

Section 2033.—Property in Which the Decedent Had an Interest

26 CFR 20.2033-1: Property in which the decedent had an interest.

What portion of a life insurance policy on a spouse's life is includible in a decedent's gross estate if the noninsured spouse predeceases the insured spouse? See Rev. Rul. 2003-40, on this page.

Section 2042.—Proceeds of Life Insurance

26 CFR 20.2042-1(c)(5): Proceeds of life insurance.

(Also § 2033; 20.2033-1.)

Estate tax; taxation of life insurance.

If a Louisiana decedent purchases a life insurance policy on the decedent's life during marriage, names the decedent as owner of the policy, and does not transfer ownership of the policy, the policy is presumed to be community property under Louisiana law. As a result, one-half of the proceeds is includible in the decedent's gross estate.

Rev. Rul. 2003-40

ISSUE

If a Louisiana decedent purchases a life insurance policy on the decedent's life during marriage, names the decedent as owner of the policy, and does not transfer ownership of the policy, to what extent are the proceeds of insurance on the decedent's life includible in the decedent's gross estate under § 2042 of the Internal Revenue Code?

FACTS

Decedent, *D*, and *D*'s spouse, *S*, are married and domiciled in Louisiana. *D* purchased a life insurance policy on *D*'s life. *D* designated *D* as owner of the policy and designated *S* as beneficiary of the policy. *D* and *S* paid all of the premiums on the policy from community funds. During *D*'s life, *D* did not transfer ownership in the policy. Upon *D*'s death, the insurance proceeds were paid to *S*.

LAW AND ANALYSIS

Section 2031 provides that the value of the gross estate of the decedent is determined by including the value at the time of

his or her death of all property, real or personal, tangible or intangible, wherever situated.

Section 2033 provides that the value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his or her death.

Section 2042(2) provides that the proceeds of insurance on a decedent's life payable to a named beneficiary are includible in the decedent's gross estate if the decedent possessed any incidents of ownership in the policy at the time of death.

Section 20.2042-1(c)(2) of the Estate Tax Regulations provides that the term "incidents of ownership" is not limited to ownership of the policy in the technical legal sense, but includes the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke an assignment, to pledge the policy for a loan, or to obtain from the insurer a loan against the surrender value of the policy. Section 20.2042-1(c)(5) explains that state law determines whether and to what extent a decedent held incidents of ownership in a life insurance policy.

In general, if life insurance is acquired by a spouse domiciled in a community property state during marriage and premiums are paid from community funds, the incidents of ownership constitute community property rights. *Freedman v. United States*, 382 F.2d 742 (5th Cir. 1967); *Davis v. Prudential Ins. Co. of America*, 331 F.2d 346 (5th Cir. 1964). Under those circumstances, one-half of the proceeds is includible in the gross estate of the insured spouse. Section 20.2042-1(c)(5).

In *Catalano v. United States*, 429 F.2d 1058, 1060 (5th Cir. 1969), the Fifth Circuit held that, under Louisiana law, a life insurance policy on the life of a husband, is, as a matter of law, deemed part of the wife's separate estate when the husband has transferred ownership of the policy to his wife. The court noted that in Louisiana the use of community funds to pay the premiums on a life insurance policy held as the separate property of the noninsured spouse does not cause any of the incidents of ownership to be attributed to the community and does not affect the separate property status of the policy. Accordingly, no portion of the proceeds was included in the insured spouse's estate under § 2042. See also *Estate of Marks v. Commissioner*, 94 T.C.

720, 724 (1990); *Bergman v. Commissioner*, 66 T.C. 887, 893 (1976); *Estate of Saia v. Commissioner*, 61 T.C. 515, 520 (1974).

The Service issued Rev. Rul. 94-69, 1994-2 C.B. 241, after the courts' opinions in *Catalano*, *Estate of Saia*, *Bergman* and *Estate of Marks*. In Rev. Rul. 94-69, the decedent, who was domiciled in Louisiana, purchased a life insurance policy on the decedent's life. The decedent designated the decedent's spouse as owner of the policy, which conferred all of the incidents of ownership in the policy on the spouse. The decedent and spouse paid all of the premiums on the policy from community funds. Based on the Fifth Circuit's and Tax Court's interpretations of Louisiana law in *Catalano*, *Estate of Saia*, *Bergman* and *Estate of Marks*, Rev. Rul. 94-69 concludes that when a Louisiana decedent purchased an insurance policy on the decedent's life during marriage, named the spouse as owner of the policy, and paid all premiums from community funds, none of the proceeds are includible in the decedent's estate under § 2042(2).

In *Estate of Burris v. Commissioner*, T.C. Memo. 2001-210, the Tax Court held that, under Louisiana law, a life insurance policy on the life of a husband is, as a matter of law, presumed to be community property when the husband is named as the owner of the policy. The court, accordingly, held that one-half of the proceeds of the insurance policy was includible in the husband's estate under § 2042.

Under the facts presented in this revenue ruling, *D* designated *D* as owner of a life insurance policy on *D*'s life and *D* retained incidents of ownership in that policy. Based on the Tax Court's interpretation of Louisiana law, the policy is presumed to be community property.

Unlike Rev. Rul. 94-69, there is no evidence in the facts presented in this revenue ruling that *S* intended to transfer *S*'s community property interest in the policy to *D* to overcome that presumption. *D*, therefore, possessed one-half of the incidents of ownership in his own right and held one-half of the incidents of ownership as agent for the community. Accordingly, only one-half of the proceeds of the life insurance policy is properly includible in *D*'s gross estate under § 2042 and § 20.2042-1(c)(5). In the event that *S* predeceases *D*, one-half of the value of the

policy is includible in *S*'s gross estate under § 2033 and § 20.2031-8(a)(2).

Taxpayers will be held to a duty of consistency in reporting the tax treatment of life insurance policies in the estates of a husband and a wife in appropriate circumstances. See *Cluck v. Commissioner*, 105 T.C. 324 (1995). For example, under the facts presented in this revenue ruling, *D*'s estate may be required to include one hundred percent of the proceeds of a life insurance policy in *D*'s gross estate if *S* died before *D* and a community property share of the value of the policy was not included in *S*'s estate.

HOLDING

If a Louisiana decedent purchases a life insurance policy on the decedent's life during marriage, names the decedent as owner of the policy, and does not transfer ownership of the policy, the policy is presumed to be community property under Louisiana law. As a result, one-half of the proceeds is includible in the decedent's gross estate under § 2042 and § 20.2042-1(c)(5).

DRAFTING INFORMATION

The principal author of this revenue ruling is DeAnn Malone of the Associate Chief Counsel (Passthroughs and Special Industries) (CC:PSI:B09). For further information regarding this revenue ruling, contact DeAnn Malone at (202) 622-7830 (not a toll-free call).