

which covers the period extending beyond that date.

### Section 2036.—Transfers With Retained Life Estate

26 CFR 20.2036-1: *Transfers with retained life estate.*

**Transfer by trust; contingent power to appoint successor trustee.** The value of assets in an irrevocable inter vivos trust, under which the corporate trustee determines distributions of income among the grantor's children, is not includible in the grantor decedent's gross estate by reason of the grantor's retention of a life power to appoint a successor corporate trustee if the original trustee resigned or was removed by judicial process.

#### Rev. Rul. 77-182

Five years prior to death, a decedent created an irrevocable trust that provided for trust income to be distributed among the decedent's children at such times and in such amounts as the corporate trustee deemed proper in its sole discretion. The trust will terminate at the death of the last surviving child and the corpus will be paid to certain named persons if living or to their estates if they are then deceased. Under the trust terms, the decedent held the power, for life, to appoint a successor corporate trustee if the original trustee resigned or was removed by judicial process.

*Held*, the value of the trust assets at the date of death of the decedent is not includible in the decedent's gross estate under section 2036 of the Internal Revenue Code of 1954 as property transferred by the decedent subject to a retained power to designate the person or persons who shall enjoy the property or its income. The decedent's power to appoint a successor corporate trustee in the event of resignation or removal of the original trustee did not amount to a power to remove the original trustee that, in effect, would have endowed the decedent

with the trustee's discretionary control over trust income. Cf. Rev. Rul. 73-21, 1973-1 C.B. 405.

26 CFR 20.2036-1: *Transfers with retained life estate.*

**Timberland; conveyances of cutting rights and title to different persons.** No part of the value of land is includible in the gross estate of a taxpayer who conveyed timber rights for five years to one person for cash and four unsecured promissory notes payable on the anniversary dates of the sale, sold the land to another person a month later, and died with 23 months remaining under the conveyance of timber rights with one note unpaid.

#### Rev. Rul. 77-193

Advice has been requested whether, under the circumstances described below, the value of certain real property is includible in a decedent's gross estate under section 2036 of the Internal Revenue Code of 1954.

In 1971, *A*, the owner in fee simple absolute of 1800 acres of land in State *X*, conveyed to *B* for a term of five years all of the merchantable timber on the land plus the right to enter the land for the purpose of cutting the trees and the right to erect mills for on-site processing of the felled timber. *B* paid *A* \$40,000 in cash at the time of the conveyance and executed four unsecured promissory notes, each with a face value of \$40,000, payable on the anniversary date of the sale in 1972, 1973, 1974 and 1975. One month following the conveyance of the timber rights to *B*, *A* by warranty deed conveyed to *C* the fee simple title to the 1800 acres subject to the prior conveyance to *B*. When *A* died in 1974, more than three years after these conveyances, 23 months remained on *B*'s rights under the 1971 conveyance and one promissory note had not yet reached maturity.

Section 2036 of the Code provides:

(a) General Rule.—The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

When *A* conveyed the timber rights to *B* for a five year term, *A* retained a reversion in the timber which would ripen into a possessory right upon the expiration of *B*'s five year term. When *A* conveyed the fee simple title to *C*, the reversion vested in *C*, leaving *A* with no interest or estate in the 1800 acres of land. Therefore, at the time of death, *A* did not possess "the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom," and the transferred property is not includible in *A*'s gross estate under section 2036(a)(2) of the Code.

In addition, since *B*'s promise to pay for the timber rights is a personal obligation of *B* as transferee, the obligation is not chargeable to the transferred property, and the payments are wholly independent of whether or not the transferred property produces income for the transferee. Thus, no part of the transferred property is includible in the transferor's gross estate under section 2036(a)(1) of the Code. See the following footnote in *Fidelity-Philadelphia Trust Co. v. Smith*, 356 U. S. 274, 280 (1958), 1958-1 C.B. 557, 559:

Where a decedent, not in contemplation of death, has transferred property to another in return for a promise to make periodic payments to the transferor for his lifetime, it has been held that these payments are not income from the transferred prop-

erty so as to include the property in the estate of the decedent. E.g., *Estate of Sarah A. Bergan*, 1 T.C. 543, Acq., 1943 Cum. Bull. 2; *Security Trust & Savings Bank, Trustee*, 11 B.T.A. 833; *Seymour Johnson*, 10 B.T.A. 411; *Hirsh v. United States*, 1929, 35 F. 2d 982, 68 Ct. Cl. 508; cf. *Welch v. Hall*, 1 Cir. 134 F. 2d 366. In these cases the promise is a personal obligation of the transferee, the obligation is usually not chargeable to the transferred property, and the size of the payments is not determined by the size of the actual income from the transferred property at the time the payments are made.

