IRS Revenue Rulings

Code Secs. 2031, 2039

26 CFR 20.2033-1: Property in which the decedent had an interest.
(Also Section 2039; 20.2039-1.)

Death benefit; Public Safety Officers' Benefits Act. A death benefit paid under section 701 (a) of the Public Safety Officers' Benefits Act to the survivor of a decedent who had been employed as a public safety officer is not includible in the decedent's gross estate under section 2039(a) or section 2033 of the Code.

REV. RUL. 79-397

ISSUE

Is a death benefit received by a decedent's survivor pursuant to the Public Safety Officers' Benefits Act includible in the decedent's gross estate for federal estate tax purposes?

FACTS

The decedent, D, was employed by a state agency as a public safety officer. In 1977, D died as the result of a personal injury sustained in the line of duty.

Section 701(a) of the Public Safety Officers' Benefits Act, 42 U.S.C. section 3796 (1976), provides for the payment of benefits to survivors of local, state, and federal public safety officers who have died in the performance of duty.

On account of D's death, D's surviving spouse received a payment of 50x dollars pursuant to section 701(a) of the Public Safety Officers' Benefits Unable to recognize this page. Act. No other benefits were payable under the statute.

LAW AND ANALYSIS

Section 2033 of the Internal Revenue Code of 1954 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 death.

Section 2039(a) of the Code provides, in part, for the inclusion in the decedent's gross estate of the value of any payment receivable by a beneficiary by reason of surviving the decedent, under any form of contract or agreement, other than insurance on the decedent's life, if, under such contract or agreement, an annuity or other payment was payable to the decedent.

The term "contract or agreement" includes any arrangement arising by reason of the decedent's employment. Section 20.2039-1(b) of the regulations.

Rev. Rul. 76-102, 1976-1 C.B. 272, holds that amounts paid under the Federal Coal Mine Health and Safety Act of 1969 arise under a public law enacted to ensure a system of benefit payments to disabled miners and their survivors rather than under any form of contract or agreement arising as a result of decedent's employment or as part of the terms of the decedent's employment. See also Rev. Rul. 60-70, 1960-1 C.B. 372, involving payments to survivors of a deceased railroad employee under the Railroad Retirement Act of 1937; Rev. Rul. 76-501, 1976-2 C.B. 267, involving annuity payable to surviving spouse of deceased veteran pursuant to Chapter 13-Title 38 of the United States Code.

In the present situation, the amounts payable under the Public Safety Officers' Benefits Act are not payable under any form of contract entered into by D or arising by reason of D's employment but are analogous to the benefits under the Federal Coal Mine Health and Safety Act since, under the Public Safety Officers' Act, the benefits are payable pursuant to a public law to provide for survivors of public safety officers who died in the line of duty. Compare Rev. Rul. 75-505, 1975-2 C.B. 364, which concludes that amounts payable under the Texas Judicial Retirement System are payable under a contract or agreement since the obligation to make the payments represents a part of the decedent's terms of employment with the employer.

In addition, D did not have the right to receive any payment during lifetime because the benefit under the Public Safety Officers' Benefits Act was payable only to certain survivors after D's death. Therefore, the 50x dollars is not includible in D's gross estate under section 2039(a) of the Code. See section 20.2039-1(b) of the regulations.

The 50x dollars benefit is not property in which D had an interest at the time of death because it was payable only to such persons (D's surviving spouse, children, and dependent parents), and in such amounts as are designated by the statute. Further, the benefits are payable from government appropriations, not from any fund in which the decedent had a vested interest. Consequently, the benefit is not includible in D's gross estate under section 2033. See Rev. Rul. 76-102, which also holds that survivor benefits, payable under the Federal Coal Mine Health and Safety Act are not property in which the employee-decedent had an interest within the meaning of section 2033.

HOLDING

The 50x dollars is not includible in D's gross estate under section 2039(a) or section 2033 of the Code.

