

# Instructions for Form 706

(Rev. September 2023)

For decedents dying after December 31, 2022

**United States Estate (and Generation-Skipping  
Transfer) Tax Return**

Volume 3 of 5



Department of the Treasury  
**Internal Revenue Service**

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## Schedule B—Stocks and Bonds



*If any assets to which the special rule of Regulations section 20.2010-2(a)(7)(ii) applies are reported on this schedule, do not enter any value in the last three columns. See the instructions for Part 5—Recapitulation, item 10, for information on how to estimate and report the value of these assets.*



*Before completing Schedule B, see the examples illustrating the alternate valuation dates being adopted and not being adopted, later.*

If the total gross estate contains any stocks or bonds, you must complete Schedule B and file it with the return.

On Schedule B, list the stocks and bonds included in the decedent's gross estate. Number each item in the left-hand column.

**Note.** Unless specifically exempted by an estate tax provision of the Code, bonds that are exempt from federal income tax are not exempt from estate tax. You should list these bonds on Schedule B.

Public housing bonds includible in the gross estate must be included at their full value.

If you paid any estate, inheritance, legacy, or succession tax to a foreign country on any stocks or bonds included in this schedule, group those stocks and bonds together and label them "Subjected to Foreign Death Taxes."

List interest and dividends on each stock or bond on a separate line.

Indicate as a separate item dividends that have not been collected at death and are payable to the decedent or the estate because the decedent was a stockholder of record on the date of death. However, if the stock is being traded on an exchange and is

selling ex-dividend on the date of the decedent's death, do not include the amount of the dividend as a separate item. Instead, add it to the ex-dividend quotation in determining the FMV of the stock on the date of the decedent's death. Dividends declared on shares of stock before the death of the decedent but payable to stockholders of record on a date after the decedent's death are not includible in the gross estate for federal estate tax purposes and should not be listed here.

## **Description**

**Stocks.** For stocks, indicate:

- Number of shares;
- Whether common or preferred;
- Issue;
- Par value where needed for identification;
- Price per share;

- Exact name of corporation;
- Principal exchange upon which sold, if listed on an exchange; and
- Nine-digit CUSIP number (defined later).

**Bonds.** For bonds, indicate:

- Quantity and denomination;
- Name of obligor;
- Date of maturity;
- Interest rate;
- Interest due date;
- Principal exchange, if listed on an exchange; and
- Nine-digit CUSIP number.

If the stock or bond is unlisted, show the company's principal business office.

If the gross estate includes any interest in a trust, partnership, or closely held entity, provide the EIN of the entity in the description column on Schedules B, E, F, G, M, and O. You must also provide the EIN of an estate (if any) in the description column on the above-noted schedules, where applicable.

**CUSIP number.** The CUSIP (Committee on Uniform Security Identification Procedures) number is a nine-digit number that is assigned to all stocks and bonds traded on major exchanges and many unlisted securities. Usually, the CUSIP number is printed on the face of the stock certificate. If you do not have a stock certificate, the CUSIP may be found on the broker's or custodian's statement or by contacting the company's transfer agent.

## **Valuation**

List the FMV of the stocks or bonds. The FMV of a stock or bond (whether listed or unlisted) is the mean between the highest and lowest selling prices quoted on the valuation date. If only the closing selling prices are available, then the FMV is the mean between the quoted closing selling price on the valuation date and on the trading day before the valuation date.

If there were no sales on the valuation date, figure the FMV as follows.

1. Find the mean between the highest and lowest selling prices on the nearest trading date before and the nearest trading date after the valuation date. Both trading dates must be reasonably close to the valuation date.
2. Prorate the difference between the mean prices to the valuation date.



3. Add or subtract (whichever applies) the prorated part of the difference to or from the mean price figured for the nearest trading date before the valuation date.

If no actual sales were made reasonably close to the valuation date, make the same computation using the mean between the bona fide bid and asked prices instead of sales prices. If actual sales prices or bona fide bid and asked prices are available within a reasonable period of time before the valuation date but not after the valuation date, or vice versa, use the mean between the highest and lowest sales prices or bid and asked prices as the FMV.

For example, assume that sales of stock nearest the valuation date (June 15) occurred 2 trading days before

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Schedule B Examples

Example showing use of Schedule B where the alternate valuation is not adopted; date of death, January 1, 2023.						
Item number	Description, including face amount of bonds or number of shares and par value where needed for identification. Give CUSIP number. If trust, partnership, or closely held entity, give EIN.		Unit value	Alternate valuation date	Alternate value	Value at date of death
1	\$60,000—Arkansas Railroad Co. first mortgage 4%, 20-year bonds, due 2024. Interest payable quarterly on Feb. 1, May 1, Aug. 1, and Nov. 1; N.Y. Exchange . . . . .	CUSIP number or EIN, where applicable	100	-----	\$-----	\$ 60,000
		XXXXXXXXXX				
		Interest coupons attached to bonds, item 1, due and payable on Nov. 1, 2022, but not cashed at date of death . . . . .				600
		Interest accrued on item 1, from Nov. 1, 2022, to Jan. 1, 2023 . . . . .				400
2	500 shares Public Service Corp., common; N.Y. Exchange . .	XXXXXXXXXX	110	-----	-----	55,000
						Dividend on item 2 of \$2 per share declared Dec. 10, 2022, payable on Jan. 9, 2023, to holders of record on Dec. 30, 2022 . . . . . 1,000

Example showing use of Schedule B where the alternate valuation is adopted; date of death, January 1, 2023.						
Item number	Description, including face amount of bonds or number of shares and par value where needed for identification. Give CUSIP number. If trust, partnership, or closely held entity, give EIN.		Unit value	Alternate valuation date	Alternate value	Value at date of death
1		CUSIP number or EIN, where applicable				
	\$60,000—Arkansas Railroad Co. first mortgage 4%, 20-year bonds, due 2024. Interest payable quarterly on Feb. 1, May 1, Aug. 1, and Nov. 1; N.Y. Exchange . . . . .	XXXXXXXXXX	100	-----	\$-----	\$ 60,000
	\$30,000 of item 1 distributed to legatees on Apr. 1, 2023 . . . . .		99	4/1/23	29,700	-----
	\$30,000 of item 1 sold by executor on May 1, 2023 . . . . .		98	5/1/23	29,400	-----
	Interest coupons attached to bonds, item 1, due and payable on Nov. 1, 2022, but not cashed at date of death. Cashed by executor on Feb. 2, 2023 . . . . .		-----	2/2/23	600	600
	Interest accrued on item 1, from Nov. 1, 2022, to Jan. 1, 2023. Cashed by executor on Feb. 2, 2023 . . . . .		-----	2/2/23	400	400
2	500 shares Public Service Corp., common; N.Y. Exchange . . .	XXXXXXXXXX	110	-----	-----	55,000
	Not disposed of within 6 months following death . . . . .		90	7/1/23	45,000	-----
	Dividend on item 2 of \$2 per share declared Dec. 10, 2022, paid on Jan. 9, 2023, to holders of record on Dec. 30, 2022 . . . . .		-----	1/9/23	1,000	1,000

