which individuals are liable for induction, for reasons other than prior deferment, for training and service in the Armed Forces of the United States.

(c) Section 112 (c) (2) and (3) provides that service is performed in a combat zone only—

(1) If it is performed in an area which the President of the United States has designated by Executive order for purposes of section 112 (c) as an area in which the Armed Forces of the United States are, or have, engaged in combat, and

(2) If it is performed on or after the date designated by the President by Executive order as the date of the commencing of combatant activities in such zone and on or before the date designated by the President by Executive order as the date of termination of combatant activities in such zone.

(d) If the official record of the branch of the Armed Forces of which the decedent was a member at the time of his death states that the decedent was killed in action while serving in a combat zone, or that death resulted from wounds or injuries received or disease contracted while in line of duty in a combat zone, this fact shall, in the absence of evidence establishing to the contrary, be presumed to be established for the purposes of the exemption. Moreover, wounds, injuries or disease suffered while in line of duty will be considered to have been caused by a hazard to which the decedent was subjected as an incident of service as a member of the Armed Forces, unless the hazard which caused the wounds, injuries, or disease was clearly unrelated to such service.

(e) A person was in active service as a member of the Armed Forces of the United States if he was at the time of his death actually serving in such forces. A member of the Armed Forces in active service in a combat zone who thereafter becomes a prisoner of war or missing in action, and occupies such status at death or when the wounds, disease, or injury resulting in death were incurred, is considered for purposes of this section as serving in a combat zone.

(f) The exemption from tax granted by section 2201 does not apply to the basic estate tax as defined in section 2011 (d).

§ 20.2202 *Statutory provisions; missionaries in foreign service.*

Sec. 2202. *Missionaries in foreign service.* Missionaries duly commissioned and serving under boards of foreign missions of the various religious denominations in the United States, dying while in the foreign missionary service of such boards, shall not, by reason merely of their intention to permanently remain in such foreign service, be deemed nonresidents of the United States, but shall be presumed to be residents of the State, the District of Columbia, Alaska, or Hawaii wherein they respectively resided at the time of their commission and their departure for such foreign service.

§ 20.2202-1 *Missionaries in foreign service.* Section 2202 provides that a duly commissioned missionary, dying while in foreign missionary service under a board of foreign missions of a religious denomination in the United States, is presumed to have retained a United States residence (see paragraph (b) (1) of § 20.0-1) held at the time of his commission and departure for foreign service, in the absence of relevant facts other than his intention to remain permanently in such foreign service.

§ 20.2203 *Statutory provisions; definition of executor.*

Sec. 2203. *Definition of executor.* The term "executor" wherever it is used in this title in connection with the estate tax imposed by this chapter means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within the United States, then any person in actual or constructive possession of any property of the decedent.

§ 20.2203-1 *Definition of executor.* The term "executor" means the executor or administrator of the decedent's estate. However, if there is no executor or administrator appointed, qualified and acting within the United States, the term means any person in actual or constructive possession of any property of the decedent. The term "person in actual or constructive possession of any property of the decedent" includes, among others, the decedent's agents and representatives; safe-deposit companies, warehouse companies, and other custodians of property in this country; brokers holding, as collateral, securities belonging to the decedent; and debtors of the decedent in this country.

§ 20.2204 *Statutory provisions; discharge of executor from personal liability.*

Sec. 2204. *Discharge of executor from personal liability.* If the executor makes written application to the Secretary or his delegate for determination of the amount of the tax and discharge from personal liability therefor, the Secretary or his delegate (as soon as possible, and in any event within 1 year after the making of such application, or, if the application is made before the return is filed, then within 1 year after the return is filed, but not after the expiration of the period prescribed for the assessment of the tax in section 6501) shall notify the executor of the amount of the tax. The

executor, on payment of the amount of which he is notified, shall be discharged from personal liability for any deficiency in tax thereafter found to be due and shall be entitled to a receipt or writing showing such discharge.

§ 20.2204-1 *Discharge of executor from personal liability.* The executor of a decedent's estate may make written application to the district director for the district in which the estate tax return is filed for a determination of the Federal estate tax and discharge from personal liability therefor. Within one year after receipt of the application, or if the application is made before the return is filed then within one year after the return is filed, the executor will be notified of the amount of the tax and, upon payment thereof, he will be discharged from personal liability for any deficiency in the tax thereafter found to be due. If no such notification is received, the executor is discharged at the end of such one year period from personal liability for any deficiency thereafter found to be due.

§ 20.2205 *Statutory provisions; reimbursement out of estate.*

Sec. 2205. *Reimbursement out of estate.* If the tax or any part thereof is paid by, or collected out of, that part of the estate passing to or in the possession of any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this chapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

§ 20.2205-1 *Reimbursement out of estate.* If any portion of the tax is paid by or collected out of that part of the estate passing to, or in the possession of, any person other than the duly qualified executor or administrator, that person may be entitled to reimbursement, either out of the undistributed estate or by contribution from other beneficiaries whose shares or interests in the estate would have been reduced had the tax been paid before distribution of the estate, or whose shares or interests are subject either to an equal or prior liability for the payment of taxes, debts, or other charges against the estate. For specific provisions giving the executor the right to reimbursement from life insurance beneficiaries and from recipients of property over which the decedent had a power of appointment, see sections 2206 and 2207. These provisions, however, are not designed to curtail the right of the district director to collect the tax from any person, or out of any property, liable for its payment. The district director cannot be required to apportion the tax among the persons liable nor to enforce any right of reimbursement or contribution.

§ 20.2206 Statutory provisions; liability of life insurance beneficiaries.

Sec. 2206. *Liability of life insurance beneficiaries.* Unless the decedent directs otherwise in his will, if any part of the gross estate on which tax has been paid consists of proceeds of policies of insurance on the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds of such policies bear to the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2051. If there is more than one such beneficiary, the executor shall be entitled to recover from such beneficiaries in the same ratio. In the case of such proceeds receivable by the surviving spouse of the decedent for which a deduction is allowed under section 2056 (relating to marital deduction), this section shall not apply to such proceeds except as to the amount thereof in excess of the aggregate amount of the marital deductions allowed under such section.

§ 20.2206-1 *Liability of life insurance beneficiaries.* With respect to the right of the district director to collect the tax without regard to the provisions of section 2206, see § 20.2205-1.

§ 20.2207 Statutory provisions; liability of recipient of property over which decedent had power of appointment.

Sec. 2207. *Liability of recipient of property over which decedent had power of appointment.* Unless the decedent directs otherwise in his will, if any part of the gross estate on which the tax has been paid consists of the value of property included in the gross estate under section 2041, the executor shall be entitled to recover from the person receiving such property by reason of the exercise, nonexercise, or release of a power of appointment such portion of the total tax paid as the value of such property bears to the sum of the taxable estate and the amount of the exemption allowed in computing the taxable estate, determined under section 2052, or section 2106 (a), as the case may be. If there is more than one such person, the executor shall be entitled to recover from such persons in the same ratio. In the case of such property received by the surviving spouse of the decedent for which a deduction is allowed under section 2056 (relating to marital deduction), this section shall not apply to such property except as to the value thereof reduced by an amount equal to the excess of the aggregate amount of the marital deductions allowed under section 2056 over the amount of proceeds of insurance upon the life of the decedent receivable by the surviving spouse for which proceeds a marital deduction is allowed under such section.

§ 20.2207-1 *Liability of recipient of property over which decedent had power of appointment.* With respect to the right of the district director to collect the tax without regard to the provisions of section 2207, see § 20.2205-1.

PROCEDURE AND ADMINISTRATION

§ 20.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.

Sec. 6001. *Notice or regulations requiring records, statements, and special returns.* Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe.

Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 20.6001-1 *Persons required to keep records and render statements.* (a) It is the duty of the executor to keep such complete and detailed records of the affairs of the estate for which he acts as will enable the district director to determine accurately the amount of the estate tax liability. All documents and vouchers used in preparing the estate tax return (§ 20.6018-1) shall be retained by the executor so as to be available for inspection whenever required.

(b) In addition to filing a preliminary notice (see § 20.6036-1) and an estate tax return (see § 20.6018-1), the executor shall furnish such supplemental data as may be necessary to establish the correct estate tax. It is therefore the duty of the executor (1) to furnish, upon request, copies of any documents in his possession (or on file in any court having jurisdiction over the estate) relating to the estate, appraisal lists of any items included in the gross estate, copies of balance sheets or other financial statements obtainable by him relating to the value of stock, and any other information obtainable by him that may be found necessary in the determination of the tax, and (2) to render any written statement, containing a declaration that it is made under penalties of perjury, of facts within his knowledge which the district director may require for the purpose of determining whether a tax liability exists and, if so, the extent thereof. Failure to comply with such a request will render the executor liable to penalties (see section 7269), and proceedings may be instituted in the proper court of the United States to secure compliance therewith (see section 7604).

(c) Persons having possession or control of any records or documents containing or supposed to contain any information concerning the estate, or having knowledge of or information about any fact or facts which have a material bearing upon the liability, or the extent of liability, of the estate for the estate tax, shall, upon request of the district director, make disclosure thereof. Failure on the part of any person to comply with such request will render him liable to penalties (section 7269), and compliance with the request may be enforced in the proper court of the United States (section 7604).

