

with respect to such interest and irrevocably elected the form of benefit payable under the plan or IRA (including the form of any survivor benefits) with respect to such interest before January 1, 1983.

(c) Similarly, the TRA of 1984 provides that the repeal of the estate tax exclusion for the value of a decedent's interest in a plan or IRA will not apply to the estate of a decedent dying after December 31, 1984, to the extent that the decedent-participant was in pay status on December 31, 1984, with respect to such interest and irrevocably elected the form of benefit payable under the plan or IRA (including the form of any survivor benefits) with respect to such interest before July 18, 1984.

Q-2: What is the meaning of "in pay status" on the applicable date?

A-2: A participant was in pay status on the applicable date with respect to a portion of his or her interest in a plan or IRA if such portion is to be paid in a benefit form that has been elected on or before such date and the participant has received, on or before such date, at least one payment under such benefit form.

Q-3: What is required for an election of the form of benefit payable under the plan to have been irrevocable as of any applicable date?

A-3: As of any applicable date, an election of the form of benefit payable under a plan is irrevocable if, as of such date, it was a written irrevocable election that, with respect to all payments to be received after such date, specified the form of distribution (e.g., lump sum, level dollar annuity, formula annuity) and the period over which the distribution would be made (e.g., single life, joint and survivor, term certain). An election is not irrevocable as of any applicable date if, on or after such date, the form or period of the distribution could be determined or altered by any person or persons. An election does not fail to be irrevocable as of an applicable date merely because the beneficiaries were not designated as of such date or could be changed after such date. If any interest in any IRA may not, by law or contract, be subject to an irrevocable election described in this section, any election of

the form of benefit payable under the IRA does not satisfy the requirement that an irrevocable election have been made.

[T.D. 8073, 51 FR 4335, Feb. 4, 1986]

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

(a) *Section 2039(c) exclusion.* In general, in the case of a decedent dying after December 31, 1953, the value of an annuity or other payment receivable under a plan or annuity contract described in paragraph (b) of this section is excluded from the decedent's gross estate to the extent provided in paragraph (c) of this section. In the case of a plan described in paragraph (b) (1) or (2) of this section (a "qualified plan"), the exclusion is subject to the limitation described in § 20.2039-3 (relating to lump sum distributions paid with respect to a decedent dying after December 31, 1976, and before January 1, 1979) or § 20.2039-4 (relating to lump sum distributions paid with respect to a decedent dying after December 31, 1978).

(b) *Plans and annuity contracts 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 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 the earlier termination of the plan, 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 the earlier termination of the plan, was a plan described in section 403(a);

(3) In the case of a decedent dying after December 31, 1957, a retirement annuity contract purchased for an employee by an employer which, for its

§ 20.2039-2

26 CFR Ch. I (4-1-10 Edition)

taxable year in which the purchase occurred, is an organization referred to in section 170(b)(1)(A) (ii) or (iv) or which is a religious organization (other than a trust) and is exempt from tax under section 501(a);

(4) In the case of a decedent dying after December 31, 1965, an annuity under Chapter 73 of Title 10 of the United States Code (10 U.S.C. 1431, *et seq.*); or

(5) In the case of a decedent dying after December 31, 1962, a bond purchase plan described in section 405.

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 includable 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 retirement at age 60, receive a distribution of the entire amount credited to the account. If the employee should die before reaching retirement age, the amount credited to the account would be distributed to the employee’s 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 payment to the designated beneficiary is receivable under a qualified profit-sharing plan, the provisions of section 2039(c) apply. However, if the payment is a lump sum distribution to which § 20.2039-3 or § 20.2039-4 applies, the payment is excludable from the decedent’s gross estate only as provided in such section.

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 retirement at age 65, with an annuity of \$100 per month for life, and was to provide the employee’s 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 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 the designated beneficiary in lieu of the annuity. 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 payment to the designated beneficiary is receivable under a qualified pension plan, the provisions of section 2039(c) apply. However, if the payment is a lump sum distribution to which § 20.2039-3 or § 20.2039-4 applies, the payment is excludable from the decedent’s gross estate only as provided in such section. It should be noted that for purposes of the exclusion under section 2039(c) it is immaterial whether or not the payment constitutes the proceeds of life insurance under the principles set forth in § 20.2039-1(d).

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.

