

\$101,500)= \$139,096.] The amount excluded is \$6,904 (\$146,000 - \$139,096).

(4) The numerator of the fraction (\$96,700) is determined by multiplying the amount rolled over from IRA F1 to IRA F2 (\$100,000) by a fraction, the numerator of which is the amount of the rollover contribution to IRA F1 (\$85,000), and the denominator of which is the total contributions to IRA F1 (\$85,000+\$5,000=\$90,000). $[(\$100,000) (\$85,000/\$90,000)]=\$96,700.$

(5) The denominator of the fraction (\$101,500) is the sum of the contributions to IRA F2 (the \$100,000 rollover contribution from IRA F1, and the \$1,500 annual contribution to IRA F2).

[T.D. 7761, 46 FR 7305, Jan. 23, 1981; 46 FR 17191, Mar. 18, 1981, as amended by T.D. 8540, 59 FR 30103, June 10, 1994]

§ 20.2040-1 Joint interests.

(a) *In general.* A decedent's gross estate includes under section 2040 the value of property held jointly at the time of the decedent's death by the decedent and another person or persons with right of survivorship, as follows:

(1) To the extent that the property was acquired by the decedent and the other joint owner or owners by gift, devise, bequest, or inheritance, the decedent's fractional share of the property is included.

(2) In all other cases, the entire value of the property is included except such part of the entire value as is attributable to the amount of the consideration in money or money's worth furnished by the other joint owner or owners. See § 20.2043-1 with respect to adequacy of consideration. Such part of the entire value is that portion of the entire value of the property at the decedent's death (or at the alternate valuation date described in section 2032 which the consideration in money or money's worth furnished by the other joint owner or owners bears to the total cost of acquisition and capital additions. In determining the consideration furnished by the other joint owner or owners, there is taken into account only that portion of such consideration which is shown not to be attributable to money or other property acquired by the other joint owner or owners from the decedent for less than a full and adequate consideration in money or money's worth.

The entire value of jointly held property is included in a decedent's gross

estate unless the executor submits facts sufficient to show that property was not acquired entirely with consideration furnished by the decedent, or was acquired by the decedent and the other joint owner or owners by gift, bequest, devise, or inheritance.

(b) *Meaning of "property held jointly".* Section 2040 specifically covers property held jointly by the decedent and any other person (or persons), property held by the decedent and spouse as tenants by the entirety, and a deposit of money, or a bond or other instrument, in the name of the decedent and any other person and payable to either or the survivor. The section applies to all classes of property, whether real or personal, and regardless of when the joint interests were created. Furthermore, it makes no difference that the survivor takes the entire interest in the property by right of survivorship and that no interest therein forms a part of the decedent's estate for purposes of administration. The section has no application to property held by the decedent and any other person (or persons) as tenants in common.

(c) *Examples.* The application of this section may be explained in the following examples in each of which it is assumed that the other joint owner or owners survived the decedent:

(1) If the decedent furnished the entire purchase price of the jointly held property, the value of the entire property is included in his gross estate;

(2) If the decedent furnished a part only of the purchase price, only a corresponding portion of the value of the property is so included;

(3) If the decedent furnished no part of the purchase price, no part of the value of the property is so included;

(4) If the decedent, before the acquisition of the property by himself and the other joint owner, gave the latter a sum of money or other property which thereafter became the other joint owner's entire contribution to the purchase price, then the value of the entire property is so included, notwithstanding the fact that the other property may have appreciated in value due to market conditions between the time of the gift and the time of the acquisition of the jointly held property;

(5) If the decedent, before the acquisition of the property by himself and the other joint owner, transferred to the latter for less than an adequate and full consideration in money or money's worth other income-producing property, the income from which belonged to and became the other joint owner's entire contribution to the purchase price, then the value of the jointly held property less that portion attributable to the income which the other joint owner did furnish is included in the decedent's gross estate;

(6) If the property originally belonged to the other joint owner and the decedent purchased his interest from the other joint owner, only that portion of the value of the property attributable to the consideration paid by the decedent is included;

(7) If the decedent and his spouse acquired the property by will or gift as tenants by the entirety, one-half of the value of the property is included in the decedent's gross estate; and

(8) If the decedent and his two brothers acquired the property by will or gift as joint tenants, one-third of the value of the property is so included.

§ 20.2041-1 Powers of appointment; in general.

(a) *Introduction.* A decedent's gross estate includes under section 2041 the value of property in respect of which the decedent possessed, exercised, or released certain powers of appointment. This section contains rules of general application; § 20.2041-2 contains rules specifically applicable to general powers of appointment created on or before October 21, 1942; and § 20.2041-3 sets forth specific rules applicable to powers of appointment created after October 21, 1942.

(b) *Definition of "power of appointment"*—(1) *In general.* The term "power of appointment" includes all powers which are in substance and effect powers of appointment regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment. Similarly, a power given

to a decedent to affect the beneficial enjoyment of trust property or its income by altering, amending, or revoking the trust instrument or terminating the trust is a power of appointment. If the community property laws of a State confer upon the wife a power of testamentary disposition over property in which she does not have a vested interest she is considered as having a power of appointment. A power in a donee to remove or discharge a trustee and appoint himself may be a power of appointment. For example, if under the terms of a trust instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment. However, the decedent is not considered to have a power of appointment if he only had the power to appoint a successor, including himself, under limited conditions which did not exist at the time of his death, without an accompanying unrestricted power of removal. Similarly, a power to amend only the administrative provisions of a trust instrument, which cannot substantially affect the beneficial enjoyment of the trust property or income, is not a power of appointment. The mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of such fiduciary duties is not a power of appointment. Further, the right in a beneficiary of a trust to assent to a periodic accounting, thereby relieving the trustee from further accountability, is not a power of appointment if the right of assent does not consist of any power or right to enlarge or shift the beneficial interest of any beneficiary therein.

(2) *Relation to other sections.* For purposes of §§ 20.2041-1 to 20.2041-3, the term "power of appointment" does not