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Rules and Regulations

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 6665]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DE- CEMBER 31, 1953

Annuities and Other Matters

On April 23, 1963, notice of proposed rule making was published in the FEDERAL REGISTER (28 F.R. 3976) regarding the amendment of the Income Tax Regulations (26 CFR Part 1) under sections 72(f) and 911 of the Internal Revenue Code of 1954 as amended by section 11 of the Revenue Act of 1962 (76 Stat. 1061). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as proposed are hereby adopted subject to the following changes:

PARAGRAPH 1. Section 1.72-8 as set forth in the notice of proposed rule making is changed by revising paragraph (a) (4) (ii) and by deleting paragraph (a) (4) (iii).

PAR. 2. Section 1.911-1 as set forth in the notice of proposed rule making is changed by revising paragraph (c) (2).

PAR. 3. Section 1.911-2 as set forth in the notice of proposed rule making is changed by revising paragraphs (a) (3), (b) (2) (ii), and (d) (1).

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] **BERTRAND M. HARDING,**
Acting Commissioner of
Internal Revenue.

Approved: July 9, 1963.

STANLEY S. SURREY,
Assistant Secretary of the
Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 72(f) and 911 of the Internal Revenue Code of 1954 to section 11 of the Revenue Act of 1962 (76 Stat. 1003), such regulations are amended as follows:

PARAGRAPH 1. Section 1.72 is amended by revising section 72(f) and by adding a historical note. These amended and added provisions read as follows:

§ 1.72 Statutory provisions; annuities; certain proceeds of endowment and life insurance contracts.

SEC. 72. Annuities; certain proceeds of endowment and life insurance contracts. * * *

(f) Special rules for computing employees' contributions. In computing, for purposes of subsection (c) (1) (A), the aggregate amount of premiums or other consideration paid for the contract, for purposes of subsection (d) (1), the consideration for the contract contributed by the employee, and for purposes of subsection (e) (1) (B), the aggregate

premiums or other consideration paid, amounts contributed by the employer shall be included, but only to the extent that—

(1) Such amounts were includible in the gross income of the employee under this subtitle or prior income tax laws; or

(2) If such amounts had been paid directly to the employee at the time they were contributed, they would not have been includible in the gross income of the employee under the law applicable at the time of such contribution.

Paragraph (2) shall not apply to amounts which were contributed by the employer after December 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of section 911 if such amounts had been paid directly to the employee at the time of contribution. The preceding sentence shall not apply to amounts which were contributed by the employer, as determined under regulations prescribed by the Secretary or his delegate, to provide pension or annuity credits, to the extent such credits are attributable to services performed before January 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on March 12, 1962, and on that date applicable to such services.

[Sec. 72 as amended by sec. 11(b), Rev. Act 1962 (76 Stat. 1005)]

PAR. 2. Paragraph (a) of § 1.72-8 is amended to read as follows:

§ 1.72-8 Effect of certain employer contributions with respect to premiums or other consideration paid or contributed by an employee.

(a) Contributions in the nature of compensation—(1) Amounts includible in gross income of employee under subtitle A of the Code or prior income tax laws. Section 72(f) provides that for the purposes of section 72 (c), (d), and (e), amounts contributed by an employer for the benefit of an employee or his beneficiaries shall constitute consideration paid or contributed by the employee to the extent that such amounts were includible in the gross income of the employee under subtitle A of the Code or prior income tax laws. Amounts to which this paragraph applies include, for example, contributions made by an employer to or under a trust or plan which fails to qualify under the provisions of section 401(a), provided that the employee's rights to such contributions are nonforfeitable at the time the contributions are made. See sections 402(b) and 403(c) and the regulations thereunder. This subparagraph also applies to premiums paid by an employer (other than premiums paid on behalf of an owner-employee) for life insurance protection for an employee if such premiums are includible in the gross income of the employee when paid. See § 1.72-16. However, such premiums shall only be considered as premiums and other consideration paid by the employee with respect to any benefits attributable to the contract providing the life insurance protection. See § 1.72-16.

(2) Amounts not includible in gross income of employee at time contributed

if paid directly to employee at that time. Except as provided in subparagraph (3) of this paragraph, section 72(f) provides that for the purposes of section 72 (c), (d), and (e), amounts contributed by an employer for the benefit of an employee or his beneficiaries shall constitute consideration paid or contributed by the employee to the extent that such amounts would not have been includible in the gross income of the employee at the time contributed had they been paid directly to the employee at that time. Amounts to which this subparagraph applies include, for example, contributions made by an employer after December 31, 1950, and before January 1, 1963, if made on account of foreign services rendered by an employee during a period in which the employee qualified as a bona fide resident of a foreign country under section 911(a) of the Internal Revenue Code of 1954, or under section 116(a) of the Internal Revenue Code of 1939. In such a case, it would be immaterial whether such contributions were made under a qualified plan or otherwise. See subparagraph (4) of this paragraph for rules governing the determination of the amount of employer foreign service contributions to which this subparagraph applies. On the other hand, if contributions are made by an employer to a qualified plan at a time when compensation paid directly to the employee concerned with respect to the same services rendered would have been includible in the gross income of the employee, such as in the case of an employee of a State government where contributions are made in 1955 with respect to services rendered by the employee prior to the year 1939, this subparagraph does not apply to such contributions.

(3) Limitation—(i) In general. Except as provided in subdivision (ii) of this subparagraph, the provisions of subparagraph (2) of this paragraph shall not apply to amounts which were contributed by the employer after December 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of section 911, if such amounts had been paid directly to the employee at the time of contribution. Employer contributions attributable to foreign services performed by the employee after December 31, 1962, do not constitute, for purposes of section 72 (c), (d), and (e), consideration paid or contributed by the employee.

