

§ 2040. Joint interests**(a) General rule**

The value of the gross estate shall include the value of all property to the extent of the interest therein held as joint tenants with right of survivorship by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, or deposited, with any person carrying on the banking business, in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth: *Provided*, That where such property or any part thereof, or part of the consideration with which such property was acquired, is shown to have been at any time acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth, there shall be excepted only such part of the value of such property as is proportionate to the consideration furnished by such other person: *Provided further*, That where any property has been acquired by gift, bequest, devise, or inheritance, as a tenancy by the entirety by the decedent and spouse, then to the extent of one-half of the value thereof, or, where so acquired by the decedent and any other person as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, then to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship.

(b) Certain joint interests of husband and wife**(1) Interests of spouse excluded from gross estate**

Notwithstanding subsection (a), in the case of any qualified joint interest, the value included in the gross estate with respect to such interest by reason of this section is one-half of the value of such qualified joint interest.

(2) Qualified joint interest defined

For purposes of paragraph (1), the term "qualified joint interest" means any interest in property held by the decedent and the decedent's spouse as—

- (A) tenants by the entirety, or
- (B) joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants.

(Aug. 16, 1954, ch. 736, 68A Stat. 385; Pub. L. 87-834, §18(a)(2)(G), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XX, §2002(c)(1), (3), Oct. 4, 1976, 90 Stat. 1855, 1856; Pub. L. 95-600, title V, §511(a), title VII, §702(k)(2), Nov. 6, 1978, 92 Stat. 2881, 2932; Pub. L. 96-222, title I, §105(a)(3), Apr. 1, 1980, 94 Stat. 218; Pub. L. 97-34, title IV, §403(c)(1)-(3)(A), Aug. 13, 1981, 95 Stat. 301, 302.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97-34, §403(c)(2), substituted "joint tenants with right of survivorship" for "joint tenants" in three places.

Subsec. (b)(2). Pub. L. 97-34, §403(c)(1), in redefining "qualified joint interest" substituted provision defining term as meaning any interest in property held by

the decedent and the decedent's spouse as tenants by the entirety, or joint tenants with right of survivorship, but only if the decedent and the spouse of the decedent are the only joint tenants for provision defining the term as meaning any interest in property held by the decedent and the decedent's spouse as joint tenants or as tenants by the entirety, but only if such joint interest was created by the decedent, the decedent's spouse, or both, in the case of personal property, the creation of such joint interest constituted in whole or in part a gift for purposes of chapter 12, or in the case of real property, an election under section 2515 applies with respect to the creation of such joint interest, and in the case of a joint tenancy, only the decedent and the decedent's spouse are joint tenants.

Subsecs. (c) to (e). Pub. L. 97-34, §403(c)(3)(A), repealed subsec. (c) respecting value where spouse of decedent materially participated in farm or other business, subsec. (d) relating to joint interests of husband and wife created before 1977, and subsec. (e) covering treatment of certain post-1976 terminations.

1980—Subsec. (c)(1). Pub. L. 96-222, §105(a)(3)(B), substituted "subsection (a)" for "subsections (a)".

Subsec. (c)(2)(C). Pub. L. 96-222, §105(a)(3)(A), added subpar. (C).

1978—Subsec. (c). Pub. L. 95-600, §511(a), added subsec. (c).

Subsecs. (d), (e). Pub. L. 95-600, §702(k)(2), added subsecs. (d) and (e).

1976—Pub. L. 94-455 designated existing provisions as subsec. (a), added heading for subsec. (a), and added subsec. (b).

1962—Pub. L. 87-834 struck out provisions which exempted real property outside of the United States.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97-34, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title V, §511(b), Nov. 6, 1978, 92 Stat. 2882, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1978."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XX, §2002(d)(3), Oct. 4, 1976, 90 Stat. 1856, provided that: "The amendment made by subsection (c) [amending this section and section 2515 of this title] shall apply to joint interests created after December 31, 1976."

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

CONSIDERATION GIVEN BEFORE JULY 14, 1988 BY DECEDENT TO NONCITIZEN SPOUSE TREATED AS ORIGINALLY BELONGING TO SPOUSE

Pub. L. 101-239, title VII, §7815(d)(16), Dec. 19, 1989, 103 Stat. 2419, as amended by Pub. L. 101-508, title XI, §11701(l)(3), Nov. 5, 1990, 104 Stat. 1388-513, provided that: "For purposes of applying section 2040(a) of the Internal Revenue Code of 1986 with respect to any joint interest to which section 2040(b) of such Code does not apply solely by reason of section 2056(d)(1)(B) of such

Code, any consideration furnished before July 14, 1988, by the decedent for such interest to the extent treated as a gift to the spouse of the decedent for purposes of chapter 12 of such Code (or would have been so treated if the donor were a citizen of the United States) shall be treated as consideration originally belonging to such spouse and never acquired by such spouse from the decedent.”

§ 2041. Powers of appointment

(a) In general

The value of the gross estate shall include the value of all property—

(1) Powers of appointment created on or before October 21, 1942

To the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent—

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive;

but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the exercise of such power shall not be deemed to be the exercise of a general power of appointment if—

(i) such partial release occurred before November 1, 1951, or

(ii) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than 6 months after the termination of such legal disability.

(2) Powers created after October 21, 1942

To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under sections 2035 to 2038, inclusive. For purposes of this paragraph (2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

(3) Creation of another power in certain cases

To the extent of any property with respect to which the decedent—

(A) by will, or

(B) by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be in-

cludible in the decedent's gross estate under section 2035, 2036, or 2037,

exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law can be validly exercised so as to postpone the vesting of any estate or interest in such property, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power.

(b) Definitions

For purposes of subsection (a)—

(1) General power of appointment

The term “general power of appointment” means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that—

(A) A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

(B) A power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment.

(C) In the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person—

(i) If the power is not exercisable by the decedent except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment.

(ii) If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent—such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

(iii) If (after the application of clauses (i) and (ii)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.

For purposes of clauses (ii) and (iii), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.