§ 205.50 Minimum requirements for the storage and handling of prescription drugs and for the establishment and maintenance of prescription drug distribution records.

* * * * *

(f) * * *

(2) Inventories and records shall be made available for inspection and photocopying by authorized Federal, State, or local law enforcement agency officials for a period of 3 years after the date of their creation.

Dated: August 3, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–30954 Filed 11–30–99; 12:38 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Determination of Tax Liability

CFR Correction

In Title 26 of the Code of Federal Regulations, part 1 (§ § 1.641 to 1.850), revised as of April 1, 1999, page 293, in § 1.704—-1 (b)(0), in the table in the first column, under ''Section'' the first, second, fourth and fifth lines respectively should read, 1.704–1(b)(0), 1.704–1(b)(1), 1.704-1 (b)(1)(ii) and 1.704–1(b)(1)(iii).

Also, in the second column, under ''Heading'' ''Maintenance of capital accounts'' make the following changes in the second column of the table:

1.704–1(b)(2)(*d*)(*2*) should read 1.704–1(b)(2)(iv)(*d*)(*2*)

1.704–1(b)(2)(iv)(*3*) should read 1.704–1(b)(2)(iv)(*d*)(*3*)

1.704–1(2)(iv)(*e*)(*1*) should read 1.704–1(b)(2)(iv)(*e*)(*1*)

1.704–1(b)(2)(*e*)(*2*) should read 1.704–1(b)(2)(iv)(*e*)(*2*)

[FR Doc. 99–55540 Filed 12–2–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[TD 8846]

RIN 1545–AV45

Deductions for Transfers for Public, Charitable, and Religious Uses; In General Marital Deduction; Valuation of Interest Passing to Surviving Spouse

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the effect of certain administration expenses on the valuation of property that qualifies for either the estate tax marital deduction under section 2056 of the Internal Revenue Code or the estate tax charitable deduction under section 2055. The regulations distinguish between estate transmission expenses, which reduce the value of property for marital and charitable deduction purposes, and estate management expenses, which generally do not reduce the value of property for these purposes.

EFFECTIVE DATES: These regulations are effective on December 3, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah Ryan, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1998, the Treasury Department and the IRS published in the **Federal Register** (63 FR 69248) a notice of proposed rulemaking (REG–114663–97) relating to the effect of certain administration expenses on the valuation of property which qualifies for the estate tax marital or charitable deduction. The proposed regulations were issued in response to the decision of the Supreme Court of the United States in *Commissioner* v. *Estate of Hubert,* 520 U.S. 93 (1997) (1997–2 C.B. 231). Written comments responding to the notice of proposed rulemaking were received, and a public hearing was held on April 21, 1999, at which time oral testimony was presented. This Treasury decision adopts final regulations with respect to the notice of proposed rulemaking. A summary of the principal comments received and revisions made in response to those comments is provided below.

The proposed regulations set forth the substantive provisions as applied to the estate tax marital deduction in § 20.2056(b)–4(a). For the estate tax charitable deduction, the proposed regulations (under § 20.2055–1(d)(6)) merely cross-reference the rules for the marital deduction.

Several commentators suggested that the regulations under section 2055 should contain specific rules relating to the charitable deduction, rather than just a cross-reference. The Treasury and the IRS agree with this suggestion. The final regulations contain rules under § 20.2055–3 specifically addressing the effect of administration expenses on the valuation of property when all or a portion of the interests in property qualify for the estate tax charitable deduction.

Several commentators stated that the distinction between estate transmission expenses and estate management expenses was not clearly made in the proposed regulations and requested more concrete definitions of each type of expense. In response to these comments, the final regulations characterize estate transmission expenses as those expenses that would not have been incurred except for the decedent's death. Although the amount of these expenses cannot be calculated with any degree of certainty on the date of the decedent's death, they are expenses that are incurred because of the decedent's death. Estate management expenses, on the other hand, are characterized in the final regulations as expenses that would be incurred with respect to the property even if the decedent had not died; that is, expenses incurred in investing, maintaining, and preserving the property. These are expenses that typically would have been incurred with respect to the property by the decedent before death or by the beneficiaries had they received the property on the date of death without any intervening period of administration. In order to be certain that all expenses are classified as either transmission expenses or management expenses, transmission expenses are defined to include all expenses that are not management expenses.