IRS Publications

Pub. 559. Survivors, Executors, and Administrators

Link to Table of Contents

OTHER TAX INFORMATION

This section contains information about the effect of an individual's death on the income tax liability of the survivors (including widows and widowers), the beneficiaries, and the estate.

TAX BENEFITS FOR SURVIVORS

Survivors can qualify for certain benefits when filing their own income tax returns.

JOINT RETURN BY SURVIVING SPOUSE. A surviving spouse can file a joint return for the year of death and may qualify for special tax rates for the following 2 years, as explained under QUALIFYING WIDOWS AND WIDOWERS, later.

DECEDENT AS YOUR DEPENDENT. If the decedent qualified as your dependent for the part of the year before death, you can claim the exemption for the dependent on your tax return, regardless of when death occurred during the year.

If the decedent was your qualifying child, you may be able to claim the child tax credit or the earned income credit.

QUALIFYING WIDOWS AND WIDOWERS. If your spouse died within the 2 tax years preceding the year for which your return is being filed, you may be eligible to claim the filing status of qualifying widow(er) with dependent child and qualify to use the MARRIED FILING JOINTLY tax rates.

REQUIREMENTS. Generally, you qualify for this special benefit if you meet all of the following requirements.

- You were entitled to file a joint return with your spouse for the year of death -- whether or not you actually filed jointly.
- You did not remarry before the end of the current tax year.

more than 1 year, regardless of how long you held the property.

PROPERTY DISTRIBUTED IN KIND. Your basis in property distributed in kind by a decedent's estate is the same as the estate's basis immediately before the distribution plus any gain, or minus any loss, recognized by the estate. Property is distributed in kind if it satisfies your right to receive another property or amount, such as the income of the estate or a specific dollar amount. Property distributed in kind generally includes any noncash property you receive from the estate other than the following.

* A specific bequest (unless it must be distributed in more than three installments).

* Real property, the title to which passes directly to you under local law.

For information on an estate's recognized gain or loss on distributions in kind, see INCOME TO INCLUDE under INCOME TAX RETURN OF AN ESTATE -- FORM 1041, later.

OTHER ITEMS OF INCOME

Some other items of income that you, as a survivor or beneficiary, may receive are discussed below. Lump-sum payments you receive as the surviving spouse or beneficiary of a deceased employee may represent accrued salary payments; distributions from employee profit-sharing, pension, annuity, and stock bonus plans; or other items that should be treated separately for tax purposes. The treatment of these lump-sum payments depends on what the payments represent.

CAUTION! If the decedent is a specified terrorist victim (see Important Reminders), certain income received by the beneficiary or the estate is not included in income. See Publication 3920.

PUBLIC SAFETY OFFICERS. Special rules apply to certain amounts received because of the death of a public safety officer (law enforcement officers, fire fighters, chaplains, ambulance crews, and rescue squads).

CAUTION! The provisions apply to a chaplain killed in the line of duty after September 10, 2001. The chaplain must have been responding to a fire, rescue, or police emergency as a member or employee of a fire or police department.

DEATH BENEFITS. The death benefit payable to eligible survivors of public safety officers who die as a result of traumatic injuries sustained in the line of duty is not included in either the beneficiaries' income or the decedent's gross estate. The benefit is administered through the Bureau of Justice Assistance (BJA).

The BJA can pay the eligible survivors an emergency interim benefit up to $3,000 if it determines that a public safety officer's death is one for which a death benefit will probably be paid. If there is no final payment, the recipient of the interim benefit is liable for repayment. However, the BJA may waive all or part of the repayment if it will cause a hardship. If all or part of the repayment is waived, that amount is not included in income.

SURVIVOR BENEFITS. Generally, a survivor annuity received by the spouse, former spouse, or child of a public safety officer killed in the line of duty is excluded from the recipient's income. The annuity must be provided under a government plan and is excludable to the extent that it is attributable to the officer's service as a public safety officer.

