

corporation at the time of the transfer. The subsequent disposition of the controlling interest does not affect the analysis in Rev. Rul. 82-141 that *D* is treated as having transferred the incidents of ownership within 3 years of *D*'s death. Accordingly, the value of the policy proceeds is includible in *D*'s gross estate under sections 2035(a) and 2035(d)(2).

In Situation 2, a similar rationale applies. The incidents of ownership in a life insurance policy on *D*'s life were transferred within 3 years of *D*'s death, within the meaning of section 2035(d)(2) of the Code, as a result of the transfer of 40 percent of the stock of *X* corporation. Although the policy itself was not transferred as in Situation 1, the result is the same. As a result of the transfer of stock, *D* no longer held a controlling interest in *X* corporation. *D* thereby effectively released the incidents of ownership in the policy attributed to *D* as the controlling shareholder and such release is a transfer within the meaning of section 2035(d)(2). Accordingly, the value of the policy proceeds is includible in *D*'s gross estate under sections 2035(a) and 2035(d)(2).

## HOLDINGS

(1) Life insurance proceeds are includible in a deceased stockholder's gross estate under section 2035 of the Code if, within 3 years of death, the corporation, for less than adequate and full consideration, assigns an insurance policy on the stockholder's life and the stockholder then disposes of control of the corporation and if the life insurance proceeds are payable to a third party for other than a business purpose within the meaning of section 20.2042-1(c)(6) of the regulations.

(2) Life insurance proceeds are includible in a deceased stockholder's gross estate under section 2035 of the Code if, within 3 years of death, the stockholder, for less than adequate and full consideration, disposes of the controlling interest in a corporation that owns a life insurance policy on the stockholder's life and if the life insurance policy proceeds are payable to a third party for other than a business purpose within the meaning of section 20.2042-1(c)(6) of the regulations.

## EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 82-141 is amplified.

## Section 2042.—Proceeds of Life Insurance

26 CFR 20.2042-1: *Proceeds of life insurance.*

If, within 3 years of its controlling stockholder's death, a corporation gratuitously assigns a life insurance policy on the stockholder's life and the stockholder then disposes of control and if the proceeds are payable to a third party, are the proceeds includible in the gross estate under section 2035(d)(2)? See Rev. Rul. 90-21, page 172.

### Part IV.—Taxable Estate

## Section 2053.—Expenses, Indebtedness and Taxes

26 CFR 20.2053-3: *Deductions for expenses of administering estate.*  
(Also Section 2032A; 20.2032A-3.)

**Deductibility of sales expenses and late-payment interest on additional estate tax.** In the case of a special use valuation election where the qualified heir disposes of a portion of the qualified real property neither the sales expenses incurred in selling the property nor the interest expense incurred as a result of the late payment of the additional estate tax is deductible under section 2053(a)(2) of the Code in computing the decedent's taxable estate. Rev. Rul. 81-154 distinguished.

## Rev. Rul. 90-8

### ISSUE

If, after a decedent's estate has made a special use valuation election under section 2032A of the Internal Revenue Code, the qualified heir disposes of a portion of the qualified property to a person who is not a member of the family of the qualified heir and the qualified heir incurs sales expenses and late-payment interest on the additional estate tax imposed by section 2032A(c), are the sales expenses incurred in selling the property and the interest on the additional tax deductible under section 2053(a)(2) in computing the decedent's taxable estate?

### FACTS

*D* owned and operated a farm for several years prior to *D*'s death in

1985. *D* devised the farm to *D*'s child, *C*. *D*'s executor, *E*, made an election on *D*'s timely filed estate tax return to specially value *D*'s farm real property under section 2032A of the Code. Pursuant to the requirements of section 2032A(d), *C* as a qualified heir signed an agreement to be liable for any additional estate tax that might be imposed under section 2032A(c).

Although the administration of *D*'s estate was expected to continue for 3 or 4 years, *C* acquired legal title to the property 1 year after *D*'s death. For reasons unrelated to the administration of the estate, *C* sold a portion of the farm property in 1987 to a person who, for purposes of section 2032(c)(1)(A) of the Code, was not a member of *C*'s family. *C* incurred selling expenses in connection with the sale of the property and received the net proceeds. The sale was a disposition of qualified real property for purposes of section 2032A(c)(1)(A) and, as a result, an additional estate tax was imposed under that section. Although under section 2032A(c)(4) the additional estate tax is required to be paid within 6 months after the date of the disposition, the tax was not paid by *C* until one year after the due date. Consequently, *C* was required to pay interest on the additional estate tax for the one-year period after the due date.

## LAW AND ANALYSIS

Section 2032A of the Code permits an executor, in determining the value of a decedent's gross estate, to elect to value qualified real property (as defined in section 2032A(b)(1)) that passes to a qualified heir (as defined in section 2032A(e)(1)) on the basis of its qualified use in farming or a trade or business other than farming rather than on the basis of its highest and best use, under certain specific conditions and subject to certain limitations.

Under section 2032A(d) of the Code and section 20.2032A-8(c)(1) of the regulations, the qualified heir must sign an agreement consenting to liability for the additional tax that is imposed under the circumstances that are described in section 2032A(c). Under that section if the property ceases to be used as a farm or in another trade or business or is disposed of by the heir to a nonfamily member with-

in 10 years after the death of the decedent, but before the death of the heir, all or a portion of the estate tax benefits obtained from the executor's earlier election to use the section 2032A special use valuation must be recaptured in the form of an additional estate tax imposed on the qualified heir.

