

be disallowed under section 508(d)(2)(A) and subparagraph (1)(i) of this paragraph—

(a) In the case of property passing under the terms of a will executed on or before October 9, 1969—

(1) If the decedent dies after October 9, 1969, but before October 9, 1972, without having amended any dispositive provision of the will after October 9, 1969, by codicil or otherwise,

(2) If the decedent dies after October 9, 1969, and at no time after that date had the right to change the portions of the will which pertain to the passing of the property to, or for the use of, an organization described in section 2055(a), or

(3) If no dispositive provision of the will is amended by the decedent, by codicil or otherwise, after October 9, 1969, and before October 9, 1972, and the decedent is on October 9, 1972, and at all times thereafter under a mental disability (as defined in §1.642(c)-2(b)(3)(ii) of this chapter) to amend the will by codicil or otherwise, or

(b) In the case of property transferred in trust on or before October 9, 1969—

(1) If the decedent dies after October 9, 1969, but before October 9, 1972, without having amended, after October 9, 1969, any dispositive provision of the instrument governing the disposition of the property,

(2) If the property transferred was an irrevocable interest to, or for the use of, an organization described in section 2055(a), or

(3) If no dispositive provision of the instrument governing the disposition of the property is amended by the decedent after October 9, 1969, and before October 9, 1972, and the decedent is on October 9, 1972, and at all times thereafter under a mental disability (as defined in §1.642(c)-2(b)(3)(ii) of this chapter) to change the disposition of the property.

(ii) *Amendment of dispositive provisions.* For purposes of subdivision (i) of this subparagraph, the provisions of paragraph (e) (4) and (5) of §20.2055-2 shall apply in determining whether an amendment will be considered as one which amends the dispositive provisions of a will or trust.

(c) *Foreign organization with substantial support from foreign sources.* Section

4948(c)(4) provides that, in the case of decedents dying after December 31, 1969, a deduction which would otherwise be allowable under section 2055 for the value of property transferred by the decedent to or for the use of a foreign organization which has received substantially all of its support (other than gross investment income) from sources without the United States shall not be allowed if the transfer is made (1) after the date on which the Commissioner has published notice that he has notified such organization that it has engaged in a prohibited transaction, or (2) in a taxable year of such organization for which it is not exempt from taxation under section 501(a) because it has engaged in a prohibited transaction after December 31, 1969.

[T.D. 7318, 39 FR 25456, July 11, 1974]

§ 20.2055-6 Disallowance of double deduction in the case of qualified terminable interest property.

No deduction is allowed from the decedent's gross estate under section 2055 for property with respect to which a deduction is allowed by reason of section 2056(b)(7). See section 2056(b)(9) and §20.2056(b)-9.

[T.D. 8522, 59 FR 9647, Mar. 1, 1994]

§ 20.2056-0 Table of contents.

This section lists the captions that appear in the regulations under §§ 20.2056(a)-1 through 20.2056(d)-3.

§ 20.2056(a)-1 Marital deduction; in general.

(a) In general.

(b) Requirements for marital deduction.

(1) In general.

(2) Burden of establishing requisite facts.

(c) Marital deduction; limitation on aggregate deductions.

(1) Estates of decedents dying before 1977.

(2) Estates of decedents dying after December 31, 1976, and before January 1, 1982.

(3) Estates of decedents dying after December 31, 1981.

§ 20.2056(a)-2 Marital deduction; deductible interests and nondeductible interests.

(a) In general.

(b) Deductible interests.

§ 20.2056(b)-1 Marital deduction; limitation in case of life estate or other "terminable interest."

(a) In general.

(b) Terminable interests.

(c) Nondeductible terminable interests.