Example (5). An employer purchased a retirement annuity contract for an employee 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. The employer, for its taxable year in which the annuity contract was purchased, was an organization referred to in section 170(b)(1)(ii), and was exempt from tax under section 501(a). The entire amount of the purchase price of the annuity contract was excluded from the employee's gross income under section 403(b). No part of the value of the survivor annuity payable after the employee's death is includible in the decedent's gross estate by reason of the provisions of section 2039(c).

(c) *Amounts 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 an annuity or other payment receivable by the beneficiary as the employer's contribution (or a contribution made on the employer's 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 this ratio—

(i) Payments or contributions made by or on behalf of the employer towards the purchase of an annuity contract described in paragraph (b)(3) of this section are considered to include only such payments or contributions as are, or were, excludable from the employee's gross income under section 403(b).

(ii) In the case of a decedent dying before January 1, 1977, payments or contributions made under a plan described in paragraph (b) (1), (2) or (5) of this section on behalf of the decedent for a period for which the decedent was self-employed, within the meaning of section 401(c)(1), with respect to the plan are considered payments or contributions made by the decedent and not by the employer.

(iii) In the case of a decedent dying after December 31, 1976, however, payments or contributions made under a plan described in paragraph (b) (1), (2) or (5) of this section on behalf of the decedent for a period for which the decedent was self-employed, within the meaning of section 401(c)(1), with respect to the plan are considered payments or contributions made by the employer to the extent the payments or contributions are, or were, deductible under section 404 or 405(c). Contributions or payments attributable to that period which are not, or were not, so deductible are considered made by the decedent.

(iv) In the case of a plan described in paragraph (b) (1) or (2) of this section, a rollover contribution described in section 402(a)(5), 403(a)(4), 409(d)(3)(A)(ii) or 409(b)(3)(C) is considered an amount contributed by the employer.

(v) In the case of an annuity contract described in paragraph (b)(3) of this section, a rollover contribution described in section 403(b)(8) is considered an amount contributed by the employer.

(vi) In the case of a plan described in paragraph (b) (1), (2) or (5) of this section, an amount includable in the gross income of an employee under section 1379(b) (relating to shareholder-employee beneficiaries under certain qualified plans) is considered an amount paid or contributed by the decedent.

(vii) Amounts payable under paragraph (b)(4) of this section are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by the decedent pursuant to section 1438 or 1452(d) of Title 10 of the United States Code.

(viii) The value at the decedent's death of the annuity or other payment is determined under the rules of §§ 20.2031-1 and 20.2031-7 or, for certain prior periods, § 20.2031-7A.

(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 payment 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 (\$30,000÷\$40,000×\$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.

(d) *Exclusion of certain annuity interests created by community property laws.*
(1) In the case of an employee on whose

behalf contributions or payments were made by his employer or former employer under an employees' trust forming part of a pension, stock bonus, or profit-sharing plan described in section 2039(c)(1), under an employee's retirement annuity contract described in section 2039(c)(2), or toward the purchase of an employee's retirement annuity contract described in section 2039(c)(3), which under section 2039(c) are not considered as contributed by the employee, if the spouse of such employee predeceases him, then, notwithstanding the provisions of section 2039 or of any other provision of law, there shall be excluded from the gross estate of such spouse the value of any interest of such spouse in such plan or trust or such contract, to the extent such interest—

(i) Is attributable to such contributions or payments, and

(ii) Arises solely by reason of such spouse's interest in community income under the community property laws of a State.

(2) Section 2039(d) and this paragraph do not provide any exclusion for such spouse's property interest in the plan, trust or contract to the extent it is attributable to the contributions of the employee spouse. Thus, the decedent's community property interest in the plan, trust, or contract which is attributable to contributions made by the employee spouse are includible in the decedent's gross estate. See paragraph (c) of this section.

(3) Section 2039(d) and this paragraph apply to the estate of a decedent who dies on or after October 27, 1972, and to the estate of a decedent who died before October 27, 1972, if the period for filing a claim for credit or refund of an overpayment of the estate tax ends on or after October 27, 1972. Interest will not be allowed or paid on any overpayment of tax resulting from the application of section 2039(d) and this paragraph for any period prior to April 26, 1973.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6526, 26 FR 416, Jan. 19, 1961; T.D. 7043, 35 FR 8480, June 2, 1970; T.D. 7416, 41 FR 14514, Apr. 6, 1976; T.D. 7428, 41 FR 34628, Aug. 16, 1976; T.D. 7562, 43 FR 38820, Aug. 31, 1978; T.D. 7761, 46 FR 7303, Jan. 23, 1981; T.D. 8540, 59 FR 30103, June 10, 1994]