(ii) Exception. The provisions of subdivision (i) of this subparagraph shall not apply to amounts which were contributed by the employer to provide pension or annuity credits (determined in accordance with the provisions of subparagraph (4) of this paragraph) to the extent such credits are—

(a) Attributable to foreign services performed before January 1, 1963, with respect to which the employee qualified for the benefits of section 911(a) (or

corresponding provisions of prior revenue laws), and

(b) Provided pursuant to pension or annuity plan provisions in existence on March 12, 1962, and on that date applicable to such services.

Amounts described in this subdivision constitute, for purposes of section 72 (c), (d), and (e), consideration paid or contributed by the employee even though such amounts are contributed by the employer after December 31, 1962.

(4) *Determination of employer foreign service contributions which constitute consideration paid or contributed by employee.* For purposes of subparagraphs (2) and (3) (ii) of this paragraph, employer foreign service contributions which constitute, for purposes of section 72 (c), (d), and (e), consideration paid or contributed by the employee shall be determined as follows:

(i) *Treatment of identifiable contributions.* If, under the terms of the pension or annuity plan under which employer contributions were made, such contributions may be identified as—

(a) Attributable to foreign services performed before January 1, 1963, with respect to which the employee qualified for the benefits of section 911(a) (or corresponding provisions of prior revenue laws), and

(b) Made under pension or annuity plan provisions in existence on March 12, 1962, which were applicable to the services referred to in (a) of this subdivision on that date,

the amount of employer contributions so identified shall be considered paid or contributed by the employee.

(ii) *Alternative rule for unidentifiable contributions.* If employer contributions may not be identified in the manner described in subdivision (i) of this subparagraph, the amount of employer contributions attributable to foreign services performed before January 1, 1963, and considered paid or contributed by the employee shall be determined on the basis of an estimated allocation which is reasonable and consistent with the circumstances and the provisions of the pension or annuity plan under which such contributions are made. For example, if an employee's benefits under a pension or annuity plan, which is unchanged after March 12, 1962, are determined with respect to his basic compensation during his entire period of credited service, the amount of employer contributions considered paid or contributed by the employee shall be an amount which bears the same ratio to total employer contributions for such employee under the pension or annuity plan as his basic compensation attributable to foreign services performed before January 1, 1963, with respect to which he qualified for the benefits of section 911 (a) (or corresponding provisions of prior revenue laws) bears to his total basic compensation. On the other hand, if an employee's benefits under a pension or annuity plan, which is unchanged after March 12, 1962, are determined with respect to his basic compensation during his final five years of credited service, the amount of employer contributions considered paid or contributed

by the employee shall be an amount which bears the same ratio to total employer contributions for such employee as his number of years of credited service before January 1, 1963, with respect to which he qualified for the benefits of section 911(a) (or corresponding provisions of prior revenue laws) bears to his total number of years of credited service.

(5) *Amounts not includible in gross income of employee under subtitle A of the Code or prior income tax laws.* Amounts contributed by an employer which were not includible in the gross income of the employee under subtitle A of the Code or prior income tax laws, but which would have been includible therein had they been paid directly to the employee, do not constitute consideration paid or contributed by the employee for the purposes of section 72. For example, contributions made by an employer under a qualified employees' trust or plan, which contributions would have been includible in the gross income of the employee had such contributions been paid to him directly as compensation, do not constitute consideration paid or contributed by the employee. Accordingly, the aggregate amount of premiums or other consideration paid or contributed by an employee, insofar as compensatory employer contributions are concerned, consists solely of the (i) sum of all amounts actually contributed by the employee, plus (ii) contributions in the nature of compensation which are deemed to be paid or contributed by the employee under this paragraph.

PAR. 3. Section 1.911 is amended by revising section 911 and by adding a historical note. These amended and added provisions read as follows:

§ 1.911 Statutory provisions; earned income from sources without the United States.

SEC. 911. *Earned income from sources without the United States—(a) General rule.* The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) *Bona fide resident of foreign country.* In the case of an individual citizen of the United States who establishes to the satisfaction of the Secretary or his delegate that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during such uninterrupted period. The amount excluded under this paragraph for any taxable year shall be computed by applying the special rules contained in subsection (c).

(2) *Presence in foreign country for 17 months.* In the case of an individual citizen of the United States who during any period of 18 consecutive months is present in a foreign country or countries during at least 510 full days in such period, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during such 18-month period. The amount excluded under this paragraph for any taxable year shall be computed by applying the special rules contained in subsection (c). An individual shall not be allowed, as a deduction from his gross income, any deductions (other than those allowed

by section 151, relating to personal exemptions) properly allocable to or chargeable against amounts excluded from gross income under this subsection.

(b) *Definition of earned income.* For purposes of this section, the term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary or his delegate, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

(c) *Special rules.* For purposes of computing the amount excludable under subsection (a), the following rules shall apply:

(1) *Limitations on amount of exclusion.* The amount excluded from the gross income of an individual under subsection (a) for any taxable year shall not exceed an amount which shall be computed on a daily basis at an annual rate of—

(A) Except as provided in subparagraph (B), \$20,000 in the case of an individual who qualifies under subsection (a), or

(B) \$35,000 in the case of an individual who qualifies under subsection (a) (1), but only with respect to that portion of such taxable year occurring after such individual has been a bona fide resident of a foreign country or countries for an uninterrupted period of 3 consecutive years.

(2) *Attribution to year in which services are performed.* For purposes of applying paragraph (1), amounts received shall be considered received in the taxable year in which the services to which the amounts are attributable are performed.

(3) *Treatment of community income.* In applying paragraph (1) with respect to amounts received for services performed by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount excludable under subsection (a) from the gross income of such husband and wife shall equal the amount which would be excludable if such amounts did not constitute such community income.

(4) *Requirement as to time of receipt.* No amount received after the close of the taxable year following the taxable year in which the services to which the amounts are attributable are performed may be excluded under subsection (a).