Three commentators stated that the different treatment accorded to estate transmission expenses and estate management expenses under the proposed regulations creates a new federal standard for allocating expenses that may be contrary to the manner in which the expenses must be charged under state law. However, the Treasury and the IRS believe that the allocation of administration expenses based on the distinction between transmission and management expenses provides the most accurate measure of the value of the property which passes to the surviving spouse or to the charity at the moment of the decedent's death for federal estate tax marital and charitable deduction purposes. Transmission expenses that are charged to the property passing to the surviving spouse or to the charity reduce the amount of that property as of the date of the decedent's death because the expenses, as well as the transfer to the surviving spouse or to charity, are a consequence of, and arise as a result of, the decedent's death. In contrast, management expenses do not generally

reduce the amount of the property passing from the decedent as of the date of the decedent's death because these expenses are incurred in producing income and preserving and maintaining the property between the date of the decedent's death and the date of distribution. These expenses are the ongoing, year-to-year expenses incurred in the investment, preservation, and maintenance of property by property owners.

In response to other comments, the final regulations illustrate the application of these rules to pecuniary bequests to the surviving spouse. If, under the terms of the governing instrument or applicable local law, the recipient of a pecuniary bequest is not entitled to income earned until distribution, the income is not included in the definition of the marital or charitable share. Thus, the amount of the property passing to the surviving spouse or charity for which a marital or charitable deduction is allowable will not be reduced even if estate transmission or estate management expenses are paid out of the income earned by assets that will be used to satisfy the pecuniary bequest.

Two commentators requested guidance in applying the regulations to estates that are intended to be nontaxable. Accordingly, the final regulations add two examples, one involving a formula designed to produce zero estate taxes and the other involving a pecuniary bequest designed to utilize the applicable exclusion amount under section 2010.

Many of the comments concerned the special rule of § 20.2056(b)–4(e)(2)(ii) of the proposed regulations. Under the special rule, the value of the deductible property interest is not increased as a result of the decrease in the federal estate tax liability that is attributable to the deduction of estate management expenses as expenses of administration under section 2053 on the federal estate tax return. A similar rule would have applied for purposes of the estate tax charitable deduction.

Several of these commentators argued that the special rule is inconsistent with sections 2056(a) and 2055(c), because the value of the property passing to the surviving spouse or charity should be reduced only by the estate taxes actually paid. Thus, an estate should be permitted the full benefit of deducting management expenses on the federal estate tax return, including an increase to the marital or charitable deduction based on the resultant decrease in tax payable from the marital or charitable share.

Conversely, other commentators asserted that the special rule does not conform with section 2056(b)(9). Section 2056(b)(9) provides that nothing in section 2056 or any other estate tax provision shall allow the value of any interest in property to be deducted for federal estate tax purposes more than once with respect to the same decedent. These commentators pointed out that if estate management expenses paid from the marital or charitable share are deducted on the federal estate tax return, and no reduction is made to the allowable amount of the marital or charitable deduction, then the same property interest is deducted twice in violation of section 2056(b)(9).

After considering these comments, the Treasury and the IRS have eliminated the special rule of the proposed regulations. The final regulations provide that estate management expenses attributable to, and payable from, the property interest passing to the surviving spouse or charity do not reduce the value of the property interest. However, pursuant to section 2056(b)(9), the allowable amount of the marital or charitable deduction is reduced by the amount of these management expenses if they are deducted on the Federal estate tax return.

The Treasury and the IRS believe that the principles which apply for determining the value of the marital and charitable deductions should also apply for determining the value of property that passes from one decedent to another when calculating the amount of the credit for tax on prior transfers under section 2013. Therefore, the final regulations amend § 20.2013–4(b) by adding a cross reference to § 20.2056(b)–4(d).

Effective Dates

The regulations under sections 2055 and 2056 are applicable to estates of decedents dying on or after December 3, 1999. The regulations under section 2013 are applicable to transfers from estates of decedents dying on or after December 3, 1999.

Effect on Other Documents

The following publications are obsolete as of December 3, 1999.

Rev. Rul. 66–233 (1996–2 C.B. 428)
Rev. Rul. 73–98 (1973–1 C.B. 407)
Rev. Rul. 80–159 (1980–1 C.B. 206)
Rev. Rul. 93–48 (1993–2 C.B. 270)

Special Analyses

This rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting information. The principal author of these regulations is Deborah Ryan, Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 20 is amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 20.2013–4 is amended by:

1. Removing ''and'' at the end of paragraph (b)(2).
2. Redesignating paragraph (b)(3) as paragraph (b)(4).
3. Adding a new paragraph (b)(3).