(June 13) and 3 trading days after (June 18). On those days, the mean sale prices per share were \$10 and \$15, respectively. Therefore, the price of \$12 is considered the FMV of a share of stock on the valuation date. If, however, on June 13 and 18, the mean sale prices per share were \$15 and \$10, respectively, the FMV of a share of stock on the valuation date is \$13.

If only closing prices for bonds are available, see Regulations section 20.2031-2(b).

Apply the rules in the section 2031 regulations to determine the value of inactive stock and stock in close corporations. Attach to Schedule B complete financial and other data used to determine value, including balance sheets (particularly the one nearest to the valuation date) and statements of the net earnings or operating results and dividends paid for each of the 5 years immediately before the valuation date.

Securities reported as of no value, of nominal value, or obsolete should be listed last.

Include the address of the company and the state and date of incorporation. Attach copies of correspondence or statements used to determine the "no value."

If the security was listed on more than one stock exchange, use either the records of the exchange where the security is principally traded or the composite listing of combined exchanges, if available, in a publication of general circulation. In valuing listed stocks and bonds, you should carefully check accurate records to obtain values for the applicable valuation date.

If you get quotations from brokers, or evidence of the sale of securities from the officers of the issuing companies, attach to the schedule copies of the letters furnishing these quotations or evidence of sale.

## Schedule C—Mortgages, Notes, and Cash



*If any assets to which the special rule of Regulations section 20.2010-2(a)(7)(ii) applies are reported on this schedule, do not enter any value in the last three columns. See the instructions for Part 5—Recapitulation, item 10, for information on how to estimate and report the value of these assets.*

Complete Schedule C and file it with your return if the total gross estate contains any:

- Mortgages,
- Notes, or
- Cash.

List on Schedule C:

- Mortgages and notes payable **to the decedent** at the time of death, and
- Cash the decedent had at the date of death.

**Note.** Do not list mortgages and notes payable **by the decedent** on Schedule C. (If these are deductible, list them on Schedule K.)

**Schedule C reporting order.** List the items on Schedule C in the following order.

1. Mortgages.
2. Promissory notes.
3. Contracts by decedent to sell land.
4. Cash in possession.
5. Cash in banks, savings and loan associations, and other types of financial organizations.

## **Description**

**Mortgages.** For mortgages, list:

- Face value,
- Unpaid balance,
- Date of mortgage,



- Name of maker,
- Property mortgaged,
- Date of maturity,
- Interest rate, and
- Interest date.

***Mortgage description example.*** “Bond and mortgage of \$50,000, unpaid balance: \$17,000; dated: January 1, 1992; J. Doe to R. Roe; premises: 22 Clinton Street, Newark, NJ; due: January 1, 2023; interest payable at 10% a year—January 1 and July 1.”

**Promissory notes.** For promissory notes, list in the same way as mortgages.

### **Contracts by the decedent to sell land.**

For contracts by the decedent to sell land, list:

- Name of purchaser,
- Contract date,
- Property description,

- Sale price,
- Initial payment,
- Amounts of installment payment,
- Unpaid balance of principal, and
- Interest rate.

**Cash in possession.** For cash on hand, list such cash separately from bank deposits.

**Cash in financial organizations.** For cash in banks, savings and loan associations, and other types of financial organizations, list:

- Name and address of each financial organization;
- Amount in each account;
- Serial or account number;
- Nature of account—checking, savings, time deposit, etc.; and

- Unpaid interest accrued from date of last interest payment to the date of death.

**Note.** If you obtain statements from the financial organizations, keep them for IRS inspection.

## **Schedule D—Insurance on the Decedent's Life**



*If any assets to which the special rule of Regulations section 20.2010-2(a)(7)(ii) applies are reported on this schedule, do not enter any value in the last three columns. See the instructions for Part 5—Recapitulation, item 10, for information on how to estimate and report the value of these assets.*

If you are required to file Form 706 and there was any insurance on the decedent's life, whether or not included in the gross estate, you must complete Schedule D and file it with the return.

## **Insurance you must include on Schedule**

**D.** Under section 2042, you must include in the gross estate:

- Insurance on the decedent's life receivable by or for the benefit of the estate; and
- Insurance on the decedent's life receivable by beneficiaries other than the estate, as described below.

The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficiary societies operating under the lodge system, and death benefits paid under no-fault automobile insurance policies if the no-fault insurer was unconditionally bound to pay the benefit in the event of the insured's death.

### **Insurance in favor of the estate.**

Include on Schedule D the full amount of the proceeds of insurance on the life of the decedent receivable by the executor or

otherwise payable to or for the benefit of the estate. Insurance in favor of the estate includes insurance used to pay the estate tax, and any other taxes, debts, or charges that are enforceable against the estate. The manner in which the policy is drawn is immaterial as long as there is an obligation, legally binding on the beneficiary, to use the proceeds to pay taxes, debts, or charges. You must include the full amount even though the premiums or other consideration may have been paid by a person other than the decedent.

**Insurance receivable by beneficiaries other than the estate.** Include on Schedule D the proceeds of all insurance on the life of the decedent not receivable by, or for the benefit of, the decedent's estate if the decedent possessed at death any of the following incidents of ownership, exercisable either alone or in conjunction with any person

or entity. Incidents of ownership in a policy include the following.