(5) *Certain amounts not excludable.* No amount—

(A) Received as a pension or annuity, or

(B) Included in gross income by reason of section 402(b) (relating to taxability of beneficiary of non-exempt trust), section 403(c) (relating to taxability of beneficiary under a non-qualified annuity), or section 403(d) (relating to taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations),

may be excluded under subsection (a).

(6) *Test of bona fide residence.* A statement by an individual who has earned income from sources within a foreign country to the authorities of that country that he is not a resident of that country, if he is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings, shall be conclusive evidence with respect to such earnings that he is not a bona fide

resident of that country for purposes of subsection (a) (1).

(7) *Certain noncash remuneration.* If an individual who qualifies under subsection (a) (1) receives compensation from sources without the United States (except from the United States or any agency thereof) in the form of the right to use property or facilities, the limitation under paragraph (1) applicable with respect to such individual—

(A) For a taxable year ending in 1963, shall be increased by an amount equal to the amount of such compensation so received during such taxable year;

(B) For a taxable year ending in 1964, shall be increased by an amount equal to two-thirds of such compensation so received during such taxable year; and

(C) For a taxable year ending in 1965, shall be increased by an amount equal to one-third of such compensation so received during such taxable year.

(d) *Cross references.* For administrative and penal provisions relating to the exclusion provided for in this section, see sections 6001, 6011, 6012(c), and the other provisions of subtitle F.

[Sec. 911 as amended by sec. 11(a), Rev. Act 1962 (76 Stat. 1003)]

PAR 4. Section 1.911-1 is amended by revising the heading, by revising paragraphs (a) (5) and (8) and (b) (4), and by adding a new paragraph (c). The amended and added provisions read as follows:

§ 1.911-1 **Earned income from sources without the United States attributable to services performed before 1963.**

(a) *Bona fide resident of a foreign country.* * * *

(5) *Earned income from business in which capital is material.* In the case of a taxpayer engaged in a trade or business (other than in corporate form) in which both personal services and capital are material income-producing factors, a reasonable allowance as compensation for the personal services actually rendered by the taxpayer shall be considered earned income, but the total amount which shall be treated as the earned income of the taxpayer from such a trade or business shall, in no case, exceed 30 percent of his share of the net profits of such trade or business.

(8) *Declaration of estimated tax.* In estimating his gross income for the purpose of making a declaration of estimated tax for any taxable year, a citizen of the United States is not required to take into account income which he believes will be excluded from gross income under the provisions of section 911(a) (1) and the regulations thereunder. However, if the actual amount of the exclusion is less than the amount anticipated, the citizen may be subject to an addition to tax under the provisions of section 6654 and the regulations thereunder.

(b) *Presence in foreign country.* * * *

(4) *Declaration of estimated tax.* In estimating his gross income for the purpose of making a declaration of estimated tax for any taxable year, a citizen of the United States is not required to take into account income which he believes will be excluded from gross income under the provisions of section 911(a) (2) and the regulations thereunder.

However, if the actual amount of the exclusion is less than the amount anticipated, the citizen may be subject to an addition to tax under the provisions of section 6654 and the regulations thereunder.

(c) *Applicability of section—(1) In general.* The rules contained in this section apply only to amounts received—

(i) During taxable years ending on or before September 4, 1962, or

(ii) During taxable years ending after September 4, 1962, but only if such amounts are attributable to services performed—

(a) On or before December 31, 1962, and are received—

(1) On or before December 31, 1962, or

(2) After December 31, 1962, but only if on March 12, 1962, there existed a right described in subparagraph (2) of this paragraph to receive such amounts, or

(b) After December 31, 1962, but only if such amounts are received on or before March 12, 1962.

(2) *Rule of application.* A right referred to in subparagraph (1) (ii) (a) (2) of this paragraph shall be considered to exist on March 12, 1962, if such right (whether forfeitable or nonforfeitable) is embodied in a contract, agreement, plan, or provision of foreign law in force on March 12, 1962, which provides for the payment of a fixed amount of compensation for services performed during a term, for the payment of an amount of compensation computed solely by reference to sales, profits, or other objectively determinable facts, or for the payment of fixed or determinable amounts which are in the nature of compensation for past services. The existence as of March 12, 1962, of such a contract, agreement, plan, or provision of foreign law embodying such a right may be established by—

(i) Written evidence;

(ii) Evidence of a trade custom governing the method of payment of persons performing the same type of services;

(iii) Evidence of an oral agreement between the person performing services and the person for whom such services are performed as to the method of computing compensation for such services; or

(iv) Evidence of the provision of foreign law.

(3) *Statement required.* If, for any taxable year, an individual who qualifies under paragraph (a) or (b) of this section receives an amount after December 31, 1962, which is attributable to services performed on or before that date, and excludes such amount from his gross income on the ground that a right to receive such amount existed on March 12, 1962, such individual shall attach a statement to the Form 2555, Statement to Support Exemption of Income Earned Abroad, filed by him for such taxable year setting forth the particulars on which he relies to support such exclusion.

(4) *Illustrations.* The application of the provisions of this paragraph may be illustrated by the following examples:

Example (1). A, a United States citizen who files his returns for the calendar year using a cash receipts and disbursements method of accounting, is privately employed and a bona fide resident of Sweden for the entire period January 1, 1962, through December 31, 1963. A is employed under a written employment contract in force throughout the entire period which provides for compensation of \$3,000 per month payable on the 10th day of the succeeding month. A receives \$3,000 on January 10, 1963, attributable to services performed on or before December 31, 1962; such amount is excludable from A's gross income under paragraph (a) of this section since the right to receive such amount existed on March 12, 1962, under an employment contract in force on that date.

Example (2). The facts are the same as in example (1), except that A's employment contract expires on October 31, 1962, and is renewed on that date without any change in terms. The result is the same as in example (1) since the new employment contract is essentially a continuation of the old contract.