(d) Upon notification from the Internal Revenue Service, a corporation (organized or created in the United States) or its transfer agent is required to furnish the following information pertaining to stocks or bonds registered in the name of a nonresident decedent (regardless of citizenship): (1) The name of the decedent as registered; (2) the date of the decedent's death; (3) the decedent's residence and his place of death; (4) the names and addresses of executors, attorneys, or other representatives of the estate, within and without the United States; and (5) a description

of the securities, the number of shares or bonds and the par values thereof.

§ 20.6011 Statutory provisions; general requirement of return, statement, or list.

Sec. 6011. *General requirement of return, statement, or list—(a) General rule.* When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(c) *Income, estate, and gift taxes.* For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see sections 6012 to 6019, inclusive.

§ 20.6011-1 *General requirement of return, statement, or list—(a) General rule.* Every person made liable for any tax imposed by subtitle B of the Code shall make such returns or statements as are required by the regulations in this part. The return or statement shall include therein the information required by the applicable regulations or forms.

(b) *Use of prescribed forms.* Copies of the forms prescribed by §§ 20.6018-1 and 20.6036-1 may be obtained from district directors. The fact that an executor has not been furnished with copies of these forms will not excuse him from filing a preliminary notice or making a return. Application for a form shall be made to the district director in ample time for the executor to have the form prepared, verified, and filed with the district director on or before the date prescribed for the filing thereof (see §§ 20.6071-1 and 20.6075-1). The executor shall carefully prepare the preliminary notice and the return so as to set forth fully and clearly the data called for therein. A preliminary notice or a return which has not been so prepared will not be accepted as meeting the requirements of §§ 20.6018-1 through 20.6018-4 and § 20.6036-1.

§ 20.6018 Statutory provisions; estate tax returns.

Sec. 6018. *Estate tax returns—(a) Returns by executor—(1) Citizens or residents.* In all cases where the gross estate at the death of a citizen or resident exceeds \$60,000, the executor shall make a return with respect to the estate tax imposed by subtitle B.

(2) *Nonresidents not citizens of the United States.* In the case of the estate of every nonresident not a citizen of the United States if that part of the gross estate which is situated in the United States exceeds \$2,000, the executor shall make a return with respect to the estate tax imposed by subtitle B.

(b) *Returns by beneficiaries.* If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein. Upon notice from the Secretary or his delegate such person shall in like manner make a return as to such part of the gross estate.

§ 20.6018-1 *Returns—(a) Estates of citizens or residents.* A return must be filed on Form 706 for the estate of every

citizen or resident of the United States whose gross estate exceeded \$60,000 in value on the date of his death. The value of the gross estate at the date of death governs with respect to the filing of the return regardless of whether the value of the gross estate is, at the executor's election, finally determined as of a date subsequent to the date of death pursuant to the provisions of section 2032. Duplicate copies of the return are not required to be filed. For the contents of the return, see § 20.6018-3.

(b) *Estates of nonresidents not citizens.* A return must be filed on Form 706 or 706NA for the estate of every nonresident not a citizen if the value of the part of the gross estate situated in the United States exceeded \$2,000 on the date of his death. Under certain conditions the return may be made only on Form 706. See the instructions on Form 706NA for circumstances under which that form may not be used. Duplicate copies of the return are not required to be filed. For the contents of the return, see § 20.6018-3.

(c) *Place for filing.* See § 20.6091-1 for the place where the return shall be filed.

(d) *Time for filing.* See § 20.6075-1 for the time for filing the return.

§ 20.6018-2 *Returns; person required to file return.* It is required that the duly qualified executor or administrator shall file the return. If there is more than one executor or administrator, the return must be made jointly by all. If there is no executor or administrator appointed, qualified and acting within the United States, every person in actual or constructive possession of any property of the decedent situated in the United States is constituted an executor for purposes of the tax (see § 20.2203-1), and is required to make and file a return. If in any case the executor is unable to make a complete return as to any part of the gross estate, he is required to give all the information he has as to such property, including a full description, and the name of every person holding a legal or beneficial interest in the property. If the executor is unable to make a return as to any property, every person holding a legal or beneficial interest therein shall, upon notice from the district director, make a return as to that part of the gross estate. For delinquency penalty for failure to file return, see section 6651 and § 301.6651-1 of this chapter (Regulations on Procedure and Administration). For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, 7207, and 7269.

§ 20.6018-3 *Returns; contents of returns—(a) Citizens or residents.* The return of an estate of a decedent who was a citizen or resident of the United States at the time of his death must contain an itemized inventory by schedule of the property constituting the gross estate and lists of the deductions under the proper schedules. The return shall set forth (1) the value of the gross estate (see §§ 20.2031-1 through 20.2044-1), (2) the deduction claimed (see §§ 20.-

2052-1 through 20.2056 (e)-3), (3) the taxable estate (see § 20.2051-1), and (4) the gross estate tax, reduced by any credits (see §§ 20.2011-1 through 20.2014-6) against the tax. In listing upon the return the property constituting the gross estate (other than household and personal effects for which see § 20.2031-6), the description of it shall be such that the property may be readily identified for the purpose of verifying the value placed on it by the executor.

(b) *Nonresidents not citizens.* The return of an estate of a decedent who was not a citizen or resident of the United States at the time of his death must contain the following information: (1) An itemized list of that part of the gross estate situated in the United States (see § 20.2104-1), (2) an itemized list of any deductions claimed (see §§ 20.2106-1 and 20.2106-2), (3) the amount of the taxable estate (see § 20.2106-1), and (4) the gross estate tax, reduced by any credits (see § 20.2102-1) against the tax. For the disallowance of certain deductions if the return does not disclose that part of the gross estate not situated in the United States, see §§ 20.2106-1 and 20.2106-2.

(c) *Provisions applicable to returns described in paragraphs (a) and (b) of this section.* (1) A legal description shall be given of each parcel of real estate, and, if located in a city, the name of the street and number, its area, and, if improved, a short statement of the character of the improvements.

(2) A description of bonds shall include the number held, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number if there is more than one issue, and the principal exchange upon which listed, or the principal business office of the obligor, if unlisted. A description of stocks shall include number of shares, whether common or preferred, and, if preferred, what issue, par value, quotation at which returned, exact name of corporation, and, if the stock is unlisted, the location of the principal business office and State in which incorporated and the date of incorporation, or if the stock is listed, the principal exchange upon which sold. A description of notes shall include name of maker, date on which given, date of maturity, amount of principal, amount of principal unpaid, rate of interest and whether simple or compound, date to which interest has been paid and amount of unpaid interest. A description of the seller's interest in land contracts shall include name of buyer, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal and accrued interest, interest rate and date prior to decedent's death to which interest had been paid.

(3) A description of bank accounts shall disclose the name and address of depository, amount on deposit, whether a checking, savings, or a time-deposit account, rate of interest, if any payable, amount of interest accrued and payable, and serial number. A description of life insurance shall give the name of the in-

suror, number of policy, name of the beneficiary, and the amount of the proceeds.

(4) In describing an annuity, the name and address of the grantor of the annuity shall be given, or, if the annuity is payable out of a trust or other funds, such a description as will fully identify it. If the annuity is payable for a term of years, the duration of the term and the date on which it began shall be given, and if payable for the life of a person other than the decedent, the date of birth of such person shall be stated. If the executor has not included in the gross estate the full value of an annuity or other payment described in section 2039, he shall nevertheless fully describe the annuity and state its total purchase price and the amount of the contribution made by each person (including the decedent's employer) toward the purchase price. If the executor believes that any part of the annuity or other payment is excludable from the gross estate under the provisions of section 2039, or for any other reason, he shall state in the return the reason for his belief.

(5) Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of the judgment debtor, amount of judgment, and rate of interest to which subject, and by stating whether any payments have been made thereon, and, if so, when and in what amounts.

(6) If, pursuant to section 2032, the executor elects to have the estate valued at a date or dates subsequent to the time of the decedent's death, there must be set forth on the return: (i) An itemized description of all property included in the gross estate on the date of the decedent's death, together with the value of each item as of that date; (ii) an itemized disclosure of all distributions, sales, exchanges, and other dispositions of any property during the 1-year period after the date of the decedent's death, together with the dates thereof; and (iii) the value of each item of property in accordance with the provisions of section 2032 (see § 20.2032-1). Interest and rents accrued at the date of the decedent's death and dividends declared to stockholders of record on or before the date of the decedent's death and not collected at that date are to be shown separately. (See also paragraph (e) of § 20.6018-4 with respect to documents required to be filed with the return.)

(7) All transfers made by the decedent within 3 years before the date of his death of a value of \$1,000 or more and all transfers (other than outright transfers not in trust) made by the decedent at any time during his life of a value of \$5,000 or more, except bona fide sales for an adequate and full consideration in money or money's worth, must be disclosed in the return, whether or not the executor regards the transfers as subject to the tax. If the executor believes that such a transfer is not subject to the tax, a brief statement of the pertinent facts shall be made.