- The right of the insured or estate to its economic benefits.
- The power to change the beneficiary.
- The power to surrender or cancel the policy.
- The power to assign the policy or to revoke an assignment.
- The power to pledge the policy for a loan.
- The power to obtain from the insurer a loan against the surrender value of the policy.
- A reversionary interest if the value of the reversionary interest was more than 5% of the value of the policy immediately before the decedent died. (An interest in an insurance policy is considered a reversionary interest if,

for example, the proceeds become payable to the insured's estate or payable as the insured directs if the beneficiary dies before the insured.)

Life insurance not includible in the gross estate under section 2042 may be includible under some other section of the Code. For example, a life insurance policy could be transferred by the decedent in such a way that it would be includible in the gross estate under section 2036, 2037, or 2038. See the instructions for Schedule G for a description of these sections.

## **Completing the Schedule**

You must list every insurance policy on the life of the decedent, whether or not it is included in the gross estate. Under "Description," list:

- The name of the insurance company, and
- The number of the policy.

For every life insurance policy listed on the schedule, request a statement on Form 712 from the company that issued the policy. Attach the Form 712 to Schedule D.

**Note.** If the insurance company that issued the policy will not provide Form 712, you should attach evidence that verifies the amount includible on Schedule D, including but not limited to an attachment, rider, assignment, copy of insurance proceeds check, and other relevant material.

If the policy proceeds are paid in one sum, enter the net proceeds received (from Form 712, line 24) in the value (and alternate value) columns of Schedule D. If the policy proceeds are not paid in one sum, enter the value of the proceeds as of the date of the decedent's death (from Form 712, line 25).

If part or all of the policy proceeds are not included in the gross estate, explain why they were not included.



## Schedule E—Jointly Owned Property



*If any assets to which the special rule of Regulations section 20.2010-2(a)(7)(ii) applies are reported on this schedule, do not enter any value in the last three columns. See the instructions for Part 5—Recapitulation, item 10, for information on how to estimate and report the value of these assets.*

If you are required to file Form 706, complete Schedule E and file it with the return if the decedent owned any joint property at the time of death, whether or not the decedent's interest is includible in the gross estate.

Enter on this schedule all property of whatever kind or character, whether real estate, personal property, or bank accounts, in which the decedent held at the time of death an interest either as a joint tenant with right to survivorship or as a tenant by the entirety.

Do not list on this schedule property that the decedent held as a tenant in common, but report the value of the interest on Schedule A if real estate, or on the appropriate schedule if personal property. Similarly, community property held by the decedent and spouse should be reported on the appropriate Schedules A through I. The decedent's interest in a partnership should not be entered on this schedule unless the partnership interest itself is jointly owned. Solely owned partnership interests should be reported on Schedule F.

**Part 1. Qualified joint interests held by decedent and spouse.** Under section 2040(b)(2), a joint interest is a qualified joint interest if the decedent and the surviving spouse held the interest as:

- Tenants by the entirety, or
- Joint tenants with right of survivorship if the decedent and the decedent's spouse are the only joint tenants.

Interests that meet either of the two requirements above should be entered in Part 1. Joint interests that do not meet either of the two requirements above should be entered in Part 2.

Under "Description," describe the property as required in the instructions for Schedules A, B, C, and F for the type of property involved. For example, jointly held stocks and bonds should be described using the rules given in the instructions for Schedule B.

Under "Alternate value" and "Value at date of death," enter the full value of the property.

**Note.** You cannot claim the special treatment under section 2040(b) for property held jointly by a decedent and a surviving spouse who is not a U.S. citizen. Report these joint interests on Part 2 of Schedule E, not Part 1.

**Part 2. All other joint interests.** All joint interests that were not entered in Part 1 must be entered in Part 2.

For each item of property, enter the appropriate letter A, B, C, etc., from line 2a to indicate the name and address of the surviving co-tenant.

Under "Description," describe the property as required in the instructions for Schedules A, B, C, and F for the type of property involved.

In the "Percentage includible" column, enter the percentage of the total value of the property included in the gross estate.

Generally, you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s) and was never received or acquired by the other tenant(s) from the decedent for less than adequate and full consideration in money or money's worth. Full value of jointly owned property also does not have to be included in the gross estate if you can show that any part of the property was acquired

with consideration originally belonging to the surviving joint tenant(s). In this case, you may exclude from the value of the property an amount proportionate to the consideration furnished by the other tenant(s).

Relinquishing or promising to relinquish dower, curtesy, or statutory estate created instead of dower or curtesy, or other marital rights in the decedent's property or estate is not consideration in money or money's worth. See the Schedule A instructions for the value to show for real property that is subject to a mortgage.

If the property was acquired by the decedent and another person or persons by gift, bequest, devise, or inheritance as joint tenants, and their interests are not otherwise specified by law, include only that part of the value of the property that is figured by dividing the full value of the property by the number of joint tenants.

If you believe that less than the full value of the entire property is includible in the gross estate for tax purposes, you must establish the right to include the smaller value by attaching proof of the extent, origin, and nature of the decedent's interest and the interest(s) of the decedent's co-tenant(s).

In the “Includible alternate value” and “Includible value at date of death” columns, enter only the values that you believe are includible in the gross estate.

## **Schedule F—Other Miscellaneous Property**



*If any assets to which the special rule of Regulations section 20.2010-2(a)(7)(ii) applies are reported on this schedule, do not enter any value in the last three columns. See the instructions for Part 5—Recapitulation, item 10, for information on how to estimate and report the value of these assets.*

**You must complete Schedule F and file it with the return.** On Schedule F, list all items that must be included in the gross estate that are not reported on any other schedule, including:

- Debts due the decedent (other than notes and mortgages included on Schedule C);
- Interests in business;
- Any interest in an Archer medical savings account (MSA) or health savings account (HSA), unless such interest passes to the surviving spouse;
- Insurance on the life of another (obtain and attach Form 712, for each policy) (see *Note* below);
- Section 2044 property (see *Decedent Who Was a Surviving Spouse*, later);

- Claims (including the value of the decedent's interest in a claim for refund of income taxes or the amount of the refund actually received);
- Rights;
- Digital assets are any digital representations of value that are recorded on a cryptographically secured distributed ledger or any similar technology. For example, digital assets include non-fungible tokens (NFTs) and virtual currencies, such as cryptocurrencies and stablecoins. If a particular asset has the characteristics of a digital asset, it will be treated as a digital asset for federal transfer tax purposes;
- Royalties;
- Leaseholds;
- Judgments;



- Reversionary or remainder interests;
- Shares in trust funds (attach a copy of the trust instrument);
- Household goods and personal effects, including wearing apparel;
- Farm products and growing crops;
- Livestock;
- Farm machinery; and
- Automobiles.

