

A term life insurance policy furnishes life insurance protection for a specified term, the face value of which is payable only if death occurs during the stipulated term. At the end of the policy term all premiums are fully earned, and all rights of the policy owner terminate. S. Huebner and K. Black, *Life Insurance* 73 (8th Ed. 1972). If, however, the policy contains a provision granting a right of renewal, the contract must be renewed upon demand (and payment of the premium) by the policy owner, without regard to the insurable status of the insured at the time. D. Gregg, and V. Lucas, *Life and Health Insurance Handbook*, 57 (3d ed. 1973).

In the instant case, the premiums paid by X company are attributable to D, for estate tax and gift tax purposes. See Rev. Rul. 76-490, 1976-2 C.B. 300. Thus, if the premium payment was deemed to purchase a new insurance contract each year, then the policy proceeds would be subject to inclusion under section 2035.

Under the group term policy considered here, there was an option for automatic renewal upon payment of the premium. This renewal was accomplished without providing evidence of insurability. The rights and obligations of the parties continued without interruption from the policy's inception, as long as the policy was renewed on each anniversary date. Thus, the payment of the premium at the time of the policy's renewal did not create new rights, nor was such payment a repurchase of insurance. The payment merely effectuated the continuation of an existing agreement. Therefore, when D, through X company, paid each renewal premium, it was not a new transfer of insurance coverage under section 2035 of the Code and the proceeds from the insurance policy are not includible in D's gross estate.

Compare *Bel v. United States*, where payments of annual premiums after creation of the policy were each considered purchases of a new policy. In *Bel*, an accidental death policy was involved that did not provide a renewal privilege.

HOLDING

The value of the renewable group term life insurance policy is not includible in the decedent's gross estate under section 2035 of the Code when the decedent assigned the policy more than three years before death, but is considered to have made premium payments until death.

Section 2036.—Transfers With Retained Life Estate

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

Charitable remainder trust; private annuity; valuation. The portion of a charitable remainder trust includible in the decedent-grantor's gross estate, where the decedent is the private annuitant, is that portion of trust corpus necessary to yield the private annuity payment, assuming a 6 percent return.

Rev. Rul. 82-105

ISSUE

For purposes of section 2036 of the Internal Revenue Code, what portion of the value of a charitable remainder annuity trust is includible in the grantor's gross estate when the grantor is the private annuitant for life?

FACTS

In 1974 D created a trust that qualified as a charitable remainder annuity trust under section 664 of the Code. The trust agreement provided for an annuity of 12x dollars to be paid each year to D for life and for the remainder upon D's death to be distributed to N, a charitable organization described in section 2055(a). The trust was funded with 200x dollars. D died on March 1, 1980. The value of the trust assets on D's date of death was 300x dollars. D's executor did not elect to use the alternate valuation date.

LAW AND ANALYSIS

Section 2036(a)(1) of the Code provides, in part, that a decedent's gross estate shall include the value of any in-

terest in property transferred by the decedent if the decedent retained for life the possession or enjoyment of, or the right to income from, the property.

Section 20.2036-1(a) of the Estate Tax Regulations provides generally that if the decedent retained or reserved an interest or right with respect to all of the property transferred by the decedent, the amount to be included in the gross estate under section 2036 of the Code is the value of the entire property on the date of death. If the decedent retained a right with respect to only part of the property transferred, the amount to be included in the decedent's gross estate under section 2036 is the proportionate amount of corpus.

Under the trust agreement D did not retain the right to the income from the cash transferred, but retained the right to receive the annuity amount. In effect, D has retained the right to income from a portion of the property transferred.

In order to determine the amount includible under section 2036 of the Code, it is necessary to ascertain the specific portion of corpus over which D, in effect, possessed an income interest.

In *Northeastern Pennsylvania National Bank & Trust Company v. United States*, 387 U.S. 213 (1967), Ct.D. 1916, 1967-2 C.B. 343, a bequest to the decedent's spouse of a fixed monthly stipend, payable from trust income or corpus, was held to satisfy the requirement of section 2056(b)(5) of the Code that the spouse receive all the income from a specific portion of trust corpus. The specific portion of corpus qualifying for the marital deduction was determined by computing the amount of corpus necessary to produce the guaranteed monthly payment, assuming a fixed rate of return.

This computation is discussed in *Citizens National Bank of Evansville v. United States*, 359 F.2d 817 (7th Cir. 1966), cert. denied, 387 U.S. 941 (1966), which involved an identical issue. The court computed the allowable marital deduction by capitalizing

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the annual annuity payment at an assumed rate of 3½% (rate specified under section 20.2031-7 of the regulations, applicable in the case of decedents dying prior to 1971).