The addition reads as follows:

§ 20.2013–4 Valuation of property transferred.

* * * * *

(b) * * *

(3)(i) By the amount of administration expenses in accordance with the principles of § 20.2056(b)–4(d).

(ii) This paragraph (b)(3) applies to transfers from estates of decedents dying on or after December 3, 1999; and

* * * * *

Par. 3. Section 20.2055–3 is amended by:

1. Revising the section heading.
2. Adding a paragraph heading for paragraph (a).
3. Redesignating the text of paragraph (a) following the heading and paragraphs (b) and (c) as paragraph (a)(1) and paragraphs (a)(2) and (a)(3), respectively.
4. Adding a new paragraph (b).

The revision and additions read as follows:

§ 20.2055–3 Effect of death taxes and administration expenses.

(a) *Death taxes.* * * *

(b) *Administration expenses*—(1) *Definitions*—(i) *Management expenses.* Estate management expenses are expenses that are incurred in connection with the investment of estate assets or with their preservation or maintenance during a reasonable period of administration. Examples of these expenses could include investment advisory fees, stock brokerage commissions, custodial fees, and interest.

(ii) *Transmission expenses.* Estate transmission expenses are expenses that would not have been incurred but for the decedent's death and the consequent necessity of collecting the decedent's assets, paying the decedent's debts and death taxes, and distributing the decedent's property to those who are entitled to receive it. Estate transmission expenses include any administration expense that is not a management expense. Examples of these expenses could include executor commissions and attorney fees (except to the extent of commissions or fees specifically related to investment, preservation, and maintenance of the assets), probate fees, expenses incurred in construction proceedings and defending against will contests, and appraisal fees.

(iii) *Charitable share.* The charitable share is the property or interest in property that passed from the decedent for which a deduction is allowable under section 2055(a) with respect to all or part of the property interest. The charitable share includes, for example, bequests to charitable organizations and bequests to a charitable lead unitrust or annuity trust, a charitable remainder unitrust or annuity trust, and a pooled income fund, described in section 2055(e)(2). The charitable share also includes the income produced by the property or interest in property during the period of administration if the income, under the terms of the governing instrument or applicable local law, is payable to the charitable organization or is to be added to the principal of the property interest passing in whole or in part to the charitable organization.

(2) *Effect of transmission expenses.* For purposes of determining the charitable deduction, the value of the charitable share shall be reduced by the amount of the estate transmission expenses paid from the charitable share.

(3) *Effect of management expenses attributable to the charitable share.* For purposes of determining the charitable deduction, the value of the charitable share shall not be reduced by the amount of the estate management expenses attributable to and paid from the charitable share. Pursuant to section 2056(b)(9), however, the amount of the allowable charitable deduction shall be reduced by the amount of any such management expenses that are deducted under section 2053 on the decedent's federal estate tax return.

(4) *Effect of management expenses not attributable to the charitable share.* For purposes of determining the charitable deduction, the value of the charitable share shall be reduced by the amount of the estate management expenses paid from the charitable share but attributable to a property interest not included in the charitable share.

(5) *Example.* The following example illustrates the application of this paragraph (b):

Example. The decedent, who dies in 2000, leaves his residuary estate, after the payment of debts, expenses, and estate taxes, to a charitable remainder unitrust that satisfies the requirements of section 664(d). During the period of administration, the estate incurs estate transmission expenses of $400,000. The residue of the estate (the charitable share) must be reduced by the $400,000 of transmission expenses and by the Federal and State estate taxes before the present value of the remainder interest passing to charity can be determined in accordance with the provisions of § 1.664–4 of this chapter. Because the estate taxes are payable out of the residue, the computation of the estate taxes and the allowable charitable deduction are interrelated. See paragraph (a)(2) of this section.

(6) *Cross reference.* See § 20.2056(b)–4(d) for additional examples applicable to the treatment of administration expenses under this paragraph (b).

(7) *Effective date.* The provisions of this paragraph (b) apply to estates of decedents dying on or after December 3, 1999.

Par. 4. Section 20.2056(b)–4 is amended by:

1. Removing the last two sentences of paragraph (a).

2. Redesignating paragraph (d) as paragraph (e).

3. Adding a new paragraph (d).

The addition reads as follows:

§ 20.2056(b)–4 Marital deduction; valuation of interest passing to surviving spouse.