**Note (for single premium or paid-up policies).** In certain situations (for example, where the surrender value of the policy exceeds its replacement cost), the true economic value of the policy will be greater than the amount shown on Form 712, line 59. In these situations, report the full economic value of the policy on Schedule F. See Rev. Rul. 78-137, 1978-1 C.B. 280, for details.

**Interests.** If the decedent owned any interest in a partnership or unincorporated business, attach a statement of assets and liabilities for the valuation date and for the 5 years before the valuation date. Also, attach statements of the net earnings for the same 5 years. Be sure to include the EIN of the entity. You must account for goodwill in the valuation. In general, furnish the same information and follow the methods used to value close corporations. See the instructions for Schedule B.

All partnership interests should be reported on Schedule F unless the partnership interest is jointly owned. Jointly owned partnership interests should be reported on Schedule E.

If real estate is owned by a sole proprietorship, it should be reported on Schedule F and not on Schedule A. Describe the real estate with the same detail required for Schedule A. **Valuation discounts.** If you answered "Yes" to *Part 4—General*

*Information*, line 11b, for any interest in a partnership, an unincorporated business, an LLC, or stock in a closely held corporation, attach a statement that lists the item number from Schedule F and identifies the total effective discount taken (that is, XX.XX%) on such interest.

**Example of effective discount:**

<b>a</b>	Pro-rata value of LLC (before any discounts)	\$100.00
<b>b</b>	Minus: 10% discounts for lack of control	(10.00)
<b>c</b>	Marketable minority interest value (as if freely traded minority interest value)	\$90.00
<b>d</b>	Minus: 15% discount for lack of marketability	(13.50)

<b>e</b>	Nonmarketable minority interest value	\$76.50
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### **Calculation of effective discount:**

( <b>a</b> minus <b>e</b> ) divided by <b>a</b> = effective discount
$(\$100.00 - \$76.50) \div \$100.00 = 23.50\%$

**Note.** The amount of discounts are based on the factors pertaining to a specific interest and those discounts shown in the example are for demonstration purposes only.

If you answered "Yes" to *Part 4—General Information*, line 11b, for any transfer(s) described in (1) through (5) in the Schedule G instructions (and made by the decedent), **attach a statement to Schedule G** which lists the item number from that schedule and identifies the total effective discount taken (that is, XX.XX%) on such transfer(s).

**Line 1.** If the decedent owned at the date of death works of art or items with collectible value (for example, jewelry, furs, silverware, books, statuary, vases, oriental rugs, coin or stamp collections), check the “Yes” box on line 1 and provide full details. If any item or collection of similar items is valued at more than \$3,000, attach an appraisal by an expert under oath and the required statement regarding the appraiser's qualifications (see Regulations section 20.2031-6(b)).

## **Decedent Who Was a Surviving Spouse**

If the decedent was a surviving spouse, the decedent may have received qualified terminable interest property (QTIP) from the predeceased spouse for which the marital deduction was elected either on the predeceased spouse's estate tax return or on a gift tax return, Form 709. The election is available for transfers made and decedents

dying after December 31, 1981. List such property on Schedule F.

If this election was made and the surviving spouse retained interest in the QTIP property at death, the full value of the QTIP property is includible in the estate, even though the qualifying income interest terminated at death. It is valued as of the date of the surviving spouse's death, or alternate valuation date, if applicable. Do not reduce the value by any annual exclusion that may have applied to the transfer creating the interest.

The value of such property included in the surviving spouse's gross estate is treated as passing from the surviving spouse. It therefore qualifies for the charitable and marital deductions on the surviving spouse's estate tax return if it meets the other requirements for those deductions.

For additional details, see Regulations section 20.2044-1.

## **Schedule G—Transfers During Decedent's Life**



*If any assets to which the special rule of Regulations section 20.2010-2(a)(7)(ii) applies are reported on this schedule, do not enter any value in the last three columns. See the instructions for Part 5—Recapitulation, item 10, for information on how to estimate and report the value of these assets.*

Complete Schedule G and file it with the return if the decedent made any of the transfers described in (1) through (5) later, or if you answered “Yes” to question 12 or 13a of *Part 4—General Information*.

Report the following types of transfers on this schedule.

<b>IF . . .</b>	<b>AND . . .</b>	<b>THEN . . .</b>
the decedent made a transfer from a trust	at the time of the transfer, the transfer was from a portion of the trust that was owned by the grantor under section 676 (other than by reason of section 672(e)) by reason of a power in the grantor	for purposes of sections 2035 and 2038, treat the transfer as made directly by the decedent. Any such transfer within the annual gift tax exclusion is not includible in the gross estate.



1. **Certain gift taxes (section 2035(b)).** Enter on item A of Schedule G the total value of the gift taxes that were paid by the decedent or the estate on gifts made by the decedent or the decedent's spouse within 3 years of death.

The date of the gift, not the date of payment of the gift tax, determines whether a gift tax paid is included in the gross estate under this rule.

Therefore, you should carefully examine the Forms 709 filed by the decedent and the decedent's spouse to determine what part of the total gift taxes reported on them was attributable to gifts made within 3 years of death.

For example, if the decedent died on July 10, 2023, you should examine gift tax returns for 2023, 2022, 2021, and 2020. However, the gift taxes on the

2020 return that are attributable to gifts made on or before July 10, 2020, are not included in the gross estate. Explain how you figured the includible gift taxes if the entire gift taxes shown on any Form 709 filed for gifts made within 3 years of death are not included in the gross estate. Also attach copies of any relevant gift tax returns filed by the decedent's spouse, with "Exhibit to Estate Tax Return" entered across the top of the first page of each, for gifts made within 3 years of death.

2. **Other transfers within 3 years of death (section 2035(a)).** These

transfers include only the following.

- Any transfer by the decedent with respect to a life insurance policy within 3 years of death.
- Any transfer within 3 years of death of a retained section 2036

life estate, section 2037 reversionary interest, or section 2038 power to revoke, etc., if the property subject to the life estate, interest, or power would have been included in the gross estate had the decedent continued to possess the life estate, interest, or power until death.