Example (3). The facts are the same as in example (2), except that the renewed employment contract provides for an increase in A's salary to \$3,200 per month. A receives \$3,200 on January 10, 1963, which is attributable to services performed on or before December 31, 1962; \$3,000 of the amount received on January 10, 1963, is excludable from A's gross income under paragraph (a) of this section since, to that extent, the new employment contract is essentially a continuation of the old contract; \$200 of the amount received on January 10, 1963, is governed by the rules set forth in § 1.911-2.

Example (4). The facts are the same as in example (1), and, in addition, A and his employer enter into a written agreement on December 15, 1961, that A shall receive as a supplementary salary payment for services performed during the calendar year 1962, an amount equal to 1 percent of his employer's net profit per books for the year 1962 is excess of \$500,000, such amount to be payable as soon as practicable after audit of the employer's books. On March 10, 1963, A receives \$5,000 pursuant to the agreement of December 15, 1961; such amount is excludable from A's gross income under paragraph (a) of this section since the right to receive the amount existed on March 12, 1962, under the agreement in force on that date.

Example (5). B, a United States citizen who files his returns for the calendar year using a cash receipts and disbursements method of accounting is privately employed and a bona fide resident of Spain from January 1, 1953, through December 31, 1972, the entire period of service to his employer. B is compensated at a rate of \$30,000 per year for the years 1953 through 1957, \$40,000 per year for the years 1958 through 1962, \$50,000 per year for the years 1963 through 1967, and \$60,000 per year for the years 1968 through 1972. B retires on December 31, 1972, and commences participation in his employer's pension program. The pension plan is embodied in a written document, is in existence on March 12, 1962, and unchanged after that date. B will receive \$3,000 per month for life and the amounts will be paid out of his employer's current funds. B's pension is computed with reference to the amounts of salary set forth above. B's total compensation with respect to which his pension is computed is \$900,000 and the amount of such compensation attributable to foreign services performed before January 1, 1963, is \$350,000. The amount of B's pension attributable to foreign services performed before January 1, 1963, and excludable from his gross income for his taxable year 1973 and for taxable years thereafter is \$14,000 (350/900 of \$36,000).

PAR. 5. There is inserted immediately after § 1.911-1, the following new section:

§ 1.911-2 Earned income from sources without the United States attributable to services performed after 1962.

(a) *Bona fide resident of a foreign country*—(1) *Qualifications for exemption.* Subject to the limitations in paragraph (d) of this section and in subparagraph (4) of this paragraph, amounts constituting earned income as defined in paragraph (c) of this section shall be excluded from the gross income of an individual citizen of the United States who establishes to the satisfaction of the Commissioner that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, if such amounts are (i) from sources without the United States, (ii) attributable to such uninterrupted period, and (iii) not paid by the United States or any agency or instrumentality thereof. The exemption from tax thus provided is applicable to such amounts as are attributable to that portion of an uninterrupted period of bona fide foreign residence which falls within a taxable year during which the citizen begins or terminates bona fide residence in a foreign country, provided that such period includes at least one entire taxable year.

(2) *What constitutes bona fide residence.* Though the period of bona fide foreign residence must be continuous and uninterrupted, once bona fide residence in a foreign country or countries has been established, temporary visits to the United States or elsewhere on vacation or business trips will not necessarily deprive the citizen of his status as a bona fide resident of a foreign country. Whether the individual citizen of the United States is a bona fide resident of a foreign country shall be determined by the application, to the extent feasible, of the principles of section 871 and the regulations thereunder, relating to what constitutes residence or nonresidence, as the case may be, in the United States in the case of an alien individual.

(3) *Test of bona fide residence.* If an individual who has earned income from sources within a foreign country makes a statement to the authorities of that country that he is not a resident of that country, and such individual is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earned income, such statement shall be conclusive evidence with respect to such earned income that such individual is not a bona fide resident of that country for purposes of this paragraph. If an individual has made such a statement of nonresidence to the authorities of a foreign country and, as of any date a determination is being made for purposes of this paragraph, no adverse determination has been made by the authorities of the foreign country with respect to such individual's nonresidence status, such individual shall be considered to have been held not subject to the income tax of the foreign country for purposes of this paragraph.

(4) *Amount of exemption*—(i) *In general.* Subject to the limitations in paragraph (d) of this section, the amount excluded from the gross income of an individual who qualifies under this paragraph shall not (except as provided in subparagraph (5) of this paragraph) exceed an amount which shall be computed on a daily basis at an annual rate of (a) \$20,000, or (b) \$35,000 with respect to taxable years (or a portion of a taxable year) occurring immediately after such individual has been a bona fide foreign resident of a foreign country or countries for an uninterrupted period of 36 consecutive months.

(ii) *Rules of application*—(a) *Number of days.* The amount excludable under this paragraph accrues on a daily basis throughout the taxable year. The number of days to be used in making the computation under subdivision (i) of this subparagraph on a daily basis shall be the number of days in the taxable year with respect to which the exclusion is claimed.

(b) *Treatment of prior residence.* For purposes of determining whether an individual is entitled to the annual rate of exclusion of \$35,000 under subdivision (i) (b) of this subparagraph with respect to a taxable year ending after September 4, 1962, the period of bona fide residence in a foreign country or countries may include a period prior to the beginning of such taxable year, even though the tax for such prior period is computed under the rules set forth in § 1.911-1.

(c) *Interruption of residence.* An individual who interrupts his foreign residence shall be entitled, upon resuming bona fide foreign residence, only to the benefits of the annual rate of exclusion of \$20,000 under subdivision (i) (a) of this subparagraph until such individual has been a bona fide foreign resident of a foreign country or countries for another uninterrupted period of 36 consecutive months.