* * * * *

(d) *Effect of administration expenses*—(1) *Definitions*—(i) *Management expenses.* Estate management expenses are expenses that are incurred in connection with the investment of estate assets or with their preservation or maintenance during a reasonable period of administration. Examples of these expenses could include investment advisory fees, stock brokerage commissions, custodial fees, and interest.

(ii) *Transmission expenses.* Estate transmission expenses are expenses that would not have been incurred but for the decedent's death and the consequent necessity of collecting the decedent's assets, paying the decedent's debts and death taxes, and distributing the decedent's property to those who are entitled to receive it. Estate transmission expenses include any administration expense that is not a management expense. Examples of these expenses could include executor commissions and attorney fees (except to the extent of commissions or fees specifically related to investment, preservation, and maintenance of the assets), probate fees, expenses incurred in construction proceedings and defending against will contests, and appraisal fees.

(iii) *Marital share.* The marital share is the property or interest in property that passed from the decedent for which a deduction is allowable under section 2056(a). The marital share includes the income produced by the property or interest in property during the period of administration if the income, under the terms of the governing instrument or applicable local law, is payable to the surviving spouse or is to be added to the principal of the property interest passing to, or for the benefit of, the surviving spouse.

(2) *Effect of transmission expenses.* For purposes of determining the marital deduction, the value of the marital share shall be reduced by the amount of the estate transmission expenses paid from the marital share.

(3) *Effect of management expenses attributable to the marital share.* For purposes of determining the marital deduction, the value of the marital share shall not be reduced by the amount of the estate management expenses attributable to and paid from the marital share. Pursuant to section 2056(b)(9), however, the amount of the allowable marital deduction shall be reduced by the amount of any such management expenses that are deducted under section 2053 on the decedent's Federal estate tax return.

(4) *Effect of management expenses not attributable to the marital share.* For purposes of determining the marital deduction, the value of the marital share shall be reduced by the amount of the estate management expenses paid from the marital share but attributable to a property interest not included in the marital share.

(5) *Examples.* The following examples illustrate the application of this paragraph (d):

Example 1. The decedent dies after 2006 having made no lifetime gifts. The decedent makes a bequest of shares of ABC Corporation stock to the decedent's child. The bequest provides that the child is to receive the income from the shares from the date of the decedent's death. The value of the bequeathed shares on the decedent's date of death is $3,000,000. The residue of the estate is bequeathed to a trust for which the executor properly makes an election under section 2056(b)(7) to treat as qualified terminable interest property. The value of the residue on the decedent's date of death, before the payment of administration expenses and Federal and State estate taxes, is $6,000,000. Under applicable local law, the executor has the discretion to pay administration expenses from the income or principal of the residuary estate. All estate taxes are to be paid from the residue. The State estate tax equals the State death tax credit available under section 2011.

During the period of administration, the estate incurs estate transmission expenses of $400,000, which the executor charges to the residue. For purposes of determining the marital deduction, the value of the residue is reduced by the Federal and State estate taxes and by the estate transmission expenses. If the transmission expenses are deducted on the Federal estate tax return, the marital deduction is $3,500,000 ($6,000,000 minus $400,000 transmission expenses and minus $2,100,000 Federal and State estate taxes). If the transmission expenses are deducted on the estate's Federal income tax return rather than on the estate tax return, the marital deduction is $3,011,111 ($6,000,000 minus $400,000 transmission expenses and minus $2,588,889 Federal and State estate taxes).

Example 2. The facts are the same as in Example 1, except that, instead of incurring estate transmission expenses, the estate incurs estate management expenses of $400,000 in connection with the residue property passing for the benefit of the spouse. The executor charges these management expenses to the residue. In determining the value of the residue passing to the spouse for marital deduction purposes, a reduction is made for Federal and State estate taxes payable from the residue but no reduction is made for the estate management expenses. If the management expenses are deducted on the estate's income tax return, the net value of the property passing to the spouse is $3,900,000 ($6,000,000 minus $2,100,000 Federal and State estate taxes). A marital deduction is claimed for that amount, and the taxable estate is $5,100,000.

Example 3. The facts are the same as in *Example 1,* except that the estate management expenses of $400,000 are incurred in connection with the bequest of ABC Corporation stock to the decedent's child. The executor charges these management expenses to the residue. For purposes of determining the marital deduction, the value of the residue is reduced by the Federal and State estate taxes and by the management expenses. The management expenses reduce the value of the residue because they are charged to the property passing to the spouse even though they were incurred with respect to stock passing to the child. If the management expenses are deducted on the estate's Federal income tax return, the marital deduction is $3,011,111 ($6,000,000 minus $400,000 management expenses and minus $2,588,889 Federal and State estate taxes). If the management expenses are deducted on the estate's Federal estate tax return, rather than on the estate's Federal income tax return, the marital deduction is $3,500,000 ($6,000,000 minus $400,000 management expenses and minus $2,100,000 in Federal and State estate taxes).