The exclusion does not apply if the recipient's actions were responsible for the officer's death. It also does not apply in the following circumstances.

- The death was caused by the intentional misconduct of the officer or by the officer's intention to cause such death.

- The officer was voluntarily intoxicated at the time of death.

- The officer was performing his or her duties in a grossly negligent manner at the time of death.

SALARY OR WAGES. Salary or wages paid after the employee's death are usually taxable income to the beneficiary. See WAGES, earlier, under SPECIFIC TYPES OF INCOME IN RESPECT OF A DECEDENT.

ROLLOVER DISTRIBUTIONS. An employee's surviving spouse who receives an eligible rollover distribution may roll it over tax free into an IRA, a qualified plan, a section 403 annuity, or a section 457 plan. A distribution to a beneficiary other than the employee's surviving spouse is not an eligible rollover distribution and is subject to tax. If the decedent was born before 1936, the beneficiary may be able to use optional methods to figure the tax on the distribution. For more information, see Publication 575, PENSION AND ANNUITY INCOME.

PENSIONS AND ANNUITIES. For beneficiaries who receive pensions and annuities, see Publication 575. For beneficiaries of federal Civil Service employees or retirees, see Publication 721, TAX GUIDE TO U.S. CIVIL SERVICE RETIREMENT BENEFITS.

INHERITED IRAs. If a person other than the decedent's spouse inherits the decedent's traditional IRA or Roth IRA, that person cannot treat the IRA as one established on his or her behalf. If a distribution from a traditional IRA is from contributions that were deducted or from earnings and gains in the IRA, it is fully taxable income. If there were nondeductible contributions, an allocation between taxable and nontaxable income must be made. For information on distributions from a Roth IRA, see the discussion earlier under INCOME IN RESPECT OF THE DECEDENT. The inherited IRA cannot be rolled over into, or receive a rollover from, another IRA. No deduction is allowed for amounts paid into that inherited

IRS Publications

Pub. 559. Survivors, Executors, and Administrators

Link to Table of Contents

IMPORTANT CHANGES

COMBAT ZONE. Special rules apply if a member of the Armed Forces of the United States dies while in active service in a combat zone or from wounds, disease, or injury incurred in a combat zone. See TAX FORGIVENESS FOR DEATHS DUE TO MILITARY OR TERRORIST ACTIONS, later. For other tax information for members of the Armed Forces, see Publication 3, ARMED FORCES' TAX GUIDE.

BENEFITS FOR PUBLIC SAFETY OFFICERS' SURVIVORS. For tax years beginning after 2001, a survivor annuity received by the spouse, former spouse, or child of a public safety officer killed in the line of duty generally will be excluded from the recipient's income regardless of the date of the officer's death. Survivor benefits received before 2002 were excludable only if the officer died after 1996. The provision applies to a chaplain killed in the line of duty after September 10, 2001. For more information, see PUBLIC SAFETY OFFICERS, later.

ROLLOVERS BY SURVIVING SPOUSES. For distributions after 2001, an employee's surviving spouse who receives an eligible rollover distribution may roll it over into an eligible retirement plan, including an IRA, a qualified plan, a section 403(b) annuity, or a section 457 plan. For plan distributions before 2002, surviving spouses could only roll the distribution over into an IRA.

ESTATE TAX RETURN. Generally, if the decedent died during 2002, an estate tax return (Form 706) must be filed if the gross estate is more than $1,000,000.

ESTATE TAX REPEAL. The estate tax is repealed for decedents dying after 2009.

IMPORTANT REMINDERS

SPECIFIED TERRORIST VICTIM. The VICTIMS OF TERRORISM TAX RELIEF ACT OF 2001 is explained in Publication 3920, TAX RELIEF FOR VICTIMS OF TERRORIST ATTACKS. Under the Act, the federal income tax liability of those killed in the following attacks (specified terrorist victim) is forgiven for certain tax years.

* The April 19, 1995, terrorist attack on the Alfred P. Murrah