§ 20.2056-0

26 CFR Ch. I (4-1-04 Edition)

- (d) Exceptions.
- (e) Miscellaneous principles.
- (f) Direction to acquire a terminable interest.
- (g) Examples.
- § 20.2056(b)-2 Marital deduction; interest in unidentified assets.*
 - (a) In general.
 - (b) Application of section 2056(b)(2).
 - (c) Interest nondeductible if circumstances present.
 - (d) Example.
- § 20.2056(b)-3 Marital deduction; interest of spouse conditioned on survival for limited period.*
 - (a) In general.
 - (b) Six months' survival.
 - (c) Common disaster.
 - (d) Examples.
- § 20.2056(b)-4 Marital deduction; valuation of interest passing to surviving spouse.*
 - (a) In general.
 - (b) Property interest subject to an encumbrance or obligation.
 - (c) Effect of death taxes.
 - (d) Remainder interests.
- § 20.2056(b)-5 Marital deduction; life estate with power of appointment in surviving spouse.*
 - (a) In general.
 - (b) Specific portion; deductible amount.
 - (c) Meaning of specific portion.
 - (1) In general.
 - (2) Fraction or percentage share.
 - (3) Special rule in the case of estates of decedents dying on or before October 24, 1992, and certain decedents dying after October 24, 1992, with wills or revocable trusts executed on or prior to that date.
 - (4) Local law.
 - (5) Examples.
 - (d) Meaning of entire interest.
 - (e) Application of local law.
 - (f) Right to income.
 - (g) Power of appointment in surviving spouse.
 - (h) Requirement of survival for a limited period.
 - (j) Existence of power in another.
- § 20.2056(b)-6 Marital deduction; life insurance or annuity payments with power of appointment in surviving spouse.*
 - (a) In general.
 - (b) Specific portion; deductible interest.
 - (c) Applicable principles.
 - (d) Payments of installments or interest.
 - (e) Powers of appointment.
- § 20.2056(b)-7 Election with respect to life estate for surviving spouse.*
 - (a) In general.
 - (b) Qualified terminable interest property.
 - (1) In general.
 - (2) Property for which an election may be made.
 - (3) Persons permitted to make the election.
 - (4) Manner and time of making the election.

- (c) Protective elections.
 - (1) In general.
 - (2) Protective election irrevocable.
 - (d) Qualifying income interest for life.
 - (1) In general.
 - (2) Entitled for life to all income.
 - (3) Contingent income interests.
 - (4) Income between last distribution date and spouse's date of death.
 - (5) Pooled income funds.
 - (6) Power to distribute principal to spouse.
 - (e) Annuities payable from trusts in the case of estates of decedents dying on or before October 24, 1992, and certain decedents dying after October 24, 1992, with wills or revocable trusts executed on or prior to that date.
 - (1) In general.
 - (2) Deductible interest.
 - (3) Distributions permissible only to surviving spouse.
 - (4) Applicable interest rate.
 - (5) Effective dates.
 - (f) Joint and survivor annuities. [Reserved]
 - (g) Application of local law.
 - (h) Examples.
- § 20.2056(b)-8 Special rule for charitable remainder trusts.*
 - (a) In general.
 - (1) Surviving spouse only noncharitable beneficiary.
 - (2) Interest for life or term of years.
 - (3) Payment of state death taxes.
 - (b) Charitable trusts where surviving spouse is not the only noncharitable beneficiary.
- § 20.2056(b)-9 Denial of double deduction.*
- § 20.2056(b)-10 Effective dates.*
- § 20.2056(c)-1 Marital deduction; definition of passed from the decedent.*
 - (a) In general.
 - (b) Expectant interest in property under community property laws.
- § 20.2056(c)-2 Marital deduction; definition of "passed from the decedent to his surviving spouse."*
 - (a) In general.
 - (b) Examples.
 - (c) Effect of election by surviving spouse.
 - (d) Will contests.
 - (e) Survivorship.
- § 20.2056(c)-3 Marital deduction; definition of passed from the decedent to a person other than his surviving spouse.*
- § 20.2056(d)-1 Marital deduction; special rules for marital deduction if surviving spouse is not a United States citizen.*
- § 20.2056(d)-2 Marital deduction; effect of disclaimers of post-December 31, 1976 transfers.*
 - (a) Disclaimer by a surviving spouse.
 - (b) Disclaimer by a person other than a surviving spouse.
- § 20.2056(d)-3 Marital deduction; effect of disclaimers of pre-January 1, 1977 transfers.*
 - (a) Disclaimers by a surviving spouse.
 - (b) Disclaimer by a person other than a surviving spouse.