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

Example (1). A, a United States citizen who files his returns for the calendar year using a cash receipts and disbursements method of accounting, is unmarried, privately employed, and a bona fide resident of France for the period April 1, 1963, through December 31, 1964, and a bona fide resident of Germany for the period January 1, 1965, through June 30, 1968. A is compensated at a rate of \$50,000 per year and he receives such amount as current compensation in the year in which the services to which the amount is attributable are performed. A receives no compensation in the form of the right to use property or facilities. The amounts excludable under this paragraph from A's gross income for services performed after December 31, 1962, for the various calendar years may be computed as follows: For the year 1963, \$15,068.49 ($275/365 \times \$20,000$); for the year 1964, \$20,000 ($366/366 \times \$20,000$); for the year 1965, \$20,000 ($365/365 \times \$20,000$); for the year 1966, \$31,301.37 ($90/365 \times \$20,000$ plus $275/365 \times \$35,000$); for the year 1967, \$35,000 ($365/365 \times \$35,000$); and, for the year 1968, \$17,404.37 ($182/366 \times \$35,000$).

Example (2). The facts are the same as in example (1), except that A is a bona fide resident of France for the period January 1, 1959, through December 31, 1963. The amount excludable under this paragraph

from A's gross income for services performed after December 31, 1962, for the calendar year 1963 is \$35,000 ($365/365 \times \$35,000$).

Example (3). The facts are the same as in example (1), except that A is a bona fide resident of France for the period July 1, 1960, through December 31, 1964. The amounts excludable under this paragraph from A's gross income for services performed after December 31, 1962, for the calendar years 1963 and 1964 may be computed as follows: For the year 1963, \$27,561.65 ($181/365 \times \$20,000$ plus $184/365 \times \$35,000$); for the year 1964, \$35,000 ($366/366 \times \$35,000$).

Example (4). The facts are the same as in example (1), and on July 1, 1968, A interrupts his foreign residence. On March 31, 1971, A takes private employment in Germany and becomes a bona fide resident of Germany through December 31, 1975. A is compensated at a rate of \$50,000 per year and he receives such amount as current compensation in the year in which the services to which the amount is attributable are performed. A receives no compensation in the form of the right to use property or facilities. The amounts excludable under this paragraph from A's gross income for the calendar years 1971 through 1975 may be computed as follows: For the year 1971, \$15,068.49 ($275/365 \times \$20,000$); for the year 1972, \$20,000 ($366/366 \times \$20,000$); for the year 1973, \$20,000 ($365/365 \times \$20,000$); for the year 1974, \$31,301.37 ($90/365 \times \$20,000$ plus $275/365 \times \$35,000$); for the year 1975, \$35,000 ($365/365 \times \$35,000$).

(5) *Treatment of certain noncash remuneration.* (i) If an individual who qualifies under this paragraph receives earned income from sources without the United States (except from the United States or any agency thereof) in the form of the right to use property or facilities, the amount of exemption under subparagraph (4) (i) of this paragraph with respect to such individual (a) for a taxable year ending in 1963, shall be increased by an amount equal to the amount of such earned income so received during such taxable year, (b) for a taxable year ending in 1964, shall be increased by an amount equal to two-thirds of the amount of such earned income so received during such taxable year, and (c) for a taxable year ending in 1965, shall be increased by an amount equal to one-third of such earned income so received during such taxable year. The amount of such earned income taken into account under this subparagraph shall be the fair market value of the right to use such property or facilities.

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

Example (1). B, a United States citizen who files his returns for the calendar year using a cash receipts and disbursements method of accounting, is unmarried, privately employed, qualifies under the provisions of this paragraph, and becomes a bona fide resident of France on December 31, 1962. B is compensated at a rate of \$40,000 per year and he receives such amount as current compensation in the year in which the services to which the amount is attributable are performed. During his taxable years ending December 31, 1963, 1964, 1965, and 1966, B also receives earned income in the form of the right to use a residence, such use having a fair market value of \$6,000 per year. Under the provisions of this subparagraph, the applicable amount of B's exemption under subparagraph (4) (i) of this

paragraph is increased in the following amounts:

Taxable year ending:	Amount
December 31, 1963.....	\$6,000
December 31, 1964.....	4,000
December 31, 1965.....	2,000
December 31, 1966.....	0

Accordingly, B may exclude \$26,000 from his gross income for his taxable year 1963, \$24,000 for his taxable year 1964, \$22,000 for his taxable year 1965, and \$35,000 for his taxable year 1966.

Example (2). The facts are the same as in example (1), except that B interrupts his foreign residence on July 1, 1965. B is entitled to increase the applicable amount of exemption under subparagraph (4)(i) of this paragraph for his taxable year ending December 31, 1965, in an amount limited to \$991.78 ($181/365 \times \$2,000$). Thus, the amount excludable under this paragraph from B's gross income for services performed after December 31, 1962, for his taxable year ending December 31, 1965, is \$10,909.59 ($181/365 \times \$2,000$ plus $181/365 \times \$20,000$).

(b) Presence in a foreign country—(1) Qualifications for exemption. Subject to the limitations in paragraph (d) of this section and subparagraph (2) of this paragraph, amounts constituting earned income as defined in paragraph (c) of this section shall be excluded from gross income in the case of an individual citizen of the United States who during any period of 18 consecutive months is present in a foreign country or countries during a total of at least 510 full days, if such amounts are (i) from sources without the United States, (ii) attributable to such period, and (iii) not paid by the United States or any agency or instrumentality thereof. For purposes of determining the right to the exclusion under this paragraph for a taxable year ending after September 4, 1962, the period of presence in a foreign country may include a period prior to the beginning of such taxable year, even though the tax for such prior period is computed under the rules set forth in § 1.911-1.

(2) Amount of exemption. (i) Subject to the limitations in paragraph (d) of this section, the amount excluded from the gross income of an individual who qualifies under this paragraph shall not exceed an amount which shall be computed on a daily basis at an annual rate of \$20,000 if the 18-month period includes the entire taxable year. If the 18-month period does not include the entire taxable year, the amount excluded from gross income under this paragraph for such taxable year shall not exceed an amount which bears the same ratio to \$20,000 as the number of days in the part of the taxable year within the 18-month period bears to the total number of days in such year.

