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SUBCHAPTER B—ESTATE AND GIFT TAXES

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

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SOURCE: T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, unless otherwise noted.

INTRODUCTION

§ 20.0–1 Introduction.

(a) *In general.* (1) The regulations in this part (part 20, subchapter B, chapter I, title 26, Code of Federal Regulations) are designated ''Estate Tax Regulations.'' These regulations pertain to (i) the Federal estate tax imposed by chapter 11 of subtitle B of the Internal Revenue Code on the transfer of estates of decedents dying after August 16,

1954, and (ii) certain related administrative provisions of subtitle F of the Code. It should be noted that the application of many of the provisions of these regulations may be affected by the provisions of an applicable death tax convention with a foreign country. Unless otherwise indicated, references in the regulations to the ''Internal Revenue Code'' or the ''Code'' are references to the Internal Revenue Code of 1954, as amended, and references to a section or other provision of law are references to a section or other provision of the Internal Revenue Code of 1954, as amended. Unless otherwise provided, the Estate Tax Regulations are applicable to the estates of decedents dying after August 16, 1954, and supersede the regulations contained in part 81, subchapter B, chapter I, title 26, *Code of Federal Regulations* (1939) (Regulations 105, Estate Tax), as prescribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 FR 5167, Aug. 17, 1954). The regulations in this part do not reflect the amendments made by the Foreign Investors Tax Act of 1966 (80 Stat. 1539).

(2) Section 2208 makes the provisions of chapter 11 of the Code apply to the transfer of the estates of certain decedents dying after September 2, 1958, who were citizens of the United States and residents of a possession thereof at the time of death. Section 2209 makes the provisions of chapter 11 apply to the transfer of the estates of certain other decedents dying after September 14, 1960, who were citizens of the United States and residents of a possession thereof at the time of death. See §§ 20.2208–1 and 20.2209–1. Except as otherwise provided in §§ 20.2208–1 and 20.2209–1, the provisions of these regulations do not apply to the estates of such decedents.

(b) *Scope of regulations*—(1) *Estates of citizens or residents.* Subchapter A of Chapter 11 of the Code pertains to the taxation of the estate of a person who was a citizen or a resident of the United States at the time of his death. A ''resident'' decedent is a decedent who, at the time of his death, had his domicile in the United States. The term ''United States'', as used in the estate tax regulations, includes only the States and the District of Columbia. The term also includes the Territories of Alaska and Hawaii prior to their admission as States. See section 7701(a)(9). A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal. For the meaning of the term ''citizen of the United States'' as applied in a case where the decedent was a resident of a possession of the United States, see § 20.2208–1. The regulations pursuant to subchapter A are set forth in §§ 20.2001–1 to 20.2056(d)–1.

(2) *Estates of nonresidents not citizens.* Subchapter B of Chapter 11 of the Code pertains to the taxation of the estate of a person who was a nonresident not a citizen of the United States at the time of his death. A ''nonresident'' decedent is a decedent who, at the time of his death, had his domicile outside the United States under the principles set forth in subparagraph (1) of this paragraph. (See, however, section 2202 with respect to missionaries in foreign service.) The regulations pursuant to subchapter B are set forth in §§ 20.2101–1 to 20.2107–1.

(3) *Miscellaneous substantive provisions.* Subchapter C of Chapter 11 of the Code contains a number of miscellaneous substantive provisions. The regulations pursuant to subchapter C are set forth in §§ 20.2201–1 to 20.2209–1.

(4) *Procedure and administration provisions.* Subtitle F of the Internal Revenue Code contains some sections which are applicable to the Federal estate tax. The regulations pursuant to those sections are set forth in §§ 20.6001–1 to 20.7101–1. Such regulations do not purport to be all the regulations on procedure and administration which are pertinent to estate tax matters. For the remainder of the regulations on procedure and administration which are pertinent to estate tax matters, see part 301 (Regulations on Procedure and Administration) of this chapter.

(c) *Arrangement and numbering.* Each section of the regulations in this part (other than this section and § 20.0–2) is designated by a number composed of the part number followed by a decimal point (20.); the section of the Internal Revenue Code which it interprets; a hyphen (-); and a number identifying the section. By use of these designations one can ascertain the sections of the regulations relating to a provision of the Code. For example, the regulations pertaining to section 2012 of the Code are designated § 20.2012–1.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6526, 26 FR 414, Jan. 19, 1961; T.D. 7238, 37 FR 28717, Dec. 29, 1972; T.D. 7296, 38 FR 34191, Dec. 12, 1973; T.D. 7665, 45 FR 6089, Jan. 25, 1980; T.D. 8522, 59 FR 9646, Mar. 1, 1994]

§ 20.0–2 General description of tax.

(a) *Nature of tax.* The Federal estate tax is neither a property tax nor an inheritance tax. It is a tax imposed upon the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share. Escheat of a decedent's property to the State for lack of heirs is a transfer which causes the property to be included in the decedent's gross estate.

(b) *Method of determining tax; estate of citizen or resident*—(1) *In general.* Subparagraphs (2) to (5) of this paragraph contain a general description of the method to be used in determining the Federal estate tax imposed upon the transfer of the estate of a decedent who was a citizen or resident of the United States at the time of his death.

(2) *Gross estate.* The first step in determining the tax is to ascertain the total value of the decedent's gross estate. The value of the gross estate includes the value of all property to the extent of the interest therein of the decedent at the time of his death. (For certain exceptions in the case of real property situated outside the United States, see paragraphs (a) and (c) of § 20.2031–1.) In addition, the gross estate may include property in which the decedent did not have an interest at the time of his death. A decedent's gross estate for Federal estate tax purposes may therefore be very different from the same decedent's estate for local probate purposes. Examples of items which may be included in a decedent's gross estate and not in his probate estate are the following: certain property transferred by the decedent during his lifetime without adequate consideration; property held jointly by the decedent and others; property over which the decedent had a general power of appointment; proceeds of certain policies of insurance on the decedent's life; annuities; and dower or curtesy of a surviving spouse or a statutory estate in lieu thereof. For a detailed explanation of the method of ascertaining the value of the gross estate, see sections 2031 through 2044, and the regulations thereunder.

(3) *Taxable estate.* The second step in determining the tax is to ascertain the value of the decedent's taxable estate. The value of the taxable estate is determined by subtracting from the value of the gross estate the authorized exemption and deductions. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. For a detailed explanation of the method of ascertaining the value of the taxable estate, see sections 2051 through 2056, and the regulations thereunder.

(4) *Gross estate tax.* The third step is the determination of the gross estate tax. This is accomplished by the application of certain rates to the value of the decedent's taxable estate. In this connection, see section 2001 and the regulations thereunder.

(5) *Net estate tax payable.* The final step is the determination of the net estate tax payable. This is done by subtracting from the gross estate tax the authorized credits against tax. Under certain conditions and limitations, credits are allowable for the following (computed in the order stated below):

(i) State death taxes paid in connection with the decedent's estate (section 2011);

(ii) Gift taxes paid on inter-vivos transfers by the decedent of property included in his gross estate (section 2012);

(iii) Foreign death taxes paid in connection with the decedent's estate (section 2014); and

(iv) Federal estate taxes paid on transfers of property to the decedent (section 2013).

Sections 25.2701–5 and 25.2702–6 of this chapter contain rules that provide additional adjustments to mitigate double taxation in cases where the amount of the decedent's gift was previously determined under the special valuation provisions of sections 2701 and 2702. For a detailed explanation of the credits against tax, see sections 2011 through 2016 and the regulations thereunder.

(c) *Method of determining tax; estate of nonresident not a citizen.* In general, the method to be used in determining the Federal estate tax imposed upon the transfer of an estate of a decedent who was a nonresident not a citizen of the United States is similar to that described in paragraph (b) of this section with respect to the estate of a citizen or resident. Briefly stated, the steps are as follows: First, ascertain the sum of the value of that part of the decedent's ''entire gross estate'' which at the time of his death was situated in the United States (see §§ 20.2103–1 and 20.2014–1) and, in the case of an estate of an expatriate to which section 2107 applies, any amounts includible in his gross estate under section 2107(b) (see paragraph (b) of § 20.2107–1); second, determine the value of the taxable estate by subtracting from the amount determined under the first step the amount of the allowable deductions (see § 20.2106–1); third, compute the gross estate tax on the taxable estate (see § 20.2106–1); and fourth, subtract from the gross estate tax the total amount of any allowable credits in order to arrive at the net estate tax payable (see § 20.2102–1 and paragraph (c) of § 20.2107–1).

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6684, 28 FR 11408, Oct. 24, 1963; T.D. 7296, 38 FR 34191, Dec. 12, 1973; T.D. 8395, 57 FR 4254, Feb. 4, 1992]

ESTATES OF CITIZENS OR RESIDENTS

TAX IMPOSED

§ 20.2001–1 Rate of tax.

(a) The gross estate tax is computed by the application of progressively graduated rates to the value of the decedent's taxable estate in accordance with the following table:

TABLE FOR COMPUTATION OF GROSS ESTATE TAX

(A)—Taxable estate equal to or more than—	(B)—Taxable estate less than—	(C)—Tax on amount in column (A)	(D)—Rate of tax on excess over amount in column (A) (percent)
	$5,000	.....	3
$5,000	10,000	$150	7
10,000	20,000	500	11
20,000	30,000	1,600	14
30,000	40,000	3,000	18
40,000	50,000	4,800	22
50,000	60,000	7,000	25
60,000	100,000	9,500	28
100,000	250,000	20,700	30
250,000	500,000	65,700	32
500,000	750,000	145,700	35
750,000	1,000,000	233,200	37
1,000,000	1,250,000	325,700	39
1,250,000	1,500,000	423,200	42
1,500,000	2,000,000	528,200	45
2,000,000	2,500,000	753,200	49
2,500,000	3,000,000	998,200	53
3,000,000	3,500,000	1,263,200	56
3,500,000	4,000,000	1,543,200	59
4,000,000	5,000,000	1,838,200	63
5,000,000	6,000,000	2,468,200	67
6,000,000	7,000,000	3,138,200	70
7,000,000	8,000,000	3,838,200	73
8,000,000	10,000,000	4,568,200	76
10,000,000	.....	6,088,200	77

(b) The application of the table may be illustrated by the following example:

Example. The decedent died January 1, 1955, having a gross estate of $600,000. The exemption and authorized deductions amount to $75,000, thus leaving a taxable estate of $525,000. Reference to the table discloses that the specified amount in column (A) nearest to and less than the value of the decedent's taxable estate is $500,000. The tax upon this amount as indicated in column (C), is $145,700. The amount by which the taxable estate exceeds the same specified amount is $25,000. The tax upon this amount, computed at the rate of 35 percent indicated in column (D), is $8,750. Thus the total gross estate tax upon a taxable estate of $525,000 is $154,450. From this amount, the credits authorized by sections 2011 through 2014 are subtracted in order to determine the net estate tax payable.

§ 20.2002–1 Liability for payment of tax.

The Federal estate tax imposed both with respect to the estates of citizens or residents and with respect to estates of nonresidents not citizens is payable by the executor or administrator of the

decedent's estate. This duty applies to the entire tax, regardless of the fact that the gross estate consists in part of property which does not come within the possession of the executor or administrator. If there is no executor or administrator appointed, qualified and acting in the United States, any person in actual or constructive possession of any property of the decedent is required to pay the entire tax to the extent of the value of the property in his possession. See section 2203, defining the term ''executor''. The personal liability of the executor or such other person is described in section 3467 of the Revised Statutes (31 U.S.C. 192) as follows:

> Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

As used in said section, the word ''debt'' includes a beneficiary's distributive share of an estate. Thus, if the executor pays a debt due by the decedent's estate or distributes any portion of the estate before all the estate tax is paid, he is personally liable, to the extent of the payment or distribution, for so much of the estate tax as remains due and unpaid. In addition, section 6324(a)(2) provides that if the estate tax is not paid when due, then the spouse, transferee, trustee (except the trustee of an employee's trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under section 2034 through 2042, is personally liable for the tax to the extent of the value, at the time of the decedent's death, of such property. See also the following related sections of the Internal Revenue Code: Section 2204, discharge of executor from personal liability; section 2205, reimbursement out of estate; sections 2206 and 2207, liability of life insurance beneficiaries and recipients of property over which decedent had power of appointment; sections 6321 through 6325, concerning liens for taxes; and section 6901(a)(1), concerning the liabilities of transferees and fiduciaries.

CREDITS AGAINST TAX

§ 20.2011–1 Credit for State death taxes.

(a) *In general.* A credit is allowed under section 2011 against the Federal estate tax for estate, inheritance, legacy or succession taxes actually paid to any State, Territory, or the District of Columbia, or, in the case of decedents dying before September 3, 1958, any possession of the United States (hereinafter referred to as ''State death taxes''). The credit, however, is allowed only for State death taxes paid (1) with respect to property included in the decedent's gross estate, and (2) with respect to the decedent's estate. The amount of the credit is subject to the limitation described in paragraph (b) of this section. It is subject to further limitations described in § 20.2011–2 if a deduction is allowed under section 2053(d) for State death taxes paid with respect to a charitable gift. See paragraph (a) of § 20.2014–1 as to the allowance of a credit for death taxes paid to a possession of the United States in a case where the decedent died after September 2, 1958.

(b) *Amount of credit.* (1) If the decedent's taxable estate does not exceed $40,000, the credit for State death taxes is zero. If the decedent's taxable estate does exceed $40,000, the credit for State death taxes is limited to an amount computed in accordance with the following table:

TABLE FOR COMPUTATION OF MAXIMUM CREDIT FOR STATE DEATH TAXES

(A)—Taxable estate equal to or more than—	(B)—Taxable estate less than—	(C)—Credit on amount in column (A)	(D)—Rates of credit on excess over amount in column (A) (percent)
$40,000	$90,000	.....	0.8
90,000	140,000	$400	1.6
140,000	240,000	1,200	2.4
240,000	440,000	3,600	3.2
440,000	640,000	10,000	4.0
640,000	840,000	18,000	4.8
840,000	1,040,000	27,600	5.6

TABLE FOR COMPUTATION OF MAXIMUM CREDIT FOR STATE DEATH TAXES—Continued

(A)—Taxable estate equal to or more than—	(B)—Taxable estate less than—	(C)—Credit on amount in column (A)	(D)—Rates of credit on excess over amount in column (A) (percent)
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	106,800	8.0
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.0
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000	.....	1,082,800	16.0

(2) Subparagraph (1) of this paragraph may be illustrated by the following example:

Example. (i) The decedent died January 1, 1955, leaving a taxable estate of $150,000. On January 1, 1956, inheritance taxes totaling $2,500 were actually paid to a State with respect to property included in the decedent's gross estate. Reference to the table discloses that the specified amount in column (A) nearest to but less than the value of the decedent's taxable estate is $140,000. The maximum credit in respect of this amount, as indicated in column (C), is $1,200. The amount by which the taxable estate exceeds the same specified amount is $10,000. The maximum credit in respect of this amount, computed at the rate of 2.4 percent indicated in column (D), is $240. Thus, the maximum credit in respect of the decedent's taxable estate of $150,000 is $1,440, even though $2,500 in inheritance taxes was actually paid to the State.

(ii) If, in subdivision (i) of this example, the amount actually paid to the State was $950, the credit for State death taxes would be limited to $950. If, in subdivision (i) of this example, the decedent's taxable estate was $35,000, no credit for State death taxes would be allowed.

(c) *Miscellaneous limitations and conditions to credit*—(1) *Period of limitations.* The credit for State death taxes is limited under section 2011(c) to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the estate tax return for the decedent's estate. If, however, a petition has been filed with the Tax Court of the United States for the redetermination of a deficiency within the time prescribed in section 6213(a), the credit is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the return or within 60 days after the decision of the Tax Court becomes final, whichever period is the last to expire. Similarly, if an extension of time has been granted under section 6161 for payment of the tax shown on the return, or of a deficiency, the credit is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the return, or before the date of the expiration of the period of the extension, whichever period is last to expire. If a claim for refund or credit of an overpayment of the Federal estate tax is filed within the time prescribed in section 6511, the credit for State death taxes is limited to such taxes as were actually paid and credit therefor claimed within four years after the filing of the return or before the expiration of 60 days from the date of mailing by certified or registered mail by the district director to the taxpayer of a notice of disallowance of any part of the claim, or before the expiration of 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon the claim, whichever period is the last to expire. See section 2015 for the applicable period of limitations for credit for State death taxes on reversionary or remainder interests if an election is made under section 6163(a) to postpone payment of the estate tax attributable to reversionary or remainder interests. If a claim for refund based on the credit for State death taxes is filed within the applicable period described in this subparagraph, a refund may be made despite the general limitation provisions of sections 6511 and 6512. Any refund based on the credit described in this section shall be made without interest.

(2) *Submission of evidence.* Before the credit for State death taxes is allowed, evidence that such taxes have been paid must be submitted to the district director. The district director may require the submission of a certificate from the proper officer of the taxing State, Territory, or possession of the United States, or the District of Columbia, showing: (i) The total amount of tax imposed (before adding interest

and penalties and before allowing discount); (ii) the amount of any discount allowed; (iii) the amount of any penalties and interest imposed or charged; (iv) the total amount actually paid in cash; and (v) the date or dates of payment. If the amount of these taxes has been redetermined, the amount finally determined should be stated. The required evidence should be filed with the return, but if that is not convenient or possible, then it should be submitted as soon thereafter as practicable. The district director may require the submission of such additional proof as is deemed necessary to establish the right to the credit. For example, he may require the submission of a certificate of the proper officer of the taxing jurisdiction showing (vi) whether a claim for refund of any part of the State death tax is pending and (vii) whether a refund of any part thereof has been authorized, and if a refund has been made, its date and amount, and a description of the property or interest in respect of which the refund was made. The district director may also require an itemized list of the property in respect of which State death taxes were imposed certified by the officer having custody of the records pertaining to those taxes. In addition, he may require the executor to submit a written statement (containing a declaration that it is made under penalties of perjury) stating whether, to his knowledge, any person has instituted litigation or taken an appeal (or contemplates doing so), the final determination of which may affect the amount of those taxes. See section 2016 concerning the redetermination of the estate tax if State death taxes claimed as credit are refunded.

(d) *Definition of ''basic estate tax''.* Section 2011(d) provides definitions of the terms ''basic estate tax'' and ''additional estate tax'', used in the Internal Revenue Code of 1939, and ''estate tax imposed by the Revenue Act of 1926'', for the purpose of supplying a means of computing State death taxes under local statutes using those terms, and for use in determining the exemption provided for in section 2201 for estates of certain members of the Armed Forces. See section 2011(e)(3) for a modification of these definitions if a deduction is allowed under section 2053(d) for State death taxes paid with respect to a charitable gift.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6526, 26 FR 414, Jan. 19, 1961]

§ 20.2011–2 Limitation on credit if a deduction for State death taxes is allowed under section 2053(d).

If a deduction is allowed under section 2053(d) for State death taxes paid with respect to a charitable gift, the credit for State death taxes is subject to special limitations. Under these limitations, the credit cannot exceed the least of the following:

(a) The amount of State death taxes paid other than those for which a deduction is allowed under section 2053(d);

(b) The amount indicated in section 2011(b) to be the maximum credit allowable with respect to the decedent's taxable estate; or

(c) An amount, A, which bears the same ratio to B (the amount which would be the maximum credit allowable under section 2011(b) if the deduction under section 2053(d) for State death taxes were not allowed in computing the decedent's taxable estate) as C (the amount of State death taxes paid other than those for which a deduction is allowed under section 2053(d)) bears to D (the total amount of State death taxes paid). For the purpose of this computation, in determining what the decedent's taxable estate would be if the deduction for State death taxes under section 2053(d) were not allowed, adjustment must be made for the decrease in the deduction for charitable gifts under section 2055 or 2106(a)(2) (for estates of nonresidents not citizens) by reason of any increase in Federal estate tax which would be charged against the charitable gifts.

The application of this section may be illustrated by the following example:

Example. The decedent died January 1, 1955, leaving a gross estate of $925,000. Expenses, indebtedness, etc., amounted to $25,000. The decedent bequeathed $400,000 to his son with the direction that the son bear the State death taxes on the bequest. The residuary estate was left to a charitable organization. Except as noted above, all Federal and State death taxes were payable out of the residuary estate. The State imposed death taxes of $60,000 on the son's bequest and death

taxes of $75,000 on the bequest to charity. No death taxes were imposed by a foreign country with respect to any property in the gross estate. The decedent's taxable estate (determined without regard to the limitation imposed by section 2011(e)(2)(B) is computed as follows:

Gross estate				$925,000.00
Expenses, indebtedness, etc.			$25,000.00	
Exemption			60,000.00	
Deduction under section 2053(d)			75,000.00	
Charitable deduction:				
Gross estate		$925,000.00		
Expenses, etc	$25,000.00			
Bequest to son	400,000.00			
State death tax paid from residue	75,000.00			
Federal estate tax paid from residue	122,916.67	622,916.67	302,083.33	462,083.33
Taxable estate				462,916.67

If the deduction under section 2053(d) were not allowed, the decedent's taxable estate would be computed as follows:

Gross estate				$925,000.00
Expenses, indebtedness, etc.			$25,000.00	
Exemption			60,000.00	
Charitable deduction:				
Gross estate		$925,000.00		
Expenses, etc	$25,000.00			
Bequest to son	400,000.00			
State death tax paid from residue	75,000.00			
Federal estate tax paid from residue	155,000.00	655,000.00	270,000.00	355,000.00
Taxable estate				570,000.00

On a taxable estate of $570,000, the maximum credit allowable under section 2011(b) would be $15,200. Under these facts, the credit for State death taxes is determined as follows:

(1) Amount of State death taxes paid other than those for which a deduction is allowed under section 2053(d) ($135,000 – $75,000)	$60,000.00
(2) Amount indicated in section 2011(b) to be the maximum credit allowable with respect to the decedent's taxable estate of $462,916.67	10,916.67
(3) Amount determined by use of the ratio described in paragraph (c) above [($60,000÷$135,000)×$15,200]	6,755.56
(4) Credit for State death taxes (least of subparagraphs (1) through (3) above)	6,755.56

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6600, 27 FR 4983, May 29, 1962]

§ 20.2012–1 Credit for gift tax.

(a) *In general.* With respect to gifts made before 1977, a credit is allowed under section 2012 against the Federal estate tax for gift tax paid under chapter 12 of the Internal Revenue Code, or corresponding provisions of prior law, on a gift by the decedent of property subsequently included in the decedent's gross estate. The credit is allowable even though the gift tax is paid after the decedent's death and the amount of the gift tax is deductible from the gross estate as a debt of the decedent.

(b) *Limitations on credit.* The credit for gift tax is limited to the smaller of the following amounts:

(1) The amount of gift tax paid on the gift computed as set forth in paragraph (c) of this section, or

(2) The amount of the estate tax attributable to the inclusion of the gift in the gross estate, computed as set forth in paragraph (d) of this section.

When more than one gift is included in the gross estate, a separate computation of the two limitations on the credit is to be made for each gift.

(c) *''First limitation''.* The amount of the gift tax paid on the gift is the ''first limitation''. Thus, if only one gift was made during a certain calendar quarter, or calendar year if the gift was made before January 1, 1971, and the gift is wholly included in the decedent's gross estate for the purpose of the estate tax, the credit with respect to the gift is limited to the amount of the gift tax paid for that calendar quarter or calendar year. On the other hand, if more than one gift

was made during a certain calendar quarter or calendar year, the credit with respect to any such gift which is included in the decedent's gross estate is limited under section 2012(d) to an amount, A, which bears the same ratio to B (the total gift tax paid for that calendar quarter or calendar year) as C (the ''amount of the gift,'' computed as described below) bears to D (the total taxable gifts for the calendar quarter or the calendar year, computed without deduction of the gift tax specific exemption). Stated algebraically, the ''first limitation'' (A) equals:

''Amount of the gift'' (C) ÷ Total taxable gifts, plus specific exemption allowed (D) × Total gift tax paid (B).

For purposes of the ratio stated above, the ''amount of the gift'' referred to as factor ''C'' is the value of the gift reduced by any portion excluded or deducted under sections 2503(b) (annual exclusion), 2522 (charitable deduction), or 2523 (marital deduction) of the Internal Revenue Code or corresponding provisions of prior law. In making the computations described in this paragraph, the values to be used are those finally determined for the purpose of the gift tax, irrespective of the values determined for the purpose of the estate tax. A similar computation is made in case only a portion of any gift is included in the decedent's gross estate. The application of this paragraph may be illustrated by the following example:

Example. The donor made gifts during the calendar year 1955 on which a gift tax was determined as shown below:

Gift of property to son on February 1		$13,000
Gift of property to wife on May 1		86,000
Gift of property to charitable organization on May 15		10,000
Total gifts		109,000
Less exclusions ($3,000 for each gift)		9,000
Total included amount of gifts		100,000
Marital deduction (for gift to wife)	$43,000	
Charitable deduction	7,000	
Specific exemption ($30,000 less $20,000 used in prior years)	10,000	
Total deductions		60,000
Taxable gifts		40,000
Total gift tax paid for calendar year 1955		3,600

The donor's gift to his wife was made in contemplation of death and was thereafter included in his gross estate. Under the ''first limitation'', the credit with respect to that gift cannot exceed:

[$86,000 − $3,000 − $43,000 (gift to wife, less annual exclusion and marital deduction)] ÷ [$40,000 + $10,000 (taxable gifts, plus specific exemption allowed)] × $3,600 (total gift tax paid) = $2,880.

(d) *''Second limitation''.* (1) The amount of the estate tax attributable to the inclusion of the gift in the gross estate is the ''second limitation''. Thus, the credit with respect to any gift of property included in the gross estate is limited to an amount, E, which bears the same ratio to F (the gross estate tax, reduced by any credit for State death taxes under section 2011) as G (the ''value of the gift'', computed as described in subparagraph (2) of this paragraph) bears to H (the value of entire gross estate, reduced by the total deductions allowed under sections 2055 or 2106(a)(2) (charitable deduction) and 2056 (marital deduction)). Stated algebraically, the ''second limitation'' (E) equals:

''Value of the gift'' (G) ÷ Value of gross estate, less marital and charitable deductions (H) × Gross estate tax, less credit for State death taxes (F).

(2) For purposes of the ratio stated in subparagraph (1) of this paragraph, the ''value of the gift'' referred to as factor ''G'' is the value of the property transferred by gift and included in the gross estate, as determined for the purpose of the gift tax or for the purpose of the estate tax, whichever is lower, and adjusted as follows:

(i) The appropriate value is reduced by all or a portion of any annual exclusion allowed for gift tax purposes under section 2503(b) of the Internal Revenue Code or corresponding provisions of prior law. If the gift tax value is lower than the estate tax value, it is reduced by the entire amount of the exclusion. If the estate tax value is lower than the gift tax value, it is reduced by an amount which bears the same ratio to the estate tax value as the annual exclusion bears to the total value of the property as determined for gift tax purposes. To illustrate: In 1955, a donor, in contemplation of death, transferred certain property to his five children which was valued at $300,000, for the purpose of the gift tax. Thereafter, the same property was included in his

gross estate at a value of $270,000. In computing his gift tax, the donor was allowed annual exclusions totalling $15,000. The reduction provided for in this subdivision is:

$15,000 (annual exclusions allowed) ÷ $300,000 (value of transferred property for the purpose of the gift tax) × $270,000 (value of transferred property for the purpose of the estate tax) = $13,500.

(ii) The appropriate value is further reduced if any portion of the value of the property is allowed as a marital deduction under section 2056 or as a charitable deduction under section 2055 or section 2106(a)(2) (for estates of nonresidents not citizens). The amount of the reduction is an amount which bears the same ratio to the value determined under subdivision (i) of this subparagraph as the portion of the property allowed as a marital deduction or as a charitable deduction bears to the total value of the property as determined for the purpose of the estate tax. Thus, if a gift is made solely to the decedent's surviving spouse and is subsequently included in the decedent's gross estate as having been made in contemplation of death, but a marital deduction is allowed under section 2056 for the full value of the gift, no credit for gift tax on the gift will be allowed since the reduction under this subdivision together with the reduction under subdivision (i) of this subparagraph will have the effect of reducing the factor ''G'' of the ratio in subparagraph (1) of this paragraph to zero.

(e) *Credit for ''split gifts''.* If a decedent made a gift of property which is thereafter included in his gross estate, and, under the provisions of section 2513 of the Internal Revenue Code of 1954 or section 1000(f) of the Internal Revenue Code of 1939, the gift was considered as made one-half by the decedent and one-half by his spouse, credit against the estate tax is allowed for the gift tax paid with respect to both halves of the gift. The ''first limitation'' is to be separately computed with respect to each half of the gift in accordance with the principles stated in paragraph (c) of this section. The ''second limitation'' is to be computed with respect to the entire gift in accordance with the principles stated in paragraph (d) of this section. To illustrate: A donor, in contemplation of death, transferred property valued at $106,000 to his son on January 1, 1955, and he and his wife consented that the gift should be considered as made one-half by him and one-half by her. The property was thereafter included in the donor's gross estate. Under the ''first limitation'', the amount of the gift tax of the donor paid with respect to the one-half of the gift considered as made by him is determined to be $11,250, and the amount of the gift tax of his wife paid with respect to the one-half of the gift considered as made by her is determined to be $1,200. Under the ''second limitation'', the amount of the estate tax attributable to the property is determined to be $28,914. Therefore, the credit for gift tax allowed is $12,450 ($11,250 plus $1,200).

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7238, 37 FR 28718, Dec. 29, 1972; T.D. 8522, 59 FR 9646, Mar. 1, 1994]

§ 20.2013–1 Credit for tax on prior transfers.

(a) *In general.* A credit is allowed under section 2013 against the Federal estate tax imposed on the present decedent's estate for Federal estate tax paid on the transfer of property to the present decedent from a transferor who died within ten years before, or within two years after, the present decedent's death. See § 20.2013–5 for definition of the terms ''property'' and ''transfer''. There is no requirement that the transferred property be identified in the estate of the present decedent or that the property be in existence at the time of the decedent's death. It is sufficient that the transfer of the property was subjected to Federal estate tax in the estate of the transferor and that the transferor died within the prescribed period of time. The executor must submit such proof as may be requested by the district director in order to establish the right of the estate to the credit.

(b) *Limitations on credit.* The credit for tax on prior transfers is limited to the smaller of the following amounts:

(1) The amount of the Federal estate tax attributable to the transferred property in the transferor's estate, computed as set forth in § 20.2013–2; or

(2) The amount of the Federal estate tax attributable to the transferred property in the decedent's estate, computed as set forth in § 20.2013–3.

Rules for valuing property for purposes of the credit are contained in § 20.2013–4.

(c) *Percentage reduction.* If the transferor died within the two years before, or within the two years after, the present decedent's death, the credit is the smaller of the two limitations described in paragraph (b) of this section. If the transferor predeceased the present decedent by more than two years, the credit is a certain percentage of the smaller of the two limitations described in paragraph (b) of this section, determined as follows:

(1) 80 percent, if the transferor died within the third or fourth years preceding the present decedent's death;

(2) 40 percent, if the transferor died within the fifth or sixth years preceding the present decedent's death;

(3) 40 percent, if the transferor died within the seventh or eighth years preceding the present decedent's death; and

(4) 20 percent, if the transferor died within the ninth or tenth years preceding the present decedent's death.

The word ''within'' as used in this paragraph means ''during''. Therefore, if a death occurs on the second anniversary of another death, the first death is considered to have occurred within the two years before the second death. If the credit for tax on prior transfers relates to property received from two or more transferors, the provisions of this paragraph are to be applied separately with respect to the property received from each transferor. See paragraph (d) of example (2) in § 20.2013–6.

(d) *Examples.* For illustrations of the application of this section, see examples (1) and (2) set forth in § 20.2013–6.

§ 20.2013–2 "First limitation".

(a) The amount of the Federal estate tax attributable to the transferred property in the transferor's estate is the ''first limitation.'' Thus, the credit is limited to an amount, A, which bears the same ratio to B (the ''transferor's adjusted Federal estate tax'', computed as described in paragraph (b) of this section) as C (the value of the property transferred (see § 20.2013–4)) bears to D (the ''transferor's adjusted taxable estate'', computed as described in paragraph (c) of this section). Stated algebraically, the ''first limitation'' (A) equals:

Value of transferred property (C) ÷ ''Transferor's adjusted taxable estate'' (D) × ''Transferor's adjusted Federal estate tax'' (B).

(b) For purposes of the ratio stated in paragraph (a) of this section, the ''transferor's adjusted Federal estate tax'' referred to as factor ''B'' is the amount of the Federal estate tax paid with respect to the transferor's estate plus:

(1) Any credit allowed the transferor's estate for gift tax under section 2012, or the corresponding provisions of prior law; and

(2) Any credit allowed the transferor's estate, under section 2013, for tax on prior transfers, but only if the transferor acquired property from a person who died within 10 years before the death of the present decedent.

(c)(1) For purposes of the ratio stated in paragraph (a) of this section, the ''transferor's adjusted taxable estate'' referred to as factor ''D'' is the amount of the transferor's taxable estate (or net estate) decreased by the amount of any ''death taxes'' paid with respect to his gross estate and increased by the amount of the exemption allowed in computing his taxable estate (or net estate). The amount of the transferor's taxable estate (or net estate) is determined in accordance with the provisions of § 20.2051–1 in the case of a citizen or resident of the United States or of § 20.2106–1 in the case of a nonresident not a citizen of the United States (or the corresponding provisions of prior regulations). The term ''death taxes'' means the Federal estate tax plus all other estate, inheritance, legacy, succession, or similar death taxes imposed by, and paid to, any taxing authority, whether within or without the United States. However, only the net amount of such taxes paid is taken into consideration.

(2) The amount of the exemption depends upon the citizenship and residence of the transferor at the time of his death. Except in the case of a decedent described in section 2209 (relating to certain residents of possessions of

the United States who are considered nonresidents not citizens), if the decedent was a citizen or resident of the United States, the exemption is the $60,000 authorized by section 2052 (or the corresponding provisions of prior law). If the decedent was a nonresident not a citizen of the United States, or is considered under section 2209 to have been such a nonresident, the exemption is the $30,000 or $2,000, as the case may be, authorized by section 2106(a)(3) (or the corresponding provisions of prior law), or such larger amount as is authorized by section 2106(a)(3)(B) or may have been allowed as an exemption pursuant to the prorated exemption provisions of an applicable death tax convention. See § 20.2052–1 and paragraph (a)(3) of § 20.2106–1.

(d) If the credit for tax on prior transfers relates to property received from two or more transferors, the provisions of this section are to be applied separately with respect to the property received from each transferor. See paragraph (b) of example (2) in § 20.2013–6.

(e) For illustrations of the application of this section, see examples (1) and (2) set forth in § 20.2013–6.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7296, 38 FR 34191, Dec. 12, 1973]

§ 20.2013–3 "Second limitation".

(a) The amount of the Federal estate tax attributable to the transferred property in the present decedent's estate is the ''second limitation''. Thus, the credit is limited to the difference between—

(1) The net estate tax payable (see paragraph (b)(5) or (c), as the case may be, of § 20.0–2) with respect to the present decedent's estate, determined without regard to any credit for tax on prior transfers under section 2013 or any credit for foreign death taxes claimed under the provisions of a death tax convention, and

(2) The net estate tax determined as provided in subparagraph (1) of this paragraph but computed by subtracting from the present decedent's gross estate the value of the property transferred (see § 20.2013–4), and by making only the adjustment indicated in paragraph (b) of this section if a charitable deduction is allowable to the estate of the present decedent.

(b) If a charitable deduction is allowable to the estate of the present decedent under the provisions of section 2055 or section 2106 (a)(2) (for estates of nonresidents not citizens), for purposes of determining the tax described in paragraph (a)(2) of this section, the charitable deduction otherwise allowable is reduced by an amount, E, which bears the same ratio to F (the charitable deduction otherwise allowable) as G (the value of the transferred property (see § 20.2013–4)) bears to H (the value of the present decedent's gross estate reduced by the amount of the deductions for expenses, indebtedness, taxes, losses, etc., allowed under the provisions of sections 2053 and 2054 or section 2106(a)(1) (for estates of nonresidents not citizens)). See paragraph (c)(2) of example (1) and paragraph (c)(2) of example (2) in § 20.2013–6.

(c) If the credit for tax on prior transfers relates to property received from two or more transferors, the property received from all transferors is aggregated in determining the limitation on credit under this section (the ''second limitation''). However, the limitation so determined is apportioned to the property received from each transferor in the ratio that the property received from each transferor bears to the total property received from all transferors. See paragraph (c) of example (2) in § 20.2013–6.

(d) For illustrations of the application of this section, see examples (1) and (2) set forth in § 20.2013–6.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7296, 38 FR 34191, Dec. 12, 1973]

§ 20.2013–4 Valuation of property transferred.

(a) For purposes of section 2013 and §§ 20.2013–1 to 20.2013–6, the value of the property transferred to the decedent is the value at which the property was included in the transferor's gross estate for the purpose of the Federal estate tax (see sections 2031, 2032, 2103, and 2107, and the regulations thereunder) reduced as indicated in paragraph (b) of this section. If the decedent received a

life estate or a remainder or other limited interest in property that was included in a transferor decedent's gross estate, the value of the interest is determined as of the date of the transferor's death on the basis of recognized valuation principles (see §§ 20.2031–7 (or, for certain prior periods, § 20.2031–7A) and 20.7520–1 through 20.7520–4). The application of this paragraph may be illustrated by the following examples:

Example (1). A died on January 1, 1953, leaving Blackacre to B. The property was included in A's gross estate at a value of $100,000. On January 1, 1955, B sold Blackacre to C for $150,000. B died on February 1, 1955. For purposes of computing the credit against the tax imposed on B's estate, the value of the property transferred to B is $100,000.

Example (2). A died on January 1, 1953, leaving Blackacre to B for life and, upon B's death, remainder to C. At the time of A's death, B was 56 years of age. The property was included in A's gross estate at a value of $100,000. The part of that value attributable to the life estate is $44,688 and the part of that value attributable to the remainder is $55,312 (see § 20.2031–7A(b)). B died on January 1, 1955, and C died on January 1, 1956. For purposes of computing the credit against the tax imposed on B's estate, the value of the property transferred to B is $44,688. For purposes of computing the credit against the tax imposed on C's estate, the value of the property transferred to C is $55,312.

(b) In arriving at the value of the property transferred to the decedent, the value at which the property was included in the transferor's gross estate (see paragraph (a) of this section) is reduced as follows:

(1) By the amount of the Federal estate tax and any other estate, inheritance, legacy, or succession taxes which were payable out of the property transferred to the decedent or which were payable by the decedent in connection with the property transferred to him. For example, if under the transferor's will or local law all death taxes are to be paid out of other property with the result that the decedent receives a bequest free and clear of all death taxes, no reduction is to be made under this subparagraph;

(2) By the amount of any marital deduction allowed the transferor's estate under section 2056 (or under section 812(e) of the Internal Revenue Code of 1939) if the decedent was the spouse of the transferor at the time of the transferor's death; and

(3)(i) By the amount of any encumbrance on the property or by the amount of any obligation imposed by the transferor and incurred by the decedent with respect to the property, to the extent such charges would be taken into account if the amount of a gift to the decedent of such property were being determined.

(ii) For purposes of this subparagraph, an obligation imposed by the transferor and incurred by the decedent with respect to the property includes a bequest, etc., in lieu of the interest of the surviving spouse under community property laws, unless the interest was, immediately prior to the transferor's death, a mere expectancy. However, an obligation imposed by the transferor and incurred by the decedent with respect to the property does not include a bequest, devise, or other transfer in lieu of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the transferor's property or estate.

(iii) The application of this subparagraph may be illustrated by the following examples:

Example (1). The transferor devised to the decedent real estate subject to a mortgage. The value of the property transferred to the decedent does not include the amount of the mortgage. If, however, the transferor by his will directs the executor to pay off the mortgage, such payment constitutes an additional amount transferred to the decedent.

Example (2). The transferor bequeathed certain property to the decedent with a direction that the decedent pay $1,000 to X. The value of the property transferred to the decedent is the value of the property reduced by $1,000.

Example (3). The transferor bequeathed certain property to his wife, the decedent, in lieu of her interest in property held by them as community property under the law of the State of their residence. The wife elected to relinquish her community property interest and to take the bequest. The value of the property transferred to the decedent is the value of the property reduced by the value of the community property interest relinquished by the wife.

Example (4). The transferor bequeathed to the decedent his entire residuary estate, out of which certain claims were to be satisfied.

The entire distributable income of the transferor's estate (during the period of its administration) was applied toward the satisfaction of these claims and the remaining portion of the claims was satisfied by the decedent out of his own funds. Thus, the decedent received a larger sum upon settlement of the transferor's estate than he was actually bequeathed. The value of the property transferred to the decedent is the value at which such property was included in the transferor's gross estate, reduced by the amount of the estate income and the decedent's own funds paid out in satisfaction of the claims.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7077, 35 FR 18461, Dec. 4, 1970; T.D. 7296, 38 FR 34191, Dec. 12, 1973; T.D. 8522, 59 FR 9646, Mar. 1, 1994; T.D. 8540, 59 FR 30151, June 10, 1994]

§ 20.2013–5 "Property" and "transfer" defined.

(a) For purposes of section 2013 and §§ 20.2013–1 to 20.2013–6, the term ''property'' means any beneficial interest in property, including a general power of appointment (as defined in section 2041) over property. Thus, the term does not include an interest in property consisting merely of a bare legal title, such as that of a trustee. Nor does the term include a power of appointment over property which is not a general power of appointment (as defined in section 2041). Examples of property, as described in this paragraph, are annuities, life estates, estates for terms of years, vested or contingent remainders and other future interests.

(b) In order to obtain the credit for tax on prior transfers, there must be a transfer of property described in paragraph (a) of this section by or from the transferor to the decedent. The term ''transfer'' of property by or from a transferor means any passing of property or an interest in property under circumstances which were such that the property or interest was included in the gross estate of the transferor. In this connection, if the decedent receives property as a result of the exercise or nonexercise of a power of appointment, the donee of the power (and not the creator) is deemed to be the transferor of the property if the property subject to the power is includible in the donee's gross estate under section 2041 (relating to powers of appointment). Thus, notwithstanding the designation by local law of the capacity in which the decedent takes, property received from the transferor includes interests in property held by or devolving upon the decedent: (1) As spouse under dower or curtesy laws or laws creating an estate in lieu of dower or curtesy; (2) as surviving tenant of a tenancy by the entirety or joint tenancy with survivorship rights; (3) as beneficiary of the proceeds of life insurance; (4) as survivor under an annuity contract; (5) as donee (possessor) of a general power of appointment (as defined in section 2041); (6) as appointee under the exercise of a general power of appointment (as defined in section 2041); or (7) as remainderman under the release or nonexercise of a power of appointment by reason of which the property is included in the gross estate of the donee of the power under section 2041.

(c) The application of this section may be illustrated by the following example:

Example: A devises Blackacre to B, as trustee, with directions to pay the income therefore to C, his son, for life. Upon C's death. Blackacre is to be sold. C is given a general testamentary power, to appoint one-third of the proceeds, and a testamentary power, which is not a general power, to appoint the remaining two-thirds of the proceeds, to such of the issue of his sister D as he should choose. D has a daughter, E, and a son, F. Upon his death, C exercised his general power by appointing one-third of the proceeds to D and his special power by appointing two-thirds of the proceeds to E. Since B's interest in Blackacre as a trustee is not a beneficial interest, no part of it is ''property'' for purpose of the credit in B's estate. On the other hand, C's life estate and his testamentary power over the one-third interest in the remainder constitute ''property'' received from A for purpose of the credit in C's estate. Likewise, D's one-third interest in the remainder received through the exercise of C's general power of appointment is ''property'' received from C for purpose of the credit in D's estate. No credit is allowed E's estate for the property which passed to her from C since the property was not included in C's gross estate. On the other hand, no credit is allowed in E's estate for property passing to her from A since her interest was not susceptible of valuation at the time of A's death (see § 20.2013–4).

§ 20.2013–6 Examples.

The application of §§ 20.2013–1 to 20.2013–5 may be further illustrated by the following examples:

Example (1). (a) A died December 1, 1953, leaving a gross estate of $1,000,000. Expenses, indebtedness, etc., amounted to $90,000. A bequeathed $200,000 to B, his wife, $100,000 of which qualified for the marital deduction. B died November 1, 1954, leaving a gross estate of $500,000. Expenses, indebtedness, etc., amounted to $40,000. B bequeathed $150,000 to charity. A and B were both citizens of the United States. The estates of A and B both paid State death taxes equal to the maximum credit allowable for State death taxes. Death taxes were not a charge on the bequest to B.

(b) ''First limitation'' on credit for B's estate (§ 20.2013–2):

A's gross estate		$1,000,000.00
Expenses, indebtedness, etc.		90,000.00
A's adjusted gross estate		910,000.00
Marital deduction	$100,000.00	
Exemption	60,000.00	
		160,000.00
A's taxable estate		750,000.00
A's gross estate tax		233,200.00
Credit for State death taxes		23,280.00
A's net estate tax payable		209,920.00
''First limitation'' = $209,920.00 (§ 20.2013–2(b)) × [($200,000.00 − $100,000.00) (§ 20.2013–4) ÷ ($750,000.00 − $209,920.00 − $23,280.00 + $60,000.00) (§ 20.2013–2(c))]		$36,393.90

(c) ''Second limitation'' on credit for B's estate (§ 20.2013–3):

(1) B's net estate tax payable as described in § 20.2013–3(a)(1) (previously taxed transfer included):

B's gross estate	$500,000.00	
Expenses, indebtedness, etc.	$40,000.00	
Charitable deduction	150,000.00	
Exemption	60,000.00	
		250,000.00
B's taxable estate		250,000.00
B's gross estate tax		$65,700.00
Credit for State death taxes		3,920.00
B's net estate tax payable		61,780.00

(2) B's net estate tax payable as described in § 20.2013–3(a)(2) (previously taxed transfer excluded):

B's gross estate		$400,000.00
Expenses, indebtedness, etc	$40,000.00	
Charitable deduction (§ 20.2013–3(b))=$150,000.00 − [$150,000.00 × ($200,000.00 − $100,000.00 ÷ $500,000.00 − $40,000.00)]	117,391.30	
Exemption	60,000.00	
		217,391.30
B's taxable estate		182,608.70
B's gross estate tax		45,482.61
Credit for State death taxes		2,221.61
B's net estate tax payable		43,260.00

(3) ''Second limitation'':

Subparagraph (1)	$61,780.00	
Less: Subparagraph (2)	43,260.00	
		$18,520.00

(d) Credit of B's estate for tax on prior transfers (§ 20.2013–1(c)):

Credit for tax on prior transfers=$18,520.00 (lower of paragraphs (b) and (c))×100 percent (percentage to be taken into account under § 20.2013–1(c))		$18,520.00

Example (2). (a) The facts are the same as those contained in example (1) of this paragraph with the following additions. C died December 1, 1950, leaving a gross estate of $250,000. Expenses, indebtedness, etc., amounted to $50,000. C bequeathed $50,000 to B. C was a citizen of the United States. His estate paid State death taxes equal to the maximum credit allowable for State death taxes. Death taxes were not a charge on the bequest to B.

(b) ''First limitation'' on credit for B's estate (§ 20.2013–2(d)) −

(1) With respect to the property received from A:

''First limitation''=$36,393.90 (this computation is identical with the one contained in paragraph (b) of example (1) of this section).

(2) With respect to the property received from C:

C's gross estate		$250,000.00
Expenses, indebtedness, etc.	$50,000.00	
Exemption	$60,000.00	
		$110,000.00
C's taxable estate		140,000.00
C's gross estate tax		32,700.00
Credit for State death taxes		1,200.00
C's net estate tax payable		31,500.00
''First limitation'' = $31,500.00 (§ 20.2013–2(b)) × [$50,000.00 (§ 20.2013–4) ÷ ($140,000.00 − $31,500.00 − $1,200.00 + $60,000.00) (§ 20.2013–2(c))]		$9,414.23

(c) ''Second limitation'' on credit for B's estate (§ 20.2013–3(c)):

(1) B's net estate tax payable as described in § 20.2013–3(a)(1) (previously taxed transfers included)=$61,780.00 (this computation is identical with the one contained in paragraph (c)(1) of example (1) of this section).

(2) B's net estate tax payable as described in § 20.2013–3(a)(2) (previously taxed transfers excluded):

B's gross estate		$350,000.00
Expenses, indebtedness, etc	$40,000.00	
Charitable deduction (§ 20.2013–3(b)) = $150,000.00 − [$150,000.00 × ($200,000.00 − $100,000.00 + $50,000.00) ÷ ($500,000.00 − $40,000.00)]	101,086.96	
Exemption	60,000.00	
		201,086.96
B's taxable estate		148,913.04
B's gross estate tax		35,373.91
Credit for State death taxes		1,413.91
B's net estate tax payable		33,960.00

(3) ''Second limitation'':

Subparagraph (1)	$61,780.00	
Less: Subparagraph (2)	33,960.00	
		$27,820.00

(4) Apportionment of ''second limitation'' on credit:

Transfer from A (§ 20.2013–4)	$100,000.00
Transfer from C (§ 20.2013–4)	50,000.00
Total	150,000.00
Portion of ''second limitation'' attributable to transfer from A (100/150 of $27,820.00)	18,546.67
Portion of ''second limitation'' attributable to transfer from C (50/150 of $27,820.00)	9,273.33

(d) Credit of B's estate for tax on prior transfers (§ 20.2013–1(c)):

Credit for tax on transfer from A= $18,546.67 (lower of ''first limitation'' computed in paragraph (b)(1) and ''second limitation'' apportioned to A's transfer in paragraph (c)(4)) × 100 percent (percentage to be taken into account under § 20.2013–1(c))	$18,546.67
Credit for tax on transfer from C= $9,273.33 (lower of ''first limitation'' computed in paragraph (b)(2) and ''second limitation'' apportioned to B's transfer in paragraph (c)(4)) × 80 percent (percentage to be taken into account under § 20.2013–1(c))	7,418.66
Total credit for tax on prior transfers	25,965.33

§ 20.2014–1 Credit for foreign death taxes.

(a) *In general.* (1) A credit is allowed under section 2014 against the Federal estate tax for any estate, inheritance, legacy, or succession taxes actually paid to any foreign country (hereinafter referred to as ''foreign death taxes''). The credit is allowed only for foreign death taxes paid (i) with respect to property situated within the country to which the tax is paid, (ii) with respect to property included in the decedent's gross estate, and (iii) with respect to the decedent's estate. The credit is allowable to the estate of a decedent who was a citizen of the United States at the time of his death. The credit is also allowable, as provided in paragraph (c) of this section, to the estate of a decedent who was a resident but not a citizen of the United States at the time of his death. The credit is not allowable to the estate of a decedent who was neither a citizen nor a resident of the United States at the time of his death. See paragraph (b)(1) of § 20.0–1 for the meaning of the term ''resident'' as applied to a decedent. The credit is allowable not only for death taxes paid to foreign countries which are states in the international sense, but also for death taxes paid to possessions or political subdivisions of foreign states. With respect to the estate of a decedent dying after September 2, 1958, the term ''foreign country'', as used in this section and §§ 20.2014–2 to 20.2014–6, includes a possession of the United States. See §§ 20.2011–1 and 20.2011–2 for the allowance of a credit for death taxes paid to a possession of the United States in the case of a decedent dying before September 3, 1958. No credit is allowable for interest or penalties paid in connection with foreign death taxes.

(2) In addition to the credit for foreign death taxes under section 2014, similar credits are allowed under death tax conventions with certain foreign countries. If credits against the Federal estate tax are allowable under section 2014, or under section 2014 and one or more death tax conventions, for death taxes paid to more than one country, the credits are combined and the aggregate amount is credited against the Federal estate tax, subject to the limitation provided for in paragraph (c) of § 20.2014–4. For application of the credit in cases involving a death tax convention, see § 20.2014–4.

(3) No credit is allowable under section 2014 in connection with property situated outside of the foreign country imposing the tax for which credit is claimed. However, such a credit may be allowable under certain death tax conventions. In the case of a tax imposed by a political subdivision of a foreign

country, credit for the tax shall be allowed with respect to property having a situs in that foreign country, even though, under the principles described in this subparagraph, the property has a situs in a political subdivision different from the one imposing the tax. Whether or not particular property of a decedent is situated in the foreign country imposing the tax is determined in accordance with the same principles that would be applied in determining whether or not similar property of a nonresident decedent not a citizen of the United States is situated within the United States for Federal estate tax purposes. See §§ 20.2104–1 and 20.2105–1. For example, under § 20.2104–1 shares of stock are deemed to be situated in the United States only if issued by a domestic corporation. Thus, a share of corporate stock is regarded as situated in the foreign country imposing the tax only if the issuing corporation is incorporated in that country. Further, under § 20.2105–1 amounts receivable as insurance on the life of a nonresident not a citizen of the United States at the time of his death are not deemed situated in the United States. Therefore, in determining the credit under section 2014 in the case of a decedent who was a citizen or resident of the United States, amounts receivable as insurance on the life of the decedent and payable under a policy issued by a corporation incorporated in a foreign country are not deemed situated in such foreign country. In addition, under § 20.2105–1 in the case of an estate of a nonresident not a citizen of the United States who died on or after November 14, 1966, a debt obligation of a domestic corporation is not considered to be situated in the United States if any interest thereon would be treated under section 862(a)(1) as income from sources without the United States by reason of section 861(a)(1)(B) (relating to interest received from a domestic corporation less than 20 percent of whose gross income for a 3-year period was derived from sources within the United States). Accordingly, a debt obligation the primary obligor on which is a corporation incorporated in the foreign country imposing the tax is not considered to be situated in that country if, under circumstances corresponding to those described in § 20.2105–1 less than 20 percent of the gross income of the corporation for the 3-year period was derived from sources within that country. Further, under § 20.2104–1 in the case of an estate of a nonresident not a citizen of the United States who died before November 14, 1966, a bond for the payment of money is not situated within the United States unless it is physically located in the United States. Accordingly, in the case of the estate of a decedent dying before November 14, 1966, a bond is deemed situated in the foreign country imposing the tax only if it is physically located in that country. Finally, under § 20.2105–1 moneys deposited in the United States with any person carrying on the banking business by or for a nonresident not a citizen of the United States who died before November 14, 1966, and who was not engaged in business in the United States at the time of death are not deemed situated in the United States. Therefore, an account with a foreign bank in the foreign country imposing the tax is not considered to be situated in that country under corresponding circumstances.

(4) Where a deduction is allowed under section 2053(d) for foreign death taxes paid with respect to a charitable gift, the credit for foreign death taxes is subject to further limitations as explained in § 20.2014–7.

(b) *Limitations on credit.* The credit for foreign death taxes is limited to the smaller of the following amounts:

(1) The amount of a particular foreign death tax attributable to property situated in the country imposing the tax and included in the decedent's gross estate for Federal estate tax purposes, computed as set forth in § 20.2014–2; or

(2) The amount of the Federal estate tax attributable to particular property situated in a foreign country, subjected to foreign death tax in that country, and included in the decedent's gross estate for Federal estate tax purposes, computed as set forth in § 20.2014–3.

(c) *Credit allowable to estate of resident not a citizen.* (1) In the case of an estate of a decedent dying before November 14, 1966, who was a resident but not a citizen of the United States, a credit is allowed to the estate under section 2014

only if the foreign country of which the decedent was a citizen or subject, in imposing foreign death taxes, allows a similar credit to the estates of citizens of the United States who were resident in that foreign country at the time of death.

(2) In the case of an estate of a decedent dying on or after November 14, 1966, who was a resident but not a citizen of the United States, a credit is allowed to the estate under section 2014 without regard to the similar credit requirement of subparagraph (1) of this paragraph unless the decedent was a citizen or subject of a foreign country with respect to which there is in effect at the time of the decedent's death a Presidential proclamation, as authorized by section 2014(h), reinstating the similar credit requirement. In the case of an estate of a decedent who was a resident of the United States and a citizen or subject of a foreign country with respect to which such a proclamation has been made, and who dies while the proclamation is in effect, a credit is allowed under section 2014 only if that foreign country, in imposing foreign death taxes, allows a similar credit to the estates of citizens of the United States who were resident in that foreign country at the time of death. The proclamation authorized by section 2014(h) for the reinstatement of the similar credit requirement with respect to the estates of citizens or subjects of a specific foreign country may be made by the President whenever he finds that—

(i) The foreign country, in imposing foreign death taxes, does not allow a similar credit to the estates of citizens of the United States who were resident in the foreign country at the time of death,

(ii) The foreign country, after having been requested to do so, has not acted to provide a similar credit to the estates of such citizens, and

(iii) It is in the public interest to allow the credit under section 2014 to the estates of citizens or subjects of the foreign country only if the foreign country allows a similar credit to the estates of citizens of the United States who were resident in the foreign country at the time of death.

The proclamation for the reinstatement of the similar credit requirement with respect to the estates of citizens or subjects of a specific foreign country may be revoked by the President. In that case, a credit is allowed under section 2014, to the estate of a decedent who was a citizen or subject of that foreign country and a resident of the United States at the time of death, without regard to the similar credit requirement if the decedent dies after the proclamation reinstating the similar credit requirement has been revoked.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6526, 26 FR 415, Jan. 19, 1961; T.D. 6600, 27 FR 4983, May 29, 1962; T.D. 7296, 38 FR 34192, Dec. 12, 1973]

§ 20.2014–2 "First limitation".

(a) The amount of a particular foreign death tax attributable to property situated in the country imposing the tax and included in the decedent's gross estate for Federal estate tax purposes is the ''first limitation.'' Thus, the credit for any foreign death tax is limited to an amount, A, which bears the same ratio to B (the amount of the foreign death tax without allowance of credit, if any, for Federal estate tax), as C (the value of the property situated in the country imposing the foreign death tax, subjected to the foreign death tax, included in the gross estate and for which a deduction is not allowed under section 2053(d)) bears to D (the value of all property subjected to the foreign death tax). Stated algebraically, the ''first limitation'' (A) equals—

Value of property in foreign country subjected to foreign death tax, included in gross estate and for which a deduction is not allowed under section 2053(d)(C) ÷ Value of all property subjected to foreign death tax (D) × Amount of foreign death tax (B)

The values used in this proportion are the values determined for the purpose of the foreign death tax. The amount of the foreign death tax for which credit is allowable must be converted into United States money. The application of this paragraph may be illustrated by the following example:

Example. At the time of his death on June 1, 1966, the decedent, a citizen of the United

States, owned stock in X Corporation (a corporation organized under the laws of Country Y) valued at $80,000. In addition, he owned bonds issued by Country Y valued at $80,000. The stock and bond certificates were in the United States. Decedent left by will $20,000 of the stock and $50,000 of the Country Y bonds to his surviving spouse. He left the rest of the stock and bonds to his son. Under the situs rules referred to in paragraph (a)(3) of § 20.2014–1 the stock is deemed situated in Country Y while the bonds are deemed to have their situs in the United States. (The bonds would be deemed to have their situs in Country Y if the decedent had died on or after November 14, 1966.) There is not death tax convention in existence between the United States and Country Y. The laws of Country Y provide for inheritance taxes computed as follows:

Inheritance tax of surviving spouse:	
Value of stock	$20,000
Value of bonds	50,000
Total value	70,000
Tax (16 percent rate)	11,200
Inheritance tax of son:	
Value of stock	60,000
Value of bonds	$30,000
Total value	90,000
Tax (16 percent rate)	14,400

The ''first limitation'' on the credit for foreign death taxes is:

$20,000 + $60,000 (factor C of the ratio stated at § 20.2014 − 2(a)) ÷ $70,000+ $90,000 (factor D of the ratio stated at § 20.2014 − 2(a)) × ($11,200+$14,400) (factor B of the ratio stated at § 20.2014–2(a)) = $12,800

(b) If a foreign country imposes more than one kind of death tax or imposes taxes at different rates upon the several shares of an estate, or if a foreign country and a political subdivision or possession thereof each imposes a death tax, a ''first limitation'' is to be computed separately for each tax or rate and the results added in order to determine the total ''first limitation.'' The application of this paragraph may be illustrated by the following example:

Example. The facts are the same as those contained in the example set forth in paragraph (a) of this section, except that the tax of the surviving spouse was computed at a 10 percent rate and amounted to $7,000, and the tax of the son was computed at a 20 percent rate and amounted to $18,000. In this case, the ''first limitation'' on the credit for foreign death taxes is computed as follows:

''First limitation'' with respect to inheritance tax of surviving spouse:	
[$20,000 (factor C of the ratio stated at § 20.2014–2(a)) ÷ $70,000 (factor D of the ratio stated at § 20.2014–2(a))] × $7,000 (factor B of the ratio stated at § 20.2014–2(a))=	$2,000.
''First limitation'' with respect to inheritance tax of son:	
[$60,000 (factor C of the ratio stated at § 20.2014–2(a)) ÷ $90,000 (factor D of the ratio stated at § 20.2014–2(a))] × $18,000 (factor B of the ratio stated at § 20.2014–2(a))=	12,000.
Total ''first limitation'' on the credit for foreign death taxes	14,000

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6600, 27 FR 4984, May 29, 1962; T.D. 6684, 28 FR 11408, Oct. 24, 1963; T.D. 7296, 38 FR 34193, Dec. 12, 1973; 39 FR 2090, Jan. 17, 1974]

§ 20.2014–3 "Second limitation".

