

(2) By the amount of any marital deduction allowed the transferor's estate under section 2056 (or under section 812(e) of the Internal Revenue Code of 1939) if the decedent was the spouse of the transferor at the time of the transferor's death;

(3)(i) By the amount of administration expenses in accordance with the principles of § 20.2056(b)-4(d).

(ii) This paragraph (b)(3) applies to transfers from estates of decedents dying on or after December 3, 1999; and

(4)(i) By the amount of any encumbrance on the property or by the amount of any obligation imposed by the transferor and incurred by the decedent with respect to the property, to the extent such charges would be taken into account if the amount of a gift to the decedent of such property were being determined.

(ii) For purposes of this subparagraph, an obligation imposed by the transferor and incurred by the decedent with respect to the property includes a bequest, etc., in lieu of the interest of the surviving spouse under community property laws, unless the interest was, immediately prior to the transferor's death, a mere expectancy. However, an obligation imposed by the transferor and incurred by the decedent with respect to the property does not include a bequest, devise, or other transfer in lieu of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the transferor's property or estate.

(iii) The application of this subparagraph may be illustrated by the following examples:

Example (1). The transferor devised to the decedent real estate subject to a mortgage. The value of the property transferred to the decedent does not include the amount of the mortgage. If, however, the transferor by his will directs the executor to pay off the mortgage, such payment constitutes an additional amount transferred to the decedent.

Example (2). The transferor bequeathed certain property to the decedent with a direction that the decedent pay \$1,000 to X. The value of the property transferred to the decedent is the value of the property reduced by \$1,000.

Example (3). The transferor bequeathed certain property to his wife, the decedent, in lieu of her interest in property held by them as community property under the law of the

State of their residence. The wife elected to relinquish her community property interest and to take the bequest. The value of the property transferred to the decedent is the value of the property reduced by the value of the community property interest relinquished by the wife.

Example (4). The transferor bequeathed to the decedent his entire residuary estate, out of which certain claims were to be satisfied. The entire distributable income of the transferor's estate (during the period of its administration) was applied toward the satisfaction of these claims and the remaining portion of the claims was satisfied by the decedent out of his own funds. Thus, the decedent received a larger sum upon settlement of the transferor's estate than he was actually bequeathed. The value of the property transferred to the decedent is the value at which such property was included in the transferor's gross estate, reduced by the amount of the estate income and the decedent's own funds paid out in satisfaction of the claims.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7077, 35 FR 18461, Dec. 4, 1970; T.D. 7296, 38 FR 34191, Dec. 12, 1973; T.D. 8522, 59 FR 9646, Mar. 1, 1994; T.D. 8540, 59 FR 30151, June 10, 1994; T.D. 8846, 64 FR 67764, Dec. 3, 1999]

§ 20.2013-5 "Property" and "transfer" defined.

(a) For purposes of section 2013 and §§ 20.2013-1 to 20.2013-6, the term "property" means any beneficial interest in property, including a general power of appointment (as defined in section 2041) over property. Thus, the term does not include an interest in property consisting merely of a bare legal title, such as that of a trustee. Nor does the term include a power of appointment over property which is not a general power of appointment (as defined in section 2041). Examples of property, as described in this paragraph, are annuities, life estates, estates for terms of years, vested or contingent remainders and other future interests.

(b) In order to obtain the credit for tax on prior transfers, there must be a transfer of property described in paragraph (a) of this section by or from the transferor to the decedent. The term "transfer" of property by or from a transferor means any passing of property or an interest in property under circumstances which were such that the property or interest was included in the gross estate of the transferor. In