Example 4. The decedent, who dies in 2000, has a gross estate of $3,000,000. Included in the gross estate are proceeds of $150,000 from a policy insuring the decedent's life and payable to the decedent's child as beneficiary. The applicable credit amount against the tax was fully consumed by the decedent's lifetime gifts. Applicable State law requires the child to pay any estate taxes attributable to the life insurance policy. Pursuant to the decedent's will, the rest of the decedent's estate passes outright to the surviving spouse. During the period of administration, the estate incurs estate management expenses of $150,000 in connection with the property passing to the spouse. The value of the property passing to the spouse is $2,850,000 ($3,000,000 less the insurance proceeds of $150,000 passing to the child). For purposes of determining the marital deduction, if the management expenses are deducted on the estate's income tax return, the marital deduction is $2,850,000 ($3,000,000 less $150,000) and there is a resulting taxable estate of $150,000 ($3,000,000 less a marital deduction of $2,850,000). Suppose, instead, the management expenses of $150,000 are deducted on the estate's estate tax return under section 2053 as expenses of administration. In such a situation, claiming a marital deduction of $2,850,000 would be taking a deduction for the same $150,000 in property under both sections 2053 and 2056 and would shield from estate taxes the $150,000 in insurance proceeds passing to the decedent's child. Therefore, in accordance with section 2056(b)(9), the marital deduction is limited to $2,700,000, and the resulting taxable estate is $150,000.

Example 5. The decedent dies after 2006 having made no lifetime gifts. The value of the decedent's residuary estate on the decedent's date of death is $3,000,000, before the payment of administration expenses and Federal and State estate taxes. The decedent's will provides a formula for dividing the decedent's residuary estate between two trusts to reduce the estate's Federal estate taxes to zero. Under the formula, one trust, for the benefit of the decedent's child, is to be funded with that amount of property equal in value to so much of the applicable exclusion amount under section 2010 that would reduce the estate's Federal estate tax to zero. The other trust, for the benefit of the surviving spouse, satisfies the requirements of section 2056(b)(7) and is to be funded with the remaining property in the estate. The State estate tax equals the State death tax credit available under section 2011. During the period of administration, the estate incurs transmission expenses of $200,000. The transmission expenses of $200,000 reduce the value of the residue to $2,800,000. If the transmission expenses are deducted on the Federal estate tax return, then the formula divides the residue so that the value of the property passing to the child's trust is $1,000,000 and the value of the property passing to the marital trust is $1,800,000. The allowable marital deduction is $1,800,000. The applicable exclusion amount shields from Federal estate tax the entire $1,000,000 passing to the child's trust so that the amount of Federal and State estate taxes is zero. Alternatively, if the transmission expenses are deducted on the estate's Federal income tax return, the formula divides the residue so that the value of the property passing to the child's trust is $800,000 and the value of the property passing to the marital trust is $2,000,000. The allowable marital deduction remains $1,800,000. The applicable exclusion amount shields from Federal estate tax the entire $800,000 passing to the child's trust and $200,000 of the $2,000,000 passing to the marital trust so that the amount of Federal and State estate taxes remains zero.

Example 6. The facts are the same as in *Example 5,* except that the decedent's will provides that the child's trust is to be funded with that amount of property equal in value to the applicable exclusion amount under section 2010 allowable to the decedent's estate. The residue of the estate, after the payment of any debts, expenses, and Federal and State estate taxes, is to pass to the marital trust. The applicable exclusion amount in this case is $1,000,000, so the value of the property passing to the child's trust is $1,000,000. After deducting the $200,000 of transmission expenses, the residue of the estate is $1,800,000 less any estate taxes. If the transmission expenses are deducted on the Federal estate tax return, the allowable marital deduction is $1,800,000, the taxable estate is zero, and the Federal and State estate taxes are zero. Alternatively, if the transmission expenses are deducted on the estate's Federal income tax return, the net value of the property passing to the spouse is $1,657,874 ($1,800,000 minus $142,106 estate taxes). A marital deduction is claimed for that amount, the taxable estate is $1,342,106, and the Federal and State estate taxes total $142,106.