(a) The amount of the Federal estate tax attributable to particular property situated in a foreign country, subjected to foreign death tax in that country, and included in the decedent's gross estate for Federal estate tax purposes is the ''second limitation.'' Thus, the credit is limited to an amount, E, which bears the same ratio to F (the gross Federal estate tax, reduced by any credit for State death taxes under section 2011 and by any credit for gift tax under section 2012) as G (the ''adjusted value of the property situated in the foreign country, subjected to foreign death tax, and included in the gross estate'', computed as described in paragraph (b) of this section) bears to H (the value of the entire gross estate, reduced by the total amount of the deductions allowed under sections 2055 (charitable deduction) and 2056 (marital deduction)). Stated algebraically, the ''second limitation'' (E) equals:

''Adjusted value of the property situated in the foreign country, subjected to foreign death taxes, and included in the gross estate'' (G) ÷ Value of entire gross estate, less charitable and marital deductions (H) × Gross Federal estate tax, less credits for State death taxes and gift tax (F)

The values used in this proportion are the values determined for the purpose of the Federal estate tax.

(b) Adjustment is required to factor ''G'' of the ratio stated in paragraph (a) of this section if a deduction for foreign death taxes under section 2053(d), a charitable deduction under section

2055, or a marital deduction under section 2056 is allowed with respect to the foreign property. If a deduction for foreign death taxes is allowed, the value of the property situated in the foreign country, subjected to foreign death tax, and included in the gross estate does not include the value of any property in respect of which the deduction for foreign death taxes is allowed. See § 20.2014–7. If a charitable deduction or a marital deduction is allowed, the value of such foreign property (after exclusion of the value of any property in respect of which the deduction for foreign death taxes is allowed) is reduced as follows:

(1) If a charitable deduction or a marital deduction is allowed to a decedent's estate with respect to any part of the foreign property, except foreign property in respect of which a deduction for foreign death taxes is allowed, specifically bequeathed, devised, or otherwise specifically passing to a charitable organization or to the decedent's spouse, the value of the foreign property is reduced by the amount of the charitable deduction or marital deduction allowed with respect to such specific transfer. See example (1) of paragraph (c) of this section.

(2) If a charitable deduction or a marital deduction is allowed to a decedent's estate with respect to a bequest, devise or other transfer of an interest in a group of assets including both the foreign property and other property, the value of the foreign property is reduced by an amount, I, which bears the same ratio to J (the amount of the charitable deduction or marital deduction allowed with respect to such transfer of an interest in a group of assets) as K (the value of the foreign property, except foreign property in respect of which a deduction for foreign death taxes is allowed, included in the group of assets) bears to L (the value of the entire group of assets). As used in this subparagraph, the term ''group of assets'' has reference to those assets which, under applicable law, are chargeable with the charitable or marital transfer. See example (2) of paragraph (c) of this section.

Any reduction described in paragraph (b)(1) or (b)(2) of this section on account of the marital deduction must proportionately take into account, if applicable, the limitation on the aggregate amount of the marital deduction contained in § 20.2056(a)–1(c). See § 20.2014–3(c), *Example 3.*

(c) The application of paragraphs (a) and (b) of this section may be illustrated by the following examples. In each case, the computations relate to the amount of credit under section 2014 without regard to the amount of credit which may be allowable under an applicable death tax convention.

Example (1). (i) Decedent, a citizen and resident of the United States at the time of his death on February 1, 1967, left a gross estate of $1,000,000 which includes the following: shares of stock issued by a domestic corporation, valued at $750,000; bonds issued in 1960 by the United States and physically located in foreign Country X, valued at $50,000; and shares of stock issued by a Country X corporation, valued at $200,000, with respect to which death taxes were paid to Country X. Expenses, indebtedness, etc., amounted to $60,000. Decedent specifically bequeathed $40,000 of the stock issued by the Country X corporation to a U.S. charity and left the residue of his estate, in equal shares, to his son and daughter. The gross Federal estate tax is $266,500, and the credit for State death taxes is $27,600. Under the situs rules referred to in paragraph (a)(3) of § 20.2014–1, the shares of stock issued by the Country X corporation comprise the only property deemed to be situated in Country X. (The bonds also would be deemed to have their situs in Country X if the decedent had died before November 14, 1966.)

(ii) The ''second limitation'' on the credit for foreign death taxes is:

[($200,000 − $40,000 (factor G of the ratio stated at § 20.2014–3(a); see also § 20.2014–3(b)(1))) ÷ ($1,000,000 − $40,000 (factor H of the ratio stated at § 20.2014–3(a)))] × ($266,500 − $27,600) (factor F of the ratio stated at § 20.2014–3(a)) = $39,816.67.

The lesser of this amount and the amount of the ''first limitation'' (computed under § 20.2014–2) is the credit for foreign death taxes.

Example (2). (i) Decedent, a citizen and resident of the United States at the time of his death, left a gross estate of $1,000,000 which includes: shares of stock issued by a United States corporation, valued at $650,000; shares of stock issued by a Country X corporation, valued at $200,000; and life insurance, in the amount of $150,000, payable to a son. Expenses, indebtedness, etc., amounted to $40,000. The decedent made a specific bequest of $25,000 of the Country X corporation stock to Charity A and a general bequest of $100,000

to Charity B. The residue of his estate was left to his daughter. The gross Federal estate tax is $242,450 and the credit for State death taxes is $24,480. Under these facts and applicable law, neither the stock of the Country X corporation specifically bequeathed to Charity A nor the insurance payable to the son could be charged with satisfying the bequest to Charity B. Therefore, the ''group of assets'' which could be so charged is limited to stock of the Country X corporation valued at $175,000 and stock of the United States corporation valued at $650,000.

(ii) Factor ''G'' of the ratio which is used in determining the ''second limitation'' is computed as follows:

Value of property situated in Country X		$200,000.00
Less:		
Reduction described in § 20.2014–3(b)(1)	$25,000.00	
Reduction described in § 20.2014–3(b)(2) = [$175,000 (factor K of the ratio stated at § 20.2014–3 (b)(2)) ÷ ($175,000 + $650,000 (factor L of the ratio stated at § 20.2014–3 (b)(2)))] × $100,000 (factor J of the ratio stated at § 20.2014–3(b)(2)) = ...	21,212.12	
		46,212.12
Factor ''G'' of the ratio	.....	153,787.88

(iii) In this case, the ''second limitation'' on the credit for foreign death taxes is:

[$153,787.88 (factor G of the ratio stated at § 20.2014–3(a); see also subdivision (ii) above) ÷ ($1,000,000 − $125,000 (factor H of the ratio stated at § 20.2014–3(a)))] × ($242,450 − $24,480) (factor F of the ratio stated at § 20.2014–3(a)) = $38,309.88.

Example (3). (i) Decedent, a citizen and resident of the United States at the time of his death, left a gross estate of $850,000 which includes: shares of stock issued by United States corporations, valued at $440,000; real estate located in the United States, valued at $110,000; and shares of stock issued by Country X corporations, valued at $300,000. Expenses, indebtedness, etc., amounted to $50,000. Decedent devised $40,000 in real estate to a United States charity. In addition, he bequeathed to his wife $200,000 in United States stocks and $300,000 in Country X stocks. The residue of his estate passed to his children. The gross Federal estate tax is $81,700 and the credit for State death taxes is $5,520.

(ii) Decedent's adjusted gross estate is $800,000 (i.e., the $850,000, gross estate less $50,000, expenses, indebtedness, etc.). Assume that the limitation imposed by section 2056(c), as in effect before 1982, is applicable so that the aggregate allowable marital deduction is limited to one-half the adjusted gross estate, or $400,000 (which is 50 percent of $800,000). Factor ''G'' of the ratio which is used in determining the ''second limitation'' is computed as follows:

Value of property situated in Country X.		$300,000
Less: Reduction described in § 20.2014–3 (b)(1) determined as follows (see also end of § 20.2014–3(b))—		
Total amount of bequests which qualify for the marital deduction:		
Specific bequest of Country X stock	$300,000	
Specific bequest of United States stock	200,000	
	500,000	
Limitation on aggregate marital deduction under section 2056(c)	400,000	
Part of specific bequest of Country X stock with respect to which the marital deduction is allowed—($400,000 ÷ $500,000 × $300,000)		240,000
Factor ''G'' of the ratio		60,000

(iii) Thus, the ''second limitation'' on the credit for foreign death taxes is:

[$60,000 (factor G of the ratio stated at § 20.2014–3(a); see also subdivision (ii) above) ÷ ($850,000 − $40,000 − $400,000 (factor H of the ratio stated at § 20.2014–3(a)))] × ($81,700 − $5,520) (factor F of the ratio stated at § 20.2014–3(a)) = $11,148.29.

(d) If the foreign country imposes more than one kind of death tax or imposes taxes at different rates upon the several shares of an estate, or if the foreign country and a political subdivision or possession thereof each imposes a death tax, the ''second limitation'' is still computed by applying the ratio set forth in paragraph (a) of this section. Factor ''G'' of the ratio is determined by taking into consideration the combined value of the foreign property which is subjected to each different tax or different rate. The combined value, however, cannot exceed the value at which such property was included in the gross estate for Federal estate tax purposes. Thus, if Country X imposes a tax on the inheritance of a surviving spouse at a 10-percent rate and on the inheritance of a son at a 20-percent rate, the combined value of their inheritances is taken into consideration in determining factor ''G'' of the ratio, which is then used in computing the ''second limitation.'' However, the ''first limitation'' is computed as provided in paragraph (b) of § 20.2014–2. The lesser of the ''first limitation'' and the

''second limitation'' is the credit for foreign death taxes.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6600, 27 FR 4984, May 29, 1962; T.D. 7296, 38 FR 34193, Dec. 12, 1973; T.D. 8522, 59 FR 9646, Mar. 1, 1994]

§ 20.2014–4 Application of credit in cases involving a death tax convention.

(a) *In general.* (1) If credit for a particular foreign death tax is authorized by a death tax convention, there is allowed either the credit provided for by the convention or the credit provided for by section 2014, whichever is the more beneficial to the estate. For cases where credit may be taken under both the death tax convention and section 2014, see paragraph (b) of this section. The application of this paragraph may be illustrated by the following example:

Example. (i) Decedent, a citizen of the United States and a domiciliary of foreign Country X at the time of his death on December 1, 1966, left a gross estate of $1 million which includes the following: Shares of stock issued by a Country X corporation, valued at $400,000; bonds issued in 1962 by the United States and physically located in Country X, valued at $350,000; and real estate located in the United States, valued at $250,000. Expenses, indebtedness, etc., amounted to $50,000. Decedent left his entire estate to his son. There is in effect a death tax convention between the United States and Country X which provides for the allowance of credit by the United States for succession duties imposed by the national government of Country X. The gross Federal estate tax is $307,200, and the credit for State death taxes is $33,760. Country X imposed a net succession duty on the stocks and bonds of $180,000. Under the situs rules referred to in paragraph (a)(3) of § 20.2014–1, the shares of stock comprise the only property deemed to be situated in Country X. (If the decedent has died before November 14, 1966, the bonds also would be deemed to have their situs in Country X.) Under the convention, both the stocks and the bonds are deemed to be situated in Country X. In this example all figures are rounded to the nearest dollar.

(ii)(*a*) The credit authorized by the convention for death taxes imposed by Country X is computed as follows:

(1) Country X tax attributable to property situated in Country X and subjected to tax by both countries ($750,000÷$750,000×$180,000)	$180,000
(2) Federal estate tax attributable to property situated in Country X and subjected to tax by both countries—($750,000 ÷ $1,000,000 × $273,440)	205,080
(3) Credit (subdivision *(1)* or *(2)*, whichever is less)	180,000

(b) The credit authorized by section 2014 for death taxes imposed by Country X is computed as follows:

(1) ''First limitation'' computed under § 20.2014–2 ($400,000÷$750,000×$180,000)	$96,000
(2) ''Second limitation'' computed under § 20.2014–3 ($400,000÷$1,000,000×$273,440)	109,376
(3) Credit (subdivision *(1)* or *(2)*, whichever is less)	96,000

(iii) On the basis of the facts contained in this example, the credit of $180,000 authorized by the convention is the more beneficial to the estate.

(2) It should be noted that the greater of the treaty credit and the statutory credit is not necessarily the more beneficial to the estate. Such is the situation, for example, in those cases which involve both a foreign death tax credit and a credit under section 2013 for tax on prior transfers. The reason is that the amount of the credit for tax on prior transfers may differ depending upon whether the credit for foreign death tax is taken under the treaty or under the statute. Therefore, under certain circumstances, the advantage of taking the greater of the treaty credit and the statutory credit may be more than offset by a resultant smaller credit for tax on prior transfers. The solution is to compute the net estate tax payable first on the assumption that the treaty credit will be taken and then on the assumption that the statutory credit will be taken. Such computations will indicate whether the treaty credit or the statutory credit is in fact the more beneficial to the estate.

(b) *Taxes imposed by both a foreign country and a political subdivision thereof.* If death taxes are imposed by both a foreign country with which the United States has entered into a death tax convention and one or more of its possessions or political subdivisions, there is allowed, against the tax imposed by section 2001—

(1) A credit for the combined death taxes paid to the foreign country and its political subdivisions or possessions as provided for by the convention, or

(2) A credit for the combined death taxes paid to the foreign country and its political subdivisions or possessions as determined under section 2014, or

(3)(i) A credit for that amount of the combined death taxes paid to the foreign country and its political subdivisions or possessions as is allowable under the convention, and

(ii) A credit under section 2014 for the death taxes paid to each political subdivision or possession, but only to the extent such death taxes are not directly or indirectly creditable under the convention.

whichever is the most beneficial to the estate. The application of this paragraph may be illustrated by the following example:

Example. (1) Decedent, a citizen of the United States and a domiciliary of Province Y of foreign Country X at the time of his death on February 1, 1966, left a gross estate of $250,000 which includes the following: Bonds issued by Country X physically located in Province Y, valued at $75,000; bonds issued by Province Z of Country X and physically located in the United States, valued at $50,000; and shares of stock issued by a domestic corporation, valued at $125,000. Decedent left his entire estate to his son. Expenses, indebtedness etc., amounted to $26,000. The Federal estate tax after allowance of the credit for State death taxes is $38,124. Province Y imposed a death tax of 8 percent on the Country X bonds located therein which amounted to $6,000. No death tax was imposed by Province Z. Country X imposed a death tax of 15 percent on the Country X bonds and the Province Z bonds which amounted to $18,750 before allowance of any credit for the death tax of Province Y. Country X allows against its death taxes a credit for death taxes paid to any of its provinces on property which it also taxes, but only to the extent of one-half of the Country X death tax attributable to the property, or the amount of death taxes paid to its province, whichever is less. Country X, therefore, allowed a credit of $5,625 for the death taxes paid to Province Y. There is in effect a death tax convention between the United States and Country X which provides for allowance of credit by the United States for death taxes imposed by the national government of Country X. The death tax convention provides that in computing the ''first limitation'' for the credit under the convention, the tax of Country X is not to be reduced by the amount of the credit allowed for provincial taxes. Under the situs rules described in paragraph (a)(3) of § 20.2014–1, only the Country X bonds located in Province Y are deemed situated in Country X. (The bonds issued by Province Z also would be deemed to have their situs in Country X if the decedent had died on or after November 14, 1966.) Under the convention, both the Country X bonds and the Province Z bonds are deemed to be situated in Country X. In this example all figures are rounded to the nearest dollar.

(2)(i) The credit authorized by section 2014 for death taxes imposed by Country X (which includes death taxes imposed by Province Y according to § 20.2014–1(a)(1)) is computed as follows:

(a) ''First limitation'' with respect to tax imposed by national government of Country X (computed under paragraph (b) of § 20.2014–2)	
(1) Gross Country X death tax attributable to Country X bonds (before allowance of provincial death taxes) (75,000÷$125,000×$18,750)	$11,250
(2) Less credit for Province Y death taxes on such bonds	5,625
(3) Net Country X death tax attributable to such bonds	5,625
(b) ''First limitation'' with respect to tax imposed by Province Y (computed under paragraph (b) of § 20.2014–2) ($75,000÷$75,000×$6,000)	6,000
(c) Total ''first limitation''	11,625
(d) ''Second limitation'' (computed under paragraph (d) of § 20.2014–3) ($75,000÷$250,000×$38,124)	11,437
(e) Credit (subdivision *(c)* or *(d)*, whichever is less)	11,437

(ii) The credit authorized under the death tax convention between the United States and Country X is computed as follows:

(a) Country X tax attributable to property situated in Country X and subject to tax by both countries ($125,000÷$125,000×$18,750)	$18,750
(b) Federal estate tax attributable to property situated in Country X and subjected to tax by both countries ($125,000÷$250,000×$38,124)	19,062
(c) Credit (subdivision *(a) or (b),* whichever is less)	18,750

(3) If the estate takes a credit for death taxes under the convention, it would receive a credit of $18,750 which would include an indirect credit of $5,625 for death taxes paid to Province Y. The death tax of Province Y which was not directly or indirectly creditable under the convention is $375 ($6,000 − $5,625). A credit for this tax would also be allowed under section 2014 but only to the extent of $187, as the amount of credit for the combined foreign death taxes is limited to the amount of Federal estate tax attributable to the property, determined in accordance with the rules prescribed for computing the ''second limitation'' under section 2014. In this case, the ''second limitation'' under section 2014 on the taxes attributable to the Country X bonds is $11,437 (see computation set forth in (2)(i) *(d)* of this example). The amount of credit under the convention for taxes attributable to Country X bonds is $11,250 − ($75,000÷$125,000× $18,750). Inasmuch as the ''second limitation'' under section 2014 in respect of the Country X bonds ($11,437) exceeds the amount of the credit allowed under the convention in respect of the Country X bonds ($11,250) by $187, the additional credit allowable under section 2014 for the death taxes paid to Province Y not directly

or indirectly creditable under the convention is limited to $187.

(c) *Taxes imposed by two foreign countries with respect to the same property.* It is stated as a general rule in paragraph (a)(2) of § 20.2014–1 that if credits against the Federal estate tax are allowable under section 2014, or under section 2014 and one or more death tax conventions, for death taxes paid to more than one country, the credits are combined and the aggregate amount is credited against the Federal estate tax. This rule may result in credit being allowed for taxes imposed by two different countries upon the same item of property. If such is the case, the total amount of the credits with respect to such property is limited to the amount of the Federal estate tax attributable to the property, determined in accordance with the rules prescribed for computing the ''second limitation'' set forth in § 20.2014–3. The application of this section may be illustrated by the following example:

Example. The decedent, a citizen of the United States and a domiciliary of Country X at the time of his death on May 1, 1967, left a taxable estate which included bonds issued by Country Z and physically located in Country X. Each of the three countries involved imposed death taxes on the Country Z bonds. Assume that under the provisions of a treaty between the United States and Country X the estate is entitled to a credit against the Federal estate tax for death taxes imposed by Country X on the bonds in the maximum amount of $20,000. Assume, also, that since the decedent died after November 13, 1966, so that under the situs rules referred to in paragraph (a)(3) of § 20.2014–1 the bonds are deemed to have their situs in Country Z, the estate is entitled to a credit against the Federal estate tax for death taxes imposed by Country Z on the bonds in the maximum amount of $10,000. Finally, assume that the Federal estate tax attributable to the bonds is $25,000. Under these circumstances, the credit allowed the estate with respect to the bonds would be limited to $25,000.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6742, 29 FR 7928, June 23, 1964; T.D. 7296, 38 FR 34193, Dec. 12, 1973]

§ 20.2014–5 Proof of credit.

(a) If the foreign death tax has not been determined and paid by the time the Federal estate tax return required by section 6018 is filed, credit may be claimed on the return in an estimated amount. However, before credit for the foreign death tax is finally allowed, satisfactory evidence, such as a statement by an authorized official of each country, possession or political subdivision thereof imposing the tax, must be submitted on Form 706CE certifying:

(1) The full amount of the tax (exclusive of any interest or penalties), as computed before allowance of any credit, remission, or relief;

(2) The amount of any credit, allowance, remission, or relief, and other pertinent information, including the nature of the allowance and a description of the property to which it pertains;

(3) The net foreign death tax payable after any such allowance;

(4) The date on which the death tax was paid, or if not all paid at one time, the date and amount of each partial payment; and

(5) A list of the property situated in the foreign country and subjected to its tax, showing a description and the value of the property.

Satisfactory evidence must also be submitted showing that no refund of the death tax is pending and none is authorized or, if any refund is pending or has been authorized, its amount and other pertinent information. See also section 2016 and § 20.2016–1 for requirements if foreign death taxes claimed as a credit are subsequently recovered.

(b) The following information must also be submitted whenever applicable:

(1) If any of the property subjected to the foreign death tax was situated outside of the country imposing the tax, the description of each item of such property and its value.

(2) If more than one inheritance or succession is involved with respect to which credit is claimed, or if the foreign country, possession or political subdivision thereof imposes more than one kind of death tax, or if both the foreign country and a possession or political subdivision thereof each imposes a death tax, a separate computation with respect to each inheritance or succession tax.

(c) In addition to the information required under paragraphs (a) and (b) of this section, the district director may require the submission of any further

proof deemed necessary to establish the right to the credit.

§ 20.2014–6 Period of limitations on credit.

The credit for foreign death taxes under section 2014 is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the estate tax return for the decedent's estate. If, however, a petition has been filed with the Tax Court of the United States for the redetermination of a deficiency within the time prescribed in section 6213(a), the credit is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the return, or before the expiration of 60 days after the decision of the Tax Court becomes final, whichever period is the last to expire. Similarly, if an extension of time has been granted under section 6161 for payment of the tax shown on the return, or of a deficiency, the credit is limited to those taxes which were actually paid and for which a credit was claimed within four years after the filing of the return, or before the date of the expiration of the period of the extension, whichever period is the last to expire. See section 2015 for the applicable period of limitations for credit for foreign death taxes on reversionary or remainder interests if an election is made under section 6163(a) to postpone payment of the estate tax attributable to reversionary or remainder interests. If a claim for refund based on the credit for foreign death taxes is filed within the applicable period described in this section, a refund may be made despite the general limitation provisions of sections 6511 and 6512. Any refund based on the credit for foreign death taxes shall be made without interest.

§ 20.2014–7 Limitation on credit if a deduction for foreign death taxes is allowed under section 2053(d).

If a deduction is allowed under section 2053(d) for foreign death taxes paid with respect to a charitable gift, the credit for foreign death taxes is subject to special limitations. In such a case the property described in subparagraphs (A), (B), and (C) of paragraphs (1) and (2) of section 2014(b) shall not include any property with respect to which a deduction is allowed under section 2053(d). The application of this section may be illustrated by the following example:

Example. The decedent, a citizen of the United States, died July 1, 1955, leaving a gross estate of $1,200,000 consisting of: Shares of stock issued by United States corporations, valued at $600,000; bonds issued by the United States Government physically located in the United States, valued at $300,000; and shares of stock issued by a Country X corporation, valued at $300,000. Expenses, indebtedness, etc., amounted to $40,000. The decedent made specific bequests of $400,000 of the United States corporation stock to a niece and $100,000 of the Country X corporation stock to a nephew. The residue of his estate was left to charity. There is no death tax convention in existence between the United States and Country X. The Country X tax imposed was at a 50-percent rate on all beneficiaries. A State inheritance tax of $20,000 was imposed on the niece and nephew. The decedent did not provide in his will for the payment of the death taxes, and under local law the Federal estate tax is payable from the general estate, the same as administration expenses.

DISTRIBUTION OF THE ESTATE

Gross estate		$1,200,000.00
Debts and charges	$40,000.00	
Bequest of U.S. corporation stock to niece	400,000.00	
Bequest of country X corporation stock to nephew	100,000.00	
Net Federal estate tax	136,917.88	
		676,917.88
Residue before country X tax		523,082.12
Country X succession tax on charity		100,000.00
Charitable deduction		423,082.12

TAXABLE ESTATE AND FEDERAL ESTATE TAX

Gross estate		1,200,000.00
Debts and charges	40,000.00	
Deduction of foreign death tax under section 2053(d)	100,000.00	
Charitable deduction	423,082.12	
Exemption	60,000.00	
		623,082.12
Taxable estate		576,917.88
Gross estate tax		172,621.26
Credit for State death taxes		15,476.72
Gross estate tax less credit for State death taxes		157,144.54
Credit for foreign death taxes		20,226.66
Net Federal estate tax		136,917.88

CREDIT FOR FOREIGN DEATH TAXES

COUNTRY X TAX

Succession tax on nephew:		
Value of stock of country X corporation		100,000
Tax (50% rate)		$50,000

DISTRIBUTION OF THE ESTATE

Succession tax on charity:		
Value of stock of country X corporation	.....	200,000
Tax (50% rate)	.....	100,000

COMPUTATION OF EXCLUSION UNDER SECTION 2014(B)

Value of situated in country X	.....	300,000
Value of property in respect of which a deduction is allowed under section 2053(d)	.....	200,000
Value of property situated within country X, subjected to tax, and included in gross estate as limited by section 2014(f)	.....	100,000

FIRST LIMITATION, § 28.2014–2(A)

$100,000 (factor C of the ratio stated at § 20.2014–2(a)) ÷ $100,000 + $200,000 (factor D of the ratio stated at § 20.2014 2(a) × $50,000 + $100,000) (factor B of the ratio stated at § 20.2014–2(a)) = $50,000.00

SECOND LIMITATION, § 28.2014–3(A)

$100,000 (factor G of the ratio stated at § 20.2014–3(a)) (as limited by section 2014(f)) ÷ $1,200,000 − $423,082.12 (factor H of the ratio stated at § 20.2014 3(a) × $172,621.26 − $15,476.72) (factor F of the ratio stated at § 20.2014–3(a)) = $20,226.66Z

[T.D. 6600, 27 FR 4984, May 27, 1962]

§ 20.2015–1 Credit for death taxes on remainders.

(a) If the executor of an estate elects under section 6163(a) to postpone the time for payment of any portion of the Federal estate tax attributable to a reversionary or remainder interest in property, credit is allowed under sections 2011 and 2014 against that portion of the Federal estate tax for State death taxes and foreign death taxes attributable to the reversionary or remainder interest if the State death taxes or foreign death taxes are paid and if credit therefor is claimed either—

(1) Within the time provided for in sections 2011 and 2014, or

(2) Within the time for payment of the tax imposed by section 2001 or 2101 as postponed under section 6163(a) and as extended under section 6163(b) (on account of undue hardship) or, if the precedent interest terminated before July 5, 1958, within 60 days after the termination of the preceding interest or interests in the property.

The allowance of credit, however, is subject to the other limitations contained in sections 2011 and 2014 and, in the case of the estate of a decedent who was a nonresident not a citizen of the United States, in section 2102(b).

(b) In applying the rule stated in paragraph (a) of this section, credit for State death taxes or foreign death taxes paid within the time provided in sections 2011 and 2014 is applied first to the portion of the Federal estate tax payment of which is not postponed, and any excess is applied to the balance of the Federal estate tax. However, credit for State death taxes or foreign death taxes not paid within the time provided in section 2011 and 2014 is allowable only against the portion of the Federal estate tax attributable to the reversionary or remainder interest, and only for State or foreign death taxes attributable to that interest. If a State death tax or a foreign death tax is imposed upon both a reversionary or remainder interest and upon other property, without a definite apportionment of the tax, the amount of the tax deemed attributable to the reversionary or remainder interest is an amount which bears the same ratio to the total tax as the value of the reversionary or remainder interest bears to the value of the entire property with respect to which the tax was imposed. In applying this ratio, adjustments consistent with those required under paragraph (c) of § 20.6163–1 must be made.

(c) The application of this section may be illustrated by the following examples:

Example (1). One-third of the Federal estate tax was attributable to a remainder interest in real property located in State Y, and two-thirds of the Federal estate tax was attributable to other property located in State X. The payment of the tax attributable to the remainder interest was postponed under the provisions of section 6163(a). The maximum credit allowable for State death taxes under the provisions of section 2011 is $12,000. Therefore, of the maximum credit allowable, $4,000 is attributable to the remainder interest and $8,000 is attributable to the other property. Within the 4-year period provided for in section 2011, inheritance tax in the amount of $9,000 was paid to State X in connection with the other property. With respect to this $9,000, $8,000 (the maximum amount allowable) is allowed as a credit against the Federal estate tax attributable to the other property, and $1,000 is allowed as a credit against the postponed tax. The life

estate or other precedent interest expired after July 4, 1958. After the expiration of the 4-year period but before the expiration of the period of postponment elected under section 6163(a) and of the period of extension granted under section 6163(b) for payment of the tax, inheritance tax in the amount of $5,000 was paid to State Y in connection with the remainder interest. As the maximum credit allowable with respect to the remainder interest is $4,000 and $1,000 has already been allowed as a credit, an additional $3,000 will be credited against the Federal estate tax attributable to the remainder interest. It should be noted that if the life estate or other precedent interest had expired after the expiration of the 4-year period but before July 5, 1958, the same result would be reached only if the inheritance tax had been paid to State Y before the expiration of 60 days after the termination of the life estate or other precedent interest.

Example (2). The facts are the same as in example (1), except that within the 4-year period inheritance tax in the amount of $2,500 was paid to State Y with respect to the remainder interest and inheritance tax in the amount of $7,500 was paid to State X with respect to the other property. The amount of $8,000 is allowed as a credit against the Federal estate tax attributable to the other property and the amount of $2,000 is allowed as a credit against the postponed tax. The life estate or other precedent interest expired after July 4, 1958. After the expiration of the 4-year period but before the expiration of the period of postponement elected under section 6163(a) and of the period of extension granted under section 6163(b) for payment of the tax, inheritance tax in the amount of $5,000 was paid to State Y in connection with the remainder interest. As the maximum credit allowable with respect to the remainder interest is $4,000 and $2,000 already has been allowed as a credit, an additional $2,000 will be credited against the Federal estate tax attributable to the remainder interest. It should be noted that if the life estate or other precedent interest had expired after the expiration of the 4-year period but before July 5, 1958, the same result would be reached only if the inheritance tax had been paid to State Y before the expiration of 60 days after the termination of the life estate or other precedent interest.

Example (3). The facts are the same as in example (2), except that no payment was made to State Y within the 4-year period. The amount of $7,500 is allowed as a credit against the Federal estate tax attributable to the other property. After termination of the life interest additional credit will be allowed in the amount of $4,000 against the Federal estate tax attributable to the remainder interest. Since the payment of $5,000 was made to State Y following the expiration of the 4-year period, no part of the payment may be allowed as a credit against the Federal estate tax attributable to the other property.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6526, 26 FR 415, Jan. 19, 1961; T.D. 7296, 38 FR 34194, Dec. 12, 1973]

§ 20.2016–1 Recovery of death taxes claimed as credit.

In accordance with the provisions of section 2016, the executor (or any other person) receiving a refund of any State death taxes or foreign death taxes claimed as a credit under section 2011 or section 2014 shall notify the district director of the refund within 30 days of its receipt. The notice shall contain the following information:

(a) The name of the decedent;

(b) The date of the decedent's death;

(c) The property with respect to which the refund was made;

(d) The amount of the refund, exclusive of interest;

(e) The date of the refund; and

(f) The name and address of the person receiving the refund.

If the refund was in connection with foreign death taxes claimed as a credit under section 2014, the notice shall also contain a statement showing the amount of interest, if any, paid by the foreign country on the refund. Finally, the person filing the notice shall furnish the district director such additional information as he may request. Any Federal estate tax found to be due by reason of the refund is payable by the person or persons receiving it, upon notice and demand, even though the refund is received after the expiration of the period of limitations set forth in section 6501 (see section 6501(c)(5)). If the tax found to be due results from a refund of foreign death tax claimed as a credit under section 2014, such tax shall not bear interest for any period before the receipt of the refund, except to the extent that interest was paid by the foreign country on the refund.

GROSS ESTATE

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[T.D. 8540, 59 FR 30151, June 10, 1994]

§ 20.2031–1 Definition of gross estate; valuation of property.

(a) *Definition of gross estate.* Except as otherwise provided in this paragraph the value of the gross estate of a decedent who was a citizen or resident of the United States at the time of his death is the total value of the interests described in sections 2033 through 2044. The gross estate of a decedent who died before October 17, 1962, does not include real property situated outside the United States (as defined in paragraph (b)(1) of § 20.0–1). Except as provided in paragraph (c) of this section (relating to the estates of decedents dying after October 16, 1962, and before July 1, 1964), in the case of a decedent dying after October 16, 1962, real property situated outside the United States which comes within the scope of sections 2033 through 2044 is included in the gross estate to the same extent as any other property coming within the scope of those sections. In arriving at the value of the gross estate the interests described in sections 2033 through 2044 are valued as described in this section, §§ 20.2031–2 through 20.2031–9 and § 20.2032–1. The contents of sections 2033 through 2044 are, in general, as follows:

(1) Sections 2033 and 2034 are concerned mainly with interests in property passing through the decedent's probate estate. Section 2033 includes in the decedent's gross estate any interest that the decedent had in property at the time of his death. Section 2034 provides that any interest of the decedent's surviving spouse in the decedent's property, such as dower or curtesy, does not prevent the inclusion of such property in the decedent's gross estate.

(2) Sections 2035 through 2038 deal with interests in property transferred by the decedent during his life under such circumstances as to bring the interests within the decedent's gross estate. Section 2035 includes in the decedent's gross estate property transferred in contemplation of death, even though the decedent had not interest in, or control over, the property at the time of his death. Section 2036 provides for the inclusion of transferred property with respect to which the decedent retained the income or the power to designate who shall enjoy the income. Section 2037 includes in the decedent's gross estate certain transfers under which the beneficial enjoyment of the property could be obtained only by surviving the decedent. Section 2038 provides for the inclusion of transferred property if the decedent had at the time of his death the power to change the beneficial enjoyment of the property. It should be noted that there is considerable overlap in the application of sections 2036 through 2038 with respect to reserved powers, so that transferred property may be includible in the decedent's gross estate in varying degrees under more than one of those sections.

(3) Sections 2039 through 2042 deal with special kinds of property and powers. Sections 2039 and 2040 concern annuities and jointly held property respectively. Section 2041 deals with powers held by the decedent over the beneficial enjoyment of property not originating with the decedent. Section 2042 concerns insurance under policies on the life of the decedent.

(4) Section 2043 concerns the sufficiency of consideration for transfers made by the decedent during his life. This has a bearing on the amount to be included in the decedent's gross estate under sections 2035 through 2038, and 2041. Section 2044 deals with retroactivity.

(b) *Valuation of property in general.* The value of every item of property includible in a decedent's gross estate under sections 2031 through 2044 is its fair market value at the time of the decedent's death, except that if the executor elects the alternate valuation method under section 2032, it is the fair market value thereof at the date, and with the adjustments, prescribed in that section. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property includible in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate. Thus, in the case of an item of property includible in the decedent's gross estate, which is generally obtained by the public in the retail market, the fair market value of such an item of property is the price at which the item or a comparable item would be sold at retail. For example, the fair market value of an automobile (an article generally obtained by the public in the retail market) includible in the decedent's gross estate is the price for which an automobile of the same or approximately the same description, make, model, age, condition, etc., could be purchased by a member of the general public and not the price for which the particular automobile of the decedent would be purchased by a dealer in used automobiles. Examples of items of property which are generally sold to the public at retail may be found in §§ 20.2031–6 and 20.2031–8. The value is generally to be determined by ascertaining as a basis the fair market value as of the applicable valuation date of each unit of property. For example, in the case of shares of stock or bonds, such unit of property is generally a share of stock or a bond. Livestock, farm machinery, harvested and growing crops must generally be itemized and the value of each item separately returned. Property shall not be returned at the value at which it is assessed for local tax purposes unless that value represents the fair market value as of the applicable valuation date. All relevant facts and elements of value as of the applicable valuation date shall be considered in every case. The value of items of property which were held by the decedent for sale in the course of a business generally should be reflected in the value of the business. For valuation of interests in businesses, see § 20.2031–3. See § 20.2031–2 and §§ 20.2031–4 through 20.2031–8 for further information concerning the valuation of other particular kinds of property. For certain circumstances under which the sale of an item of property at a price below its fair market value may result in a deduction for the estate, see paragraph (d)(2) of § 20.2053–3.

(c) *Real property situated outside the United States; gross estate of decedent dying after October 16, 1962, and before July 1, 1964*—(1) *In general.* In the case of decedent dying after October 16, 1962, and before July 1, 1964, the value of real property situated outside the United States (as defined in paragraph (b)(1) of § 20.0–1) is not included in the gross estate of the decedent—

(i) Under section 2033, 2034, 2035(a), 2036(a), 2037(a), or 2038(a) to the extent the real property, or the decedent's interest in it, was acquired by the decedent before February 1, 1962;

(ii) Under section 2040 to the extent such property or interest was acquired by the decedent before February 1, 1962, or was held by the decedent and the survivor in a joint tenancy or tenancy by the entirety before February 1, 1962; or

(iii) Under section 2041(a) to the extent that before February 1, 1962, such property or interest was subject to a general power of appointment (as defined in section 2041) possessed by the decedent.

(2) *Certain property treated as acquired before February 1, 1962.* For purposes of this paragraph real property situated outside the United States (including property held by the decedent and the survivor in a joint tenancy or tenancy by the entirety), or an interest in such property or a general power of appointment in respect of such property, which was acquired by the decedent after January 31, 1962, is treated as acquired by the decedent before February 1, 1962, if

(i) Such property, interest, or power was acquired by the decedent by gift within the meaning of section 2511, or from a prior decedent by devise or inheritance, or by reason of death, form of ownership, or other conditions (including the exercise or nonexercise of a power of appointment); and

(ii) Before February 1, 1962, the donor or prior decedent had acquired the property or his interest therein or had possessed a power of appointment in respect thereof.

(3) *Certain property treated as acquired after January 31, 1962.* For purposes of this paragraph that portion of capital additions or improvements made after January 31, 1962, to real property situated outside the United States is, to the extent that it materially increases the value of the property, treated as real property acquired after January 31, 1962. Accordingly, the gross estate may include the value of improvements on unimproved real property, such as office buildings, factories, houses, fences, drainage ditches, and other capital items, and the value of capital additions and improvements to existing improvements, placed on real property after January 31, 1962, whether or not the value of such real property or existing improvements is included in the gross estate.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6684, 28 FR 11408, Oct. 24, 1963; T.D. 6826, 30 FR 7708, June 15, 1965]

§ 20.2031–2 Valuation of stocks and bonds.

(a) *In general.* The value of stocks and bonds is the fair market value per share or bond on the applicable valuation date.

(b) *Based on selling prices.* (1) In general, if there is a market for stocks or bonds, on a stock exchange, in an over-the-counter market, or otherwise, the mean between the highest and lowest quoted selling prices on the valuation date is the fair market value per share or bond. If there were no sales on the valuation date but there were sales on dates within a reasonable period both before and after the valuation date, the fair market value is determined by taking a weighted average of the means between the highest and lowest sales on the nearest date before and the nearest date after the valuation date. The average is to be weighted inversely by the respective numbers of trading days between the selling dates and the valuation date. If the stocks or bonds are listed on more than one exchange, the records of the exchange where the stocks or bonds are principally dealt in should be employed if such records are available in a generally available listing or publication of general circulation. In the event that such records are not so available and such stocks or bonds are listed on a composite listing of combined exchanges available in a generally available listing or publication of general circulation, the records of such combined exchanges should be employed. In valuing listed securities, the executor should be careful to consult accurate records to obtain values as of the applicable valuation date. If quotations of unlisted securities are obtained from brokers, or evidence as to their sale is obtained from officers of the issuing companies, copies of the letters furnishing such quotations or evidence of sale should be attached to the return.

(2) If it is established with respect to bonds for which there is a market on a stock exchange, that the highest and lowest selling prices are not available for the valuation date in a generally available listing or publication of general circulation but that closing selling prices are so available, the fair market value per bond is the mean between the quoted closing selling price on the valuation date and the quoted closing selling price on the trading day before the valuation date. If there were no sales on the trading day before the valuation date but there were sales on

a date within a reasonable period before the valuation date, the fair market value is determined by taking a weighted average of the quoted closing selling price on the valuation date and the quoted closing selling price on the nearest date before the valuation date. The closing selling price for the valuation date is to be weighted by the number of trading days between the previous selling date and the valuation date. If there were no sales within a reasonable period before the valuation date but there were sales on the valuation date, the fair market value is the closing selling price on such valuation date. If there were no sales on the valuation date but there were sales on dates within a reasonable period both before and after the valuation date, the fair market value is determined by taking a weighted average of the quoted closing selling prices on the nearest date before and the nearest date after the valuation date. The average is to be weighted inversely by the respective numbers of trading days between the selling dates and the valuation date. If the bonds are listed on more than one exchange, the records of the exchange where the bonds are principally dealt in should be employed. In valuing listed securities, the executor should be careful to consult accurate records to obtain values as of the applicable valuation date.

(3) The application of this paragraph may be illustrated by the following examples:

Example (1). Assume that sales of X Company common stock nearest the valuation date (Friday, June 15) occurred two trading days before (Wednesday, June 13) and three trading days after (Wednesday, June 20) and on these days the mean sale prices per share were $10 and $15, respectively. The price of $12 is taken as representing the fair market value of a share of X Company common stock as of the valuation date

$$\left[(3\times 10)+(2\times 15)\right]/5.$$

Example (2). Assume the same facts as in example (1) except that the mean sale prices per share on June 13, and June 20 were $15 and $10, respectively. The price of $13 is taken as representing the fair market value of a share of X Company common stock as of the valuation date

$$\left[(3\times 5)+(2\times 10)\right]/5.$$

Example (3). Assume the decedent died on Sunday, October 7, and that Saturday and Sunday were not trading days. If sales of X Company common stock occurred on Friday, October 5, at mean sale prices per share of $20 and on Monday, October 8, at mean sale prices per share of $23, the price of $21.50 is taken as representing the fair market value of a share of X Company common stock as of the valuation date

$$\left[(1\times 20)+(23\times 1)\right]/2.$$

Example (4). Assume that on the valuation date (Tuesday, April 3, 1973) the closing selling price of a listed bond was $25 per bond and that the highest and lowest selling prices are not available in a generally available listing or publication of general circulation for that date. Assume further, that the closing selling price of the same listed bond was $21 per bond on the day before the valuation date (Monday, April 2, 1973). Thus, under paragraph (b)(2) of this section the price of $23 is taken as representing the fair market value per bond as of the valuation date

$$(25+21)/2.$$

Example (5). Assume the same facts as in example (4) except that there were no sales on the day before the valuation date. Assume further, that there were sales on Thursday, March 29, 1973, and that the closing selling price on that day was $23. The price of $24.50 is taken as representing the fair market value per bond as of the valuation date

$$\left[(1\times 23)+(3\times 25)\right]/4.$$

Example (6). Assume that no bonds were traded on the valuation date (Friday, April 20). Assume further, that sales of bonds nearest the valuation date occurred two trading days before (Wednesday, April 18) and three trading days after (Wednesday, April 25) the valuation date and that on these two days the closing selling prices per bond were $29 and $22, respectively. The highest and lowest selling prices are not available for these dates in a generally available listing or publication of general circulation. Thus, under paragraph (b)(2) of this section, the price of $26.20 is taken as representing the fair market value of a bond as of the valuation date

$$\left[(3\times 29)+(2\times 22)\right]/5.$$

(c) *Based on bid and asked prices.* If the provisions of paragraph (b) of this section are inapplicable because actual

sales are not available during a reasonable period beginning before and ending after the valuation date, the fair market value may be determined by taking the mean between the bona fide bid and asked prices on the valuation date, or if none, by taking a weighted average of the means between the bona fide bid and asked prices on the nearest trading date before and the nearest trading date after the valuation date, if both such nearest dates are within a reasonable period. The average is to be determined in the manner described in paragraph (b) of this section.

(d) *Based on incomplete selling prices or bid and asked prices.* If the provisions of paragraphs (b) and (c) of this section are inapplicable because no actual sale prices or bona fide bid and asked prices are available on a date within a reasonable period before the valuation date, but such prices are available on a date within a reasonable period after the valuation date, or vice versa, then the mean between the highest and lowest available sale prices or bid and asked prices may be taken as the value.

(e) *Where selling prices or bid and asked prices do not reflect fair market value.* If it is established that the value of any bond or share of stock determined on the basis of selling or bid and asked prices as provided under paragraphs (b), (c), and (d) of this section does not reflect the fair market value thereof, then some reasonable modification of that basis or other relevant facts and elements of value are considered in determining the fair market value. Where sales at or near the date of death are few or of a sporadic nature, such sales alone may not indicate fair market value. In certain exceptional cases, the size of the block of stock to be valued in relation to the number of shares changing hands in sales may be relevant in determining whether selling prices reflect the fair market value of the block of stock to be valued. If the executor can show that the block of stock to be valued is so large in relation to the actual sales on the existing market that it could not be liquidated in a reasonable time without depressing the market, the price at which the block could be sold as such outside the usual market, as through an underwriter, may be a more accurate indication of value than market quotations. Complete data in support of any allowance claimed due to the size of the block of stock being valued shall be submitted with the return. On the other hand, if the block of stock to be valued represents a controlling interest, either actual or effective, in a going business, the price at which other lots change hands may have little relation to its true value.

(f) *Where selling prices or bid and asked prices are unavailable.* If the provisions of paragraphs (b), (c), and (d) of this section are inapplicable because actual sale prices and bona fide bid and asked prices are lacking, then the fair market value is to be determined by taking the following factors into consideration:

(1) In the case of corporate or other bonds, the soundness of the security, the interest yield, the date of maturity, and other relevant factors; and

(2) In the case of shares of stock, the company's net worth, prospective earning power and dividend-paying capacity, and other relevant factors.

Some of the ''other relevant factors'' referred to in subparagraphs (1) and (2) of this paragraph are: The good will of the business; the economic outlook in the particular industry; the company's position in the industry and its management; the degree of control of the business represented by the block of stock to be valued; and the values of securities of corporations engaged in the same or similar lines of business which are listed on a stock exchange. However, the weight to be accorded such comparisons or any other evidentiary factors considered in the determination of a value depends upon the facts of each case. In addition to the relevant factors described above, consideration shall also be given to nonoperating assets, including proceeds of life insurance policies payable to or for the benefit of the company, to the extent such nonoperating assets have not been taken into account in the determination of net worth, prospective earning power and dividend-earning capacity. Complete financial and other data upon which the valuation is based should be submitted with the return, including copies of reports of any examinations of the company

made by accountants, engineers, or any technical experts as of or near the applicable valuation date.

(g) *Pledged securities.* The full value of securities pledged to secure an indebtedness of the decedent is included in the gross estate. If the decedent had a trading account with a broker, all securities belonging to the decedent and held by the broker at the date of death must be included at their fair market value as of the applicable valuation date. Securities purchased on margin for the decedent's account and held by a broker must also be returned at their fair market value as of the applicable valuation date. The amount of the decedent's indebtedness to a broker or other person with whom securities were pledged is allowed as a deduction from the gross estate in accordance with the provisions of § 20.2053–1 or § 20.2106–1 (for estates of nonresidents not citizens).

(h) *Securities subject to an option or contract to purchase.* Another person may hold an option or a contract to purchase securities owned by a decedent at the time of his death. The effect, if any, that is given to the option or contract price in determining the value of the securities for estate tax purposes depends upon the circumstances of the particular case. Little weight will be accorded a price contained in an option or contract under which the decedent is free to dispose of the underlying securities at any price he chooses during his lifetime. Such is the effect, for example, of an agreement on the part of a shareholder to purchase whatever shares of stock the decedent may own at the time of his death. Even if the decedent is not free to dispose of the underlying securities at other than the option or contract price, such price will be disregarded in determining the value of the securities unless it is determined under the circumstances of the particular case that the agreement represents a bona fide business arrangement and not a device to pass the decedent's shares to the natural objects of his bounty for less than an adequate and full consideration in money or money's worth. See section 2703 and the regulations at § 25.2703 of this chapter for special rules involving options and agreements (including contracts to purchase) entered into (or substantially modified after) October 8, 1990.

(i) *Stock sold ''ex-dividend.''* In any case where a dividend is declared on a share of stock before the decedent's death but payable to stock holders of record on a date after his death and the stock is selling ''ex-dividend'' on the date of the decedent's death, the amount of the dividend is added to the ex-dividend quotation in determining the fair market value of the stock as of the date of the decedent's death.

(j) *Application of chapter 14.* See section 2701 and the regulations at § 25.2701 of this chapter for special rules for valuing the transfer of an interest in a corporation and for the treatment of unpaid qualified payments at the death of the transferor or an applicable family member. See section 2704(b) and the regulations at § 25.2704–2 of this chapter for special valuation rules involving certain restrictions on liquidation rights created after October 8, 1990.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7312, 39 FR 14948, Apr. 29, 1974; T.D. 7327, 39 FR 35354, Oct. 1, 1974; T.D. 7432, 41 FR 38769, Sept. 13, 1976; T.D. 8395, 57 FR 4254, Feb. 4, 1992]

§ 20.2031–3 Valuation of interests in businesses.

The fair market value of any interest of a decedent in a business, whether a partnership or a proprietorship, is the net amount which a willing purchaser whether an individual or a corporation, would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. The net value is determined on the basis of all relevant factors including—

(a) A fair appraisal as of the applicable valuation date of all the assets of the business, tangible and intangible, including good will;

(b) The demonstrated earning capacity of the business; and

(c) The other factors set forth in paragraphs (f) and (h) of § 20.2031–2 relating to the valuation of corporate stock, to the extent applicable.

Special attention should be given to determining an adequate value of the good will of the business in all cases in which the decedent has not agreed, for

an adequate and full consideration in money or money's worth, that his interest passes at his death to, for example, his surviving partner or partners. Complete financial and other data upon which the valuation is based should be submitted with the return, including copies of reports of examinations of the business made by accountants, engineers, or any technical experts as of or near the applicable valuation date. See section 2701 and the regulations at § 25.2701 of this chapter for special rules for valuing the transfer of an interest in a partnership and for the treatment of unpaid qualified payments at the death of the transferor or an applicable family member. See section 2703 and the regulations at § 25.2703 of this chapter for special rules involving options and agreements (including contracts to purchase) entered into (or substantially modified after) October 8, 1990. See section 2704(b) and the regulations at § 25.2704–2 of this chapter for special valuation rules involving certain restrictions on liquidation rights created after October 8, 1990.

[T.D. 8395, 57 FR 4254, Feb. 4, 1992]

§ 20.2031–4 Valuation of notes.

The fair market value of notes, secured or unsecured, is presumed to be the amount of unpaid principal, plus interest accrued to the date of death, unless the executor establishes that the value is lower or that the notes are worthless. However, items of interest shall be separately stated on the estate tax return. If not returned at face value, plus accrued interest, satisfactory evidence must be submitted that the note is worth less than the unpaid amount (because of the interest rate, date of maturity, or other cause), or that the note is uncollectible, either in whole or in part (by reason of the insolvency of the party or parties liable, or for other cause), and that any property pledged or mortgaged as security is insufficient to satisfy the obligation.

§ 20.2031–5 Valuation of cash on hand or on deposit.

The amount of cash belonging to the decedent at the date of his death, whether in his possession or in the possession of another, or deposited with a bank, is included in the decedent's gross estate. If bank checks outstanding at the time of the decedent's death and given in discharge of bona fide legal obligations of the decedent incurred for an adequate and full consideration in money or money's worth are subsequently honored by the bank and charged to the decedent's account, the balance remaining in the account may be returned, but only if the obligations are not claimed as deductions from the gross estate.

§ 20.2031–6 Valuation of household and personal effects.

(a) *General rule.* The fair market value of the decedent's household and personal effects is the price which a willing buyer would pay to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. A room by room itemization of household and personal effects is desirable. All the articles should be named specifically, except that a number of articles contained in the same room, none of which has a value in excess of $100, may be grouped. A separate value should be given for each article named. In lieu of an itemized list, the executor may furnish a written statement, containing a declaration that it is made under penalties of perjury, setting forth the aggregate value as appraised by a competent appraiser or appraisers of recognized standing and ability, or by a dealer or dealers in the class of personalty involved.

(b) *Special rule in cases involving a substantial amount of valuable articles.* Notwithstanding the provisions of paragraph (a) of this section, if there are included among the household and personal effects articles having marked artistic or intrinsic value of a total value in excess of $3,000 (e.g., jewelry, furs, silverware, paintings, etchings, engravings, antiques, books, statuary, vases, oriental rugs, coin or stamp collections), the appraisal of an expert or experts, under oath, shall be filed with the return. The appraisal shall be accompanied by a written statement of the executor containing a declaration that it is made under the penalties of perjury as to the completeness of the itemized list of such property and as to the disinterested character and the

qualifications of the appraiser or appraisers.

(c) *Disposition of household effects prior to investigation.* If it is desired to effect distribution or sale of any portion of the household or personal effects of the decedent in advance of an investigation by an officer of the Internal Revenue Service, information to that effect shall be given to the district director. The statement to the district director shall be accompanied by an appraisal of such property, under oath, and by a written statement of the executor, containing a declaration that it is made under the penalties of perjury, regarding the completeness of the list of such property and the qualifications of the appraiser, as heretofore described. If a personal inspection by an officer of the Internal Revenue Service is not deemed necessary, the executor will be so advised. This procedure is designed to facilitate disposition of such property and to obviate future expense and inconvenience to the estate by affording the district director an opportunity to make an investigation should one be deemed necessary prior to sale or distribution.

(d) *Additional rules if an appraisal involved.* If, pursuant to paragraphs (a), (b), and (c) of this section, expert appraisers are employed, care should be taken to see that they are reputable and of recognized competency to appraise the particular class of property involved. In the appraisal, books in sets by standard authors should be listed in separate groups. In listing paintings having artistic value, the size, subject, and artist's name should be stated. In the case of oriental rugs, the size, make, and general condition should be given. Sets of silverware should be listed in separate groups. Groups or individuals pieces of silverware should be weighed and the weights given in troy ounces. In arriving at the value of silverware, the appraisers should take into consideration its antiquity, utility, desirability, condition, and obsolescence.

§ 20.2031–7 Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is after April 30, 1989.

(a) *In general.* Except as otherwise provided in paragraph (b) of this section and § 20.7520–3(b) (pertaining to certain limitations on the use of prescribed tables), the fair market value of annuities, life estates, terms of years, remainders, and reversionary interests for estates of decedents is the present value of such interests, determined under paragraph (d) of this section. The regulations in this and in related sections provide tables with standard actuarial factors and examples that illustrate how to use the tables to compute the present value of ordinary annuity, life, and remainder interests in property. These sections also refer to standard and special actuarial factors that may be necessary to compute the present value of similar interests in more unusual fact situations.

(b) *Commercial annuities and insurance contracts.* The value of annuities issued by companies regularly engaged in their sale, and of insurance policies on the lives of persons other than the decedent, is determined under § 20.2031–8. See § 20.2042–1 with respect to insurance policies on the decedent's life.

(c) *Actuarial valuations before May 1, 1989.* The present value of annuities, life estates, terms of years, remainders, and reversions for estates of decedents for which the valuation date of the gross estate is before May 1, 1989, is determined under the following sections:

Valuation date		Applicable section
After	Before	
	01–01–52	20.2031–7A(a)
12–31–51	01–01–71	20.2031–7A(b)
12–31–70	12–01–83	20.2031–7A(c)
11–30–83	05–01–89	20.2031–7A(d)

(d) *Actuarial valuations after April 30, 1989*—(1) *In general.* Except as otherwise provided in paragraph (b) of this section and § 20.7520–3(b) (pertaining to

certain limitations on the use of prescribed tables), if the valuation date for the gross estate of the decedent is after April 30, 1989, the fair market value of annuities, life estates, terms of years, remainders, and reversionary interests is their present value determined by use of standard or special section 7520 actuarial factors. These factors are derived by using the appropriate section 7520 interest rate and, if applicable, the mortality component for the valuation date of the interest that is being valued. See §§ 20.7520–1 through 20.7520–4.

(2) *Specific Interests*—(i) *Charitable Remainder Trusts.* The fair market value of a remainder interest in a pooled income fund, as defined in § 1.642(c)–5 of this chapter, is its value determined under § 1.642(c)–6(e) of this chapter. The fair market value of a remainder interest in a charitable remainder annuity trust, as defined in § 1.664–2(a) of this chapter, is its present value determined under § 1.664–2(c) of this chapter. The fair market value of a remainder interest in a charitable remainder unitrust, as defined in § 1.664–3 of this chapter, is its present value determined under § 1.664–4(e) of this chapter. The fair market value of a life interest or term of years in a charitable remainder unitrust is the fair market value of the property as of the date of valuation less the fair market value of the remainder interest on that date determined under § 1.664–4(e) of this chapter.

(ii) *Ordinary remainder and reversionary interests.* If the interest to be valued is to take effect after a definite number of years or after the death of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate remainder interest actuarial factor (that corresponds to the applicable section 7520 interest rate and remainder interest period) in Table B (for a term certain) or Table S (for one measuring life), as the case may be. Tables B and S are included in paragraph (d)(6) of this section and in Internal Revenue Service Publication 1457. For information about obtaining actuarial factors for other types of remainder interests, see paragraph (d)(4) of this section.

(iii) *Ordinary term-of-years and life interests.* If the interest to be valued is the right of a person to receive the income of certain property, or to use certain nonincome-producing property, for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate term-of-years or life interest actuarial factor (that corresponds to the applicable section 7520 interest rate and term-of-years or life interest period). Internal Revenue Service Publication 1457 includes actuarial factors for an interest for a term of years in Table B and for the life of one individual in Table S. However, term-of-years and life interest actuarial factors are not included in Table B or Table S in § 20.2031–7(d)(6) of this chapter. If Internal Revenue Service Publication 1457 (or any other reliable source of term-of-years and life interest actuarial factors) is not conveniently available, an actuarial factor for the interest may be derived mathematically. This actuarial factor may be derived by subtracting the correlative remainder factor (that corresponds to the applicable section 7520 interest rate and the term of years or the life) in Table B (for a term of years) or in Table S (for the life of one individual) in § 20.2031–7(d)(6), as the case may be, from 1.000000. For information about obtaining actuarial factors for other types of term-of-years and life interests, see paragraph (d)(4) of this section.

(iv) *Annuities.* (A) If the interest to be valued is the right of a person to receive an annuity that is payable at the end of each year for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the aggregate amount payable annually by the appropriate annuity actuarial factor (that corresponds to the applicable section 7520 interest rate and annuity period). Internal Revenue Publication 1457 includes actuarial factors in Table B (for an annuity payable for a term of years) and in Table S (for an annuity payable for the life of one individual). However, annuity actuarial factors are not included in Table B or Table S in paragraph (d)(6) of this section. If Internal Revenue Service Publication 1457 (or

any other reliable source of annuity actuarial factors) is not conveniently available, a required annuity factor for a term of years or for one life may be mathematically derived. This annuity factor may be derived by subtracting the applicable remainder factor (that corresponds to the applicable section 7520 interest rate and annuity period) in Table B (in the case of a term-of-years annuity) or in Table S (in the case of a one-life annuity) in paragraph (d)(6) of this section, as the case may be, from 1.000000 and then dividing the result by the applicable section 7520 interest rate expressed as a decimal number.

