

designated beneficiary in lieu of the annuity described above. The plan at no time met the requirements of section 401(a) (relating to qualified plans). Assume that the reserve value of the contract at the retirement age would be \$20,000. If the employee died after reaching the retirement age, the death benefit to the designated beneficiary would constitute an annuity, the value of which would be includable in the employee's gross estate under section 2039 (a) and (b). If, on the other hand, the employee died before reaching his retirement age, the death benefit to the designated beneficiary would constitute insurance under a policy on the life of the decedent since the reserve value would be less than the death benefit. Accordingly, its includability would depend upon section 2042 and § 20.2042-1.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7416, 41 FR 14514, Apr. 6, 1976]

**§ 20.2039-1T Limitations and repeal of estate tax exclusion for qualified plans and individual retirement plans (IRAs) (temporary).**

Q-1: Are there any exceptions to the general effective dates of the \$100,000 limitation and the repeal of the estate tax exclusion for the value of interests under qualified plans and IRAs described in section 2039 (c) and (e)?

A-1: (a) Yes. Section 245 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) limited the estate tax exclusion to \$100,000 for estates of decedents dying after December 31, 1982. Section 525 of the Tax Reform Act of 1984 (TRA of 1984) repealed the exclusion for estates of decedents dying after December 31, 1984.

(b) Section 525(b)(3) of the TRA of 1984 amended section 245 of TEFRA to provide that the \$100,000 limitation on the exclusion for the value of a decedent's interest in a plan or IRA will not apply to the estate of any decedent dying after December 31, 1982, to the extent that the decedent-participant was in pay status on December 31, 1982, with respect to such interest and irrevocably elected the form of benefit payable under the plan or IRA (including the form of any survivor benefits) with respect to such interest before January 1, 1983.

(c) Similarly, the TRA of 1984 provides that the repeal of the estate tax exclusion for the value of a decedent's interest in a plan or IRA will not apply

to the estate of a decedent dying after December 31, 1984, to the extent that the decedent-participant was in pay status on December 31, 1984, with respect to such interest and irrevocably elected the form of benefit payable under the plan or IRA (including the form of any survivor benefits) with respect to such interest before July 18, 1984.

Q-2: What is the meaning of "in pay status" on the applicable date?

A-2: A participant was in pay status on the applicable date with respect to a portion of his or her interest in a plan or IRA if such portion is to be paid in a benefit form that has been elected on or before such date and the participant has received, on or before such date, at least one payment under such benefit form.

Q-3: What is required for an election of the form of benefit payable under the plan to have been irrevocable as of any applicable date?

A-3: As of any applicable date, an election of the form of benefit payable under a plan is irrevocable if, as of such date, it was a written irrevocable election that, with respect to all payments to be received after such date, specified the form of distribution (e.g., lump sum, level dollar annuity, formula annuity) and the period over which the distribution would be made (e.g., single life, joint and survivor, term certain). An election is not irrevocable as of any applicable date if, on or after such date, the form or period of the distribution could be determined or altered by any person or persons. An election does not fail to be irrevocable as of an applicable date merely because the beneficiaries were not designated as of such date or could be changed after such date. If any interest in any IRA may not, by law or contract, be subject to an irrevocable election described in this section, any election of the form of benefit payable under the IRA does not satisfy the requirement that an irrevocable election have been made.

[T.D. 8073, 51 FR 4335, Feb. 4, 1986]