Section 2032(c)(4) of the Code provides that the additional tax imposed on the qualified heir will become due and payable 6 months after the property is disposed of or ceases to be used as a farm or in another trade or business. Under section 6601(a), if any amount of tax is not paid on or before the last day fixed for payment, interest must be paid at the established annual rate for the period from the last day fixed for payment to the date paid. Thus, under section 6601(a), interest on the additional tax runs from the date that is 6 months after the date of disposition of the property or cessation of the qualified use until the date of payment. See Rev. Rul. 81-308, 1981-2 C.B. 176.

Section 2053(a)(2) of the Code provides that the value of the taxable estate is determined by deducting from the value of the gross estate administration expenses to the extent the expenses are allowable under the laws of the jurisdiction in which the estate is being administered.

Section 20.2053-3(a) of the Estate Tax Regulations provides in part that the expenses deductible under section 2053(a)(2) of the Code are only those that are actually and necessarily incurred in the administration of an estate and in the transfer of the property of the estate to individual beneficiaries or to a trustee. Expenditures not essential to the proper settlement of the estate but incurred for the individual benefit of the heirs, legatees or devisees are not deductible.

Section 20.2053-3(d)(2) of the regulations provides that expenses for selling property of the estate are deductible if the sale is necessary in order to pay the decedent's debts, expenses of administration, or taxes, to preserve the estate, or to effect distribution. The phrase "expenses for selling property" include brokerage fees and other necessary expenses attending the sale.

In *United States v. Stapp*, 375 U.S. 118 (1963), the Supreme Court held

that expenses allocable to the surviving spouse's share of community property were not deductible as administration expenses under the predecessor of section 2053 of the Code even though the decedent's will directed that these amounts should be paid by the estate.

In Rev. Rul. 81-154, 1981-1 C.B. 470, the Service held that interest on the federal estate tax liability of a decedent's estate is a necessary administration expense under section 2053(a)(2) of the Code and is deductible to the extent allowable under local law, irrespective of the reason the estate incurred the interest expense.

In the present case, the sale of the property by C was not necessary to the administration of D's estate. The expenses were incurred by C, not D's estate. Under section 20.2032A-8-(c)(1) of the regulations, C signed an agreement to be personally liable for additional tax in the event of an early disposition of qualified property. The additional tax and the interest thereon were imposed on C and not on D's estate.

No expense is deductible as an administration expense under section 2053(a)(2) of the Code unless it is actually and necessarily incurred in the administration of the estate. Thus, neither the sales expenses incurred by C nor the interest imposed on C is deductible under section 2053(a)(2).

Rev. Rul. 81-154 is distinguished because the interest expense in that ruling was interest on a tax imposed on the estate. Here the interest is on a tax imposed on the qualified heir.

## HOLDING

If, after a decedent's estate has made a special use valuation election under section 2032A of the Code, the qualified heir disposes of a portion of the qualified property to a person who is not a member of the family of the qualified heir and the qualified heir incurs sales expenses and late-payment interest on the additional estate tax imposed by section 2032A(c), neither the sales expenses nor the interest on the additional tax is deductible under section 2053(a)(2) in computing the decedent's taxable estate.

## EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 81-154, 1981-1 C.B. 470 is distinguished.

## Section 2055.—Transfers for Public, Charitable, and Religious Uses

*26 CFR 20.2055-2: Transfers not exclusively for charitable purposes.*

Contributions to a qualifying charitable remainder unitrust that meets the requirements of section 664(d)(2) of the Code and provides for unitrust payments for one or two measuring lives are deductible for estate tax purposes, assuming that all other applicable requirements for a charitable contribution are met. See Rev. Proc. 90-30, page 534.

*26 CFR 20.2055-2: Transfers not exclusively for charitable purposes.*

Contributions to a qualifying charitable remainder unitrust that meets the requirements of section 664(d)(2) and (3) of the Code and provides for unitrust payments for one or two measuring lives are deductible for estate tax purposes, assuming that all other applicable requirements for a charitable contribution are met. See Rev. Proc. 90-31, page 539.

*26 CFR 20.2055-2: Transfers not exclusively for charitable purposes.*

Contributions to a qualifying charitable remainder unitrust that meets the requirements of section 664(d)(1) of the Code and provides for annuity payments for one or two measuring lives are deductible for estate tax purposes, assuming that all other applicable requirements for a charitable contribution are met. See Rev. Proc. 90-32, page 546.

*26 CFR 20.2055-2: Transfers not exclusively for charitable purposes.*

The Service ordinarily will not issue rulings as to whether a transfer to charitable remainder trust described in section 664 of the Code that provides for annuity or unitrust payments for one or two measuring lives qualifies for a charitable deduction under section 2055(e)(2)-(A) of the Code. See Rev. Proc. 90-33, page 551.

## Section 2056.—Bequests, Etc., To Surviving Spouse

*25 CFR 20.2056(b)-1: Marital deduction; limitation in case of life estate or other "terminable interests."*

**Residuary bequest to spouse; pecuniary bequest payable at fair market value.** A residuary bequest to the