

Internal Revenue Service, Treasury

§ 20.2036-1

to be accompanied by remittance of any additional amount of estate tax and interest determined to be due as a result of valuation of the qualified property based upon its fair market value. Elections that are made on or before August 30, 1980, that do not comply with this section as proposed on July 13, 1978 (43 FR 30070), and amended on December 21, 1978 (43 FR 59517), must be conformed to this final regulation by means of an amended return before the original estate tax return can be finally accepted by the Internal Revenue Service.

[T.D. 7710, 45 FR 50743, July 31, 1980, as amended by T.D. 7786, 46 FR 43037, Aug. 26, 1981]

§ 20.2033-1 Property in which the decedent had an interest.

(a) *In general.* The gross estate of a decedent who was a citizen or resident of the United States at the time of his death includes under section 2033 the value of all property, whether real or personal, tangible or intangible, and wherever situated, beneficially owned by the decedent at the time of his death. (For certain exceptions in the case of real property situated outside the United States, see paragraphs (a) and (c) of § 20.2031-1.) Real property is included whether it came into the possession and control of the executor or administrator or passed directly to heirs or devisees. Various statutory provisions which exempt bonds, notes, bills, and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation are generally not applicable to the estate tax, since such tax is an excise tax on the transfer of property at death and is not a tax on the property transferred.

(b) *Miscellaneous examples.* A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of that part of the lot which is not designed for the interment of the decedent and the members of his family. Property subject to homestead or other exemptions under local law is included in the gross estate. Notes or other claims held by the decedent are likewise included even though they are cancelled by the decedent's will. Interest and rents accrued

at the date of the decedent's death constitute a part of the gross estate. Similarly, dividends which are payable to the decedent or his estate by reason of the fact that on or before the date of the decedent's death he was a stockholder of record (but which have not been collected at death) constitute a part of the gross estate.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6684, 28 FR 11409, Oct. 24, 1963]

§ 20.2034-1 Dower or curtesy interests.

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

§ 20.2036-1 Transfers with retained life estate.

(a) *In general.* A decedent's gross estate includes under section 2036 the value of any interest in property transferred by the decedent after March 3, 1931, whether in trust or otherwise, except to the extent that the transfer was for an adequate and full consideration in money or money's worth (see § 20.2043-1), if the decedent retained or reserved—

(1) For his life;

(2) For any period not ascertainable without reference to his death (if the transfer was made after June 6, 1932); or

(3) For any period which does not in fact end before his death:

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

(ii) The right, either alone or in conjunction with any other person or persons, to designate the person or persons who shall possess or enjoy the transferred property or its income (except that, if the transfer was made before June 7, 1932, the right to designate

must be retained by or reserved to the decedent alone).

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

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

(ii) A decedent reserved the right to receive the income from transferred property after the death of another person who was in fact enjoying the income at the time of the decedent’s death. In such a case, the amount to be included in the decedent’s gross estate under this section does not include the value of the outstanding income interest of the other person. It may be noted that if the other person predeceased the decedent, the reservation by the decedent may be considered to be either for his life, or for a period which does not in fact end before his death.

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

(3) The phrase “right * * * to designate the person or persons who shall possess or enjoy the transferred property or the income therefrom” includes a reserved power to designate the person or persons to receive the income from the transferred property, or to possess or enjoy nonincome-producing property, during the decedent’s life or during any other period described in paragraph (a) of this section. With respect to such a power, it is immaterial (i) whether the power was exercisable alone or only in conjunction with another person or persons, whether or not having an adverse interest; (ii) in what

capacity the power was exercisable by the decedent or by another person or persons in conjunction with the decedent; and (iii) whether the exercise of the power was subject to a contingency beyond the decedent’s control which did not occur before his death (e.g., the death of another person during the decedent’s lifetime). The phrase, however, does not include a power over the transferred property itself which does not affect the enjoyment of the income received or earned during the decedent’s life. (See, however, section 2038 for the inclusion of property in the gross estate on account of such a power.) Nor does the phrase apply to a power held solely by a person other than the decedent. But, for example, if the decedent reserved the unrestricted power to remove or discharge a trustee at any time and appoint himself as trustee, the decedent is considered as having the powers of the trustee.