§ 20.6018-4 *Returns; documents to accompany the return.* (a) A certified copy of the will, if the decedent died testate, must be submitted with the return, together with copies of such other documents as are required in Form 706 and in the applicable sections of these regulations. There may also be filed copies of any documents which the executor may desire to submit in explanation of the return.

(b) In the case of an estate of a non-resident citizen, the executor shall also file the following documents with the return: (1) A copy of any inventory of property and schedule of liabilities, claims against the estate and expenses of administration filed with the foreign court of probate jurisdiction, certified by a proper official of the court; and (2) a copy of any return filed under any applicable foreign inheritance, estate, legacy, or succession tax act, certified by a proper official of the foreign tax department.

(c) In the case of an estate of a non-resident not a citizen, the executor must also file with the return, but only if deductions are claimed, a copy of the inventory of property filed under the foreign death duty act; or, if no such inventory was filed, a certified copy of the inventory filed with the foreign court of probate jurisdiction.

(d) For every policy of life insurance listed on the return, the executor must procure a statement, on Form 712, by the company issuing the policy and file it with the return.

(e) If, pursuant to section 2032, the executor elects to have the estate valued at a date or dates subsequent to the time of the decedent's death, the executor shall file with the return evidence in support of any statements made by him in the return as to distributions, sales, exchanges, or other dispositions of property during the 1-year period which followed the decedent's death. If the court having jurisdiction over the estate makes an order or decree of distribution during that period, a certified copy thereof must be submitted as part of the evidence. The district director may require the submission of such additional evidence as is deemed necessary.

(f) In any case where a transfer, by trust or otherwise, was made by a written instrument, a copy thereof shall be filed with the return if (1) the property is included in the gross estate, or (2) the executor pursuant to the provisions of paragraph (c) (7) of § 20.6018-3 has made a disclosure of the transfer on the return but has not included its value in the gross estate in the belief that it is not so includible. If the written instrument is of public record, the copy shall be certified, or if it is not of record, the copy shall be verified. If the decedent was a nonresident not a citizen at the time of his death, the copy may be either certified or verified.

(g) If the executor contends that the value of property transferred by the decedent within a period of three years ending with the date of the decedent's death should not be included in the gross estate because he considers that the transfer was not made in contemplation

of death, he shall file with the return (1) a copy of the death certificate, and (2) a statement, containing a declaration that it is made under the penalties of perjury, of all the material facts and circumstances, including those directly or indirectly indicating the decedent's motive in making the transfer and his mental and physical condition at that time. However, this data need not be furnished with respect to transfers of less than \$1,000 in value unless requested by the district director.

§ 20.6036 *Statutory provisions; notice of qualification as executor or receiver.*

Sec. 6036. *Notice of qualification as executor or receiver.* Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary, and every executor (as defined in section 2203), shall give notice of his qualification as such to the Secretary or his delegate in such manner and at such time as may be required by regulations of the Secretary or his delegate. The Secretary or his delegate may by regulation provide such exemptions from the requirements of this section as the Secretary or his delegate deems proper.

§ 20.6036-1 *Notice of qualification as executor—(a) Preliminary notice.* A preliminary notice is required to be filed on Form 704 in the case of every citizen or resident of the United States whose gross estate exceeded \$60,000 in value at the date of death, and on Form 705 in the case of every nonresident who is not a citizen if that part of his gross estate which was situated in the United States (see § 20.2104-1) exceeded \$2,000 in value at the date of death. The value of the gross estate at the date of death governs with respect to the filing of the notice regardless of whether the value of the gross estate is, at the executor's election, finally determined as of a date subsequent to the date of death pursuant to the provisions of section 2032. If there is doubt as to whether the gross estate exceeds \$60,000 or \$2,000, as the case may be, the notice shall be filed as a matter of precaution in order to avoid the possibility of penalties attaching. The primary purpose of the notice is to advise the Internal Revenue Service of the existence of taxable estates, and filing shall not be delayed beyond the period provided for in § 20.6071-1 merely because of uncertainty as to the exact value of the assets. The estimate of the gross estate called for by the notice shall be the best approximation of value which can be made within the time allowed. Duplicate copies of the preliminary notice are not required to be filed. For criminal penalties for failure to file a notice and filing a false or fraudulent notice, see sections 7203, 7207, and 7269. See § 20.6091-1 for the place for filing the notice. See § 20.6071-1 for the time for filing the notice.

(b) *Persons required to file.* In the case of an estate of a citizen or resident of the United States the preliminary notice must be filed by the duly qualified executor or administrator, or if none qualifies within two months after the decedent's death, by every person in actual or constructive possession of any property of the decedent at or after the time of the decedent's death. The signature of one executor or administrator

on the preliminary notice is sufficient. In the case of a nonresident not a citizen, the notice must be filed by every duly qualified executor or administrator within the United States, or if none qualifies within two months after the decedent's death, by every person in actual or constructive possession of any property of the decedent at or after the time of the decedent's death.

§ 20.6071 *Statutory provisions; time for filing returns and other documents.*

Sec. 6071. *Time for filing returns and other documents—(a) General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

§ 20.6071-1 *Time for filing of preliminary notice.* If a duly qualified executor or administrator of the estate of a decedent who was a resident or a citizen of the United States qualifies within two months after a decedent's death, or if a duly qualified executor or administrator of the estate of a nonresident not a citizen qualifies within the United States within two months after the decedent's death, the preliminary notice required by § 20.6036-1 must be filed within two months after his qualification. If no such executor or administrator qualifies within that period, the preliminary notice must be filed within two months of the decedent's death.

§ 20.6075 *Statutory provisions; time for filing estate tax return.*

Sec. 6075. *Time for filing estate and gift tax returns—(a) Estate tax returns.* Returns made under section 6018 (a) (relating to estate taxes) shall be filed within 15 months after the date of the decedent's death.

§ 20.6075-1 *Returns; time for filing estate tax return.* The estate tax return required by section 6018 must be filed on or before the due date. The due date is the date on or before which the return is required to be filed in accordance with the provisions of section 6075 (a) or the last day of the period covered by an extension of time granted by the district director as provided in § 20.6081-1. Unless an extension of time for filing has been granted, the due date is the day of the fifteenth calendar month after the decedent's death numerically corresponding to the day of the calendar month on which death occurred, except that, if there is no numerically corresponding day in such fifteenth month, the last day of the fifteenth month is the due date. For example, if the decedent died on August 31, 1955, the due date is November 30, 1956. When the due date falls on Saturday, Sunday, or a legal holiday, the due date for filing the return is the next succeeding day which is not Saturday, Sunday, or a legal holiday. For definition of a legal holiday, see section 7503 and § 301.7503-1 of this chapter (Regulations on Procedure and Administration). As to additions to the tax in the case of failure to file the return within the prescribed time, see section 6651 and § 301.6651-1 of this chapter (Regulations on Procedure and Adminis-

tration). For rules with respect to the right to elect to have the property valued as of a date or dates subsequent to the decedent's death, see § 20.2032-1, and section 7502 and § 301.7502-1 of this chapter (Regulations on Procedure and Administration).

§ 20.6081 Statutory provisions; extension of time for filing returns.

Sec. 6081. Extension of time for filing returns—(a) General rule. The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

(c) **Postponement by reason of war.** For time for performing certain acts postponed by reason of war, see section 7508.

§ 20.6081-1 Extension of time for filing the return. (a) In case it is impossible or impracticable for the executor to file a reasonably complete return within 15 months from the date of death, the district director may, upon a showing of good and sufficient cause, grant a reasonable extension of time for filing the return required by section 6018. Unless the executor is abroad, the extension may not be for more than six months from the date for filing provided by section 6075 (a). Therefore, unless the executor is abroad, the due date for filing the return under any extension granted by a district director may not be later than 21 months from the date of the decedent's death. The extension may, of course, be for a lesser period of time.

(b) The application for an extension of time for filing the return shall be addressed to the district director for the district in which the return is to be filed, and must contain a full recital of the causes for the delay. It must be made before the expiration of the time within which the return otherwise must be filed. It shall, where possible, be made sufficiently early to permit the district director to consider the matter and reply before what otherwise would be the due date of the return.

(c) A return as complete as possible must be filed before the expiration of the extension period granted. The return thus filed will be the return required by section 6018 (a) and any tax shown thereon will be the "amount determined by the executor as the tax" referred to in section 6161 (a) (2), or the "amount shown as the tax by the taxpayer upon his return" referred to in section 6211 (a) (1) (A). The return cannot be amended after the expiration of the extension period although supplemental information may subsequently be filed that may result in a finally determined tax different from the amount shown as the tax by the executor on the return. An extension of time for filing the return does not operate to extend the time for payment of the tax. See § 20.6151-1 for the time for payment of the tax, and §§ 20.6161-1 and 20.6163-1 for extensions of time for payment of the tax.

§ 20.6091 Statutory provisions; place for filing returns or other documents.

