

under § 301.7101-1 of this chapter (Regulations on Procedure and Administration), or upon receipt by the fiduciary of notification of a determination that he is not liable for such tax or that a bond is not required, the fiduciary will be discharged from personal liability for any deficiency in the tax thereafter found to be due. If no such notification is received, the fiduciary is discharged at the end of such 6 months (or upon discharge of the executor, if later) from personal liability for any deficiency thereafter found to be due. The discharge of the fiduciary from personal liability under this section applies only to him in his personal capacity and to his personal assets. The discharge is not applicable to his liability as a fiduciary (such as a trustee) to the extent of the assets of the estate in his possession or control. Further, the discharge is not to operate as a release of any part of the gross estate from the lien for estate tax for any deficiency that may thereafter be determined to be due.

[T.D. 7238, 37 FR 28720, Dec. 29, 1972]

§ 20.2204-3 Special rules for estates of decedents dying after December 31, 1976; special lien under section 6324A.

For purposes of §§ 20.2204-1(b) and 20.2204-2(b), in the case of a decedent dying after December 31, 1976, if the executor elects a special lien in favor of the United States under section 6324A, relating to special lien for estate taxes deferred under sections 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981), such lien shall be treated as the furnishing of a bond with respect to the amount for which the time for payment has been extended under section 6166. If an election has been made under section 6324A, the executor may not thereafter substitute a bond pursuant to section 2204 in lieu of that lien. If a bond has been supplied under section 2204, however, the executor may, by filing a proper notice of election and agreement, substitute a lien under section 6324A for any part or all of such bond. See §§ 20.6324A-1 and 301.6324A-1 for rules relating to a special lien under section 6324A.

[T.D. 7941, 49 FR 4468, Feb. 7, 1984]

§ 20.2205-1 Reimbursement out of estate.

If any portion of the tax is paid by or collected out of that part of the estate passing to, or in the possession of, any person other than the duly qualified executor or administrator, that person may be entitled to reimbursement, either out of the undistributed estate or by contribution from other beneficiaries whose shares or interests in the estate would have been reduced had the tax been paid before distribution of the estate, or whose shares or interests are subject either to an equal or prior liability for the payment of taxes, debts, or other charges against the estate. For specific provisions giving the executor the right to reimbursement from life insurance beneficiaries and from recipients of property over which the decedent had a power of appointment, see sections 2206 and 2207. These provisions, however, are not designed to curtail the right of the district director to collect the tax from any person, or out of any property, liable for its payment. The district director cannot be required to apportion the tax among the persons liable nor to enforce any right of reimbursement or contribution.

§ 20.2206-1 Liability of life insurance beneficiaries.

With respect to the right of the district director to collect the tax without regard to the provisions of section 2206, see § 20.2205-1.

§ 20.2207-1 Liability of recipient of property over which decedent had power of appointment.

With respect to the right of the district director to collect the tax without regard to the provisions of section 2207, see § 20.2205-1.

§ 20.2207A-1 Right of recovery of estate taxes in the case of certain marital deduction property.

(a) *In general*—(1) *Right of recovery from person receiving the property.* If the gross estate includes the value of property that is includible by reason of section 2044 (relating to certain property in which the decedent had a qualifying income interest for life under sections 2056(b)(7) or 2523(f)), the estate of the

surviving spouse is entitled to recover from the *person receiving the property* (as defined in paragraph (d) of this section) the amount of Federal estate tax attributable to that property. The right of recovery arises when the Federal estate tax with respect to the property includible in the gross estate by reason of section 2044 is paid by the estate. There is no right of recovery from any person for the property received by that person for which a deduction was allowed from the gross estate if no tax is attributable to that property.

(2) *Failure to exercise right of recovery.* Failure of an estate to exercise a right of recovery under this section upon a transfer subject to section 2044 is treated as a transfer for Federal gift tax purposes of the unrecovered amounts from the persons who would benefit from the recovery to the persons from whom the recovery could have been obtained. See § 25.2511-1 of this chapter. The transfer is considered made when the right of recovery is no longer enforceable under applicable local law. A delay in the exercise of the right of recovery may be treated as an interest-free loan with appropriate gift tax consequences under section 7872 depending on the facts of the particular case.

(3) *Waiver of right of recovery.* The provisions of § 20.2207A-1(a)(2) do not apply to the extent that the surviving spouse's will provides that a recovery shall not be made or to the extent that the beneficiaries cannot otherwise compel recovery. Thus, e.g., if the surviving spouse gives the executor of the estate discretion to waive the right of recovery and the executor waives the right, no gift occurs under § 25.2511-1 of this chapter if the persons who would benefit from the recovery cannot compel the executor to exercise the right of recovery.

(b) *Amount of estate tax attributable to property includible under section 2044.* The amount of Federal estate tax attributable to property includible in the gross estate under section 2044 is the amount by which the total Federal estate tax (including penalties and interest attributable to the tax) under chapter 11 of the Internal Revenue Code that has been paid, exceeds the total Federal estate tax (including penalties

and interest attributable to the tax) under chapter 11 of the Internal Revenue Code that would have been paid if the value of the property includible in the gross estate by reason of section 2044 had not been so included.