These transfers are reported on Schedule G, regardless of whether a gift tax return was required to be filed for them when they were made. However, the amount includible and the information required to be shown for the transfers are determined:

- For insurance on the life of the decedent using the instructions for Schedule D (attach Form 712);

- For insurance on the life of another using the instructions for Schedule F (attach Form 712); and
- For sections 2036, 2037, and 2038 transfers, using paragraphs (3), (4), and (5) of these instructions.

3. **Transfers with retained life estate (section 2036).** These are transfers by the decedent in which the decedent retained an interest in the transferred property. The transfer can be in trust or otherwise, but excludes bona fide sales for adequate and full consideration.

***Interests or rights.*** Section 2036 applies to the following retained interests or rights.

- The right to income from the transferred property.

- The right to the possession or enjoyment of the property.
- The right, either alone or with any person, to designate the persons who shall receive the income from, possess, or enjoy, the property.

***Retained annuity, unitrust, and other income interests in trusts.*** If a decedent transferred property into a trust and retained or reserved the right to use the property, or the right to an annuity, unitrust, or other interest in such trust for the property for the decedent's life, any period not ascertainable without reference to the decedent's death, or for a period that does not, in fact, end before the decedent's death, then the decedent's right to use the property or the retained annuity, unitrust, or other interest (whether payable from income and/or principal) is the retention of the possession or enjoyment of, or the right to the income from, the property

for purposes of section 2036. See Regulations section 20.2036-1(c)(2).

***Retained voting rights.*** Transfers with a retained life estate also include transfers of stock in a controlled corporation made after June 22, 1976, if the decedent retained or acquired voting rights in the stock. If the decedent retained direct or indirect voting rights in a controlled corporation, the decedent is considered to have retained enjoyment of the transferred property. A corporation is a *controlled corporation* if the decedent owned (actually or constructively) or had the right (either alone or with any other person) to vote at least 20% of the total combined voting power of all classes of stock. See section 2036(b)(2). If these voting rights ceased or were relinquished within 3 years of the decedent's death, the corporate interests are included in the gross estate as if the decedent had actually retained the voting rights until death.

The amount includible in the gross estate is the value of the transferred property at the time of the decedent's death. If the decedent kept or reserved an interest or right to only a part of the transferred property, the amount includible in the gross estate is a corresponding part of the entire value of the property.

A retained life estate does not have to be legally enforceable. What matters is that a substantial economic benefit was retained. For example, if a parent transferred the home title to one's child, but with the informal understanding that the parent was to continue living there until the parent's death, the value of the home would be includible in the parent's estate even if the agreement would not have been legally enforceable.

4. **Transfers taking effect at death (section 2037).** A transfer that takes effect at the decedent's death is one under which possession or enjoyment

can be obtained only by surviving the decedent. A transfer is not treated as one that takes effect at the decedent's death unless the decedent retained a reversionary interest (defined later) in the property that immediately before the decedent's death had a value of more than 5% of the value of the transferred property. If the transfer was made before October 8, 1949, the reversionary interest must have arisen by the express terms of the instrument of transfer.

*A reversionary interest is, generally, any right under which the transferred property will or may be returned to the decedent or the decedent's estate. It also includes the possibility that the transferred property may become subject to a power of disposition by the decedent. It does not matter if the right arises by the express terms of the instrument of transfer or by operation of law. For this*



purpose, reversionary interest does not include the possibility that the income alone from the property may return to the decedent or become subject to the decedent's power of disposition.

5. **Revocable transfers (section 2038).** The gross estate includes the value of any transferred property which was subject to the decedent's power to alter, amend, revoke, or terminate the transfer at the time of the decedent's death. A decedent's power to change beneficiaries and to increase any beneficiary's enjoyment of the property are examples of this.

It does not matter whether the power was reserved at the time of the transfer, whether it arose by operation of law, or whether it was later created or conferred. The rule applies regardless of the source from which the power was acquired, and regardless of whether the power was exercisable by the

decedent alone or with any person (and regardless of whether that person had a substantial adverse interest in the transferred property).

The capacity in which the decedent could use a power has no bearing. If the decedent gave property in trust and was the trustee with the power to revoke the trust, the property would be included in the decedent's gross estate.

For transfers or additions to an irrevocable trust after October 28, 1979, the transferred property is includible if the decedent reserved the power to remove the trustee at will and appoint another trustee.

If the decedent relinquished within 3 years of death any of the includible powers described above, figure the gross estate as if the decedent had actually retained the powers until death.

Only the part of the transferred property that is subject to the decedent's power is included in the gross estate.

For more detailed information on which transfers are includible in the gross estate, see Regulations section 20.2038-1.

## **Special Valuation Rules for Certain Lifetime Transfers**

Sections 2701 through 2704 provide rules for valuing certain transfers to family members.

Section 2701 deals with the transfer of an interest in a corporation or partnership while retaining certain distribution rights, or a liquidation, put, call, or conversion right.

Section 2702 deals with the transfer of an interest in a trust while retaining any interest other than a qualified interest. In general, a *qualified interest* is a right to receive certain distributions from the trust at least annually, or a noncontingent remainder interest if all of the other interests in the trust are distribution rights specified in section 2702.

Section 2703 provides rules for the valuation of property transferred to a family member but subject to an option, agreement, or other right to acquire or use the property at less than FMV. It also applies to transfers subject to restrictions on the right to sell or use the property.

Finally, section 2704 provides that in certain cases, the lapse of a voting or liquidation right in a family-owned corporation or partnership will result in a deemed transfer.

These rules have potential consequences for the valuation of property in an estate. If the decedent (or any member of the decedent's family) was involved in any such transactions, see sections 2701 through 2704 and the related regulations for additional details.

## **How To Complete Schedule G**

All transfers (other than outright transfers not in trust and bona fide sales) made by the decedent at any time during life must be

reported on Schedule G, regardless of whether you believe the transfers are subject to tax. If the decedent made any transfers not described in these instructions, the transfers should not be shown on Schedule G. Instead, attach a statement describing these transfers by listing:

- The date of the transfer,
- The amount or value of the transferred property, and
- The type of transfer.

Complete the schedule for each transfer that is included in the gross estate under sections 2035(a), 2036, 2037, and 2038, as described in the instructions for Schedule G.

