

paragraph (d) of this section. To illustrate: A donor, in contemplation of death, transferred property valued at \$106,000 to his son on January 1, 1955, and he and his wife consented that the gift should be considered as made one-half by him and one-half by her. The property was thereafter included in the donor's gross estate. Under the "first limitation", the amount of the gift tax of the donor paid with respect to the one-half of the gift considered as made by him is determined to be \$11,250, and the amount of the gift tax of his wife paid with respect to the one-half of the gift considered as made by her is determined to be \$1,200. Under the "second limitation", the amount of the estate tax attributable to the property is determined to be \$28,914. Therefore, the credit for gift tax allowed is \$12,450 (\$11,250 plus \$1,200).

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7238, 37 FR 28718, Dec. 29, 1972; T.D. 8522, 59 FR 9646, Mar. 1, 1994]

§ 20.2013-1 Credit for tax on prior transfers.

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

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

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

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

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

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

(1) 80 percent, if the transferor died within the third or fourth years preceding the present decedent's death;

(2) 40 percent, if the transferor died within the fifth or sixth years preceding the present decedent's death;

(3) 40 percent, if the transferor died within the seventh or eighth years preceding the present decedent's death; and

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

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

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

§ 20.2013-2 "First limitation".

(a) The amount of the Federal estate tax attributable to the transferred property in the transferor's estate is the "first limitation." Thus, the credit is limited to an amount, A, which bears the same ratio to B (the "transferor's adjusted Federal estate tax", computed as described in paragraph (b) of this section) as C (the value of the property

transferred (see § 20.2013-4)) bears to D (the “transferor’s adjusted taxable estate”, computed as described in paragraph (c) of this section). Stated algebraically, the “first limitation” (A) equals:

Value of transferred property (C) + “Transferor’s adjusted taxable estate” (D) × “Transferor’s adjusted Federal estate tax” (B).

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

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

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

(c)(1) For purposes of the ratio stated in paragraph (a) of this section, the “transferor’s adjusted taxable estate” referred to as factor “D” is the amount of the transferor’s taxable estate (or net estate) decreased by the amount of any “death taxes” paid with respect to his gross estate and increased by the amount of the exemption allowed in computing his taxable estate (or net estate). The amount of the transferor’s taxable estate (or net estate) is determined in accordance with the provisions of § 20.2051-1 in the case of a citizen or resident of the United States or of § 20.2106-1 in the case of a nonresident not a citizen of the United States (or the corresponding provisions of prior regulations). The term “death taxes” means the Federal estate tax plus all other estate, inheritance, legacy, succession, or similar death taxes imposed by, and paid to, any taxing authority, whether within or without the United States. However, only the net amount of such taxes paid is taken into consideration.

(2) The amount of the exemption depends upon the citizenship and residence of the transferor at the time of his death. Except in the case of a decedent described in section 2209 (relating

to certain residents of possessions of the United States who are considered nonresidents not citizens), if the decedent was a citizen or resident of the United States, the exemption is the \$60,000 authorized by section 2052 (or the corresponding provisions of prior law). If the decedent was a nonresident not a citizen of the United States, or is considered under section 2209 to have been such a nonresident, the exemption is the \$30,000 or \$2,000, as the case may be, authorized by section 2106(a)(3) (or the corresponding provisions of prior law), or such larger amount as is authorized by section 2106(a)(3)(B) or may have been allowed as an exemption pursuant to the prorated exemption provisions of an applicable death tax convention. See § 20.2052-1 and paragraph (a)(3) of § 20.2106-1.

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

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

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7296, 38 FR 34191, Dec. 12, 1973]

§ 20.2013-3 “Second limitation”.

(a) The amount of the Federal estate tax attributable to the transferred property in the present decedent’s estate is the “second limitation”. Thus, the credit is limited to the difference between—

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

(2) The net estate tax determined as provided in subparagraph (1) of this paragraph but computed by subtracting from the present decedent’s gross estate the value of the property transferred (see § 20.2013-4), and by making only the adjustment indicated