Example 7. The decedent, who dies in 2000, makes an outright pecuniary bequest of $3,000,000 to the decedent's surviving spouse, and the residue of the estate, after the payment of all debts, expenses, and Federal and State estate taxes, passes to the decedent's child. Under the terms of the applicable local law, a beneficiary of a pecuniary bequest is not entitled to any income on the bequest. During the period of administration, the estate pays estate transmission expenses from the income

earned by the property that will be distributed to the surviving spouse in satisfaction of the pecuniary bequest. The income earned on this property is not part of the marital share. Therefore, the allowable marital deduction is $3,000,000, unreduced by the amount of the estate transmission expenses.

(6) *Effective date.* The provisions of this paragraph (d) apply to estates of decedents dying on or after December 3, 1999.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: November 22, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 99–31094 Filed 12–2–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20, 25, 301 and 602

[TD 8845]

RIN 1545–AW20

Adequate Disclosure of Gifts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to changes made to Internal Revenue Code sections 2001, 2504, and 6501 by the Taxpayer Relief Act of 1997 and the Internal Revenue Service Restructuring and Reform Act of 1998 regarding the valuation of prior gifts in determining estate and gift tax liability, and the period of limitations for assessing and collecting gift tax. These regulations are necessary because section 6501(c)(9) now requires that a gift must be adequately disclosed on a gift tax return in order to commence the running of the period of limitations on assessment with respect to the gift. Once the period of limitations expires, the amount of that gift as reported on the return may not be adjusted for purposes of determining future gift and estate tax liability. The regulations provide guidance on what constitutes adequate disclosure for purposes of the statute.

DATES: These regulations are effective December 3, 1999.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1637. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The reporting burden contained in § 301.6501(c)–1(f) is reflected in the burden for Form 709, ''U.S. Gift (and Generation-Skipping Transfer) Tax Return.''

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may be material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 22, 1998, the IRS published in the **Federal Register** (63 FR 70701) a notice of proposed rulemaking under sections 2001 and 2504 relating to the value of prior gifts for purposes of computing the estate and gift tax, and under section 6501 relating to the period for assessment and collection of gift tax. Written comments responding to the notice of proposed rulemaking were received and a hearing was held on April 28, 1999, at which time oral testimony was presented. This document adopts final regulations with respect to this notice of proposed rulemaking. A summary of the principal comments received and the revisions made in response to those comments is provided below.

1. Requirements for Adequate Disclosure

Under section 6501(c)(9), the period of limitations on the assessment of gift tax with respect to a gift will commence to run only if the gift is adequately disclosed on the gift tax return. The proposed regulations provide a list of information required to satisfy the adequate disclosure standard.

In general, the comments objected to the quantity, detail, and nature of the information required under the proposed regulations. In some cases, information required in the proposed regulations is not required in the final regulations. However, Treasury and the IRS continue to believe that the adequate disclosure rule was intended to afford the IRS a viable means to identify the returns that should be examined, with a minimum expenditure of resources. Further, the more complete and comprehensive the information filed with the return is, the more readily the IRS will be able to identify the returns that should not be examined, thus saving taxpayers needless expenditures of time and money.

Several commentators suggested that the language in § 301.6501–1(f)(2) of the proposed regulations imposed two requirements for adequate disclosure. That is, the taxpayer had to provide information adequate to apprise the IRS of the nature of the gift, etc. and in addition, the taxpayer had to provide the information listed in the regulation. In response to these comments, the final regulations clarify that the adequate disclosure requirement is satisfied if the information listed in the regulation is provided.

Some commentators argued that Congress intended that the new adequate disclosure requirements be the same as the existing disclosure requirements under prior section 6501(c)(9) for pre-August 5, 1997 gifts of property subject to the special valuation rules of sections 2701 and 2702. Therefore, the commentators suggested that the IRS adopt the disclosure requirements under § 301.6501(c)–1(e)(2) for transfers of those interests. This suggestion was not adopted. The IRS and Treasury believe it is necessary to expand on those disclosure requirements to address the broader range of transfers covered by the new legislation, as well as transactions and entities that may not have been prevalent when the prior regulations were promulgated.

Under the proposed regulations, if property is transferred in trust, taxpayers are required to provide a brief description of the terms of the trust. In response to comments, the final regulations provide that taxpayers may submit a complete copy of the trust document in lieu of a description of the trust terms.

The proposed regulations require the submission of a detailed description of the method used in determining the fair