(c) *Retained or reserved interest—*(1) *Amount included in gross estate—*(i) *In general.* If the decedent retained or reserved an interest or right with respect to all of the property transferred by him, the amount to be included in his gross estate under section 2036 is the value of the entire property, less only the value of any outstanding income interest which is not subject to the decedent’s interest or right and which is actually being enjoyed by another person at the time of the decedent’s death. If the decedent retained or reserved an interest or right with respect to a part only of the property transferred by him, the amount to be included in his gross estate under section 2036 is only a corresponding proportion of the amount described in the preceding sentence. An interest or right is treated as having been retained or reserved if at the time of the transfer there was an understanding, express, or implied, that the interest or right would later be conferred.

(ii) *Examples.* The application of paragraph (c)(1)(i) of this section is illustrated in the following examples:

Example 1. [Reserved]

Example 2. D transferred D’s personal residence to D’s child (C), but retained the right to use the residence for a term of years. D dies during the term. At D’s death, the fair

market value of the personal residence is includible in D's gross estate under section 2036(a)(1) because D retained the right to use the residence for a period that did not in fact end before D's death.

(2) *Retained annuity, unitrust, and other income interests in trusts*—(i) *In general.* This paragraph (c)(2) applies to a grantor's retained use of an asset held in trust or a retained annuity, unitrust, or other interest in any trust (other than a trust constituting an employee benefit) including without limitation the following (collectively referred to in this paragraph (c)(2) as "trusts"): Certain charitable remainder trusts (collectively CRTs) such as a charitable remainder annuity trust (CRAT) within the meaning of section 664(d)(1), a charitable remainder unitrust (CRUT) within the meaning of section 664(d)(2) or (d)(3), and any charitable remainder trust that does not qualify under section 664(d), whether because the CRT was created prior to 1969, there was a defect in the drafting of the CRT, there was no intention to qualify the CRT for the charitable deduction, or otherwise; other trusts established by a grantor (collectively GRTs) such as a grantor retained annuity trust (GRAT) paying out a qualified annuity interest within the meaning of § 25.2702-3(b) of this chapter, a grantor retained unitrust (GRUT) paying out a qualified unitrust interest within the meaning of § 25.2702-3(c) of this chapter; and various other forms of grantor retained income trusts (GRITs) whether or not the grantor's retained interest is a qualified interest as defined in section 2702(b), including without limitation a qualified personal residence trust (QPRT) within the meaning of § 25.2702-5(c) of this chapter and a personal residence trust (PRT) within the meaning of § 25.2702-5(b) of this chapter. If a decedent transferred property into such a trust and retained or reserved the right to use such property, or the right to an annuity, unitrust, or other interest in such trust with respect to the property decedent so transferred for decedent's life, any period not ascertainable without reference to the decedent's death, or for a period that does not in fact end before the decedent's death, then the decedent's right to use the property or the retained an-

nuity, unitrust, or other interest (whether payable from income and/or principal) constitutes the retention of the possession or enjoyment of, or the right to the income from, the property for purposes of section 2036. The portion of the trust's corpus includible in the decedent's gross estate for Federal estate tax purposes is that portion of the trust corpus necessary to provide the decedent's retained use or retained annuity, unitrust, or other payment (without reducing or invading principal) as determined in accordance with § 20.2031-7 (or § 20.2031-7A, if applicable). The portion of the trust's corpus includible in the decedent's gross estate under section 2036, however, shall not exceed the fair market value of the trust's corpus at the decedent's date of death.

(ii) *Graduated retained interests.* [Reserved]

(iii) *Examples.* The application of paragraphs (c)(2)(i) and (c)(2)(ii) of this section are illustrated in the following examples:

Example 1. (i) Decedent (D) transferred \$100,000 to an inter vivos trust that qualifies as a CRAT under section 664(d)(1). The trust agreement provides for an annuity of \$7,500 to be paid each year to D for D's life, then to D's child (C) for C's life, with the remainder to be distributed upon the survivor's death to N, a charitable organization described in sections 170(c), 2055(a), and 2522(a). The annuity is payable to D or C, as the case may be, annually on each December 31st. D dies in September 2006, survived by C who was then age 40. On D's death, the value of the trust assets was \$300,000 and the section 7520 interest rate was 6 percent. D's executor does not elect to use the alternate valuation date.