(ii) The application of subdivision (i) of this subparagraph may be illustrated by the following example:

Example. A, a United States citizen who files his returns for the calendar year using a cash receipts and disbursements method of accounting, is unmarried, privately employed, and physically present in France from January 1, 1963, through June 30, 1964. A is compensated at a rate of \$25,000 per year and he receives such amount as current compensation in the year in which the services to which the amount is attributable are

performed. The amount excludable under this paragraph from A's gross income for services performed after December 31, 1962, for the calendar years 1963 and 1964 may be computed as follows: For the year 1963, \$20,000 because the 18-month period includes his entire taxable year 1963. For the year 1964, \$11,967.21, since only 219 days of his taxable year 1964 are included within such an 18-month period. The number of days (219) is determined by treating the first day of the 18-month period as coinciding with

the first day of the 510-day period. The first day of the 510-day period ending June 30, 1964 (the last full day A was present in France), was February 7, 1963. Commencing with February 7, 1963, the 18-month period ends August 6, 1964. The number of days in that part of 1964 falling within the 18-month period is, therefore, 219 (January 1, 1964, through August 6, 1964). The amount excludable from A's gross income in 1964 (\$11,967.21) is computed on the basis of the following formula:

$$\frac{\text{Number of days in that part of the taxable year falling within the 18-month period}}{\text{Number of days in the taxable year}} \times \$20,000 \text{ (Maximum amount excludable for the entire taxable year under this paragraph)} = \frac{219}{366} \times \$20,000$$

(3) Determination of 18-month period and application of 510-day rule. For rules governing the determination of an 18-month period, the definition of a "full day", and illustrations of the application of the 510-day rule, see paragraph (b) (8), (9), (10), and (11) of § 1.911-1.

(c) Definition of earned income—

(1) In general. For purposes of this section, the term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings and profits rather than a reasonable allowance for personal services actually rendered.

(2) Earned income and employed assistants. The entire amount received as professional fees shall be treated as earned income if the taxpayer is engaged in a professional occupation, such as a doctor or a lawyer, even though he employs assistants to perform part or all of the services, provided the patients or clients are those of the taxpayer and look to the taxpayer as the person responsible for the services performed.

(3) Earned income from business in which capital is material. In the case of a taxpayer engaged in a trade or business (other than in corporate form) in which both personal services and capital are material income-producing factors, a reasonable allowance as compensation for the personal services actually rendered by the taxpayer shall be considered earned income, but the total amount which shall be treated as the earned income of the taxpayer from such a trade or business shall, in no case, exceed 30 percent of his share of the net profits of such trade or business.

(4) Source of income and place of receipt. An amount constituting earned income which is derived from sources without the United States shall not be included in gross income solely because it is received within the United States, since the place of receipt is immaterial in determining whether any items shall be excluded from gross income under the provisions of paragraph (a) or (b) of this section. No amounts received for services performed within the United States shall be excluded from gross income under such paragraphs. For the allocation or segregation as between sources within, and sources without, the United States in the case of compensa-

tion for labor or personal services, see sections 861, 862, 863, and 864 and the regulations thereunder.

(d) Special rules—(1) Attribution to year in which services are performed.

(i) For purposes of applying paragraphs (a) (4) and (b) (2) of this section, amounts received (whether received before, during, or after the taxable year in which the services to which the amounts are attributable are performed) by an individual shall be considered received in his taxable year in which the services to which the amounts are attributable are performed by such individual.

(ii) The rule of subdivision (i) of this subparagraph applies only to determine the total amounts attributable to any one year for the purpose of determining the amount of the exclusion under paragraph (a) (4) or (b) (2) of this section and does not affect the time of reporting of any amounts which are includible in the individual's gross income.

(iii) Amounts received by an individual shall not, for purposes of subdivision (i) of this subparagraph, be attributed to any year in which the services performed by such individual are insubstantial in nature; thus, for example, amounts received by an individual under an arrangement which provides for future payments as additional compensation for current services and provides that during the future years the individual shall refrain from competitive activities and be available for consultation and advice shall not be attributed to a future year unless the consultative and advisory services actually rendered during such future year are substantial in nature.

(2) Requirement as to time of receipt. No amount received by an individual after the close of his taxable year following his taxable year in which the services to which the amount is attributable are performed may be excluded from his gross income under paragraph (a) or (b) of this section. Thus, an amount received by an individual is attributed under subparagraph (1) of this paragraph to his taxable year in which the services to which the amount is attributable are performed, but if such amount is received after the close of his taxable year following his taxable year in which the services to which the amount is attributable are performed, such amount may not be excluded from his gross income under paragraph (a) or (b) of this section.

(3) *Illustration.* The application of this paragraph may be illustrated by the following examples:

Example (1). A, a United States citizen who files his returns for the calendar year using a cash receipts and disbursements method of accounting, is privately employed and a bona fide resident of France for his entire taxable year 1963. For services performed during 1963, A receives a salary of \$16,000 during 1963, and supplementary salary payments of \$3,000 in each of the years 1964 and 1965. Under the provisions of subparagraph (1) of this paragraph, the supplementary payments of \$3,000 are attributed to A's taxable year 1963. However, under the provisions of subparagraph (2) of this paragraph, the amount received by A in 1965 may not be excluded from his gross income under paragraph (a) or (b) of this section. Thus, A may exclude \$19,000 from his gross income, \$16,000 for his taxable year 1963 and \$3,000 for his taxable year 1964.

Example (2). The facts are the same as in example (1), except that A is physically present in France for 510 days of an 18-month period which includes his entire taxable year 1963. The result is the same as in example (1).