(B) If the annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods, the product obtained by multiplying the annuity factor by the aggregate amount payable annually is then multiplied by the applicable adjustment factor set forth in Table K for payments made at the end of the specified periods. The provisions of this paragraph (d)(2)(iv)(B) are illustrated by the following example:

Example. At the time of the decedent's death in January 1990, the annuitant, age 72, is entitled to receive an annuity of $15,000 a year for life payable in equal monthly installments at the end of each period. The section 7520 rate for January 1990 is 9.6 percent. Under Table S, the remainder factor at 9.6 percent for an individual aged 72 is .40138. By converting the remainder factor to an annuity factor, as described above, the annuity factor at 9.6 percent for an individual aged 72 is 6.2356 (1.00000 minus .40138, divided by .096). Under Table K, the adjustment factor under the column for payments made at the end of each monthly period at the rate of 9.6 percent is 1.0433. The aggregate annual amount, $15,000, is multiplied by the factor 6.2356 and the product multiplied by 1.0433. The present value of the annuity at the date of the decedent's death is, therefore, $97,584.02 ($15,000×6.2356×1.0433).

(C) If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for a term of years, the value of the annuity is computed by multiplying the aggregate amount payable annually by the annuity factor described in paragraph (d)(2)(iv)(A) of this section; and the product so obtained is then multiplied by the adjustment factor in Table J at the appropriate interest rate component for payments made at the beginning of specified periods. If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for one or more lives, the value of the annuity is the sum of the first payment plus the present value of a similar annuity, the first payment of which is not to be made until the end of the payment period, determined as provided in this paragraph (d)(2)(iv).

(v) *Annuity and unitrust interests for a term of years or until the prior death of an individual.* See § 25.2512–5(d)(2)(v) of this chapter for examples explaining how to compute the present value of an annuity or unitrust interest that is payable until the earlier of the lapse of a specific number of years or the death of an individual.

(3) *Transitional rule.* (i) If the valuation date is after April 30, 1989, and before June 10, 1994, a taxpayer can rely on Notice 89–24, 1989–1 C.B. 660, or Notice 89–60, 1989–1 C.B. 700 (See § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) If a decedent dies after April 30, 1989, and if on May 1, 1989, the decedent was mentally incompetent so that the disposition of the decedent's property could not be changed, and the decedent dies without having regained competency to dispose of the decedent's property or dies within 90 days of the date on which the decedent first regains competency, the fair market value of annuities, life estates, terms for years, remainders, and reversions included in the gross estate of the decedent is their present value determined either under this section or under the corresponding section applicable at the time the decedent became mentally incompetent, at the option of the decedent's executor. For example, see § 20.2031–7A(d).

(4) *Publications and actuarial computations by the Internal Revenue Service.* Many standard actuarial factors not included in paragraph (d)(6) of this section are included in Internal Revenue Service Publication 1457, ''Actuarial Values, Alpha Volume,'' (8–89). Publication 1457 also includes examples that illustrate how to compute many special factors for more unusual situations. A copy of this publication may be purchased from the Superintendent of Documents, United States Government

Printing Office, Washington, DC 20402. If a special factor is required in the case of an actual decedent, the Service may furnish the factor to the executor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts including a statement of the date of birth for each measuring life, the date of the decedent's death, any other applicable dates, and a copy of the will, trust, or other relevant documents. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see §§ 601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee.

(5) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. Remainder payable at an individual's death. The decedent, or the decedent's estate, was entitled to receive certain property worth $50,000 upon the death of the decedent's elder sister, to whom the income was bequeathed for life. The decedent died in February 1990. At the time of the decedent's death, the elder sister was 47 years 5 months old. In February 1990, the section 7520 rate was 9.8 percent. Under Table S in paragraph (d)(6) of this section, the remainder factor at 9.8 percent for determining the present value of the remainder interest due at the death of a person aged 47, the number of years nearest the elder sister's actual age at the decedent's death, is .11352. The present value of the remainder interest at the date of the decedent's death is, therefore, $5,676.00 ($50,000×.11352).

Example 2. Income payable for an individual's life. A's parent bequeathed an income interest in property to A for life, with the remainder interest passing to B at A's death. At the time of the parent's death in October 1989, the value of the property was $50,000 and A was 30 years 10 months old. The section 7520 rate in October 1989 was 10.2 percent. Under Table S in paragraph (d)(6) of this section, the remainder factor at 10.2 percent for determining the present value of the remainder interest due at the death of a person aged 31, the number of years closest to A's age at the decedent's death, is .03753. Converting this remainder factor to an income factor, as described in paragraph (d)(2)(iii) of this section, the factor for determining the present value of an income interest for the life of a person aged 31 is .96247. The present value of A's interest at the time of the parent's death is, therefore, $48,123.50 ($50,000×.96247).

Example 3. Annuity payable for an individual's life. A purchased an annuity for the benefit of both A and B. Under the terms of the annuity contract, at A's death, a survivor annuity of $10,000 a year payable in equal semiannual installments made at the end of each interval is payable to B for life. A died in September 1989. For September 1989, the section 7520 rate was 9.6 percent. At A's death, B was 45 years 7 months old. Under Table S in paragraph (d)(6) of this section, the factor at 9.6 percent for determining the present value of the remainder interest at the death of a person age 46 (the number of years nearest B's actual age) is .11013. By converting the factor to an annuity factor, as described in paragraph (d)(2)(iv) of this section, the factor for the present value of an annuity payable until the death of a person age 46 is 9.2695 (1.00000 minus .11013, divided by .096). The adjustment factor from Table K in paragraph (d)(6) of this section at an interest rate of 9.6 percent for semiannual annuity payments made at the end of the period is 1.0235. The present value of the annuity at the date of A's death is, therefore, $94,873.33 ($10,000×9.2695×1.0235).

Example 4. Annuity payable for a term of years. The decedent, or the decedent's estate, was entitled to receive an annuity of $10,000 a year payable in equal quarterly installments at the end of each quarter throughout a term certain. The decedent died in February 1990. For February 1990, the section 7520 rate was 9.8 percent. A quarterly payment had just been made prior to the decedent's death and payments were to continue for 5 more years. Under Table B in paragraph (d)(6) of this section for the interest rate of 9.8 percent, the factor for the present value of a remainder interest due after a term of 5 years is .626597. Converting the factor to an annuity factor, as described in paragraph (d)(2)(iv) of this section, the factor for the present value of an annuity for a term of 5 years is 3.8102. The adjustment factor from Table K in paragraph (d)(6) of this section at an interest rate of 9.8 percent for quarterly annuity payments made at the end of the period is 1.0360. The present value of the annuity is, therefore, $39,473.67 ($10,000×3.8102×1.0360).

(6) *Actuarial Tables.* Except as provided in § 20.7520–3(b) (pertaining to certain limitations on the use of prescribed tables), the following tables must be used in the application of the provisions of this section when the section 7520 interest rate component is between 4.2 and 14 percent.

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989

Years	Interest rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
1	.959693	.957854	.956023	.954198	.952381	.950570	.948767	.946970	.945180	.943396
2	.921010	.917485	.913980	.910495	.907029	.903584	.900158	.896752	.893364	.889996
3	.883887	.878817	.873786	.868793	.863838	.858920	.854040	.849197	.844390	.839619
4	.848260	.841779	.835359	.829001	.822702	.816464	.810285	.804163	.798100	.792094
5	.814069	.806302	.798623	.791031	.783526	.776106	.768771	.761518	.754348	.747258
6	.781257	.772320	.763501	.754801	.746215	.737744	.729384	.721135	.712994	.704961
7	.749766	.739770	.729925	.720230	.710681	.701277	.692015	.682893	.673908	.665057
8	.719545	.708592	.697825	.687242	.676839	.666613	.656561	.646679	.636964	.627412
9	.690543	.678728	.667137	.655765	.644609	.633663	.622923	.612385	.602045	.591898
10	.662709	.650122	.637798	.625730	.613913	.602341	.591009	.579910	.569041	.558395
11	.635997	.622722	.609750	.597071	.584679	.572568	.560729	.549157	.537846	.526788
12	.610362	.596477	.582935	.569724	.556837	.544266	.532001	.520035	.508361	.496969
13	.585760	.571339	.557299	.543630	.530321	.517363	.504745	.492458	.480492	.468839
14	.562150	.547259	.532790	.518731	.505068	.491790	.478885	.466343	.454151	.442301
15	.539491	.524195	.509360	.494972	.481017	.467481	.454350	.441612	.429255	.417265
16	.517746	.502102	.486960	.472302	.458112	.444374	.431072	.418194	.405723	.393646
17	.496877	.480941	.465545	.450670	.436297	.422408	.408987	.396017	.383481	.371364
18	.476849	.460671	.445071	.430028	.415521	.401529	.388033	.375016	.362458	.350344
19	.457629	.441256	.425498	.410332	.395734	.381681	.368153	.355129	.342588	.330513
20	.439183	.422659	.406786	.391538	.376889	.362815	.349291	.336296	.323807	.311805
21	.421481	.404846	.388897	.373605	.358942	.344881	.331396	.318462	.306056	.294155
22	.404492	.387783	.371794	.356494	.341850	.327834	.314417	.301574	.289278	.277505
23	.388188	.371440	.355444	.340166	.325571	.311629	.298309	.285581	.273420	.261797
24	.372542	.355785	.339813	.324586	.310068	.296225	.283025	.270437	.258431	.246979
25	.357526	.340791	.324869	.309719	.295303	.281583	.268525	.256096	.244263	.232999
26	.343115	.326428	.310582	.295533	.281241	.267664	.254768	.242515	.230873	.219810
27	.329285	.312670	.296923	.281998	.267848	.254434	.241715	.229654	.218216	.207368
28	.316012	.299493	.283866	.269082	.255094	.241857	.229331	.217475	.206253	.195630
29	.303275	.286870	.271382	.256757	.242946	.229902	.217582	.205943	.194947	.184557
30	.291051	.274780	.259447	.244997	.231377	.218538	.206434	.195021	.184260	.174110
31	.279319	.263199	.248038	.233776	.220359	.207736	.195858	.184679	.174158	.164255
32	.268061	.252106	.237130	.223069	.209866	.197468	.185823	.174886	.164611	.154957
33	.257256	.241481	.226702	.212852	.199873	.187707	.176303	.165612	.155587	.146186
34	.246887	.231304	.216732	.203103	.190355	.178429	.167270	.156829	.147058	.137912
35	.236935	.221556	.207201	.193801	.181290	.169609	.158701	.148512	.138996	.130105
36	.227385	.212218	.198089	.184924	.172657	.161225	.150570	.140637	.131376	.122741
37	.218220	.203274	.189377	.176454	.164436	.153256	.142856	.133179	.124174	.115793
38	.209424	.194707	.181049	.168373	.156605	.145681	.135537	.126116	.117367	.109239
39	.200983	.186501	.173087	.160661	.149148	.138480	.128593	.119428	.110933	.103056
40	.192882	.178641	.165475	.153302	.142046	.131635	.122004	.113095	.104851	.097222
41	.185107	.171112	.158198	.146281	.135282	.125128	.115754	.107098	.099103	.091719
42	.177646	.163900	.151241	.139581	.128840	.118943	.109823	.101418	.093670	.086527
43	.170486	.156992	.144590	.133188	.122704	.113064	.104197	.096040	.088535	.081630
44	.163614	.150376	.138231	.127088	.116861	.107475	.098858	.090947	.083682	.077009
45	.157019	.144038	.132152	.121267	.111297	.102163	.093793	.086124	.079094	.072650
46	.150690	.137968	.126340	.115713	.105997	.097113	.088988	.081557	.074758	.068538
47	.144616	.132153	.120784	.110413	.100949	.092312	.084429	.077232	.070660	.064658
48	.138787	.126583	.115473	.105356	.096142	.087749	.080103	.073136	.066786	.060998
49	.133193	.121248	.110395	.100530	.091564	.083412	.075999	.069258	.063125	.057546
50	.127824	.116138	.105540	.095926	.087204	.079289	.072106	.065585	.059665	.054288
51	.122672	.111243	.100898	.091532	.083051	.075370	.068411	.062107	.056394	.051215
52	.117728	.106555	.096461	.087340	.079096	.071644	.064907	.058813	.053302	.048316
53	.112982	.102064	.092219	.083340	.075330	.068103	.061581	.055695	.050380	.045582
54	.108428	.097763	.088164	.079523	.071743	.064737	.058426	.052741	.047618	.043001
55	.104058	.093642	.084286	.075880	.068326	.061537	.055433	.049944	.045008	.040567
56	.099864	.089696	.080580	.072405	.065073	.058495	.052593	.047296	.042541	.038271
57	.095839	.085916	.077036	.069089	.061974	.055604	.049898	.044787	.040208	.036105
58	.091976	.082295	.073648	.065924	.059023	.052855	.047342	.042412	.038004	.034061
59	.088268	.078826	.070409	.062905	.056212	.050243	.044916	.040163	.035921	.032133
60	.084710	.075504	.067313	.060024	.053536	.047759	.042615	.038033	.033952	.030314

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989

Years	Interest rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
1	.941620	.939850	.938086	.936330	.934579	.932836	.931099	.929368	.927644	.925926
2	.886647	.883317	.880006	.876713	.873439	.870183	.866945	.863725	.860523	.857339
3	.834885	.830185	.825521	.820892	.816298	.811738	.807211	.802718	.798259	.793832

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989—Continued

Years	Interest rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
4	.786144	.780249	.774410	.768626	.762895	.757218	.751593	.746021	.740500	.735030
5	.740248	.733317	.726464	.719687	.712986	.706360	.699808	.693328	.686920	.680583
6	.697032	.689208	.681486	.673864	.666342	.658918	.651590	.644357	.637217	.630170
7	.656339	.647752	.639292	.630959	.622750	.614662	.606694	.598845	.591111	.583490
8	.618022	.608789	.599711	.590786	.582009	.573379	.564892	.556547	.548340	.540269
9	.581942	.572170	.562581	.553170	.543934	.534868	.525971	.517237	.508664	.500249
10	.547968	.537754	.527750	.517950	.508349	.498944	.489731	.480704	.471859	.463193
11	.515977	.505408	.495075	.484972	.475093	.465433	.455987	.446750	.437717	.428883
12	.485854	.475007	.464423	.454093	.444012	.434173	.424569	.415196	.406046	.397114
13	.457490	.446436	.435669	.425181	.414964	.405012	.395316	.385870	.376666	.367698
14	.430781	.419582	.408695	.398109	.387817	.377810	.368078	.358615	.349412	.340461
15	.405632	.394344	.383391	.372762	.362446	.352434	.342717	.333285	.324130	.315242
16	.381951	.370624	.359654	.349028	.338735	.328763	.319103	.309745	.300677	.291890
17	.359653	.348331	.337386	.326805	.316574	.306682	.297117	.287867	.278921	.270269
18	.338656	.327379	.316498	.305997	.295864	.286084	.276645	.267534	.258739	.250249
19	.318885	.307687	.296902	.286514	.276508	.266870	.257584	.248638	.240018	.231712
20	.300268	.289179	.278520	.268272	.258419	.248946	.239836	.231076	.222651	.214548
21	.282739	.271785	.261276	.251191	.241513	.232225	.223311	.214755	.206541	.198656
22	.266232	.255437	.245099	.235197	.225713	.216628	.207925	.199586	.191596	.183941
23	.250689	.240073	.229924	.220222	.210947	.202078	.193598	.185489	.177733	.170315
24	.236054	.225632	.215689	.206201	.197147	.188506	.180259	.172387	.164873	.157699
25	.222273	.212060	.202334	.193072	.184249	.175845	.167839	.160211	.152943	.146018
26	.209297	.199305	.189807	.180779	.172195	.164035	.156275	.148895	.141877	.135202
27	.197078	.187317	.178056	.169269	.160930	.153017	.145507	.138379	.131611	.125187
28	.185572	.176049	.167031	.158491	.150402	.142740	.135482	.128605	.122088	.115914
29	.174739	.165460	.156690	.148400	.140563	.133153	.126147	.119521	.113255	.107328
30	.164537	.155507	.146989	.138951	.131367	.124210	.117455	.111079	.105060	.099377
31	.154932	.146154	.137888	.130104	.122773	.115868	.109362	.103233	.097458	.092016
32	.145887	.137362	.129351	.121820	.114741	.108085	.101827	.095942	.090406	.085200
33	.137370	.129100	.121342	.114064	.107235	.100826	.094811	.089165	.083865	.078889
34	.129350	.121335	.113830	.106802	.100219	.094054	.088278	.082867	.077797	.073045
35	.121798	.114036	.106782	.100001	.093663	.087737	.082196	.077014	.072168	.067635
36	.114688	.107177	.100171	.093634	.087535	.081844	.076532	.071574	.066946	.062625
37	.107992	.100730	.093969	.087673	.081809	.076347	.071259	.066519	.062102	.057986
38	.101688	.094671	.088151	.082090	.076457	.071219	.066349	.061821	.057609	.053690
39	.095751	.088977	.082693	.076864	.071455	.066436	.061778	.057454	.053440	.049713
40	.090161	.083625	.077573	.071970	.066780	.061974	.057521	.053396	.049573	.046031
41	.084897	.078595	.072770	.067387	.062412	.057811	.053558	.049625	.045987	.042621
42	.079941	.073867	.068265	.063097	.058329	.053929	.049868	.046120	.042659	.039464
43	.075274	.069424	.064038	.059079	.054513	.050307	.046432	.042862	.039572	.036541
44	.070880	.065248	.060074	.055318	.050946	.046928	.043233	.039835	.036709	.033834
45	.066742	.061323	.056354	.051796	.047613	.043776	.040254	.037021	.034053	.031328
46	.062845	.057635	.052865	.048498	.044499	.040836	.037480	.034406	.031589	.029007
47	.059176	.054168	.049592	.045410	.041587	.038093	.034898	.031976	.029303	.026859
48	.055722	.050910	.046522	.042519	.038867	.035535	.032493	.029717	.027183	.024869
49	.052469	.047848	.043641	.039812	.036324	.033148	.030255	.027618	.025216	.023027
50	.049405	.044970	.040939	.037277	.033948	.030922	.028170	.025668	.023392	.021321
51	.046521	.042265	.038405	.034903	.031727	.028845	.026229	.023855	.021699	.019742
52	.043805	.039722	.036027	.032681	.029651	.026907	.024422	.022170	.020129	.018280
53	.041248	.037333	.033796	.030600	.027711	.025100	.022739	.020604	.018673	.016925
54	.038840	.035087	.031704	.028652	.025899	.023414	.021172	.019149	.017322	.015672
55	.036572	.032977	.029741	.026828	.024204	.021842	.019714	.017796	.016068	.014511
56	.034437	.030993	.027900	.025119	.022621	.020375	.018355	.016539	.014906	.013436
57	.032427	.029129	.026172	.023520	.021141	.019006	.017091	.015371	.013827	.012441
58	.030534	.027377	.024552	.022023	.019758	.017730	.015913	.014285	.012827	.011519
59	.028751	.025730	.023032	.020620	.018465	.016539	.014817	.013276	.011899	.010666
60	.027073	.024183	.021606	.019307	.017257	.015428	.013796	.012339	.011038	.009876

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989

Years	Interest rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
1	.924214	.922509	.920810	.919118	.917431	.915751	.914077	.912409	.910747	.909091
2	.854172	.851023	.847892	.844777	.841680	.838600	.835536	.832490	.829460	.826446
3	.789438	.785077	.780747	.776450	.772183	.767948	.763744	.759571	.755428	.751315
4	.729610	.724241	.718920	.713649	.708425	.703250	.698121	.693039	.688003	.683013
5	.674316	.668119	.661989	.655927	.649931	.644001	.638136	.632335	.626597	.620921
6	.623213	.616346	.609566	.602874	.596267	.589745	.583305	.576948	.570671	.564474

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989—Continued

Years	Interest rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
7	.575982	.568585	.561295	.554112	.547034	.540059	.533186	.526412	.519737	.513158
8	.532331	.524524	.516846	.509294	.501866	.494560	.487373	.480303	.473349	.466507
9	.491988	.483879	.475917	.468101	.460428	.452894	.445496	.438233	.431101	.424098
10	.454703	.446383	.438230	.430240	.422411	.414738	.407218	.399848	.392624	.385543
11	.420243	.411792	.403526	.395441	.387533	.379797	.372228	.364824	.357581	.350494
12	.388394	.379882	.371571	.363457	.355535	.347799	.340245	.332869	.325666	.318631
13	.358960	.350445	.342147	.334060	.326179	.318497	.311010	.303713	.296599	.289664
14	.331756	.323288	.315052	.307040	.299246	.291664	.284287	.277110	.270127	.263331
15	.306613	.298236	.290103	.282206	.274538	.267092	.259860	.252838	.246017	.239392
16	.283376	.275126	.267130	.259381	.251870	.244589	.237532	.230691	.224059	.217629
17	.261901	.253806	.245976	.238401	.231073	.223983	.217123	.210485	.204061	.197845
18	.242052	.234139	.226497	.219119	.211994	.205113	.198467	.192048	.185848	.179859
19	.223708	.215995	.208561	.201396	.194490	.187832	.181414	.175226	.169260	.163508
20	.206754	.199257	.192045	.185107	.178431	.172007	.165826	.159878	.154153	.148644
21	.191085	.183817	.176837	.170135	.163698	.157516	.151578	.145874	.140395	.135131
22	.176604	.169573	.162834	.156374	.150182	.144245	.138554	.133097	.127864	.122846
23	.163220	.156432	.149939	.143726	.137781	.132093	.126649	.121439	.116452	.111678
24	.150850	.144310	.138065	.132101	.126405	.120964	.115767	.110802	.106058	.101526
25	.139418	.133128	.127132	.121416	.115968	.110773	.105820	.101097	.096592	.092296
26	.128852	.122811	.117064	.111596	.106393	.101441	.096727	.092241	.087971	.083905
27	.119087	.113295	.107794	.102570	.097608	.092894	.088416	.084162	.080119	.076278
28	.110062	.104515	.099258	.094274	.089548	.085068	.080819	.076790	.072968	.069343
29	.101721	.096416	.091398	.086649	.082155	.077901	.073875	.070064	.066456	.063039
30	.094012	.088945	.084160	.079640	.075371	.071338	.067527	.063927	.060524	.057309
31	.086887	.082053	.077495	.073199	.069148	.065328	.061725	.058327	.055122	.052099
32	.080302	.075694	.071358	.067278	.063438	.059824	.056422	.053218	.050202	.047362
33	.074216	.069829	.065708	.061837	.058200	.054784	.051574	.048557	.045722	.043057
34	.068592	.064418	.060504	.056835	.053395	.050168	.047142	.044304	.041641	.039143
35	.063394	.059426	.055713	.052238	.048986	.045942	.043092	.040423	.037924	.035584
36	.058589	.054821	.051301	.048013	.044941	.042071	.039389	.036882	.034539	.032349
37	.054149	.050573	.047239	.044130	.041231	.038527	.036005	.033652	.031457	.029408
38	.050045	.046654	.043498	.040560	.037826	.035281	.032911	.030704	.028649	.026735
39	.046253	.043039	.040053	.037280	.034703	.032309	.030083	.028015	.026092	.024304
40	.042747	.039703	.036881	.034264	.031838	.029587	.027498	.025561	.023763	.022095
41	.039508	.036627	.033961	.031493	.029209	.027094	.025136	.023322	.021642	.020086
42	.036514	.033789	.031271	.028946	.026797	.024811	.022976	.021279	.019711	.018260
43	.033746	.031170	.028795	.026605	.024584	.022721	.021002	.019415	.017951	.016600
44	.031189	.028755	.026515	.024453	.022555	.020807	.019197	.017715	.016349	.015091
45	.028825	.026527	.024415	.022475	.020692	.019054	.017548	.016163	.014890	.013719
46	.026641	.024471	.022482	.020657	.018984	.017449	.016040	.014747	.013561	.012472
47	.024622	.022575	.020701	.018986	.017416	.015978	.014662	.013456	.012351	.011338
48	.022756	.020825	.019062	.017451	.015978	.014632	.013402	.012277	.011248	.010307
49	.021031	.019212	.017552	.016039	.014659	.013400	.012250	.011202	.010244	.009370
50	.019437	.017723	.016163	.014742	.013449	.012271	.011198	.010221	.009330	.008519
51	.017964	.016350	.014883	.013550	.012338	.011237	.010236	.009325	.008497	.007744
52	.016603	.015083	.013704	.012454	.011319	.010290	.009356	.008508	.007739	.007040
53	.015345	.013914	.012619	.011446	.010385	.009423	.008552	.007763	.007048	.006400
54	.014182	.012836	.011620	.010521	.009527	.008629	.007817	.007083	.006419	.005818
55	.013107	.011841	.010699	.009670	.008741	.007902	.007146	.006463	.005846	.005289
56	.012114	.010923	.009852	.008888	.008019	.007237	.006532	.005897	.005324	.004809
57	.011196	.010077	.009072	.008169	.007357	.006627	.005971	.005380	.004849	.004371
58	.010347	.009296	.008354	.007508	.006749	.006069	.005458	.004909	.004416	.003974
59	.009563	.008576	.007692	.006901	.006192	.005557	.004989	.004479	.004022	.003613
60	.008838	.007911	.007083	.006343	.005681	.005089	.004560	.004087	.003663	.003284

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989

Years	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
1	.907441	.905797	.904159	.902527	.900901	.899281	.897666	.896057	.894454	.892857
2	.823449	.820468	.817504	.814555	.811622	.808706	.805804	.802919	.800049	.797194
3	.747232	.743178	.739153	.735158	.731191	.727253	.723343	.719461	.715607	.711780
4	.678069	.673168	.668312	.663500	.658731	.654005	.649321	.644679	.640078	.635518
5	.615307	.609754	.604261	.598827	.593451	.588134	.582873	.577669	.572520	.567427
6	.558355	.552313	.546348	.540457	.534641	.528897	.523225	.517625	.512093	.506631
7	.506674	.500284	.493985	.487777	.481658	.475627	.469682	.463821	.458044	.452349
8	.459777	.453156	.446641	.440232	.433926	.427722	.421617	.415610	.409700	.403883
9	.417221	.410467	.403835	.397322	.390925	.384642	.378472	.372411	.366458	.360610

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989—Continued

Years	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
10	.378603	.371800	.365131	.358593	.352184	.345901	.339741	.333701	.327780	.321973
11	.343560	.336775	.330137	.323640	.317283	.311062	.304974	.299016	.293184	.287476
12	.311760	.305050	.298496	.292094	.285841	.279732	.273765	.267935	.262240	.256675
13	.282904	.276313	.269888	.263623	.257514	.251558	.245749	.240085	.234561	.229174
14	.256719	.250284	.244022	.237927	.231995	.226221	.220601	.215130	.209804	.204620
15	.232957	.226706	.220634	.214735	.209004	.203436	.198026	.192769	.187661	.182696
16	.211395	.205350	.199489	.193804	.188292	.182946	.177761	.172732	.167854	.163122
17	.191828	.186005	.180369	.174914	.169633	.164520	.159570	.154778	.150138	.145644
18	.174073	.168483	.163083	.157864	.152822	.147950	.143241	.138690	.134291	.130040
19	.157961	.152612	.147453	.142477	.137678	.133048	.128582	.124274	.120117	.116107
20	.143340	.138235	.133321	.128589	.124034	.119648	.115424	.111357	.107439	.103667
21	.130073	.125213	.120543	.116055	.111742	.107597	.103612	.099782	.096100	.092560
22	.118033	.113418	.108990	.104743	.100669	.096760	.093009	.089410	.085957	.082643
23	.107108	.102733	.098544	.094533	.090693	.087014	.083491	.080117	.076884	.073788
24	.097195	.093056	.089100	.085319	.081705	.078250	.074947	.071789	.068770	.065882
25	.088198	.084289	.080560	.077003	.073608	.070369	.067278	.064327	.061511	.058823
26	.080035	.076349	.072839	.069497	.066314	.063281	.060393	.057641	.055019	.052521
27	.072627	.069157	.065858	.062723	.059742	.056908	.054213	.051650	.049212	.046894
28	.065905	.062642	.059547	.056609	.053822	.051176	.048665	.046281	.044018	.041869
29	.059804	.056741	.053840	.051091	.048488	.046022	.043685	.041470	.039372	.037383
30	.054269	.051396	.048680	.046111	.043683	.041386	.039214	.037160	.035216	.033378
31	.049246	.046554	.044014	.041617	.039354	.037218	.035201	.033297	.031500	.029802
32	.044688	.042169	.039796	.037560	.035454	.033469	.031599	.029836	.028175	.026609
33	.040552	.038196	.035982	.033899	.031940	.030098	.028365	.026735	.025201	.023758
34	.036798	.034598	.032533	.030595	.028775	.027067	.025463	.023956	.022541	.021212
35	.033392	.031339	.029415	.027613	.025924	.024341	.022857	.021466	.020162	.018940
36	.030301	.028387	.026596	.024921	.023355	.021889	.020518	.019235	.018034	.016910
37	.027497	.025712	.024047	.022492	.021040	.019684	.018418	.017236	.016131	.015098
38	.024952	.023290	.021742	.020300	.018955	.017702	.016533	.015444	.014428	.013481
39	.022642	.021096	.019658	.018321	.017077	.015919	.014841	.013839	.012905	.012036
40	.020546	.019109	.017774	.016535	.015384	.014316	.013323	.012400	.011543	.010747
41	.018645	.017309	.016071	.014923	.013860	.012874	.011959	.011111	.010325	.009595
42	.016919	.015678	.014531	.013469	.012486	.011577	.010735	.009956	.009235	.008567
43	.015353	.014201	.013138	.012156	.011249	.010411	.009637	.008922	.008260	.007649
44	.013932	.012864	.011879	.010971	.010134	.009362	.008651	.007994	.007389	.006830
45	.012642	.011652	.010740	.009902	.009130	.008419	.007765	.007163	.006609	.006098
46	.011472	.010554	.009711	.008937	.008225	.007571	.006971	.006419	.005911	.005445
47	.010410	.009560	.008780	.008065	.007410	.006809	.006257	.005752	.005287	.004861
48	.009447	.008659	.007939	.007279	.006676	.006123	.005617	.005154	.004729	.004340
49	.008572	.007844	.007178	.006570	.006014	.005506	.005042	.004618	.004230	.003875
50	.007779	.007105	.006490	.005929	.005418	.004952	.004526	.004138	.003784	.003460
51	.007059	.006435	.005868	.005351	.004881	.004453	.004063	.003708	.003384	.003089
52	.006406	.005829	.005306	.004830	.004397	.004005	.003647	.003322	.003027	.002758
53	.005813	.005280	.004797	.004359	.003962	.003601	.003274	.002977	.002708	.002463
54	.005275	.004783	.004337	.003934	.003569	.003238	.002939	.002668	.002422	.002199
55	.004786	.004332	.003922	.003551	.003215	.002912	.002638	.002390	.002166	.001963
56	.004343	.003924	.003546	.003205	.002897	.002619	.002368	.002142	.001938	.001753
57	.003941	.003554	.003206	.002892	.002610	.002355	.002126	.001919	.001733	.001565
58	.003577	.003220	.002899	.002610	.002351	.002118	.001908	.001720	.001550	.001398
59	.003246	.002916	.002621	.002356	.002118	.001905	.001713	.001541	.001387	.001248
60	.002945	.002642	.002370	.002126	.001908	.001713	.001538	.001381	.001240	.001114

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989

Years	Interest rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
1	.891266	.889680	.888099	.886525	.884956	.883392	.881834	.880282	.878735	.877193
2	.794354	.791530	.788721	.785926	.783147	.780382	.777632	.774896	.772175	.769468
3	.707981	.704208	.700462	.696743	.693050	.689383	.685742	.682127	.678536	.674972
4	.630999	.626520	.622080	.617680	.613319	.608996	.604711	.600464	.596254	.592080
5	.562388	.557402	.552469	.547589	.542760	.537982	.533255	.528577	.523949	.519369
6	.501237	.495909	.490648	.485451	.480319	.475249	.470242	.465297	.460412	.455587
7	.446735	.441200	.435744	.430364	.425061	.419831	.414676	.409592	.404580	.399637
8	.398160	.392527	.386984	.381529	.376160	.370876	.365675	.360557	.355518	.350559
9	.354866	.349223	.343680	.338235	.332885	.327629	.322465	.317391	.312406	.307508
10	.316280	.310697	.305222	.299853	.294588	.289425	.284361	.279394	.274522	.269744
11	.281889	.276421	.271068	.265827	.260698	.255676	.250759	.245945	.241232	.236617
12	.251238	.245926	.240735	.235663	.230706	.225862	.221128	.216501	.211979	.207559

TABLE B.—TERM CERTAIN REMAINDER FACTORS APPLICABLE AFTER APRIL 30, 1989—Continued

Years	Interest rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
13	.223920	.218795	.213797	.208921	.204165	.199525	.194998	.190582	.186273	.182069
14	.199572	.194658	.189873	.185213	.180677	.176258	.171956	.167766	.163685	.159710
15	.177872	.173183	.168626	.164196	.159891	.155705	.151637	.147681	.143835	.140096
16	.158531	.154077	.149757	.145564	.141496	.137549	.133718	.130001	.126393	.122892
17	.141293	.137080	.132999	.129046	.125218	.121510	.117917	.114438	.111066	.107800
18	.125930	.121957	.118116	.114403	.110812	.107341	.103984	.100737	.097598	.094561
19	.112237	.108503	.104899	.101421	.098064	.094824	.091696	.088677	.085762	.082948
20	.100033	.096533	.093161	.089912	.086782	.083767	.080861	.078061	.075362	.072762
21	.089156	.085883	.082736	.079709	.076798	.073999	.071306	.068716	.066224	.063826
22	.079462	.076408	.073478	.070664	.067963	.065370	.062880	.060489	.058193	.055988
23	.070821	.067979	.065255	.062646	.060144	.057747	.055450	.053247	.051136	.049112
24	.063121	.060480	.057953	.055537	.053225	.051014	.048898	.046873	.044935	.043081
25	.056257	.053807	.051468	.049235	.047102	.045065	.043119	.041261	.039486	.037790
26	.050140	.047871	.045709	.043648	.041683	.039810	.038024	.036321	.034698	.033149
27	.044688	.042590	.040594	.038695	.036888	.035168	.033531	.031973	.030490	.029078
28	.039829	.037892	.036052	.034304	.032644	.031067	.029569	.028145	.026793	.025507
29	.035498	.033711	.032017	.030411	.028889	.027444	.026075	.024776	.023544	.022375
30	.031638	.029992	.028435	.026960	.025565	.024244	.022994	.021810	.020689	.019627
31	.028198	.026684	.025253	.023901	.022624	.021417	.020277	.019199	.018180	.017217
32	.025132	.023740	.022427	.021189	.020021	.018920	.017881	.016900	.015975	.015102
33	.022399	.021121	.019917	.018785	.017718	.016714	.015768	.014877	.014038	.013248
34	.019964	.018791	.017689	.016653	.015680	.014765	.013905	.013096	.012336	.011621
35	.017793	.016718	.015709	.014763	.013876	.013043	.012261	.011528	.010840	.010194
36	.015858	.014873	.013951	.013088	.012279	.011522	.010813	.010148	.009525	.008942
37	.014134	.013233	.012390	.011603	.010867	.010178	.009535	.008933	.008370	.007844
38	.012597	.011773	.011004	.010286	.009617	.008992	.008408	.007864	.007355	.006880
39	.011227	.010474	.009772	.009119	.008510	.007943	.007415	.006922	.006463	.006035
40	.010007	.009319	.008679	.008084	.007531	.007017	.006538	.006093	.005679	.005294
41	.008919	.008291	.007708	.007167	.006665	.006199	.005766	.005364	.004991	.004644
42	.007949	.007376	.006845	.006354	.005898	.005476	.005085	.004722	.004386	.004074
43	.007084	.006562	.006079	.005633	.005219	.004837	.004484	.004157	.003854	.003573
44	.006314	.005838	.005399	.004993	.004619	.004273	.003954	.003659	.003386	.003135
45	.005628	.005194	.004795	.004427	.004088	.003775	.003487	.003221	.002976	.002750
46	.005016	.004621	.004258	.003924	.003617	.003335	.003075	.002835	.002615	.002412
47	.004470	.004111	.003782	.003479	.003201	.002946	.002711	.002496	.002298	.002116
48	.003984	.003658	.003359	.003084	.002833	.002602	.002391	.002197	.002019	.001856
49	.003551	.003254	.002983	.002734	.002507	.002299	.002108	.001934	.001774	.001628
50	.003165	.002895	.002649	.002424	.002219	.002031	.001859	.001702	.001559	.001428
51	.002821	.002576	.002353	.002149	.001963	.001794	.001640	.001499	.001370	.001253
52	.002514	.002292	.002089	.001905	.001737	.001585	.001446	.001319	.001204	.001099
53	.002241	.002039	.001856	.001689	.001538	.001400	.001275	.001161	.001058	.000964
54	.001997	.001814	.001648	.001497	.001361	.001237	.001124	.001022	.000930	.000846
55	.001780	.001614	.001463	.001327	.001204	.001093	.000991	.000900	.000817	.000742
56	.001586	.001436	.001300	.001177	.001066	.000965	.000874	.000792	.000718	.000651
57	.001414	.001277	.001154	.001043	.000943	.000853	.000771	.000697	.000631	.000571
58	.001260	.001136	.001025	.000925	.000835	.000753	.000680	.000614	.000554	.000501
59	.001123	.001011	.000910	.000820	.000739	.000665	.000600	.000540	.000487	.000439
60	.001001	.000900	.000809	.000727	.000654	.000588	.000529	.000476	.000428	.000385

TABLE J.—ADJUSTMENT FACTORS FOR TERM CERTAIN ANNUITIES PAYABLE AT THE BEGINNING OF EACH INTERVAL APPLICABLE AFTER APRIL 30, 1989

[Frequency of payments]

Interest rate	Annually	Semi annually	Quarterly	Monthly	Weekly
4.2	1.0420	1.0314	1.0261	1.0226	1.0213
4.4	1.0440	1.0329	1.0274	1.0237	1.0223
4.6	1.0460	1.0344	1.0286	1.0247	1.0233
4.8	1.0480	1.0359	1.0298	1.0258	1.0243
5.0	1.0500	1.0373	1.0311	1.0269	1.0253
5.2	1.0520	1.0388	1.0323	1.0279	1.0263
5.4	1.0540	1.0403	1.0335	1.0290	1.0273
5.6	1.0560	1.0418	1.0348	1.0301	1.0283
5.8	1.0580	1.0433	1.0360	1.0311	1.0293
6.0	1.0600	1.0448	1.0372	1.0322	1.0303
6.2	1.0620	1.0463	1.0385	1.0333	1.0313
6.4	1.0640	1.0478	1.0397	1.0343	1.0323
6.6	1.0660	1.0492	1.0409	1.0354	1.0333

TABLE J.—ADJUSTMENT FACTORS FOR TERM CERTAIN ANNUITIES PAYABLE AT THE BEGINNING OF EACH INTERVAL APPLICABLE AFTER APRIL 30, 1989—Continued

[Frequency of payments]

Interest rate	Annually	Semi annually	Quarterly	Monthly	Weekly
6.8	1.0680	1.0507	1.0422	1.0365	1.0343
7.0	1.0700	1.0522	1.0434	1.0375	1.0353
7.2	1.0720	1.0537	1.0446	1.0386	1.0363
7.4	1.0740	1.0552	1.0458	1.0396	1.0373
7.6	1.0760	1.0567	1.0471	1.0407	1.0383
7.8	1.0780	1.0581	1.0483	1.0418	1.0393
8.0	1.0800	1.0596	1.0495	1.0428	1.0403
8.2	1.0820	1.0611	1.0507	1.0439	1.0413
8.4	1.0840	1.0626	1.0520	1.0449	1.0422
8.6	1.0860	1.0641	1.0532	1.0460	1.0432
8.8	1.0880	1.0655	1.0544	1.0471	1.0442
9.0	1.0900	1.0670	1.0556	1.0481	1.0452
9.2	1.0920	1.0685	1.0569	1.0492	1.0462
9.4	1.0940	1.0700	1.0581	1.0502	1.0472
9.6	1.0960	1.0715	1.0593	1.0513	1.0482
9.8	1.0980	1.0729	1.0605	1.0523	1.0492
10.0	1.1000	1.0744	1.0618	1.0534	1.0502
10.2	1.1020	1.0759	1.0630	1.0544	1.0512
10.4	1.1040	1.0774	1.0642	1.0555	1.0521
10.6	1.1060	1.0788	1.0654	1.0565	1.0531
10.8	1.1080	1.0803	1.0666	1.0576	1.0541
11.0	1.1100	1.0818	1.0679	1.0586	1.0551
11.2	1.1120	1.0833	1.0691	1.0597	1.0561
11.4	1.1140	1.0847	1.0703	1.0607	1.0571
11.6	1.1160	1.0862	1.0715	1.0618	1.0581
11.8	1.1180	1.0877	1.0727	1.0628	1.0590
12.0	1.1200	1.0892	1.0739	1.0639	1.0600
12.2	1.1220	1.0906	1.0752	1.0649	1.0610
12.4	1.1240	1.0921	1.0764	1.0660	1.0620
12.6	1.1260	1.0936	1.0776	1.0670	1.0630
12.8	1.1280	1.0950	1.0788	1.0681	1.0639
13.0	1.1300	1.0965	1.0800	1.0691	1.0649
13.2	1.1320	1.0980	1.0812	1.0701	1.0659
13.4	1.1340	1.0994	1.0824	1.0712	1.0669
13.6	1.1360	1.1009	1.0836	1.0722	1.0679
13.8	1.1380	1.1024	1.0849	1.0733	1.0688
14.0	1.1400	1.1039	1.0861	1.0743	1.0698

TABLE K.—ADJUSTMENT FACTORS FOR ANNUITIES PAYABLE AT THE END OF EACH INTERVAL APPLICABLE AFTER APRIL 30, 1989

[Frequency of Payments]

Interest Rate	Annually	Semi annually	Quarterly	Monthly	Weekly
4.2	1.0000	1.0104	1.0156	1.0191	1.0205
4.4	1.0000	1.0109	1.0164	1.0200	1.0214
4.6	1.0000	1.0114	1.0171	1.0209	1.0224
4.8	1.0000	1.0119	1.0178	1.0218	1.0234
5.0	1.0000	1.0123	1.0186	1.0227	1.0243
5.2	1.0000	1.0128	1.0193	1.0236	1.0253
5.4	1.0000	1.0133	1.0200	1.0245	1.0262
5.6	1.0000	1.0138	1.0208	1.0254	1.0272
5.8	1.0000	1.0143	1.0215	1.0263	1.0282
6.0	1.0000	1.0148	1.0222	1.0272	1.0291
6.2	1.0000	1.0153	1.0230	1.0281	1.0301
6.4	1.0000	1.0158	1.0237	1.0290	1.0311
6.6	1.0000	1.0162	1.0244	1.0299	1.0320
6.8	1.0000	1.0167	1.0252	1.0308	1.0330
7.0	1.0000	1.0172	1.0259	1.0317	1.0339
7.2	1.0000	1.0177	1.0266	1.0326	1.0349
7.4	1.0000	1.0182	1.0273	1.0335	1.0358
7.6	1.0000	1.0187	1.0281	1.0344	1.0368
7.8	1.0000	1.0191	1.0288	1.0353	1.0378
8.0	1.0000	1.0196	1.0295	1.0362	1.0387
8.2	1.0000	1.0201	1.0302	1.0370	1.0397
8.4	1.0000	1.0206	1.0310	1.0379	1.0406

TABLE K.—ADJUSTMENT FACTORS FOR ANNUITIES PAYABLE AT THE END OF EACH INTERVAL APPLICABLE AFTER APRIL 30, 1989—Continued

[Frequency of Payments]

Interest Rate	Annually	Semi annually	Quarterly	Monthly	Weekly
8.6	1.0000	1.0211	1.0317	1.0388	1.0416
8.8	1.0000	1.0215	1.0324	1.0397	1.0425
9.0	1.0000	1.0220	1.0331	1.0406	1.0435
9.2	1.0000	1.0225	1.0339	1.0415	1.0444
9.4	1.0000	1.0230	1.0346	1.0424	1.0454
9.6	1.0000	1.0235	1.0353	1.0433	1.0463
9.8	1.0000	1.0239	1.0360	1.0442	1.0473
10.0	1.0000	1.0244	1.0368	1.0450	1.0482
10.2	1.0000	1.0249	1.0375	1.0459	1.0492
10.4	1.0000	1.0254	1.0382	1.0468	1.0501
10.6	1.0000	1.0258	1.0389	1.0477	1.0511
10.8	1.0000	1.0263	1.0396	1.0486	1.0520
11.0	1.0000	1.0268	1.0404	1.0495	1.0530
11.2	1.0000	1.0273	1.0411	1.0503	1.0539
11.4	1.0000	1.0277	1.0418	1.0512	1.0549
11.6	1.0000	1.0282	1.0425	1.0521	1.0558
11.8	1.0000	1.0287	1.0432	1.0530	1.0568
12.0	1.0000	1.0292	1.0439	1.0539	1.0577
12.2	1.0000	1.0296	1.0447	1.0548	1.0587
12.4	1.0000	1.0301	1.0454	1.0556	1.0596
12.6	1.0000	1.0306	1.0461	1.0565	1.0605
12.8	1.0000	1.0310	1.0468	1.0574	1.0615
13.0	1.0000	1.0315	1.0475	1.0583	1.0624
13.2	1.0000	1.0320	1.0482	1.0591	1.0634
13.4	1.0000	1.0324	1.0489	1.0600	1.0643
13.6	1.0000	1.0329	1.0496	1.0609	1.0652
13.8	1.0000	1.0334	1.0504	1.0618	1.0662
14.0	1.0000	1.0339	1.0511	1.0626	1.0671

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
0	.07389	.06749	.06188	.05695	.05261	.04879	.04541	.04243	.03978	.03744
1	.06494	.05832	.05250	.04738	.04287	.03889	.03537	.03226	.02950	.02705
2	.06678	.05999	.05401	.04874	.04410	.03999	.03636	.03314	.03028	.02773
3	.06897	.06200	.05587	.05045	.04567	.04143	.03768	.03435	.03139	.02875
4	.07139	.06425	.05796	.05239	.04746	.04310	.03922	.03578	.03271	.02998
5	.07401	.06669	.06023	.05451	.04944	.04494	.04094	.03738	.03421	.03137
6	.07677	.06928	.06265	.05677	.05156	.04692	.04279	.03911	.03583	.03289
7	.07968	.07201	.06521	.05918	.05381	.04903	.04477	.04097	.03757	.03453
8	.08274	.07489	.06792	.06172	.05621	.05129	.04689	.04297	.03945	.03630
9	.08597	.07794	.07079	.06443	.05876	.05370	.04917	.04511	.04148	.03821
10	.08936	.08115	.07383	.06730	.06147	.05626	.05159	.04741	.04365	.04027
11	.09293	.08453	.07704	.07035	.06436	.05900	.05419	.04988	.04599	.04250
12	.09666	.08807	.08040	.07354	.06739	.06188	.05693	.05248	.04847	.04486
13	.10049	.09172	.08387	.07684	.07053	.06487	.05977	.05518	.05104	.04731
14	.10437	.09541	.08738	.08017	.07370	.06788	.06263	.05791	.05364	.04978
15	.10827	.09912	.09090	.08352	.07688	.07090	.06551	.06064	.05623	.05225
16	.11220	.10285	.09445	.08689	.08008	.07394	.06839	.06337	.05883	.05472
17	.11615	.10661	.09802	.09028	.08330	.07699	.07129	.06612	.06144	.05719
18	.12017	.11043	.10165	.09373	.08656	.08009	.07422	.06890	.06408	.05969
19	.12428	.11434	.10537	.09726	.08992	.08327	.07724	.07177	.06679	.06226
20	.12850	.11836	.10919	.10089	.09337	.08654	.08035	.07471	.06959	.06492
21	.13282	.12248	.11311	.10462	.09692	.08991	.08355	.07775	.07247	.06765
22	.13728	.12673	.11717	.10848	.10059	.09341	.08686	.08090	.07546	.07049
23	.14188	.13113	.12136	.11248	.10440	.09703	.09032	.08418	.07858	.07345
24	.14667	.13572	.12575	.11667	.10839	.10084	.09395	.08764	.08187	.07659
25	.15167	.14051	.13034	.12106	.11259	.10486	.09778	.09130	.08536	.07991
26	.15690	.14554	.13517	.12569	.11703	.10910	.10184	.09518	.08907	.08346
27	.16237	.15081	.14024	.13056	.12171	.11359	.10614	.09930	.09302	.08724
28	.16808	.15632	.14555	.13567	.12662	.11831	.11068	.10366	.09720	.09125
29	.17404	.16208	.15110	.14104	.13179	.12329	.11547	.10827	.10163	.09551
30	.18025	.16808	.15692	.14665	.13721	.12852	.12051	.11313	.10631	.10002
31	.18672	.17436	.16300	.15255	.14291	.13403	.12584	.11827	.11127	.10480

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
32	.19344	.18090	.16935	.15870	.14888	.13980	.13142	.12367	.11650	.10985
33	.20044	.18772	.17598	.16514	.15513	.14587	.13730	.12936	.12201	.11519
34	.20770	.19480	.18287	.17185	.16165	.15221	.14345	.13533	.12780	.12080
35	.21522	.20215	.19005	.17884	.16846	.15883	.14989	.14159	.13388	.12670
36	.22299	.20974	.19747	.18609	.17552	.16571	.15660	.14812	.14022	.13287
37	.23101	.21760	.20516	.19360	.18286	.17288	.16358	.15492	.14685	.13933
38	.23928	.22572	.21311	.20139	.19048	.18032	.17085	.16201	.15377	.14607
39	.24780	.23409	.22133	.20945	.19837	.18804	.17840	.16939	.16097	.15310
40	.25658	.24273	.22982	.21778	.20654	.19605	.18624	.17706	.16847	.16043
41	.26560	.25163	.23858	.22639	.21499	.20434	.19436	.18502	.17627	.16806
42	.27486	.26076	.24758	.23525	.22370	.21289	.20276	.19326	.18434	.17597
43	.28435	.27013	.25683	.24436	.23268	.22172	.21143	.20177	.19270	.18416
44	.29407	.27975	.26633	.25373	.24191	.23081	.22038	.21057	.20134	.19265
45	.30402	.28961	.27608	.26337	.25142	.24019	.22962	.21966	.21028	.20144
46	.31420	.29970	.28608	.27326	.26120	.24983	.23913	.22904	.21951	.21053
47	.32460	.31004	.29632	.28341	.27123	.25975	.24892	.23870	.22904	.21991
48	.33521	.32058	.30679	.29379	.28151	.26992	.25897	.24862	.23883	.22957
49	.34599	.33132	.31746	.30438	.29201	.28032	.26926	.25879	.24888	.23949
50	.35695	.34224	.32833	.31518	.30273	.29094	.27978	.26921	.25918	.24966
51	.36809	.35335	.33940	.32619	.31367	.30180	.29055	.27987	.26973	.26010
52	.37944	.36468	.35070	.33744	.32486	.31292	.30158	.29081	.28057	.27083
53	.39098	.37622	.36222	.34892	.33629	.32429	.31288	.30203	.29170	.28186
54	.40269	.38794	.37393	.36062	.34795	.33590	.32442	.31349	.30308	.29316
55	.41457	.39985	.38585	.37252	.35983	.34774	.33621	.32522	.31474	.30473
56	.42662	.41194	.39796	.38464	.37193	.35981	.34824	.33720	.32666	.31658
57	.43884	.42422	.41028	.39697	.38426	.37213	.36053	.34945	.33885	.32872
58	.45123	.43668	.42279	.40951	.39682	.38468	.37307	.36196	.35132	.34114
59	.46377	.44931	.43547	.42224	.40958	.39745	.38584	.37471	.36405	.35383
60	.47643	.46206	.44830	.43513	.42250	.41040	.39880	.38767	.37699	.36674
61	.48916	.47491	.46124	.44814	.43556	.42350	.41192	.40080	.39012	.37985
62	.50196	.48783	.47427	.46124	.44874	.43672	.42518	.41408	.40340	.39314
63	.51480	.50081	.48736	.47444	.46201	.45006	.43856	.42749	.41684	.40658
64	.52770	.51386	.50054	.48773	.47540	.46352	.45208	.44105	.43043	.42019
65	.54069	.52701	.51384	.50115	.48892	.47713	.46577	.45480	.44422	.43401
66	.55378	.54029	.52727	.51472	.50262	.49093	.47965	.46876	.45824	.44808
67	.56697	.55368	.54084	.52845	.51648	.50491	.49373	.48293	.47248	.46238
68	.58026	.56717	.55453	.54231	.53049	.51905	.50800	.49729	.48694	.47691
69	.59358	.58072	.56828	.55624	.54459	.53330	.52238	.51179	.50154	.49160
70	.60689	.59427	.58205	.57021	.55874	.54762	.53683	.52638	.51624	.50641
71	.62014	.60778	.59578	.58415	.57287	.56193	.55131	.54100	.53099	.52126
72	.63334	.62123	.60948	.59808	.58700	.57624	.56579	.55563	.54577	.53617
73	.64648	.63465	.62315	.61198	.60112	.59056	.58029	.57030	.56059	.55113
74	.65961	.64806	.63682	.62590	.61527	.60492	.59485	.58504	.57550	.56620
75	.67274	.66149	.65054	.63987	.62948	.61936	.60950	.59990	.59053	.58140
76	.68589	.67495	.66429	.65390	.64377	.63390	.62427	.61487	.60570	.59676
77	.69903	.68841	.67806	.66796	.65811	.64849	.63910	.62993	.62097	.61223
78	.71209	.70182	.69179	.68199	.67242	.66307	.65393	.64501	.63628	.62775
79	.72500	.71507	.70537	.69588	.68660	.67754	.66867	.65999	.65151	.64321
80	.73768	.72809	.71872	.70955	.70058	.69180	.68320	.67479	.66655	.65849
81	.75001	.74077	.73173	.72288	.71422	.70573	.69741	.68926	.68128	.67345
82	.76195	.75306	.74435	.73582	.72746	.71926	.71123	.70335	.69562	.68804
83	.77346	.76491	.75654	.74832	.74026	.73236	.72460	.71699	.70952	.70219
84	.78456	.77636	.76831	.76041	.75265	.74503	.73756	.73021	.72300	.71592
85	.79530	.78743	.77971	.77212	.76466	.75733	.75014	.74306	.73611	.72928
86	.80560	.79806	.79065	.78337	.77621	.76917	.76225	.75544	.74875	.74216
87	.81535	.80813	.80103	.79404	.78717	.78041	.77375	.76720	.76076	.75442
88	.82462	.81771	.81090	.80420	.79760	.79111	.78472	.77842	.77223	.76612
89	.83356	.82694	.82043	.81401	.80769	.80147	.79533	.78929	.78334	.77747
90	.84225	.83593	.82971	.82357	.81753	.81157	.80570	.79991	.79420	.78857
91	.85058	.84455	.83861	.83276	.82698	.82129	.81567	.81013	.80466	.79927
92	.85838	.85263	.84696	.84137	.83585	.83040	.82503	.81973	.81449	.80933
93	.86557	.86009	.85467	.84932	.84405	.83884	.83370	.82862	.82360	.81865
94	.87212	.86687	.86169	.85657	.85152	.84653	.84160	.83673	.83192	.82717
95	.87801	.87298	.86801	.86310	.85825	.85345	.84872	.84404	.83941	.83484
96	.88322	.87838	.87360	.86888	.86420	.85959	.85502	.85051	.84605	.84165
97	.88795	.88328	.87867	.87411	.86961	.86515	.86074	.85639	.85208	.84782
98	.89220	.88769	.88323	.87883	.87447	.87016	.86589	.86167	.85750	.85337
99	.89612	.89176	.88745	.88318	.87895	.87478	.87064	.86656	.86251	.85850
100	.89977	.89555	.89136	.88722	.88313	.87908	.87506	.87109	.86716	.86327

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	4.2%	4.4%	4.6%	4.8%	5.0%	5.2%	5.4%	5.6%	5.8%	6.0%
101	.90326	.89917	.89511	.89110	.88712	.88318	.87929	.87543	.87161	.86783
102	.90690	.90294	.89901	.89513	.89128	.88746	.88369	.87995	.87624	.87257
103	.91076	.90694	.90315	.89940	.89569	.89200	.88835	.88474	.88116	.87760
104	.91504	.91138	.90775	.90415	.90058	.89704	.89354	.89006	.88661	.88319
105	.92027	.91681	.91337	.90996	.90658	.90322	.89989	.89659	.89331	.89006
106	.92763	.92445	.92130	.91816	.91506	.91197	.90890	.90586	.90284	.89983
107	.93799	.93523	.93249	.92977	.92707	.92438	.92170	.91905	.91641	.91378
108	.95429	.95223	.95018	.94814	.94611	.94409	.94208	.94008	.93809	.93611
109	.97985	.97893	.97801	.97710	.97619	.97529	.97438	.97348	.97259	.97170