In the "Item number" column, number each transfer consecutively beginning with "1." In the "Description" column, list the name of the transferee and the date of the transfer, and give a complete description of the property. Transfers included in the gross estate should

be valued on the date of the decedent's death or, if alternate valuation is elected, according to section 2032.

If only part of the property transferred meets the terms of section 2035(a), 2036, 2037, or 2038, then only a corresponding part of the value of the property should be included in the value of the gross estate. If the transferee makes additions or improvements to the property, the increased value of the property at the valuation date should not be included on Schedule G. However, if only a part of the value of the property is included, enter the value of the whole under the column headed "Description" and explain what part was included.

**Attachments.** If a transfer, by trust or otherwise, was made by a written instrument, attach a copy of the instrument to Schedule G. If the copy of the instrument is of public record, it should be certified; if not of public record, the copy should be verified.

## Schedule H—Powers of Appointment



*If any assets to which the special rule of Regulations section 20.2010-2(a)(7)(ii) applies are reported on this schedule, do not enter any value in the last three columns. See the instructions for Part 5—Recapitulation, item 10, for information on how to estimate and report the value of these assets.*

Complete Schedule H and file it with the return if you answered “Yes” to question 14 of *Part 4—General Information*.

On Schedule H, include the following in the gross estate.

- The value of property for which the decedent possessed a general power of appointment (defined later) on the date of the decedent’s death.
- The value of property for which the decedent possessed a general power of appointment that the decedent

exercised or released before death by disposing of it in such a way that if it were a transfer of property owned by the decedent, the property would be includible in the decedent's gross estate as a transfer with a retained life estate, a transfer taking effect at death, or a revocable transfer.

With the above exceptions, property subject to a power of appointment is not includible in the gross estate if the decedent released the power completely and the decedent held no interest in or control over the property.

If the failure to exercise a general power of appointment results in a lapse of the power, the lapse is treated as a release only to the extent that the value of the property that could have been appointed by the exercise of the lapsed power is more than the greater of \$5,000 or 5% of the total value, at the time of the lapse, of the assets out of which, or the



proceeds of which, the exercise of the lapsed power could have been satisfied.

## **Powers of Appointment**

*A power of appointment* determines who will own or enjoy the property subject to the power and when they will own or enjoy it. The power must be created by someone other than the decedent. It does not include a power created or held on property transferred by the decedent.

A power of appointment includes all powers which are, in substance and effect, powers of appointment regardless of how they are identified and regardless of local property laws. For example, if a settlor transfers property in trust for the life of the settlor's spouse, with a power in the spouse to appropriate or consume the principal of the trust, the spouse has a power of appointment.

Some powers do not in themselves constitute a power of appointment. For example, a power to amend only administrative provisions of a trust that cannot substantially affect the beneficial enjoyment of the trust property or income is not a power of appointment. A power to manage, invest, or control assets, or to allocate receipts and disbursements, when exercised only in a fiduciary capacity, is not a power of appointment.

**General power of appointment.** A *general power of appointment* is a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except the following.

1. A power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to

health, education, support, or maintenance of the decedent.

2. A power exercisable by the decedent only in conjunction with:
  - a. The creator of the power; or
  - b. A person who has a substantial interest in the property subject to the power, which is adverse to the exercise of the power in favor of the decedent.

A part of a power is considered a general power of appointment if the power:

1. May only be exercised by the decedent in conjunction with another person, and
2. Is also exercisable in favor of the other person (in addition to being exercisable in favor of the decedent, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate).

When there is a partial power, figure the amount included in the gross estate by dividing the value of the property by the number of persons (including the decedent) in favor of whom the power is exercisable.

**Date power was created.** Generally, a power of appointment created by will is considered created on the date of the testator's death.

A power of appointment created by an inter vivos instrument is considered created on the date the instrument takes effect. If the holder of a power exercises it by creating a second power, the second power is considered as created at the time of the exercise of the first.

## **Attachments**

If the decedent ever possessed a power of appointment, attach a certified or verified copy of the instrument granting the power and a certified or verified copy of any instrument by which the power was exercised

or released. You must file these copies even if you contend that the power was not a general power of appointment, and that the property is not otherwise includible in the gross estate.

## **Schedule I—Annuities**



*If any assets to which the special rule of Regulations section 20.2010-2(a)(7)(ii) applies are reported on this schedule, do not enter any value in the last three columns. See the instructions for Part 5—Recapitulation, item 10, for information on how to estimate and report the value of these assets.*

Complete Schedule I and file it with the return if you answered “Yes” to question 16 of *Part 4—General Information*.

Enter on Schedule I every annuity that meets all of the conditions under *General*, later, and every annuity described in paragraphs (a) through (h) of *Annuities Under Approved*

*Plans*, later, even if the annuities are wholly or partially excluded from the gross estate.

For a discussion regarding the QTIP treatment of certain joint and survivor annuities, see the Schedule M, line 3, instructions.

## **General**

These rules apply to all types of annuities, including pension plans, individual retirement arrangements (IRAs), purchased commercial annuities, and private annuities.

In general, you must include in the gross estate all or part of the value of any annuity that meets the following requirements.

- It is receivable by a beneficiary following the death of the decedent and by reason of surviving the decedent.
- The annuity is under a contract or agreement entered into after March 3, 1931.

- The annuity was payable to the decedent (or the decedent possessed the right to receive the annuity) either alone or in conjunction with another, for the decedent's life or for any period not ascertainable without reference to the decedent's death or for any period that did not in fact end before the decedent's death.
- The contract or agreement is not a policy of insurance on the life of the decedent.

**Note.** A *private annuity* is an annuity issued by a party not engaged in the business of writing annuity contracts, typically a junior generation family member or a family trust.

An annuity contract that provides periodic payments to a person for life and ceases at the person's death is not includible in the gross estate. Social security benefits are not includible in the gross estate even if the surviving spouse receives benefits.

An annuity or other payment that is not includible in the decedent's or the survivor's gross estate as an annuity may still be includible under some other applicable provision of the law. For example, see *Powers of Appointment* and the instructions for *Schedule G—Transfers During Decedent's Life*, earlier. See also Regulations section 20.2039-1(e).

If the decedent retired before January 1, 1985, see *Annuities Under Approved Plans*, later, for rules that allow the exclusion of part or all of certain annuities.