(4) *Treatment of community income.*

(i) For purposes of applying paragraphs (a) (4) and (b) (2) of this section with respect to amounts received for services performed by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount excludable under paragraph (a) or (b) of this section from the gross income of such husband or wife shall equal the amount which would be excludable if such amounts did not constitute such community income. Thus, the amount excludable under paragraph (a) or (b) of this section from the gross income of such husband or wife shall be neither increased nor decreased by operation of community property law.

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

Example (1). H, a United States citizen who files his returns for the calendar year using a cash receipts and disbursements method of accounting, is privately employed and a bona fide resident of Scotland for his entire taxable year 1963. H has been abroad for less than 3 consecutive years. H receives \$40,000 during his taxable year 1963 for services performed abroad during such taxable year. W, the wife of H and a United States citizen, earns no income of her own and continues to live in a community property State in the United States. H and W's marital domicile also continues in such State; H and W file a joint income tax return. The aggregate amount excludable by H and W from their gross income under paragraph (a) of this section is \$20,000. Moreover, if H and W file separate returns, the aggregate amount excludable from their gross income under paragraph (a) of this section is \$20,000.

Example (2). The facts are the same as in example (1), except that W also resides in Scotland and receives \$5,000 which does not constitute earned income within the meaning of paragraph (c) of this section. Whether H and W file their income tax returns separately or jointly, the aggregate amount excludable from their gross income under paragraph (a) of this section is \$20,000.

Example (3). The facts are the same as in example (2), except that W receives \$10,000 during her taxable year 1963 for services performed in a private employment

abroad during such taxable year. Whether H and W file their income tax returns separately or jointly, the aggregate amount excludable from their gross income under paragraph (a) of this section is \$30,000.

Example (4). The facts are the same as in example (3), except that H and W are domiciled in a noncommunity property jurisdiction. Whether H and W file their income tax returns separately or jointly, the aggregate amount excludable from their gross income under paragraph (a) of this section is \$30,000.

Example (5). H, a United States citizen who files his returns for the calendar year using a cash receipts and disbursements method of accounting is privately employed and a bona fide resident of Scotland for his entire taxable year 1963. H receives \$50,000 during his taxable year 1963 for services performed abroad during such taxable year. W, the wife of H, is a nonresident alien who has never been present in the United States and earns no income of her own. H and W's marital domicile is in a community property jurisdiction. One-half of H's earnings (\$25,000) belong to W under community property laws and W is exempt from tax on such amount because it is income from sources without the United States. The division of income, however, also divides the exemption provided under paragraph (a) of this section. Thus, the amount excludable by H from his gross income under paragraph (a) of this section is limited to \$10,000; the remaining \$15,000 is includible in H's gross income.

(5) *Certain amounts not excludable.* No amount—

(i) Received by an individual as a pension or annuity, or

(ii) Included by an individual in his gross income by reason of section 402(b) (relating to taxability of beneficiary of non-exempt trust), section 403(c) (relating to taxability of beneficiary under a nonqualified annuity), or section 403(d) (relating to taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations or public schools),

may be excluded from the gross income of such individual under paragraph (a) or (b) of this section.

(6) *Treatment of deductions.* In any case in which any amount is excluded from the gross income of an individual under paragraph (a) or (b) of this section, there shall be disallowed as a deduction any expenses, losses, or other items otherwise deductible (other than those allowed by section 151, relating to personal exemptions), properly allocable to or chargeable against the amount so excluded from gross income. If the earned income excludable under paragraph (a) or (b) of this section (determined without regard to the applicable \$20,000 or \$35,000 limitation) exceeds the earned income excludable under paragraph (a) or (b) of this section, the amount disallowed as a deduction shall be limited to an amount which bears the same ratio to the total of such items properly allocable to or chargeable against such earned income so excludable (determined without regard to the applicable \$20,000 or \$35,000 limitation) as the amount excluded from gross income under paragraph (a) or (b) of this section bears to such earned income (determined without regard to the applicable \$20,000 or \$35,000 limita-

tion). However, deductions which are not properly allocable to or chargeable against earned income excluded under paragraph (a) or (b) of this section are deductible in their entirety (subject to specific statutory limitations relating to such items). Examples of such items include personal and family medical expenses, real estate taxes on a personal residence, interest on mortgage on personal residence, and charitable deductions.

(c) *Returns and declarations of estimated tax.*—(1) *Returns.* Any return filed before the completion of the period necessary to qualify a citizen for the exemption under paragraph (a) or (b) of this section shall be filed without regard to the exemption provided by such paragraph, but claim for credit or refund of any overpayment of tax may be filed if the taxpayer subsequently qualifies for the exemption under such paragraph. A taxpayer desiring an extension of time (in addition to the automatic extension of time granted by § 1.6081-2) for filing the return until after the completion of the qualifying period under paragraph (a) or (b) of this section shall make application therefor on Form 2350, Application for Extension of Time for Filing U.S. Income Tax Return. Such application shall be filed with the internal revenue officer (Director, Office of International Operations, Internal Revenue Service, Washington 25, D.C., or the district director) with whom the return is required to be filed. The application shall set forth the facts relied upon to justify the extension of time requested and include a statement as to the earliest date the taxpayer expects to be in a position to determine whether he will be entitled to the exclusion provided by paragraph (a) or (b) of this section. An extension of time may be granted for more than 6 months in the case of taxpayers who are abroad. See section 6081 and § 1.6081-1. See section 6012(c) and paragraph (a) (3) of § 1.6012-1, relating to the returns to be filed and the information to be furnished by individuals who qualify for exemption under section 911.

(2) *Declaration of estimated tax.* In estimating his gross income for the purpose of making a declaration of estimated tax for any taxable year, a citizen of the United States is not required to take into account income which he believes will be excluded from gross income under the provisions of paragraph (a) or (b) of this section. However, if the actual amount of the exclusion is less than the amount anticipated, the citizen may be subject to an addition to tax under the provisions of section 6654 and the regulations thereunder.

