

§ 20.2013-5

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§ 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) over property. Thus, the term does not include an interest in property consisting merely of a bare legal title, such as that of a trustee. Nor does the term include a power of appointment over property which is not a general power of appointment (as defined in section 2041). Examples of property, as described in this paragraph, are annuities, life estates, estates for terms of years, vested or contingent remainders and other future interests.

(b) In order to obtain the credit for tax on prior transfers, there must be a transfer of property described in paragraph (a) of this section by or from the transferor to the decedent. The term “transfer” of property by or from a transferor means any passing of property or an interest in property under circumstances which were such that the property or interest was included in the gross estate of the transferor. In this connection, if the decedent receives property as a result of the exercise or nonexercise of a power of appointment, the donee of the power (and not the creator) is deemed to be the transferor of the property if the property subject to the power is includible in the donee’s gross estate under section 2041 (relating to powers of appointment). Thus, notwithstanding the designation by local law of the capacity in which the decedent takes, property received from the transferor includes interests in property held by or devolving upon the decedent: (1) As spouse under dower or curtesy laws or laws creating an estate in lieu of dower or curtesy; (2) as surviving tenant of a tenancy by the entirety or joint tenancy with survivorship rights; (3) as beneficiary of the proceeds of life insurance; (4) as survivor under an annuity contract; (5) as donee (possessor) of a general power of appointment (as defined in section 2041); (6) as appointee under the exercise of a general power of appointment (as defined in section 2041); or (7) as remainderman under the release or nonexercise of a power of appointment by

reason of which the property is included in the gross estate of the donee of the power under section 2041.

(c) The application of this section may be illustrated by the following example:

Example: A devises Blackacre to B, as trustee, with directions to pay the income therefore to C, his son, for life. Upon C’s death, Blackacre is to be sold. C is given a general testamentary power, to appoint one-third of the proceeds, and a testamentary power, which is not a general power, to appoint the remaining two-thirds of the proceeds, to such of the issue of his sister D as he should choose. D has a daughter, E, and a son, F. Upon his death, C exercised his general power by appointing one-third of the proceeds to D and his special power by appointing two-thirds of the proceeds to E. Since B’s interest in Blackacre as a trustee is not a beneficial interest, no part of it is “property” for purpose of the credit in B’s estate. On the other hand, C’s life estate and his testamentary power over the one-third interest in the remainder constitute “property” received from A for purpose of the credit in C’s estate. Likewise, D’s one-third interest in the remainder received through the exercise of C’s general power of appointment is “property” received from C for purpose of the credit in D’s estate. No credit is allowed E’s estate for the property which passed to her from C since the property was not included in C’s gross estate. On the other hand, no credit is allowed in E’s estate for property passing to her from A since her interest was not susceptible of valuation at the time of A’s death (see § 20.2013-4).

§ 20.2013-6 Examples.

The application of §§ 20.2013-1 to 20.2013-5 may be further illustrated by the following examples:

Example (1). (a) A died December 1, 1953, leaving a gross estate of \$1,000,000. Expenses, indebtedness, etc., amounted to \$90,000. A bequeathed \$200,000 to B, his wife, \$100,000 of which qualified for the marital deduction. B died November 1, 1954, leaving a gross estate of \$500,000. Expenses, indebtedness, etc., amounted to \$40,000. B bequeathed \$150,000 to charity. A and B were both citizens of the United States. The estates of A and B both paid State death taxes equal to the maximum credit allowable for State death taxes. Death taxes were not a charge on the bequest to B.