Internal Revenue Service, Treasury

§ 20.2056(a)-2

(1) Decedents dying after October 3, 1966, and before January 1, 1977.

(2) Decedents dying after September 30, 1963, and before October 4, 1966.

(3) Decedents dying before October 4, 1966.

[T.D. 8522, 59 FR 9647, Mar. 1, 1994, as amended by T. D. 8612, 60 FR 43538, Aug. 22, 1995]

§ 20.2056(a)-1 Marital deduction; in general.

(a) *In general.* A deduction is allowed under section 2056 from the gross estate of a decedent for the value of any property interest which passes from the decedent to the decedent's surviving spouse if the interest is a *deductible interest* as defined in § 20.2056(a)-2. With respect to decedents dying in certain years, a deduction is allowed under section 2056 only to the extent that the total of the deductible interests does not exceed the applicable limitations set forth in paragraph (c) of this section. The deduction allowed under section 2056 is referred to as the *marital deduction*. See also sections 2056(d) and 2056A for special rules applicable in the case of decedents dying after November 10, 1988, if the decedent's surviving spouse is not a citizen of the United States at the time of the decedent's death. In such cases, the marital deduction may not be allowed unless the property passes to a qualified domestic trust as described in section 2056A(a).

(b) *Requirements for marital deduction*—(1) *In general.* To obtain the marital deduction with respect to any property interest, the executor must establish the following facts—

(i) The decedent was survived by a spouse (see § 20.2056(c)-2(e));

(ii) The property interest passed from the decedent to the spouse (see §§ 20.2056(b)-5 through 20.2056(b)-8 and 20.2056(c)-1 through 20.2056(c)-3);

(iii) The property interest is a *deductible interest* (see § 20.2056(a)-2); and

(iv) The value of the property interest (see § 20.2056(b)-4).

(2) *Burden of establishing requisite facts.* The executor must provide the facts relating to any applicable limitation on the amount of the allowable marital deduction under § 20.2056(a)-1(c), and must submit proof necessary to establish any fact required under paragraph (b)(1), including any evi-

dence requested by the district director.

(c) *Marital deduction; limitation on aggregate deductions*—(1) *Estates of decedents dying before 1977.* In the case of estates of decedents dying before January 1, 1977, the marital deduction is limited to one-half of the value of the *adjusted gross estate*, as that term was defined under section 2056(c)(2) prior to repeal by the Economic Recovery Tax Act of 1981.

(2) *Estates of decedents dying after December 31, 1976, and before January 1, 1982*— Except as provided in § 2002(d)(1) of the Tax Reform Act of 1976 (Pub. L. 94-455), in the case of decedents dying after December 31, 1976, and before January 1, 1982, the marital deduction is limited to the greater of—

(i) \$250,000; or

(ii) One-half of the value of the decedent's adjusted gross estate, adjusted for inter vivos gifts to the spouse as prescribed by section 2056(c)(1)(B) prior to repeal by the Economic Recovery Tax Act of 1981 (Pub. L. 97-34).

(3) *Estates of decedents dying after December 31, 1981.* In the case of estates of decedents dying after December 31, 1981, the marital deduction is limited as prescribed in paragraph (c)(2) of this section if the provisions of § 403(e)(3) of Pub. L. 97-34 are satisfied.

[T.D. 8522, 59 FR 9648, Mar. 1, 1994]

§ 20.2056(a)-2 Marital deduction; “deductible interests” and “nondeductible interests”.

(a) *In general.* Property interests which passed from a decedent to his surviving spouse fall within two general categories:

(1) Those with respect to which the marital deduction is authorized, and

(2) Those with respect to which the marital deduction is not authorized.

These categories are referred to in this section and other sections of the regulations under section 2056 as “deductible interests” and “nondeductible interests”, respectively (see paragraph (b) of this section). Subject to any applicable limitations set forth in § 20.2056(a)-1(c), the amount of the marital deduction is the aggregate value of the *deductible interests*.

(b) *Deductible interests.* An interest passing to a decedent's surviving