In *Estate of Marvin L. Pardee v. Commissioner*, 49 T.C. 140 (1967), *acq.*, 1973-2 C.B. 3, the decedent created a trust and retained the right to use the income of the trust to satisfy a legal obligation of the decedent to pay, as child support, the sum of \$500 per month. The court held that, under section 2036(a)(1) of the Code, the right retained by the decedent was the right to satisfy the legal obligation of \$500 per month, and the amount includible in the decedent's estate was the amount which is required to yield monthly payments of \$500 per month at 3½% (rate specified under section 20.2031-7 of the regulations, applicable in the case of decedents dying prior to 1971). See also *United States National Bank of Portland v. United States*, 188 F. Supp. 332 (D. Ore. 1960), which discusses a computation similar to the computation in *Pardee*.

For estate tax purposes, the annual rate of return of a charitable remainder annuity trust is presumed to be 6 percent in the case of decedents dying after December 31, 1970. See section 20.2031-10 of the Estate Tax Regulations. See also section 1.664-2(c) of the Income Tax Regulations which refers to section 20.2031-10 of the Estate Tax Regulations, and Rev. Rul. 77-374, 1977-2 C.B. 329. Therefore, in accordance with *Northeastern*, the portion of corpus over which *D* has retained a right to income is that portion which will yield an annuity of 12x dollars a year, assuming a 6 percent annual rate of return. At a 6 percent rate of return on investment, the amount of corpus necessary to generate 12x dollars per year is 200x dollars:

$$\frac{12x \text{ dollars}}{.06} = 200x \text{ dollars}$$

Accordingly, although the value of the corpus on *D*'s date of death was 300x dollars, only 200x dollars is includible in *D*'s gross estate under section 2036 of the Code. Alternatively, if the value of the trust assets was 200x dollars or less on *D*'s date of death, the entire

corpus would be includible in *D*'s gross estate. Compare Rev. Rul. 76-273, 1976-2 C.B. 268, which demonstrates the application of section 2036 of the Code to a charitable remainder unitrust.

HOLDING

For purposes of section 2036 of the Code, the portion of the value of a charitable remainder annuity trust that is includible in *D*'s gross estate at death is the amount necessary, at the rate of 6 percent as specified under section 20.2031-10 of the regulations, to yield the guaranteed annual payment. In the instant case, the amount includible is 200x dollars

$$\left(\frac{12x \text{ dollars}}{.06} = 200x \text{ dollars} \right) \text{ However,}$$

because the 200x dollars constitutes part of the remainder interest passing to a charitable organization described in section 2055(a), the 200x dollars is deductible from *D*'s gross estate under section 2055. The amount of the charitable deduction cannot exceed the value of the transferred property required to be included in the gross estate. Section 2055(d).

The holding of this ruling applies only to the portion of the value of a charitable remainder annuity trust that is includible in the gross estate under section 2036. The ruling does not consider the amount, if any, that may be includible in the gross estate under any other provisions of the Code.

Section 2037.—Transfers Taking Effect at Death

26 CFR 20.2037-1: *Transfers taking effect at death.*
(Also Section 2033; 20.2033-1.)

Trust; valuation; prior transfer of contingent remainder interest. A legally binding contract was entered into prior to the death of the life tenant between the two equal testamentary trust beneficiaries of contingent remainder interests providing that, if either predeceased the life tenant, then the survivor would transfer one-half of the trust corpus received to the heirs of the deceased. Upon

the death of one of the beneficiaries prior to the death of the life tenant, the contract results in a transfer for purposes of section 2037 of the Code.

Rev. Rul. 82-24

ISSUE

Is section 2037 of the Code applicable in the situation described below?

FACTS

A died testate in 1974. Under the terms of *A*'s will, the residue of *A*'s estate was transferred to a testamentary trust divided into two equal parts, Part 1 and Part 2. The trust income from Parts 1 and 2 was to be paid to *B* for life. Upon the death of *B*, the trust was to terminate, at which time the corpus of Part 1 was to be paid to *C* and the corpus of Part 2 was to be paid to *D*.

The will further provided that, if either *C* or *D* predeceased *B*, the part otherwise payable to the deceased beneficiary was to pass to the survivor. If both *C* and *D* predeceased *B*, the corpus of Part 1 was to be paid to *C*'s estate and the corpus of Part 2 was to be paid to *D*'s estate. *B*, *C* and *D* survived *A*. *C* and *D* were the same age and sex.

In 1976, prior to *B*'s death, *C* and *D* had entered into an agreement providing that, if either *C* or *D* predeceased *B*, the part of the trust corpus that the deceased would have been entitled to, if both *C* and *D* had survived *B*, would be transferred to the heirs of the deceased.

C died in 1980 survived by two children, who were *C*'s sole heirs. At the time of *C*'s death, *B* and *D* were still living. Further, immediately before *C*'s death, the value of *C*'s right to receive Part 1 of the trust exceeded 5 percent of the value of Part 1. Under applicable local law, the contingent interests granted to *C* and *D* by *A* were freely alienable and the agreement was a binding contract at the time of its execution. *C*'s executor did not elect, under section 2032 of the Code, to value *C*'s estate on the alternate valuation date.