

Subtitle B.—Estate and Gift Taxes
 Chapter 11.—Estate Tax
 Subchapter A.—Estate of Citizens or Residents
 Part II.—Credits Against Tax

Section 2013.—Credit for Tax on Prior Transfers

26 CFR 20.2013-2: "First limitation."
 (Also Sections 6166, 6511; 20.6166-1, 301.6511(a)-1.)

Refunds and credits; prior transfers; installment payments. If the estate tax of a transferor decedent is being paid in section 6166 installments, only the amount of installments actually paid is to be used in computing the section 2013 credit for the estate of the transferee decedent.

Rev. Rul. 83-15

ISSUE

In computing the "first limitation" of the credit for tax on prior transfers under section 2013(b) of the Internal Revenue Code, what is the proper amount of the federal estate tax liability of the transferor-decedent's estate to be used when the estate tax on the transferor-decedent is being paid in installments under section 6166?

FACTS

At A's death in 1977, A owned all the shares of a closely held corporation. A bequeathed these shares to D. A's executor elected under section 6166 of the Code to pay the estate tax in ten installments. The federal estate tax was \$300,000 of which \$200,000 qualified for installment payments. The executor chose not to use the five-year deferral option, and on the date the estate tax return was due, paid the initial installment of \$20,000 and the additional \$100,000 which did not qualify for installment payments.

Within 2 years after A's death, D died. When D's estate tax was due, 2 installments had been paid by the executor of A's estate. D's executor claimed a credit based upon the "first limitation" of section 2013 of the Code.

LAW AND ANALYSIS

Section 2013 of the Code provides, in general, that the estate of a decedent is allowed a credit for the estate tax paid on property transferred to the decedent from a transferor who died within ten years before, or within two years after, the decedent's death. The amount of the credit allowable for the transferred property is limited to the lesser of the transferor's or the transferee's federal estate tax paid with respect to such property.

The "first limitation", the amount of the transferor's federal estate tax attributable to the transferred property, is determined in accordance with section 2013(b) of the Code. It provides that the allowable credit is an amount that bears the same ratio to the estate tax paid by the estate of the transferor as the value of the transferred property bears to the transferor's taxable estate (determined for purposes of the estate tax) decreased by any death taxes paid with respect to such estate. This "first limitation" is expressed in section 20.2013-2(a) of the Estate Tax Regulations as:

$$\frac{\text{value of transferred property}}{\text{transferor's adjusted taxable estate}} \times \text{transferor's adjusted federal estate tax}$$

Section 2013 of the Code explicitly refers to the federal estate tax actually "paid." Therefore, in this case \$140,000 (rather than the total liability of \$300,000) is the appropriate amount to use when computing the first limitation as of the day when D's estate tax return is due. Substituting the federal estate tax amount paid in the above algebraic expression, the first limitation for D's gross estate is:

$$\frac{\text{value of transferred property}}{A's \text{ taxable estate} - \$140,000} \times \$140,000$$

Subsequent installment payments by A's estate will increase the first limitation and the amount of the credit for tax on prior transfer that may be refunded. Section 6511 of the Code provides that a claim for credit or refund of an overpayment of any tax must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later. To safeguard the right or potential right

to receive a refund after each installment is paid, the executor of D's estate must file a protective claim for refund for the entire amount of credit potentially due within the time provided by section 6511. A present assertion of a claim for refund will be sufficient even though no present right to the refund has arisen at the time the protective claim is filed. The initial protective claim must be perfected by filing a subsequent claim for refund for the additional credit allowable upon the payment of each installment of the estate tax of the transferor estate, using Form 843.

HOLDING

When the federal estate tax of a transferor-decedent is being paid in installments under section 6166 of the Code, only the amount of such installment actually paid is to be used in computing the credit for tax on prior transfers under section 2013 for the estate of the transferee-decedent. This holding is also applicable when the tax payments are deferred under sections 6161, 6163, and 6166A (for estates of decedents dying before January 1, 1982).

Part III.—Gross Estate

Section 2031.—Definition of Gross Estate

26 CFR 20.2031-2: Valuation of stocks and bonds.
 (Also Section 2053; 20.2053-3.)

Valuation; stock; underwriting fees. Underwriting fees that are incurred in marketing a large block of stock are not considered in determining blockage discount to be accorded in valuing the stock under section 2031 of the Code, but are deductible as an administration expense under section 2053(a)(2).

Rev. Rul. 83-30

ISSUE

Are underwriting fees, incurred in marketing a large block of stock, considered in determining a blockage discount to be accorded in valuing the stock under section 2031 of the Internal Revenue Code, or are the fees