(ii) The amount of corpus with respect to which D retained the right to the income, and thus the amount includible in D's gross estate under section 2036, is that amount of corpus necessary to yield the annual annuity payment to D (without reducing or invading principal). In this case, the formula for determining the amount of corpus necessary to yield the annual annuity payment to D is: $\text{annual annuity} / \text{section 7520 interest rate} = \text{amount includible under section 2036}$. The amount of corpus necessary to yield the annual annuity is $\$7,500 / .06 = \$125,000$. Therefore, \$125,000 is includible in D's gross estate under section 2036(a)(1). (The result would be the same if D had retained an interest in the CRAT for a term of years and had died during the term. The result also would be the same if D had irrevocably relinquished D's annuity interest less than 3 years prior to

D's death because of the application of section 2035.) If, instead, the trust agreement had provided that D could revoke C's annuity interest or change the identity of the charitable remainderman, see section 2038 with regard to the portion of the trust to be included in the gross estate on account of such a retained power to revoke. Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of this retained annuity. See § 20.2039-1(e).

Example 2. (i) D transferred \$100,000 to a GRAT in which D's annuity is a qualified interest described in section 2702(b). The trust agreement provides for an annuity of \$12,000 per year to be paid to D for a term of ten years or until D's earlier death. The annuity amount is payable in twelve equal installments at the end of each month. At the expiration of the term of years or on D's earlier death, the remainder is to be distributed to D's child (C). D dies prior to the expiration of the ten-year term. On the date of D's death, the value of the trust assets is \$300,000 and the section 7520 interest rate is 6 percent. D's executor does not elect to use the alternate valuation date.

(ii) The amount of corpus with respect to which D retained the right to the income, and thus the amount includible in D's gross estate under section 2036, is that amount of corpus necessary to yield the annual annuity payment to D (without reducing or invading principal). In this case, the formula for determining the amount of corpus necessary to yield the annual annuity payment to D is: annual annuity (adjusted for monthly payments) / section 7520 interest rate = amount includible under section 2036. The Table K adjustment factor for monthly annuity payments in this case is 1.0272. Thus, the amount of corpus necessary to yield the annual annuity is $(\$12,000 \times 1.0272) / .06 = \$205,440$. Therefore, \$205,440 is includible in D's gross estate under section 2036(a)(1). If, instead, the trust agreement had provided that the annuity was to be paid to D during D's life and to D's estate for the balance of the 10-year term if D died during that term, then the portion of trust corpus includible in D's gross estate would still be as calculated in this paragraph. It is not material whether payments are made to D's estate after D's death. Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of this retained annuity. See § 20.2039-1(e).

Example 3. (i) In 2000, D created a CRUT within the meaning of section 664(d)(2). The trust instrument directs the trustee to hold, invest, and reinvest the corpus of the trust and to pay to D for D's life, and then to D's child (C) for C's life, in equal quarterly installments payable at the end of each calendar quarter, an amount equal to 6 percent of the fair market value of the trust as val-

ued on December 15 of the prior taxable year of the trust. At the termination of the trust, the then-remaining corpus, together with any and all accrued income, is to be distributed to N, a charitable organization described in sections 170(c), 2055(a), and 2522(a). D dies in 2006, survived by C, who was then age 55. The value of the trust assets on D's death was \$300,000. D's executor does not elect to use the alternate valuation date and, as a result, D's executor does not choose to use the section 7520 interest rate for either of the two months prior to D's death.

(ii) The amount of the corpus with respect to which D retained the right to the income, and thus the amount includible in D's gross estate under section 2036(a)(1), is that amount of corpus necessary to yield the unitrust payments. In this case, such amount of corpus is determined by dividing the trust's equivalent income interest rate by the section 7520 rate (which was 6 percent at the time of D's death). The equivalent income interest rate is determined by dividing the trust's adjusted payout rate by the excess of 1 over the adjusted payout rate. Based on § 1.664-4(e)(3) of this chapter, the appropriate adjusted payout rate for the trust at D's death is 5.786 percent (6 percent $\times .964365$). Thus, the equivalent income interest rate is 6.141 percent (5.786 percent / (1 - 5.786 percent)). The ratio of the equivalent interest rate to the assumed interest rate under section 7520 is 102.35 percent (6.141 percent / 6 percent). Because this exceeds 100 percent, D's retained payout interest exceeds a full income interest in the trust, and D effectively retained the income from all the assets transferred to the trust. Accordingly, because D retained for life an interest at least equal to the right to all income from all the property transferred by D to the CRUT, the entire value of the corpus of the CRUT is includible in D's gross estate under section 2036(a)(1). (The result would be the same if D had retained, instead, an interest in the CRUT for a term of years and had died during the term.) Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of D's retained unitrust interest. See § 20.2039-1(e).