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
0	.03535	.03349	.03183	.03035	.02902	.02783	.02676	.02579	.02492	.02413
1	.02486	.02292	.02119	.01963	.01824	.01699	.01587	.01486	.01395	.01312
2	.02547	.02345	.02164	.02002	.01857	.01727	.01609	.01504	.01408	.01321
3	.02640	.02429	.02241	.02073	.01921	.01785	.01662	.01552	.01451	.01361
4	.02753	.02535	.02339	.02163	.02005	.01863	.01735	.01619	.01514	.01418
5	.02883	.02656	.02453	.02269	.02105	.01956	.01822	.01700	.01590	.01490
6	.03026	.02790	.02578	.02387	.02215	.02060	.01919	.01792	.01677	.01572
7	.03180	.02935	.02714	.02515	.02336	.02174	.02027	.01894	.01773	.01664
8	.03347	.03092	.02863	.02656	.02469	.02300	.02146	.02007	.01881	.01766
9	.03528	.03263	.03025	.02810	.02615	.02438	.02278	.02133	.02000	.01880
10	.03723	.03449	.03201	.02977	.02774	.02590	.02423	.02271	.02133	.02006
11	.03935	.03650	.03393	.03160	.02949	.02757	.02583	.02424	.02279	.02147
12	.04160	.03865	.03598	.03356	.03136	.02936	.02755	.02589	.02438	.02299
13	.04394	.04088	.03811	.03560	.03331	.03123	.02934	.02761	.02603	.02458
14	.04629	.04312	.04025	.03764	.03527	.03311	.03113	.02933	.02768	.02617
15	.04864	.04536	.04238	.03968	.03721	.03496	.03290	.03103	.02930	.02773
16	.05099	.04759	.04451	.04170	.03913	.03679	.03466	.03270	.03090	.02926
17	.05333	.04982	.04662	.04370	.04104	.03861	.03638	.03434	.03247	.03075
18	.05570	.05207	.04875	.04573	.04296	.04044	.03812	.03599	.03404	.03225
19	.05814	.05438	.05095	.04781	.04494	.04231	.03990	.03769	.03565	.03378
20	.06065	.05677	.05321	.04996	.04698	.04424	.04173	.03943	.03731	.03535
21	.06325	.05922	.05554	.05217	.04907	.04623	.04362	.04122	.03901	.03697
22	.06594	.06178	.05797	.05447	.05126	.04831	.04559	.04309	.04078	.03865
23	.06876	.06446	.06051	.05688	.05355	.05048	.04766	.04505	.04265	.04042
24	.07174	.06729	.06321	.05945	.05599	.05281	.04987	.04715	.04465	.04233
25	.07491	.07031	.06609	.06219	.05861	.05530	.05224	.04941	.04680	.04438
26	.07830	.07355	.06918	.06515	.06142	.05799	.05481	.05187	.04915	.04662
27	.08192	.07702	.07250	.06832	.06446	.06090	.05759	.05454	.05170	.04906
28	.08577	.08071	.07603	.07171	.06772	.06402	.06059	.05740	.05445	.05170
29	.08986	.08464	.07981	.07534	.07120	.06736	.06380	.06049	.05742	.05456
30	.09420	.08882	.08383	.07921	.07492	.07095	.06725	.06381	.06061	.05763
31	.09881	.09327	.08812	.08335	.07891	.07479	.07095	.06738	.06405	.06095
32	.10369	.09797	.09267	.08774	.08315	.07888	.07491	.07120	.06774	.06451
33	.10885	.10297	.09750	.09241	.08767	.08325	.07913	.07529	.07170	.06834
34	.11430	.10824	.10261	.09736	.09246	.08790	.08363	.07964	.07592	.07243
35	.12002	.11380	.10800	.10259	.09754	.09282	.08841	.08428	.08041	.07679
36	.12602	.11963	.11366	.10809	.10288	.09800	.09344	.08917	.08516	.08140
37	.13230	.12574	.11961	.11387	.10850	.10347	.09876	.09433	.09018	.08628
38	.13887	.13214	.12584	.11994	.11441	.10922	.10436	.09978	.09549	.09145
39	.14573	.13883	.13237	.12630	.12061	.11527	.11025	.10553	.10109	.09690
40	.15290	.14583	.13920	.13297	.12712	.12162	.11644	.11157	.10698	.10266
41	.16036	.15312	.14633	.13994	.13393	.12827	.12294	.11792	.11318	.10871
42	.16810	.16071	.15375	.14720	.14103	.13522	.12973	.12456	.11967	.11505
43	.17614	.16858	.16146	.15475	.14842	.14245	.13682	.13149	.12645	.12169
44	.18447	.17675	.16948	.16261	.15613	.15000	.14421	.13873	.13355	.12864
45	.19310	.18524	.17780	.17078	.16414	.15787	.15192	.14630	.14096	.13591
46	.20204	.19402	.18644	.17926	.17247	.16604	.15995	.15418	.14870	.14350
47	.21128	.20311	.19538	.18806	.18112	.17454	.16830	.16238	.15676	.15141
48	.22080	.21249	.20462	.19716	.19007	.18335	.17696	.17090	.16513	.15964
49	.23059	.22214	.21413	.20653	.19930	.19244	.18591	.17970	.17379	.16816
50	.24063	.23206	.22391	.21617	.20881	.20180	.19514	.18879	.18274	.17697

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	6.2%	6.4%	6.6%	6.8%	7.0%	7.2%	7.4%	7.6%	7.8%	8.0%
51	.25095	.24225	.23398	.22610	.21861	.21147	.20466	.19818	.19199	.18609
52	.26157	.25275	.24436	.23636	.22874	.22147	.21453	.20791	.20159	.19556
53	.27249	.26357	.25505	.24694	.23919	.23180	.22474	.21799	.21154	.20537
54	.28369	.27466	.26604	.25782	.24995	.24244	.23526	.22839	.22181	.21552
55	.29518	.28605	.27734	.26900	.26103	.25341	.24611	.23912	.23243	.22601
56	.30695	.29774	.28893	.28050	.27242	.26469	.25728	.25019	.24338	.23685
57	.31902	.30973	.30084	.29232	.28415	.27632	.26881	.26161	.25469	.24805
58	.33138	.32203	.31306	.30446	.29621	.28829	.28069	.27339	.26637	.25962
59	.34402	.33461	.32558	.31691	.30859	.30059	.29290	.28550	.27839	.27155
60	.35690	.34745	.33836	.32963	.32124	.31317	.30540	.29792	.29073	.28379
61	.36999	.36050	.35137	.34259	.33414	.32601	.31817	.31062	.30334	.29633
62	.38325	.37374	.36458	.35576	.34726	.33907	.33117	.32356	.31621	.30912
63	.39669	.38717	.37799	.36913	.36060	.35236	.34441	.33674	.32933	.32217
64	.41031	.40078	.39159	.38272	.37415	.36588	.35789	.35016	.34270	.33548
65	.42416	.41464	.40545	.39656	.38798	.37968	.37166	.36390	.35639	.34912
66	.43825	.42876	.41958	.41070	.40211	.39380	.38576	.37797	.37043	.36312
67	.45260	.44315	.43399	.42513	.41655	.40824	.40019	.39238	.38482	.37749
68	.46720	.45779	.44868	.43985	.43129	.42299	.41494	.40713	.39956	.39221
69	.48197	.47263	.46357	.45478	.44625	.43798	.42995	.42215	.41458	.40722
70	.49686	.48760	.47861	.46988	.46140	.45316	.44516	.43738	.42983	.42248
71	.51182	.50265	.49374	.48508	.47666	.46847	.46051	.45276	.44523	.43790
72	.52685	.51778	.50896	.50038	.49203	.48390	.47599	.46829	.46079	.45349
73	.54194	.53298	.52426	.51578	.50751	.49946	.49161	.48397	.47652	.46926
74	.55714	.54832	.53972	.53134	.52317	.51520	.50744	.49986	.49247	.48527
75	.57250	.56382	.55536	.54710	.53904	.53118	.52351	.51601	.50870	.50156
76	.58803	.57951	.57120	.56308	.55515	.54740	.53984	.53245	.52522	.51817
77	.60369	.59535	.58720	.57923	.57144	.56383	.55639	.54912	.54200	.53504
78	.61942	.61126	.60329	.59549	.58787	.58040	.57310	.56596	.55896	.55212
79	.63508	.62713	.61935	.61174	.60428	.59698	.58983	.58283	.57597	.56925
80	.65059	.64285	.63527	.62785	.62058	.61345	.60646	.59961	.59290	.58632
81	.66579	.65827	.65090	.64368	.63659	.62965	.62283	.61615	.60959	.60316
82	.68061	.67332	.66616	.65914	.65226	.64550	.63886	.63235	.62595	.61968
83	.69499	.68793	.68099	.67418	.66749	.66092	.65447	.64813	.64191	.63579
84	.70896	.70213	.69541	.68881	.68233	.67595	.66969	.66353	.65748	.65153
85	.72256	.71596	.70947	.70308	.69681	.69063	.68456	.67859	.67271	.66693
86	.73569	.72931	.72305	.71688	.71081	.70484	.69896	.69318	.68748	.68188
87	.74818	.74204	.73599	.73003	.72417	.71839	.71271	.70711	.70159	.69616
88	.76011	.75419	.74836	.74261	.73695	.73137	.72588	.72046	.71512	.70986
89	.77169	.76599	.76037	.75484	.74938	.74400	.73870	.73347	.72831	.72323
90	.78302	.77755	.77215	.76683	.76158	.75640	.75129	.74625	.74128	.73638
91	.79395	.78870	.78352	.77842	.77337	.76840	.76349	.75864	.75385	.74913
92	.80423	.79920	.79423	.78933	.78449	.77971	.77499	.77033	.76572	.76118
93	.81377	.80894	.80417	.79946	.79481	.79022	.78568	.78120	.77677	.77239
94	.82247	.81784	.81325	.80873	.80425	.79983	.79547	.79115	.78688	.78266
95	.83033	.82586	.82145	.81709	.81278	.80852	.80431	.80014	.79602	.79195
96	.83729	.83298	.82872	.82451	.82034	.81622	.81215	.80812	.80414	.80019
97	.84361	.83944	.83532	.83124	.82721	.82322	.81927	.81537	.81151	.80769
98	.84929	.84525	.84126	.83730	.83339	.82952	.82569	.82190	.81815	.81443
99	.85454	.85062	.84674	.84290	.83910	.83534	.83161	.82792	.82427	.82066
100	.85942	.85561	.85184	.84810	.84440	.84074	.83711	.83352	.82997	.82644
101	.86408	.86037	.85670	.85306	.84946	.84589	.84236	.83886	.83539	.83196
102	.86894	.86534	.86177	.85823	.85473	.85126	.84782	.84442	.84104	.83770
103	.87408	.87060	.86714	.86371	.86032	.85695	.85362	.85031	.84703	.84378
104	.87980	.87644	.87311	.86980	.86653	.86328	.86005	.85686	.85369	.85054
105	.88684	.88363	.88046	.87731	.87418	.87108	.86800	.86494	.86191	.85890
106	.89685	.89389	.89095	.88804	.88514	.88226	.87940	.87656	.87374	.87094
107	.91117	.90858	.90600	.90344	.90089	.89836	.89584	.89334	.89085	.88838
108	.93414	.93217	.93022	.92828	.92634	.92442	.92250	.92060	.91870	.91681
109	.97081	.96992	.96904	.96816	.96729	.96642	.96555	.96468	.96382	.96296

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
0	.02341	.02276	.02217	.02163	.02114	.02069	.02027	.01989	.01954	.01922

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
1	.01237	.01170	.01108	.01052	.01000	.00953	.00910	.00871	.00834	.00801
2	.01243	.01172	.01107	.01048	.00994	.00944	.00899	.00857	.00819	.00784
3	.01278	.01203	.01135	.01073	.01016	.00964	.00916	.00872	.00832	.00795
4	.01332	.01253	.01182	.01116	.01056	.01001	.00951	.00904	.00862	.00822
5	.01400	.01317	.01241	.01172	.01109	.01051	.00998	.00949	.00904	.00862
6	.01477	.01390	.01310	.01238	.01171	.01110	.01054	.01002	.00954	.00910
7	.01563	.01472	.01389	.01312	.01242	.01178	.01118	.01064	.01013	.00966
8	.01660	.01564	.01477	.01396	.01322	.01254	.01192	.01134	.01081	.01031
9	.01770	.01669	.01577	.01492	.01414	.01342	.01276	.01216	.01159	.01107
10	.01891	.01785	.01688	.01599	.01517	.01442	.01372	.01308	.01249	.01194
11	.02026	.01915	.01814	.01720	.01634	.01555	.01481	.01414	.01351	.01293
12	.02173	.02056	.01950	.01852	.01761	.01678	.01601	.01529	.01463	.01402
13	.02326	.02204	.02092	.01989	.01895	.01807	.01726	.01651	.01582	.01517
14	.02478	.02351	.02234	.02126	.02027	.01935	.01850	.01771	.01698	.01630
15	.02628	.02495	.02372	.02259	.02155	.02058	.01969	.01886	.01810	.01738
16	.02774	.02635	.02507	.02388	.02279	.02178	.02084	.01997	.01917	.01842
17	.02917	.02772	.02637	.02513	.02399	.02293	.02194	.02103	.02018	.01940
18	.03059	.02907	.02767	.02637	.02517	.02406	.02302	.02207	.02118	.02035
19	.03205	.03046	.02899	.02763	.02637	.02521	.02412	.02312	.02218	.02131
20	.03355	.03188	.03035	.02892	.02760	.02638	.02524	.02419	.02320	.02229
21	.03509	.03334	.03173	.03024	.02886	.02758	.02638	.02527	.02424	.02328
22	.03669	.03487	.03318	.03162	.03017	.02882	.02757	.02640	.02532	.02430
23	.03837	.03646	.03470	.03306	.03154	.03013	.02881	.02759	.02644	.02538
24	.04018	.03819	.03634	.03463	.03303	.03155	.03016	.02888	.02767	.02655
25	.04214	.04006	.03812	.03633	.03465	.03309	.03164	.03029	.02902	.02784
26	.04428	.04210	.04008	.03820	.03644	.03481	.03328	.03186	.03052	.02928
27	.04662	.04434	.04223	.04025	.03841	.03670	.03509	.03360	.03219	.03088
28	.04915	.04677	.04456	.04249	.04056	.03876	.03708	.03550	.03403	.03264
29	.05189	.04941	.04709	.04493	.04291	.04102	.03925	.03760	.03604	.03458
30	.05485	.05226	.04984	.04757	.04546	.04348	.04162	.03988	.03825	.03671
31	.05805	.05535	.05282	.05045	.04824	.04616	.04421	.04238	.04067	.03905
32	.06149	.05867	.05603	.05356	.05124	.04906	.04702	.04510	.04329	.04160
33	.06520	.06226	.05950	.05692	.05449	.05221	.05007	.04806	.04616	.04438
34	.06916	.06609	.06322	.06052	.05799	.05560	.05336	.05125	.04926	.04738
35	.07339	.07020	.06720	.06439	.06174	.05925	.05690	.05469	.05260	.05063
36	.07787	.07455	.07143	.06850	.06573	.06313	.06068	.05836	.05617	.05411
37	.08262	.07917	.07593	.07287	.06999	.06727	.06470	.06228	.05999	.05783
38	.08765	.08407	.08069	.07751	.07451	.07167	.06899	.06646	.06407	.06180
39	.09296	.08925	.08574	.08243	.07931	.07635	.07356	.07092	.06841	.06604
40	.09858	.09472	.09109	.08765	.08440	.08132	.07841	.07565	.07303	.07055
41	.10449	.10050	.09673	.09316	.08978	.08658	.08355	.08067	.07794	.07535
42	.11069	.10656	.10265	.09895	.09544	.09212	.08896	.08596	.08312	.08041
43	.11718	.11291	.10887	.10503	.10140	.09794	.09466	.09154	.08858	.08576
44	.12399	.11958	.11540	.11143	.10766	.10407	.10067	.09743	.09434	.09141
45	.13111	.12656	.12224	.11814	.11423	.11052	.10699	.10362	.10042	.09736
46	.13856	.13387	.12941	.12516	.12113	.11728	.11362	.11013	.10680	.10363
47	.14633	.14150	.13690	.13252	.12835	.12438	.12059	.11697	.11352	.11022
48	.15442	.14945	.14471	.14020	.13589	.13179	.12787	.12412	.12055	.11713
49	.16280	.15769	.15281	.14816	.14373	.13949	.13544	.13157	.12787	.12433
50	.17147	.16622	.16121	.15643	.15186	.14749	.14331	.13931	.13548	.13182
51	.18045	.17507	.16993	.16501	.16030	.15580	.15150	.14737	.14342	.13963
52	.18979	.18427	.17899	.17394	.16911	.16448	.16004	.15579	.15172	.14780
53	.19947	.19383	.18842	.18324	.17828	.17352	.16896	.16458	.16038	.15635
54	.20950	.20372	.19819	.19288	.18779	.18291	.17822	.17372	.16940	.16524
55	.21986	.21397	.20831	.20288	.19767	.19266	.18785	.18322	.17878	.17450
56	.23058	.22457	.21879	.21324	.20791	.20278	.19785	.19310	.18854	.18414
57	.24167	.23554	.22965	.22399	.21854	.21329	.20824	.20338	.19870	.19419
58	.25314	.24690	.24090	.23512	.22956	.22420	.21904	.21407	.20927	.20464
59	.26497	.25863	.25252	.24664	.24097	.23550	.23023	.22515	.22024	.21551
60	.27712	.27068	.26448	.25849	.25272	.24716	.24178	.23659	.23158	.22674
61	.28956	.28304	.27674	.27067	.26480	.25913	.25366	.24837	.24325	.23831
62	.30228	.29567	.28929	.28312	.27717	.27141	.26584	.26045	.25524	.25020
63	.31525	.30857	.30211	.29586	.28982	.28397	.27832	.27284	.26754	.26240
64	.32851	.32176	.31522	.30890	.30278	.29685	.29111	.28555	.28016	.27493
65	.34209	.33528	.32868	.32229	.31610	.31010	.30429	.29865	.29317	.28787
66	.35604	.34918	.34253	.33609	.32983	.32377	.31788	.31217	.30663	.30124
67	.37037	.36347	.35678	.35028	.34398	.33786	.33191	.32614	.32053	.31508
68	.38508	.37815	.37142	.36489	.35854	.35237	.34638	.34055	.33488	.32937
69	.40008	.39313	.38638	.37982	.37344	.36724	.36120	.35533	.34961	.34405

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	8.2%	8.4%	8.6%	8.8%	9.0%	9.2%	9.4%	9.6%	9.8%	10.0%
70	.41533	.40838	.40162	.39504	.38864	.38241	.37634	.37043	.36468	.35907
71	.43076	.42382	.41705	.41047	.40405	.39780	.39171	.38578	.38000	.37436
72	.44638	.43945	.43269	.42611	.41969	.41344	.40733	.40138	.39558	.38991
73	.46218	.45527	.44854	.44197	.43556	.42931	.42321	.41725	.41143	.40575
74	.47823	.47137	.46466	.45812	.45173	.44549	.43940	.43345	.42763	.42195
75	.49459	.48777	.48112	.47462	.46826	.46205	.45598	.45004	.44424	.43856
76	.51127	.50452	.49793	.49148	.48517	.47900	.47297	.46706	.46129	.45563
77	.52823	.52157	.51505	.50867	.50243	.49632	.49033	.48447	.47873	.47311
78	.54541	.53885	.53242	.52613	.51996	.51392	.50800	.50220	.49652	.49094
79	.56267	.55621	.54989	.54369	.53762	.53166	.52582	.52009	.51448	.50897
80	.57987	.57354	.56733	.56125	.55527	.54941	.54366	.53802	.53248	.52705
81	.59685	.59065	.58457	.57860	.57274	.56699	.56134	.55579	.55035	.54499
82	.61351	.60746	.60151	.59567	.58993	.58429	.57875	.57331	.56796	.56270
83	.62978	.62387	.61806	.61236	.60675	.60123	.59581	.59047	.58523	.58007
84	.64567	.63992	.63426	.62869	.62321	.61783	.61253	.60731	.60218	.59713
85	.66125	.65565	.65014	.64472	.63938	.63413	.62896	.62387	.61886	.61392
86	.67636	.67092	.66557	.66030	.65511	.65000	.64496	.64000	.63511	.63030
87	.69081	.68554	.68034	.67522	.67018	.66520	.66031	.65548	.65071	.64602
88	.70468	.69957	.69453	.68956	.68466	.67983	.67507	.67037	.66574	.66117
89	.71821	.71326	.70838	.70357	.69882	.69414	.68952	.68495	.68045	.67601
90	.73153	.72676	.72204	.71739	.71280	.70827	.70379	.69938	.69502	.69071
91	.74447	.73986	.73532	.73083	.72640	.72202	.71770	.71343	.70921	.70504
92	.75669	.75225	.74787	.74354	.73927	.73504	.73087	.72674	.72267	.71864
93	.76807	.76379	.75957	.75540	.75127	.74719	.74317	.73918	.73524	.73135
94	.77849	.77437	.77030	.76627	.76229	.75835	.75446	.75061	.74680	.74303
95	.78792	.78394	.78001	.77611	.77226	.76845	.76468	.76096	.75727	.75362
96	.79630	.79244	.78863	.78485	.78112	.77742	.77377	.77015	.76657	.76303
97	.80391	.80016	.79646	.79280	.78917	.78559	.78203	.77852	.77504	.77160
98	.81076	.80712	.80352	.79996	.79643	.79294	.78948	.78606	.78267	.77931
99	.81709	.81354	.81004	.80657	.80313	.79972	.79635	.79302	.78971	.78644
100	.82296	.81950	.81609	.81270	.80934	.80602	.80273	.79947	.79624	.79304
101	.82855	.82518	.82185	.81854	.81526	.81201	.80880	.80561	.80245	.79932
102	.83438	.83110	.82785	.82462	.82142	.81826	.81512	.81200	.80892	.80586
103	.84056	.83737	.83420	.83106	.82795	.82487	.82181	.81878	.81577	.81279
104	.84743	.84433	.84127	.83822	.83521	.83221	.82924	.82630	.82338	.82048
105	.85591	.85295	.85001	.84709	.84419	.84132	.83846	.83563	.83282	.83003
106	.86816	.86540	.86266	.85993	.85723	.85454	.85187	.84922	.84659	.84397
107	.88592	.88348	.88105	.87863	.87623	.87384	.87147	.86911	.86676	.86443
108	.91493	.91306	.91119	.90934	.90749	.90566	.90383	.90201	.90020	.89840
109	.96211	.96125	.96041	.95956	.95872	.95788	.95704	.95620	.95537	.95455

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
0	.01891	.01864	.01838	.01814	.01791	.01770	.01750	.01732	.01715	.01698
1	.00770	.00741	.00715	.00690	.00667	.00646	.00626	.00608	.00590	.00574
2	.00751	.00721	.00693	.00667	.00643	.00620	.00600	.00580	.00562	.00544
3	.00760	.00728	.00699	.00671	.00646	.00622	.00600	.00579	.00560	.00541
4	.00786	.00752	.00721	.00692	.00665	.00639	.00616	.00594	.00573	.00554
5	.00824	.00788	.00755	.00724	.00695	.00668	.00643	.00620	.00598	.00578
6	.00869	.00832	.00796	.00764	.00733	.00705	.00678	.00654	.00630	.00608
7	.00923	.00883	.00846	.00811	.00779	.00749	.00720	.00694	.00669	.00646
8	.00986	.00943	.00904	.00867	.00833	.00801	.00771	.00743	.00716	.00692
9	.01059	.01014	.00972	.00933	.00897	.00863	.00831	.00801	.00773	.00747
10	.01142	.01095	.01051	.01009	.00971	.00935	.00901	.00869	.00840	.00812
11	.01239	.01189	.01142	.01098	.01057	.01019	.00983	.00950	.00918	.00889
12	.01345	.01292	.01243	.01197	.01154	.01113	.01075	.01040	.01007	.00975
13	.01457	.01401	.01349	.01300	.01255	.01212	.01172	.01135	.01100	.01067
14	.01567	.01508	.01453	.01402	.01354	.01309	.01267	.01227	.01190	.01155
15	.01672	.01610	.01552	.01498	.01448	.01400	.01356	.01314	.01275	.01238
16	.01772	.01707	.01646	.01589	.01536	.01486	.01439	.01396	.01354	.01315
17	.01866	.01798	.01734	.01674	.01618	.01566	.01516	.01470	.01427	.01386
18	.01958	.01886	.01818	.01755	.01697	.01641	.01590	.01541	.01495	.01452
19	.02050	.01974	.01903	.01837	.01775	.01717	.01662	.01611	.01563	.01517

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
20	.02143	.02064	.01989	.01919	.01854	.01793	.01735	.01681	.01630	.01582
21	.02238	.02154	.02075	.02002	.01933	.01868	.01807	.01750	.01696	.01646
22	.02336	.02247	.02164	.02087	.02014	.01946	.01882	.01821	.01764	.01711
23	.02438	.02345	.02257	.02176	.02099	.02027	.01959	.01895	.01835	.01778
24	.02550	.02451	.02359	.02273	.02192	.02115	.02044	.01976	.01913	.01853
25	.02673	.02569	.02472	.02381	.02295	.02214	.02138	.02067	.01999	.01936
26	.02811	.02701	.02598	.02502	.02411	.02326	.02246	.02170	.02098	.02031
27	.02965	.02849	.02741	.02639	.02543	.02452	.02367	.02287	.02211	.02140
28	.03134	.03013	.02898	.02790	.02689	.02593	.02503	.02418	.02338	.02262
29	.03322	.03193	.03072	.02958	.02851	.02750	.02654	.02564	.02479	.02398
30	.03527	.03391	.03264	.03143	.03030	.02923	.02821	.02726	.02635	.02550
31	.03753	.03610	.03475	.03348	.03228	.03115	.03008	.02907	.02811	.02720
32	.04000	.03849	.03707	.03573	.03446	.03326	.03213	.03105	.03004	.02907
33	.04269	.04111	.03961	.03819	.03685	.03558	.03438	.03325	.03217	.03115
34	.04561	.04394	.04236	.04087	.03946	.03812	.03685	.03565	.03451	.03342
35	.04877	.04702	.04535	.04378	.04229	.04087	.03953	.03826	.03706	.03591
36	.05215	.05031	.04856	.04690	.04533	.04384	.04242	.04108	.03980	.03859
37	.05578	.05384	.05200	.05025	.04860	.04703	.04553	.04411	.04276	.04148
38	.05965	.05761	.05568	.05385	.05211	.05045	.04888	.04738	.04595	.04460
39	.06379	.06165	.05962	.05770	.05587	.05412	.05247	.05089	.04939	.04795
40	.06820	.06596	.06383	.06181	.05989	.05806	.05631	.05465	.05307	.05155
41	.07288	.07054	.06832	.06620	.06418	.06226	.06042	.05868	.05701	.05541
42	.07784	.07539	.07306	.07085	.06873	.06671	.06479	.06295	.06119	.05952
43	.08308	.08052	.07808	.07576	.07355	.07143	.06941	.06748	.06564	.06387
44	.08861	.08594	.08340	.08097	.07865	.07644	.07432	.07230	.07036	.06851
45	.09445	.09167	.08901	.08648	.08406	.08174	.07953	.07741	.07538	.07343
46	.10060	.09770	.09494	.09230	.08977	.08735	.08503	.08281	.08068	.07865
47	.10707	.10406	.10119	.09843	.09579	.09327	.09085	.08853	.08630	.08417
48	.11386	.11073	.10774	.10487	.10213	.09949	.09697	.09455	.09222	.08999
49	.12094	.11769	.11458	.11160	.10874	.10600	.10337	.10084	.09842	.09609
50	.12831	.12494	.12172	.11862	.11565	.11280	.11006	.10743	.10490	.10247
51	.13600	.13251	.12917	.12596	.12288	.11991	.11706	.11432	.11169	.10915
52	.14405	.14044	.13698	.13366	.13046	.12738	.12442	.12157	.11883	.11619
53	.15247	.14875	.14517	.14172	.13841	.13522	.13215	.12919	.12635	.12360
54	.16124	.15740	.15370	.15014	.14671	.14341	.14023	.13717	.13421	.13136
55	.17039	.16642	.16261	.15893	.15539	.15198	.14868	.14551	.14244	.13948
56	.17991	.17583	.17190	.16811	.16445	.16092	.15752	.15423	.15106	.14799
57	.18984	.18564	.18160	.17769	.17392	.17029	.16677	.16338	.16010	.15692
58	.20018	.19587	.19172	.18770	.18382	.18007	.17645	.17295	.16956	.16628
59	.21093	.20652	.20225	.19812	.19414	.19028	.18655	.18294	.17945	.17606
60	.22206	.21753	.21316	.20893	.20483	.20087	.19703	.19332	.18972	.18624
61	.23353	.22890	.22442	.22009	.21589	.21182	.20788	.20407	.20037	.19678
62	.24532	.24059	.23601	.23158	.22728	.22311	.21907	.21515	.21135	.20767
63	.25742	.25260	.24793	.24339	.23900	.23473	.23060	.22658	.22268	.21890
64	.26987	.26495	.26019	.25556	.25107	.24671	.24248	.23837	.23438	.23050
65	.28271	.27771	.27286	.26815	.26357	.25912	.25480	.25059	.24651	.24254
66	.29601	.29093	.28600	.28120	.27654	.27200	.26760	.26331	.25913	.25507
67	.30978	.30462	.29961	.29474	.29000	.28539	.28090	.27653	.27227	.26813
68	.32401	.31879	.31371	.30877	.30396	.29927	.29471	.29027	.28593	.28171
69	.33863	.33336	.32822	.32322	.31835	.31359	.30896	.30445	.30005	.29576
70	.35361	.34829	.34310	.33804	.33311	.32830	.32361	.31903	.31457	.31021
71	.36886	.36349	.35826	.35316	.34818	.34332	.33858	.33394	.32942	.32500
72	.38439	.37899	.37373	.36858	.36356	.35866	.35387	.34919	.34461	.34015
73	.40021	.39479	.38950	.38432	.37927	.37433	.36950	.36478	.36016	.35565
74	.41639	.41096	.40565	.40046	.39538	.39042	.38556	.38081	.37616	.37161
75	.43301	.42758	.42226	.41706	.41198	.40699	.40212	.39734	.39267	.38809
76	.45009	.44467	.43937	.43417	.42908	.42410	.41921	.41443	.40974	.40514
77	.46761	.46221	.45693	.45175	.44667	.44170	.43682	.43203	.42734	.42274
78	.48548	.48013	.47488	.46973	.46468	.45972	.45486	.45009	.44541	.44082
79	.50356	.49826	.49306	.48795	.48294	.47802	.47319	.46845	.46379	.45922
80	.52171	.51647	.51133	.50628	.50132	.49644	.49166	.48695	.48233	.47779
81	.53974	.53457	.52950	.52451	.51961	.51479	.51006	.50541	.50083	.49633
82	.55753	.55245	.54745	.54254	.53771	.53296	.52828	.52369	.51917	.51472
83	.57500	.57001	.56510	.56026	.55551	.55083	.54623	.54170	.53724	.53285
84	.59216	.58726	.58245	.57770	.57304	.56844	.56391	.55945	.55506	.55074
85	.60906	.60428	.59956	.59492	.59034	.58583	.58139	.57702	.57270	.56845
86	.62555	.62088	.61627	.61173	.60725	.60284	.59849	.59420	.58997	.58580
87	.64139	.63683	.63233	.62790	.62352	.61921	.61495	.61076	.60661	.60253
88	.65666	.65221	.64783	.64350	.63923	.63502	.63086	.62675	.62270	.61871

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	10.2%	10.4%	10.6%	10.8%	11.0%	11.2%	11.4%	11.6%	11.8%	12.0%
89	.67163	.66730	.66304	.65882	.65466	.65055	.64650	.64249	.63854	.63463
90	.68646	.68226	.67812	.67402	.66998	.66599	.66204	.65814	.65430	.65049
91	.70093	.69686	.69285	.68888	.68496	.68108	.67725	.67347	.66973	.66604
92	.71466	.71073	.70684	.70300	.69920	.69545	.69173	.68806	.68444	.68085
93	.72750	.72370	.71994	.71622	.71254	.70890	.70530	.70174	.69822	.69474
94	.73931	.73562	.73198	.72838	.72481	.72129	.71780	.71434	.71093	.70755
95	.75001	.74644	.74291	.73941	.73595	.73253	.72914	.72579	.72247	.71919
96	.75953	.75606	.75262	.74923	.74586	.74253	.73924	.73598	.73275	.72955
97	.76819	.76481	.76147	.75816	.75489	.75165	.74844	.74526	.74211	.73899
98	.77599	.77270	.76944	.76621	.76302	.75986	.75672	.75362	.75054	.74750
99	.78319	.77998	.77680	.77365	.77053	.76744	.76437	.76134	.75833	.75535
100	.78987	.78673	.78362	.78054	.77748	.77446	.77146	.76849	.76555	.76263
101	.79622	.79315	.79010	.78708	.78409	.78113	.77819	.77528	.77239	.76953
102	.80283	.79983	.79685	.79390	.79097	.78807	.78519	.78234	.77951	.77671
103	.80983	.80690	.80399	.80111	.79825	.79541	.79260	.78981	.78705	.78430
104	.81760	.81475	.81192	.80912	.80633	.80357	.80083	.79810	.79541	.79273
105	.82726	.82451	.82178	.81907	.81638	.81371	.81106	.80843	.80582	.80322
106	.84137	.83879	.83623	.83368	.83115	.82863	.82614	.82366	.82119	.81874
107	.86211	.85981	.85751	.85523	.85297	.85071	.84847	.84624	.84403	.84182
108	.89660	.89481	.89304	.89127	.88950	.88775	.88601	.88427	.88254	.88081
109	.95372	.95290	.95208	.95126	.95045	.94964	.94883	.94803	.94723	.94643

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS

[Applicable after April 30, 1989]

Age	Interest rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
0	.01683	.01669	.01655	.01642	.01630	.01618	.01607	.01596	.01586	.01576
1	.00559	.00544	.00531	.00518	.00506	.00494	.00484	.00473	.00464	.00454
2	.00528	.00513	.00499	.00485	.00473	.00461	.00449	.00439	.00428	.00419
3	.00524	.00508	.00493	.00479	.00465	.00453	.00441	.00429	.00419	.00408
4	.00536	.00519	.00503	.00488	.00473	.00460	.00447	.00435	.00423	.00412
5	.00558	.00540	.00523	.00507	.00492	.00477	.00464	.00451	.00439	.00427
6	.00588	.00569	.00550	.00533	.00517	.00502	.00487	.00473	.00460	.00448
7	.00624	.00604	.00584	.00566	.00549	.00532	.00517	.00502	.00488	.00475
8	.00668	.00646	.00626	.00606	.00588	.00570	.00554	.00538	.00523	.00509
9	.00722	.00699	.00677	.00656	.00636	.00617	.00600	.00583	.00567	.00552
10	.00785	.00761	.00737	.00715	.00694	.00674	.00655	.00637	.00620	.00604
11	.00861	.00835	.00810	.00786	.00764	.00743	.00723	.00704	.00686	.00668
12	.00946	.00918	.00891	.00866	.00843	.00820	.00799	.00779	.00760	.00741
13	.01035	.01006	.00978	.00951	.00927	.00903	.00880	.00859	.00839	.00819
14	.01122	.01091	.01061	.01034	.01007	.00982	.00958	.00936	.00914	.00894
15	.01203	.01171	.01140	.01110	.01082	.01056	.01031	.01007	.00985	.00963
16	.01279	.01244	.01211	.01181	.01151	.01123	.01097	.01072	.01048	.01025
17	.01347	.01311	.01276	.01244	.01213	.01184	.01156	.01130	.01104	.01081
18	.01411	.01373	.01336	.01302	.01270	.01239	.01210	.01182	.01155	.01130
19	.01474	.01434	.01396	.01359	.01325	.01293	.01262	.01233	.01205	.01178
20	.01537	.01494	.01454	.01415	.01379	.01345	.01313	.01282	.01252	.01224
21	.01598	.01553	.01510	.01470	.01432	.01396	.01361	.01329	.01298	.01268
22	.01660	.01613	.01568	.01525	.01485	.01446	.01410	.01375	.01343	.01312
23	.01725	.01674	.01627	.01581	.01539	.01498	.01460	.01423	.01388	.01355
24	.01796	.01742	.01692	.01644	.01599	.01556	.01515	.01476	.01439	.01404
25	.01876	.01819	.01765	.01714	.01666	.01621	.01577	.01536	.01497	.01460
26	.01967	.01907	.01850	.01796	.01745	.01696	.01650	.01606	.01565	.01525
27	.02072	.02008	.01948	.01890	.01836	.01784	.01735	.01688	.01644	.01601
28	.02190	.02122	.02057	.01996	.01938	.01883	.01831	.01781	.01734	.01689
29	.02322	.02249	.02181	.02116	.02054	.01996	.01940	.01887	.01836	.01788
30	.02469	.02392	.02319	.02250	.02184	.02122	.02062	.02006	.01952	.01900
31	.02634	.02552	.02475	.02401	.02331	.02264	.02201	.02140	.02083	.02028
32	.02816	.02729	.02647	.02568	.02494	.02423	.02355	.02291	.02229	.02170
33	.03018	.02926	.02838	.02755	.02675	.02600	.02528	.02459	.02393	.02331
34	.03239	.03142	.03048	.02960	.02875	.02795	.02718	.02645	.02575	.02508
35	.03482	.03378	.03279	.03185	.03095	.03009	.02928	.02850	.02775	.02704
36	.03743	.03633	.03528	.03428	.03333	.03242	.03155	.03072	.02992	.02916
37	.04026	.03909	.03798	.03692	.03591	.03494	.03401	.03313	.03228	.03147
38	.04330	.04207	.04089	.03977	.03869	.03767	.03668	.03574	.03484	.03398

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
39	.04658	.04528	.04403	.04284	.04170	.04061	.03957	.03857	.03762	.03670
40	.05011	.04873	.04741	.04615	.04495	.04379	.04269	.04163	.04061	.03964
41	.05389	.05244	.05104	.04971	.04844	.04721	.04604	.04492	.04384	.04281
42	.05791	.05638	.05491	.05350	.05216	.05086	.04962	.04844	.04729	.04620
43	.06219	.06057	.05902	.05754	.05612	.05475	.05344	.05218	.05098	.04981
44	.06673	.06503	.06340	.06184	.06034	.05890	.05752	.05619	.05491	.05368
45	.07157	.06978	.06806	.06642	.06484	.06332	.06186	.06046	.05911	.05781
46	.07669	.07481	.07301	.07128	.06962	.06802	.06649	.06501	.06358	.06221
47	.08212	.08015	.07826	.07645	.07470	.07302	.07140	.06984	.06834	.06690
48	.08784	.08578	.08380	.08190	.08006	.07830	.07660	.07496	.07338	.07186
49	.09384	.09169	.08961	.08762	.08570	.08384	.08206	.08034	.07868	.07708
50	.10013	.09787	.09570	.09361	.09160	.08966	.08779	.08598	.08424	.08256
51	.10671	.10436	.10209	.09991	.09780	.09577	.09381	.09192	.09009	.08832
52	.11365	.11120	.10883	.10655	.10435	.10222	.10017	.09819	.09628	.09442
53	.12095	.11840	.11593	.11355	.11126	.10904	.10689	.10482	.10282	.10088
54	.12860	.12595	.12338	.12090	.11851	.11619	.11396	.11179	.10970	.10767
55	.13663	.13386	.13120	.12862	.12613	.12372	.12138	.11912	.11694	.11482
56	.14503	.14217	.13940	.13672	.13413	.13162	.12919	.12683	.12456	.12235
57	.15385	.15089	.14801	.14523	.14254	.13994	.13741	.13496	.13259	.13029
58	.16311	.16004	.15706	.15418	.15139	.14868	.14606	.14352	.14105	.13866
59	.17279	.16961	.16654	.16355	.16066	.15786	.15514	.15250	.14994	.14745
60	.18286	.17958	.17640	.17332	.17033	.16743	.16462	.16188	.15922	.15664
61	.19330	.18992	.18665	.18347	.18038	.17738	.17447	.17164	.16889	.16622
62	.20409	.20061	.19724	.19396	.19078	.18768	.18467	.18175	.17891	.17614
63	.21522	.21165	.20818	.20480	.20152	.19833	.19523	.19221	.18928	.18642
64	.22672	.22306	.21949	.21602	.21265	.20937	.20617	.20306	.20003	.19708
65	.23867	.23491	.23125	.22769	.22423	.22085	.21757	.21437	.21125	.20821
66	.25112	.24727	.24353	.23988	.23632	.23286	.22948	.22619	.22299	.21986
67	.26409	.26016	.25633	.25260	.24896	.24541	.24195	.23857	.23528	.23206
68	.27760	.27359	.26968	.26586	.26214	.25851	.25497	.25151	.24814	.24484
69	.29157	.28748	.28350	.27961	.27581	.27211	.26849	.26495	.26150	.25812
70	.30596	.30181	.29775	.29379	.28992	.28614	.28245	.27884	.27532	.27187
71	.32069	.31648	.31236	.30833	.30440	.30055	.29679	.29312	.28952	.28600
72	.33578	.33151	.32733	.32325	.31925	.31535	.31152	.30778	.30412	.30054
73	.35123	.34691	.34269	.33855	.33450	.33054	.32666	.32286	.31914	.31550
74	.36715	.36279	.35852	.35434	.35024	.34623	.34230	.33845	.33468	.33098
75	.38360	.37921	.37491	.37069	.36656	.36250	.35853	.35464	.35082	.34708
76	.40064	.39623	.39190	.38765	.38349	.37941	.37540	.37148	.36762	.36384
77	.41823	.41381	.40947	.40521	.40103	.39692	.39290	.38895	.38507	.38126
78	.43632	.43189	.42755	.42329	.41910	.41499	.41095	.40698	.40309	.39926
79	.45473	.45032	.44599	.44173	.43755	.43344	.42940	.42543	.42153	.41770
80	.47333	.46894	.46463	.46040	.45623	.45213	.44811	.44414	.44025	.43642
81	.49191	.48755	.48328	.47907	.47493	.47085	.46684	.46290	.45902	.45520
82	.51034	.50603	.50179	.49762	.49351	.48947	.48549	.48157	.47772	.47392
83	.52852	.52427	.52008	.51595	.51189	.50788	.50394	.50006	.49623	.49246
84	.54648	.54228	.53815	.53407	.53006	.52610	.52221	.51836	.51458	.51084
85	.56426	.56013	.55606	.55205	.54810	.54420	.54035	.53656	.53282	.52913
86	.58169	.57764	.57364	.56970	.56581	.56197	.55818	.55445	.55076	.54713
87	.59850	.59452	.59060	.58673	.58291	.57913	.57541	.57174	.56811	.56453
88	.61476	.61086	.60702	.60322	.59947	.59577	.59212	.58851	.58494	.58142
89	.63078	.62697	.62321	.61950	.61583	.61220	.60862	.60508	.60159	.59813
90	.64674	.64302	.63935	.63573	.63215	.62861	.62511	.62165	.61823	.61485
91	.66238	.65877	.65520	.65167	.64819	.64474	.64133	.63795	.63462	.63132
92	.67730	.67379	.67032	.66689	.66350	.66014	.65682	.65354	.65029	.64708
93	.69130	.68789	.68452	.68119	.67789	.67463	.67140	.66820	.66504	.66191
94	.70421	.70090	.69762	.69438	.69118	.68800	.68486	.68175	.67867	.67563
95	.71594	.71272	.70954	.70639	.70326	.70017	.69712	.69409	.69109	.68812
96	.72638	.72325	.72014	.71707	.71403	.71101	.70803	.70507	.70215	.69925
97	.73590	.73285	.72982	.72682	.72385	.72090	.71799	.71510	.71224	.70941
98	.74448	.74149	.73853	.73560	.73269	.72981	.72696	.72414	.72134	.71856
99	.75240	.74948	.74658	.74371	.74086	.73805	.73525	.73248	.72974	.72702
100	.75974	.75687	.75403	.75121	.74842	.74566	.74292	.74020	.73751	.73484
101	.76669	.76388	.76109	.75833	.75559	.75287	.75018	.74751	.74486	.74223
102	.77393	.77117	.76844	.76573	.76304	.76037	.75773	.75511	.75251	.74993
103	.78158	.77888	.77620	.77355	.77091	.76830	.76571	.76313	.76058	.75805
104	.79007	.78743	.78482	.78222	.77964	.77709	.77455	.77203	.76953	.76705
105	.80065	.79809	.79556	.79304	.79054	.78805	.78559	.78314	.78071	.77829
106	.81631	.81389	.81149	.80911	.80674	.80438	.80204	.79972	.79741	.79511
107	.83963	.83745	.83529	.83313	.83099	.82886	.82674	.82463	.82254	.82045

TABLE S.—BASED ON LIFE TABLE 80CNSMT SINGLE LIFE REMAINDER FACTORS—Continued

[Applicable after April 30, 1989]

Age	Interest rate									
	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%	13.6%	13.8%	14.0%
108	.87910	.87739	.87569	.87400	.87232	.87064	.86897	.86731	.86566	.86401
109	.94563	.94484	.94405	.94326	.94248	.94170	.94092	.94014	.93937	.93860

TABLE 80CNSMT.—APPLICABLE AFTER APRIL 30, 1989

Age × (1)	1(×) (2)	Age × (1)	1(×) (2)	Age × (1)	1(×) (2)
0	100000	37	95492	74	59279
1	98740	38	95317	75	56799
2	98648	39	95129	76	54239
3	98584	40	94926	77	51599
4	98535	41	94706	78	48878
5	98495	42	94465	79	46071
6	98459	43	94201	80	43180
7	98426	44	93913	81	40208
8	98396	45	93599	82	37172
9	98370	46	93256	83	34095
10	98347	47	92882	84	31012
11	98328	48	92472	85	27960
12	98309	49	92021	86	24961
13	98285	50	91526	87	22038
14	98248	51	90986	88	19235
15	98196	52	90402	89	16598
16	98129	53	89771	90	14154
17	98047	54	89087	91	11908
18	97953	55	88348	92	9863
19	97851	56	87551	93	8032
20	97741	57	86695	94	6424
21	97623	58	85776	95	5043
22	97499	59	84789	96	3884
23	97370	60	83726	97	2939
24	97240	61	82581	98	2185
25	97110	62	81348	99	1598
26	96982	63	80024	100	1150
27	96856	64	78609	101	815
28	96730	65	77107	102	570
29	96604	66	75520	103	393
30	96477	67	73846	104	267
31	96350	68	72082	105	179
32	96220	69	70218	106	119
33	96088	70	68248	107	78
34	95951	71	66165	108	51
35	95808	72	63972	109	33
36	95655	73	61673	110	0

(e) *Effective date.* This section is effective as of May 1, 1989.

[T.D. 8540, 59 FR 30152, June 10, 1994]

§ 20.2031–8 Valuation of certain life insurance and annuity contracts; valuation of shares in an open-end investment company.

(a) *Valuation of certain life insurance and annuity contracts.* (1) The value of a contract for the payment of an annuity, or an insurance policy on the life of a person other than the decedent, issued by a company regularly engaged in the selling of contracts of that character is established through the sale by that company of comparable contracts. An annuity payable under a combination annuity contract and life insurance policy on the decedent's life (e.g., a ''retirement income'' policy with death benefit) under which there was no insurance element at the time of the decedent's death (see paragraph (d) of § 20.2039–1) is treated like a contract for the payment of an annuity for purposes of this section.

(2) As valuation of an insurance policy through sale of comparable contracts is not readily ascertainable when, at the date of the decedent's death, the contract has been in force for some time and further premium payments are to be made, the value may be approximated by adding to the interpolated terminal reserve at the date of the decedent's death the proportionate part of the gross premium last paid before the date of the decedent's death which covers the period extending beyond that date. If, however, because of the unusual nature of the contract such an approximation is not reasonably close to the full value of the contract, this method may not be used.

(3) The application of this section may be illustrated by the following examples. In each case involving an insurance contract, it is assumed that there are no accrued dividends or outstanding indebtedness on the contract.

Example (1). X purchased from a life insurance company a joint and survivor annuity contract under the terms of which X was to receive payments of $1,200 annually for his life and, upon X's death, his wife was to receive payments of $1,200 annually for her life. Five years after such purchase, when his wife was 50 years of age, X died. The value of the annuity contract at the date of X's death is the amount which the company would charge for an annuity providing for the payment of $1,200 annually for the life of a female 50 years of age.

Example (2). Y died holding the incidents of ownership in a life insurance policy on the life of his wife. The policy was one on which no further payments were to be made to the company (e.g., a single premium policy or a paid-up policy). The value of the insurance policy at the date of Y's death is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured.

Example (3). Z died holding the incidents of ownership in a life insurance policy on the life of his wife. The policy was an ordinary life policy issued nine years and four months prior to Z's death and at a time when Z's wife was 35 years of age. The gross annual premium is $2,811 and the decedent died four months after the last premium due date. The value of the insurance policy at the date of Z's death is computed as follows:

Terminal reserve at end of tenth year	$14,601.00
Terminal reserve at end of ninth year	12,965.00
Increase	1,636.00
One-third of such increase (Z having died four months following the last preceding premium date) is	545.33
Terminal reserve at end of ninth year	12,965.00
Interpolated terminal reserve at date of Z's death	13,510.33
Two-thirds of gross premium (⅔×$2,811)	1,874.00
Value of the insurance policy	15,384.33

(b) *Valuation of shares in an open-end investment company.* (1) The fair market value of a share in an open-end investment company (commonly known as a ''mutual fund'') is the public redemption price of a share. In the absence of an affirmative showing of the public redemption price in effect at the time of death, the last public redemption price quoted by the company for the date of death shall be presumed to be the applicable public redemption price. If the alternate valuation method under 2032 is elected, the last public redemption price quoted by the company for the alternate valuation date shall be the applicable redemption price. If there is no public redemption price quoted by the company for the applicable valuation date (e.g., the valuation date is a Saturday, Sunday, or holiday), the fair market value of the mutual fund share is the last public redemption price quoted by the company for the first day preceding the applicable valuation date for which there is a quotation. In any case where a dividend is declared on a share in an open-end investment company before the decedent's death but payable to shareholders of record on a date after his death and the share is quoted ''exdividend'' on the date of the decedent's death, the amount of the dividend is added to the ex-dividend quotation in determining the fair market value of the share as of the date of the decedent's death. As used in this paragraph, the term ''open-end investment company'' includes only a company which on the applicable valuation date was engaged in offering its shares to the public in the capacity of an open-end investment company.

(2) The provisions of this paragraph shall apply with respect to estates of decedents dying after August 16, 1954.

[T.D. 6680, 28 FR 10872, Oct. 10, 1963, as amended by T.D. 7319, 39 FR 26723, July 23, 1974]

§ 20.2031–9 Valuation of other property.

The valuation of any property not specifically described in §§ 20.2031–2 to 20.2031–8 is made in accordance with the general principles set forth in § 20.2031–1. For example, a future interest in property not subject to valuation in accordance with the actuarial principles set forth in § 20.2031–7 is to be valued in accordance with the general principles set forth in § 20.2031–1.

§ 20.2032–1 Alternate valuation.

(a) *In general.* In general, section 2032 provides for the valuation of a decedent's gross estate at a date other than the date of the decedent's death. More specifically, if an executor elects the alternate valuation method under section 2032, the property included in the decedent's gross estate on the date of his death is valued as of whichever of the following dates is applicable:

(1) Any property distributed, sold, exchanged, or otherwise disposed of within 6 months (1 year, if the decedent died on or before December 31, 1970) after the decedent's death is valued as of the date on which it is first distributed, sold, exchanged, or otherwise disposed of;

(2) Any property not distributed, sold, exchanged, or otherwise disposed of within 6 months (1 year, if the decedent died on or before December 31, 1970) after the decedent's death is valued as of the date 6 months (1 year, if the decedent died on or before December 31, 1970) after the date of the decedent's death;

(3) Any property, interest, or estate which is affected by mere lapse of time is valued as of the date of the decedent's death, but adjusted for any difference in its value not due to mere lapse of time as of the date 6 months (1 year, if the decedent died on or before December 31, 1970) after the decedent's death, or as of the date of its distribution, sale, exchange, or other disposition, whichever date first occurs.

(b) *Method and effect of election.* (1) While it is the purpose of section 2032 to permit a reduction in the amount of tax that would otherwise be payable if the gross estate has suffered a shrinkage in its aggregate value in the 6 months (1 year, if the decedent died on or before Decembe 31, 1970) following the decedent's death, the alternate valuation method is not automatic but must be elected. Furthermore, the alternate valuation method may be elected whether or not there has been a shrinkage in the aggregate value of the estate. However, the election is not effective for any purpose unless the value of the gross estate at the time of the decedent's death exceeded $60,000, so that an estate tax return is required to be filed under section 6018.

(2) If the alternate valuation method under section 2032 is to be used, section 2032(c) requires that the executor must so elect on the estate tax return required under section 6018, filed within 9 months (15 months, if the decedent died on or before December 31, 1970) from the date of the decedent's death or within the period of any extension of time granted by the district director under section 6081. In no case may the election be exercised, or a previous election changed, after the expiration of such time. If the election is made, it applies to all the property included in the gross estate, and cannot be applied to only a portion of the property.

(c) *Meaning of ''distributed, sold, exchanged, or otherwise disposed of''.* (1) The phrase ''distributed, sold, exchanged, or otherwise disposed of'' comprehends all possible ways by which property ceases to form a part of the gross estate. For example, money on hand at the date of the decedent's death which is thereafter used in the payment of funeral expenses, or which is thereafter invested, falls within the term ''otherwise disposed of.'' The term also includes the surrender of a stock certificate for corporate assets in complete or partial liquidation of a corporation pursuant to section 331. The term does not, however, extend to transactions which are mere changes in form. Thus, it does not include a transfer of assets to a corporation in exchange for its stock in a transaction with respect to which no gain or loss would be recognizable for income tax purposes under section 351. Nor does it include an exchange of stock or securities in a corporation for stock or securities in the same corporation or another corporation in a transaction,

such as a merger, recapitalization, reorganization or other transaction described in section 368 (a) or 355, with respect to which no gain or loss is recognizable for income tax purposes under section 354 or 355.

(2) Property may be ''distributed'' either by the executor, or by a trustee of property included in the gross estate under section 2035 through 2038, or section 2041. Property is considered as ''distributed'' upon the first to occur of the following:

(i) The entry of an order or decree of distribution, if the order or decree subsequently becomes final;

(ii) The segregation or separation of the property from the estate or trust so that it becomes unqualifiedly subject to the demand or disposition of the distributee; or

(iii) The actual paying over or delivery of the property to the distributee.

(3) Property may be ''sold, exchanged, or otherwise disposed of'' by:

(i) The executor;

(ii) A trustee or other donee to whom the decedent during his lifetime transferred property included in his gross estate under sections 2035 through 2038, or section 2041;

(iii) An heir or devisee to whom title to property passes directly under local law;

(iv) A surviving joint tenant or tenant by the entirety; or

(v) Any other person.

If a binding contract for the sale, exchange, or other disposition of property is entered into, the property is considered as sold, exchanged, or otherwise disposed of on the effective date of the contract, unless the contract is not subsequently carried out substantially in accordance with its terms. The effective date of a contract is normally the date it is entered into (and not the date it is consummated, or the date legal title to the property passes) unless the contract specifies a different effective date.

(d) *''Included property'' and ''excluded property''.* If the executor elects the alternate valuation method under section 2432, all property interests existing at the date of decedent's death which form a part of his gross estate as determined under sections 2033 through 2044 are valued in accordance with the provisions of this section. Such property interests are referred to in this section as ''included property''. Furthermore, such property interests remain ''included property'' for the purpose of valuing the gross estate under the alternate valuation method even though they change in form during the alternate valuation period by being actually received, or disposed of, in whole or in part, by the estate. On the other hand, property earned or accrued (whether received or not) after the date of the decedent's death and during the alternate valuation period with respect to any property interest existing at the date of the decedent's death, which does not represent a form of ''included property'' itself or the receipt of ''included property'' is excluded in valuing the gross estate under the alternate valuation method. Such property is referred to in this section as ''excluded property''. Illustrations of ''included property'' and ''excluded property'' are contained in the subparagraphs (1) to (4) of this paragraph:

(1) *Interest-bearing obligations.* Interest-bearing obligations, such as bonds or notes, may comprise two elements of ''included property'' at the date of the decedent's death, namely, (i) the principal of the obligation itself, and (ii) interest accrued to the date of death. Each of these elements is to be separately valued as of the applicable valuation date. Interest accrued after the date of death and before the subsequent valuation date constitutes ''excluded property''. However, any part payment or principal made between the date of death and the subsequent valuation date, or any advance payment of interest for a period after the subsequent valuation date made during the alternate valuation period which has the effect of reducing the value of the principal obligation as of the subsequent valuation date, will be included in the gross estate, and valued as of the date of such payment.

(2) *Leased property.* The principles set forth in subparagraph (1) of this paragraph with respect to interest- bearing obligations also apply to leased realty or personalty which is included in the gross estate and with respect to which an obligation to pay rent has been reserved. Both the realty or personalty

itself and the rents accrued to the date of death constitute ''included property'', and each is to be separately valued as of the applicable valuation date. Any rent accrued after the date of death and before the subsequent valuation date is ''excluded property''. Similarly, the principle applicable with respect to interest paid in advance is equally applicable with respect to advance payments of rent.

(3) *Noninterest-bearing obligations.* In the case of noninterest-bearing obligations sold at a discount, such as savings bonds, the principal obligation and the discount amortized to the date of death are property interests existing at the date of death and constitute ''included property''. The obligation itself is to be valued at the subsequent valuation date without regard to any further increase in value due to amortized discount. The additional discount amortized after death and during the alternate valuation period is the equivalent of interest accruing during that period and is, therefore, not to be included in the gross estate under the alternate valuation method.

(4) *Stock of a corporation.* Shares of stock in a corporation and dividends declared to stockholders of record on or before the date of the decedent's death and not collected at the date of death constitute ''included property'' of the estate. On the other hand, ordinary dividends out of earnings and profits (whether in cash, shares of the corporation, or other property) declared to stockholders of record after the date of the decedent's death are ''excluded property'' and are not to be valued under the alternate valuation method. If, however, dividends are declared to stockholders of record after the date of the decedent's death with the effect that the shares of stock at the subsequent valuation date do not reasonably represent the same ''included property'' of the gross estate as existed at the date of the decedent's death, the dividends are ''included property'', except to the extent that they are out of earnings of the corporation after the date of the decedent's death. For example, if a corporation makes a distribution in partial liquidation to stockholders of record during the alternate valuation period which is not accompanied by a surrender of a stock certificate for cancellation, the amount of the distribution received on stock included in the gross estate is itself ''included property'', except to the extent that the distribution was out of earnings and profits since the date of the decedent's death. Similarly, if a corporation, in which the decedent owned a substantial interest and which possessed at the date of the decedent's death accumulated earnings and profits equal to its paid-in capital, distributed all of its accumulated earnings and profits as a cash dividend to shareholders of record during the alternate valuation period, the amount of the dividends received on stock includible in the gross estate will be included in the gross estate under the alternate valuation method. Likewise, a stock dividend distributed under such circumstances is ''included property''.

(e) *Illustrations of ''included property'' and ''excluded property''.* The application of paragraph (d) of this section may be further illustrated by the following example in which it is assumed that the decedent died on January 1, 1955:

Description	Subsequent valuation date	Alternate value	Value at date of death
Bond, par value $1,000, bearing interest at 4 percent payable quarterly on Feb. 1, May 1, Aug. 1, and Nov. 1. Bond distributed to legatee on Mar. 1, 1955.	Mar. 1, 1955	$1,000.00	$1,000.00
Interest coupon of $10 attached to bond and not cashed at date of death although due and payable Nov. 1, 1954. Cashed by executor on Feb. 1, 1955.	Feb. 1, 1955	10.00	10.00
Interest accrued from Nov. 1, 1954, to Jan. 1, 1955, collected on Feb. 1, 1955	Feb. 1, 1955	6.67	6.67
Real estate, not disposed of within year following death. Rent of $300 due at the end of each quarter, Feb. 1, May 1, Aug. 1, and Nov. 1.	Jan. 1, 1956	11,000.00	12,000.00
Rent due for quarter ending Nov. 1, 1954, but not collected until Feb. 1, 1955	Feb. 1, 1955	300.00	300.00
Rent accrued for November and December 1954, collected on Feb. 1, 1955	Feb. 1, 1955	200.00	200.00
Common stock, X Corporation, 500 shares, not disposed of within year following decedent's death.	Jan. 1, 1956	47,500.00	50,000.00
Dividend of $2 per share declared Dec. 10, 1954, and paid on Jan. 10, 1955, to holders of record on Dec. 30, 1954.	Jan. 10, 1955	1,000.00	1,000.00

(f) *Mere lapse of time.* In order to eliminate changes in value due only to mere lapse of time, section 2032(a)(3) provides that any interest or estate ''affected by mere lapse of time'' is included in a decedent's gross estate under the alternate valuation method at its value as of the date of the decedent's death, but with adjustment for any difference in its value as of the subsequent valuation date not due to mere lapse of time. Properties, interests, or estates which are ''affected by mere lapse of time'' include patents, estates for the life of a person other than the decedent, remainders, reversions, and other like properties, interests, or estates. The phrase ''affected by mere lapse of time'' has no reference to obligations for the payment of money, whether or not interest-bearing, the value of which changes with the passing of time. However, such an obligation, like any other property, may become affected by lapse of time when made the subject of a bequest or transfer which itself is creative of an interest or estate so affected. The application of this paragraph is illustrated in subparagraphs (1) and (2) of this paragraph:

(1) *Life estates, remainders, and similar interests.* The values of life estates, remainders, and similar interests are to be obtained by applying the methods prescribed in § 20.2031–7, using (i) the age of each person, the duration of whose life may affect the value of the interest, as of the date of the decedent's death, and (ii) the value of the property as of the alternate date. For example, assume that the decedent or his estate was entitled to receive property upon the death of his elder brother who was entitled to receive the income therefrom for life. At the date of the decedent's death, the property was worth $50,000 and the elder brother was 31 years old. The value of the decedent's remainder interest at the date of the decedent's death would, as explained in paragraph (d) of § 20.2031–7(A)(d), be $2,373 ($50,000×.04746). If, because of economic conditions, the property declined in value and was worth only $40,000 6 months after the date of the decedent's death, the value of the remainder interest would be $1,898.40 ($40,000×.04746), even though the elder brother may be 32 years old on the alternate date.