this connection, if the decedent receives property as a result of the exercise or nonexercise of a power of appointment, the donee of the power (and not the creator) is deemed to be the transferor of the property if the property subject to the power is includible in the donee's gross estate under section 2041 (relating to powers of appointment). Thus, notwithstanding the designation by local law of the capacity in which the decedent takes, property received from the transferor includes interests in property held by or devolving upon the decedent: (1) As spouse under dower or curtesy laws or laws creating an estate in lieu of dower or curtesy; (2) as surviving tenant of a tenancy by the entirety or joint tenancy with survivorship rights; (3) as beneficiary of the proceeds of life insurance; (4) as survivor under an annuity contract; (5) as donee (possessor) of a general power of appointment (as defined in section 2041); (6) as appointee under the exercise of a general power of appointment (as defined in section 2041); or (7) as remainderman under the release or nonexercise of a power of appointment by reason of which the property is included in the gross estate of the donee of the power under section 2041.

(c) The application of this section may be illustrated by the following example:

Example: A devises Blackacre to B, as trustee, with directions to pay the income therefore to C, his son, for life. Upon C's death, Blackacre is to be sold. C is given a general testamentary power, to appoint one-third of the proceeds, and a testamentary power, which is not a general power, to appoint the remaining two-thirds of the proceeds, to such of the issue of his sister D as he should choose. D has a daughter, E, and a son, F. Upon his death, C exercised his general power by appointing one-third of the proceeds to D and his special power by appointing two-thirds of the proceeds to E. Since B's interest in Blackacre as a trustee is not a beneficial interest, no part of it is "property" for purpose of the credit in B's estate. On the other hand, C's life estate and his testamentary power over the one-third interest in the remainder constitute "property" received from A for purpose of the credit in C's estate. Likewise, D's one-third interest in the remainder received through the exercise of C's general power of appointment is "property" received from C for purpose of the credit in D's estate. No credit is allowed E's estate for the property which

passed to her from C since the property was not included in C's gross estate. On the other hand, no credit is allowed in E's estate for property passing to her from A since her interest was not susceptible of valuation at the time of A's death (see § 20.2013-4).

§ 20.2013-6 Examples.

The application of §§ 20.2013-1 to 20.2013-5 may be further illustrated by the following examples:

Example (1). (a) A died December 1, 1953, leaving a gross estate of \$1,000,000. Expenses, indebtedness, etc., amounted to \$90,000. A bequeathed \$200,000 to B, his wife, \$100,000 of which qualified for the marital deduction. B died November 1, 1954, leaving a gross estate of \$500,000. Expenses, indebtedness, etc., amounted to \$40,000. B bequeathed \$150,000 to charity. A and B were both citizens of the United States. The estates of A and B both paid State death taxes equal to the maximum credit allowable for State death taxes. Death taxes were not a charge on the bequest to B.

(b) "First limitation" on credit for B's estate (§ 20.2013-2):

A's gross estate	\$1,000,000.00
Expenses, indebtedness, etc.	90,000.00
<hr/>	
A's adjusted gross estate	910,000.00
Marital deduction	\$100,000.00
Exemption	60,000.00
<hr/>	
	160,000.00
<hr/>	
A's taxable estate	750,000.00
<hr/>	
A's gross estate tax	233,200.00
Credit for State death taxes	23,280.00
<hr/>	
A's net estate tax payable	209,920.00

"First limitation" =
 \$209,920.00
 (§ 20.2013-2(b)) ×
 [(\$200,000.00 -
 \$100,000.00)
 (§ 20.2013-4) +
 (\$750,000.00 -
 \$209,920.00 -
 \$23,280.00 +
 \$60,000.00)
 (§ 20.2013-2(c))] \$36,393.90

(c) "Second limitation" on credit for B's estate (§ 20.2013-3):

(1) B's net estate tax payable as described in § 20.2013-3(a)(1) (previously taxed transfer included):

B's gross estate	\$500,000.00
Expenses, indebtedness, etc.	\$40,000.00
Charitable deduction	150,000.00
Exemption	60,000.00
<hr/>	
	250,000.00
<hr/>	
B's taxable estate	250,000.00
<hr/>	
B's gross estate tax	\$65,700.00