Sec. 6091. Place for filing returns or other documents—(a) General rule. When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) **Tax returns.** In the case of returns of tax required under authority of part II of this subchapter—

(3) **Estate tax returns.** Returns of estate tax required under section 6018 shall be made to the Secretary or his delegate in the internal revenue district in which was the domicile of the decedent at the time of his death or, if there was no such domicile in an internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

§ 20.6091-1 Place for filing returns or other documents. If the decedent was a resident of the United States, the preliminary notice required by § 20.6036-1 and the estate tax return required by § 20.6018-1 must be filed with the district director in whose district the decedent had his domicile at the time of death. If the decedent was a nonresident (whether a citizen or not a citizen), the notice and the return must be filed with the office of the Director of International Operations, Internal Revenue Service, Washington 25, D. C., or with such other office as the Commissioner may designate.

§ 20.6151 Statutory provisions; time and place for paying tax shown on returns.

Sec. 6151. Time and place for paying tax shown on returns—(a) General rule. Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the principal internal revenue officer for the internal revenue district in which the return is required to be filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(c) **Date fixed for payment of tax.** In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§ 20.6151-1 Time and place for paying tax shown on the return—(a) General rule. The tax shown on the estate tax return is to be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return). For provisions relating to the time and place for filing the return, see §§ 20.6075-1 and 20.6091-1. For the duty of the executor to pay the tax, see § 20.2002-1.

(b) **Extension of time for paying—(1) In general.** For general provisions relating to extension of time for paying the tax, see § 20.6161-1.

(2) **Reversionary or remainder interests.** For provisions relating to extension of time for payment of estate tax on the value of a reversionary or remainder interest in property, see § 20.6163-1.

(c) **Payment with obligations of the United States.** Treasury bonds of certain issues which were owned by the decedent at the time of his death or which were treated as part of his gross estate under the rules contained in § 306.28 of Treasury Department Circular No. 306, Revised (31 CFR Part 306), may be redeemed at par plus accrued interest for the purpose of payment of the estate tax, as provided in said section. Whether bonds of particular issues may be redeemed for this purpose will depend on the terms of the offering circulars cited on the face of the bonds. A current list of eligible issues may be obtained from any Federal reserve bank or branch, or from the Bureau of Public Debt, Washington, D. C. See section 6312 and §§ 301.6312-1 and 301.6312-2 of this chapter (Regulations on Procedure and Administration) for provisions relating to the payment of taxes with United States Treasury obligations.

(d) **Receipt for payment.** For provisions relating to duplicate receipts for payment of the tax, see § 20.6314-1.

§ 20.6161 Statutory provisions; extension of time for paying tax.

Sec. 6161. Extension of time for paying tax—(a) Amount determined by taxpayer on return—(1) General rule. The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

(2) **Estate tax.** If the Secretary or his delegate finds that the payment on the due date of any part of the amount determined by the executor as the tax imposed by chapter 11 would result in undue hardship to the estate, he may extend the time for payment for a reasonable period not in excess of 10 years from the date fixed for payment of the tax.

(b) **Amount determined as deficiency.** Under regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may extend, to the extent provided below, the time for payment of the amount determined as a deficiency:

(2) In the case of a tax imposed by chapter 11, for a period not to exceed 4 years from the date otherwise fixed for payment of the deficiency.

An extension under this subsection may be granted only where it is shown to the satisfaction of the Secretary or his delegate that the payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer in the case of a tax imposed by chapter 1, to the estate in the case of a tax imposed by chapter 11, or to the donor in the case of a tax imposed by chapter 12. No extension shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

§ 20.6161-1 *Extension of time for paying tax shown on the return.* (a) In any case in which the district director finds that payment, on the due date, of any part of the tax shown on the return would impose undue hardship upon the estate, he may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to extend more than 10 years from the due date.

(b) The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the tax at the due date. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

(c) An application for such an extension must be in writing and must contain, or be supported by, information in a written statement declaring that it is made under penalties of perjury, showing the undue hardship that would result to the estate if the requested extension were refused. The application, with the supporting information, must be filed with the district director. When received, it will be examined, and, if possible, within 30 days will be denied, granted, or tentatively granted subject to certain conditions of which the executor will be notified. The district director will not consider an application for such an extension unless it is applied for on or before the due date for payment of the tax. If the executor desires to obtain an additional extension, it must be applied for on or before the date of the expiration of the previous extension. The granting of the extension of time for paying the tax is discretionary with the district director and his authority will be exercised under such conditions as he may deem advisable.

(d) The amount of the tax for which an extension is granted, with the additions thereto, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the district director.

(e) The granting of an extension of time for paying the tax will not relieve the executor from the duty of filing the return on or before the date provided for in § 20.6075-1, nor will it operate to prevent the running of interest. See section 6601. An extension of time to pay the tax may extend the period within which State and foreign death taxes allowed as a credit under sections 2011 and 2014 are required to be paid and the credit therefor claimed. See paragraph (c) of § 20.2011-1 and § 20.2014-6.

(f) For provisions requiring the furnishing of security for the payment of the tax for which an extension is granted, see paragraph (a) of § 20.6165-1. For provisions relating to extensions of time for payment of tax on the value of a reversionary or remainder interest in property, see § 20.6163-1.

§ 20.6161-2 *Extension of time for paying deficiency in tax.* (a) In any case in which the district director finds that pay-

ment, on the date prescribed therefor, of any part of a deficiency would impose undue hardship upon the estate, he may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed four years from the date prescribed for payment thereof.

(b) The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the estate. It must appear that a substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the deficiency at the date prescribed therefor. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No extension will be granted if the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade the tax.

(c) An application for such an extension must be in writing and must contain, or be supported by, information in a written statement declaring that it is made under penalties of perjury showing the undue hardship that would result to the estate if the extension were refused. The application, with the supporting information, must be filed with the district director. When received, it will be examined, and, if possible, within thirty days will be denied, granted, or tentatively granted subject to certain conditions of which the executor will be notified. The district director will not consider an application for such an extension unless it is applied for on or before the date prescribed for payment of the deficiency, as shown by the notice and demand from the district director. If the executor desires to obtain an additional extension, it must be applied for on or before the date of the expiration of the previous extension. The granting of the extension of time for paying the deficiency is discretionary with the district director.

(d) The amount of the deficiency for which an extension is granted, with the additions thereto, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the district director.

(e) The granting of an extension of time for paying the deficiency will not operate to prevent the running of interest. See section 6601. An extension of time to pay the deficiency may extend the period within which State and foreign death taxes allowed as a credit under sections 2011 and 2014 are required to be paid and the credit therefor claimed. See paragraph (c) of § 20.2011-1 and § 20.2014-6.

(f) For provisions requiring the furnishing of security for the payment of the deficiency for which an extension is granted, see § 20.6165-1.

§ 20.6163 *Statutory provisions; extension of time for payment of estate tax on value of reversionary or remainder interest in property.*

Sec. 6163. *Extension of time for payment of estate tax on value of reversionary or remainder interest in property—(a) Extension*

permitted. If the value of a reversionary or remainder interest in property is included under chapter 11 in the value of the gross estate, the payment of the part of the tax under chapter 11 attributable to such interest may, at the election of the executor, be postponed until 6 months after the termination of the precedent interest or interests in the property, under such regulations as the Secretary or his delegate may prescribe.

(b) *Cross references—(1) Interest.* For provisions requiring the payment of interest for the period of such extension, see section 6601 (b).

(2) *Security.* For authority of the Secretary or his delegate to require security in the case of such extension, see section 6165.

§ 20.6163-1 *Extension of time for payment of estate tax on value of reversionary or remainder interest in property.*

(a) In case there is included in the gross estate a reversionary or remainder interest in property, the payment of the part of the tax attributable to that interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property. This provision is limited to cases in which the reversionary or remainder interest is included in the decedent's gross estate as such and does not extend to cases in which the decedent creates future interests by his own testamentary act.

(b) Notice of the exercise of the election to postpone the payment of the tax attributable to a reversionary or remainder interest should be filed with the district director before the date prescribed for payment of the tax. The notice of election may be made in the form of a letter addressed to the district director. There shall be filed with the notice of election a certified copy of the will or other instrument under which the reversionary or remainder interest was created, or a copy verified by the executor if the instrument is not filed of record. The district director may require the submission of such additional proof as he deems necessary to disclose the complete facts. If the duration of the precedent interest is dependent upon the life of any person, the notice of election must show the date of birth of that person.

(c) If the decedent's gross estate consists of both a reversionary or remainder interest in property and other property, the tax attributable to the reversionary or remainder interest, within the meaning of this section, is an amount which bears the same ratio to the total tax as the value of the reversionary or remainder interest (reduced as provided in the following sentence) bears to the entire gross estate (reduced as provided in the last sentence of this paragraph). In applying this ratio, the value of the reversionary or remainder interest is reduced by (1) the amount of claims, mortgages, and indebtedness which is a lien upon such interest; (2) losses in respect of such interest during the settlement of the estate which are deductible under the provisions of section 2054 or section 2106 (a) (1); (3) any amount deductible in respect of such interest under section 2055 or 2106 (a) (2) for charitable, etc., transfers; and (4) the portion of the marital deduction allowed under the pro-

visions of section 2056 on account of bequests, etc., of such interests to the decedent's surviving spouse. Likewise, in applying the ratio, the value of the gross estate is reduced by such deductions having similar relationship to the items comprising the gross estate.