(2) *Patents.* To illustrate the alternate valuation of a patent, assume that the decedent owned a patent which, on the date of the decedent's death, had an unexpired term of ten years and a value of $78,000. Six months after the date of the decedent's death, the patent was sold, because of lapse of time and other causes, for $60,000. The alternate value thereof would be obtained by dividing $60,000 by 0.95 (ratio of the remaining life of the patent at the alternate date to the remaining life of the patent at the date of the decedent's death), and would, therefore, be $63,157.89.

(g) *Effect of election on deductions.* If the executor elects the alternate valuation method under section 2032, any deduction for administration expenses under section 2053(b) (pertaining to property not subject to claims) or losses under section 2054 (or section 2106(a)(1), relating to estates of nonresidents not citizens) is allowed only to the extent that it is not otherwise in effect allowed in determining the value of the gross estate. Furthermore, the amount of any charitable deduction under section 2055 (or section 2106(a)(2), relating to the estates of nonresidents not citizens) or the amount of any marital deduction under section 2056 is determined by the value of the property with respect to which the deduction is allowed as of the date of the decedent's death, adjusted, however, for any difference in its value as of the date 6 months (1 year, if the decedent died on or before December 31, 1970) after death, or as of the date of its distribution, sale, exchange, or other disposition, whichever first occurs. However, no such adjustment may take into account any difference in value due to lapse of time or to the occurrence or nonoccurrence of a contingency.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7238, 37 FR 28718, Dec. 29, 1972; T.D. 7955, 49 FR 19995, May 11, 1984; T.D. 8540, 59 FR 30103, June 10, 1994]

§ 20.2032A–3 Material participation requirements for valuation of certain farm and closely-held business real property.

(a) *In general.* Under section 2032A, an executor may, for estate tax purposes, make a special election concerning valuation of qualified real property (as defined in section 2032A(b)) used as a farm for farming purposes or in another trade or business. If this election is made, the property will be valued on the basis of its value for its qualified use in farming or the other trade or business, rather than its fair market value determined on the basis of highest and best use (irrespective of whether its highest and best use is the use in farming or other business). For the special valuation rules of section 2032A to apply, the deceased owner and/or a member of the owner's family (as defined in section 2032A (e) (2)) must materially participate in the operation of the farm or other business. Whether the required material participation occurs is a factual determination, and the types of activities and financial risks which will support such a finding will vary with the mode of ownership of both the property itself and of any business in which it is used. Passively collecting rents, salaries, draws, dividends, or other income from the farm or other business is not sufficient for material participation, nor is merely advancing capital and reviewing a crop plan or other business proposal and financial reports each season or business year.

(b) *Types of qualified property*—(1) *In general.* Real property valued under section 2032A must pass from the decendent to a qualified heir or be acquired from the decedent by a qualified heir. The real property may be owned directly or may be owned indirectly through ownership of an interest in a corporation, a partnership, or a trust. Where the ownership is indirect, however, the decedent's interest in the business must, in addition to meeting the tests for qualification under section 2032A, qualify under the tests of section 6166 (b) (1) as an interest in a closely-held business on the date of the decedent's death and for sufficient other time (combined with periods of direct ownership) to equal at least 5 years of the 8 year period preceding the death. All specially valued property must be used in a trade or business. Directly owned real property that is leased by a decedent to a separate closely held business is considered to be qualified real property, but only if the separate business qualifies as a closely held business under section 6166 (b) (1) with respect to the decedent on the date of his or her death and for sufficient other time (combined with periods during which the property was operated as a proprietorship) to equal at least 5 years of the 8 year period preceding the death. For example, real property owned by the decedent and leased to a farming corporation or partnership owned and operated entirely by the decedent and fewer than 15 members of the decedent's family is eligible for special use valuation. Under section 2032A, the term trade or business applies only to an active business such as a manufacturing, mercantile, or service enterprise, or to the raising of agricultural or horticultural commodities, as distinguished from passive investment activities. The mere passive rental of property to a party other than a member of the decedent's family will not qualify. The decedent or a member of the decedent's family must own an equity interest in the farm operation. A trade or business is not necessarily present even though an office and regular hours are maintained for management of income producing assets, as the term ''business'' is not as broad under section 2032A as under section 162. Additionally, no trade or business is present in the case of activities not engaged in for profit. *See* section 183.

(2) *Structures and other real property improvements.* Qualified real property includes residential buildings and other structures and real property improvements occupied or used on a regular basis by the owner or lessee of real property (or by employees of the owner or lessee) for the purpose of operating the farm or other closely held business. A farm residence occupied by the decedent owner of the specially valued property is considered to be occupied for the purpose of operating the farm even though a family member (not the decedent) was the person materially

participating in the operation of the farm as required under section 2032A (b) (1) (C).

(c) *Period material participation must last.* The required participation must last—

(1) For periods totalling 5 years or more during the 8 years immediately preceding the date of the decedent's death; and

(2) For periods totalling 5 years or more during any 8 year period ending after the date of the decedent's death (up to a maximum of 15 years after decedent's death, when the additional estate tax provisions of section 2032A(c) cease to apply).

In determining whether the material participation requirement is satisfied, no exception is made for periods during which real property is held by the decedent's estate. Additionally, contemporaneous material participation by 2 or more family members during a period totalling a year will not result in that year being counted as 2 or more years for purposes of satisfying the requirements of this paragraph (c). Death of a qualified heir (as defined in section 2032A(e)(1)) before the requisite time has passed ends any material participation requirement for that heir's portion of the property as to the origninal decedent's estate if the heir received a separate, joint or other undivided property interest from the decedent. If qualified heirs receive successive interests in specially valued property (e.g. life estate and remainder interests) from the decedent, the material participation requirement does not end with respect to any part of the property until the death of the last qualified heir (or, if earlier, the expiration of 15 years from the date of the decedent's death). The requirements of section 2032A will fully apply to an heir's estate if an election under this section is made for the same property by the heir's executor. In general, to determine whether the required participation has occurred, brief periods (*e.g.*, periods of 30 days or less) during which there was no material participation may be disregarded. This is so only if these periods were both preceded and followed by substantial periods (*e.g.* periods of more than 120 days) in which there was uninterrupted material participation. *See* paragraph (e)(1) of this section which provides a special rule for periods when little or no activity is necessary to manage fully a farm.

(d) *Period property must be owned by decedent and family members.* Only real property which is actually owned by any combination of the decedent, members of the decedent's family, and qualified closely held businesses for periods totalling at least 5 of the 8 years preceding the date of decedent's death may be valued under section 2032A. For example, replacement property acquired in like-kind exchange under section 1031 is considered to be owned only from the date on which the replacement property is actually acquired. On the other hand, replacement property acquired as a result of an involuntary conversion in a transfer that would meet the requirements of section 2032A(h) if it occurred after the date of the decedent's death is considered to have been owned from the date in which the involuntarily converted property was acquired. Property transferred from a proprietorship to a corporation or a partnership during the 8-year period ending on the date of the decedent's death is considered to be continuously owned to the extent of the decedent's equity interest in the corporation or partnership if, (1) the transfer meets the requirements of section 351 or 721, respectively, and (2) the decedent's interest in the corporation or partnership meets the requirements for indirectly held property contained in paragraph (b)(1) of this section. Likewise, property transferred to a trust is considered to be continuously owned if the beneficial ownership of the trust property is such that the requirements of section 6166(b)(1)(C) would be so satisfied if the property were owned by a corporation and all beneficiaries having vested interests in the trust were shareholders in the corporation. Any periods following the transfer during which the interest in the corporation, partnership, or trust does not meet the requirements of section 6166(b)(1) may not be counted for purposes of satisfying the ownership requirements of this paragraph (d).

(e) *Required activities*—(1) *In general.* Actual employment of the decedent (or of a member of the decedent's family)

on a substantially full-time basis (35 hours a week or more) or to any lesser extent necessay personally to manage fully the farm or business in which the real property to be valued under section 2032A is used constitutes material participation. For example, many farming operations require only seasonal activity. Material participation is present as long as all necessary functions are performed even though little or no actual activity occurs during nonproducing seasons. In the absence of this direct involvement in the farm or other business, the activities of either the decedent or family members must meet the standards prescribed in this paragraph and those prescribed in the regulations issued under section 1402(a)(1). Therefore, if the participant (or participants) is self-employed with respect to the farm or other trade or business, his or her income from the farm or other business must be earned income for purposes of the tax on self-employment income before the participant is considered to be materially participating under section 2032A. Payment of the self-employment tax is not conclusive as to the presence of material participation. If no self-employment taxes have been paid, however, material participation is presumed not to have occurred unless the executor demonstrates to the satisfaction of the Internal Revenue Service that material participation did in fact occur and informs the Service of the reason no such tax was paid. In addition, all such taxes (including interest and penalties) determined to be due must be paid. In determining whether the material participation requirement is satisfied, the activities of each participant are viewed separately from the activities of all other participants, and at any given time, the activities of at least one participant must be material. If the involvement is less than full-time, it must be pursuant to an arrangement providing for actual participation in the production or management of production where the land is used by any nonfamily member, or any trust or business entity, in farming or another business. The arrangement may be oral or written, but must be formalized in some manner capable of proof. Activities not contemplated by the arrangement will not support a finding of material participation under section 2032A, and activities of any agent or employee other than a family member may not be considered in determining the presence of material participation. Activities of family members are considered only if the family relationship existed at the time the activities occurred.

(2) *Factors considered.* No single factor is determinative of the presence of material participation, but physical work and participation in management decisions are the principal factors to be considered. As a minimum, the decedent and/or a family member must regularly advise or consult with the other managing party on the operation of the business. While they need not make all final management decisions alone, the decedent and/or family members must participate in making a substantial number of these decisions. Additionally, production activities on the land should be inspected regularly by the family participant, and funds should be advanced and financial responsibility assumed for a substantial portion of the expense involved in the operation of the farm or other business in which the real property is used. In the case of a farm, the furnishing by the owner or other family members of a substantial portion of the machinery, implements, and livestock used in the production activities is an important factor to consider in finding material participation. With farms, hotels, or apartment buildings, the operation of which qualifies as a trade or business, the participating decedent or heir's maintaining his or her principal place of residence on the premises is a factor to consider in determining whether the overall participation is material. Retention of a professional farm manager will not by itself prevent satisfaction of the material participation requirement by the decedent and family members. However, the decedent and/or a family member must personally materially participate under the terms of arrangement with the professional farm manager to satisfy this requirement.

(f) *Special rules for corporations, partnerships, and trusts*—(1) *Required arrangement.* With indirectly owned property as with property that is directly

owned, there must be an arrangement calling for material participation in the business by the decedent owner or a family member. Where the real property is indirectly owned, however, even full-time involvement must be pursuant to an arrangement between the entity and the decedent or family member specifying the services to be performed. Holding an office in which certain material functions are inherent may constitute the necessary arrangement for material participation. Where property is owned by a trust, the arrangement will generally be found in one or more of four situations. First, the arrangement may result from appointment as a trustee. Second, the arrangement may result from an employer-employee relationship in which the participant is employed by a qualified closely held business owned by the trust in a position requiring his or her material participation in its activities. Third, the participants may enter into a contract with the trustees to manage, or take part in managing, the real property for the trust. Fourth, where the trust agreement expressly grants the management rights to the beneficial owner, that grant is sufficient to constitute the arrangement required under this section.

(2) *Required activities.* The same participation standards apply under section 2032A where property is owned by a qualified closely held business as where the property is directly owned. In the case of a corporation, a partnership, or a trust where the participating decedent and/or family members are employees and thereby not subject to self-employment income taxes, they are to be viewed as if they were self-employed, and their activities must be activities that would subject them to self-employment income taxes were they so. Where property is owned by a corporation, a partnership or a trust, participation in the management and operation of the real property itself as a component of the closely held business is the determinative factor. Nominally holding positions as a corporate officer or director and receiving a salary therefrom or merely being listed as a partner and sharing in profits and losses will not alone support a finding of material participation. This is so even though, as partners, the participants pay self-employment income taxes on their distributive shares of partnership earnings under § 1.1402(a)–2. Further, it is especially true for corporate directors in states where the board of directors need not be an actively functioning entity or need only act informally. Corporate offices held by an owner are, however, factors to be considered with all other relevant facts in judging the degree of participation. When real property is directly owned and is leased to a corporation or partnership in which the decedent owns an interest which qualified as an interest in a trade or business within the meaning of section 6166(b)(1), the presence of material participation is determined by looking at the activities of the participant with regard to the property in whatever capacity rendered. During any periods when qualified real property is held by an estate, material participation is to be determined in the same manner as if the property were owned by a trust.

(g) *Examples.* The rules for determining material participation may be illustrated by the following examples. Additional illustrations may be found in examples (1) through (6) in § 1.1402(a)–4.

Example (1). A, the decedent, actively operated his 100-acre farm on a full-time basis for 20 years. He then leased it to B for the 10 years immediately preceding his death. By the terms of the lease, A was to consult with B on where crops were to be planted, to supervise marketing of the crop, and to share equally with B in expenses and earnings. A was present on the farm each spring for consultation; however, once planting was completed, he left for his retirement cottage where he remained until late summer, at which time he returned to the farm to supervise the marketing operation. A at all times maintained the farm home in which he had lived for the time he had owned the farm and lived there when at the farm. In light of his activities, assumption of risks, and valuable knowledge of proper techniques for the particular land gained over 20 years of full-time farming on the land involved, A is deemed to have materially participated in the farming business.

Example (2). D is the 70-year old widow of farmer C. She lives on a farm for which special valuation has been elected and has lived there for 20 years. D leases the land to E

under an arrangement calling for her participation in the operation of the farm. D annually raises a vegetable garden, chickens, and hogs. She also inspects the tobacco fields (which produce approximately 50 percent of farm income) weekly and informs E if she finds any work that needs to be done. D and E share expenses and income equally. Other decisions such as what fields to plant and when to plant and harvest crops are left to E, but D does occasionally make suggestions. During the harvest season, D prepares and serves meals for all temporary farm help. D is deemed to participate materially in the farm operations based on her farm residence and her involvement with the main money crop.

Example (3). Assume that D in example (2) moved to a nursing home 1 year after her husband's death. E completely operated the farm for her for 6 years following her move. If E is not a member of D's family, material participation ceases when D moves; however, if E is a member of D's family, E's material participation will prevent disqualification even if D owns the property. Further, upon D's death, the section 2032A valuation could be elected for her estate if E were a member of her family and the other requirements of section 203A were satisfied.

Example (4). F, a qualified heir, owned a specially valued farm. He contracted with G to manage the farm for him as F, a lawyer, lived and worked 15 miles away in a nearby town. F supplied all machinery and equipment and assumed financial responsiblity for the expenses of the farm operation. The contract specified that G was to submit a crop plan and a list of expenses and earnings for F's approval. It also called for F to inspect the farm regularly and to approve all expenditures over $100. In practice, F visited the farm weekly during the growing season to inspect and discuss operations. He actively participated in making important management decisions such as what fields to plant or pasture and how to utilize the subsidy program. F is deemed to have materially participated in the farm operation as his personal involvement amounted to more than managing an investment. Had F not regularly inspected the farm and participated in management decisions, however, he would not be considered to be materially participating. This would be true even though F did assume financial responsibility for the operation and did review annual crop plans.

Example (5). Decedent I owned 90 percent of all outstanding stock of X Corporation, a qualified closely-held business which owns real property to be specially valued. I held no formal position in the corporation and there was no arrangement for him to participate in daily business operations. I regularly spent several hours each day at the corporate offices and made decisions on many routine matters. I is not deemed to have materially participated in the X Corporation despite his activity because there was no arrangement requiring him to act in the manner in which he did.

Example (6). Decedent J was a senior partner in the law firm of X, Y, and Z, which is a qualified closely held business owning the building in which its offices are located. J ceased to practice law actively 5 years before his death in 1977; however, he remained a full partner and annually received a share of firm profits. J is not deemed to have materially participated under section 2032A even though he still may have reported his distributive share of partnership income for self-employment income tax purposes if the payments were not made pursuant to any retirement agreement. This is so because J does not meet the requirement of actual personal material participation.

Example (7). K, the decedent, owned a tree farm. He contracted with L, a professional forester, to manage the property for him as K, a doctor, lived and worked in a town 50 miles away. The activities of L are not considered in determining whether K materially participated in the tree farm operation. During the 5 years preceding K's death, there was no need for frequent inspections of the property or consultation concerning it, inasmuch as most of the land had been reforested and the trees were in the beginning stages of their growing cycle. However, once every year, L submitted for K's approval a proposed plan for the management of the property over the next year. K actively participated in making important management decisions, such as where and whether a precommercial thinning should be conducted, whether the timber was adequately protected from fire and disease, whether fire lines needed to be plowed around the new trees, and whether boundary lines were properly maintained around the property. K inspected the property at least twice every year and assumed financial responsibility for the expenses of the tree farm. K also reported his income from the tree farm as earned income for purposes of the tax on self-employment income. Over a period of several years, K had harvested and marketed timber from certain tracts of the tree farm and had supervised replanting of the areas where trees were removed. K's history of harvesting, marketing, and replanting of trees showed him to be in the business of tree farming rather than merely passively investing in timber land. If the history of K's tree farm did not show such an active business operation, however, the tree farm would not qualify for special use valuation. In light of all these facts, K is deemed to have materially participated in the farm as his personal involvement amounted to more than managing an investment.

Example (8). Decedent M died on January 1, 1978, owning a farm for which special use valuation under section 2032A has been elected. M owned the farm real property for 15 years before his death. During the 4 years preceding M's death (January 1, 1974 through December 31, 1977), the farm was rented to N, a non-family member, and neither M nor any member of his family materially participated in the farming operation. From January 1, 1970, until December 31, 1973, both M and his daughter, O, materially participated in the farming operation. The material participation requirement of section 2032A(b)(1)(C)(ii) is not satisfied because material participation did not occur for periods aggregating at least 5 different years of the 8 years preceding M's death.

[T.D. 7710, 45 FR 50739, July 31, 1980, as amended by T.D. 7786, 46 FR 43037, Aug. 26, 1981]

§ 20.2032A–4 Method of valuing farm real property.

(a) *In general.* Unless the executor of the decedent's estate elects otherwise under section 2032A(e)(7)(B)(ii) or fails to document comparable rented farm property meeting the requirements of this section, the value of the property which is used for farming purposes and which is subject to an election under section 2032A is determined by—

(1) Subtracting the average annual state and local real estate taxes on actual tracts of comparable real property in the same locality from the average annual gross cash rental for that same comparable property, and

(2) Dividing the result so obtained by the average annual effective interest rate charged on new Federal land bank loans.

The computation of each average annual amount is to be based on the 5 most recent calendar years ending before the date of the decedent's death.

(b) *Gross cash rental*—(1) *Generally.* Gross cash rental is the total amount of cash received for the use of actual tracts of comparable farm real property in the same locality as the property being specially valued during the period of one calendar year. This amount is not diminished by the amount of any expenses or liabilities associated with the farm operation or the lease. *See,* paragraph (d) of this section for a definition of comparable property and rules for property on which buildings or other improvements are located and farms including multiple property types. Only rentals from tracts of comparable farm property which are rented solely for an amount of cash which is not contingent upon production are acceptable for use in valuing real property under section 2032A (e) (7). The rentals considered must result from an arm's-length transaction as defined in this section. Additionally, rentals received under leases which provide for payment solely in cash are not acceptable as accurate measures of cash rental value if involvement by the lessor (or a member of the lessor's family who is other than a lessee) in the management or operation of the farm to an extent which amounts to material participation under the rules of section 2032A is contemplated or actually occurs. In general, therefore, rentals for any property which qualifies for special use valuation cannot be used to compute gross cash rentals under this section because the total amount received by the lessor does not reflect the true cash rental value of the real property.

(2) *Special rules*—(i) *Documentation required of executor.* The executor must identify to the Internal Revenue Service actual comparable property for all specially valued property and cash rentals from that property if the decedent's real property is valued under section 2032A(e)(7). If the executor does not identify such property and cash rentals, all specially valued real property must be valued under the rules of section 2032A(e)(8) if special use valuation has been elected. *See,* however, § 20.2032A–8(d) for a special rule for estates electing section 2032A treatment on or before August 30, 1980.

(ii) *Arm's-length transaction required.* Only those cash rentals which result from a lease entered into in an arm's-length transaction are acceptable under section 2032A(e)(7). For these purposes, lands leased from the Federal government, or any state or local government, which are leased for less than the amount that would be demanded by a private individual leasing for profit are not leased in an arm's-length transaction. Additionally, leases between family members (as defined in section 2032A(e)(2)) which do not provide a return on the property commensurate

with that received under leases between unrelated parties in the locality are not acceptable under this section.

(iii) *In-kind rents, statements of appraised rental value, and area averages.* Rents which are paid wholly or partly in kind (*e.g.,* crop shares) may not be used to determine the value of real property under section 2032A

(e)(7). Likewise, appraisals or other statements regarding rental value as well as area-wide averages of rentals (*i.e.,* those compiled by the United States Department of Agriculture) may not be used under section 2032A

(e)(7) because they are not true measures of the actual cash rental value of comparable property in the same locality as the specially valued property.

(iv) *Period for which comparable real property must have been rented solely for cash.* Comparable real property rented solely for cash must be identified for each of the five calendar years preceding the year of the decedent's death if section 2032A(e)(7) is used to value the decedent's real property. Rentals from the same tract of comparable property need not be used for each of these 5 years, however, provided an actual tract of property meeting the requirements of this section is identified for each year.

(v) *Leases under which rental of personal property is included.* No adjustment to the rents actually received by the lessor is made for the use of any farm equipment or other personal property the use of which is included under a lease for comparable real property unless the lease specifies the amount of the total rental attributable to the personal property and that amount is reasonable under the circumstances.

(c) *State and local real estate taxes.* For purposes of the farm valuation formula under section 2032A(e)(7) state and local taxes are taxes which are assessed by a state or local government and which are allowable deductions under section 164. However, only those taxes on the comparable real property from which cash rentals are determined may be used in the formula valuation.

(d) *Comparable real property defined.* Comparable real property must be situated in the same locality as the specially valued property. This requirement is not to be viewed in terms of mileage or political divisions alone, but rather is to be judged according to generally accepted real property valuation rules. The determination of properties which are comparable is a factual one and must be based on numerous factors, no one of which is determinative. It will, therefore, frequently be necessary to value farm property in segments where there are different uses or land characteristics included in the specially valued farm. For example, if section 2032A(e)(7) is used, rented property on which comparable buildings or improvements are located must be identified for specially valued property on which buildings or other real property improvements are located. In cases involving multiple areas or land characteristics, actual comparable property for each segment must be used, and the rentals and taxes from all such properties combined (using generally accepted real property valuation rules) for use in the valuation formula given in this section. However, any premium or discount resulting from the presence of multiple uses or other characteristics in one farm is also to be reflected. All factors generally considered in real estate valuation are to be considered in determining comparability under section 2032A. While not intended as an exclusive list, the following factors are among those to be considered in determining comparability—

(1) Similarity of soil as determined by any objective means, including an official soil survey reflected in a soil productivity index;

(2) Whether the crops grown are such as would deplete the soil in a similar manner;

(3) The types of soil conservation techniques that have been practiced on the two properties;

(4) Whether the two properties are subject to flooding;

(5) The slope of the land;

(6) In the case of livestock operations, the carrying capacity of the land;

(7) Where the land is timbered, whether the timber is comparable to that on the subject property;

(8) Whether the property as a whole is unified or whether it is segmented, and where segmented, the availability

of the means necessary for movement among the different segments;

(9) The number, types, and conditions of all buildings and other fixed improvements located on the properties and their location as it affects efficient management and use of property and value per se; and

(10) Availability of, and type of, transportation facilities in terms of costs and of proximity of the properties to local markets.

(e) *Effective interest rate defined*—(1) *Generally*. The annual effective interest rate on new Federal land bank loans is the average billing rate charged on new agricultural loans to farmers and ranchers in the farm credit district in which the real property to be valued under section 2032A is located, adjusted as provided in paragraph (e)(2) of this section. This rate is to be a single rate for each district covering the period of one calendar year and is to be computed to the nearest one-hundredth of one percent. In the event that the district billing rates of interest on such new agricultural loans change during a year, the rate for that year is to be weighted to reflect the portion of the year during which each such rate was charged. If a district's billing rate on such new agricultural loans varies according to the amount of the loan, the rate applicable to a loan in an amount resulting from dividing the total dollar amount of such loans closed during the year by the total number of the loans closed is to be used under section 2032A. Applicable rates may be obtained from the district director of internal revenue.

(2) *Adjustment to billing rate of interest.* The billing rate of interest determined under this paragraph is to be adjusted to reflect the increased cost of borrowing resulting from the required purchase of land bank association stock. For section 2032A purposes, the rate of required stock investment is the average of the percentages of the face amount of new agricultural loans to farmers and ranchers required to be invested in such stock by the applicable district bank during the year. If this percentage changes during a year, the average is to be adjusted to reflect the period when each percentage requirement was effective. The percentage is viewed as a reduction in the loan proceeds actually received from the amount upon which interest is charged.

(3) *Example.* The determination of the effective interest rate for any year may be illustrated as follows:

Example. District X of the Federal land bank system charged an 8 percent billed interest rate on new agricultural loans for 8 months of the year, 1976, and an 8.75 percent rate for 4 months of the year. The average billing rate was, therefore, 8.25 percent [(1.08 × 8/12) + (1.0875 × 4/12)=1.0825]. The district required stock equal to 5 percent of the face amount of the loan to be purchased as a precondition to receiving a loan. Thus, the borrower only received 95 percent of the funds upon which he paid interest. The applicable annual interest rate for 1976 of 8.68 percent is computed as follows:

8.25 percent × 1.00 (total loan amount)=8.25 percent (billed interest rate) divided by 0.95 (percent of loan proceeds received by borrower) = 8.68 percent (effective interest rate for 1976).

[T.D. 7710, 45 FR 50742, July 31, 1980]

§ 20.2032A–8 Election and agreement to have certain property valued under section 2032A for estate tax purposes.

(a) *Election of special use valuation*—(1) *In general.* An election under section 2032A is made as prescribed in paragraph (a)(3) of this section and on Form 706, United States Estate Tax Return. Once made, this election is irrevocable; however, see paragraph (d) of this section for a special rule for estates for which elections are made on or before August 30, 1980. Under section 2032A(a)(2), special use valuation may not reduce the value of the decedent's estate by more than $500,000. This election is available only if, at the time of death, the decedent was a citizen or resident of the United States.

(2) *Elections to specially value less than all qualified real property included in an estate.* An election under section 2032A need not include all real property included in an estate which is eligible for special use valuation, but sufficient property to satisfy the threshold requirements of section 2032A(b)(1)(B) must be specially valued under the election. If joint or undivided interests (e.g. interests as joint tenants or tenants in common) in the same property

are received from a decedent by qualified heirs, an election with respect to one heir's joint or undivided interest need not include any other heir's interest in the same property if the electing heir's interest plus other property to be specially valued satisfy the requirements of section 2032A(b)(1)(B). If successive interests (e.g. life estates and remainder interests) are created by a decedent in otherwise qualified property, an election under section 2032A is available only with respect to that property (or portion thereof) in which qualified heirs of the decedent receive all of the successive interests, and such an election must include the interests of all of those heirs. For example, if a surviving spouse receives a life estate in otherwise qualified property and the spouse's brother receives a remainder interest in fee, no part of the property may be valued pursuant to an election under section 2032A. Where successive interests in specially valued property are created, remainder interests are treated as being received by qualified heirs only if such remainder interests are not contingent upon surviving a nonfamily member or are not subject to divestment in favor of a nonfamily member.

(3) *Time and manner of making election.* An election under this section is made by attaching to a timely filed estate tax return the agreement described in paragraph (c)(1) of this section and a notice of election which contains the following information:

(i) The decedent's name and taxpayer identification number as they appear on the estate tax return;

(ii) The relevant qualified use;

(iii) The items of real property shown on the estate tax return to be specially valued pursuant to the election (identified by schedule and item number);

(iv) The fair market value of the real property to be specially valued under section 2032A and its value based on its qualified use (both values determined without regard to the adjustments provided by section 2032A

(b)(3)(B));

(v) The adjusted value (as defined in section 2032A(b)(3)(B)) of all real property which is used in a qualified use and which passes from the decedent to a qualified heir and the adjusted value of all real property to be specially valued;

(vi) The items of personal property shown on the estate tax return that pass from the decedent to a qualified heir and are used in a qualified use under section 2032A (identified by schedule and item number) and the total value of such personal property adjusted as provided under section 2032A(b)(3)(B);

(vii) The adjusted value of the gross estate, as defined in section 2032A-(b)(3)(A);

(viii) The method used in determining the special value based on use;

(ix) Copies of written appraisals of the fair market value of the real property;

(x) A statement that the decedent and/or a member of his or her family has owned all specially valued real property for at least 5 years of the 8 years immediately preceding the date of the decedent's death;

(xi) Any periods during the 8-year period preceding the date of the decedent's death during which the decedent or a member of his or her family did not own the property, use it in a qualified use, or materially participate in the operation of the farm or other business within the meaning of section 2032A(e)(6);

(xii) The name, address, taxpayer identification number, and relationship to the decedent of each person taking an interest in each item of specially valued property, and the value of the property interests passing to each such person based on both fair market value and qualified use;

(xiii) Affidavits describing the activities constituting material participation and the identity of the material participant or participants; and

(xiv) A legal description of the specially valued property.

If neither an election nor a protective election is timely made, special use valuation is not available to the estate. *See* sections 2032A(d)(1), 6075(a), and 6081(a).

(b) *Protective election.* A protective election may be made to specially value qualified real property. The availability of special use valuation pursuant to this election is contingent upon values as finally determined (or

agreed to following examination of a return) meeting the requirements of section 2032A. A protective election does not, however, extend the time for payment of any amount of tax. Rules for such extensions are contained in sections 6161, 6163, 6166, and 6166A. The protective election is to be made by a notice of election filed with a timely estate tax return stating that a protective election under section 2032A is being made pending final determination of values. This notice is to include the following information:

(1) The decedent's name and taxpayer identification number as they appear on the estate tax return;

(2) The relevant qualified use; and

(3) The items of real and personal property shown on the estate tax return which are used in a qualified use, and which pass to qualified heirs (identified by schedule and item number).

If it is found that the estate qualifies for special use valuation based upon values as finally determined (or agreed to following examination of a return), an additional notice of election must be filed within 60 days after the date of such determination. This notice must set forth the information required under paragraph (a)(3) of this section and is to be attached, together with the agreement described in paragraph (c)(1) of this section, to an amended estate tax return. The new return is to be filed with the Internal Revenue Service office where the original return was filed.

(c) *Agreement to special valuation by persons with an interest in property*—(1) *In general.* The agreement required under section 2032A (a)(1)(B) and (d)(2) must be executed by all parties who have any interest in the property being valued based on its qualified use as of the date of the decedent's death. In the case of a qualified heir, the agreement must express consent to personal liability under section 2032A(c) in the event of certain early dispositions of the property or early cessation of the qualified use. *See* section 2032A(c)(6). In the case of parties (other than qualified heirs) with interests in the property, the agreement must express consent to collection of any additional estate tax imposed under section 2032A(c) from the qualified property. The agreement is to be in a form that is binding on all parties having an interest in the property. It must designate an agent with satisfactory evidence of authority to act for the parties to the agreement in all dealings with the Internal Revenue Service on matters arising under section 2032A and must indicate the address of that agent.

(2) *Persons having an interest in designated property.* An interest in property is an interest which, as of the date of the decedent's death, can be asserted under applicable local law so as to affect the disposition of the specially valued property by the estate. Any person in being at the death of the decedent who has any such interest in the property, whether present or future, or vested or contingent, must enter into the agreement. Included among such persons are owners of remainder and executory interests, the holders of general or special powers of appointment, beneficiaries of a gift over in default of exercise of any such power, co-tenants, joint tenants and holders of other undivided interests when the decedent held only a joint or undivided interest in the property or when only an undivided interest is specially valued, and trustees of trusts holding any interest in the property. An heir who has the power under local law to caveat (challenge) a will and thereby affect disposition of the property is not, however, considered to be a person with an interest in property under section 2032A solely by reason of that right. Likewise, creditors of an estate are not such persons solely by reason of their status as creditors.

(3) *Consent on behalf of interested party.* If any person required to enter into the agreement provided for by paragraph (c)(1) either desires that an agent act for him or her or cannot legally bind himself or herself due to infancy or other incompetency, or to death before the election under section 2032A is timely exercised, a representative authorized under local law to bind such person in an agreement of this nature is permitted to sign the agreement on his or her behalf.

(4) *Duties of agent designated in agreement.* The Internal Revenue Service will contact the agent designated in the agreement under paragraph (c)(1)

on all matters relating to continued qualification under section 2032A of the specially valued real property and on all matters relating to the special lien arising under section 6324B. It is the duty of the agent as attorney-in-fact for the parties with interests in the specially valued property to furnish the Service with any requested information and to notify the Service of any disposition or cessation of qualified use of any part of the property.

(d) *Special rule for estates for which elections under section 2032A are made on* or before August 30, 1980. An election to specially value real property under section 2032A that is made on or before August 30, 1980, may be revoked. To revoke an election, the executor must file a notice of revocation with the Internal Revenue Service office where the original estate tax return was filed on or before January 31, 1981 (or if earlier, the date on which the period of limitation for assessment expires). This notice of revocation must contain the decedent's name, date of death, and taxpayer identification number, and is to be accompanied by remittance of any additional amount of estate tax and interest determined to be due as a result of valuation of the qualified property based upon its fair market value. Elections that are made on or before August 30, 1980, that do not comply with this section as proposed on July 13, 1978 (43 FR 30070), and amended on December 21, 1978 (43 FR 59517), must be conformed to this final regulation by means of an amended return before the original estate tax return can be finally accepted by the Internal Revenue Service.

[T.D. 7710, 45 FR 50743, July 31, 1980, as amended by T.D. 7786, 46 FR 43037, Aug. 26, 1981]

§ 20.2033–1 Property in which the decedent had an interest.

(a) *In general.* The gross estate of a decedent who was a citizen or resident of the United States at the time of his death includes under section 2033 the value of all property, whether real or personal, tangible or intangible, and wherever situated, beneficially owned by the decedent at the time of his death. (For certain exceptions in the case of real property situated outside the United States, see paragraphs (a) and (c) of § 20.2031–1.) Real property is included whether it came into the possession and control of the executor or administrator or passed directly to heirs or devisees. Various statutory provisions which exempt bonds, notes, bills, and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation are generally not applicable to the estate tax, since such tax is an excise tax on the transfer of property at death and is not a tax on the property transferred.

(b) *Miscellaneous examples.* A cemetery lot owned by the decedent is part of his gross estate, but its value is limited to the salable value of that part of the lot which is not designed for the interment of the decedent and the members of his family. Property subject to homestead or other exemptions under local law is included in the gross estate. Notes or other claims held by the decedent are likewise included even though they are cancelled by the decedent's will. Interest and rents accrued at the date of the decedent's death constitute a part of the gross estate. Similarly, dividends which are payable to the decedent or his estate by reason of the fact that on or before the date of the decedent's death he was a stockholder of record (but which have not been collected at death) constitute a part of the gross estate.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6684, 28 FR 11409, Oct. 24, 1963]

§ 20.2034–1 Dower or curtesy interests.

A decedent's gross estate includes under section 2034 any interest in property of the decedent's surviving spouse existing at the time of the decedent's death as dower or curtesy, or any interest created by statute in lieu thereof (although such other interest may differ in character from dower or curtesy). Thus, the full value of property is included in the decedent's gross estate, without deduction of such an interest of the surviving husband or wife, and without regard to when the right to such an interest arose.

§ 20.2036–1 Transfers with retained life estate.

(a) *In general.* A decedent's gross estate includes under section 2036 the value of any interest in property transferred by the decedent after March 3, 1931, whether in trust or otherwise, except to the extent that the transfer was for an adequate and full consideration in money or money's worth (see § 20.2043–1), if the decedent retained or reserved (1) for his life, or (2) for any period not ascertainable without reference to his death (if the transfer was made after June 6, 1932), or (3) for any period which does not in fact end before his death:

(i) The use, possession, right to the income, or other enjoyment of the transferred property, or

(ii) The right, either alone or in conjunction with any other person or persons, to designate the person or persons who shall possess or enjoy the transferred property or its income (except that, if the transfer was made before June 7, 1932, the right to designate must be retained by or reserved to the decedent alone).

If the decedent retained or reserved an interest or right with respect to all of the property transferred by him, the amount to be included in his gross estate under section 2036 is the value of the entire property, less only the value of any outstanding income interest which is not subject to the decedent's interest or right and which is actually being enjoyed by another person at the time of the decedent's death. If the decedent retained or reserved an interest or right with respect to a part only of the property transferred by him, the amount to be included in his gross estate under section 2036 is only a corresponding proportion of the amount described in the preceding sentence. An interest or right is treated as having been retained or reserved if at the time of the transfer there was an understanding, express, or implied, that the interest or right would later be conferred.

(b) *Meaning of terms.* (1) A reservation by the decedent ''for any period not ascertainable without reference to his death'' may be illustrated by the following examples:

(i) A decedent reserved the right to receive the income from transferred property in quarterly payments, with the proviso that no part of the income between the last quarterly payment and the date of the decedent's death was to be received by the decedent or his estate; and

(ii) A decedent reserved the right to receive the income from transferred property after the death of another person who was in fact enjoying the income at the time of the decedent's death. In such a case, the amount to be included in the decedent's gross estate under this section does not include the value of the outstanding income interest of the other person. It may be noted that if the other person predeceased the decedent, the reservation by the decedent may be considered to be either for his life, or for a period which does not in fact end before his death.

(2) The ''use, possession, right to the income, or other enjoyment of the transferred property'' is considered as having been retained by or reserved to the decedent to the extent that the use, possession, right to the income, or other enjoyment is to be applied toward the discharge of a legal obligation of the decedent, or otherwise for his pecuniary benefit. The term ''legal obligation'' includes a legal obligation to support a dependent during the decedent's lifetime.

(3) The phrase ''right * * * to designate the person or persons who shall possess or enjoy the transferred property or the income therefrom'' includes a reserved power to designate the person or persons to receive the income from the transferred property, or to possess or enjoy nonincome-producing property, during the decedent's life or during any other period described in paragraph (a) of this section. With respect to such a power, it is immaterial (i) whether the power was exercisable alone or only in conjunction with another person or persons, whether or not having an adverse interest; (ii) in what capacity the power was exercisable by the decedent or by another person or persons in conjunction with the decedent; and (iii) whether the exercise of the power was subject to a contingency beyond the decedent's control which did not occur before his death (e.g., the

death of another person during the decedent's lifetime). The phrase, however, does not include a power over the transferred property itself which does not affect the enjoyment of the income received or earned during the decedent's life. (See, however, section 2038 for the inclusion of property in the gross estate on account of such a power.) Nor does the phrase apply to a power held solely by a person other than the decedent. But, for example, if the decedent reserved the unrestricted power to remove or discharge a trustee at any time and appoint himself as trustee, the decedent is considered as having the powers of the trustee.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6501, 25 FR 10869, Nov. 16, 1960]

§ 20.2037–1 Transfers taking effect at death.

(a) *In general.* A decedent's gross estate includes under section 2037 the value of any interest in property transferred by the decedent after September 7, 1916, whether in trust or otherwise, except to the extent that the transfer was for an adequate and full consideration in money or money's worth (see § 20.2043–1), if—

(1) Possession or enjoyment of the property could, through ownership of the interest, have been obtained only by surviving the decedent,

(2) The decedent had retained a possibility (referred to in this section as a ''reversionary interest'') that the property, other than the income alone, would return to the decedent or his estate or would be subject to a power of disposition by him, and

(3) The value of the reversionary interest immediately before the decedent's death exceeded 5 percent of the value of the entire property.

However, if the transfer was made before October 8, 1949, section 2037 is applicable only if the reversionary interest arose by the express terms of the instrument of transfer and not by operation of law (see paragraph (f) of this section). See also paragraph (g) of this section with respect to transfers made between November 11, 1935, and January 29, 1940. The provisions of section 2037 do not apply to transfers made before September 8, 1916.

(b) *Condition of survivorship.* As indicated in paragraph (a) of this section, the value of an interest in transferred property is not included in a decedent's gross estate under section 2037 unless possession or enjoyment of the property could, through ownership of such interest, have been obtained only by surviving the decedent. Thus, property is not included in the decedent's gross estate if, immediately before the decedent's death, possession or enjoyment of the property could have been obtained by any beneficiary either by surviving the decedent or through the occurrence of some other event such as the expiration of a term of years. However, if a consideration of the terms and circumstances of the transfer as a whole indicates that the ''other event'' is unreal and if the death of the decedent does, in fact, occur before the ''other event'', the beneficiary will be considered able to possess or enjoy the property only by surviving the decedent. Notwithstanding the foregoing, an interest in transferred property is not includible in a decedent's gross estate under section 2037 if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a general power of appointment (as defined in section 2041) which in fact was exercisable immediately before the decedent's death. See examples (5) and (6) in paragraph (e) of this section.

(c) *Retention of reversionary interest.* (1) As indicated in paragraph (a) of this section, the value of an interest in transferred property is not included in a decedent's gross estate under section 2037 unless the decedent had retained a reversionary interest in the property, and the value of the reversionary interest immediately before the death of the decedent exceeded 5 percent of the value of the property.

(2) For purposes of section 2037, the term ''reversionary interest'' includes a possibility that property transferred by the decedent may return to him or his estate and a possibility that property transferred by the decedent may become subject to a power of disposition by him. The term is not used in a technical sense, but has reference to any reserved right under which the

transferred property shall or may be returned to the grantor. Thus, it encompasses an interest arising either by the express terms of the instrument of transfer or by operation of law. (See, however, paragraph (f) of this section with respect to transfers made before October 8, 1949.) The term ''reversionary interest'' does not include rights to income only, such as the right to receive the income from a trust after the death of another person. (However, see section 2036 for the inclusion of property in the gross estate on account of such rights.) Nor does the term ''reversionary interest'' include the possibility that the decedent during his lifetime might have received back an interest in transferred property by inheritance through the estate of another person. Similarly, a statutory right of a spouse to receive a portion of whatever estate a decedent may leave at the time of his death is not a ''reversionary interest''.

(3) For purposes of this section, the value of the decedent's reversionary interest is computed as of the moment immediately before his death, without regard to whether or not the executor elects the alternate valuation method under section 2032 and without regard to the fact of the decedent's death. The value is ascertained in accordance with recognized valuation principles for determining the value for estate tax purposes of future or conditional interests in property. (See §§ 20.2031–1, 20.2031–7, and 20.2031–9). For example, if the decedent's reversionary interest was subject to an outstanding life estate in his wife, his interest is valued according to the actuarial rules set forth in § 20.2031–7. On the other hand, if the decedent's reversionary interest was contingent on the death of his wife without issue surviving and if it cannot be shown that his wife is incapable of having issue (so that his interest is not subject to valuation according to the actuarial rules in § 20.2031–7), his interest is valued according to the general rules set forth in § 20.2031–1. A possibility that the decedent may be able to dispose of property under certain conditions is considered to have the same value as a right of the decedent to the return of the property under those same conditions.

(4) In order to determine whether or not the decedent retained a reversionary interest in transferred property of a value in excess of 5 percent, the value of the reversionary interest is compared with the value of the transferred property, including interests therein which are not dependent upon survivorship of the decedent. For example, assume that the decedent, A, transferred property in trust with the income payable to B for life and with the remainder payable to C if A predeceases B, but with the property to revert to A if B predeceases A. Assume further that A does, in fact, predecease B. The value of A's reversionary interest immediately before his death is compared with the value of the trust corpus, without deduction of the value of B's outstanding life estate. If, in the above example, A had retained a reversionary interest in one-half only of the trust corpus, the value of his reversionary interest would be compared with the value of one-half of the trust corpus, again without deduction of any part of the value of B's outstanding life estate.

(d) *Transfers partly taking effect at death.* If separate interests in property are transferred to one or more beneficiaries, paragraphs (a) to (c) of this section are to be separately applied with respect to each interest. For example, assume that the decedent transferred an interest in Blackacre to A which could be possessed or enjoyed only by surviving the decedent, and that the decedent transferred an interest in Blackacre to B which could be possessed or enjoyed only on the occurrence of some event unrelated to the decedent's death. Assume further that the decedent retained a reversionary interest in Blackacre of a value in excess of 5 percent. Only the value of the interest transferred to A is includible in the decedent's gross estate. Similar results would obtain if possession or enjoyment of the entire property could have been obtained only by surviving the decedent, but the decedent had retained a reversionary interest in a part only of such property.

(e) *Examples.* The provisions of paragraphs (a) to (d) of this section may be

further illustrated by the following examples. It is assumed that the transfers were made on or after October 8, 1949; for the significance of this date, see paragraphs (f) and (g) of this section:

Example (1). The decedent transferred property in trust with the income payable to his wife for life and, at her death, remainder to the decedent's then surviving children, or if none, to the decedent or his estate. Since each beneficiary can possess or enjoy the property without surviving the decedent, no part of the property is includible in the decedent's gross estate under section 2037, regardless of the value of the decedent's reversionary interest. (However, see section 2033 for inclusion of the value of the reversionary interest in the decedent's gross estate.)

Example (2). The decedent transferred property in trust with the income to be accumulated for the decedent's life, and at his death, principal and accumulated income to be paid to the decedent's then surviving issue, or, if none, to A or A's estate. Since the decedent retained no reversionary interest in the property, no part of the property is includible in the decedent's gross estate, even though possession or enjoyment of the property could be obtained by the issue only by surviving the decedent.

Example (3). The decedent transferred property in trust with the income payable to his wife for life and with the remainder payable to the decedent or, if he is not living at his wife's death, to his daughter or her estate. The daughter cannot obtain possession or enjoyment of the property without surviving the decedent. Therefore, if the decedent's reversionary interest immediately before his death exceeded 5 percent of the value of the property, the value of the property, less the value of the wife's outstanding life estate, is includible in the decedent's gross estate.

Example (4). The decedent transferred property in trust with the income payable to his wife for life and with the remainder payable to his son or, if the son is not living at the wife's death, to the decedent or, if the decedent is not then living, to X or X's estate. Assume that the decedent was survived by his wife, his son, and X. Only X cannot obtain possession or enjoyment of the property without surviving the decedent. Therefore, if the decedent's reversionary interest immediately before his death exceeded 5 percent of the value of the property, the value of X's remainder interest (with reference to the time immediately after the decedent's death) is includible in the decedent's gross estate.

Example (5). The decedent transferred property in trust with the income to be accumulated for a period of 20 years or until the decedent's prior death, at which time the principal and accumulated income was to be paid to the decedent's son if then surviving. Assume that the decedent does, in fact, die before the expiration of the 20-year period. If, at the time of the transfer, the decedent was 30 years of age, in good health, etc., the son will be considered able to possess or enjoy the property without surviving the decedent. If, on the other hand, the decedent was 70 years of age at the time of the transfer, the son will not be considered able to possess or enjoy the property without surviving the decedent. In this latter case, if the value of the decedent's reversionary interest (arising by operation of law) immediately before his death exceeded 5 percent of the value of the property, the value of the property is includible in the decedent's gross estate.

Example (6). The decedent transferred property in trust with the income to be accumulated for his life and, at his death, the principal and accumulated income to be paid to the decedent's then surviving children. The decedent's wife was given the unrestricted power to alter, amend, or revoke the trust. Assume that the wife survived the decedent but did not, in fact, exercise her power during the decedent's lifetime. Since possession or enjoyment of the property could have been obtained by the wife during the decedent's lifetime under the exercise of a general power of appointment, which was, in fact, exercisable immediately before the decedent's death, no part of the property is includible in the decedent's gross estate.

(f) *Transfers made before October 8, 1949.* (1) Notwithstanding any provisions to the contrary contained in paragraphs (a) to (e) of this section, the value of an interest in property transferred by a decedent before October 8, 1949, is included in his gross estate under section 2037 only if the decedent's reversionary interest arose by the express terms of the instrument and not by operation of law. For example, assume that the decedent, on January 1, 1947, transferred property in trust with the income payable to his wife for the decedent's life, and, at his death, remainder to his then surviving descendants. Since no provision was made for the contingency that no descendants of the decedent might survive him, a reversion to the decedent's estate existed by operation of law. The descendants cannot obtain possession or enjoyment of the property without surviving the decedent. However, since the decedent's reversionary interest arose by operation of law, no part of the property is includible in the decedent's gross estate under section 2037. If, in the above example, the transfer

had been made on or after October 8, 1949, and if the decedent's reversionary interest immediately before his death exceeded 5 percent of the value of the property, the value of the property would be includible in the decedent's gross estate.

(2) The decedent's reversionary interest will be considered to have arisen by the express terms of the instrument of transfer and not by operation of law if the instrument contains an express disposition which affirmatively creates the reversionary interest, even though the terms of the disposition do not refer to the decedent or his estate, as such. For example, where the disposition is, in its terms, to the next of kin of the decedent and such a disposition, under applicable local law, constitute a reversionary interest in the decedent's estate, the decedent's reversionary interest will be considered to have arisen by the express terms of the instrument of transfer and not by operation of law.

(g) *Transfers made after November 11, 1935, and before January 29, 1940.* The provisions of paragraphs (a) to (f) of this section are fully applicable to transfers made after November 11, 1935 (the date on which the Supreme Court decided *Helvering* v. *St. Louis Union Trust Co.* (296 U.S. 39) and *Becker* v. *St. Louis Union Trust Co.* (296 U.S. 48)), and before January 29, 1940 (the date on which the Supreme Court decided *Helvering* v. *Hallock* and companion cases (309 U.S. 106)), except that the value of an interest in property transferred between these dates is not included in a decedent's gross estate under section 2037 if—

(1) The Commissioner, whose determination shall be final, determines that the transfer is classifiable with the transfers involved in the *St. Louis Union Trust Co.* cases, rather than with the transfer involved in the case of *Klein* v. *United States* (283 U.S. 231), previously decided by the Supreme Court, and

(2) The transfer shall have been finally treated for all gift tax purposes, both as to the calendar year of the transfer and as to subsequent calendar years, as a gift in an amount measured by the value of the property undiminished by reason of a provision in the instrument of transfer by which the property, in whole or in part, is to revert to the decedent should he survive the donee or another person, or the reversion is conditioned upon some other contingency terminable by the decedent's death.

§ 20.2038–1 Revocable transfers.

(a) *In general.* A decedent's gross estate includes under section 2038 the value of any interest in property transferred by the decedent, whether in trust or otherwise, if the enjoyment of the interest was subject at the date of the decedent's death to any change through the exercise of a power by the decedent to alter, amend, revoke, or terminate, or if the decedent relinquished such a power in contemplation of death. However, section 2038 does not apply—

(1) To the extent that the transfer was for an adequate and full consideration in money or money's worth (see § 20.2043–1);

(2) If the decedent's power could be exercised only with the consent of all parties having an interest (vested or contingent) in the transferred property, and if the power adds nothing to the rights of the parties under local law; or

(3) To a power held solely by a person other than the decedent. But, for example, if the decedent had the unrestricted power to remove or discharge a trustee at any time and appoint himself trustee, the decedent is considered as having the powers of the trustee. However, this result would not follow if he only had the power to appoint himself trustee under limited conditions which did not exist at the time of his death. (See last two sentences of paragraph (b) of this section.)

Except as provided in this paragraph, it is immaterial in what capacity the power was exercisable by the decedent or by another person or persons in conjunction with the decedent; whether the power was exercisable alone or only in conjunction with another person or persons, whether or not having an adverse interest (unless the transfer was made before June 2, 1924; see paragraph (d) of this section); and at what time or from what source the decedent acquired his power (unless the transfer

was made before June 23, 1936; see paragraph (c) of this section). Section 2038 is applicable to any power affecting the time or manner of enjoyment of property or its income, even though the identity of the beneficiary is not affected. For example, section 2038 is applicable to a power reserved by the grantor of a trust to accumulate income or distribute it to A, and to distribute corpus to A, even though the remainder is vested in A or his estate, and no other person has any beneficial interest in the trust. However, only the value of an interest in property subject to a power to which section 2038 applies is included in the decedent's gross estate under section 2038.

(b) *Date of existence of power.* A power to alter, amend, revoke, or terminate will be considered to have existed at the date of the decedent's death even though the exercise of the power was subject to a precedent giving of notice or even though the alteration, amendment, revocation, or termination would have taken effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice had been given or the power had been exercised. In determining the value of the gross estate in such cases, the full value of the property transferred subject to the power is discounted for the period required to elapse between the date of the decedent's death and the date upon which the alteration, amendment, revocation, or termination could take effect. In this connection, see especially § 20.2031–7. However, section 2038 is not applicable to a power the exercise of which was subject to a contingency beyond the decedent's control which did not occur before his death (e.g., the death of another person during the decedent's life). See, however, section 2036(a)(2) for the inclusion of property in the decedent's gross estate on account of such a power.

(c) *Transfers made before June 23, 1936.* Notwithstanding anything to the contrary in paragraphs (a) and (b) of this section, the value of an interest in property transferred by a decedent before June 23, 1936, is not included in his gross estate under section 2038 unless the power to alter, amend, revoke, or terminate was reserved at the time of the transfer. For purposes of this paragraph, the phrase ''reserved at the time of the transfer'' has reference to a power (arising either by the express terms of the instrument of transfer or by operation of law) to which the transfer was subject when made and which continued to the date of the decedent's death (see paragraph (b) of this section) to be exercisable by the decedent alone or by the decedent in conjunction with any other person or persons. The phrase also has reference to any understanding, express or implied, had in connection with the making of the transfer that the power would later be created or conferred.

(d) *Transfers made before June 2, 1924.* Notwithstanding anything to the contrary in paragraphs (a) to (c) of this section, if an interest in property was transferred by a decedent before the enactment of the Revenue Act of 1924. (June 2, 1924, 4:01 p.m., eastern standard time), and if a power reserved by the decedent to alter, amend, revoke, or terminate was exercisable by the decedent only in conjunction with a person having a substantial adverse interest in the transferred property, or in conjunction with several persons some or all of whom held such an adverse interest, there is included in the decedent's gross estate only the value of any interest or interests held by a person or persons not required to joint in the exercise of the power plus the value of any insubstantial adverse interest or interests of a person or persons required to join in the exercise of the power.

(e) *Powers relinquished in contemplation of death*—(1) *In general.* If a power to alter, amend, revoke, or terminate would have resulted in the inclusion of an interest in property in a decedent's gross estate under section 2038 if it had been held until the decedent's death, the relinquishment of the power in contemplation of the decedent's death within 3 years before his death results in the inclusion of the same interest in property in the decedent's gross estate, except to the extent that the power was relinquished for an adequate and full consideration in money or money's worth (see § 20.2043–1). For the meaning

of the phrase ''in contemplation of death'', see paragraph (c) of § 20.2035–1.

(2) *Transfers before June 23, 1936.* In the case of a transfer made before June 23, 1936, section 2038 applies only to a relinquishment made by the decedent. However, in the case of a transfer made after June 22, 1936, section 2038 also applies to a relinquishment made by a person or persons holding the power in conjunction with the decedent, if the relinquishment was made in contemplation of the decedent's death and had the effect of extinguishing the power.

(f) *Effect of disability to relinquish power in certain cases.* Notwithstanding anything to the contrary in paragraphs (a) through (e) of this section the provisions of this section do not apply to a transfer if—

(1) The relinquishment on or after January 1, 1940, and on or before December 31, 1947, of the power would, by reason of section 1000(e), of the Internal Revenue Code of 1939, be deemed not a transfer of property for the purpose of the gift tax under chapter 4 of the Internal Revenue Code of 1939, and

(2) The decedent was, for a continuous period beginning on or before September 30, 1947, and ending with his death, after August 16, 1954, under a mental disability to relinquish a power.

For the purpose of the foregoing provision, the term ''mental disability'' means mental incompetence, in fact, to release the power whether or not there was an adjudication of incompetence. Such provision shall apply even though a guardian could have released the power for the decedent. No interest shall be allowed or paid on any overpayment allowable under section 2038(c) with respect to amounts paid before August 7, 1959.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6600, 27 FR 4985, May 29, 1962]

§ 20.2039–1 Annuities.

(a) *In general.* A decedent's gross estate includes under section 2039 (a) and (b) the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under certain agreements or plans to the extent that the value of the annuity or other payment is attributable to contributions made by the decedent or his employer. Section 2039 (a) and (b), however, has no application to an amount which constitutes the proceeds of insurance under a policy on the decedent's life. Paragraph (b) of this section describes the agreements or plans to which section 2039 (a) and (b) applies; paragraph (c) of this section provides rules for determining the amount includible in the decedent's gross estate; and paragraph (d) of this section distinguishes proceeds of life insurance. The fact that an annuity or other payment is not includible in a decedent's gross estate under section 2039 (a) and (b) does not mean that it is not includible under some other section of Part III of Subchapter A of Chapter 11. However, see section 2039 (c) and (d) and § 20.2039–2 for rules relating to the exclusion from a decedent's gross estate of annuities and other payments under certain ''qualified plans''.

(b) *Agreements or plans to which section 2039 (a) and (b) applies.* (1) Section 2039 (a) and (b) applies to the value of an annuity or other payment receivable by any beneficiary under any form of contract or agreement entered into after March 3, 1931, under which—

(i) An annuity or other payment was payable to the decedent, either alone or in conjunction with another person or persons, for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death, or

(ii) The decedent possessed, for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death, the right to receive such an annuity or other payment, either alone or in conjunction with another person or persons.

The term ''annuity or other payment'' as used with respect to both the decedent and the beneficiary has reference to one or more payments extending over any period of time. The payments may be equal or unequal, conditional or unconditional, periodic or sporadic. The term ''contract or agreement'' includes any arrangement, understanding or plan, or any combination of arrangements, understandings

or plans arising by reason of the decedent's employment. An annuity or other payment ''was payable'' to the decedent if, at the time of his death, the decedent was in fact receiving an annuity or other payment, whether or not he had an enforceable right to have payments continued. The decedent ''possessed the right to receive'' an annuity or other payment if, immediately before his death, the decedent had an enforceable right to receive payments at some time in the future, whether or not, at the time of his death, he had a present right to receive payments. In connection with the preceding sentence, the decedent will be regarded as having had ''an enforceable right to receive payments at some time in the future'' so long as he had complied with his obligations under the contract or agreement up to the time of his death. For the meaning of the phrase ''for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death'', see section 2036 and § 20.2036–1.

(2) The application of this paragraph is illustrated and more fully explained in the following examples. In each example: (i) It is assumed that all transactions occurred after March 3, 1931, and (ii) the amount stated to be includible in the decedent's gross estate is determined in accordance with the provisions of paragraph (c) of this section.

Example (1). The decedent purchased an annuity contract under the terms of which the issuing company agreed to pay an annuity to the decedent for his life and, upon his death, to pay a specified lump sum to his designated beneficiary. The decedent was drawing his annuity at the time of his death. The amount of the lump sum payment to the beneficiary is includible in the decedent's gross estate under section 2039 (a) and (b).

Example (2). Pursuant to a retirement plan, the employer made contributions to a fund which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which was to provide the employee's wife, upon his death after retirement, with a similar annuity for life. The benefits under the plan were completely forfeitable during the employee's life, but upon his death after retirement, the benefits to the wife were forfeitable only upon her remarriage. The employee had no right to originally designate or to ever change the employer's designation of the surviving beneficiary. The retirement plan at no time met the requirements of section 401(a) (relating to qualified plans). Assume that the employee died at age 61 after the employer started payment of his annuity as described above. The value of the wife's annuity is includible in the decedent's gross estate under section 2039 (a) and (b). Includibility in this case is based on the fact that the annuity to the decedent ''was payable'' at the time of his death. The fact that the decedent's annuity was forfeitable is of no consequence since, at the time of his death, he was in fact receiving payments under the plan. Nor is it important that the decedent had no right to choose the surviving beneficiary. The element of forfeitability in the wife's annuity may be taken into account only with respect to the valuation of the annuity in the decedent's gross estate.

