

amount is excluded from B's gross estate under section 2039(e).

(2) On October 17, 1981, C contributes \$1,500 on C's own behalf to IRA B. Under § 1.408-2(b)(7)(ii), C's contribution will cause IRA B to be treated as being maintained by and on behalf of C ("IRA C") and C's making the contribution constitutes an election to which paragraph (c)(5) of this section applies. The balance in IRA C immediately before C's contribution is \$240,000. Accordingly, the amount with respect to which C made the election is \$240,000.

(3) C dies January 19, 1982. E, an individual, is the sole beneficiary under the plan, and the amounts payable to E (\$242,000) are payable as a qualifying annuity, within the meaning of paragraph (b) of this section.

(4) The rules described in section 2039(e) and this section are applied with respect to the gross estate of C without regard to whether amounts now payable under IRA C were or were not excluded from B's gross estate. Under paragraph (c) of this section, the amount not excluded from C's gross estate is the value of the qualifying annuity payable to E (\$242,000), multiplied by the fraction  $\frac{\$240,000}{\$240,000 + \$1,500}$ . Thus, the amount not excluded from C's gross estate is \$240,497.  $[(\$242,000) (\frac{\$240,000}{\$240,000 + \$1,500}) = \$240,497.]$  The amount excluded is therefore \$1,503  $(\$242,000 - \$240,497)$ .

*Example (4).* (1) F, an individual, establishes an individual retirement plan ("IRA F1") in 1977 and makes \$1,250 annual contributions for 1977, 1978, 1979 and 1980  $(4 \times \$1,250 = \$5,000)$ , each of which is deducted by F under section 219. In February 1980, F receives an \$85,000 distribution on account of the death of G, F's spouse, from the qualified plan of G's former employer, and rolls it over into IRA F1, under section 402(a)(7). Because IRA F1 includes a rollover contribution under section 402(a)(7), paragraph (c)(4) of this section applies. In 1981, F's entire interest in IRA F1, \$100,000, is paid to F and contributed to another individual retirement plan ("IRA F2") under section 408(d)(3)(A)(i). IRA F2 is a transferee plan to which paragraph (c)(6) of this section applies because of the rollover. F makes a \$1,500 deductible contribution to IRA F2 for 1981.

(2) F dies in 1984. The balance in IRA F2 (\$146,000) is payable to G, an individual, as a qualifying annuity, within the meaning of paragraph (b) of this section.

(3) Under paragraph (c) of this section, the amount *not* excluded from F's gross estate is the value of the qualifying annuity payable under IRA F2 multiplied by the fraction  $\frac{\$96,700}{\$96,700 + \$101,500}$ . Accordingly, the amount not excluded is \$139,096.  $[(\$146,000) (\frac{\$96,700}{\$96,700 + \$101,500}) = \$139,096.]$  The amount excluded is \$6,904  $(\$146,000 - \$139,096)$ .

(4) The numerator of the fraction  $(\frac{\$96,700}{\$96,700 + \$101,500})$  is determined by multiplying the amount rolled over from IRA F1 to IRA F2 (\$100,000)

by a fraction, the numerator of which is the amount of the rollover contribution to IRA F1 (\$85,000), and the denominator of which is the total contributions to IRA F1  $(\$85,000 + \$5,000 = \$90,000)$ .  $[(\$100,000) (\frac{\$85,000}{\$90,000}) = \$96,700.]$

(5) The denominator of the fraction (\$101,500) is the sum of the contributions to IRA F2 (the \$100,000 rollover contribution from IRA F1, and the \$1,500 annual contribution to IRA F2).

[T.D. 7761, 46 FR 7305, Jan. 23, 1981; 46 FR 17191, Mar. 18, 1981, as amended by T.D. 8540, 59 FR 30103, June 10, 1994]

**§ 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.

#### **§ 20.2041-1 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