(d) For provisions requiring the payment of interest for the period of the extension, see section 6601 (b). For provisions requiring the furnishing of security for the payment of the tax for which the extension is granted, see paragraph (b) of § 20.6165-1. For provisions concerning the time within which credit for State and foreign death taxes on such a reversionary or remainder interest may be taken, see section 2015 and the regulations thereunder.

§ 20.6165 Statutory provisions; bonds where time to pay tax or deficiency has been extended.

Sec. 6165. *Bonds where time to pay tax or deficiency has been extended.* In the event the Secretary or his delegate grants any extension of time within which to pay any tax or any deficiency therein, the Secretary or his delegate may require the taxpayer to furnish a bond in such amount (not exceeding double the amount with respect to which the extension is granted) conditioned upon the payment of the amount extended in accordance with the terms of such extension.

§ 20.6165-1 Bonds where time to pay tax or deficiency has been extended—

(a) *Extensions under section 6161 of time to pay tax or deficiency.* If an extension of time for payment of tax or deficiency is granted under section 6161, the district director may, if he deems it necessary, require the executor to furnish a bond for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension. However, such bond shall not exceed double the amount with respect to which the extension is granted. For other provisions relating to bonds required where extensions of time to pay estate taxes or deficiencies are granted under section 6161, see the regulations under sections 6165 and 7101 contained in Part 301 of this chapter (Regulations on Procedure and Administration).

(b) *Extensions under section 6163 of time to pay estate tax attributable to reversionary or remainder interests.* As a prerequisite to the postponement of the payment of the tax attributable to a reversionary or remainder interest as provided in § 20.6163-1, a bond must be furnished in an amount which is double the amount of the tax and interest for the estimated duration of the precedent interest, conditioned upon the payment of the tax and interest accrued thereon within six months after the termination of the precedent interest. If after the acceptance of a bond it is determined that the amount of the tax attributable to the reversionary or remainder interest was understated in the bond, a new bond or a supplemental bond may be required, or the tax, to the extent of the understatement, may be collected. The bond must be conditioned upon the principal or surety promptly notifying the district director when the precedent interest terminates and upon the principal or surety notifying the district director during the

month of September of each year as to the continuance of the precedent interest, if the duration of the precedent interest is dependent upon the life or lives of any person or persons, or is otherwise indefinite. For other provisions relating to bonds where an extension of time has been granted for paying the tax, see the regulations under sections 6165 and 7101 contained in Part 301 of this chapter (Regulations on Procedure and Administration).

§ 20.6314 Statutory provisions; receipt for taxes.

Sec. 6314. *Receipt for taxes—(a) General rule.* The Secretary or his delegate shall, upon request, give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no receipt shall be issued in lieu of a stamp representing a tax.

(b) *Duplicate receipts for payment of estate taxes.* The Secretary or his delegate shall, upon request, give to the person paying the tax under chapter 11 (relating to the estate tax) duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

(c) *Cross references.* * * *

(2) For receipt of discharge of executor from personal liability, see section 2204.

§ 20.6314-1 Duplicate receipts for payment of estate taxes. The district director will, upon request, give to the person paying the tax duplicate receipts, either of which will be sufficient evidence of such payment and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts.

§ 20.6321 Statutory provisions; lien for taxes.

Sec. 6321. *Lien for taxes.* If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

§ 20.6321-1 Lien for taxes. For regulations concerning the lien for taxes, see § 301.6321-1 of this chapter (Regulations on Procedure and Administration).

§ 20.6322 Statutory provisions; period of lien.

Sec. 6322. *Period of lien.* Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time.

§ 20.6323 Statutory provisions; validity against mortgagees, pledgees, purchasers, and judgment creditors.

Sec. 6323. *Validity against mortgagees, pledgees, purchasers, and judgment creditors—(a) Invalidity of lien without notice.* Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under State or territorial laws.* In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) *With clerk of district court.* In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) *With clerk of district court for District of Columbia.* In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) *Form of notice.* If the notice filed pursuant to subsection (a) (1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a) (2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

(c) *Exception in case of securities—(1) Exception.* Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) *Definition of security.* As used in this subsection, the term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(d) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed under subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

§ 20.6323-1 Validity against mortgagees, pledgees, purchasers, and judgment creditors. For regulations concerning the validity of liens against mortgagees, pledgees, purchasers, and judgment creditors, see § 301.6323-1 of this chapter (Regulations on Procedure and Administration).

§ 20.6324 Statutory provisions; special liens for estate and gift taxes.

Sec. 6324. *Special liens for estate and gift taxes—(a) Liens for estate tax.* Except as otherwise provided in subsection (c) (relating to transfers of securities)—

(1) *Upon gross estate.* Unless the estate tax imposed by chapter 11 is sooner paid in full, it shall be a lien for 10 years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

(2) *Liability of transferees and others.* If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee,

trustee (except the trustee of an employee's trust which meets the requirements of section 401 (a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession of property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, to a bona fide purchaser, mortgagee, or pledgee, for an adequate and full consideration in money or money's worth shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, beneficiary, or transferee of any such person, except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth.

(3) *Continuance after discharge of executor.* The provisions of section 2204 (relating to discharge of executor from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money, or money's worth, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser, mortgagee, or pledgee by the heirs, legatees, devisees, or distributees.

(c) *Exception in case of securities.* The lien imposed by subsection (a) or (b) shall not be valid with respect to a security, as defined in section 6323 (c) (2), as against any mortgagee, pledgee, or purchaser of any such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

§ 20.6324-1 *Special lien for estate tax.* For regulations concerning the special lien for the estate tax, see § 301.6324-1 of this chapter (Regulations on Procedure and Administration).

§ 20.6325 *Statutory provisions; release of lien or partial discharge of property.*

Sec. 6325. *Release of lien or partial discharge of property.*—(a) *Release of lien.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if—

(1) *Liability satisfied or unenforceable.* The Secretary or his delegate finds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied, has become legally unenforceable, or, in the case of the estate tax imposed by chapter 11 or the gift tax imposed by chapter 12, has been fully satisfied or provided for; or

(2) *Bond accepted.* There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within

the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such rules or regulations.

(b) *Partial discharge of property.*—(1) *Property double the amount of the liability.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to any lien imposed under this chapter if the Secretary or his delegate finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the unsatisfied liability secured by such lien and the amount of all other liens upon such property which have priority to such lien.

(2) *Part payment or interest of United States valueless.* Subject to such rules or regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of discharge of any part of the property subject to the lien if—

(A) There is paid over to the Secretary or his delegate in part satisfaction of the liability secured by the lien an amount determined by the Secretary or his delegate, which shall not be less than the value, as determined by the Secretary or his delegate, of the interest of the United States in the part to be so discharged; or

(B) The Secretary or his delegate determines at any time that the interest of the United States in the part to be so discharged has no value.

In determining the value of the interest of the United States in the part to be so discharged, the Secretary or his delegate shall give consideration to the fair market value of such part and to such liens thereon as have priority to the lien of the United States.

(c) *Effect of certificate of release or partial discharge.* A certificate of release or of partial discharge issued under this section shall be held conclusive that the lien upon the property covered by the certificate is extinguished.

(d) *Cross references.* (1) For single bond complying with the requirements of both subsection (a) (2) and section 6165, see section 7102.

(2) For other provisions relating to bonds, see generally chapter 73.

(3) For provisions relating to suits to enforce lien, see section 7403.

(4) For provisions relating to suits to clear title to realty, see section 7424.

§ 20.6325-1 *Release of lien or partial discharge of property; transfer certificates in nonresident estates.*

(a) A transfer certificate is a certificate permitting the transfer of property of a nonresident decedent without liability. Except as provided in paragraph (b) of this section, no domestic corporation or its transfer agent should transfer stock registered in the name of a non-resident decedent (regardless of citizenship) except such shares which have been submitted for transfer by a duly qualified executor or administrator who has been appointed and is acting in the United States, without first requiring a transfer certificate covering all of the decedent's stock of the corporation and showing that the transfer may be made without liability. Corporations, transfer agents of domestic corporations, transfer agents of foreign corporations (except as to shares held in the name of a nonresident decedent not a citizen of the United States), banks, trust companies, or other custodians in actual or constructive pos-

session of property, of such a decedent can insure avoidance of liability for taxes and penalties only by demanding and receiving transfer certificates before transfer of property of nonresident decedents.

(b) A transfer certificate is not required in the case of a nonresident decedent not a citizen of the United States if, as of the date of the decedent's death, the total value of his gross estate situated in the United States is not in excess of \$2,000. In this connection, a corporation, transfer agent, bank, trust company or other custodian will not incur liability for a transfer of the decedent's property if the corporation or other person, having no information to the contrary, first receives from the executor or other responsible person, who may be reasonably regarded as in possession of the pertinent facts, a statement that the total value, as of the date of the decedent's death, of that part of his gross estate situated in the United States is not in excess of \$2,000. Also, a transfer certificate is not required for bonds owned by a nonresident decedent who was not a citizen of the United States at the time of his death if it is shown that the bonds were not physically situated in the United States at the time of his death.