Example (3). Pursuant to a retirement plan, the employer made contributions to a fund which was to provide the employee, upon his retirement at age 60, with an annuity of $100 per month for life, and which was to provide his designated beneficiary, upon the employee's death after retirement, with a similar annuity for life. The plan also provided that (a) upon the employee's separation from service before retirement, he would have a nonforfeitable right to receive a reduced annuity starting at age 60, and (b) upon the employee's death before retirement, a lump sum payment representing the amount of the employer's contributions credited to the employee's account would be paid to the designated beneficiary. The plan at no time met the requirements of section 401(a) (relating to qualified plans). Assume that the employee died at age 49 and that the designated beneficiary was paid the specified lump sum payment. Such amount is includible in the decedent's gross estate under section 2039 (a) and (b). Since immediately before his death, the employee had an enforceable right to receive an annuity commencing at age 60, he is considered to have ''possessed the right to receive'' an annuity as that term is used in section 2039 (a). If, in this example, the employee would not be entitled to any benefits in the event of his separation from service before retirement for any reason other than death, the result would be the same so long as the decedent had complied with his obligations under the contract up to the time of his death. In such case, he is considered to have had, immediately before his death, an enforceable right to receive an annuity commencing at age 60.

Example (4). Pursuant to a retirement plan, the employee made contributions to a fund which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which was to provide his designated beneficiary, upon the employee's death after retirement, with a similar annuity for life. The plan provided, however, that no benefits

were payable in the event of the employee's death before retirement. The retirement plan at no time met the requirements of section 401(a) (relating to qualified plans). Assume that the employee died at age 59 but that the employer nevertheless started payment of an annuity in a slightly reduced amount to the designated beneficiary. The value of the annuity is not includible in the decedent's gross estate under section 2039 (a) and (b). Since the employee died before reaching the retirement age, the employer was under no obligation to pay the annuity to the employee's designated beneficiary. Therefore, the annuity was not paid under a ''contract or agreement'' as that term is used in section 2039 (a). If, however, it can be established that the employer has consistently paid an annuity under such circumstances, the annuity will be considered as having been paid under a ''contract or agreement''.

Example (5). The employer made contributions to a retirement fund which were credited to the employee's individual account. Under the plan, the employee was to receive one-half the amount credited to his account upon his retirement at age 60, and his designated beneficiary was to receive the other one-half upon the employee's death after retirement. If the employee should die before reaching the retirement age, the entire amount credited to his account at such time was to be paid to the designated beneficiary. The retirement plan at no time met the requirements of section 401(a) (relating to qualified plans). Assume that the employee received one-half the amount credited to his account upon reaching the retirement age and that he died shortly thereafter. Since the employee received all that he was entitled to receive under the plan before his death, no amount was payable to him for his life or for any period not ascertainable without reference to his death, or for any period which did not in fact end before his death. Thus, the amount of the payment to the designated beneficiary is not includible in the decedent's gross estate under section 2039 (a) and (b). If, in this example, the employee died before reaching the retirement age, the amount of the payment to the designated beneficiary would be includible in the decedent's gross estate under section 2039 (a) and (b). In this latter case, the decedent possessed the right to receive lump sum payment for a period which did not in fact end before his death.

Example (6). The employer made contributions to two different funds set up under two different plans. One plan was to provide the employee upon his retirement at age 60, with an annuity for life, and the other plan was to provide the employee's designated beneficiary, upon the employee's death, with a similar annuity for life. Each plan was established at a different time and each plan was administered separately in every respect. Neither plan at any time met the requirements of section 401(a) (relating to qualified plans). The value of the designated beneficiary's annuity is includible in the employee's gross estate. All rights and benefits accruing to an employee and to others by reason of the employment (except rights and benefits accruing under certain plans meeting the requirements of section 401(a) (see § 20.2039–2)) are considered together in determining whether or not section 2039 (a) and (b) applies. The scope of section 2039 (a) and (b) cannot be limited by indirection.

(c) *Amount includible in the gross estate.* The amount to be included in a decedent's gross estate under section 2039 (a) and (b) is an amount which bears the same ratio to the value at the decedent's death of the annuity or other payment receivable by the beneficiary as the contribution made by the decedent, or made by his employer (or former employer) for any reason connected with his employment, to the cost of the contract or agreement bears to its total cost. In applying this ratio, the value at the decedent's death of the annuity or other payment is determined in accordance with the rules set forth in §§ 20.2031–1, 20.2031–7, 20.2031–8, and 20.2031–9. The application of this paragraph may be illustrated by the following examples:

Example (1). On January 1, 1945, the decedent and his wife each contributed $15,000 to the purchase price of an annuity contract under the terms of which the issuing company agreed to pay an annuity to the decedent and his wife for their joint lives and to continue the annuity to the survivor for his life. Assume that the value of the survivor's annuity at the decedent's death (computed under § 20.2031–8) is $20,000. Since the decedent contributed one-half of the cost of the contract, the amount to be included in his gross estate under section 2039 (a) and (b) is $10,000.

Example (2). Under the terms of an employment contract entered into on January 1, 1945, the employer and the employee made contributions to a fund which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which was to provide his designated beneficiary, upon the employee's death after retirement, with a similar annuity for life. The retirement fund at no time formed part of a plan meeting the requirements of section 401(a) (relating to qualified plans). Assume that the employer and the employee each contributed $5,000 to the retirement fund. Assume further, that the employee died after retirement at which

time the value of the survivor's annuity was $8,000. Since the employer's contributions were made by reason of the decedent's employment, the amount to be included in his gross estate under section 2039 (a) and (b) is the entire $8,000. If, in the above example, only the employer made contributions to the fund, the amount to be included in the gross estate would still be $8,000.

(d) *Insurance under policies on the life of the decedent.* If an annuity or other payment receivable by a beneficiary under a contract or agreement is in substance the proceeds of insurance under a policy on the life of the decedent, section 2039 (a) and (b) does not apply. For the extent to which such an annuity or other payment is includable in a decedent's gross estate, see section 2042 and § 20.2042–1. A combination annuity contract and life insurance policy on the decedent's life (e.g., a ''retirement income'' policy with death benefits) which matured during the decedent's lifetime so that there was no longer an insurance element under the contract at the time of the decedent's death is subject to the provisions of section 2039 (a) and (b). On the other hand, the treatment of a combination annuity contract and life insurance policy on the decedent's life which did not mature during the decedent's lifetime depends upon the nature of the contract at the time of the decedent's death. The nature of the contract is generally determined by the relation of the reserve value of the policy to the value of the death benefit at the time of the decedent's death. If the decedent dies before the reserve value equals the death benefit, there is still an insurance element under the contract. The contract is therefore considered, for estate tax purposes, to be an insurance policy subject to the provisions of section 2042. However, if the decedent dies after the reserve value equals the death benefit, there is no longer an insurance element under the contract. The contract is therefore considered to be a contract for an annuity or other payment subject to the provisions of section 2039 (a) and (b) or some other section of Part III of Subchapter A of Chapter 11. Notwithstanding the relation of the reserve value to the value of the death benefit, a contract under which the death benefit could never exceed the total premiums paid, plus interest, contains no insurance element.

Example. Pursuant to a retirement plan established January 1, 1945, the employer purchased a contract from an insurance company which was to provide the employee, upon his retirement at age 65, with an annuity of $100 per month for life, and which was to provide his designated beneficiary, upon the employee's death after retirement, with a similar annuity for life. The contract further provided that if the employee should die before reaching the retirement age, a lump sum payment of $20,000 would be paid to his designated beneficiary in lieu of the annuity described above. The plan at no time met the requirements of section 401(a) (relating to qualified plans). Assume that the reserve value of the contract at the retirement age would be $20,000. If the employee died after reaching the retirement age, the death benefit to the designated beneficiary would constitute an annuity, the value of which would be includable in the employee's gross estate under section 2039 (a) and (b). If, on the other hand, the employee died before reaching his retirement age, the death benefit to the designated beneficiary would constitute insurance under a policy on the life of the decedent since the reserve value would be less than the death benefit. Accordingly, its includability would depend upon section 2042 and § 20.2042–1.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7416, 41 FR 14514, Apr. 6, 1976]

§ 20.2039–1T Limitations and repeal of estate tax exclusion for qualified plans and individual retirement plans (IRAs) (temporary).

Q–1: Are there any exceptions to the general effective dates of the $100,000 limitation and the repeal of the estate tax exclusion for the value of interests under qualified plans and IRAs described in section 2039 (c) and (e)?

A–1: (a) Yes. Section 245 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) limited the estate tax exclusion to $100,000 for estates of decedents dying after December 31, 1982. Section 525 of the Tax Reform Act of 1984 (TRA of 1984) repealed the exclusion for estates of decedents dying after December 31, 1984.

(b) Section 525(b)(3) of the TRA of 1984 amended section 245 of TEFRA to provide that the $100,000 limitation on the exclusion for the value of a decedent's interest in a plan or IRA will not apply to the estate of any decedent

dying after December 31, 1982, to the extent that the decedent-participant was in pay status on December 31, 1982, with respect to such interest and irrevocably elected the form of benefit payable under the plan or IRA (including the form of any survivor benefits) with respect to such interest before January 1, 1983.

(c) Similarly, the TRA of 1984 provides that the repeal of the estate tax exclusion for the value of a decedent's interest in a plan or IRA will not apply to the estate of a decedent dying after December 31, 1984, to the extent that the decedent-participant was in pay status on December 31, 1984, with respect to such interest and irrevocably elected the form of benefit payable under the plan or IRA (including the form of any survivor benefits) with respect to such interest before July 18, 1984.

Q–2: What is the meaning of ''in pay status'' on the applicable date?

A–2: A participant was in pay status on the applicable date with respect to a portion of his or her interest in a plan or IRA if such portion is to be paid in a benefit form that has been elected on or before such date and the participant has received, on or before such date, at least one payment under such benefit form.

Q–3: What is required for an election of the form of benefit payable under the plan to have been irrevocable as of any applicable date?

A–3: As of any applicable date, an election of the form of benefit payable under a plan is irrevocable if, as of such date, it was a written irrevocable election that, with respect to all payments to be received after such date, specified the form of distribution (e.g., lump sum, level dollar annuity, formula annuity) and the period over which the distribution would be made (e.g., single life, joint and survivor, term certain). An election is not irrevocable as of any applicable date if, on or after such date, the form or period of the distribution could be determined or altered by any person or persons. An election does not fail to be irrevocable as of an applicable date merely because the beneficiaries were not designated as of such date or could be changed after such date. If any interest in any IRA may not, by law or contract, be subject to an irrevocable election described in this section, any election of the form of benefit payable under the IRA does not satisfy the requirement that an irrevocable election have been made.

[T.D. 8073, 51 FR 4335, Feb. 4, 1986]

§ 20.2039–2 Annuities under "qualified plans" and section 403(b) annuity contracts.

(a) *Section 2039(c) exclusion.* In general, in the case of a decedent dying after December 31, 1953, the value of an annuity or other payment receivable under a plan or annuity contract described in paragraph (b) of this section is excluded from the decedent's gross estate to the extent provided in paragraph (c) of this section. In the case of a plan described in paragraph (b) (1) or (2) of this section (a ''qualified plan''), the exclusion is subject to the limitation described in § 20.2039–3 (relating to lump sum distributions paid with respect to a decedent dying after December 31, 1976, and before January 1, 1979) or § 20.2039–4 (relating to lump sum distributions paid with respect to a decedent dying after December 31, 1978).

(b) *Plans and annuity contracts to which section 2039(c) applies.* Section 2039(c) excludes from a decedent's gross estate, to the extent provided in paragraph (c) of this section, the value of an annuity or other payment receivable by any beneficiary (except the value of an annuity or other payment receivable by or for the benefit of the decedent's estate) under—

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

(2) A retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan which, at the time of decedent's separation from employment (by death or otherwise), or at the time of the earlier termination of the plan, was a plan described in section 403(a);

(3) In the case of a decedent dying after December 31, 1957, a retirement annuity contract purchased for an employee by an employer which, for its taxable year in which the purchase occurred, is an organization referred to in section 170(b)(1)(A) (ii) or (iv) or which is a religious organization (other than a trust) and is exempt from tax under section 501(a);

(4) In the case of a decedent dying after December 31, 1965, an annuity under Chapter 73 of Title 10 of the United States Code (10 U.S.C. 1431, *et seq.*); or

(5) In the case of a decedent dying after December 31, 1962, a bond purchase plan described in section 405.

For the meaning of the term ''annuity or other payment'', see paragraph (b) of § 20.2039–1. For the meaning of the phrase ''receivable by or for the benefit of the decedent's estate'', see paragraph (b) of § 20.2042–1. The application of this paragraph may be illustrated by the following examples in each of which it is assumed that the amount stated to be excludable from the decedent's gross estate is determined in accordance with paragraph (c) of this section:

Example (1). Pursuant to a pension plan, the employer made contributions to a trust which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which was to provide his wife, upon the employee's death after retirement, with a similar annuity for life. At the time of the employee's retirement, the pension trust formed part of a plan meeting the requirements of section 401(a). Assume that the employee died at age 61 after the trustee started payment of his annuity as described above. Since the wife's annuity was receivable under a qualified pension plan, no part of the value of such annuity is includable in the decedent's gross estate by reason of the provisions of section 2039(c). If, in this example, the employer provided other benefits under nonqualified plans, the result would be the same since the exclusion under section 2039(c) is confined to the benefits provided for under the qualified plan.

Example (2). Pursuant to a profit-sharing plan, the employer made contributions to a trust which were allocated to the employee's individual account. Under the plan, the employee would, upon retirement at age 60, receive a distribution of the entire amount credited to the account. If the employee should die before reaching retirement age, the amount credited to the account would be distributed to the employee's designated beneficiary. Assume that the employee died before reaching the retirement age and that at such time the plan met the requirements of section 401(a). Since the payment to the designated beneficiary is receivable under a qualified profit-sharing plan, the provisions of section 2039(c) apply. However, if the payment is a lump sum distribution to which § 20.2039–3 or § 20.2039–4 applies, the payment is excludable from the decedent's gross estate only as provided in such section.

Example (3). Pursuant to a pension plan, the employer made contributions to a trust which were used by the trustee to purchase a contract from an insurance company for the benefit of an employee. The contract was to provide the employee, upon retirement at age 65, with an annuity of $100 per month for life, and was to provide the employee's designated beneficiary upon the employee's death after retirement, with a similar annuity for life. The contract further provided that if the employee should die before reaching retirement age, a lump sum payment equal to the greater of (a) $10,000 or (b) the reserve value of the policy would be paid to the designated beneficiary in lieu of the annuity. Assume that the employee died before reaching the retirement age and that at such time the plan met the requirements of section 401(a). Since the payment to the designated beneficiary is receivable under a qualified pension plan, the provisions of section 2039(c) apply. However, if the payment is a lump sum distribution to which § 20.2039–3 or § 20.2039–4 applies, the payment is excludable from the decedent's gross estate only as provided in such section. It should be noted that for purposes of the exclusion under section 2039(c) it is immaterial whether or not the payment constitutes the proceeds of life insurance under the principles set forth in § 20.2039–1(d).

Example (4). Pursuant to a profit-sharing plan, the employer made contributions to a trust which were allocated to the employee's individual account. Under the plan, the employee would, upon his retirement at age 60, be given the option to have the amount credited to his account (a) paid to him in a lump sum, (b) used to purchase a joint and survivor annuity for him and his designated beneficiary, or (c) left with the trustee under an arrangement whereby interest would be paid to him for his lifetime with the principal to be paid, at his death, to his designated beneficiary. The plan further provided that if the third method of settlement were selected, the employee would retain the right to have the principal paid to himself in a lump sum up to the time of his death. At the time of the employee's retirement, the profit-sharing plan met the requirements of section 401(a). Assume that the employee, upon reaching his retirement age, elected to have the amount credited to his account left

with the trustee under the interest arrangement. Assume, further, that the employee did not exercise his right to have such amount paid to him before his death. Under such circumstances, the employee is considered as having constructively received the amount credited to his account upon his retirement. Thus, such amount is not considered as receivable by the designated beneficiary under the profit-sharing plan and the exclusion of section 2039(c) is not applicable.

Example (5). An employer purchased a retirement annuity contract for an employee which was to provide the employee, upon his retirement at age 60, with an annuity for life and which was to provide his wife, upon the employee's death after retirement, with a similar annuity for life. The employer, for its taxable year in which the annuity contract was purchased, was an organization referred to in section 170(b)(1)(ii), and was exempt from tax under section 501(a). The entire amount of the purchase price of the annuity contract was excluded from the employee's gross income under section 403(b). No part of the value of the survivor annuity payable after the employee's death is includible in the decedent's gross estate by reason of the provisions of section 2039(c).

(c) *Amounts excludable from the gross estate.* (1) The amount to be excluded from a decedent's gross estate under section 2039(c) is an amount which bears the same ratio to the value at the decedent's death of an annuity or other payment receivable by the beneficiary as the employer's contribution (or a contribution made on the employer's behalf) on the employee's account to the plan or towards the purchase of the annuity contract bears to the total contributions on the employee's account to the plan or towards the purchase of the annuity contract. In applying this ratio—

(i) Payments or contributions made by or on behalf of the employer towards the purchase of an annuity contract described in paragraph (b)(3) of this section are considered to include only such payments or contributions as are, or were, excludable from the employee's gross income under section 403(b).

(ii) In the case of a decedent dying before January 1, 1977, payments or contributions made under a plan described in paragraph (b) (1), (2) or (5) of this section on behalf of the decedent for a period for which the decedent was self-employed, within the meaning of section 401(c)(1), with respect to the plan are considered payments or contributions made by the decedent and not by the employer.

(iii) In the case of a decedent dying after December 31, 1976, however, payments or contributions made under a plan described in paragraph (b) (1), (2) or (5) of this section on behalf of the decedent for a period for which the decedent was self-employed, within the meaning of section 401(c)(1), with respect to the plan are considered payments or contributions made by the employer to the extent the payments or contributions are, or were, deductible under section 404 or 405(c). Contributions or payments attributable to that period which are not, or were not, so deductible are considered made by the decedent.

(iv) In the case of a plan described in paragraph (b) (1) or (2) of this section, a rollover contribution described in section 402(a)(5), 403(a)(4), 409(d)(3)(A)(ii) or 409(b)(3)(C) is considered an amount contributed by the employer.

(v) In the case of an annuity contract described in paragraph (b)(3) of this section, a rollover contribution described in section 403(b)(8) is considered an amount contributed by the employer.

(vi) In the case of a plan described in paragraph (b) (1), (2) or (5) of this section, an amount includable in the gross income of an employee under section 1379(b) (relating to shareholder-employee beneficiaries under certain qualified plans) is considered an amount paid or contributed by the decedent.

(vii) Amounts payable under paragraph (b)(4) of this section are attributable to payments or contributions made by the decedent only to the extent of amounts deposited by the decedent pursuant to section 1438 or 1452(d) of Title 10 of the United States Code.

(viii) The value at the decedent's death of the annuity or other payment is determined under the rules of §§ 20.2031–1 and 20.2031–7 or, for certain prior periods, § 20.2031–7A.

(2) In certain cases, the employer's contribution (or a contribution made

on his behalf) to a plan on the employee's account and thus the total contributions to the plan on the employee's account cannot be readily ascertained. In order to apply the ratio stated in subparagraph (1) of this paragraph in such a case, the method outlined in the following two sentences must be used unless a more precise method is presented. In such a case, the total contributions to the plan on the employee's account is the value of any annuity or other payment payable to the decedent and his survivor computed as of the time the decedent's rights first mature (or as of the time the survivor's rights first mature if the decedent's rights never mature) and computed in accordance with the rules set forth in §§ 20.2031–1, 20.2031–7, 20.2031–8, and 20.2031–9. By subtracting from such value the amount of the employee's contribution to the plan, the amount of the employer's contribution to the plan on the employee's account may be obtained. The application of this paragraph may be illustrated by the following example.

Example. Pursuant to a pension plan, the employer and the employee contributed to a trust which was to provide the employee, upon his retirement at age 60, with an annuity for life, and which was to provide his wife, upon the employee's death after retirement, with a similar annuity for life. At the time of the employee's retirement, the pension trust formed part of a plan meeting the requirements of section 401(a). Assume the following: (i) That the employer's contributions to the fund were not credited to the accounts of individual employees; (ii) that the value of the employee's annuity and his wife's annuity, computed as of the time of the decedent's retirement, was $40,000; (iii) that the employee contributed $10,000 to the plan; and (iv) that the value at the decedent's death of the wife's annuity was $16,000. On the basis of these facts, the total contributions to the fund on the employee's account are presumed to be $40,000 and the employer's contribution to the plan on the employee's account is presumed to be $30,000 ($40,000 less $10,000). Since the wife's annuity was receivable under a qualified pension plan, that part of the value of such annuity which is attributable to the employer's contributions ($30,000÷$40,000×$16,000), or $12,000 is excludable from the decedent's gross estate by reason of the provisions of section 2039(c). Compare this result with the results reached in the examples set forth in paragraph (b) of this section in which all contributions to the plans were made by the employer.

(d) *Exclusion of certain annuity interests created by community property laws.* (1) In the case of an employee on whose behalf contributions or payments were made by his employer or former employer under an employees' trust forming part of a pension, stock bonus, or profit-sharing plan described in section 2039(c)(1), under an employee's retirement annuity contract described in section 2039(c)(2), or toward the purchase of an employee's retirement annuity contract described in section 2039(c)(3), which under section 2039(c) are not considered as contributed by the employee, if the spouse of such employee predeceases him, then, notwithstanding the provisions of section 2039 or of any other provision of law, there shall be excluded from the gross estate of such spouse the value of any interest of such spouse in such plan or trust or such contract, to the extent such interest—

(i) Is attributable to such contributions or payments, and

(ii) Arises solely by reason of such spouse's interest in community income under the community property laws of a State.

(2) Section 2039(d) and this paragraph do not provide any exclusion for such spouse's property interest in the plan, trust or contract to the extent it is attributable to the contributions of the employee spouse. Thus, the decedent's community property interest in the plan, trust, or contract which is attributable to contributions made by the employee spouse are includible in the decendent's gross estate. See paragraph (c) of this section.

(3) Section 2039(d) and this paragraph apply to the estate of a decedent who dies on or after October 27, 1972, and to the estate of a decedent who died before October 27, 1972, if the period for filing a claim for credit or refund of an overpayment of the estate tax ends on or after October 27, 1972. Interest will

not be allowed or paid on any overpayment of tax resulting from the application of section 2039(d) and this paragraph for any period prior to April 26, 1973.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6526, 26 FR 416, Jan. 19, 1961; T.D. 7043, 35 FR 8480, June 2, 1970; T.D. 7416, 41 FR 14514, Apr. 6, 1976; T.D. 7428, 41 FR 34628, Aug. 16, 1976; T.D. 7562, 43 FR 38820, Aug. 31, 1978; T.D. 7761, 46 FR 7303, Jan. 23, 1981; T.D. 8540, 59 FR 30103, June 10, 1994]

§ 20.2039–3 Lump sum distributions under "qualified plans;" decedents dying after December 31, 1976, and before January 1, 1979.

(a) *Limitation of section 2039(c) exclusion.* This section applies in the case of a decedent dying after December 31, 1976, and before January 1, 1979. If a lump sum distribution is paid with respect to the decedent under a plan described in § 20.2039–2(b) (1) or (2) (a ''qualified plan''), no amount payable with respect to the decedent under the plan is excludable from the decedent's gross estate under § 20.2039–2.

(b) *''Lump sum distribution'' defined.* For purposes of this section the term ''lump sum distribution'' means a lump sum distribution defined in section 402(e)(4)(A) that satisfies the requirements of section 402(e)(4)(C), relating to the aggregation of certain trusts and plans. The distribution of an annuity contract is not a lump sum distribution for purposes of this section, and § 20.2039–2 will apply with respect to the distribution of an annuity contract without regard to whether the contract is included in a distribution that is otherwise a lump sum distribution under this paragraph (b). A distribution is a lump sum distribution for purposes of this section without regard to the election described in section 402(e)(4)(B).

(c) *Amounts payable as a lump sum distribution.* If on the date the estate tax return is filed, an amount under a qualified plan is payable with respect to the decedent as a lump sum distribution (whether at the election of a beneficiary or otherwise), for purposes of this section the amount is deemed paid as a lump sum distribution no later than on such date. Accordingly, no portion of the amount payable under the plan is excludable from the value of the decedent's gross estate under § 20.2039–2. If, however, the amount payable as a lump sum distribution is not, in fact, thereafter paid as a lump sum distribution, there shall be allowed a credit or refund of any tax paid which is attributable to treating such amount as a lump sum distribution under this paragraph. Any claim for credit or refund filed under this paragraph must be filed within the time prescribed by section 6511, and must provide satisfactory evidence that the amount originally payable as a lump sum distribution is no longer payable in such form.

(d) *Filing date.* For purposes of paragraph (c) of this section, ''the date the estate tax return is filed'' means the earlier of—

(1) The date the estate tax return is actually filed, or

(2) The date nine months after the decedent's death, plus any extension of time for filing the estate tax return granted under section 6081.

[T.D. 7761, 46 FR 7304, Jan. 23, 1981]

§ 20.2039–4 Lump sum distributions from "qualified plans;" decedents dying after December 31, 1978.

(a) *Limitation on section 2039(c) exclusion.* This section applies in the case of a decedent dying after December 31, 1978. If a lump sum distribution is paid or payable with respect to a decedent under a plan described in § 20.2039–2(b) (1) or (2) (a ''qualified plan''), no amount paid or payable with respect to the decedent under the plan is excludable from the decedent's gross estate under § 20.2039–2, unless the recipient of the distribution makes the section 402(a)/403(a) taxation election described in paragraph (c) of this section. For purposes of this section, an amount is payable as a lump sum distribution under a plan if, as of the date the estate tax return is filed (as determined under § 20.2039–3(d)), it is payable as a lump sum distribution at the election of the recipient or otherwise.

(b) *''Lump sum distribution'' defined; treatment of annuity contracts.* For purposes of this section the term ''lump sum distribution'' means a lump sum distribution defined in section 402(e)(4)(A) that satisfies the requirements of section 402(e)(4)(C), relating to the aggregation of certain trusts

and plans. A distribution is a lump sum distribution for purposes of this section without regard to the election described in section 402(e)(4)(B). The distribution of an annuity contract is not a lump sum distribution for purposes of this section, and the limitation described in this section does not apply to an annuity contract distributed under a plan. Accordingly, if the amount payable with respect to a decedent under a plan is paid to a recipient partly by the distribution of an annuity contract, and partly by the distribution of an amount that is a lump sum distribution within the meaning of this paragraph (b), § 20.2039–2 shall apply with respect to the annuity contract without regard to whether the recipient makes the section 402(a)/403(a) taxation election with respect to the remainder of the distribution.

(c) *Recipient's section 402(a)/403(a) taxation election.* The section 402(a)/403(a) taxation election is the election by the recipient of a lump sum distribution to treat the distribution as—

(1) Taxable under section 402(a), without regard to section 402(a)(2), to the extent includable in gross income (in the case of a distribution under a qualified plan described in § 20.2039–2(b)(1)),

(2) Taxable under section 403(a), without regard to section 403(a)(2), to the extent includable in gross income (in the case of a distribution under a qualified annuity contract described in § 20.2039–2(b)(2)), or

(3) A rollover contribution, in whole or in part, under section 402(a)(7) (relating to rollovers by a decedent's surviving spouse).

Accordingly, if a recipient makes the election, no portion of the distribution is taxable to the recipient under the 10-year averaging provisions of section 402(e) or as long-term capital gain under section 402(a)(2). However, a recipient's election under this paragraph (c) does not preclude the application of section 402(e)(4)(J) to any securities of the employer corporation included in the distribution.

(d) *Method of election*—(1) *General rule.* The recipient of a lump sum distribution shall make the section 402(a)/403(a) taxation election by:

(i) Determining the income tax liability on the income tax return (or amended return) for the taxable year of the distribution in a manner consistent with paragraph (c) (1) or (2) of this section,

(ii) Rolling over all or any part of the distribution under section 402(a)(7), or

(iii) Filing a section 2039(f)(2) election statement described in paragraph (d)(2) of this section.

(2) *Election statement.* A recipient may file a section 2039(f)(2) election statement indicating that the recipient elects to treat a lump sum distribution in the manner described in paragraph (c) of this section. The statement must be filed where the recipient would file the income tax return for the taxable year of the distribution. The statement must be signed by the recipient and include the individual's name, address, social security number, the name of the decedent, and a statement indicating the election is being made. A section 2039(f)(2) election statement may be filed at any time prior to making the election under paragraph (d)(1)(i) or (ii) of this section.

(3) *Effect on estate tax return.* If the date the estate tax return is filed precedes the date on which the recipient makes the section 402(a)/403(a) taxation election with respect to a lump sum distribution, the estate tax return may not reflect the election. However, if after the estate tax return is filed, the recipient makes the section 402(a)/403(a) taxation election, the executor of the estate may file a claim for refund or credit of an overpayment of the Federal estate tax within the time prescribed in section 6511. See also, § 20.6081–1 for rules relating to obtaining an extension of time for filing the estate tax return.

(e) *Election irrevocable.* If a recipient of a lump sum distribution files a section 2039(f)(2) election statement, an income tax return (or amended return) or makes a rollover contribution that constitutes the section 402(a)/403(a) taxation election described in paragraphs (c) and (d), the election may not be revoked. Accordingly, a subsequent and amended income tax return filed by the recipient that is inconsistent with the prior election will not be given effect for purposes of section 2039 and section 402 or 403.

(f) *Lump sum distribution to multiple recipients.* In the case of a lump sum distribution paid or payable under a qualified plan with respect to the decedent to more than one recipient, the exclusion under § 20.2039–2 applies to so much of the distribution as is paid or payable to a recipient who makes the section 402(a)/403(a) taxation election.

(g) *Distributions of annuity contracts included in multiple distributions.* Notwithstanding that a recipient makes the section 402(a)/403(a) taxation election with respect to a lump sum distribution that includes the distribution of an annuity contract, the distribution of the annuity contract is to be taken into account by the recipient for purposes of the multiple distribution rules under section 402(e).

[T.D. 7761, 46 FR 7304, Jan. 23, 1981, as amended by T.D. 7956, 49 FR 20284, May 14, 1984]

§ 20.2039–5 Annuities under individual retirement plans.

(a) *Section 2039(e) exclusion*—(1) *In general.* In the case of a decedent dying after December 31, 1976, section 2039 (e) excludes from the decedent's gross estate, to the extent provided in paragraph (c) of this section, the value of a ''qualifying annuity'' receivable by a beneficiary under an individual retirement plan. The term ''individual retirement plan'' means—

(i) An individual retirement account described in section 408(a).

(ii) An individual retirement annuity described in section 408(b), or

(iii) A retirement bond described in section 409(a).

(2) *Limitations.* (i) Section 2039(e) applies only with respect to the gross estate of a decedent on whose behalf the individual retirement plan was established. Accordingly, section 2039(e) does not apply with respect to the estate of a decedent who was only a beneficiary under the plan.

(ii) Section 2039(e) does not apply to an annuity receivable by or for the benefit of the decedent's estate. For the meaning of the term ''receivable by or for the benefit of the decedent's estate,'' see § 20.2042–1(b).

(b) *Qualifying annuity.* For purposes of this section, the term ''qualifying annuity'' means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary for the beneficiary's life or over a period ending at least 36 months after the decedent's death. The term ''annuity contract'' includes an annuity purchased for a beneficiary and distributed to the beneficiary, if under section 408 the contract is not included in the gross income of the beneficiary upon distribution. The term ''other arrangement'' includes any arrangement arising by reason of the decedent's participation in the program providing the individual retirement plan. Payments shall be considered ''periodic'' if under the arrangement or contract (including a distributed contract) payments are to be made to the beneficiary at regular intervals. If the contract or arrangement provides optional payment provisions, not all of which provide for periodic payments, payments shall be considered periodic only if an option providing periodic payments is elected not later than the date the estate tax return is filed (as determined under § 20.2039–3(d)). For this purpose, the right to surrender a contract (including a distributed contract) for a cash surrender value will not be considered an optional payment provision. Payments shall be considered ''substantially equal'' even though the amounts receivable by the beneficiary may vary. Payments shall not be considered substantially equal, however, if more than 40% of the total amount payable to the beneficiary under the individual retirement plan, determined as of the date of the decedent's death and excluding any postmortem increase, is payable to the beneficary in any 12-month period.

(c) *Amount excludible from gross estate*—(1) *In general.* Except as otherwise described in this paragraph (c), the amount excluded from the decedent's gross estate under section 2039 (e) is the entire value of the qualifying annuity (as determined under §§ 20.2031–1 and 20.2031–7 or, for certain prior periods, § 20.2031–7A) payable under the individual retirement plan.

(2) *Excess contribution.* In any case in which there exists, on the date of the decedent's death, an excess contribution (as defined in section 4973(b)) with respect to the individual retirement

plan, the amount excluded from the value of the decedent's gross estate is determined under the following formula:

$$E = A - A(X \div C - R)$$

Where:

E=The amount excluded from the decedent's gross estate under section 2039(e),

A=The value of the qualifying annuity at the decedent's death (as determined under §§ 20.2031–1 and 20.2031–7 or, for certain prior periods, § 20.2031–7A),

X=The amount which is an excess contribution at the decedent's death (as determined under section 4973(b)),

C=The total amount contributed by or on behalf of the decedent to the individual retirement plan, and

R=The total of amounts paid or distributed from the individual retirement plan before the death of the decedent which were either includable in the gross income of the recipient under section 408(d)(1) and represented the payment or distribution of an excess contribution, or were payments or distributions described in section 408(d)(4) or (5) (relating to returned excess contributions).

(3) *Certain section 403(b)(8) rollover contributions.* This subparagraph (3) applies if the decedent made a rollover contribution to the individual retirement plan under section 403(b)(8), and the contribution was attributable to a distribution under an annuity contract other than an annuity contract described in § 20.2039–2(b)(3). If such a rollover contribution was the only contribution made to the plan, no part of the value of the qualifying annuity payable under the plan is excluded from the decedent's gross estate under section 2039(e). If a contribution other than such a rollover contribution was made to the plan, the amount excluded from the decedent's gross estate is determined under the formula described in subparagraph (2) of this paragraph, except that for purposes of that formula, X includes the amount that was a rollover contribution under section 403(b)(8) attributable to a distribution under an annuity contract not described in § 20.2039–2(b)(3).

(4) *Surviving spouse's rollover contribution.* This subparagraph (4) applies if the decedent made a rollover contribution to the individual retirement plan under section 402(a)(7), relating to rollovers by a surviving spouse. If the rollover contribution under section 402(a)(7) was the only contribution made by the decedent to the plan, no part of the value of the qualifying annuity payable under the plan is excluded from the decedent's gross estate under section 2039(e). If a contribution other than a rollover contribution under section 402(a)(7) was made by the decedent to the plan, the amount excluded from the decedent's gross estate is determined under the formula described in subparagraph (2) of this paragraph, except that for purposes of that formula, X includes the amount that was a rollover contribution under section 402(a)(7).

(5) *Election under § 1.408–2(b)(7)(ii).* This subparagraph (5) applies if the decedent at any time made the election described in § 1.408–2(b)(7)(ii) with respect to an amount in the individual retirement plan. If this subparagraph (5) applies, the amount excluded from the decedent's gross estate is determined under the formula described in subparagraph (2), except that for purposes of that formula, X and C include the amount with respect to which the election was made.

(6) *Plan-to-plan rollovers.* (i) This subparagraph (6) applies if the individual retirement plan is a transferee plan. A ''transferee plan'' is a plan that was the recipient of a contribution described in section 408(d)(3)(A)(i) or 409(b)(3)(C) (relating to rollovers from one individual retirement plan to another) made by the decedent. The amount of the contribution described in section 408(d)(3)(A)(i) or 409(b)(3)(C) is the ''rollover amount.'' The plan from which the rollover amount was paid or distributed to the decedent is the ''transferor plan.''

(ii) If the decedent made a contribution described in subparagraph (3) or (4) to the transferor plan, the amount excluded from the decedent's gross estate with respect to the transferee plan is determined under the formula described in subparagraph (2), except that for purposes of that formula, X includes so much of the rollover amount as was attributable to the contribution to the transferor plan that was described in subparagraph (3) or (4). The extent to which a rollover amount is attributable to a contribution described in subparagraph (3) or (4) that

was made to the transferor plan is determined by multiplying the rollover amount by a fraction, the numerator of which is the amount of such contribution, and the denominator of which is the sum of all amounts contributed by the decedent to the transferor plan (if not returned as described under R in subparagraph (2)), and any amount in the transferor plan to which the election described in subparagraph (5) applied.

(iii) If the decedent made the election described in subparagraph (5) with respect to an amount in the transferor plan, the amount excluded from the decedent's gross estate with respect to the transferee plan is determined under the formula described in subparagraph (2), except that for purposes of that formula, X includes so much of the rollover amount as was attributable to the amount in the transferor plan to which the election applied. The extent to which a rollover amount is attributable to an amount in the transferor plan to which the election applied is determined by multiplying the rollover amount by a fraction, the numerator of which is the amount to which the election applied, and the denominator of which is the sum of all amounts contributed by the decedent to the transferor plan (if not returned as described under R in subparagraph (2)), and the amount in the transferor plan to which the election applied.

(iv) If a transferor plan described in this subparagraph (6) was also a transferee plan, then the rules described in this subparagraph (6) are to be applied with respect to both the rollover amount paid to the plan and the rollover amount thereafter paid from the plan.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example (1). (1) A establishes an individual retirement account described in section 408 (a) on January 1, 1976, when A is age 65. A's only contribution to the account is a rollover contribution described in section 402(a)(5). The trust agreement provides that A may at any time elect to have the balance in the account distributed in one of the following methods:

(i) A single sum payment of the account,

(ii) Equal or substantially equal semiannual payments over a period equal to A's life expectancy, or

(iii) Equal or substantially equal semiannual payments over a period equal to the life expectancy of A and A's spouse.

(2) The trust agreement further provides that although semiannual payments have commenced under option (ii) or (iii), A (or A's surviving spouse) may, by written notice to the trustee, receive all or a part of the balance remaining in the account. In addition, under option (ii), any balance remaining in the account at A's death is payable in a single sum to A's designated beneficiary. Under option (iii), any balance remaining in the account at the death of the survivor of A or A's spouse is payable in a single sum to a beneficiary designated by A or A's surviving spouse.

(3) A elects option (iii), and the first semiannual payment is made to A on July 1, 1976. On that date, A's life expectancy is 15 years, and that of A's spouse is 22 years. Under option (iii), the semiannual payments to A or A's surviving spouse will continue until July 1, 1998.

(4) A dies on November 20, 1978. On December 15, 1978, the trust agreement is modified so that A's surviving spouse no longer may elect to receive all or part of the balance remaining in the account. The value of the semiannual payments payable to A's spouse is excluded from A's gross estate under section 2039(e).

(5) A's spouse dies July 12, 1981, and the single sum payment payable on account of the death of A's spouse is paid to the designated beneficiary on August 1, 1981. Notwithstanding that the balance in the account was paid to the designated beneficiary within 36 months after A's death, the value of the semiannual payments payable to A's spouse are excluded from A's gross estate, since at A's death those semiannual payments were to be paid over a period extending beyond 36 months. Section 2039(e) does not apply to exclude any amount from the estate of A's spouse, because A's spouse was only a beneficiary and not the individual on whose behalf the account was established.

Example (2). Assume the same facts as in example (1), except that the trust agreement is not modified so that A's surviving spouse no longer may elect to receive all or part of the balance remaining in the account (see (2) and (4) in example (1)). Instead, the balance of the account is applied toward the purchase of a contract providing an immediate annuity, the contract is distributed to A's surviving spouse on December 15, 1978, and under section 408 the contract is not included in the gross income of the spouse upon its distribution. The value of the annuity contract is excluded from A's gross estate, if the contract provides for a series of

substantially equal periodic payments (within the meaning of paragraph (b) of this section) to be made over the life of A's surviving spouse or over a period not ending before the date 36 months after A's death.

Example (3). (1) B establishes an individual retirement plan described in section 408(a) (''IRA B'') on February 6, 1981, in order to receive a $220,000 rollover contribution from a qualified plan, as described in section 402(a)(5). B dies August 14, 1981. C, an individual, is the sole beneficiary under IRA B. The amount in IRA B ($238,000) is payable to C in whole or part as C may elect. Because the amount in IRA B is payable to C as other than a qualifying annuity, within the meaning of paragraph (b) of this section, no amount is excluded from B's gross estate under section 2039(e).

(2) On October 17, 1981, C contributes $1,500 on C's own behalf to IRA B. Under § 1.408–2(b)(7)(ii), C's contribution will cause IRA B to be treated as being maintained by and on behalf of C (''IRA C'') and C's making the contribution constitutes an election to which paragraph (c)(5) of this section applies. The balance in IRA C immediately before C's contribution is $240,000. Accordingly, the amount with respect to which C made the election is $240,000.

(3) C dies January 19, 1982. E, an individual, is the sole beneficiary under the plan, and the amounts payable to E ($242,000) are payable as a qualifying annuity, within the meaning of paragraph (b) of this section.

(4) The rules described in section 2039(e) and this section are applied with respect to the gross estate of C without regard to whether amounts now payable under IRA C were or were not excluded from B's gross estate. Under paragraph (c) of this section, the amount not excluded from C's gross estate is the value of the qualifying annuity payable to E ($242,000), multiplied by the fraction $240,000/($240,000+$1,500). Thus, the amount not excluded from C's gross estate is $240,497. [($242,000) ($240,000 ($240,000+$1,500))=$240,497.] The amount excluded is therefore $1,503 ($242,000 − $240,497).

Example (4). (1) F, an individual, establishes an individual retirement plan (''IRA F1'') in 1977 and makes $1,250 annual contributions for 1977, 1978, 1979 and 1980 (4×$1,250=$5,000), each of which is deducted by F under section 219. In February 1980, F receives an $85,000 distribution on account of the death of G, F's spouse, from the qualified plan of G's former employer, and rolls it over into IRA F1, under section 402(a)(7). Because IRA F1 includes a rollover contribution under section 402(a)(7), paragraph (c)(4) of this section applies. In 1981, F's entire interest in IRA F1, $100,000, is paid to F and contributed to another individual retirement plan (''IRA F2'') under section 408(d)(3)(A)(i). IRA F2 is a transferee plan to which paragraph (c)(6) of this section applies because of the rollover. F makes a $1,500 deductible contribution to IRA F2 for 1981.

(2) F dies in 1984. The balance in IRA F2 ($146,000) is payable to G, an individual, as a qualifying annuity, within the meaning of paragraph (b) of this section.

(3) Under paragraph (c) of this section, the amount *not* excluded from F's gross estate is the value of the qualifying annuity payable under IRA F2 multiplied by the fraction $96,700/$101,500. Accordingly, the amount not excluded is $139,096. [($146,000) ($96,700/$101,500)=$139,096.] The amount excluded is $6,904 ($146,000 − $139,096).

(4) The numerator of the fraction ($96,700) is determined by multiplying the amount rolled over from IRA F1 to IRA F2 ($100,000) by a fraction, the numerator of which is the amount of the rollover contribution to IRA F1 ($85,000), and the denominator of which is the total contributions to IRA F1 ($85,000+$5,000=$90,000). [($100,000) ($85,000/$90,000)=$96,700.]

(5) The denominator of the fraction ($101,500) is the sum of the contributions to IRA F2 (the $100,000 rollover contribution from IRA F1, and the $1,500 annual contribution to IRA F2).

[T.D. 7761, 46 FR 7305, Jan. 23, 1981; 46 FR 17191, Mar. 18, 1981, as amended by T.D. 8540, 59 FR 30103, June 10, 1994]

§ 20.2040–1 Joint interests.

(a) *In general.* A decedent's gross estate includes under section 2040 the value of property held jointly at the time of the decedent's death by the decedent and another person or persons with right of survivorship, as follows:

(1) To the extent that the property was acquired by the decedent and the other joint owner or owners by gift, devise, bequest, or inheritance, the decedent's fractional share of the property is included.

(2) In all other cases, the entire value of the property is included except such part of the entire value as is attributable to the amount of the consideration in money or money's worth furnished by the other joint owner or owners. See § 20.2043–1 with respect to adequacy of consideration. Such part of the entire value is that portion of the entire value of the property at the decedent's death (or at the alternate valuation date described in section 2032 which the consideration in money or money's worth furnished by the other joint owner or owners bears to the

total cost of acquisition and capital additions. In determining the consideration furnished by the other joint owner or owners, there is taken into account only that portion of such consideration which is shown not to be attributable to money or other property acquired by the other joint owner or owners from the decedent for less than a full and adequate consideration in money or money's worth.

The entire value of jointly held property is included in a decedent's gross estate unless the executor submits facts sufficient to show that property was not acquired entirely with consideration furnished by the decedent, or was acquired by the decedent and the other joint owner or owners by gift, bequest, devise, or inheritance.

(b) *Meaning of ''property held jointly''.* Section 2040 specifically covers property held jointly by the decedent and any other person (or persons), property held by the decedent and spouse as tenants by the entirety, and a deposit of money, or a bond or other instrument, in the name of the decedent and any other person and payable to either or the survivor. The section applies to all classes of property, whether real or personal, and regardless of when the joint interests were created. Furthermore, it makes no difference that the survivor takes the entire interest in the property by right of survivorship and that no interest therein forms a part of the decedent's estate for purposes of administration. The section has no application to property held by the decedent and any other person (or persons) as tenants in common.

(c) *Examples.* The application of this section may be explained in the following examples in each of which it is assumed that the other joint owner or owners survived the decedent:

(1) If the decedent furnished the entire purchase price of the jointly held property, the value of the entire property is included in his gross estate;

(2) If the decedent furnished a part only of the purchase price, only a corresponding portion of the value of the property is so included;

(3) If the decedent furnished no part of the purchase price, no part of the value of the property is so included;

(4) If the decedent, before the acquisition of the property by himself and the other joint owner, gave the latter a sum of money or other property which thereafter became the other joint owner's entire contribution to the purchase price, then the value of the entire property is so included, notwithstanding the fact that the other property may have appreciated in value due to market conditions between the time of the gift and the time of the acquisition of the jointly held property;

(5) If the decedent, before the acquisition of the property by himself and the other joint owner, transferred to the latter for less than an adequate and full consideration in money or money's worth other income-producing property, the income from which belonged to and became the other joint owner's entire contribution to the purchase price, then the value of the jointly held property less that portion attributable to the income which the other joint owner did furnish is included in the decedent's gross estate;

(6) If the property originally belonged to the other joint owner and the decedent purchased his interest from the other joint owner, only that portion of the value of the property attributable to the consideration paid by the decedent is included;

(7) If the decedent and his spouse acquired the property by will or gift as tenants by the entirety, one-half of the value of the property is included in the decedent's gross estate; and

(8) If the decedent and his two brothers acquired the property by will or gift as joint tenants, one-third of the value of the property is so included.

§ 20.2041–1 Powers of appointment; in general.

(a) *Introduction.* A decedent's gross estate includes under section 2041 the value of property in respect of which the decedent possessed, exercised, or released certain powers of appointment. This section contains rules of general application; § 20.2041–2 contains rules specifically applicable to general powers of appointment created on or before October 21, 1942; and § 20.2041–3 sets forth specific rules applicable to powers of appointment created after October 21, 1942.

(b) *Definition of ''power of appointment''*—(1) *In general.* The term ''power of appointment'' includes all powers which are in substance and effect powers of appointment regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment. Similarly, a power given to a decedent to affect the beneficial enjoyment of trust property or its income by altering, amending, or revoking the trust instrument or terminating the trust is a power of appointment. If the community property laws of a State confer upon the wife a power of testamentary disposition over property in which she does not have a vested interest she is considered as having a power of appointment. A power in a donee to remove or discharge a trustee and appoint himself may be a power of appointment. For example, if under the terms of a trust instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and the decedent has the unrestricted power to remove or discharge the trustee at any time and appoint any other person including himself, the decedent is considered as having a power of appointment. However, the decedent is not considered to have a power of appointment if he only had the power to appoint a successor, including himself, under limited conditions which did not exist at the time of his death, without an accompanying unrestricted power of removal. Similarly, a power to amend only the administrative provisions of a trust instrument, which cannot substantially affect the beneficial enjoyment of the trust property or income, is not a power of appointment. The mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of such fiduciary duties is not a power of appointment. Further, the right in a beneficiary of a trust to assent to a periodic accounting, thereby relieving the trustee from further accountability, is not a power of appointment if the right of assent does not consist of any power or right to enlarge or shift the beneficial interest of any beneficiary therein.

(2) *Relation to other sections.* For purposes of §§ 20.2041–1 to 20.2041–3, the term ''power of appointment'' does not include powers reserved by the decedent to himself within the concept of sections 2036 through 2038. (See §§ 20.2036–1 to 20.2038–1.) No provision of section 2041 or of §§ 20.2041–1 to 20.2041–3 is to be construed as in any way limiting the application of any other section of the Internal Revenue Code or of these regulations. The power of the owner of a property interest already possessed by him to dispose of his interest, and nothing more, is not a power of appointment, and the interest is includable in his gross estate to the extent it would be includable under section 2033 or some other provision of Part III of Subchapter A of Chapter 11. For example, if a trust created by S provides for payment of the income to A for life with power in A to appoint the remainder by will and, in default of such appointment for payment of the income to A's widow, W, for her life and for payment of the remainder to A's estate, the value of A's interest in the remainder is includable in his gross estate under section 2033 regardless of its includability under section 2041.

(3) *Powers over a portion of property.* If a power of appointment exists as to part of an entire group of assets or only over a limited interest in property, section 2041 applies only to such part or interest. For example, if a trust created by S provides for the payment of income to A for life, then to W for life, with power in A to appoint the remainder by will and in default of appointment for payment of the remainder to B or his estate, and if A dies before W, section 2041 applies only to the value of the remainder interest excluding W's life estate. If A dies after W, section 2041 would apply to the value of the entire property. If the power were only over one-half the remainder interest, section 2041 would apply only to

one-half the value of the amounts described above.

(c) *Definition of ''general power of appointment''*—(1) *In general.* The term ''general power of appointment'' as defined in section 2041(b)(1) means any power of appointment exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate, except (i) joint powers, to the extent provided in §§ 20.2041–2 and 20.2041–3, and (ii) certain powers limited by an ascertainable standard, to the extent provided in subparagraph (2) of this paragraph. A power of appointment exercisable to meet the estate tax, or any other taxes, debts, or charges which are enforceable against the estate, is included within the meaning of a power of appointment exercisable in favor of the decedent's estate, his creditors, or the creditors of his estate. A power of appointment exercisable for the purpose of discharging a legal obligation of the decedent or for his pecuniary benefit is considered a power of appointment exercisable in favor of the decedent or his creditors. However, for purposes of §§ 20.2041–1 to 20.2041–3, a power of appointment not otherwise considered to be a general power of appointment is not treated as a general power of appointment merely by reason of the fact that an appointee may, in fact, be a creditor of the decedent or his estate. A power of appointment is not a general power if by its terms it is either—

(*a*) Exercisable only in favor of one or more designated persons or classes other than the decedent or his creditors, or the decedent's estate or the creditors of his estate, or

(*b*) Expressly not exercisable in favor of the decedent or his creditors, or the decedent's estate or the creditors of his estate.

A decedent may have two powers under the same instrument, one of which is a general power of appointment and the other of which is not. For example, a beneficiary may have a power to withdraw trust corpus during his life, and a testamentary power to appoint the corpus among his descendants. The testamentary power is not a general power of appointment.

(2) *Powers limited by an ascertainable standard.* A power to consume, invade, or appropriate income or corpus, or both, for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent is, by reason of section 2041(b)(1)(A), not a general power of appointment. A power is limited by such a standard if the extent of the holder's duty to exercise and not to exercise the power is reasonably measurable in terms of his needs for health, education, or support (or any combination of them). As used in this subparagraph, the words ''support'' and ''maintenance'' are synonymous and their meaning is not limited to the bare necessities of life. A power to use property for the comfort, welfare, or happiness of the holder of the power is not limited by the requisite standard. Examples of powers which are limited by the requisite standard are powers exercisable for the holder's ''support,'' ''support in reasonable comfort,'' ''maintenance in health and reasonable comfort,'' ''support in his accustomed manner of living,'' ''education, including college and professional education,'' ''health,'' and ''medical, dental, hospital and nursing expenses and expenses of invalidism.'' In determining whether a power is limited by an ascertainable standard, it is immaterial whether the beneficiary is required to exhaust his other income before the power can be exercised.

(3) *Certain powers under wills of decedents dying between January 1 and April 2, 1948.* Section 210 of the Technical Changes Act of 1953 provides that if a decedent died after December 31, 1947, but before April 3, 1948, certain property interests described therein may, if the decedent's surviving spouse so elects, be accorded special treatment in the determination of the marital deduction to be allowed the decedent's estate under the provisions of section 812(e) of the Internal Revenue Code of 1939. See § 81.47a (h) of Regulations 105 (26 CFR (1939) 81.47a(h)). The section further provides that property affected by the election shall, for the purpose of inclusion in the surviving spouse's gross estate, be considered property with respect to which she has a general power of appointment. Therefore, notwithstanding any other provision of

law or of §§ 20.2041–1 to 20.2041–3, if the present decedent (in her capacity as surviving spouse of a prior decedent) has made an election under section 210 of the Technical Changes Act of 1953, the property which was the subject of the election shall be considered as property with respect to which the present decedent has a general power of appointment created after October 21, 1942, exercisable by deed or will, to the extent it was treated as an interest passing to the surviving spouse and not passing to any other person for the purpose of the marital deduction in the prior decedent's estate.

(d) *Definition of ''exercise''.* Whether a power of appointment is in fact exercised may depend upon local law. For example, the residuary clause of a will may be considered under local law as an exercise of a testamentary power of appointment in the absence of evidence of a contrary intention drawn from the whole of the testator's will. However, regardless of local law, a power of appointment is considered as exercised for purposes of section 2041 even though the exercise is in favor of the taker in default of appointment, and irrespective of whether the appointed interest and the interest in default of appointment are identical or whether the appointee renounces any right to take under the appointment. A power of appointment is also considered as exercised even though the disposition cannot take effect until the occurrence of an event after the exercise takes place, if the exercise is irrevocable and, as of the time of the exercise, the condition was not impossible of occurrence. For example, if property is left in trust to A for life, with a power in B to appoint the remainder by will, and B dies before A, exercising his power by appointing the remainder to C if C survives A, B is considered to have exercised his power if C is living at B's death. On the other hand, a testamentary power of appointment is not considered as exercised if it is exercised subject to the occurrence during the decedent's life of an express or implied condition which did not in fact occur. Thus, if in the preceding example, C dies before B, B's power of appointment would not be considered to have been exercised. Similarly, if a trust provides for income to A for life, remainder as A appoints by will, and A appoints a life estate in the property to B and does not otherwise exercise his power, but B dies before A, A's power is not considered to have been exercised.

(e) *Time of creation of power.* A power of appointment created by will is, in general, considered as created on the date of the testator's death. However, section 2041(b)(3) provides that a power of appointment created by a will executed on or before October 21, 1942, is considered a power created on or before that date if the testator dies before July 1, 1949, without having republished the will, by codicil or otherwise, after October 21, 1942. A power of appointment created by an inter vivos instrument is considered as created on the date the instrument takes effect. Such a power is not considered as created at some future date merely because it is not exercisable on the date the instrument takes effect, or because it is revocable, or because the identity of its holders is not ascertainable until after the date the instrument takes effect. However, 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. The application of this paragraph may be illustrated by the following examples:

Example (1). A created a revocable trust before October 22, 1942, providing for payment of income to B for life with remainder as B shall appoint by will. Even though A dies after October 21, 1942, without having exercised his power of revocation, B's power of appointment is considered a power created before October 22, 1942.

Example (2). C created an irrevocable inter vivos trust before October 22, 1942, naming T as trustee and providing for payment of income to D for life with remainder to E. T was given the power to pay corpus to D and the power to appoint a successor trustee. If T resigns after October 21, 1942, and appoints D as successor trustee, D is considered to have a power of appointment created before October 22, 1942.

Example (3). F created an irrevocable inter vivos trust before October 22, 1942, providing for payment of income to G for life with remainder as G shall appoint by will, but in default of appointment income to H for life with remainder as H shall appoint by will. If G died after October 21, 1942, without having exercised his power of appointment, H's power of appointment is considered a power

created before October 22, 1942, even though it was only a contingent interest until G's death.

Example (4). If in example (3) above G had exercised his power of appointment by creating a similar power in J, J's power of appointment would be considered a power created after October 21, 1942.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6582, 26 FR 11861, Dec. 12, 1961]

§ 20.2041–2 Powers of appointment created on or before October 21, 1942.

(a) *In general.* Property subject to a general power of appointment created on or before October 21, 1942, is includable in the gross estate of the holder of the power under section 2041 only if he exercised the power under specified circumstances. Section 2041(a)(1) requires that there be included in the gross estate of a decedent the value of property subject to such a power only if the power is exercised by the decedent either (1) by will, or (2) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, the property would be includable in the decedent's gross estate under section 2035 (relating to transfers in contemplation of death), 2036 (relating to transfers with retained life estate), 2037 (relating to transfers taking effect at death), or 2038 (relating to revocable transfers). See paragraphs (b), (c), and (d) of § 20.2041–1 for the definition of various terms used in this section.

(b) *Joint powers created on or before October 21, 1942.* Section 2041(b)(1)(B) provides that a power created on or before October 21, 1942, which at the time of the exercise is not exercisable by the decedent except in conjunction with another person, is not deemed a general power of appointment.

(c) *Exercise during life.* The circumstances under which section 2041 applies to the exercise other than by will of a general power of appointment created on or before October 21, 1942, are set forth in paragraph (a) of this section. In this connection, the rules of sections 2035 through 2038 which are to be applied are those in effect on the date of the decedent's death which are applicable to transfers made on the date when the exercised of the power occurred. Those rules are to be applied in determining the extent to which and the conditions under which a disposition is considered a transfer of property. The application of this paragraph may be illustrated by the following examples:

Example (1). A decedent in 1951 exercised a general power of appointment created in 1940, reserving no interest in or power over the property subject to the general power. The decedent died in 1956. Since the exercise was not made within three years before the decedent's death, no part of the property is includable in his gross estate. See section 2035(b), relating to transfers in contemplation of death.

Example (2). S created a trust in 1930 to pay the income to A for life, remainder as B appoints by an instrument filed with the trustee during B's lifetime, and in default of appointment remainder to C. B exercised the power in 1955 by directing that after A's death the income be paid to himself for life with remainder to C. If B dies after A, the entire value of the trust property would be included in B's gross estate, since such a disposition if it were a transfer of property owned by B would cause the property to be included in his gross estate under section 2036(a)(1). If B dies before A, the value of the trust property less the value of A's life estate would be included in B's gross estate for the same reason.

Example (3). S created a trust in 1940 to pay the income to A for life, remainder as A appoints by an instrument filed with the trustee during A's lifetime. A exercised the trustee during A's lifetime. A exercised the power in 1955, five years before his death, reserving the right of revocation. The exercise, if not revoked before death, will cause the property subject to the power to be included in A's gross estate under section 2041(a)(1), since such a disposition if it were a transfer of property owned by A would cause the property to be included in his gross estate under section 2038. However, if the exercise were completely revoked, so that A died still possessed of the power, the property would not be included in A's gross estate for the reason that the power will not be treated as having been exercised.

Example (4). A decedent exercised a general power of appointment created in 1940 by making a disposition in trust under which possession or enjoyment of the property subject to the exercise could be obtained only by surviving the decedent and under which the decedent retained a reversionary interest in the property of a value of more than five percent. The exercise will cause the property subject to the power to be included in the decedent's gross estate, since such a disposition if it were a transfer of property owned by the decedent would cause the property to

be included in his gross estate under section 2037.