Accordingly, it is held that section 2036 of the Code does not apply to the transaction under which *A* conveyed timber rights to *B* for a term of years in exchange for a cash payment and promissory notes, not all of which had reached maturity at the time of *A*'s death, and *A* subsequently conveyed all of his interest and estate in the land to *C*.

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26 CFR 20.2036-1: *Transfers with retained life estate.*

Whether proceeds of insurance policy are includible in decedent's gross estate under section 2036 of the Code in a situation involving simultaneous deaths of spouses. Also, whether gift of insurance proceeds is made in the same situation. Rev. Rul. 77-48, page 292.

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## Section 2039.—Annuities

26 CFR 20.2039-1: *Annuities.*

**Survivorship annuity; Civil Service.** An annuity receivable under the U.S. Civil Service Retirement Act by the surviving spouse of an employee who entered Government service in 1925 is receivable under a contract or agreement entered into after March 3, 1931, for purposes of section 2039(a) of the Code.

### Rev. Rul. 77-95

Advice has been requested whether, under the circumstances described below, any amount is includible in the decedent's gross estate under section 2039(a) of the Internal Revenue Code of 1954 with respect to an annuity payable to the decedent's surviving

spouse under the United States Civil Service Retirement System.

The decedent entered into Federal Government service in 1925 and retired in 1965. The decedent died in 1976, survived by a spouse who became entitled to receive an immediate annuity of \$500 a month, the present value of which was \$75,000.

Section 2039(a) of the Code provides:

The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than as insurance under policies on the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

Section 20.2039-1(b) of the Estate Tax Regulations defines the term "contract or agreement" to include any arrangement, understanding or plan, or any combination of arrangements, understandings or plans arising by reason of the decedent's employment.

The specific question presented in the instant case is whether, in view of the fact that the decedent entered into Federal Government service in 1925, the surviving spouse's annuity is receivable under "any form of contract or agreement entered into after March 3, 1931."

Under the Civil Service Retirement Act applicable to the retiree in this case, a married Civil Service retiree receives a reduced annuity in order to provide his/her spouse with survivorship benefits unless the retiree expressly elects upon retirement a full annuity without survivorship benefits. Once the retiree makes a binding election, which occurs at the time the Civil Service Commission approves the retiring employee's claim for an annuity, the retiree may not revoke or change the election or name

another survivor. Survivorship benefits were first incorporated in the Civil Service Retirement Act by an amendment dated August 4, 1939, which became effective January 1, 1940. Thus, a "contract or agreement" by which the surviving spouse receives the annuity that arose by reason of the decedent's employment could not have been entered into prior to that January 1, 1940 date. See *Estate of Henry C. Beal*, 47 T.C. 269 (1966), acq., 1967-2 C.B. 1.

In view of the foregoing, the annuity payable to the decedent's surviving spouse is receivable under a contract or agreement entered into after March 3, 1931. Accordingly, except to the extent provided in section 2039(c) of the Code (dealing with the exemption of annuities payable under "qualified plans"), the annuity payable to the surviving spouse is includible in the value of the decedent's gross estate under section 2039(a).

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26 CFR 20.2039-1: *Annuities.*

**Annuities; survivorship; benefits under two different employee plans.** The benefits accruing to a decedent while an active employee under an employer's sickness and accident income plan cannot be considered together with the benefits accruing under the same employer's survivor's income benefit plan for purposes of determining the includibility of the value of the survivor's benefits in the decedent's gross estate under section 2039 of the Code.

### Rev. Rul. 77-183

Advice has been requested whether benefits accruing under an employee's sickness and accident income plan can be considered together with the benefits accruing under a survivor's income plan for purposes of determining the includibility of the value of the survivor's benefits in the decedent's gross estate under section 2039 of the Internal Revenue Code of 1954.