(b) “First limitation” on credit for B’s estate (§ 20.2013-2):

A’s gross estate	\$1,000,000.00
Expenses, indebtedness, etc.	90,000.00
A’s adjusted gross estate	910,000.00

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Marital deduction	\$100,000.00	
Exemption	60,000.00	
		160,000.00
A's taxable estate		750,000.00
A's gross estate tax		233,200.00
Credit for State death taxes		23,280.00
A's net estate tax payable		209,920.00
"First limitation" =		
\$209,920.00		
(\$20.2013-2(b)) ×		
[((\$200,000.00 –		
\$100,000.00)		
(\$20.2013-4) +		
(\$750,000.00 –		
\$209,920.00 –		
\$23,280.00 +		
\$60,000.00)		
(\$20.2013-2(c))]		\$36,393.90
(c) "Second limitation" on credit for B's		
estate (§20.2013-3):		
(1) B's net estate tax payable as described		
in §20.2013-3(a)(1) (previously taxed transfer		
included):		
B's gross estate	\$500,000.00	
Expenses, indebtedness, etc.	\$40,000.00	
Charitable deduction	150,000.00	
Exemption	60,000.00	
		250,000.00
B's taxable estate		250,000.00
B's gross estate tax	\$65,700.00	
Credit for State death taxes	3,920.00	
B's net estate tax payable		61,780.00
(2) B's net estate tax payable as described		
in §20.2013-3(a)(2) (previously taxed transfer		
excluded):		
B's gross estate		\$400,000.00
Expenses, indebtedness, etc.	\$40,000.00	
Charitable deduction		
(\$20.2013-3(b))=	\$150,000.00	
– [\$150,000.00 ×		
(\$200,000.00 – \$100,000.00		
÷ \$500,000.00 –		
\$40,000.00)]	117,391.30	
Exemption	60,000.00	
		217,391.30
B's taxable estate		182,608.70
B's gross estate tax	45,482.61	
Credit for State death taxes	2,221.61	
B's net estate tax payable		43,260.00
(3) "Second limitation":		
Subparagraph (1)	\$61,780.00	
Less: Subparagraph (2)	43,260.00	
		\$18,520.00
(d) Credit for B's estate for tax on prior		
transfers (§20.2013-1(c)):		

Credit for tax on prior transfers=\$18,520.00
(lower of paragraphs (b) and (c))×100 percent
(percentage to be taken into account under
§20.2013-1(c)) \$18,520.00

Example (2). (a) The facts are the same as those contained in example (1) of this paragraph with the following additions. C died December 1, 1950, leaving a gross estate of \$250,000. Expenses, indebtedness, etc., amounted to \$50,000. C bequeathed \$50,000 to B. C was a citizen of the United States. His estate paid State death taxes equal to the maximum credit allowable for State death taxes. Death taxes were not a charge on the bequest to B.

(b) "First limitation" on credit for B's estate (§20.2013-2(d))–

(1) With respect to the property received from A:

"First limitation"=\$36,393.90 (this computation is identical with the one contained in paragraph (b) of example (1) of this section).

(2) With respect to the property received from C:

C's gross estate		\$250,000.00
Expenses, indebtedness, etc.	\$50,000.00	
Exemption	\$60,000.00	
		\$110,000.00

C's taxable estate 140,000.00

C's gross estate tax	32,700.00
Credit for State death taxes	1,200.00

C's net estate tax payable	31,500.00
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"First limitation" = \$31,500.00 (§20.2013-2(b))
× [\$50,000.00 (§20.2013-4) + (\$140,000.00
– \$31,500.00 – \$1,200.00 + \$60,000.00)
(\$20.2013-2(c))]

(c) "Second limitation" on credit for B's estate (§20.2013-3(c)):

(1) B's net estate tax payable as described in §20.2013-3(a)(1) (previously taxed transfers included)= $\$61,780.00$ (this computation is identical with the one contained in paragraph (c)(1) of example (1) of this section).