(d) *Release or lapse.* A failure to exercise a general power of appointment created on or before October 21, 1942, or a complete release of such a power is not considered to be an exercise of a general power of appointment. The phrase ''a complete release'' means a release of all powers over all or a portion of the property subject to a power of appointment, as distinguished from the reduction of a power of appointment to a lesser power. Thus, if the decedent completely relinquished all powers over one-half of the property subject to a power of appointment, the power is completely released as to that one-half. If at or before the time a power of appointment is relinquished, the holder of the power exercises the power in such a manner or to such an extent that the relinquishment results in the reduction, enlargement, or shift in a beneficial interest in property, the relinquishment will be considered to be an exercise and not a release of the power. For example, assume that A created a trust in 1940 providing for payment on the income to B for life and, upon B's death, remainder to C. Assume further that B was given the unlimited power to amend the trust instrument during his lifetime. If B amended the trust in 1948 by providing that upon his death the remainder was to be paid to D, and if he further amended the trust in 1950 by deleting his power to amend the trust, such relinquishment will be considered an exercise and not a release of a general power of appointment. On the other hand, if the 1948 amendment became ineffective before or at the time of the 1950 amendment, or if B in 1948 merely amended the trust by changing the purely ministerial powers of the trustee, his relinquishment of the power in 1950 will be considered as a release of a power of appointment.

(e) *Partial release.* If a general power of appointment created on or before October 21, 1942, is partially released so that it is not thereafter a general power of appointment, a subsequent exercise of the partially released power is not an exercise of a general power of appointment if the partial release occurs before whichever is the later of the following dates:

(1) November 1, 1951, or

(2) If the decedent was under a legal disability to release the power on October 21, 1942, the day after the expiration of 6 months following the termination of such legal disability.

However, if a general power created on or before October 21, 1942, is partially released on or after the later of these dates, a subsequent exercise of the power will cause the property subject to the power to be included in the holder's gross estate, if the exercise is such that if it were a disposition of property owned by the decedent it would cause the property to be included in his gross estate. The legal disability referred to in this paragraph is determined under local law and may include the disability of an insane person, a minor, or an unborn child. The fact that the type of general power of appointment possessed by the decedent actually was not generally releasable under the local law does not place the decedent under a legal disability within the meaning of this paragraph. In general, however, it is assumed that all general powers of appointment are releasable, unless the local law on the subject is to the contrary, and it is presumed that the method employed to release the power is effective, unless it is not in accordance with the local law relating specifically to releases or, in the absence of such local law, is not in accordance with the local law relating to similar transactions.

(f) *Partial exercise.* If a general power of appointment created on or before October 21, 1942, is exercised only as to a portion of the property subject to the power, section 2041 is applicable only to the value of that portion. For example, if a decedent had a general power of appointment exercisable by will created on or before October 21, 1942, over a trust fund valued at $200,000 at the date of his death, and if the decedent exercised his power either to the extent of directing the distribution of one-half of the trust property to B or of directing the payment of $100,000 to B, the trust property would be includable in the decedent's gross estate only to the extent of $100,000.

§ 20.2041–3 Powers of appointment created after October 21, 1942.

(a) *In general.* (1) Property subject to a power of appointment created after October 21, 1942, is includable in the gross estate of the holder of the power under varying conditions depending on whether the power is (i) general in nature, (ii) possessed at death, or (iii) exercised or released. See paragraphs (b), (c), and (d) of § 20.2041–1 for the definition of various terms used in this section. See paragraph (c) of this section for the rules applicable to determine the extent to which joint powers created after October 21, 1942, are to be treated as general powers of appointment.

(2) If the power is a general power of appointment, the value of an interest in property subject to such a power is includable in a decedent's gross estate under section 2041(a)(2) if either—

(i) The decedent has the power at the time of his death (and the interest exists at the time of his death), or

(ii) The decedent exercised or released the power, or the power lapsed, under the circumstances and to the extent described in paragraph (d) of this section.

(3) If the power is not a general power of appointment, the value of property subject to the power is includable in the holder's gross estate under section 2041(a)(3) only if it is exercised to create a further power under certain circumstances (see paragraph (e) of this section).

(b) *Existence of power at death.* For purposes of section 2041(a)(2), a power of appointment is considered to exist on the date of a decedent's death even though the exercise of the power is subject to the precedent giving of notice, or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the decedent's death notice has been given or the power has been exercised. However, a power which by its terms is exercisable only upon the occurrence during the decedent's lifetime of an event or a contingency which did not in fact take place or occur during such time is not a power in existence on the date of the decedent's death. For example, if a decedent was given a general power of appointment exercisable only after he reached a certain age, only if he survived another person, or only if he died without descendants, the power would not be in existence on the date of the decedent's death if the condition precedent to its exercise had not occurred.

(c) *Joint powers created after October 21, 1942.* The treatment of a power of appointment created after October 21, 1942, which is exercisable only in conjunction with another person is governed by section 2041(b)(1)(C), which provides as follows:

(1) Such a power is not considered a general power of appointment if it is not exercisable by the decedent except with the consent or joinder of the creator of the power.

(2) Such power is not considered a general power of appointment if it is not exercisable by the decedent except with the consent or joinder of a person having a substantial interest in the property subject to the power which is adverse to the exercise of the power in favor of the decedent, his estate, his creditors, or the creditors of his estate. An interest adverse to the exercise of a power is considered as substantial if its value in relation to the total value of the property subject to the power is not insignificant. For this purpose, the interest is to be valued in accordance with the actuarial principles set forth in § 20.2031–7 or, if it is not susceptible to valuation under those provisions, in accordance with the general principles set forth in § 20.2031–1. A taker in default of appointment under a power has an interest which is adverse to an exercise of the power. A coholder of the power has no adverse interest merely because of his joint possession of the power nor merely because he is a permissible appointee under a power. However, a coholder of a power is considered as having an adverse interest where he may possess the power after the decedent's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate. Thus, for example, if X, Y, and Z held a power jointly to appoint among a group of persons which includes themselves and if on the death of X the power will pass to Y and Z jointly, then Y and Z are considered to have interests adverse to the exercise

of the power in favor of X. Similarly, if on Y's death the power will pass to Z, Z is considered to have an interest adverse to the exercise of the power in favor of Y. The application of this subparagraph may be further illustrated by the following additional examples in each of which it is assumed that the value of the interest in question is substantial:

Example (1). The decedent and R were trustees of a trust under the terms of which the income was to be paid to the decedent for life and then to M for life, and the remainder was to be paid to R. The trustees had power to distribute corpus to the decedent. Since R's interest was substantially adverse to an exercise of the power in favor of the decedent the latter did not have a general power of appointment. If M and the decedent were the trustees, M's interest would likewise have been adverse.

Example (2). The decedent and L were trustees of a trust under the terms of which the income was to be paid to L for life and then to M for life, and the remainder was to be paid to the decedent. The trustees had power to distribute corpus to the decedent during L's life. Since L's interest was adverse to an exercise of the power in favor of the decedent, the decedent did not have a general power of appointment. If the decedent and M were the trustees, M's interest would likewise have been adverse.

Example (3). The decedent and L were trustees of a trust under the terms of which the income was to be paid to L for life. The trustees could designate whether corpus was to be distributed to the decedent or to A after L's death. L's interest was not adverse to an exercise of the power in favor of the decedent, and the decedent therefore had a general power of appointment.

(3) A power which is exercisable only in conjunction with another person, and which after application of the rules set forth in subparagraphs (1) and (2) of this paragraph constitutes a general power of appointment, will be treated as though the holders of the power who are permissible appointees of the property were joint owners of property subject to the power. The decedent, under this rule, will be treated as possessed of a general power of appointment over an aliquot share of the property to be determined with reference to the number of joint holders, including the decedent, who (or whose estates or creditors) are permissible appointees. Thus, for example, if X, Y, and Z hold an unlimited power jointly to appoint among a group of persons, including themselves, but on the death of X the power does not pass to Y and Z jointly, then Y and Z are not considered to have interests adverse to the exercise of the power in favor of X. In this case X is considered to possess a general power of appointment as to one-third of the property subject to the power.

(d) *Releases, lapses, and disclaimers of general powers of appointment.* (1) Property subject to a general power of appointment created after October 21, 1942, is includable in the gross estate of a decedent under section 2041(a)(2) even though he does not have the power at the date of his death, if during his life he exercised or released the power under circumstances such that, if the property subject to the power had been owned and transferred by the decedent, the property would be includable in the decedent's gross estate under section 2035, 2036, 2037, or 2038. Further, section 2041(b)(2) provides that the lapse of a power of appointment is considered to be a release of the power to the extent set forth in subparagraph (3) of this paragraph. A release of a power of appointment need not be formal or express in character. The principles set forth in § 20.2041–2 for determining the application of the pertinent provisions of sections 2035 through 2038 to a particular exercise of a power of appointment are applicable for purposes of determining whether or not an exercise or release of a power of appointment created after October 21, 1942, causes the property to be included in a decedent's gross estate under section 2041(a)(2). If a general power of appointment created after October 21, 1942, is partially released, a subsequent exercise or release of the power under circumstances described in the first sentence of this subparagraph, or its possession at death will nevertheless cause the property subject to the power to be included in the gross estate of the holder of the power.

(2) Section 2041(a)(2) is not applicable to the complete release of a general power of appointment created after October 21, 1942, whether exercisable during life or by will, if the release was not made in contemplation of death within the meaning of section 2035, and if after the release the holder of the

power retained no interest in or control over the property subject to the power which would cause the property to be included in his gross estate under sections 2036 through 2038 if the property had been transferred by the holder.

(3) The failure to exercise a power of appointment created after October 21, 1942, within a specified time, so that the power lapses, constitutes a release of the power. However, section 2041(b)(2) provides that such a lapse of a power of appointment during any calendar year during the decedent's life is treated as a release for purposes of inclusion of property in the gross estate under section 2041(a)(2) only to the extent that the property which could have been appointed by exercise of the lapsed power exceeds the greater of (i) $5,000 or (ii) 5 percent of the aggregate 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. For example, assume that A transferred $200,000 worth of securities in trust providing for payment of income to B for life with remainder to B's issue. Assume further that B was given a noncumulative right to withdraw $10,000 a year from the principal of the trust fund (which neither increased nor decreased in value prior to B's death). In such case, the failure of B to exercise his right of withdrawal will not result in estate tax with respect to the power to withdraw $10,000 which lapses each year before the year of B's death. At B's death there will be included in his gross estate the $10,000 which he was entitled to withdraw for the year in which his death occurs less any amount which he may have taken during that year. However, if in the above example B had possessed the right to withdraw $15,000 of the principal annually, the failure to exercise such power in any year will be considered a release of the power to the extent of the excess of the amount subject to withdrawal over 5 percent of the trust fund (in this example, $5,000, assuming that the trust fund is worth $200,000 at the time of the lapse). Since each lapse is treated as though B had exercised dominion over the trust property by making a transfer of principal reserving the income therefrom for his life, the value of the trust property (but only to the extent of the excess of the amount subject to withdrawal over 5 percent of the trust fund) is includable in B's gross estate (unless before B's death he has disposed of his right to the income under circumstances to which sections 2035 through 2038 would not be applicable). The extent to which the value of the trust property is included in the decedent's gross estate is determined as provided in subparagraph (4) of this paragraph.

(4) The purpose of section 2041(b)(2) is to provide a determination, as of the date of the lapse of the power, of the proportion of the property over which the power lapsed which is an exempt disposition for estate tax purposes and the proportion which, if the other requirements of sections 2035 through 2038 are satisfied, will be considered as a taxable disposition. Once the taxable proportion of any disposition at the date of lapse has been determined, the valuation of that proportion as of the date of the decedent's death (or, if the executor has elected the alternate valuation method under section 2032, the value as of the date therein provided), is to be ascertained in accordance with the principles which are applicable to the valuation of transfers of property by the decedent under the corresponding provisions of sections 2035 through 2038. For example, if the life beneficiary of a trust had a right exercisable only during one calendar year to draw down $50,000 from the corpus of a trust, which he did not exercise, and if at the end of the year the corpus was worth $800,000, the taxable portion over which the power lapsed is $10,000 (the excess of $50,000 over 5 percent of the corpus), or 1/80 of the total value. On the decedent's death, if the total value of the corpus of the trust (excluding income accumulated after the lapse of the power) on the applicable valuation date was $1,200,000, $15,000 (1/80 of $1,200,000) would be includable in the decedent's gross estate. However, if the total value was then $600,000, only $7,500 (1/80 of $600,000) would be includable.

(5) If the failure to exercise a power, such as a right of withdrawal, occurs in more than a single year, the proportion

of the property over which the power lapsed which is treated as a taxable disposition will be determined separately for each such year. The aggregate of the taxable proportions for all such years, valued in accordance with the above principles, will be includable in the gross estate by reason of the lapse. The includable amount, however, shall not exceed the aggregate value of the assets out of which, or the proceeds of which, the exercise of the power could have been satisfied, valued as of the date of the decedent's death (or, if the executor has elected the alternate valuation method under section 2032, the value as of the date therein provided).

(6)(i) A disclaimer or renunciation of a general power of appointment created in a transfer made after December 31, 1976, is not considered to be the release of the power if the disclaimer or renunciation is a qualified disclaimer as described in section 2518 and the corresponding regulations. For rules relating to when the transfer creating the power occurs, see § 25.2518–2(c)(3) of this chapter. If the disclaimer or renunciation is not a qualified disclaimer, it is considered a release of the power by the disclaimant.

(ii) The disclaimer or renunication of a general power of appointment created in a taxable transfer before January 1, 1977, in the person disclaiming is not considered to be a release of the power. The disclaimer or renunciation must be unequivocal and effective under local law. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. There can be no disclaimer or renunciation of a power after its acceptance. In the absence of facts to the contrary, the failure to renounce or disclaim within a reasonable time after learning of its existence will be presumed to constitute an acceptance of the power. In any case where a power is purported to be disclaimed or renounced as to only a portion of the property subject to the power, the determination as to whether or not there has been a complete and unqualified refusal to accept the rights to which one is entitled will depend on all the facts and circumstances of the particular case, taking into account the recognition and effectiveness of such a disclaimer under local law. Such rights refer to the incidents of the power and not to other interests of the decedent in the property. If effective under local law, the power may be disclaimed or renounced without disclaiming or renouncing such other interests.

(iii) The first and second sentences of paragraph (d)(6)(i) of this section are applicable for transfers creating the power to be disclaimed made on or after December 31, 1997.

(e) *Successive powers.* (1) Property subject to a power of appointment created after October 21, 1942, which is not a general power, is includable in the gross estate of the holder of the power under section 2041(a)(3) if the power is exercised, and if both of the following conditions are met:

(i) If the exercise is (*a*) by will, or (*b*) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, the property would be includable in the decedent's gross estate under sections 2035 through 2037; and

(ii) If the power is exercised by creating another power of appointment which, under the terms of the instruments creating and exercising the first power and under applicable local law, can be validly exercised so as to (*a*) postpone the vesting of any estate or interest in the property for a period ascertainable without regard to the date of the creation of the first power, or (*b*) (if the applicable rule against perpetuities is stated in terms of suspension of ownership or of the power of alienation, rather than of vesting) suspend the absolute ownership or the power of alienation of the property for a period ascertainable without regard to the date of the creation of the first power.

(2) For purposes of the application of section 2041(a)(3), the value of the property subject to the second power of appointment is considered to be its value unreduced by any precedent or subsequent interest which is not subject to the second power. Thus, if a decedent has a power to appoint by will $100,000 to a group of persons consisting of his children and grandchildren and exercises the power by making an outright appointment of $75,000 and by giving one appointee a power to appoint

$25,000, no more than $25,000 will be includable in the decedent's gross estate under section 2041(a)(3). If, however, the decedent appoints the income from the entire fund to a beneficiary for life with power in the beneficiary to appoint the remainder by will, the entire $100,000 will be includable in the decedent's gross estate under section 2041(a)(3) if the exercise of the second power can validly postpone the vesting of any estate or interest in the property or can suspend the absolute ownership or power of alienation of the property for a period ascertainable without regard to the date of the creation of the first power.

(f) *Examples.* The application of this section may be further illustrated by the following examples, in each of which it is assumed, unless otherwise stated, that S has transferred property in trust after October 21, 1942, with the remainder payable to R at L's death, and that neither L nor R has any interest in or power over the enjoyment of the trust property except as is indicated separately in each example:

Example (1). Income is directed to be paid to L during his lifetime at the end of each year, if living. L has an unrestricted power during his lifetime to cause the income to be distributed to any other person, but no power to cause it to be accumulated. At L's death, no part of the trust property is includable in L's gross estate since L had a power to dispose of only his income interest, a right otherwise possessed by him.

Example (2). Income is directed to be accumulated during L's life but L has a noncumulative power to distribute $10,000 of each year's income to himself. Unless L's power is limited to himself. Unless L's power is limited by an ascertainable standard (relating to his health, etc.), as defined in paragraph (c)(2) of § 20.2041–1, he has a general power of appointment over $10,000 of each year's income, the lapse of which may cause a portion of any income not distriibuted to be included in his gross estate under section 2041. See subparagraphs (3), (4), and (5) of paragraph (d) of this section. Thus, if the trust income during the year amounts to $20,000, L's failure to distribute any of the income to himself constitutes a lapse as to $5,000 (*i.e.*, the amount by which $10,000 exceeds $5,000). If L's power were cumulative (*i.e.*, if the power did not lapse at the end of each year but lapsed only by reason of L's death), the total accumulations which L chose not to distribute to himself immediately before his death would be includable in his gross estate under section 2041.

Example (3). L is entitled to all the income during his lifetime and has an unrestricted power to cause corpus to be distributed to himself. L had a general power of appointment over the corpus of the trust, and the entire corpus as of the time of his death is includable in his gross estate under section 2041.

Example (4). Income was payable to L during his lifetime. R has an unrestricted power to cause corpus to be distributed to L. R dies before L. In such case, R has only a power to dispose of his remainder interest, the value of which is includable in his gross estate under section 2033, and nothing in addition would be includable under section 2041. If in this example R's remainder were contingent on his surviving L, nothing would be includable in his gross estate under either section 2033 or 2041. While R would have a power of appointment, it would not be a general power.

Example (5). Income was payable to L during his lifetime. R has an unrestricted power to cause corpus to be distributed to himself. R dies before L. While the value of R's remainder interest is includable in his gross estate under section 2033, R also has a general power of appointment over the entire trust corpus. Under such circumstances, the entire value of the trust corpus is includable in R's gross estate under section 2041.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8095, 51 FR 28367, Aug. 7, 1986; T.D. 8744, 62 FR 68184, Dec. 31, 1997]

§ 20.2042–1 Proceeds of life insurance.

(a) *In general.* (1) Section 2042 provides for the inclusion in a decedent's gross estate of the proceeds of insurance on the decedent's life (i) receivable by or for the benefit of the estate (see paragraph (b) of this section) and (ii) receivable by other beneficiaries (see paragraph (c) of this section). The term ''insurance'' refers to life insurance of every description, including death benefits paid by fraternal beneficial societies operating under the lodge system.

(2) Proceeds of life insurance which are not includable in the gross estate under section 2042 may, depending upon the facts of the particular case, be includable under some other section of Part III of Subchapter A of Chapter 11. For example, if the decedent possessed incidents of ownership in an insurance policy on his life but gratuitously transferred all rights in the policy in contemplation of death, the proceeds would be includable under section 2035.

Section 2042 has no application to the inclusion in the gross estate of the value of rights in an insurance policy on the life of a person other than the decedent, or the value of rights in a combination annuity contract and life insurance policy on the decedent's life (*i.e.*, a ''retirement income'' policy with death benefit or an ''endowment'' policy) under which there was no insurance element at the time of the decedent's death (see paragraph (d) of § 20.2039–1).

(3) Except as provided in paragraph (c)(6), the amount to be included in the gross estate under section 2042 is the full amount receivable under the policy. If the proceeds of the policy are made payable to a beneficiary in the form of an annuity for life or for a term of years, the amount to be included in the gross estate is the one sum payable at death under an option which could have been exercised either by the insured or by the beneficiary, or if no option was granted, the sum used by the insurance company in determining the amount of the annuity.

(b) *Receivable by or for the benefit of the estate.* (1) Section 2042 requires the inclusion in the gross estate of the proceeds of insurance on the decedent's life receivable by the executor or administrator, or payable to the decedent's estate. It makes no difference whether or not the estate is specifically named as the beneficiary under the terms of the policy. Thus, if under the terms of an insurance policy the proceeds are receivable by another beneficiary but are subject to an obligation, legally binding upon the other beneficiary, to pay taxes, debts, or other charges enforceable against the estate, then the amount of such proceeds required for the payment in full (to the extent of the beneficiary's obligation) of such taxes, debts, or other charges is includable in the gross estate. Similarly, if the decedent purchased an insurance policy in favor of another person or a corporation as collateral security for a loan or other accommodation, its proceeds are considered to be receivable for the benefit of the estate. The amount of the loan outstanding at the date of the decedent's death, with interest accrued to that date, will be deductible in determining the taxable estate. See § 20.2053–4.

(2) If the proceeds of an insurance policy made payable to the decedent's estate are community assets under the local community property law and, as a result, one-half of the proceeds belongs to the decedent's spouse, then only one-half of the proceeds is considered to be receivable by or for the benefit of the decedent's estate.

(c) *Receivable by other beneficiaries.* (1) Section 2042 requires the inclusion in the gross estate of the proceeds of insurance on the decedent's life not receivable by or for the benefit of the estate if the decedent possessed at the date of his death any of the incidents of ownership in the policy, exercisable either alone or in conjunction with any other person. However, if the decedent did not possess any of such incidents of ownership at the time of his death nor transfer them in contemplation of death, no part of the proceeds would be includible in his gross estate under section 2042. Thus, if the decedent owned a policy of insurance on his life and, 4 years before his death, irrevocably assigned his entire interest in the policy to his wife retaining no reversionary interest therein (see subparagraph (3) of this paragraph), the proceeds of the policy would not be includible in his gross estate under section 2042.

(2) For purposes of this paragraph, the term ''incidents of ownership'' is not limited in its meaning to ownership of the policy in the technical legal sense. Generally speaking, the term has reference to the right of the insured or his estate to the economic benefits of the policy. Thus, it includes the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke an assignment, to pledge the policy for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc. See subparagraph (6) of this paragraph for rules relating to the circumstances under which incidents of ownership held by a corporation are attributable to a decedent through his stock ownership.

(3) The term ''incidents of ownership'' also includes a reversionary interest in the policy or its proceeds, whether arising by the express terms of

the policy or other instrument or by operation of law, but only if the value of the reversionary interest immediately before the death of the decedent exceeded 5 percent of the value of the policy.

As used in this subparagraph, the term ''reversionary interest'' includes a possibility that the policy or its proceeds may return to the decedent or his estate and a possibility that the policy or its proceeds may become subject to a power of disposition by him. In order to determine whether or not the value of a reversionary interest immediately before the death of the decedent exceeded 5 percent of the value of the policy, the principles contained in paragraph (c) (3) and (4) of § 20.2037–1, insofar as applicable, shall be followed under this subparagraph. In that connection, there must be specifically taken into consideration any incidents of ownership-held by others immediately before the decedent's death which would affect the value of the reversionary interest. For example, the decedent would not be considered to have a reversionary interest in the policy of a value in excess of 5 percent if the power to obtain the cash surrender value existed in some other person immediately before the decedent's death and was exercisable by such other person alone and in all events. The terms ''reversionary interest'' and ''incidents of ownership'' do not include the possibility that the decedent might receive a policy or its proceeds by inheritance through the estate of another person, or as a surviving spouse under a statutory right of election or a similar right.

(4) A decedent is considered to have an ''incident of ownership'' in an insurance policy on his life held in trust if, under the terms of the policy, the decedent (either alone or in conjunction with another person or persons) has the power (as trustee or otherwise) to change the beneficial ownership in the policy or its proceeds, or the time or manner of enjoyment thereof, even though the decedent has no beneficial interest in the trust. Moreover, assuming the decedent created the trust, such a power may result in the inclusion in the decedent's gross estate under section 2036 or 2038 of other property transferred by the decedent to the trust if, for example, the decedent has the power to surrender the insurance policy and if the income otherwise used to pay premiums on the policy would become currently payable to a beneficiary of the trust in the event that the policy were surrendered.

(5) As an additional step in determining whether or not a decedent possessed any incidents of ownership in a policy or any part of a policy, regard must be given to the effect of the State or other applicable law upon the terms of the policy. For example, assume that the decedent purchased a policy of insurance on his life with funds held by him and his surviving wife as community property, designating their son as beneficiary but retaining the right to surrender the policy. Under the local law, the proceeds upon surrender would have inured to the marital community. Assuming that the policy is not surrendered and that the son receives the proceeds on the decedent's death, the wife's transfer of her one-half interest in the policy was not considered absolute before the decedent's death. Upon the wife's prior death, one-half of the value of the policy would have been included in her gross estate. Under these circumstances, the power of surrender possessed by the decedent as agent for his wife with respect to one-half of the policy is not, for purposes of this section, an ''incident of ownership'', and the decedent is, therefore, deemed to possess an incident of ownership in only one-half of the policy.

(6) In the case of economic benefits of a life insurance policy on the decedent's life that are reserved to a corporation of which the decedent is the sole or controlling stockholders, the corporations' incidents of ownership will not be attributed to the decedent through his stock ownership to the extent the proceeds of the policy are payable to the corporation. Any proceeds payable to a third party for a valid business purpose, such as in satisfaction of a business debt of the corporation, so that the net worth of the corporation is increased by the amount of such proceeds, shall be deemed to be payable to the corporation for purposes of the preceeding sentence. See § 20.2031–2(f) for a rule providing that

the proceeds of certain life insurance policies shall be considered in determining the value of the decedent's stock. Except as hereinafter provided with respect to a group-term life insurance policy, if any part of the proceeds of the policy are not payable to or for the benefit of the corporation, and thus are not taken into account in valuing the decedent's stock holdings in the corporation for purposes of section 2031, any incidents of ownership held by the corporation as to that part of the proceeds will be attributed to the decedent through his stock ownership where the decedent is the sole or controlling stockholder. Thus, for example, if the decedent is the controlling stockholder in a corporation, and the corporation owns a life insurance policy on his life, the proceeds of which are payable to the decedent's spouse, the incidents of ownership held by the corporation will be attributed to the decedent through his stock ownership and the proceeds will be included in his gross estate under section 2042. If in this example the policy proceeds had been payable 40 percent to decedent's spouse and 60 percent to the corporation, only 40 percent of the proceeds would be included in decedent's gross estate under section 2042. For purposes of this subparagraph, the decedent will not be deemed to be the controlling stockholder of a corporation unless, at the time of his death, he owned stock possessing more than 50 percent of the total combined voting power of the corporation. Solely for purposes of the preceding sentence, a decedent shall be considered to be the owner of only the stock with respect to which legal title was held, at the time of his death, by (i) the decedent (or his agent or nominee); (ii) the decedent and another person jointly (but only the proportionate number of shares which corresponds to the portion of the total consideration which is considered to be furnished by the decedent for purposes of section 2040 and the regulations thereunder); and (iii) by a trustee of a voting trust (to the extent of the decedent's beneficial interest therein) or any other trust with respect to which the decedent was treated as an owner under Subpart E, Part I, Subchapter J, Chapter I of the Code immediately prior to his death. In the case of group-term life insurance, as defined in the regulations under section 79, the power to surrender or cancel a policy held by a corporation shall not be attributed to any decedent through his stock ownership.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960 as amended by T.D. 7312, 39 FR 14949, Apr. 29, 1974; T.D. 7623, 44 FR 28800, May 17, 1979]

§ 20.2043–1 Transfers for insufficient consideration.

(a) *In general.* The transfers, trusts, interests, rights or powers enumerated and described in sections 2035 through 2038 and section 2041 are not subject to the Federal estate tax if made, created, exercised, or relinquished in a transaction which constituted a bona fide sale for an adequate and full consideration in money or money's worth. To constitute a bona fide sale for an adequate and full consideration in money or money's worth, the transfer must have been made in good faith, and the price must have been an adequate and full equivalent reducible to a money value. If the price was less than such a consideration, only the excess of the fair market value of the property (as of the applicable valuation date) over the price received by the decedent is included in ascertaining the value of his gross estate.

(b) *Marital rights and support obligations.* For purposes of chapter 11, a relinquishment or promised relinquishment or dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in ''money or money's worth.''

§ 20.2044–1 Certain property for which marital deduction was previously allowed.

(a) *In general.* Section 2044 generally provides for the inclusion in the gross estate of property in which the decedent had a qualifying income interest for life and for which a deduction was allowed under section 2056(b)(7) or 2523(f). The value of the property included in the gross estate under section 2044 is not reduced by the amount of

any section 2503(b) exclusion that applied to the transfer creating the interest. See section 2207A, regarding the right of recovery against the persons receiving the property that is applicable in certain cases.

(b) *Passed from.* For purposes of section 1014 and chapters 11 and 13 of subtitle B of the Internal Revenue Code, property included in a decedent's gross estate under section 2044 is considered to have been acquired from or to have passed from the decedent to the person receiving the property upon the decedent's death. Thus, for example, the property is treated as passing from the decedent for purposes of determining the availability of the charitable deduction under section 2055, the marital deduction under section 2056, and special use valuation under section 2032A. In addition, the tax imposed on property includible under section 2044 is eligible for the installment payment of estate tax under section 6166.

(c) *Presumption.* Unless established to the contrary, section 2044 applies to the entire value of the trust at the surviving spouse's death. If a marital deduction is taken on either the estate or gift tax return with respect to the transfer which created the qualifying income interest, it is presumed that the deduction was allowed for purposes of section 2044. To avoid the inclusion of property in the decedent-spouse's gross estate under this section, the executor of the spouse's estate must establish that a deduction was not taken for the transfer which created the qualifying income interest. For example, to establish that a deduction was not taken, the executor may produce a copy of the estate or gift tax return filed with respect to the transfer by the first spouse or the first spouse's estate establishing that no deduction was taken under section 2523(f) or section 2056(b)(7). In addition, the executor may establish that no return was filed on the original transfer by the decedent because the value of the first spouse's gross estate was below the threshold requirement for filing under section 6018. Similarly, the executor could establish that the transfer creating the decedent's qualifying income interest for life was made before the effective date of section 2056(b)(7) or section 2523(f).

(d) *Amount included*—(1) *In general.* The amount included under this section is the value of the entire interest in which the decedent had a qualifying income interest for life, determined as of the date of the decedent's death (or the alternate valuation date, if applicable). If, in connection with the transfer of property that created the decedent's qualifying income interest for life, a deduction was allowed under section 2056(b)(7) or section 2523(f) for less than the entire interest in the property (i.e., for a fractional or percentage share of the entire interest in the transferred property), the amount includible in the decedent's gross estate under this section is equal to the fair market value of the entire interest in the property on the date of the decedent's death (or the alternate valuation date, if applicable) multiplied by the fractional or percentage share of the interest for which the deduction was taken.

(2) *Inclusion of income.* If any income from the property for the period between the date of the transfer creating the decedent-spouse's interest and the date of the decedent-spouse's death has not been distributed before the decedent-spouse's death, the undistributed income is included in the decedent-spouse's gross estate under this section to the extent that the income is not so included under any other section of the Internal Revenue Code.

(3) *Reduction of includible share in certain cases.* If only a fractional or percentage share is includible under this section, the includible share is appropriately reduced if—

(i) The decedent-spouse's interest was in a trust and distributions of principal were made to the spouse during the spouse's lifetime;

(ii) The trust provides that the distributions are to be made from the qualified terminable interest share of the trust; and

(iii) The executor of the decedent-spouse's estate can establish the reduction in that share based on the fair market value of the trust assets at the time of each distribution.

(4) *Interest in previously severed trust.* If the decedent-spouse's interest was in

a trust consisting of only qualified terminable interest property and the trust was severed (in compliance with § 20.2056(b)–7(b) or § 25.2523(f)–1(b) of this chapter) from a trust that, after the severance, held only property that was not qualified terminable interest property, only the value of the property in the severed portion of the trust is includible in the decedent-spouse's gross estate.

(e) *Examples.* The following examples illustrate the principles in paragraphs (a) through (d) of this section, where the decedent, D, was survived by spouse, S.

Example 1. Inclusion of trust subject to election. Under D's will, assets valued at $800,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust with income payable to S for life. Upon S's death, the trust principal is to be distributed to D's children. D's executor elected under section 2056(b)(7) to treat the entire trust property as qualified terminable interest property and claimed a marital deduction of $800,000. S made no disposition of the income interest during S's lifetime under section 2519. On the date of S's death, the fair market value of the trust property was $740,000. S's executor did not elect the alternate valuation date. The amount included in S's gross estate pursuant to section 2044 is $740,000.

Example 2. Inclusion of trust subject to partial election. The facts are the same as in *Example 1,* except that D's executor elected under section 2056(b)(7) with respect to only 50 percent of the value of the trust ($400,000). Consequently, only the equivalent portion of the trust is included in S's gross estate; i.e., $370,000 (50 percent of $740,000).

Example 3. Spouse receives qualifying income interest in a fraction of trust income. Under D's will, assets valued at $800,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust with 20 percent of the trust income payable to S for S's life. The will provides that the trust principal is to be distributed to D's children upon S's death. D's executor elected to deduct, pursuant to section 2056(b)(7), 50 percent of the amount for which the election could be made; i.e., $80,000 (50 percent of 20 percent of $800,000). Consequently, on the death of S, only the equivalent portion of the trust is included in S's gross estate; i.e., $74,000 (50 percent of 20 percent of $740,000).

Example 4. Distribution of corpus during spouse's lifetime. The facts are the same as in *Example 3,* except that S was entitled to receive all the trust income but the executor of D's estate elected under section 2056(b)(7) with respect to only 50 percent of the value of the trust ($400,000). Pursuant to authority in the will, the trustee made a discretionary distribution of $100,000 of principal to S in 1995 and charged the entire distribution to the qualified terminable interest share. Immediately prior to the distribution, the fair market value of the trust property was $1,100,000 and the qualified terminable interest portion of the trust was 50 percent. Immediately after the distribution, the qualified terminable interest portion of the trust was 45 percent ($450,000 divided by $1,000,000). Provided S's executor can establish the relevant facts, the amount included in S's gross estate is $333,000 (45 percent of $740,000).

Example 5. Spouse assigns a portion of income interest during life. Under D's will, assets valued at $800,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust with all the income payable to S, for S's life. The will provides that the trust principal is to be distributed to D's children upon S's death. D's executor elected under section 2056(b)(7) to treat the entire trust property as qualified terminable interest property and claimed a marital deduction of $800,000. During the term of the trust, S transfers to C the right to 40 percent of the income from the trust for S's life. Because S is treated as transferring the entire remainder interest in the trust corpus under section 2519 (as well as 40 percent of the income interest under section 2511), no part of the trust is includible in S's gross estate under section 2044. However, if S retains until death an income interest in 60 percent of the trust corpus (which corpus is treated pursuant to section 2519 as having been transferred by S for both gift and estate tax purposes), 60 percent of the property will be includible in S's gross estate under section 2036(a) and a corresponding adjustment is made in S's adjusted taxable gifts.

Example 6. Inter vivos trust subject to election under section 2523(f). D transferred $800,000 to a trust providing that trust income is to be paid annually to S, for S's life. The trust provides that upon S's death, $100,000 of principal is to be paid to X charity and the remaining principal distributed to D's children. D elected to treat all of the property transferred to the trust as qualified terminable interest property under section 2523(f). At the time of S's death, the fair market value of the trust is $1,000,000. S's executor does not elect the alternate valuation date. The amount included in S's gross estate is $1,000,000; i.e., the fair market value at S's death of the entire trust property. The $100,000 that passes to X charity on S's death is treated as a transfer by S to X charity for purposes of section 2055. Therefore, S's estate is allowed a charitable deduction for the $100,000 transferred from the trust to the charity to the same extent that a deduction

would be allowed by section 2055 for a bequest by S to X charity.

Example 7. Spousal interest in the form of an annuity. D died prior to October 24, 1992, the effective date of the Energy Policy Act of 1992 (Pub. L. 102–486). See § 20.2056(b)–7(e). Under D's will, assets valued at $500,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust pursuant to which an annuity of $20,000 a year was payable to S for S's life. Trust income not paid to S as an annuity is to be accumulated in the trust and may not be distributed during S's lifetime. D's estate deducted $200,000 under section 2056(b)(7) and § 20.2056(b)–7(e)(2). S did not assign any portion of S's interest during S's life. At the time of S's death, the value of the trust property is $800,000. S's executor does not elect the alternate valuation date. The amount included in S's gross estate pursuant to section 2044 is $320,000 ([$200,000/$500,000] x $800,000).

Example 8. Inclusion of trust property when surviving spouse dies before first decedent's estate tax return is filed. D dies on July 1, 1997. Under the terms of D's will, a trust is established for the benefit of D's spouse, S. The will provides that S is entitled to receive the income from that portion of the trust that the executor elects to treat as qualified terminable interest property. The remaining portion of the trust passes as of D's date of death to a trust for the benefit of C, D's child. The trust terms otherwise provide S with a qualifying income interest for life under section 2056(b)(7)(B)(ii). S dies on February 10, 1998. On April 1, 1998, D's executor files D's estate tax return on which an election is made to treat a portion of the trust as qualified terminable interest property under section 2056(b)(7). S's estate tax return is filed on November 10, 1998. The value on the date of S's death of the portion of the trust for which D's executor made a QTIP election is includible in S's gross estate under section 2044.

[T.D. 8522, 59 FR 9646, Mar. 1, 1994, as amended by T.D. 8779, 63 FR 44393, Aug. 19, 1998]

§ 20.2044–2 Effective dates.

Except as specifically provided in *Example 7* of § 20.2044–1(e), the provisions of § 20.2044–1 are effective with respect to estates of a decedent-spouse dying after March 1, 1994. With respect to estates of decedent-spouses dying on or before such date, taxpayers may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 20.2044–1 (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

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

§ 20.2045–1 Applicability to pre-existing transfers or interests.

Sections 2034 through 2042 are applicable regardless of when the interests and events referred to in those sections were created or took place, except as otherwise provided in those sections and the regulations thereunder.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958; 25 FR 14021, Dec. 31, 1960. Redesignated by T.D. 8522, 59 FR 9646, Mar. 1, 1994]

§ 20.2046–1 Disclaimed property.

(a) This section shall apply to the disclaimer or renunciation of an interest in the person disclaiming by a transfer made after December 31, 1976. For rules relating to when the transfer creating the interest occurs, see § 25.2518–2(c)(3) and (c)(4) of this chapter. If a qualified disclaimer is made with respect to such a transfer, the Federal estate tax provisions are to apply with respect to the property interest disclaimed as if the interest had never been transferred to the person making the disclaimer. See section 2518 and the corresponding regulations for rules relating to a qualified disclaimer.

(b) The first and second sentences of this section are applicable for transfers creating the interest to be disclaimed made on or after December 31, 1997.

[T.D. 8744, 62 FR 68184, Dec. 31, 1997]

ACTUARIAL TABLES APPLICABLE BEFORE MAY 1, 1989

§ 20.2031–7A Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is before May 1, 1989.

(a) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is before January 1, 1952.* Except as otherwise provided in § 20.2031–7(b), if the valuation date of the decedent's gross estate is before January 1, 1952, the present value of annuities, life estates, terms for years, remainders, and reversions is their present value

determined under this section. If the valuation of the interest involved is dependent upon the continuation or termination of one or more lives or upon a term certain concurrent with one or more lives, the factor for the present value is computed on the basis of interest at the rate of 4 percent a year, compounded annually, and life contingencies as to each life involved from values that are based on the Actuaries' or Combined Experience Table of Mortality, as extended. This table and related factors are described in former § 81.10 (as contained in the 26 CFR part 81 edition revised as of April 1, 1958). The present value of an interest measured by a term of years is computed on the basis of interest at the rate of 4 percent a year.

(b) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is after December 31, 1951, and before January 1, 1971.* Except as otherwise provided in § 20.2031–7(b), if the valuation date for the decedent's gross estate is after December 31, 1951, and before January 1, 1971, the present value of annuities, life estates, terms of years, remainders, and reversions is their present value determined under this section. If the valuation of the interest involved is dependent upon the continuation or termination of one or more lives, or upon a term certain concurrent with one or more lives, the factor for the present value is computed on the basis of interest at the rate of 3½ percent a year, compounded annually, and life contingencies as to each life involved are taken from U.S. Life Table 38. This table and related factors are set forth in former § 20.2031–7 (as contained in the 26 CFR part 20 edition revised as of April 1, 1984). Special factors involving one and two lives may be found in or computed with the use of tables contained in the publication entitled ''Actuarial Values for Estate and Gift Tax,'' Internal Revenue Service Publication Number 11 (Rev. 5–59). This publication is no longer available for purchase from the Superintendent of Documents. However, it may be obtained by requesting a copy from: CC:DOM:CORP:T:R (IRS Publication 11), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. The present value of an interest measured by a term of years is computed on the basis of interest at the rate of 3½ percent a year.

(c) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is after December 31, 1970, and before December 1, 1983.* Except as otherwise provided in § 20.2031–7(b), if the valuation date of the decedent's gross estate is after December 31, 1970, and before December 1, 1983, the present value of annuities, life estates, terms of years, remainders, and reversions is their present value determined under this section. If the valuation of the interest involved is dependent upon the continuation of or termination of one or more lives or upon a term certain concurrent with one or more lives, the factor for the present value is computed on the basis of interest at the rate of 6 percent a year, compounded annually, and life contingencies are determined as to each male and female life involved, from values that are set forth in Table LN. Table LN contains values that are taken from the life table for total males and the life table for total females appearing as Tables 2 and 3, respectively, in United States Life Tables: 1959– 1960, published by the Department of Health and Human Services, Public Health Service. Table LN and related factors are set forth in former § 20.2031–10 (as contained in the 26 CFR part 20 edition revised as of April 1, 1994). Special factors involving one and two lives may be found in or computed with the use of tables contained in Internal Revenue Service Publication 723, ''Actuarial Values I: Valuation of Last Survivor Charitable Remainders,'' (12–70), and Internal Revenue Service Publication 723A, ''Actuarial Values II: Factors at 6 Percent Involving One and Two Lives,'' (12–70). These publications are no longer available for purchase from the Superintendent of Documents. However, a copy of each may be obtained from: CC:DOM:CORP:T:R (IRS Publication 723/723A), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

(d) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests for estates of decedents for which the valuation date of the gross estate is after November 30, 1983, and before May 1, 1989*—(1) *In general.* (i) Except as otherwise provided in § 20.2031–7(b), if the decedent died after November 30, 1983, and the valuation date for the gross estate is before May 1, 1989, the fair market value of annuities, life estates, terms of years, remainders, and reversions is their present value determined under this section. If the decedent died after November 30, 1983, and before August 9, 1984, or, in cases where the valuation date of the decedent's gross estate is before May 1, 1989, if, on December 1, 1983, the decedent was mentally incompetent so that the disposition of the decedent's property could not be changed, and the decedent died on or after December 1, 1983, without having regained competency to dispose of the decedent's property, or if the decedent died within 90 days of the date on which the decedent first regained competency, the fair market value of annuities, life estates, terms for years, remainders, and reversions included in the gross estate of such decedent is their present value determined under either this section or § 20.2031–7A(c), at the option of the taxpayer. The value of annuities issued by companies regularly engaged in their sale, and of insurance policies on the lives of persons other than the decedent, is determined under § 20.2031–8. The fair market value of a remainder interest in a charitable remainder unitrust, as defined in § 1.664–3 of this chapter, is its present value determined under § 1.664–4 of this chapter. The fair market value of a life interest or term for years in a charitable remainder unitrust is the fair market value of the property as of the date of valuation less the fair market value of the remainder interest on such date determined under § 1.664–4 of this chapter. The fair market value of the interests in a pooled income fund, as defined in § 1.642(c)–5 of this chapter, is their value determined under § 1.642(c)–6 of this chapter.

(ii) The present value of an annuity, life estate, remainder, or reversion determined under this section which is dependent on the continuation or termination of the life of one person is computed by the use of Table A in paragraph (d)(6) of this section. The present value of an annuity, term for years, remainder, or reversion dependent on a term certain is computed by the use of Table B in paragraph (d)(6) of this section. If the interest to be valued is dependent upon more than one life or there is a term certain concurrent with one or more lives, see paragraph (d)(5) of this section. For purposes of the computations described in this section, the age of a person is to be taken as the age of that person at his or her nearest birthday.

(iii) In all examples set forth in this section, the decedent is assumed to have died on or after August 9, 1984, with the valuation date of the decedent's gross estate before May 1, 1989, and to have been competent to change the disposition of the property on December 1, 1983.

(2) *Annuities.* (i) If an annuity is payable annually at the end of each year during the life of an individual (as for example if the first payment is due one year after the decedent's death), the amount payable annually is multiplied by the figure in column 2 of Table A opposite the number of years in coumn 1 nearest the age of the individual whose life measures the duration of the annuity. If the annuity is payable annually at the end of each of year for a definite number of years, the amount payable annually is multiplied by the figure in column 2 of Table B opposite the number of years in column 1 representing the duration of the annuity. The application of this paragraph (d)(2)(i) may be illustrated by the following examples:

Example (1). The decedent received, under the terms of the decedent's father's will an annuity of $10,000 a year payable annually for the life of the decedent's elder brother. At the time the decedent died, an annual payment had just been made. The brother at the decedent's death was 40 years eight months old. By reference to Table A, the figure in column 2 opposite 41 years, the number nearest to the brother's actual age, is found to be 9.1030. The present value of the annuity at the date of the decedent's death is, therefore, $91,030 ($10,000 x 9.1030).

Example (2). The decedent was entitled to receive an annuity of $10,000 a year payable

annually throughout a term certain. At the time the decedent died, the annual payment had just been made and five more annual payments were still to be made. By reference to Table B, it is found that the figure in column 2 opposite five years is 3.7908. The present value of the annuity is, therefore, $37,908 ($10,000 x 3.7808).

(ii) If an annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods during the life of an individual (as for example if the first payment is due one month after the decedent's death), the aggregate amount to be paid within a year is first multiplied by the figure in column 2 of Table A opposite the number of years in column 1 nearest the age of the individual whose life measures the duration of the annuity. The product so obtained is then multiplied by whichever of the following factors is appropriate:

1.0244 for semiannual payments,
1.0368 for quarterly payments,
1.0450 for monthly payments,
1.0482 for weekly payments.

If the annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods for a definite number of years, the aggregate amount to be paid within a year is first multiplied by the figure in column 2 of Table B opposite the number of years in column 1 representing the duration of the annuity. The product so obtained is then multiplied by whichever of the above factors is appropriate. The application of this paragraph (d)(2)(ii) may be illustrated by the following example:

Example. The facts are the same as those contained in example (1) set forth in paragraph (d)(2)(i) of this section, except that the annuity is payable semiannually. The aggregate annual amount, $10,000, is multiplied by the factor 9.1030 and the product multiplied by 1.0244. The present value of the annuity at the date of the decedent's death is, therefore, $93,251.13 ($10,000 x 9.1030 x 1.0244).

(iii)(A) If the first payment of an annuity for the life of an individual is due at the beginning of the annual or other payment period rather than at the end (as for example if the first payment is to be made immediately after the decedent's death), the value of the annuity is the sum of (A) the first payment plus (B) the present value of a similar annuity, the first payment of which is not to be made until the end of the payment period, determined as provided in paragraphs (d)(2)(i) or (ii) of this section. the application of this paragraph (d)(2)(iii)(A) may be illustrated by the following example:

Example. The decedent was entitled to receive an annuity of $50 a month during the life of another person. The decedent died on the date the payment was due. At the date of the decedent's death, the person whose life measures the duration of the annuity was 50 years of age. The value of the annuity at the date of the decedent's death is $50 plus the product of $50×12×8.4743 (see Table A)×1.0450 (See paragraph (d)(2)(ii) of this section). That is $50 plus $5,313.39, or $5,363.39.

(B) If the first payment of an annuity for a definite number of years is due at the beginning of the annual or other payment period, the applicable factor is the product of the factor shown in Table B multiplied by whichever of the following factors is appropriate:

1.1000 for annual payments,
1.0744 for semiannual payments,
1.0618 for quarterly payments,
1.0534 for monthly payments,
1.0502 for weekly payments.

The application of this paragraph (d)(2)(iii)(B) may be illustrated by the following example:

Example. The decedent was the beneficiary of an annuity of $50 a month. On the day a payment was due, the decedent died. There were 300 payments to be made, including the payment due. The value of the annuity as of the date of decedent's death is the product of $50×12×9.0770 (see Table B)×1.0534, or $5,737.03.

(3) *Life estates and terms for years.* If the interest to be valued is the right of a person for his or her life, or for the life of another person, to receive the income of certain property or to use nonincome-producing property, the value of the interest is the value of the property multiplied by the figure in column 3 of Table A opposite the number of years nearest to the actual age of the measuring life. If the interest to be valued is the right to receive income of property or to use nonincome-producing property for a term of years, column 3 of Table B is used. The application of this paragraph (d)(3) may be illustrated by the following example:

Example. The decedent or the decedent's estate was entitled to receive the income from a fund of $50,000 during the life of the decedent's elder brother. Upon the brother's

death, the remainder is to go to B. The brother was 31 years, five months old at the time of decedent's death. By reference to Table A the figure in column 3 opposite 31 years is found to be 0.95254. The present value of the decedent's interest is, therefore, $47,627 ($50,000×0.95254).

(4) *Remainders or reversionary interests.* If a decedent had, at the time of the decedent's death, a remainder or a reversionary interest in property to take effect after an estate for the life of another, the present value of the decedent's interest is obtained by multiplying the value of the property by the figure in column 4 of Table A opposite the number of years nearest to the actual age of the person whose life measures the preceding estate. If the remainder or reversion is to take effect at the end of the term for years, column 4 of Table B is used. The application of this paragraph (d)(4) may be illustrated by the following example:

Example. The decedent was entitled to receive certain property worth $50,000 upon the death of the decedent's elder sister, to whom the income was bequeathed for life. At the time of the decedent's death, the elder sister was 31 years five months old. By reference to Table A the figure in column 4 opposite 31 years is found to be .04746. The present value of the remainder interest at the date of the decedent's death is, therefore, $2,373 ($50,000×.04746).

(5) *Actuarial computations by the Internal Revenue Service.* If the valuation of the interest involved is dependent upon the continuation or the termination of more than one life or upon a term certain concurrent with one or more lives a special factor must be used. The factor is to be computed on the basis of interest at the rate of 10 percent a year, compounded annually, and life contingencies determined, as to each person involved, from the values of lx that are set forth in column 2 of Table LN of paragraph (d)(6). Table LN contains values of *lx* taken from the life table for the total population appearing as Table 1 of United States Life Tables: 1969–71, published by the Department of Health and Human Services, Public Health Service. Many special factors involving one and two lives may be found in or computed with the use of the tables contained in Internal Revenue Service Publication 723E, ''Actuarial Values II: Factors at 10 Percent Involving One and Two Lives,'' (12–83). This publication is no longer available for purchase from the Superintendent of Documents. However, it may be obtained by requesting a copy from: CC:DOM:CORP:T:R (IRS Publication 723E), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. However, if a special factor is required in the case of an actual decedent, the Commissioner will furnish the factor to the executor upon request. The request must be accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the interest, and by copies of the relevant instruments. Special factors are not furnished for prospective transfers.

(6) *Tables.* The following tables shall be used in the application of the provisions of this section:

TABLE A—SINGLE LIFE, UNISEX, 10 PERCENT—TABLE SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE ESTATE, AND A REMAINDER INTEREST—APPLICABLE FOR TRANSFERS AFTER NOVEMBER 30, 1983, AND BEFORE MAY 1, 1989

(1) Age	(2) Annuity	(3) Life estate	(4) Remainder
0	9.7188	.97188	.02812
1	9.8988	.98988	.01012
2	9.9017	.99017	.00983
3	9.9008	.99008	.00992
4	9.8981	.98981	.01019
5	9.8938	.98938	.01062
6	9.8884	.98884	.01116
7	9.8822	.98822	.01178
8	9.8748	.98748	.01252
9	9.8663	.98663	.01337
10	9.8565	.98565	.01435
11	9.8453	.98453	.01547
12	9.8329	.98329	.01671
13	9.8198	.98198	.01802
14	9.8066	.98066	.01934
15	9.7937	.97937	.02063
16	9.7815	.97815	.02185
17	9.7700	.97700	.02300
18	9.7590	.97590	.02410
19	9.7480	.97480	.02520
20	9.7365	.97365	.02635
21	9.7245	.97245	.02755
22	9.7120	.97120	.02880
23	9.6986	.96986	.03014
24	9.6841	.96841	.03159
25	9.6678	.96678	.03322
26	9.6495	.96495	.03505
27	9.6290	.96290	.03710
28	9.6062	.96062	.03938
29	9.5813	.95813	.04187
30	9.5543	.95543	.04457
31	9.5254	.95254	.04746
32	9.4942	.94942	.05058
33	9.4608	.94608	.05392
34	9.4250	.94250	.05750
35	9.3868	.93868	.06132

TABLE A—SINGLE LIFE, UNISEX, 10 PERCENT—TABLE SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE ESTATE, AND A REMAINDER INTEREST—APPLICABLE FOR TRANSFERS AFTER NOVEMBER 30, 1983, AND BEFORE MAY 1, 1989—Continued

(1) Age	(2) Annuity	(3) Life estate	(4) Remainder
36	9.3460	.93460	.06540
37	9.3026	.93026	.06974
38	9.2567	.92567	.07433
39	9.2083	.92083	.07917
40	9.1571	.91571	.08429
41	9.1030	.91030	.08970
42	9.0457	.90457	.09543
43	8.9855	.89855	.10145
44	8.9221	.89221	.10779
45	8.8558	.88558	.11442
46	8.7863	.87863	.12137
47	8.7137	.87137	.12863
48	8.6374	.86374	.13626
49	8.5578	.85578	.14422
50	8.4743	.84743	.15257
51	8.3874	.83874	.16126
52	8.2969	.82969	.17031
53	8.2028	.82028	.17972
54	8.1054	.81054	.18946
55	8.0046	.80046	.19954
56	7.9006	.79006	.20994
57	7.7931	.77931	.22069
58	7.6822	.76822	.23178
59	7.5675	.75675	.24325
60	7.4491	.74491	.25509
61	7.3267	.73267	.26733
62	7.2002	.72002	.27998
63	7.0696	.70696	.29304
64	6.9352	.69352	.30648
65	6.7970	.67970	.32030
66	6.6551	.66551	.33449
67	6.5098	.65098	.34902
68	6.3610	.63610	.36390
69	6.2086	.62086	.37914
70	6.0522	.60522	.39478
71	5.8914	.58914	.41086
72	5.7261	.57261	.42739
73	5.5571	.55571	.44429
74	5.3862	.53862	.46138
75	5.2149	.52149	.47851
76	5.0441	.50441	.49559
77	4.8742	.48742	.51258
78	4.7049	.47049	.52951
79	4.5357	.45357	.54643
80	4.3659	.43659	.56341
81	4.1967	.41967	.58033
82	4.0295	.40295	.59705
83	3.8642	.38642	.61358
84	3.6998	.36998	.63002
85	3.5359	.35359	.64641
86	3.3764	.33764	.66236
87	3.2262	.32262	.67738
88	3.0859	.30859	.69141
89	2.9526	.29526	.70474
90	2.8221	.28221	.71779
91	2.6955	.26955	.73045
92	2.5771	.25771	.74229
93	2.4692	.24692	.75308
94	2.3728	.23728	.76272
95	2.2887	.22887	.77113
96	2.2181	.22181	.77819
97	2.1550	.21550	.78450
98	2.1000	.21000	.79000
99	2.0486	.20486	.79514
100	1.9975	.19975	.80025

TABLE A—SINGLE LIFE, UNISEX, 10 PERCENT—TABLE SHOWING THE PRESENT WORTH OF AN ANNUITY, OF A LIFE ESTATE, AND A REMAINDER INTEREST—APPLICABLE FOR TRANSFERS AFTER NOVEMBER 30, 1983, AND BEFORE MAY 1, 1989—Continued

(1) Age	(2) Annuity	(3) Life estate	(4) Remainder
101	1.9532	.19532	.80468
102	1.9054	.19054	.80946
103	1.8437	.18437	.81563
104	1.7856	.17856	.82144
105	1.6962	.16962	.83038
106	1.5488	.15488	.84512
107	1.3409	.13409	.86591
108	1.0068	.10068	.89932
109	.4545	.04545	.95455

TABLE B—TERM CERTAIN, UNISEX, 10 PERCENT—TABLE SHOWING THE PRESENT WORTH OF AN ANNUITY FOR A TERM CERTAIN, OF AN INCOME INTEREST FOR A TERM CERTAIN, AND OF A REMAINDER INTEREST POSTPONED FOR A TERM CERTAIN—APPLICABLE FOR TRANSFERS AFTER NOVEMBER 30, 1983, AND BEFORE MAY 1, 1989

(1) Number of years	(2) Annuity	(3) Term certain	(4) Remainder
1	.9091	.090909	.909091
2	1.7355	.173554	.826446
3	2.4869	.248685	.751315
4	3.1699	.316987	.683013
5	3.7908	.379079	.620921
6	4.3553	.435526	.564474
7	4.8684	.486842	.513158
8	5.3349	.533493	.466507
9	5.7590	.575902	.424098
10	6.1446	.614457	.385543
11	6.4951	.649506	.350494
12	6.8137	.681369	.318631
13	7.1034	.710336	.289664
14	7.3667	.736669	.263331
15	7.6061	.760608	.239392
16	7.8237	.782371	.217629
17	8.0216	.802155	.197845
18	8.2014	.820141	.179859
19	8.3649	.836492	.163508
20	8.5136	.851356	.148644
21	8.6487	.864869	.135131
22	8.7715	.877154	.122846
23	8.8832	.888322	.111678
24	8.9847	.898474	.101526
25	9.0770	.907704	.092296
26	9.1609	.916095	.083905
27	9.2372	.923722	.076278
28	9.3066	.930657	.069343
29	9.3696	.936961	.063039
30	9.4269	.942691	.057309
31	9.4790	.947901	.052099
32	9.5264	.952638	.047362
33	9.5694	.956943	.043057
34	9.6086	.960857	.039143
35	9.6442	.964416	.035584
36	9.6765	.967651	.032349
37	9.7059	.970592	.029408
38	9.7327	.973265	.026735
39	9.7570	.975696	.024304
40	9.7791	.977905	.022095

TABLE B—TERM CERTAIN, UNISEX, 10 PERCENT—TABLE SHOWING THE PRESENT WORTH OF AN ANNUITY FOR A TERM CERTAIN, OF AN INCOME INTEREST FOR A TERM CERTAIN, AND OF A REMAINDER INTEREST POSTPONED FOR A TERM CERTAIN—APPLICABLE FOR TRANSFERS AFTER NOVEMBER 30, 1983, AND BEFORE MAY 1, 1989—Continued

(1) Number of years	(2) Annuity	(3) Term certain	(4) Remainder
41	9.7991	.979914	.020086
42	9.8174	.981740	.018260
43	9.8340	.983400	.016600
44	9.8491	.984909	.015091
45	9.8628	.986281	.013719
46	9.8753	.987528	.012472
47	9.8866	.988662	.011338
48	9.8969	.989693	.010307
49	9.9063	.990630	.009370
50	9.9140	.991481	.008519
51	9.9226	.992256	.007744
52	9.9296	.992960	.007040
53	9.9360	.993600	.006400
54	9.9418	.994182	.005818
55	9.9471	.994711	.005289
56	9.9519	.995191	.004809
57	9.9563	.995629	.004371
58	9.9603	.996026	.003974
59	9.9639	.996387	.003613
60	9.9672	.996716	.003284

TABLE LN—APPLICABLE FOR TRANSFERS AFTER NOVEMBER 30, 1983, AND BEFORE MAY 1, 1989

(1) Age X	(2) lx
0	100,000
1	97,998
2	97,876
3	97,792
4	97,724
5	97,668
6	97,619
7	97,573
8	97,531
9	97,494
10	97,460
11	97,430
12	97,401
13	97,367
14	97,322
15	97,261
16	97,181
17	97,083
18	96,970
19	96,846
20	96,716
21	96,580
22	96,438
23	96,292
24	96,145
25	96,000
26	95,859
27	95,721
28	95,586
29	95,448
30	95,307
31	95,158
32	95,003
33	94,840

TABLE LN—APPLICABLE FOR TRANSFERS AFTER NOVEMBER 30, 1983, AND BEFORE MAY 1, 1989—Continued

(1) Age X	(2) lx
34	94,666
35	94,482
36	94,285
37	94,073
38	93,843
39	93,593
40	93,322
41	93,028
42	92,712
43	92,368
44	91,995
45	91,587
46	91,144
47	90,662
48	90,142
49	89,579
50	88,972
51	88,315
52	87,605
53	86,838
54	86,007
55	85,110
56	84,142
57	83,103
58	81,988
59	80,798
60	79,529
61	78,181
62	76,751
63	75,236
64	73,631
65	71,933
66	70,139
67	68,246
68	66,254
69	64,166
70	61,984
71	59,715
72	57,360
73	54,913
74	52,363
75	49,705
76	46,946
77	44,101
78	41,192
79	38,245
80	35,285
81	32,323
82	29,375
83	26,469
84	23,638
85	20,908
86	18,282
87	15,769
88	13,407
89	11,240
90	9,297
91	7,577
92	6,070
93	4,773
94	3,682
95	2,786
96	2,068
97	1,511
98	1,087
99	772
100	542
101	375
102	257
103	175

TABLE LN—APPLICABLE FOR TRANSFERS AFTER NOVEMBER 30, 1983, AND BEFORE MAY 1, 1989—Continued

(1) Age X	(2) lx
104	117
105	78
106	52
107	34
108	22
109	14
110	0

[T.D. 8540, 59 FR 30151, June 10, 1994, as amended at 59 FR 30152, June 10, 1994]

TAXABLE ESTATE

§ 20.2051–1 Definition of taxable estate.

