

to the aggregation of certain trusts and plans. The distribution of an annuity contract is not a lump sum distribution for purposes of this section, and § 20.2039-2 will apply with respect to the distribution of an annuity contract without regard to whether the contract is included in a distribution that is otherwise a lump sum distribution under this paragraph (b). A distribution is a lump sum distribution for purposes of this section without regard to the election described in section 402(e)(4)(B).

(c) *Amounts payable as a lump sum distribution.* If on the date the estate tax return is filed, an amount under a qualified plan is payable with respect to the decedent as a lump sum distribution (whether at the election of a beneficiary or otherwise), for purposes of this section the amount is deemed paid as a lump sum distribution no later than on such date. Accordingly, no portion of the amount payable under the plan is excludable from the value of the decedent's gross estate under § 20.2039-2. If, however, the amount payable as a lump sum distribution is not, in fact, thereafter paid as a lump sum distribution, there shall be allowed a credit or refund of any tax paid which is attributable to treating such amount as a lump sum distribution under this paragraph. Any claim for credit or refund filed under this paragraph must be filed within the time prescribed by section 6511, and must provide satisfactory evidence that the amount originally payable as a lump sum distribution is no longer payable in such form.

(d) *Filing date.* For purposes of paragraph (c) of this section, "the date the estate tax return is filed" means the earlier of—

(1) The date the estate tax return is actually filed, or

(2) The date nine months after the decedent's death, plus any extension of time for filing the estate tax return granted under section 6081.

[T.D. 7761, 46 FR 7304, Jan. 23, 1981]

**§ 20.2039-4 Lump sum distributions from "qualified plans;" decedents dying after December 31, 1978.**

(a) *Limitation on section 2039(c) exclusion.* This section applies in the case of a decedent dying after December 31,

1978. If a lump sum distribution is paid or payable with respect to a decedent under a plan described in § 20.2039-2(b)(1) or (2) (a "qualified plan"), no amount paid or payable with respect to the decedent under the plan is excludable from the decedent's gross estate under § 20.2039-2, unless the recipient of the distribution makes the section 402(a)/403(a) taxation election described in paragraph (c) of this section. For purposes of this section, an amount is payable as a lump sum distribution under a plan if, as of the date the estate tax return is filed (as determined under § 20.2039-3(d)), it is payable as a lump sum distribution at the election of the recipient or otherwise.

(b) *"Lump sum distribution" defined; treatment of annuity contracts.* For purposes of this section the term "lump sum distribution" means a lump sum distribution defined in section 402(e)(4)(A) that satisfies the requirements of section 402(e)(4)(C), relating to the aggregation of certain trusts and plans. A distribution is a lump sum distribution for purposes of this section without regard to the election described in section 402(e)(4)(B). The distribution of an annuity contract is not a lump sum distribution for purposes of this section, and the limitation described in this section does not apply to an annuity contract distributed under a plan. Accordingly, if the amount payable with respect to a decedent under a plan is paid to a recipient partly by the distribution of an annuity contract, and partly by the distribution of an amount that is a lump sum distribution within the meaning of this paragraph (b), § 20.2039-2 shall apply with respect to the annuity contract without regard to whether the recipient makes the section 402(a)/403(a) taxation election with respect to the remainder of the distribution.

(c) *Recipient's section 402(a)/403(a) taxation election.* The section 402(a)/403(a) taxation election is the election by the recipient of a lump sum distribution to treat the distribution as—

(1) Taxable under section 402(a), without regard to section 402(a)(2), to the extent includable in gross income (in the case of a distribution under a qualified plan described in § 20.2039-2(b)(1)),

(2) Taxable under section 403(a), without regard to section 403(a)(2), to the extent includable in gross income (in the case of a distribution under a qualified annuity contract described in § 20.2039-2(b)(2)), or

(3) A rollover contribution, in whole or in part, under section 402(a)(7) (relating to rollovers by a decedent's surviving spouse).

Accordingly, if a recipient makes the election, no portion of the distribution is taxable to the recipient under the 10-year averaging provisions of section 402(e) or as long-term capital gain under section 402(a)(2). However, a recipient's election under this paragraph (c) does not preclude the application of section 402(e)(4)(J) to any securities of the employer corporation included in the distribution.

(d) *Method of election*—(1) *General rule.* The recipient of a lump sum distribution shall make the section 402(a)/403(a) taxation election by:

(i) Determining the income tax liability on the income tax return (or amended return) for the taxable year of the distribution in a manner consistent with paragraph (c) (1) or (2) of this section.

(ii) Rolling over all or any part of the distribution under section 402(a)(7), or

(iii) Filing a section 2039(f)(2) election statement described in paragraph (d)(2) of this section.

(2) *Election statement.* A recipient may file a section 2039(f)(2) election statement indicating that the recipient elects to treat a lump sum distribution in the manner described in paragraph (c) of this section. The statement must be filed where the recipient would file the income tax return for the taxable year of the distribution. The statement must be signed by the recipient and include the individual's name, address, social security number, the name of the decedent, and a statement indicating the election is being made. A section 2039(f)(2) election statement may be filed at any time prior to making the election under paragraph (d)(1) (i) or (ii) of this section.

(3) *Effect on estate tax return.* If the date the estate tax return is filed precedes the date on which the recipient makes the section 402(a)/403(a) taxation election with respect to a lump sum

distribution, the estate tax return may not reflect the election. However, if after the estate tax return is filed, the recipient makes the section 402(a)/403(a) taxation election, the executor of the estate may file a claim for refund or credit of an overpayment of the Federal estate tax within the time prescribed in section 6511. See also, § 20.6081-1 for rules relating to obtaining an extension of time for filing the estate tax return.

(e) *Election irrevocable.* If a recipient of a lump sum distribution files a section 2039(f)(2) election statement, an income tax return (or amended return) or makes a rollover contribution that constitutes the section 402(a)/403(a) taxation election described in paragraphs (c) and (d), the election may not be revoked. Accordingly, a subsequent and amended income tax return filed by the recipient that is inconsistent with the prior election will not be given effect for purposes of section 2039 and section 402 or 403.

(f) *Lump sum distribution to multiple recipients.* In the case of a lump sum distribution paid or payable under a qualified plan with respect to the decedent to more than one recipient, the exclusion under § 20.2039-2 applies to so much of the distribution as is paid or payable to a recipient who makes the section 402(a)/403(a) taxation election.

(g) *Distributions of annuity contracts included in multiple distributions.* Notwithstanding that a recipient makes the section 402(a)/403(a) taxation election with respect to a lump sum distribution that includes the distribution of an annuity contract, the distribution of the annuity contract is to be taken into account by the recipient for purposes of the multiple distribution rules under section 402(e).

[T.D. 7761, 46 FR 7304, Jan. 23, 1981, as amended by T.D. 7956, 49 FR 20284, May 14, 1984]

#### § 20.2039-5 Annuities under individual retirement plans.

(a) *Section 2039(e) exclusion*—(1) *In general.* In the case of a decedent dying after December 31, 1976, section 2039 (e) excludes from the decedent's gross estate, to the extent provided in paragraph (c) of this section, the value of a "qualifying annuity" receivable by a