(2) B's net estate tax payable as described in §20.2013-3(a)(2) (previously taxed transfers excluded):

B's gross estate	\$350,000.00
Expenses, indebtedness, etc.	\$40,000.00
Charitable deduction	
(\$20.2013-3(b)) =	
\$150,000.00 – [\$150,000.00	
× (\$200,000.00 –	
\$100,000.00 + \$50,000.00) +	
(\$500,000.00 – \$40,000.00)]	101,086.96
Exemption	60,000.00
	201,086.96

B's taxable estate 148,913.04

B's gross estate tax	35,373.91
Credit for State death taxes	1,413.91

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B's net estate tax payable	33,960.00
(3) "Second limitation":	
Subparagraph (1)	\$61,780.00
Less: Subparagraph (2)	33,960.00
	\$27,820.00
(4) Apportionment of "second limitation" on credit:	
Transfer from A (§ 20.2013-4)	\$100,000.00
Transfer from C (§ 20.2013-4)	50,000.00
Total	150,000.00
Portion of "second limitation" attributable to transfer from A (100/150 of \$27,820.00)	18,546.67
Portion of "second limitation" attributable to transfer from C (50/150 of \$27,820.00)	9,273.33
(d) Credit of B's estate for tax on prior transfers (§ 20.2013-1(c)):	
Credit for tax on transfer from A=	
\$18,546.67 (lower of "first limitation" computed in paragraph (b)(1) and "second limitation" apportioned to A's transfer in paragraph (c)(4)) × 100 percent (percentage to be taken into account under § 20.2013-1(c))	\$18,546.67
Credit for tax on transfer from C=	
\$9,273.33 (lower of "first limitation" computed in paragraph (b)(2) and "second limitation" apportioned to B's transfer in paragraph (c)(4)) × 80 percent (percentage to be taken into account under § 20.2013-1(c))	7,418.66
Total credit for tax on prior transfers	25,965.33

§ 20.2014-1 Credit for foreign death taxes.

(a) *In general.* (1) A credit is allowed under section 2014 against the Federal estate tax for any estate, inheritance, legacy, or succession taxes actually paid to any foreign country (hereinafter referred to as "foreign death taxes"). The credit is allowed only for foreign death taxes paid (i) with respect to property situated within the country to which the tax is paid, (ii) with respect to property included in the decedent's gross estate, and (iii) with respect to the decedent's estate. The credit is allowable to the estate of a decedent who was a citizen of the United States at the time of his death. The credit is also allowable, as provided in paragraph (c) of this section, to the estate of a decedent who was a resident but not a citizen of the United States at the time of his death. The credit is not allowable to the estate of a decedent who was neither a citizen nor a resident of the United States at the time of his death. See paragraph (b)(1) of § 20.0-1 for the meaning of the

term "resident" as applied to a decedent. The credit is allowable not only for death taxes paid to foreign countries which are states in the international sense, but also for death taxes paid to possessions or political subdivisions of foreign states. With respect to the estate of a decedent dying after September 2, 1958, the term "foreign country", as used in this section and §§ 20.2014-2 to 20.2014-6, includes a possession of the United States. See §§ 20.2011-1 and 20.2011-2 for the allowance of a credit for death taxes paid to a possession of the United States in the case of a decedent dying before September 3, 1958. No credit is allowable for interest or penalties paid in connection with foreign death taxes.

(2) In addition to the credit for foreign death taxes under section 2014, similar credits are allowed under death tax conventions with certain foreign countries. If credits against the Federal estate tax are allowable under section 2014, or under section 2014 and one or more death tax conventions, for death taxes paid to more than one country, the credits are combined and the aggregate amount is credited against the Federal estate tax, subject to the limitation provided for in paragraph (c) of § 20.2014-4. For application of the credit in cases involving a death tax convention, see § 20.2014-4.

(3) No credit is allowable under section 2014 in connection with property situated outside of the foreign country imposing the tax for which credit is claimed. However, such a credit may be allowable under certain death tax conventions. In the case of a tax imposed by a political subdivision of a foreign country, credit for the tax shall be allowed with respect to property having a situs in that foreign country, even though, under the principles described in this subparagraph, the property has a situs in a political subdivision different from the one imposing the tax. Whether or not particular property of a decedent is situated in the foreign country imposing the tax is determined in accordance with the same principles that would be applied in determining whether or not similar property of a nonresident decedent not a citizen of the United States is situated within the United States for Federal estate