## **Part Includible**

If the decedent contributed only part of the purchase price of the contract or agreement, include in the gross estate only that part of the value of the annuity receivable by the surviving beneficiary that the decedent's contribution to the purchase price of the



annuity or agreement bears to the total purchase price.

For example, if the value of the survivor's annuity was \$20,000 and the decedent had contributed 75% of the purchase price of the contract, the amount includible is \$15,000 ( $75\% (0.75) \times \$20,000$ ).

Except as provided under *Annuities Under Approved Plans*, later, contributions made by the decedent's employer to the purchase price of the contract or agreement are considered made by the decedent if they were made by the employer because of the decedent's employment. For more information, see section 2039(b).

## **Definitions**

**Annuity.** An *annuity* consists of one or more payments extending over any period of time. The payments may be equal or unequal, conditional or unconditional, periodic or sporadic.

**Examples.** The following are examples of contracts (but not necessarily the only forms of contracts) for annuities that must be included in the gross estate.

1. A contract under which the decedent immediately before death was receiving or was entitled to receive, for the duration of life, an annuity with payments to continue after death to a designated beneficiary, if surviving the decedent.
2. A contract under which the decedent immediately before death was receiving or was entitled to receive, together with another person, an annuity payable to the decedent and the other person for their joint lives, with payments to continue to the survivor following the death of either.
3. A contract or agreement entered into by the decedent and employer under which the decedent immediately

before death and following retirement was receiving, or was entitled to receive, an annuity payable to the decedent for life. After the decedent's death, if survived by a designated beneficiary, the annuity was payable to the beneficiary with payments either fixed by contract or subject to an option or election exercised or exercisable by the decedent. However, see *Annuities Under Approved Plans*, later.

4. A contract or agreement entered into by the decedent and the decedent's employer under which at the decedent's death, before retirement, or before the expiration of a stated period of time, an annuity was payable to a designated beneficiary, if surviving the decedent. However, see *Annuities Under Approved Plans*, later.
5. A contract or agreement under which the decedent immediately before

death was receiving, or was entitled to receive, an annuity for a stated period of time, with the annuity to continue to a designated beneficiary, surviving the decedent, upon the decedent's death and before the expiration of that period of time.

6. An annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary for life or over a period of at least 36 months after the date of the decedent's death under an individual retirement account, annuity, or bond as described in section 2039(e) (before its repeal by P.L. 98-369).

**Payable to the decedent.** An annuity or other payment was payable to the decedent if, at the time of death, the decedent was in fact receiving an annuity or other payment,

with or without an enforceable right to have the payments continued.

**Right to receive an annuity.** The decedent had the right to receive an annuity or other payment if, immediately before death, the decedent had an enforceable right to receive payments at some time in the future, whether or not at the time of death the decedent had a present right to receive payments.

## **Annuities Under Approved Plans**

The following rules relate to whether part or all of an otherwise includible annuity may be excluded. These rules have been repealed and apply only if the decedent either:

- On December 31, 1984, was both a participant in the plan and in pay status (for example, had received at least one benefit payment on or before December 31, 1984) and had irrevocably elected the form of the benefit before July 18, 1984; or

- Had separated from service before January 1, 1985, and did not change the form of benefit before death.

The amount excluded cannot exceed \$100,000 unless either of the following conditions is met.

- On December 31, 1982, the decedent was both a participant in the plan and in pay status (for example, had received at least one benefit payment on or before December 31, 1982) and the decedent irrevocably elected the form of the benefit before January 1, 1983.
- The decedent separated from service before January 1, 1983, and did not change the form of benefit before death.

## Approved Plans

Approved plans may be separated into two categories.

- Pension, profit-sharing, stock bonus, and other similar plans.
- IRAs and retirement bonds.

Different exclusion rules apply to the two categories of plans.

**Pension, etc., plans.** The following plans are approved plans for the exclusion rules.

- a. An employees' trust (or a contract purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan that met all the requirements of section 401(a), either at the time of the decedent's separation from employment (whether by death or otherwise) or at the time of the termination of the plan (if earlier).

- b. A retirement annuity contract purchased by the employer (but not by an employees' trust) under a plan that, at the time of the decedent's separation from employment (by death or otherwise), or at the time of the termination of the plan (if earlier), was a plan described in section 403(a).
- c. A retirement annuity contract purchased for an employee by an employer that is an organization referred to in section 170(b)(1)(A)(ii) or (vi), or that is a religious organization (other than a trust), and that is exempt from tax under section 501(a).
- d. Chapter 73 of title 10 of the United States Code.
- e. A bond purchase plan described in section 405 (before its repeal by P.L.



98-369, effective for obligations issued after December 31, 1983).

***Exclusion rules for pension, etc., plans.*** If an annuity under an *approved plan* described in (a) through (e) above is receivable by a beneficiary other than the executor and the decedent made no contributions under the plan toward the cost, no part of the value of the annuity, subject to the \$100,000 limitation (if applicable), is includible in the gross estate.

If the decedent made a contribution under a plan described in (a) through (e) above toward the cost, include in the gross estate on this schedule that proportion of the value of the annuity which the amount of the decedent's contribution under the plan bears to the total amount of all contributions under the plan. The remaining value of the annuity is excludable from the gross estate subject to the \$100,000 limitation (if applicable). For the rules to determine whether the decedent

made contributions to the plan, see Regulations section 20.2039-1(c).

**IRAs and retirement bonds.** The following plans are approved plans for the exclusion rules.

- f. An individual retirement account described in section 408(a).
- g. An individual retirement annuity described in section 408(b).
- h. A retirement bond described in section 409(a) (before its repeal by P.L. 98-369).

***Exclusion rules for IRAs and retirement bonds.*** These plans are approved plans only if they provide for a series of substantially equal periodic payments made to a beneficiary for life, or over a period of at least 36 months after the date of the decedent's death.

Subject to the \$100,000 limitation (if applicable), if an annuity under a “plan” described in (f) through (h) above is receivable by a beneficiary other than the executor, the entire value of the annuity is excludable from the gross estate even if the decedent made a contribution under the plan.

However, if any payment to or for an account or annuity described in paragraph (f), (g), or (h) earlier was not allowable as an income tax deduction under section 219 (and was not a rollover contribution, as described in section 2039(e) before its repeal by P.L. 98-369), include in the gross estate on this schedule that proportion of the value of the annuity which the amount not allowable as a deduction under section 219 and not a rollover contribution bears to the total amount paid to or for such account or annuity. For more information, see Regulations section 20.2039-5.