(c) A transfer certificate will be issued by the district director when he is satisfied that the tax imposed upon the estate, if any, has been fully discharged or provided for. The tax will be considered fully discharged for purposes of the issuance of a transfer certificate only when investigation has been completed and payment of the tax, including any deficiency finally determined, has been made. If the tax liability has not been fully discharged, transfer certificates may be issued permitting the transfer of particular items of property without liability upon the filing with the district director of such security as he may require. No transfer certificate is required in an estate of a resident decedent. Further, in the case of an estate of a nonresident decedent (regardless of citizenship) a transfer certificate is not required with respect to property which is being administered by an executor or administrator appointed, qualified, and acting within the United States. For additional regulations under section 6325, see § 301.6325-1 of this chapter (Regulations on Procedure and Administration).

§ 20.6601 *Statutory provisions; interest on underpayment, nonpayment, or extensions of time for payment, of tax.*

Sec. 6601. *Interest on underpayment, nonpayment, or extensions of time for payment, of tax.*—(a) *General rule.* If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at the rate of 6 percent per annum shall be paid for the period from such last date to the date paid.

(b) *Extensions of time for payment of estate tax.* If the time for payment of an amount of tax imposed by chapter 11 is extended as provided in section 6161 (a) (2) or if postponement of the payment of an amount of such tax is permitted by section 6163 (a), interest shall be paid at the rate

of 4 percent, in lieu of 6 percent as provided in subsection (a).

§ 20.6601-1 *Interest on underpayment, nonpayment, or extensions of time for payment, of tax.* For regulations concerning interest on underpayments, etc., see § 301.6601-1 of this chapter (Regulations on Procedure and Administration).

§ 20.7101 *Statutory provisions; form of bonds.*

Sec. 7101. *Form of bonds.* Whenever, pursuant to the provisions of this title (other than sections 7485 and 6803 (a) (1)), or rules or regulations prescribed under authority of this title, a person is required to furnish a bond or security—

(1) *General rule.* Such bond or security shall be in such form and with such surety or sureties as may be prescribed by regulations issued by the Secretary or his delegate.

(2) *United States bonds and notes in lieu of surety bonds.* The person required to furnish such bond or security may, in lieu thereof, deposit bonds or notes of the United States as provided in 6 U. S. C. 15.

§ 20.7101-1 *Form of bonds.* See paragraph (b) of § 20.6165-1 for the form of the bond required in any case in which the payment of the tax attributable to a reversionary or remainder interest has been postponed under the provisions of § 20.6163-1. For further provisions relating to bonds, see § 20.6165-1 and the regulations under sections 6165 and 7101 contained in Part 301 of this chapter (Regulations on Procedure and Administration).

§ 20.7404 *Statutory provisions; authority to bring civil action for estate taxes.*

Sec. 7404. *Authority to bring civil action for estate taxes.* If the estate tax imposed by chapter 11 is not paid on or before the due date thereof, the Secretary or his delegate shall proceed to collect the tax under the provisions of general law; or appropriate proceedings in the name of the United States may be commenced in any court of the United States having jurisdiction to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. This section insofar as it applies to the collection of a deficiency shall be subject to the provisions of sections 6213 and 6801.

PAR. 2. Section 301.6503 (e) of the Regulations on Procedure and Administration (26 CFR Part 301) is amended:

(A) By redesignating such section as § 301.6503 (f).

(B) By redesignating subsection (e) of section 6503, set forth therein, as subsection (f).

(C) By adding at the end of the section a historical note reading:

[Sec. 6503 (f) as redesignated by sec. 2, Act of Aug. 6, 1956 (Pub. Law 1011, 84th Cong., 70 Stat. 1075)]

PAR. 3. There is inserted after § 301.6503 (d)-1 the following new sections:

§ 301.6503 (e) *Statutory provisions; suspension of running of period of limitation; certain powers of appointment.*

Sec. 6503. *Suspension of running of period of limitation.* . . .

(e) *Certain powers of appointment.* The running of the period of limitations for assessment or collection of any tax imposed by chapter 11 shall be suspended in respect of the estate of a decedent claiming a deduction under section 2055 (b) (2) until 30 days after the expiration of the period for assessment or collection of the tax imposed by chapter 11 on the estate of the surviving spouse.

[Sec. 6503 (e) as added by sec. 2, Act of Aug. 6, 1956 (Pub. Law 1011, 84th Cong., 70 Stat. 1075)]

§ 301.6503 (e)-1 *Suspension of running of period of limitation; certain powers of appointment.* Where the estate of a decedent is allowed an estate tax charitable deduction under the provisions of section 2055 (b) (2) (with respect to property over which the decedent's surviving spouse was given a power of appointment exercisable in favor of charitable organizations) subject to the later disallowance of the deduction if all conditions set forth in section 2055 (b) (2) are not complied with, the running of the period of limitation for assessment or collection of any estate tax imposed on the decedent's estate is suspended until 30 days after the expiration of the period for assessment or collection of the estate tax imposed on the estate of the decedent's surviving spouse.

[SEAL] RUSSELL O. HARRINGTON,
Commissioner of Internal Revenue.

Approved: June 16, 1958.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

[F. R. Doc. 58-4658; Filed, June 23, 1958;
8:45 a. m.]

TITLE 7—AGRICULTURE

Chapter III—Agricultural Research Service, Department of Agriculture

PART 362—REGULATIONS FOR ENFORCEMENT OF FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

REVOCATION OF INTERPRETATION WITH RESPECT TO LABELING OF INSECTICIDES CONTAINING BENZENE HEXACHLORIDE AND INTERPRETATION WITH RESPECT TO LABELING OF INSECTICIDES CONTAINING DDT

Since the issuance of Interpretation 14 with respect to labeling of insecticides containing benzene hexachloride (7 CFR 362.112) and Interpretation 16, as amended, with respect to labeling of insecticides containing DDT (7 CFR 362.114), various changes in the production, use, and requirements as to the use, of benzene hexachloride and DDT have rendered these interpretations obsolete. At the time these interpretations were issued benzene hexachloride and DDT were comparatively new insecticides, and there was some uncertainty as to the labeling requirements for them. The industry has now had considerable experience in the production and marketing of

these insecticides and it is felt that interpretations with respect to their labeling are no longer needed. Therefore, pursuant to the authority vested in me by § 362.3 of the regulations (7 CFR 362.3) under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U. S. C. 135-135k), Interpretation 14 with respect to the labeling of insecticides containing benzene hexachloride and Interpretation 16, as amended, with respect to labeling of insecticides containing DDT are revoked effective upon publication of this document in the FEDERAL REGISTER.

(Sec. 6, 61 Stat. 168; 7 U. S. C. 135d)

Done at Washington, D. C., this 19th day of June 1958.

[SEAL] E. D. BURGESS,
Director,
Plant Pest Control Division.

[F. R. Doc. 58-4747; Filed, June 23, 1958;
8:48 a. m.]

Chapter VII—Commodity Stabilization Service (Farm Marketing Quotas and Acreage Allotments), Department of Agriculture

PART 728—WHEAT

SUBPART—1959-60. MARKETING YEAR

COUNTY ACREAGE ALLOTMENTS FOR 1959 CROP OF WHEAT

The amendments herein have been determined in conformity with the provisions of section 334 of the Agricultural Adjustment Act of 1938, as amended. The purpose of this document is to announce the corrected figure of the total acreage apportioned in the State of North Carolina and changes in the county reserve for appeals and corrections for the counties of Gove and Russell in the State of Kansas and Cape May County, New Jersey, which were originally published in the FEDERAL REGISTER on May 29, 1958 (23 F. R. 3691). The 1959 farm wheat acreage allotments in the three counties named above have been determined on the basis of the amended county reserve for appeals and corrections contained herein. Accordingly, it is hereby found that compliance with the public notice, procedure and effective date provisions of the Administrative Procedure Act (5 U. S. C. 1003) is unnecessary and contrary to the public interest and the amendments herein shall become effective upon the date of their publication in the FEDERAL REGISTER.

Section 728.907 is amended by changing the total acreage apportioned in the State of North Carolina to 296,356 acres and by changing the county reserve for appeals and corrections for the following three counties to read as follows:

	Acres
Gove County, Kansas.....	293
Russell County, Kansas.....	370
Cape May County, New Jersey.....	85

(Sec. 375, 52 Stat. 68; 7 U. S. C. 1375. Interprets or applies sec. 334, 52 Stat. 54; 7 U. S. C. 1334)

Done at Washington, D. C., this 18th day of June 1958. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

TRUE D. MORSE,
Acting Secretary.

[P. R. Doc. 58-4751; Filed, June 23, 1958;
8:49 a. m.]

