

Article - Estates and Trusts

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§3–404.

(a) (1) Subject to paragraph (2) of this subsection, the value of the decedent's augmented estate shall be calculated by totaling the value of:

- (i) The probate estate of the decedent;
- (ii) All revocable trusts of the decedent;
- (iii) All property with respect to which the decedent, immediately before death, held a qualifying power of disposition;
- (iv) All qualifying joint interests of the decedent; and
- (v) All qualifying lifetime transfers of the decedent.

(2) If a property interest is included in the augmented estate under more than one item of paragraph (1) of this subsection, only the item resulting in the largest augmented estate shall apply.

(b) The estate subject to election shall be calculated by reducing the value of the decedent's augmented estate by:

- (1) Funeral and administration expenses payable from the augmented estate;
- (2) Family allowances payable from the augmented estate;
- (3) Enforceable claims and debts against any part of the augmented estate;
- (4) The value of any assets included in the augmented estate that, at the time of the decedent's death, were held in a trust of which the decedent is not a settlor, if:
 - (i) The assets were not previously owned by the decedent; or
 - (ii) The assets were previously owned by the decedent but were sold by the decedent in accordance with a bona fide sale for adequate consideration in money or money's worth;

(5) The value of any assets included in the augmented estate under subsection (a)(1)(iii) of this section that, at the time of the decedent's death, were held:

(i) In a trust established under § 1917(c)(2)(B)(iii), (c)(2)(B)(iv), (d)(4)(A), or (d)(4)(C) of the Social Security Act;

(ii) In an account established under § 529A of the Internal Revenue Code; or

(iii) In a special needs trust for the benefit of an individual who is disabled as defined in § 1614(a)(3) of the Social Security Act;

(6) The value of any property included in the augmented estate under subsection (a)(1)(iii), (iv), or (v) of this section, the disposition of which the surviving spouse of the decedent consented to in writing during the decedent's lifetime other than by means of spousal consent to split-gift treatment under the federal gift tax laws;

(7) The value of any qualifying lifetime transfer of the decedent described in § 3-401(i)(1)(ii) of this subtitle where:

(i) The initial transfer took place before the decedent's marriage to the surviving spouse of the decedent; or

(ii) The decedent's interest in the property transferred terminated more than 2 years before the decedent's death;

(8) The value of any qualifying lifetime transfer of the decedent described in § 3-401(i)(1)(iii) of this subtitle that occurred before the later of:

(i) The decedent's marriage to the surviving spouse of the decedent; or

(ii) 2 years before the decedent's death;

(9) The value of any interest in real property included in the augmented estate by reason of the decedent's retention of a life estate in the real property if:

(i) At the time of the decedent's death, the decedent held no qualifying power of disposition over the real property; and

(ii) The decedent's life estate in the property was created more than 2 years before the decedent's death; and

(10) The value of the proceeds of an insurance policy on the decedent's life in excess of the net cash surrender value of the policy immediately before the decedent's death or, in the case of term insurance, in excess of the total premiums paid, if:

(i) The proceeds are included in the augmented estate;

(ii) The proceeds are payable to a charity or to or for the exclusive lifetime benefit of an ancestor, a descendant, a step-descendant, or a sibling of the decedent; and

(iii) 1. The policy was purchased before the decedent's marriage to the surviving spouse of the decedent;

2. The policy was purchased more than 5 years before the decedent's death; or

3. The surviving spouse of the decedent consented in writing during the decedent's lifetime to the disposition of the proceeds as described in item (ii) of this item.

(c) (1) The value of a qualifying lifetime transfer described under § 3–401(i)(1)(i) of this subtitle shall be determined as if the property still was owned by the transferor.

(2) The value of a qualifying lifetime transfer described under § 3–401(i)(1)(ii) of this subtitle shall be determined as of the date of the termination of the transferor's interest in the transferred property.

(3) The value of a qualifying lifetime transfer described under § 3–401(i)(1)(iii) of this subtitle shall be determined as of the date of the transfer.

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