## **Rules applicable to all approved plans.**

The following rules apply to all approved plans described in paragraphs (a) through (h), earlier.

If any part of an annuity under a “plan” described in (a) through (h), earlier, is receivable by the executor, it is generally includible in the gross estate to the extent that it is receivable by the executor in that capacity. In general, the annuity is receivable by the executor if it is to be paid to the executor or if there is an agreement (expressed or implied) that it will be applied by the beneficiary for the benefit of the estate (such as in discharge of the estate's liability for death taxes or debts of the decedent, etc.) or that its distribution will be governed to any extent by the terms of the decedent's will or the laws of descent and distribution.

If data available to you does not indicate whether the plan satisfies the requirements of section 401(a), 403(a), 408(a), 408(b), or

409(a), you may obtain that information from the IRS office where the employer's principal place of business is located.

### **Line A. Lump-Sum Distribution Election**

**Note.** The following rules have been repealed and apply only if the decedent:

- On December 31, 1984, was both a participant in the plan and in pay status (for example, had received at least one benefit payment on or before December 31, 1984) and had irrevocably elected the form of the benefit before July 18, 1984; or
- Had separated from service before January 1, 1985, and did not change the form of benefit before death.

Generally, the entire amount of any lump-sum distribution is included in the decedent's gross estate. However, under this special rule, all or part of a lump-sum distribution from a qualified (approved) plan will be

excluded if the lump-sum distribution is included in the recipient's income for income tax purposes.

If the decedent was born before 1936, the recipient may be eligible to elect special "10-year averaging" rules (under repealed section 402(e)) and capital gain treatment (under repealed section 402(a)(2)) in figuring the income tax on the distribution. For more information, see Pub. 575, Pension and Annuity Income. If this option is available, the estate tax exclusion cannot be claimed unless the recipient elects to forego the "10-year averaging" and capital gain treatment in figuring the income tax on the distribution. The recipient elects to forego this treatment by treating the distribution as taxable on the recipient's income tax return, as described in Regulations section 20.2039-4(d). The election is irrevocable.

The amount excluded from the gross estate is the portion attributable to the employer contributions. The portion, if any, attributable to the employee-decedent's contributions is always includible. Also, you may not figure the gross estate in accordance with this election unless you check "Yes" on line A and attach the names, addresses, and identifying numbers of the recipients of the lump-sum distributions. See Regulations section 20.2039-4(d)(2).

## How To Complete Schedule I

In describing an annuity, give the name and address of the grantor of the annuity. Specify if the annuity is under an approved plan.

<b>IF . . .</b>	<b>THEN . . .</b>
the annuity is under an approved plan	state the ratio of the decedent's contribution to the

	total purchase price of the annuity.
the decedent was employed at the time of death and an annuity as described earlier in <i>Definitions, Annuity, Example 4</i> became payable to any beneficiary because the beneficiary survived the decedent	state the ratio of the decedent's contribution to the total purchase price of the annuity.
an annuity under an individual retirement account or annuity became payable to any	state the ratio of the amount paid for the individual retirement account or annuity that was not allowable



beneficiary because that beneficiary survived the decedent and is payable to the beneficiary for life or for at least 36 months following the decedent's death	as an income tax deduction under section 219 (other than a rollover contribution) to the total amount paid for the account or annuity.
the annuity is payable out of a trust or other fund	the description should be sufficiently complete to fully identify it.
the annuity is payable for a term of years	include the duration of the term and the date on which it began.

the annuity is payable for the life of a person other than the decedent	include the date of birth of that person.
the annuity is wholly or partially excluded from the gross estate	enter the amount excluded under "Description" and explain how you figured the exclusion.

## **Schedule J—Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims**



*Use Schedule PC to make a protective claim for refund for expenses which are not currently deductible under section 2053. For such a claim, report the expense on Schedule J but without a value in the last column.*

**General.** Complete and file Schedule J if you claim a deduction on item 14 of *Part 5—Recapitulation*.

On Schedule J, itemize funeral expenses and expenses incurred in administering property subject to claims. List the names and addresses of persons to whom the expenses are payable and describe the nature of the expense. **Do not list expenses incurred in administering property not subject to claims on this schedule. List them on Schedule L instead.**

The deduction is limited to the amount paid for these expenses that is allowable under local law but may not exceed:

1. The value of property subject to claims included in the gross estate, plus
2. The amount paid out of property included in the gross estate but not subject to claims. This amount must

actually be paid by the due date of the estate tax return.

The applicable local law under which the estate is being administered determines which property is and is not subject to claims. If under local law a particular property interest included in the gross estate would bear the burden for the payment of the expenses, then the property is considered property subject to claims.

Unlike certain claims against the estate for debts of the decedent (see the instructions for Schedule K), you cannot deduct expenses incurred in administering property subject to claims on both the estate tax return and the estate's income tax return. If you choose to deduct them on the estate tax return, you cannot deduct them on a Form 1041, U.S. Income Tax Return for Estates and Trusts, filed for the estate. Funeral expenses are only deductible on the estate tax return.

**Funeral expenses.** Itemize funeral expenses on line A. Deduct from the expenses any amounts that were reimbursed, such as death benefits payable by the SSA or the Veterans Administration.

**Executors' commissions.** When you file the return, you may deduct commissions that have actually been paid to you or that you expect will be paid. Do not deduct commissions if none will be collected. If the amount of the commissions has not been fixed by decree of the proper court, the deduction will be allowed on the final examination of the return, provided that:

- The Chief, Estate and Gift/Excise Tax Examination, is reasonably satisfied that the commissions claimed will be paid;
- The amount entered as a deduction is within the amount allowable by the laws of the jurisdiction where the estate is being administered; and

- It is in accordance with the usually accepted practice in that jurisdiction for estates of similar size and character.

If you have not been paid the commissions claimed at the time of the final examination of the return, you must support the amount you deducted with an affidavit or statement signed under the penalties of perjury that the amount has been agreed upon and will be paid.

You may not deduct a bequest or devise made to you instead of commissions. If, however, the decedent fixed by will the compensation payable to you for services to be rendered in the administration of the estate, you may deduct this amount to the extent it is not more than the compensation allowable by the local law or practice.