(c) *Amount of estate tax attributable to a particular property.* An estate's right of recovery with respect to a particular property is an amount equal to the amount determined in paragraph (b) of this section multiplied by a fraction. The numerator of the fraction is the value for Federal estate tax purposes of the particular property included in the gross estate by reason of section 2044, less any deduction allowed with respect to the property. The denominator of the fraction is the total value of all properties included in the gross estate by reason of section 2044, less any deductions allowed with respect to those properties.

(d) *Person receiving the property.* If the property is in a trust at the time of the decedent's death, the *person receiving the property* is the trustee and any person who has received a distribution of the property prior to the expiration of the right of recovery if the property does not remain in trust. This paragraph (d) does not affect the right, if any, under local law, of any person with an interest in property to reimbursement or contribution from another person with an interest in the property.

(e) *Example.* The following example illustrates the application of paragraphs (a) through (d) of this section.

Example. D died in 1994. D's will created a trust funded with certain income producing assets included in D's gross estate at \$1,000,000. The trust provides that all the income is payable to D's wife, S, for life, remainder to be divided equally among their four children. In computing D's taxable estate, D's executor deducted, pursuant to section 2056(b)(7), \$1,000,000. Assume that S received no other property from D and that S died in 1996. Assume further that S made no section 2519 disposition of the property, that the property was included in S's gross estate at a value of \$1,080,000, and that S's will contained no provision regarding section 2207A(a). The tax attributable to the property is equal to the amount by which the total Federal estate tax (including penalties and interest) paid by S's estate exceeds the Federal estate tax (including penalties and interest) that would have been paid if S's

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gross estate had been reduced by \$1,080,000. That amount of tax may be recovered by S's estate from the trust. If, at the time S's estate seeks reimbursement, the trust has been distributed to the four children, S's estate is also entitled to recover the tax from the children.

[T.D. 8522, 59 FR 9654, Mar. 1, 1994]

§ 20.2207A-2 Effective date.

The provisions of § 20.2207A-1 are effective with respect to estates of decedents dying after March 1, 1994. With respect to estates of decedent dying on or before such date, the executor of the decedent's estate may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 20.2207A-1 (as well as project LR-211-76, 1984-1 C.B., page 598, see § 601.601(d)(2)(ii)(b) of this chapter), are considered a reasonable interpretation of the statutory provisions.

[T.D. 8522, 59 FR 9655, Mar. 1, 1994]

§ 20.2208-1 Certain residents of possessions considered citizens of the United States.

As used in this part, the term "citizen of the United States" is considered to include a decedent dying after September 2, 1958, who, at the time of his death, was domiciled in a possession of the United States and was a United States citizen, and who did not acquire his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The estate of such a decedent is, therefore, subject to the tax imposed by section 2001. See paragraph (a)(2) of § 20.0-1 and § 20.2209-1 for further information relating to the application of the Federal estate tax to the estates of decedents who were residents of possessions of the United States. The application of this section may be illustrated by the following example and the examples set forth in § 20.2209-1:

Example. A, a citizen of the United States by reason of his birth in the United States at San Francisco, established residence in Puerto Rico and acquired a Puerto Rican citizenship. A died on September 4, 1958, while a citizen and domiciliary of Puerto Rico. A's estate is, by reason of the provisions of section 2208, subject to the tax imposed by section 2001 inasmuch as his United States citizenship is based on birth in the

United States and is not based solely on being a citizen of a possession or solely on birth or residence in a possession.

[T.D. 6526, 26 FR 417, Jan. 19, 1961]

§ 20.2209-1 Certain residents of possessions considered nonresidents not citizens of the United States.

As used in this part, the term "nonresident not a citizen of the United States" is considered to include a decedent dying after September 14, 1960, who, at the time of his death, was domiciled in a possession of the United States and was a United States citizen, and who acquired his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The estate of such a decedent is, therefore, subject to the tax imposed by section 2101 which is the tax applicable in the case of a "nonresident not a citizen of the United States." See paragraph (a)(2) of § 20.0-1 and § 20.2208-1 for further information relating to the application of the Federal estate tax to the estates of decedents who were residents of possessions of the United States. The application of this section may be illustrated by the following examples and the example set forth in § 20.2208-1. In each of the following examples the decedent is deemed a "nonresident not a citizen of the United States" and his estate is subject to the tax imposed by section 2101 since the decedent died after September 14, 1960, but would not have been so deemed and subject to such tax if the decedent had died on or before September 14, 1960.

Example (1). C, who acquired his United States citizenship under section 5 of the Act of March 2, 1917 (39 Stat. 953), by reason of being a citizen of Puerto Rico, died in Puerto Rico on October 1, 1960, while domiciled therein. C is considered to have acquired his United States citizenship solely by reason of his being a citizen of Puerto Rico.

Example (2). E, whose parents were United States citizens by reason of their birth in Boston, was born in the Virgin Islands on March 1, 1927. On September 30, 1960, he died in the Virgin Islands while domiciled therein. E is considered to have acquired his United States citizenship solely by reason of his birth in the Virgin Islands (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)).