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

Subchapter B—Sugar Requirements and Quotas [Sugar Reg. 811, Amdt. 5]

PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

REQUIREMENTS, QUOTAS AND QUOTA DEFICITS FOR 1958; MISCELLANEOUS AMENDMENTS

Basis and purpose. The purpose of Sugar Regulation 811 is to determine, pursuant to section 201 of the Sugar Act of 1948, as amended (hereinafter called the act), the amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1958 and to establish, pursuant to sections 202, 204 and 411 of the act sugar quotas and proration for the supplying areas in terms of short tons of sugar, raw value, equal to the quantity determined by the Secretary of Agriculture to be needed in 1958. This regulation also establishes pursuant to section 207 of the act the quantity of quota that may be filled by direct-consumption sugar and pursuant to section 208, quotas of liquid sugar which may be entered into the continental United States.

The act requires that the Secretary shall revise the determination of sugar requirements at such times during the calendar year as may be necessary. It now appears that an increase in the estimate of requirements for the calendar year 1958 is necessary. The purpose of this amendment is to make such determination conform to the requirements indicated on the basis of the factors specified in section 201 of the act, as amended, and to give effect to the revised determination.

The purpose of this action, also, is to further amend § 811.4 (23 F. R. 2785, 3252, 3512, 3654) to determine and prorate deficits in the quotas for Hawaii and Puerto Rico for sugar to be marketed in the continental United States in 1958 as established in § 811.2, as amended herein. It also adds a new § 811.5 for the purpose of prorating to other foreign countries, other than Cuba and the Republic of the Philippines, the quantity by which the quotas for Peru and Costa Rica exceed the import limitations established for them in § 811.9 (22 F. R. 10732).

Section 204 (a) of the act provides that the Secretary shall from time to time determine whether any area will be unable to market its quota and prescribes the manner in which any deficit in a quota for a domestic area or Cuba is to be prorated to other such areas able to supply the additional sugar. Such section provides that any deficit in any domestic producing area occurring by reason of

inability to market that part of the quota for such area allotted under the provisions of section 202 (a) (2) of the act, shall first be prorated to other domestic areas on the basis of the quotas then in effect, and the remainder of such deficit to be prorated to other domestic areas and Cuba on the basis of quotas then in effect.

The act also provides that the quota for any area as established under the provisions of section 202 shall not be reduced by reason of any determination of a deficit.

In order to afford sellers of sugar in affected areas an adequate opportunity to plan marketings and to market the additional sugar authorized by this amendment, and thereby protect the welfare of consumers, it is essential that this amendment be made effective immediately. Therefore, it is hereby determined and found that compliance with the notice, procedure and effective date requirements of the Administrative Procedure Act is unnecessary, impracticable and contrary to the public interest and the amendment herein shall become effective when published in the FEDERAL REGISTER.

By virtue of the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended) and the Administrative Procedure Act (60 Stat. 237), §§ 811.1, 811.2, 811.3 and 811.4 of Sugar Regulation 811 (22 F. R. 10732; 23 F. R. 2785, 3252, 3512, 3654) are amended and a new § 811.5 is added to read as hereinafter set forth.

1. Section 811.1 is amended to read:

§ 811.1 *Sugar requirements, 1958.* The amount of sugar needed to meet the requirements of consumers in the continental United States for the calendar year 1958 is hereby determined to be 9,000,000 short tons, raw value.

2. Section 811.2 is amended to read:

§ 811.2 *Quotas for domestic areas.* (a) For the calendar year 1958 quotas for sugar to be brought into or marketed for consumption in the continental United States from domestic areas are established in column (1) and the amounts of such quotas for offshore areas that may be filled by direct-consumption sugar are established in column (2) as follows:

[Short tons, raw value]		
Area	Quota	Direct-consumption limit
Domestic beet sugar.....	1,953,952	No limit
Mainland cane sugar.....	601,250	No limit
Hawaii.....	1,090,496	30,700
Puerto Rico.....	1,140,253	133,064
Virgin Islands.....	15,549	0

(b) Of the quantity established in paragraph (a) of this section for Puerto Rico which may be filled by direct-consumption sugar, 126,033 short tons, raw value, may be filled only by sugar principally of crystalline structure.

3. Section 811.3 is amended to read:

§ 811.3 *Quotas for foreign countries.* For the calendar year 1958, quotas for sugar to be imported into the continental United States for consumption therein from foreign countries are established in

column (1) and the amount of each such quota that may be filled by direct-consumption sugar is established in column (2), as follows:

[Short tons, raw value]		
Country	Quota (1)	Direct-consumption limit (2)
Republic of the Philippines.....	980,000	59,920
Cuba.....	3,001,295	375,000
Peru.....	78,207	9,500
Dominican Republic.....	61,657	8,523
Mexico.....	44,409	15,481
Nicaragua.....	11,731	10,208
Haiti.....	6,179	6,179
Netherlands.....	3,453	3,453
China.....	3,386	3,386
Panama.....	3,386	3,386
Costa Rica.....	3,381	3,381
Canada.....	631	631
United Kingdom.....	516	516
Belgium.....	182	182
British Guiana.....	84	84
Hong Kong.....	3	3
All other countries.....	0	0

4. Section 811.4 is amended to read:

§ 811.4 *Determination and proration of area deficits and adjusted quotas—(a) Deficit in quotas established in § 811.2.* It is hereby determined, pursuant to subsection (a) of section 204 of the act, that for the calendar year 1958, Hawaii and Puerto Rico will be unable by 325,496 and 325,253 short tons, raw value, of sugar, respectively, to market the quotas established for such areas in § 811.2.

(b) *Quotas in effect upon proration of deficits in parts of quotas established pursuant to section 202 (a) (2).* The part of the deficits determined in paragraph (a) of this section applicable to that portion of the quotas in § 811.2 established pursuant to the provisions of section 202 (a) (2) of the act, which amounts to 98,749 short tons, raw value, is hereby prorated on the basis of the quotas established in § 811.2 to domestic areas to the extent each such area is able to supply additional quantities. The quotas for such areas in effect upon publication of this paragraph in the FEDERAL REGISTER shall be those established in § 811.2 plus the quantities prorated herein, as follows:

[Short tons, raw value]		
Area	Prorated herein	Quotas including proration herein
Domestic beet sugar.....	75,513	2,029,465
Mainland cane sugar.....	23,236	624,486
Hawaii.....	0	1,090,496
Puerto Rico.....	0	1,140,253
Virgin Islands.....	0	15,549

(c) *Quotas in effect upon proration of deficits in part of quotas otherwise established.* Immediately after the quotas established in paragraph (b) of this section become effective, the quantity by which the deficit determined in paragraph (a) of this section exceeds the quantity prorated in paragraph (b) of this section, which amounts to 552,000 short tons, raw value, is hereby prorated on the basis of the quotas in effect pursuant to paragraph (b) of this section for domestic areas and pursuant to § 811.3 for Cuba, to the domestic areas

able to supply additional sugar and Cuba. Thereupon, the following quotas shall be in effect, such quotas consisting of those established in paragraph (b) of this section for domestic areas and in § 811.3 for Cuba plus the quantities prorated in this paragraph:

[Short tons, raw value]

Area	Prorated herein	Quotas including prorations herein and in par. (b) of this section
Domestic beet sugar.....	198,093	2,227,558
Mainland cane sugar.....	60,955	685,441
Hawaii.....	0	1,090,496
Puerto Rico.....	0	1,140,233
Virgin Islands.....	0	15,549
Cuba.....	292,932	3,294,247

5. Section 811.5 is added to read:

§ 811.5 *Proration of portions of quotas established in § 811.3 in excess of the limitations on importations established in § 811.9.* It is hereby determined that for the calendar year 1958 Peru and Costa Rica will be unable by 22,619 and 2,258 short tons, raw value, respectively, to fill their quotas as established in § 811.3 because of the import limitations established in § 811.9 for countries which are not members of the International Sugar Agreement. Accordingly, the quantity by which Peru and Costa Rica will be unable to fill their quotas, amounting to 24,877 short tons, raw value, is hereby prorated to other foreign countries, other than Cuba and the Republic of the Philippines, on the basis of their respective quotas as established in § 811.3. Thereupon, the following quotas shall be in effect, such quotas consisting of the quantities prorated in this paragraph, in addition to the quotas established in § 811.3:

[Short tons, raw value]

Area	Prorated herein	Quotas including prorations herein	Direct-consumption limits
Dominican Republic.....	11,310	72,967	8,523
Mexico.....	8,146	52,555	15,481
Nicaragua.....	2,152	13,883	10,206
Haiti.....	1,134	7,313	7,313
Netherlands.....	630	4,066	4,066
China.....	621	4,007	4,007
Panama.....	621	4,007	4,007
Canada.....	216	747	747
United Kingdom.....	95	611	611
Belgium.....	33	215	215
British Guiana.....	15	99	99
Hong Kong.....	1	4	4
All other.....	0	0	0

STATEMENT OF BASES AND CONSIDERATIONS

Requirements. We are entering the period of heavy seasonal demand for sugar. Inventories of refiners and importers on the first of June were below those of the same date in 1957 and indications are that consumer inventories are moderate. The pressure to sell and ship sugar has diminished now that the harvesting season in the Caribbean Area is nearing completion. The market situation as reflected by the wholesale price of sugar in New York continues strong.