(iii) If, instead, D had retained the right to a unitrust amount having an adjusted payout for which the corresponding equivalent interest rate would have been less than the 6 percent assumed interest rate of section 7520, then a correspondingly reduced proportion of the trust corpus would be includible in D's gross estate under section 2036(a)(1). Alternatively, if the interest retained by D was instead only one-half of the 6 percent unitrust interest, then the amount included in D's estate would be the amount needed to produce a 3 percent unitrust interest. All of the results in this *Example 3* would be the same if the trust had been a GRUT instead of a CRUT.

Example 4. During life, D established a 15-year GRIT for the benefit of individuals who are not members of D's family within the meaning of section 2704(c)(2). D retained the right to receive all of the net income from the GRIT, payable annually, during the GRIT's term. D dies during the GRIT's term. D's executor does not elect to use the alternate valuation date. In this case, the GRIT's corpus is includible in D's gross estate under section 2036(a)(1) because D retained the right to receive all of the income from the GRIT for a period that did not in fact end before D's death. If, instead, D had retained the right to receive 60 percent of the GRIT's net income, then 60 percent of the GRIT's corpus would have been includible in D's gross estate under section 2036. Under the facts presented, section 2039 does not apply to include any amount in D's gross estate by reason of D's retained interest. See § 20.2039-1(e).

Example 5. In 2003, D transferred \$10X to a pooled income fund that conforms to Rev. Proc. 88-53, 1988-2 CB 712 (1988) in exchange for 1 unit in the fund. D is to receive all of the income from that 1 unit during D's life. Upon D's death, D's child (C), is to receive D's income interest for C's life. In 2008, D dies. D's executor does not elect to use the alternate valuation date. In this case, the fair market value of D's 1 unit in the pooled income fund is includible in D's gross estate under section 2036(a)(1) because D retained the right to receive all of the income from that unit for a period that did not in fact end before D's death. See § 601.601(d)(2)(ii)(b) of this chapter.

Example 6. D transferred D's personal residence to a trust that met the requirements of a qualified personal residence trust (QPRT) as set forth in § 25.2702-5(c) of this chapter. Pursuant to the terms of the QPRT, D retained the right to use the residence for 10 years or until D's prior death. D dies before the end of the term. D's executor does not elect to use the alternate valuation date. In this case, the fair market value of the QPRT's assets on the date of D's death are includible in D's gross estate under section 2036(a)(1) because D retained the right to use the residence for a period that did not in fact end before D's death.

(3) *Effective/applicability dates.* Paragraphs (a) and (c)(1)(i) of this section are applicable to the estates of decedents dying after August 16, 1954. Paragraphs (c)(1)(ii) and (c)(2) of this section apply to the estates of decedents dying on or after July 14, 2008.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6501, 25 FR 10869, Nov. 16, 1960; T.D. 9414, 73 FR 40177, July 14, 2008; 73 FR 44648, July 31, 2008]

§ 20.2037-1 Transfers taking effect at death.

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

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

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

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

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

(b) *Condition of survivorship.* As indicated in paragraph (a) of this section, the value of an interest in transferred property is not included in a decedent's gross estate under section 2037 unless possession or enjoyment of the property could, through ownership of such interest, have been obtained only by surviving the decedent. Thus, property is not included in the decedent's gross estate if, immediately before the decedent's death, possession or enjoyment of the property could have been obtained by any beneficiary either by surviving the decedent or through the occurrence of some other event such as the expiration of a term of years. However, if a consideration of the terms and circumstances of the transfer as a whole indicates that the "other event"