

### § 20.2013-3

### 26 CFR Ch. I (4-1-09 Edition)

(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 in paragraph (b) of this section if a charitable deduction is allowable to the estate of the present decedent.

(b) If a charitable deduction is allowable to the estate of the present decedent under the provisions of section 2055 or section 2106 (a)(2) (for estates of nonresidents not citizens), for purposes of determining the tax described in paragraph (a)(2) of this section, the charitable deduction otherwise allowable is reduced by an amount, E, which bears the same ratio to F (the charitable deduction otherwise allowable) as G (the value of the transferred property (see § 20.2013-4)) bears to H (the value of the present decedent’s gross estate reduced by the amount of the deductions for expenses, indebtedness, taxes, losses, etc., allowed under the provisions of sections 2053 and 2054 or section 2106(a)(1) (for estates of nonresidents not citizens)). See paragraph (c)(2) of example (1) and paragraph (c)(2) of example (2) in § 20.2013-6.

(c) If the credit for tax on prior transfers relates to property received from two or more transferors, the property received from all transferors is ag-

gregated in determining the limitation on credit under this section (the “second limitation”). However, the limitation so determined is apportioned to the property received from each transferor in the ratio that the property received from each transferor bears to the total property received from all transferors. See paragraph (c) of example (2) in § 20.2013-6.

(d) 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]

#### § 20.2013-4 Valuation of property transferred.

(a) For purposes of section 2013 and §§ 20.2013-1 to 20.2013-6, the value of the property transferred to the decedent is the value at which the property was included in the transferor’s gross estate for the purpose of the Federal estate tax (see sections 2031, 2032, 2103, and 2107, and the regulations thereunder) reduced as indicated in paragraph (b) of this section. If the decedent received a life estate or a remainder or other limited interest in property that was included in a transferor decedent’s gross estate, the value of the interest is determined as of the date of the transferor’s death on the basis of recognized valuation principles (see §§ 20.2031-7 (or, for certain prior periods, § 20.2031-7A) and 20.7520-1 through 20.7520-4). The application of this paragraph may be illustrated by the following examples:

*Example (1).* A died on January 1, 1953, leaving Blackacre to B. The property was included in A’s gross estate at a value of \$100,000. On January 1, 1955, B sold Blackacre to C for \$150,000. B died on February 1, 1955. For purposes of computing the credit against the tax imposed on B’s estate, the value of the property transferred to B is \$100,000.

*Example (2).* A died on January 1, 1953, leaving Blackacre to B for life and, upon B’s death, remainder to C. At the time of A’s death, B was 56 years of age. The property was included in A’s gross estate at a value of \$100,000. The part of that value attributable to the life estate is \$44,688 and the part of that value attributable to the remainder is \$55,312 (see § 20.2031-7A(b)). B died on January 1, 1955, and C died on January 1, 1956. For purposes of computing the credit against the tax imposed on B’s estate, the value of the

property transferred to B is \$44,688. For purposes of computing the credit against the tax imposed on C's estate, the value of the property transferred to C is \$55,312.

(b) In arriving at the value of the property transferred to the decedent, the value at which the property was included in the transferor's gross estate (see paragraph (a) of this section) is reduced as follows:

(1) By the amount of the Federal estate tax and any other estate, inheritance, legacy, or succession taxes which were payable out of the property transferred to the decedent or which were payable by the decedent in connection with the property transferred to him. For example, if under the transferor's will or local law all death taxes are to be paid out of other property with the result that the decedent receives a bequest free and clear of all death taxes, no reduction is to be made under this subparagraph;

(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)