In view of these facts the total of sugar quotas is increased 100,000 tons to 9,000,000 short tons, raw value.

Quotas. The quotas established in §§ 811.2 and 811.3 were determined in compliance with the specific procedures provided in section 202 of the act for translating the total sugar requirements into quotas for individual areas and countries.

The amounts of the quotas which may be filled by direct-consumption sugar were established pursuant to section 207 of the act, which specifies the quantity for some countries and provides the procedures for determining the others.

Deficits in the quotas for Hawaii and Puerto Rico are determined in § 811.4 (a) on the basis of the quotas for these areas as herein established in § 811.2, and the expectation that the total supply of sugar available for marketing in the continental United States from Hawaii will not exceed 765,000 short tons, raw value, and from Puerto Rico will not exceed 815,000 tons.

The Virgin Islands will not have a sufficient supply of sugar to participate in filling any part of the deficits herein determined. Accordingly, deficits of 325,496 and 325,253 short tons, raw value, in the mainland quotas for Hawaii and Puerto Rico, respectively, are hereby determined, and pursuant to section 204 (a) of the act, 98,749 tons are prorated to domestic areas able to market additional sugar on the basis of the quotas for such areas as established in § 811.2 and 552,000 tons are prorated to such domestic areas and Cuba on the basis of the quotas in effect after proration of the 98,749 tons.

Pursuant to section 411 of the act the Secretary is authorized to issue such regulations as may be necessary to carry out Article 7 of the International Sugar Agreement. Accordingly, limitations on the 1958 imports of sugar from Peru of 55,588 tons and from Costa Rica of 1,123 tons were established in § 811.9 (22 F. R. 10732). The quotas established in § 811.3 exceed such limitations by 22,619 tons for Peru and 2,258 tons for Costa Rica. The total of such quantities amounting to 24,877 tons, is hereby prorated to other foreign countries, other than Cuba and the Republic of the Philippines, on the basis of the respective quotas as established in § 811.3, pursuant to section 204 (b) of the act.

(Sec. 403, 61 Stat. 932; 7 U. S. C. 1153. Interprets or applies secs. 202, 204; 61 Stat. 924, 925; 7 U. S. C. 1112, 1114)

Done at Washington, D. C., this 18th day of June 1958.

[SEAL]

TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 58-4750; Filed, June 23, 1958; 8:49 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket 6972]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

ALUMINUM COOKING UTENSIL CO., INC.

Subpart—Advertising falsely or misleadingly; § 13.20 Comparative data or

merits; § 13.105 Individual's special selection or situation; § 13.170 Qualities or properties of product or service; § 13.205 Scientific or other relevant facts; § 13.260 Unique nature or advantages. Subpart—Misrepresenting oneself and goods—Goods; § 13.1575 Comparative data or merits; § 13.1663 Individual's special selection or situation; § 13.1710 Qualities or properties; § 13.1740 Scientific or other relevant facts; § 13.1770 Unique nature or advantages.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U. S. C. 45.) [Cease and desist order, The Aluminum Cooking Utensil Co., Inc., New Kensington, Pa., Docket 6972, May 21, 1958]

This proceeding was heard by a hearing examiner on the complaint of the Commission charging the manufacturer in New Kensington, Pa., of "Wear-Ever" aluminum cooking utensils, designed to employ the so-called "waterless" method of cooking, selling its products chiefly by representatives who gave demonstrations before groups of purchasers, with misrepresenting the health benefits obtained by cooking with its utensils and their superiority over competitive products, and that potential customers were selected by its advertising department to receive a special gift, among other things.

Following acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on May 21 the decision of the Commission.

The order to cease and desist, as modified by the Commission, is as follows:

It is ordered, That respondent Wear-Ever Aluminum, Inc., a corporation, formerly The Aluminum Cooking Utensil Company, Inc., and its officers, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cooking utensils made of aluminum, or any other product of substantially similar composition, design, construction, or purpose, do forthwith cease and desist from:

1. Representing, directly or by implication:

(a) That the use of respondent's utensils and the "waterless" method of cooking will promote or is conducive to better health when compared to other modern cooking utensils, namely, other utensils employing the "waterless" method of cooking and those utensils known as pressure cookers and steamers. However, nothing contained herein shall prevent respondent from representing that more vitamins and minerals are retained in food cooked in their utensils and using the "waterless" method of cooking than when cooked in other utensils requiring substantially larger quantities of water.

(b) That the use of respondent's utensils and the "waterless" method of cooking will promote or is conducive to better health except in the cases of persons who are deficient in the food elements which may be lost, damaged or destroyed in

other cooking methods or might be on the borderline.

(c) That the "waterless" method of cooking is peculiar to the use of respondent's products.

(d) That the "waterless" method of cooking can only be accomplished in aluminum utensils.

(e) That less food is required to satisfy hunger when prepared in respondent's utensils using the "waterless" method of cooking than when otherwise prepared.

(f) That the magnesium in food is "Nature's Laxative" and if it is boiled out of food, laxatives must be purchased at the drug store.

(g) That potential customers have been selected by the advertising department of Wear-Ever cookware to receive a special gift, unless such is the fact.

2. Furnishing means or instrumentalities to others by and through which they may mislead and deceive the public respecting the matters set forth in paragraph 1 hereof.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered That respondent, Wear-Ever Aluminum, Inc., a corporation, formerly The Aluminum Cooking Utensil Company, Inc., shall, within sixty (60) days after service upon it of this decision, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with the order contained in the aforesaid initial decision as modified.

Issued: May 21, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[P. R. Doc. 58-4742; Filed, June 23, 1958;
8:47 a. m.]

[Docket 7038]

PART 13—DIGEST OF CEASE AND DESIST ORDERS

NATIONWIDE CLOTHIERS, INC., ET AL.

Subpart—Advertising falsely or misleadingly: § 13.155 Prices: Exaggerated as regular and customary. Subpart—Misbranding or mislabeling: § 13.1190 Composition: Wool Products Labeling Act; § 13.1212 Formal regulatory and statutory requirements: Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 Formal regulatory and statutory requirements: Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U. S. C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 2-5, 34 Stat. 1128-1130; 15 U. S. C. 46, 68-69 (c).) [Cease and desist order, Nationwide Clothiers, Inc. (New York, N. Y.), et al., Docket 7038, May 21, 1958]

In the Matter of Nationwide Clothiers, Inc., a Corporation, A. B. Joffe Company, Inc., a Corporation, and Albert B. Joffe and Julius Blankstein, Individually and as Officers of Said Corporations

This proceeding was heard by a hearing examiner on the complaint of the

Commission charging a manufacturer of men's and boys' clothing, operating a national chain of some 30 retail stores and with main offices in Brooklyn and New York City, with violating the Wool Products Labeling Act by labeling as "100 Percent All Wool", men's sport coats which contained a substantial percentage of non-wool fibers, by failing in other respects to comply with the labeling requirements of the act, and by making fictitious pricing claims for their garments in newspaper advertising.

Following acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on May 21 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That the respondents, Nationwide Clothiers, Inc., a corporation, and its officers, and A. B. Joffe Company, Inc., a corporation, and its officers, and Albert B. Joffe and Julius Blankstein, individually, and as officers of the aforementioned corporate respondents, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce, or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, and the Wool Products Labeling Act of 1939, of wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling or otherwise identifying such products as to the character or amount of the constituent fibers contained therein;

2. Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five percentum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentage by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers;

(b) The maximum percentage of the total weight of such wool products, of any non-fibrous loading, filling, or adulterating matter;

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939;

3. Using abbreviated words or terms descriptive of fiber content on stamps, tags, labels or other means of identification attached to said wool products;

4. Failing to separately set forth on the required stamp, tag, label or other

means of identification, the character and amount of the constituent fibers contained in the interlinings of said wool products;

5. Failing to attach a stamp, tag or label or other mark of identification containing the information required under section 4 (a) (2) of the Wool Products Labeling Act on each unit of multiple-piece garments.

It is further ordered, That respondents Nationwide Clothiers, Inc., a corporation, and its officers, and A. B. Joffe Company, Inc., a corporation, and its officers, and Albert B. Joffe and Julius Blankstein, individually, and as officers of the aforementioned corporate respondents, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of men's or boys' clothing or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that certain amounts are the regular or usual retail price of their clothing, or other merchandise, when such amounts are in excess of the price at which the respondents have regularly or usually sold said clothing, or other merchandise, through their various retail stores.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents named in the caption hereof shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: May 21, 1958.

By the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[P. R. Doc. 58-4743; Filed, June 23, 1958;
8:47 a. m.]

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor

[Child Labor Reg. 39]

PART 4—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

SUBPART B—ACCEPTANCE OF STATE CERTIFICATES

DESIGNATION OF STATES; EXTENSION OF EFFECTIVE DATE

Pursuant to the provisions of 29 CFR Part 4, Subpart A (Child Labor Regulation No. 1), the designation of the States enumerated in § 4.21 of 29 CFR Part 4, as States in which State age, employment or working certificates or permits shall have the same force and effect as Federal certificates of age under the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.), is hereby extended and shall