(f) *Definition of "foreign country".* The term "foreign country" means territory under the sovereignty of a government other than that of the United States and includes the air space over such territory. It does not include a possession or territory of the United States.

(g) *Applicability of section.* (1) The rules contained in this section apply to taxable years ending after September 4, 1962, but only with respect to amounts—

(i) Received after March 12, 1962, which are attributable to services performed after December 31, 1962, or

(ii) Received after December 31, 1962, which are attributable to services performed on or before December 31, 1962, unless on March 12, 1962, there existed a right (whether forfeitable or nonforfeitable) to receive such amounts.

(2) *Rule of application.* See paragraph (c) (2) and (4) of § 1.911-1 for a statement and illustration of the rules governing the determination of the existence of a right referred to in subparagraph (1) (ii) of this paragraph.

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

Example. A, a United States citizen who files his returns for the calendar year using a cash receipts and disbursements method of accounting, is privately employed and a bona fide resident of Belgium for the entire period January 1, 1962, through December 31, 1963. A's salary is \$18,000 per year and the entire amount is received in the year it is earned. In addition, on June 1, 1963, A receives a supplementary salary payment of \$5,000 attributable to services performed during 1962, but with respect to which A had no right in existence on March 12, 1962. Under the provisions of subparagraph (1) (ii) of this paragraph, the supplementary salary is subject to the rules contained in this section. Under paragraph (d) (1) of this section, the supplementary salary payment is considered received by A in 1962. Under paragraph (a) (4) of this section, that portion of the amount received by A which, subject to the limitations of paragraph (d) of this section, when added to other qualifying amounts received by A during the taxable year 1962, does not exceed an amount computed on a daily basis at an annual rate of \$20,000 shall be excludable from A's gross income. Since A received \$18,000 of excludable amounts during his taxable year 1962, \$2,000 of the supplementary salary payment is excludable from his gross income under paragraph (a) of this section and the remaining \$3,000 is includible in his gross income.

[F.R. Doc. 63-7451; Filed, July 15, 1963; 8:52 a.m.]

SUBCHAPTER B—ESTATE AND GIFT TAXES

[T.D. 6666]

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

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Estate and Gift Tax Regulations; Deduction for Certain State Death Taxes on Charitable Transfers

On May 23, 1963, notice of proposed rule making to conform the Estate Tax Regulations (26 CFR Part 20) and the Gift Tax Regulations (26 CFR Part 25) to the Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat. 809), and to make a clarifying change in the Estate Tax Regulations relating to the deduction for certain State death taxes on charitable transfers, was published in the FEDERAL REGISTER (28 F.R. 5157). No objection to the rules proposed was received during the 30-day period prescribed in the notice. The amendments

of the regulations as proposed are hereby adopted.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] **BERTRAND M. HARDING,**
Acting Commissioner of
Internal Revenue.

Approved: July 9, 1963.

STANLEY S. SURREY,
Assistant Secretary of the
Treasury.

In order to conform the Estate Tax Regulations (26 CFR Part 20) and the Gift Tax Regulations (26 CFR Part 25) to the Self-Employed Individuals Tax Retirement Act of 1962 (76 Stat. 809) and to make a clarifying change in the Estate Tax Regulations relating to the deduction for certain State death taxes on charitable transfers, such regulations are amended as follows:

PARAGRAPH 1. Section 20.2039 is amended by revising section 2039(c) and the historical note to read as follows:

§ 20.2039 Statutory provisions; annuities.

Sec. 2039. Annuities * * *

(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 employees' trust (or under a contract purchased by an employees' 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);

(2) A retirement annuity contract purchased by an employer (and not by an employees' 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, was a plan described in section 403(a); or

(3) A retirement annuity contract purchased for an employee by an employer which is an organization referred to in section 503(b) (1), (2), or (3), and which is exempt from tax under section 501(a).

If such amounts payable after the death of the decedent under a plan described in paragraph (1) or (2) or under a contract described in paragraph (3) 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 paragraph (1) or (2) shall not be considered to be contributed by the decedent, and contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in paragraph (3) shall, to the extent excludable from gross income under section 403(b), not be considered to be contributed by the decedent. This subsection shall apply to all decedents dying after December 31, 1953. For purposes of this subsection, contributions or payments on behalf of the decedent while he was an employee within the meaning of section 401(c) (1) made under a trust or plan described in paragraph (1) or (2)

shall be considered to be contributions or payments made by the decedent.

[Sec. 2039 as amended by secs. 23(e), 67(a), Technical Amendments Act 1958 (72 Stat. 1622, 1658); sec. 7 (1), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 830)]

PAR. 2. Paragraphs (b) (2) and (c) (1) of § 20.2039-2 are amended to read as follows:

§ 20.2039-2 Annuities under "qualified plans" and section 403(b) annuity contracts.

(b) *Plans and annuity contracts to which section 2039(c) applies.* * * *

(2) A retirement annuity contract purchased by an employer (and not by an employees' 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, was a plan described in section 403(a); or

(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) on the employee's account to the plan or towards the purchase of the annuity contract bears to the total contributions on the employee's account to the plan or towards the purchase of the annuity contract. In applying the ratio set forth in the preceding sentence, payments or contributions made by the employer (or on its behalf) toward the purchase of an annuity contract described in paragraph (b) (3) of this section shall be considered to include only such payments or contributions as are, or were, excludable from the employee's gross income under section 403(b). For purposes of this ratio, contributions or payments made under a plan described in subparagraph (1) or (2) of paragraph (b) of this section on behalf of the decedent while he was an employee within the meaning of section 401(c) (1) with respect to such plan shall be considered to be contributions or payments made by the decedent and not by the employer. Furthermore, 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.

PAR. 3. Paragraph (b) (2) of § 20.2053-9 is amended by inserting "transfer" in lieu of "bequest" and, as so amended, reads as follows:

§ 20.2053-9 Deduction for certain State death taxes.

(b) *Condition for allowance of 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.,