The taxable estate of a decedent who was a citizen or resident (see paragraph (b)(1) of § 20.0–1) of the United States at the time of his death is determined by subtracting the total amount of the deductions authorized by sections 2052 through 2056 from the total amount which must be included in the gross estate under sections 2031 through 2044. These deductions are in general as follows:

(a) An exemption of $60,000 (section 2052);

(b) Funeral and administration expenses and claims against the estate (including certain taxes and charitable pledges) (section 2053);

(c) Losses from casualty or theft during the administration of the estate (section 2054);

(d) Charitable transfers (section 2055); and

(e) The marital deduction (section 2056).

See section 2106 and the regulations thereunder for the computation of the taxable estate of a decedent who was not a citizen or resident of the United States. See also § 1.642(g)–1 of this chapter concerning the disallowance for income tax purposes of certain deductions allowed for estate tax purposes.

§ 20.2052–1 Exemption.

An exemption of $60,000 is allowed as a deduction under section 2052 from the gross estate of a decedent who was a citizen or resident of the United States at the time of his death. For the amount of the exemption allowed as a deduction from the gross estate of a decedent who was a nonresident not a citizen of the United States, see paragraph (a)(3) of § 20.2106–1.

§ 20.2053–1 Deductions for expenses, indebtedness, and taxes; in general.

(a) *General rule.* In determining the taxable estate of a decedent who was a citizen or resident of the United States at the time of his death, there are allowed as deductions under section 2053 (a) and (b) amounts falling within the following two categories (subject to the limitations contained in this section and in §§ 20.2053–2 through 20.2053–9):

(1) *First category.* Amounts which are payable out of property subject to claims and which are allowable by the law of the jurisdiction, whether within or without the United States, under which the estate is being administered for—

(i) Funeral expenses;

(ii) Administration expenses;

(iii) Claims against the estate (including taxes to the extent set forth in § 20.2053–6 and charitable pledges to the extent set forth in § 20.2053–5); and

(iv) Unpaid mortgages on, or any indebtedness in respect of, property, the value of the decedent's interest in which is included in the value of the gross estate undiminished by the mortgage or indebtedness.

As used in this subparagraph, the phrase ''allowable by the law of the jurisdiction'' means allowable by the law governing the administration of decedents' estates. The phrase has no reference to amounts allowable as deductions under a law which imposes a State death tax. See further §§ 20.2053–2 through 20.2053–7.

(2) *Second category.* Amounts representing expenses incurred in administering property which is included in the gross estate but which is not subject to claims and which—

(i) Would be allowed as deductions in the first category if the property being administered were subject to claims; and

(ii) Were paid before the expiration of the period of limitation for assessment provided in section 6501.

See further § 20.2053–8.

(b) *Provisions applicable to both categories*—(1) *In general.* If the item is not one of those described in paragraph (a)

of this section, it is not deductible merely because payment is allowed by the local law. If the amount which may be expended for the particular purpose is limited by the local law no deduction in excess of that limitation is permissible.

(2) *Effect of court decree.* The decision of a local court as to the amount and allowability under local law of a claim or administration expense will ordinarily be accepted if the court passes upon the facts upon which deductibility depends. If the court does not pass upon those facts, its decree will, of course, not be followed. For example, if the question before the court is whether a claim should be allowed, the decree allowing it will ordinarily be accepted as establishing the validity and amount of the claim. However, the decree will not necessarily be accepted even though it purports to decide the facts upon which deductibility depends. It must appear that the court actually passed upon the merits of the claim. This will be presumed in all cases of an active and genuine contest. If the result reached appears to be unreasonable, this is some evidence that there was not such a contest, but it may be rebutted by proof to the contrary. If the decree was rendered by consent, it will be accepted, provided the consent was a bona fide recognition of the validity of the claim (and not a mere cloak for a gift) and was accepted by the court as satisfactory evidence upon the merits. It will be presumed that the consent was of this character, and was so accepted, if given by all parties having an interest adverse to the claimant. The decree will not be accepted if it is at variance with the law of the State; as, for example, an allowance made to an executor in excess of that prescribed by statute. On the other hand, a deduction for the amount of a bona fide indebtedness of the decedent, or of a reasonable expense of administration, will not be denied because no court decree has been entered if the amount would be allowable under local law.

(3) *Estimated amounts.* An item may be entered on the return for deduction though its exact amount is not then known, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. If the amount of a liability was not ascertainable at the time of final audit of the return by the district director and, as a consequence, it was not allowed as a deduction in the audit, and subsequently the amount of the liability is ascertained, relief may be sought by a petition to the Tax Court or a claim for refund as provided by sections 6213(a) and 6511, respectively.

(c) *Provision applicable to first category only.* Deductions of the first category (described in paragraph (a)(1) of this section) are limited under section 2053(a) to amounts which would be property allowable out of property subject to claims by the law of the jurisdiction under which the decedent's estate is being administered. Further, the total allowable amount of deductions of the first category is limited by section 2053(c)(2) to the sum of—

(1) The value of property included in the decedent's gross estate and subject to claims, plus

(2) Amounts paid, out of property not subject to claims against the decedent's estate, within 9 months (15 months in the case of the estate of a decedent dying before January 1, 1971) after the decedent's death (the period within which the estate tax return must be filed under section 6075), or within any extension of time for filing the return granted under section 6081.

The term ''property subject to claims'' is defined in section 2053(c)(2) as meaning the property includible in the gross estate which, or the avails of which, under the applicable law, would bear the burden of the payment of these deductions in the final adjustment and settlement of the decedent's estate. However, for the purposes of this definition, the value of property subject to claims is first reduced by the amount of any deduction allowed under section 2054 for any losses from casualty or theft incurred during the settlement of the estate attributable to such property. The application of this paragraph may be illustrated by the following examples:

Example (1). The only item in the gross estate is real property valued at $250,000 which the decedent and his surviving spouse held as tenants by the entirety. Under the local law

this real property is not subject to claims. Funeral expenses of $1,200 and debts of the decedent in the amount of $1,500 are allowable under local law. Before the prescribed date for filing the estate tax return, the surviving spouse paid the funeral expenses and $1,000 of the debts. The remaining $500 of the debts was paid by her after the prescribed date for filing the return. The total amount allowable as deductions under section 2053 is limited to $2,200, the amount paid prior to the prescribed date for filing the return.

Example (2). The only two items in the gross estate were a bank deposit of $20,000 and insurance in the amount of $150,000. The insurance was payable to the decedent's surviving spouse and under local law was not subject to claims. Funeral expenses of $1,000 and debts in the amount of $29,000 were allowable under local law. A son was executor of the estate and before the prescribed date for filing the estate tax return he paid the funeral expenses of $9,000 of the debts, using therefor $5,000 of the bank deposit and $5,000 supplied by the surviving spouse. After the prescribed date for filing the return, the executor paid the remaining $20,000 of the debts, using for that purpose the $15,000 left in the bank account plus an additional $5,000 supplied by the surviving spouse. The total amount allowable as deductions under section 2053 is limited to $25,000 ($20,000 of property subject to claims plus the $5,000 additional amount which, before the prescribed date for filing the return, was paid out of property not subject to claims).

(d) *Disallowance of double deductions.* See section 642(g) and § 1.642(g)–1 with respect to the disallowance for income tax purposes of certain deductions unless the right to take such deductions for estate tax purposes is waived.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7238, 37 FR 28719, Dec. 29, 1972]

§ 20.2053–2 Deduction for funeral expenses.

Such amounts for funeral expenses are allowed as deductions from a decedent's gross estate as (a) are actually expended, (b) would be properly allowable out of property subject to claims under the laws of the local jurisdiction, and (c) satisfy the requirements of paragraph (c) of § 20.2053–1. A reasonable expenditure for a tombstone, monument, or mausoleum, or for a burial lot, either for the decedent or his family, including a reasonable expenditure for its future care, may be deducted under this heading, provided such an expenditure is allowable by the local law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial.

§ 20.2053–3 Deduction for expenses of administering estate.

(a) *In general.* The amounts deductible from a decedent's gross estate as ''administration expenses'' of the first category (see paragraphs (a) and (c) of § 20.2053–1) are limited to such expenses as are actually and necessarily, incurred in the administration of the decedent's estate; that is, in the collection of assets, payment of debts, and distribution of property to the persons entitled to it. The expenses contemplated in the law are such only as attend the settlement of an estate and the transfer of the property of the estate to individual beneficiaries or to a trustee, whether the trustee is the executor or some other person. Expenditures not essential to the proper settlement of the estate, but incurred for the individual benefit of the heirs, legatees, or devisees, may not be taken as deductions. Administration expenses include (1) executor's commissions; (2) attorney's fees; and (3) miscellaneous expenses. Each of these classes is considered separately in paragraphs (b) through (d) of this section.

(b) *Executor's commissions.* (1) The executor or administrator, in filing the estate tax return, may deduct his commissions in such an amount as has actually been paid or in an amount which at the time of filing the estate tax return may reasonably be expected to be paid, but no deduction may be taken if no commissions are to 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 audit of the return, to the extent that all three of the following conditions are satisfied:

(i) The district director is reasonably satisfied that the commissions claimed will be paid;

(ii) The amount claimed as a deduction is within the amount allowable by the laws of the jurisdiction in which the estate is being administered; and

(iii) It is in accordance with the usually accepted practice in the jurisdiction to allow such an amount in estates of similar size and character.

If the deduction is disallowed in whole or in part on final audit, the disallowance will be subject to modification as the facts may later require. If the deduction is allowed in advance of payment and payment is thereafter waived, it shall be the duty of the executor to notify the district director and to pay the resulting tax, together with interest.

(2) A bequest or devise to the executor in lieu of commissions is not deductible. If, however, the decedent fixed by his will the compensation payable to the executor for services to be rendered in the administration of the estate, deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice.

(3) Except to the extent that a trustee is in fact performing services with respect to property subject to claims which would normally be performed by an executor, amounts paid as trustees' commissions do not constitute expenses of administration under the first category, and are only deductible as expenses of the second category to the extent provided in § 20.2053–8.

(c) *Attorney's fees.* (1) The executor or administrator, in filing the estate tax return, may deduct such an amount of attorney's fees as has actually been paid, or an amount which at the time of filing may reasonably be expected to be paid. If on the final audit of a return the fees claimed have not been awarded by the proper court and paid, the deduction will, nevertheless, be allowed, if the district director is reasonably satisfied that the amount claimed will be paid and that it does not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate and the local law and practice. If the deduction is disallowed in whole or in part on final audit, the disallowance will be subject to modification as the facts may later require.

(2) A deduction for attorneys' fees incurred in contesting an asserted deficiency or in prosecuting a claim for refund should be claimed at the time the deficiency is contested or the refund claim is prosecuted. A deduction for reasonable attorneys' fees actually paid in contesting an asserted deficiency or in prosecuting a claim for refund will be allowed even though the deduction, as such, was not claimed in the estate tax return or in the claim for refund. A deduction for these fees shall not be denied, and the sufficiency of a claim for refund shall not be questioned, solely by reason of the fact that the amount of the fees to be paid was not established at the time that the right to the deduction was claimed.

(3) Attorneys' fees incurred by beneficiaries incident to litigation as to their respective interests are not deductible if the litigation is not essential to the proper settlement of the estate within the meaning of paragraph (a) of this section. An attorney's fee not meeting this test is not deductible as an administration expense under section 2053 and this section, even if it is approved by a probate court as an expense payable or reimbursable by the estate.

(d) *Miscellaneous administration expenses.* (1) Miscellaneous administration expenses include such expenses as court costs, surrogates' fees, accountants' fees, appraisers' fees, clerk hire, etc. Expenses necessarily incurred in preserving and distributing the estate are deductible, including the cost of storing or maintaining property of the estate, if it is impossible to effect immediate distribution to the beneficiaries. Expenses for preserving and caring for the property may not include outlays for additions or improvements; nor will such expenses be allowed for a longer period than the executor is reasonably required to retain the property.

(2) Expenses for selling property of the estate are deductible if the sale is necessary in order to pay the decedent's debts, expenses of administration, or taxes, to preserve the estate, or to effect distribution. The phrase ''expenses for selling property'' includes brokerage fees and other expenses attending the sale, such as the fees of an auctioneer if it is reasonably necessary to employ one. Where an item included in the gross estate is disposed of in a bona fide sale (including a

redemption) to a dealer in such items at a price below its fair market value, for purposes of this paragraph there shall be treated as an expense for selling the item whichever of the following amounts is the lesser: (i) The amount by which the fair market value of the property on the applicable valuation date exceeds the proceeds of the sale, or (ii) the amount by which the fair market value of the property on the date of the sale exceeds the proceeds of the sale. The principles used in determining the value at which an item of property is included in the gross estate shall be followed in arriving at the fair market value of the property for purposes of this paragraph. See §§ 20.2031–1 through 20.2031–9.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6826, 30 FR 7708, June 15, 1965; 44 FR 23525, Apr. 20, 1979]

§ 20.2053–4 Deduction for claims against the estate; in general.

The amounts that may be deducted as claims against a decedent's estate are such only as represent personal obligations of the decedent existing at the time of his death, whether or not then matured, and interest thereon which had accrued at the time of death. Only interest accrued at the date of the decedent's death is allowable even though the executor elects the alternate valuation method under section 2032. Only claims enforceable against the decedent's estate may be deducted. Except as otherwise provided in § 20.2053–5 with respect to pledges or subscriptions, section 2053(c)(1)(A) provides that the allowance of a deduction for a claim founded upon a promise or agreement is limited to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth. See § 20.2043–1. Liabilities imposed by law or arising out of torts are deductible.

§ 20.2053–5 Deductions for charitable, etc., pledges or subscriptions.

A pledge or a subscription, evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible only to the extent that—

(a) Liability therefor was contracted bona fide and for an adequate and full consideration in cash or its equivalent, or

(b) It would have constituted an allowable deduction under section 2055 (relating to charitable, etc., deductions) if it had been a bequest.

§ 20.2053–6 Deduction for taxes.

(a) *In general.* Taxes are deductible in computing a decedent's gross estate only as claims against the estate (except to the extent that excise taxes may be allowable as administration expenses), and only to the extent not disallowed by section 2053(c)(1)(B) (see the remaining paragraphs of this section). However, see § 20.2053–9 with respect to the deduction allowed for certain State death taxes on charitable, etc., transfers.

(b) *Property taxes.* Property taxes are not deductible unless they accrued before the decedent's death. However, they are not deductible merely because they have accrued in an accounting sense. Property taxes in order to be deductible must be an enforceable obligation of the decedent at the time of his death.

(c) *Death taxes.* No estate, succession, legacy or inheritance tax payable by reason of the decedent's death is deductible, except as provided in § 20.2053–9 with respect to certain State death taxes on charitable, etc., transfers. However, see sections 2011 and 2014 and the regulations thereunder with respect to credits for death taxes.

(d) *Gift taxes.* Unpaid gift taxes on gifts made by a decedent before his death are deductible. If a gift is considered as made one-half by the decedent and one-half by his spouse under section 2513, the entire amount of the gift tax, unpaid at the decedent's death, attributable to a gift in fact made by the decedent is deductible. No portion of the tax attributable to a gift in fact made by the decedent's spouse is deductible except to the extent that the obligation is enforced against the decedent's estate and his estate has no effective right of contribution against his spouse. (See section 2012 and § 20.2012–1 with respect to credit for gift taxes paid upon gifts of property included in a decedent's gross estate.)

(e) *Excise taxes.* Excise taxes incurred in selling property of a decedent's estate are deductible as an expense of administration if the sale is necessary in order to (1) pay the decedent's debts, expenses of administration, or taxes, (2) preserve the estate, or (3) effect distribution. Excise taxes incurred in distributing property of the estate in kind are also deductible.

(f) *Income taxes.* Unpaid income taxes are deductible if they are on income property includible in an income tax return of the decedent for a period before his death. Taxes on income received after the decedent's death are not deductible. If income received by a decedent during his lifetime is included in a joint income tax return filed by the decedent and his spouse, or by the decedent's estate and his surviving spouse, the portion of the joint liability for the period covered by the return for which a deduction will be allowed is the amount for which the decedent's estate would be liable under local law, as between the decedent and his spouse, after enforcement of any effective right of reimbursement or contribution. In the absence of evidence to the contrary, the deductible amount is presumed to be an amount bearing the same ratio to the total joint tax liability for the period covered by the return that the amount of income tax for which the decedent would have been liable if he had filed a separate return for that period bears to the total of the amounts for which the decedent and his spouse would have been liable if they had both filed separate returns for that period. Thus, in the absence of evidence to the contrary, the deductible amount equals: Decedent's separate tax÷Both separate taxes×Joint tax.

However, the deduction cannot in any event exceed the lesser of—

(1) The decedent's liability for the period (as determined in this paragraph) reduced by the amounts already contributed by the decedent toward payment of the joint liability, or

(2) If there is an enforceable agreement between the decedent and his spouse or between the executor and the spouse relative to the payment of the joint liability, the amount which pursuant to the agreement is to be contributed by the estate toward payment of the joint liability.

If the decedent's estate and his surviving spouse are entitled to a refund on account of an overpayment of a joint income tax liability, the overpayment is an asset includible in the decedent's gross estate under section 2033 in the amount to which the estate would be entitled under local law, as between the estate and the surviving spouse. In the absence of evidence to the contrary, the includible amount is presumed to be the amount by which the decedent's contributions toward payment of the joint tax exceeds his liability determined in accordance with the principles set forth in this paragraph (other than subparagraph (1) of this paragraph).

§ 20.2053–7 Deduction for unpaid mortgages.

A deduction is allowed from a decedent's gross estate of the full unpaid amount of a mortgage upon, or of any other indebtedness in respect of, any property of the gross estate, including interest which had accrued thereon to the date of death, provided the value of the property, undiminished by the amount of the mortgage or indebtedness, is included in the value of the gross estate. If the decedent's estate is liable for the amount of the mortgage or indebtedness, the full value of the property subject to the mortgage or indebtedness must be included as part of the value of the gross estate; the amount of the mortgage or indebtedness being in such case allowed as a deduction. But if the decedent's estate is not so liable, only the value of the equity of redemption (or the value of the property, less the mortgage or indebtedness) need be returned as part of the value of the gross estate. In no case may the deduction on account of the mortgage or indebtedness exceed the liability therefor contracted bona fide and for an adequate and full consideration in money or money's worth. See § 20.2043–1. Only interest accrued to the date of the decedent's death is allowable even though the alternate valuation method under section 2032 is selected. In any case where real property situated outside the United States no

deduction may be taken of any mortgage thereon or any other indebtedness does not form a part of the gross estate, in respect thereof.

[T.D. 6684, 28 FR 11409, Oct. 24, 1963]

§ 20.2053–8 Deduction for expenses in administering property not subject to claims.

(a) Expenses incurred in administering property included in a decedent's gross estate but not subject to claims fall within the second category of deductions set forth in § 20.2053–1, and may be allowed as deductions if they—

(1) Would be allowed as deductions in the first category if the property being administered were subject to claims; and

(2) Were paid before the expiration of the period of limitation for assessment provided in section 6501.

Usually, these expenses are incurred in connection with the administration of a trust established by a decedent during his lifetime. They may also be incurred in connection with the collection of other assets or the transfer or clearance of title to other property included in a decedent's gross estate for estate tax purposes but not included in his probate estate.

(b) These expenses may be allowed as deductions only to the extent that they would be allowed as deductions under the first category if the property were subject to claims. See § 20.2053–3. The only expenses in administering property not subject to claims which are allowed as deductions are those occasioned by the decedent's death and incurred in settling the decedent's interest in the property or vesting good title to the property in the beneficiaries. Expenses not coming within the description in the preceding sentence but incurred on behalf of the transferees are not deductible.

(c) The principles set forth in paragraphs (b), (c), and (d) of § 20.2053–3 (relating to the allowance of executor's commissions, attorney's fees, and miscellaneous administration expenses of the first category) are applied in determining the extent to which trustee's commissions, attorney's and accountant's fees, and miscellaneous administration expenses are allowed in connection with the administration of property not subject to claims.

(d) The application of this section may be illustrated by the following examples:

Example (1). In 1940, the decedent made an irrevocable transfer of property to the X Trust Company, as trustee. The instrument of transfer provided that the trustee should pay the income from the property to the decedent for the duration of his life and upon his death, distribute the corpus of the trust among designated beneficiaries. The property was included in the decedent's gross estate under the provisions of section 2036. Three months after the date of death, the trustee distributed the trust corpus among the beneficiaries, except for $6,000 which it withheld. The amount withheld represented $5,000 which it retained as trustee's commissions in connection with the termination of the trust and $1,000 which it had paid to an attorney for representing it in connection with the termination. Both the trustee's commissions and the attorney's fees were allowable under the law of the jursidiction in which the trust was being administered, were reasonable in amount, and were in accord with local custom. Under these circumstances, the estate is allowed a deduction of $6,000.

Example (2). In 1945, the decedent made an irrevocable transfer of property to Y Trust Company, as trustee. The instrument of transfer provided that the trustee should pay the income from the property to the decedent during his life. If the decedent's wife survived him, the trust was to continue for the duration of her life, with Y Trust Company and the decedent's son as co-trustees, and with income payable to the decedent's wife for the duration of her life. Upon the death of both the decedent and his wife, the corpus is to be distributed among designated remaindermen. The decedent was survived by his wife. The property was included in the decedent's gross estate under the provisions of section 2036. In accordance with local custom, the trustee made an accounting to the court as of the date of the decedent's death. Following the death of the decedent, a controversy arose among the remaindermen as to their respective rights under the instrument of transfer, and a suit was brought in court to which the trustee was made a party. As part of the accounting, the court approved the following expenses which the trustee had paid within 3 years following the date of death: $10,000, trustee's commissions; $5,000, accountant's fees; $25,000, attorney's fees; and $2,500, representing fees paid to the guardian of a remainderman who was a minor. The trustee's commissions and accountant's fees were for services in connection with the usual issues involved in a trust

accounting as also were one-half of the attorney's and guardian's fees. The remainder of the attorney's and guardian's fees were for services performed in connection with the suit brought by the remaindermen. The amount allowed as a deduction is the $28,750 ($10,000, trustee's commissions; $5,000, accountant's fees; $12,500, attorney's fees; and $1,250, guardian's fees) incurred as expenses in connection with the usual issues involved in a trust accounting. The remaining expenses are not allowed as deductions since they were incurred on behalf of the transferees.

Example (3). Decedent in 1950 made an irrevocable transfer of property to the Z Trust Company, as trustee. The instrument of transfer provided that the trustee should pay the income from the property to the decedent's wife for the duration of her life. If the decedent survived his wife the trust corpus was to be returned to him but if he did not survive her, then upon the death of the wife, the trust corpus was to be distributed among their children. The decedent predeceased his wife and the transferred property, less the value of the wife's outstanding life estate, was included in his gross estate under the provisions of section 2037 since his reversionary interest therein immediately before his death was in excess of 5 percent of the value of the property. At the wife's request, the court ordered the trustee to render an accounting of the trust property as of the date of the decedent's death. No deduction will be allowed the decedent's estate for any of the expenses incurred in connection with the trust accounting, since the expenses were incurred on behalf of the wife.

Example (4). If, in the preceding example, the decedent died without other property and no executor or administrator of his estate was appointed, so that it was necessary for the trustee to prepare an estate tax return and participate in its audit, or if the trustee required accounting proceedings for its own protection in accordance with local custom, trustees', attorneys', and guardians' fees in connection with the estate tax or accounting proceedings would be deductible to the same extent that they would be deductible if the property were subject to claims. Deductions incurred under similar circumstances by a surviving joint tenant or the recipient of life insurance proceeds would also be deductible.

§ 20.2053–9 Deduction for certain State death taxes.

(a) *General rule.* A deduction is allowed a decedent's estate under section 2053(d) for the amount of any estate, succession, legacy, or inheritance tax imposed by a State, Territory, or the District of Columbia, or, in the case of a decedent dying before September 3, 1958, a possession of the United States upon a transfer by the decedent for charitable, etc., uses described in section 2055 or 2106(a)(2) (relating to the estates of nonresidents not citizens), but only if (1) the conditions stated in paragraph (b) of this section are met, and (2) an election is made in accordance with the provisions of paragraph (c) of this section. See section 2011(e) and § 20.2011–2 for the effect which the allowance of this deduction has upon the credit for State death taxes.

(b) *Condition for allowance of deduction.* (1) The deduction is not allowed unless either—

(i) The entire decrease in the Federal estate tax resulting from the allowance of the deduction inures solely to the benefit of a charitable, etc., transferee described in section 2055 or 2106(a)(2), or

(ii) The Federal estate tax is equitably apportioned among all the transferees (including the decedent's surviving spouse and the charitable, etc., transferees) of property included in the decedent's gross estate.

For allowance of the credit, it is sufficient if either of these conditions is satisfied. Thus, in a case where the entire decrease in Federal estate tax inures to the benefit of a charitable transferee, the deduction is allowable even though the Federal estate tax is not equitably apportioned among all the transferees of property included in the decedent's gross estate. Similarly, if the Federal estate tax is equitably apportioned among all the transferees of property included in the decedent's gross estate, the deduction is allowable even though a noncharitable transferee receives some benefit from the allowance of the deduction.

(2) For purposes of this paragraph, the Federal estate tax is considered to be equitably apportioned among all the transferees (including the decedent's surviving spouse and the charitable, etc., transferees) of property included in the decedent's gross estate only if each transferee's share of the tax is based upon the net amount of his transfer subjected to the tax (taking into account any exemptions, credits, or deductions allowed by Chapter 11).

See examples (2) through (5) of paragraph (e) of this section.

(c) *Exercise of election.* The election to take a deduction for a State death tax imposed upon a transfer for charitable, etc., uses shall be exercised by the executor by the filing of a written notification to that effect with the district director of internal revenue in whose district the estate tax return for the decedent's estate was filed. The notification shall be filed before the expiration of the period of limitation for assessment provided in section 6501 (usually 3 years from the last day for filing the return). The election may be revoked by the executor by the filing of a written notification to that effect with the district director at any time before the expiration of such period.

(d) *Amount of State death tax imposed upon a transfer.* If a State death tax is imposed upon the transfer of the decedent's entire estate and not upon the transfer of a particular share thereof, the State death tax imposed upon a transfer for charitable, etc., uses is deemed to be an amount, E, which bears the same ratio to F (the amount of the State death tax imposed with respect to the transfer of the entire estate) as G (the value of the charitable, etc., transfer, reduced as provided in the next sentence) bears to H (the total value of the properties, interests, and benefits subjected to the State death tax received by all persons interested in the estate, reduced as provided in the last sentence of this paragraph). In arriving at amount G of the ratio, the value of the charitable, etc., transfer is reduced by the amount of any deduction or exclusion allowed with respect to such property in determining the amount of the State death tax. In arriving at amount H of the ratio, the total value of the properties, interests, and benefits subjected to State death tax received by all persons interested in the estate is reduced by the amount of all deductions and exclusions allowed in determining the amount of the State death tax on account of the nature of a beneficiary or a beneficiary's relationship to the decedent.

(e) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). The decedent's gross estate was valued at $200,000. He bequeathed $90,000 to a nephew, $10,000 to Charity A, and the remainder of his estate to Charity B. State inheritance tax in the amount of $13,500 was imposed upon the bequest to the nephew, $1,500 upon the bequest to Charity A, and $15,000 upon the bequest to Charity B. Under the will and local law, each legatee is required to pay the State inheritance tax on his bequest, and the Federal estate tax is to be paid out of the residuary estate. Since the entire burden of paying the Federal estate tax falls on Charity B, it follows that the decrease in the Federal estate tax resulting from the allowance of deductions for State death taxes in the amounts of $1,500 and $15,000 would inure solely for the benefit of Charity B. Therefore, deductions of $1,500 and $15,000 are allowable under section 2053(d). If, in this example, the State death taxes as well as the Federal estate tax were to be paid out of the residuary estate, the result would be the same.

Example (2). The decedent's gross estate was valued at $350,000. Expenses, indebtedness, etc., amounted to $50,000. The entire estate was bequeathed in equal shares to a son, a daughter, and Charity C. State inheritance tax in the amount of $2,000 was imposed upon the bequest to the son, $2,000 upon the bequest to the daughter, and $5,000 upon the bequest to Charity C. Under the will and local law, each legatee is required to pay his own State inheritance tax and his proportionate share of the Federal estate tax determined by taking into consideration the net amount of his bequest subjected to the tax. Since each legatee's share of the Federal estate tax is based upon the net amount of his bequest subjected to the tax (note that the deductions under sections 2053(d) and 2055 will have the effect of reducing Charity C's proportionate share of the tax), the tax is considered to be equitably apportioned. Thus, a deduction of $5,000 is allowable under section 2053(d). This deduction together with a deduction of $95,000 under section 2055 (charitable deduction) will mean that none of Charity C's bequest is subjected to Federal estate tax. Hence, the son and the daughter will bear the entire estate tax.

Example (3). The decedent bequeathed his property in equal shares, after payment of all expenses, to a son, a daughter, and a charity. State inheritance tax of $2,000 was imposed upon the bequest to the son, $2,000 upon the bequest to the daughter, and $15,000 upon the bequest to the charity. Under the will and local law, each beneficiary pays the State inheritance tax on his bequest and the Federal estate tax is to be paid out of the estate as an administration expense. If the deduction for State death tax on the charitable bequest is allowed in this case, some portion of the decrease in the Federal estate tax would inure to the benefit of the son and the

daughter. The Federal estate tax is not considered to be equitably apportioned in this case since each legatee's share of the Federal estate tax is not based upon the net amount of his bequest subjected to the tax (note that the deductions under sections 2053(d) and 2055 will not have the effect of reducing the charity's proportionate share of the tax). Inasmuch as some of the decrease in the Federal estate tax payable would inure to the benefit of the son and the daughter, and inasmuch as there is no equitable apportionment of the tax, no deduction is allowable under section 2053(d).

Example (4). The decedent bequeathed his entire residuary estate in trust to pay the income to X for life with remainder to charity. The State imposed inheritance taxes of $2,000 upon the bequest to X and $10,000 upon the bequest to charity. Under the will and local law, all State and Federal taxes are payable out of the residuary estate and therefore they would reduce the amount which would become the corpus of the trust. If the deduction for the State death tax on the charitable bequest is allowed in this case, some portion of the decrease in the Federal estate tax would inure to the benefit of X since the allowance of the deduction would increase the size of the corpus from which X is to receive the income for life. Also, the Federal estate tax is not considered to be equitably apportioned in this case since each legatee's share of the Federal estate tax is not based upon the net amount of his bequest subjected to the tax (note that the deductions under sections 2053(d) and 2055 will not have the effect of reducing the charity's proportionate share of the tax). Inasmuch as some of the decrease in the Federal estate tax payable would inure to the benefit of X, and inasmuch as there is no equitable apportionment of the tax, no deduction is allowable under section 2053(d).

Example (5). The decedent's gross estate was valued at $750,000. Expenses, indebtedness, etc., amounted to $500,000. The decedent bequeathed $350,000 of his estate to his surviving spouse and the remainder of his estate equally to his son and Charity D. State inheritance tax in the amount of $7,000 was imposed upon the bequest to the surviving spouse, $26,250 upon the bequest to the son, and $26,250 upon the bequest to Charity D. The will was silent concerning the payment of taxes. In such a case, the local law provides that each legatee shall pay his own State inheritance tax. The local law further provides for an apportionment of the Federal estate tax among the legatees of the estate. Under the apportionment provisions, the surviving spouse is not required to bear any part of the Federal estate tax with respect to her $350,000 bequest. It should be noted, however, that the marital deduction allowed to the decedent's estate by reason of the bequest to the surviving spouse is limited to $343,000 ($350,000 bequest less $7,000 State inheritance tax payable by the surviving spouse). Thus, the bequest to the surviving spouse is subjected to the Federal estate tax in the net amount of $7,000. If the deduction for State death tax on the charitable bequest is allowed in this case, some portion of the decrease in the Federal estate tax would inure to the benefit of the son. The Federal estate tax is not considered to be equitably apportioned in this case since each legatee's share of the Federal estate tax is not based upon the net amount of his bequest subjected to the tax (note that the surviving spouse is to pay no tax). Inasmuch as some of the decrease in the Federal estate tax payable would inure to the benefit of the son, and inasmuch as there is no equitable apportionment of the tax, no deduction is allowable under section 2053(d).

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6526, 26 FR 417, Jan. 19, 1961; T.D. 6666, 28 FR 7251, July 16, 1963]

§ 20.2053–10 Deduction for certain foreign death taxes.

(a) *General rule.* A deduction is allowed the estate of a decedent dying on or after July 1, 1955, under section 2053(d) for the amount of any estate, succession, legacy, or inheritance tax imposed by and actually paid to any foreign country, in respect of any property situated within such foreign country and included in the gross estate of a citizen or resident of the United States, upon a transfer by the decedent for charitable, etc., uses described in section 2055, but only if (1) the conditions stated in paragraph (b) of this section are met, and (2) an election is made in accordance with the provisions of paragraph (c) of this section. The determination of the country within which property is situated is made in accordance with the rules contained in sections 2104 and 2105 in determining whether property is situated within or without the United States. See section 2014(f) and § 20.2014–7 for the effect which the allowance of this deduction has upon the credit for foreign death taxes.

(b) *Condition for allowance of deduction.* (1) The deduction is not allowed unless either—

(i) The entire decrease in the Federal estate tax resulting from the allowance of the deduction inures solely to the benefit of a charitable, etc., transferee described in section 2055, or

(ii) The Federal estate tax is equitably apportioned among all the transferees (including the decedent's surviving spouse and the charitable, etc., transferees) of property included in the decedent's gross estate.

For allowance of the deduction, it is sufficient if either of these conditions is satisfied. Thus, in a case where the entire decrease in Federal estate tax inures to the benefit of a charitable transferee, the deduction is allowable even though the Federal estate tax is not equitably apportioned among all the transferees of property included in the decedent's gross estate. Similarly, if the Federal estate tax is equitably apportioned among all the transferees of property included in the decedent's gross estate, the deduction is allowable even though a noncharitable transferee receives some benefit from the allowance of the deduction.

(2) For purposes of this paragraph, the Federal estate tax is considered to be equitably apportioned among all the transferees (including the decedent's surviving spouse and the charitable, etc., transferees) of property included in the decedent's gross estate only if each transferee's share of the tax is based upon the net amount of his transfer subjected to the tax (taking into account any exemptions, credits, or deductions allowed by Chapter 11). See examples (2) through (5) of paragraph (e) of § 20.2053–9.

(c) *Exercise of election*. The election to take a deduction for a foreign death tax imposed upon a transfer for charitable, etc., uses shall be exercised by the executor by the filing of a written notification to that effect with the district director of internal revenue in whose district the estate tax return for the decedent's estate was filed. An election to take the deduction for foreign death taxes is deemed to be a waiver of the right to claim a credit under a treaty with any foreign country for any tax or portion thereof claimed as a deduction under this section. The notification shall be filed before the expiration of the period of limitation for assessment provided in section 6501 (usually 3 years from the last day for filing the return). The election may be revoked by the executor by the filing of a written notification to that effect with the district director at any time before the expiration of such period.

(d) *Amount of foreign death tax imposed upon a transfer*. If a foreign death tax is imposed upon the transfer of the entire part of the decedent's estate subject to such tax and not upon the transfer of a particular share thereof, the foreign death tax imposed upon a transfer for charitable, etc., uses is deemed to be an amount, J, which bears the same ratio to K (the amount of the foreign death tax imposed with respect to the transfer of the entire part of the decedent's estate subject to such tax) as M (the value of the charitable, etc., transfer, reduced as provided in the next sentence) bears to N (the total value of the properties, interests, and benefits subjected to the foreign death tax received by all persons interested in the estate, reduced as provided in the last sentence of this paragraph). In arriving at amount M of the ratio, the value of the charitable, etc., transfer is reduced by the amount of any deduction or exclusion allowed with respect to such property in determining the amount of the foreign death tax. In arriving at amount N of the ratio, the total value of the properties, interests, and benefits subjected to foreign death tax received by all persons interested in the estate is reduced by the amount of all deductions and exclusions allowed in determining the amount of the foreign death tax on account of the nature of a beneficiary or a beneficiary's relationship to the decedent.

[T.D. 6600, 27 FR 4985, May 29, 1962]

§ 20.2054–1 Deduction for losses from casualties or theft.

A deduction is allowed for losses incurred during the settlement of the estate arising from fires, storms, shipwrecks, or other casualties, or from theft, if the losses are not compensated for by insurance or otherwise. If the loss is partly compensated for, the excess of the loss over the compensation may be deducted. Losses which are not of the nature described are not deductible. In order to be deductible a loss must occur during the settlement of the estate. If a loss with respect to an asset occurs after its distribution to the distributee it may not be deducted.

Notwithstanding the foregoing, no deduction is allowed under this section if the estate has waived its right to take such a deduction pursuant to the provisions of section 642(g) in order to permit its allowance for income tax purposes. See further § 1.642(g)–1.

§ 20.2055–1 Deduction for transfers for public, charitable, and religious uses; in general.

(a) *General rule.* A deduction is allowed under section 2055(a) from the gross estate of a decedent who was a citizen or resident of the United States at the time of his death for the value of property included in the decedent's gross estate and transferred by the decedent during his lifetime or by will—

(1) To or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) To or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and for the prevention of cruelty to children or animals), if no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual (other than as a legitimate object of such purposes), if the organization is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and if, in the case of transfers made after December 31, 1969, it does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

(3) To a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, if the transferred property is to be used exclusively for religious, charitable, scientific, literary, or educational purposes (or for the prevention of cruelty to children or animals), if no substantial part of the activities of such transferree is carrying on propaganda, or otherwise attempting, to influence legislation, and if, in the case of transfers made after December 31, 1969, such transferee does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office; or

(4) To or for the use of any veterans' organization incorporated by act of Congress, or of any of its departments, local chapters, or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

The deduction is not limited, in the case of estates of citizens or residents of the United States, to transfers to domestic corporations or associations, or to trustees for use within the United States. Nor is the deduction subject to percentage limitations such as are applicable to the charitable deduction under the income tax. An organization will not be considered to meet the requirements of subparagraph (2) or (3) of this paragraph if such organization engages in any activity which would cause it to be classified as an ''action'' organization under paragraph (c)(3) of § 1.501(c)(3)–1 of this chapter (Income Tax Regulations). See §§ 20.2055–4 and 20.2055–5 for rules relating to the disallowance of deductions to trusts and organizations which engage in certain prohibited transactions or whose governing instruments do not contain certain specified requirements.

(b) *Powers of appointment*—(1) *General rule.* A deduction is allowable under section 2055(b) for the value of property passing to or for the use of a transferee described in paragraph (a) of this section by the exercise, failure to exercise, release or lapse of a power of appointment by reason of which the property is includible in the decedent's gross estate under section 2041.

(2) *Certain bequests subject to power of appointment.* For the allowance of a deduction in the case of a bequest in trust where the decedent's surviving spouse (i) was over 80 years of age at the date of decedent's death, (ii) was entitled for life to all of the net income from the trust, and (iii) had a power of appointment over the corpus of the trust exercisable by will in favor of, among others, a charitable organization, see section 2055(b)(2). See also section 6503(e) for suspension of the period

of limitations for assessment or collection of any deficiency attributable to the allowance of the deduction.

(c) *Submission of evidence.* In establishing the right of the estate to the deduction authorized by section 2055, the executor should submit the following with the return:

(1) A copy of any instrument in writing by which the decedent made a transfer of property in his lifetime the value of which is required by statute to be included in his gross estate, for which a deduction under section 2055 is claimed. If the instrument is of record the copy should be certified, and if not of record, the copy should be verified.

(2) A written statement by the executor containing a declaration that it is made under penalties of perjury and stating whether any action has been instituted to construe or to contest the decedent's will or any provision thereof affecting the charitable deduction claimed and whether, according to his information and belief, any such action is designed or contemplated.

The executor shall also submit such other documents or evidence as may be requested by the district director.

(d) *Cross references.* (1) See section 2055(f) for certain cross references relating to section 2055.

(2) For treatment of bequests accepted by the Secretary of State or the Secretary of Commerce, for the purpose of organizing and holding an international conference to negotiate a Patent Corporation Treaty, as bequests to or for the use of the United States, see section 3 of Joint Resolution of December 24, 1969 (Pub. L. 91–160, 83 Stat. 443).

(3) For treatment of bequests accepted by the Secretary of the Department of Housing and Urban Development, for the purpose of aiding or facilitating the work of the Department, as bequests to or for the use of the United States, see section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535), as added by section 905 of Pub. L. 91–609 (84 Stat. 1809).

(4) For treatment of certain property accepted by the Chairman of the Administrative Conference of the United States, for the purposes of aiding and facilitating the work of the Conference, as a devise or bequest to the United States, see 5 U.S.C. 575(c)(12), as added by section 1(b) of the Act of October 21, 1972 (Pub. L. 92–526, 86 Stat. 1048).

(5) For treatment of the Board for International Broadcasting as a corporation described in section 2055(a)(2), see section 7 of the Board for International Broadcasting Act of 1973 (Pub. L. 93–129, 87 Stat. 459).

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960 as amended by T.D. 8318, 39 FR 25452, July 11, 1974; T.D. 8308, 55 FR 35593, Aug. 31, 1990]

§ 20.2055–2 Transfers not exclusively for charitable purposes.

(a) *Remainders and similar interests.* If a trust is created or property is transferred for both a charitable and a private purpose, deduction may be taken of the value of the charitable beneficial interest only insofar as that interest is presently ascertainable, and hence severable from the noncharitable interest. Thus, in the case of decedent's dying before January 1, 1970, if money or property is placed in trust to pay the income to an individual during his life, or for a term of years, and then to pay the principal to a charitable organization, the present value of the remainder is deductible. See paragraph (e) of this section for limitations applicable to decedent's dying after December 31, 1969. See paragraph (f) of this section for rules relating to valuation of partial interests in property passing for charitable purposes.

(b) *Transfers subject to a condition or a power.* (1) If, as of the date of a decedent's death, a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an estate or interest has passed to, or is vested in, charity at the time of a decedent's death and the estate or interest would be defeated by the subsequent performance of some act or the happening of some event, the possibility of occurrence of which appeared at the time of the decedent's death to be so remote as to be negligible, the deduction is allowable. If

the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, the deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of the power.

(2) The application of this paragraph may be illustrated by the following examples:

Example (1). In 1965, A dies leaving certain property in trust in which charity is to receive the income for the life of his widow. The assets placed in trust by the decedent consist of stock in a corporation the fiscal policies of which are controlled by the decedent and his family. The trustees of the trust and the remaindermen are members of the decedent's family, and the governing instrument contains no adequate guarantee of the request income to the charitable organization. Under such circumstances, no deduction will be allowed. Similarly, if the trustees are not members of the decedent's family but have no power to sell or otherwise dispose of the closely held stock, or otherwise insure the requisite enjoyment of income to the charitable organization, no deduction will be allowed.

Example (2). C dies leaving a tract of land to a city government for as long as the land is used by the city for a public park. If the city accepts the tract and if, on the date of C's death, the possibility that the city will not use the land for a public park is so remote as to be negligible, a deduction will be allowed.

(c) *Disclaimers*—(1) *Decedents dying after December 31, 1976.* In the case of a bequest, devise, or transfer made by a decedent dying after December 31, 1976, the amount of a bequest, devise or transfer for which a deduction is allowable under section 2055 includes an interest which falls into the bequest, devise or transfer as the result of either—

(i) A qualified disclaimer (see section 2518 and the corresponding regulations for rules relating to a qualified disclaimer), or

(ii) The complete termination of a power to consume, invade, or appropriate property for the benefit of an individual by reason of the death of such individual or for any other reason, if the termination occurs within the period of time (including extensions) for filing the decedent's Federal estate tax return and before such power has been exercised.

(2) *Decedents dying before January 1, 1977.* In the case of a bequest, devise or transfer made by a decedent dying before January 1, 1977, the amount of a bequest, devise or transfer, for which a deduction is allowable under section 2055 includes an interest which falls into the bequest, devise or transfer as a result of either—

(i) A disclaimer of a bequest, devise, transfer, or power, if the disclaimer is made within 9 months (15 months if the decedent died on or before December 31, 1970) after the decedent's death (the period of time within which the estate tax return must be filed under section 6075) or within any extension of time for filing the return, granted pursuant to section 6081, and the disclaimer is irrevocable at the time the deduction is allowed, or

(ii) The complete termination of a power to consume, invade, or appropriate property for the benefit of an individual (whether the termination occurs by reason of the death of the individual, or otherwise) if the termination occurs within the period described in paragraph (c)(2)(i) of this section and before the power has been exercised. Ordinarily, a disclaimer made by a person not under any legal disability will be considered irrevocable when filed with the probate court. A disclaimer is a complete and unqualified refusal to accept the right to which one is entitled. Thus, if a beneficiary uses these rights for his own purposes, as by receiving a consideration for his formal disclaimer, he has not refused the rights to which he was entitled. There can be no disclaimer after an acceptance of these rights, expressly or impliedly. The disclaimer of a power is to be distinguished from the release or exercise of a power. The release or exercise of a power by the donee of the power in favor of a person or object described in paragraph (a) of § 20.2055–1 does not result in any deduction under section 2055 in the estate of the donor of a power (but see paragraph (b)(1) of § 20.2055–1 with respect to the donee's estate).

(d) *Payments in compromise.* If a charitable organization assigns or surrenders a part of a transfer to it pursuant to a compromise agreement in settlement of a controversy, the amount so assigned or surrendered is not deductible as a transfer to that charitable organization.

(e) *Limitation applicable to decedents dying after December 31, 1969*—(1) *Disallowance of deduction*—(i) *In general.* In the case of decedents dying after December 31, 1969, where an interest in property passes or has passed from the decedent for charitable purposes and an interest (other than an interest which is extinguished upon the decedent's death) in the same property passes or has passed from the decedent for private purposes (for less than an adequate and full consideration in money or money's worth) after October 9, 1969, no deduction is allowed under section 2055 for the value of the interest which passes or has passed for charitable purposes unless the interest in property is a deductible interest described in subparagraph (2) of this paragraph. The principles of section 2056 and the regulations thereunder shall apply for purposes of determining under this paragraph (e)(1)(i) whether an interest in property passes or has passed from the decedent. If however, as of the date of a decedent's death, a transfer for a private purpose is dependent upon the performance of some act on the happening of a precedent event in order that it might become effective, an interest in property will be considered to pass for a private purpose unless the possibility of occurrence of such act or event is so remote as to be negligible. The application of this paragraph (e)(1)(i) may be illustrated by the following examples, in each of which it is assumed that the interest in property which passes for private purposes does not pass for an adequate and full consideration in money or money's worth:

Example (1). In 1973, H creates a trust which is to pay the income of the trust to W for her life, the reversionary interest in the trust being retained by H. H predeceases W in 1975. H's will provide that the residue of his estate (including the reversionary interest in the trust) is to be transferred to charity. For purposes of this paragraph (e)(1)(i), interests in the same property have passed from H for charitable purposes and for private purposes.

Example (2). In 1973, H creates a trust which is to pay the income of the trust to W for her life and upon termination of the life estate to transfer the remainder to S. S predeceases W in 1975. S's will provides that the residue of his estate (including the remainder interest in the trust) is to be transferred to charity. For purposes of this paragraph (e)(1)(i), interests in the same property have not passed from H or S for charitable purposes and for private purposes.

Example (3). H transfers Blackacre to A by gift, reserving the right to the rentals of Blackacre for a term of 20 years. H dies within the 20-year term, bequeathing the right to the remaining rentals to charity. For purposes of this paragraph (e)(1)(i) the term ''property'' refers to Blackacre, and the right to rentals from Blackacre consist of an interest in Blackacre. An interest in Blackacre has passed from H for charitable purposes and for private purposes.

Example (4). H bequeaths the residue of his estate in trust for the benefit of A and a charity. An annuity of $5,000 a year is to be paid to charity for 20 years. Upon termination of the 20-year term the corpus is to be distributed to A if living. However, if A should die during the 20-year term, the corpus is to be distributed to charity upon termination of the term. An interest in the residue of the estate has passed from H for charitable purposes. In addition, an interest in the residue of the estate has passed from H for private purposes, unless the possibility that A will survive the 20-year term is so remote as to be negligible.

Example (5). H bequeaths the residue of his estate in trust. Under the terms of the trust an annuity of $5,000 a year is to be paid to charity for 20 years. Upon termination of the term, the corpus is to pass to such of A's children and their issue as A may appoint. However, if A should die during the 20-year term without exercising the power of appointment, the corpus is to be distributed to charity upon termination of the term. Since the possible appointees include private persons, an interest in the residue of the estate is considered to have passed from H for private purposes.

Example (6). H devises Blackacre to X charity. Under applicable local law, W, H's widow, is entitled to elect a dower interest in Blackacre. W elects to take her dower interest in Blackacre. For purposes of this paragraph (e)(1)(i), interests in the same property have passed from H for charitable purposes and for private purposes. If, however, W does not elect to take her dower interest in Blackacre, then, for purposes of this paragraph (e)(1)(i), interests in the same property have not passed from H for charitable purposes and for private purposes.

(ii) *Works of art and copyrights treated as separate properties*—(*a*) *In general.*

For purposes of paragraphs (e)(1)(i) and (e)(2) of this section, in the case of decedents dying after December 31, 1981, if a decedent makes a qualified contribution of a work of art, the work of art and the copyright on such work of art shall be treated as separate properties. Thus, a deduction is allowable under section 2055 for a qualified contribution of a work of art, whether or not the related copyright is simultaneously transferred to a charitable organization.

(*b*) *Work of art defined.* for purposes of paragraph (e)(1)(ii)(*a*) of this section, the term ''work of art'' means any tangible personal property with respect to which a copyright exists under Federal law.

(*c*) *Qualified contribution defined.* For purposes of paragraph (e)(1)(ii)(*a*) of this section, the term ''qualified contribution'' means any transfer of property to a qualified organization (as defined in paragraph (e)(1)(ii)(*d*) of this section) if the use of the property by the organization is related to the purpose or function constituting the basis for its exemption under section 501. The rules contained in §1.170A–4(b)(3) shall apply in determining if the use of property by an organization is related to such purpose or function.

(*d*) *Qualified organization defined.* For purposes of paragraph (e)(1)(ii)(*c*) of this section, the term ''qualified organization'' means any organization described in section 501(c)(3) other than a private foundation (as defined in section 509). A private operating foundation (as defined in section 4942(j)(3)) shall be considered a qualified organization under this paragraph.

(*e*) *Examples.* The application of paragraphs (e)(1)(i) and (e)(1)(ii) (*a*) through (*d*) of this section may be illustrated by the following examples:

Example (1). A, an artist, died in 1983. A work of art created by A and the copyright interest in that work of art were included in A's estate. Under the terms of A's will, the work of art is transferred to X charity, the only charitable beneficiary under A's will. X has no suitable use for the work of art and sells it. It is determined under the rules of §1.170A–4(b)(3) that the property is put to an unrelated use by X charity. Therefore, the rule of paragraph (e)(1)(ii)(*a*), which treats works of art and their copyrights as separate properties, does not apply because the transfer of the work of art to X is not a qualified contribution. To determine whether paragraph (e)(1)(i) of this section applies to disallow a deduction under section 2055, it must be determined which interests are treated as passing to X under local law.

(i) If under local law A's will is treated as fully transferring both the work of art and the copyright interest to X, then paragraph (e)(1)(i) of this section does not apply to disallow a deduction under section 2055 for the value of the work of art and the copyright interest.

(ii) If under local law A's will is treated as transferring only the work of art to X, and the copyright interest is treated as part of the residue of the estate, no deduction is allowable under section 2055 to A's estate for the value of the work of art because the transfer of the work of art is not a qualified contribution and paragraph (e)(1)(i) of this section applies to disallow the deduction.

Example (2). B, a collector of art, purchased a work of art from an artist who retained the copyright interest. B died in 1983. Under the terms of B's will the work of art is given to Y charity. Since B did not own the copyright interest, paragraph (e)(1)(i) of this section does not apply to disallow a deduction under section 2055 for the value of the work of art, regardless of whether or not the contribution is a qualified contribution under paragraph (e)(1)(ii)(*c*) of this section.

(2) *Deductible interests.* A deductible interest for purposes of subparagraph (1) of this paragraph is a charitable interest in property where—

(i) *Undivided portion of decedent's entire interest.* The charitable interest is an undivided portion, not in trust, of the decedent's entire interest in property. An undivided portion of a decedent's entire interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the decedent in such property and must extend over the entire term of the decedent's interest in such property and in other property into which such property is converted. For example, if the decedent transferred a life estate in an office building to his wife for her life and retained a reversionary interest in the office building, the devise by the decedent of one-half of that reversionary interest to charity while his wife is still alive will not be considered the transfer of a deductible interest; because an interest in the same property has already passed from the decedent for private purposes, the reversionary interest will

not be considered the decedent's entire interest in the property. If, on the other hand, the decedent had been given a life estate in Blackacre for the life of his wife and the decedent had no other interest in Blackacre at any time during his life, the devise by the decedent of one-half of that life estate to charity would be considered the transfer of a deductible interest; because the life estate would be considered the decedent's entire interest in the property, the devise would be of an undivided portion of such entire interest. An undivided portion of a decedent's entire interest in the property includes an interest in property whereby the charity is given the right, as a tenant in common with the decedent's devisee or legatee, to possession, dominion, and control of the property for a portion of each year appropriate to its interest in such property. However, except as provided in paragraphs (e)(2)(ii), (iii), and (iv) of this section, for purposes of this subdivision a charitable contribution of an interest in property not in trust where the decedent transfers some specific rights to one party and transfers other substantial rights to another party will not be considered a contribution of an undivided portion of the decedent's entire interest in property. A bequest to charity made on or before December 17, 1980, of an open space easement in gross in perpetuity shall be considered the transfer to charity of an undivided portion of the decedent's entire interest in the property. For the definition of an open space easement in gross in perpetuity, see § 1.170 A–7(b)(1)(ii) of this chapter (Income Tax Regulations).

(ii) *Remainder interest in personal residence.* The charitable interest is a remainder interest, not in trust, in a personal residence. Thus, for example, if the decedent devises to charity a remainder interest in a personal residence and bequeaths to his surviving spouse a life estate in such property, the value of the remainder interest is deductible under section 2055. For purposes of this subdivision, the term ''personal residence'' means any property which was used by the decedent as his personal residence even though it was not used as his principal residence. For example, a decedent's vacation home may be a personal residence for purposes of this subdivision. The term ''personal residence'' also includes stock owned by the decedent as a tenant-stockholder in a cooperative housing corporation (as those terms are defined in section 216(b) (1) and (2)) if the dwelling which the decedent was entitled to occupy as such stockholder was used by him as his personal residence.

(iii) *Remainder interest in a farm.* The charitable interest is a remainder interest, not in trust, in a farm. Thus, for example, if the decedent devises to charity a remainder interest in a farm and bequeaths to his daughter a life estate in such property, the value of the remainder interest is deductible under section 2055. For purposes of this subdivision, the term ''farm'' means any land used by the decedent or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock. The term ''livestock'' includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive furbearing animals, chickens, turkeys, pigeons, and other poultry. A farm includes the improvements thereon.

(iv) *Qualified conservation contribution.* The charitable interest is a qualified conservation contribution. For the definition of a qualified conservation contribution, see § 1.170A–14.

(v) *Charitable remainder trusts and pooled income funds.* The charitable interest is a remainder interest in a trust which is a charitable remainder annuity trust, as defined in section 664(d)(1) and § 1.664–2 of this chapter; a charitable remainder unitrust, as defined in section 664(d) (2) and (3) and § 1.664–3 of this chapter; or a pooled income fund, as defined in section 642(c)(5) and § 1.642(c)–5 of this chapter. The charitable organization to or for the use of which the remainder interest passes must meet the requirements of both section 2055(a) and section 642(c)(5)(A), section 664(d)(1)(C), or section 664(d)(2)(C), whichever applies. For example, the charitable organization to which the remainder interest in a charitable remainder annuity trust passes may not be a foreign corporation.

(vi) *Guaranteed annuity interest.* (*a*) The charitable interest is a guaranteed annuity interest, whether or not such

interest is in trust. For purposes of this subdivision (vi), the term ''guaranteed annuity interest'' means the right pursuant to the instrument of transfer to receive a guaranteed annuity. A guaranteed annuity is an arrangement under which a determinable amount is paid periodically, but not less often than annually, for a specified term or for the life or lives of an individual or individuals, each of whom must be living at the date of death of the decedent and can be ascertained at such date. For example, the annuity may be paid for the life of A plus a term of years. An amount is determinable if the exact amount which must be paid under the conditions specified in the instrument of transfer can be ascertained as of the appropriate valuation date. For example, the amount to be paid may be a stated sum for a term, or for the life of an individual, at the expiration of which it may be changed by a specified amount, but it may not be redetermined by reference to a fluctuating index such as the cost of living index. In further illustration, the amount to be paid may be expressed in terms of a fraction or a percentage of the net fair market value, as finally determined for Federal estate tax purposes, of the residue of the estate on the appropriate valuation date, or it may be expressed in terms of a fraction or percentage of the cost of living index on the appropriate valuation date.

(*b*) A charitable interest is a guaranteed annuity interest only if it is a guaranteed annuity interest in every respect. For example, if the charitable interest is the right to receive from a trust each year a payment equal to the lesser of a sum certain or a fixed percentage of the net fair market value of the trust assets, determined annually, such interest is not a guaranteed annuity interest.

(*c*) Where a charitable interest in the form of a guaranteed annuity interest is not in trust, the interest will be considered a guaranteed annuity interest only if it is to be paid by an insurance company or by an organization regularly engaged in issuing annuity contracts.

(*d*) Where a charitable interest in the form of a guaranteed annuity interest is in trust, the governing instrument of the trust may provide that income of the trust which is in excess of the amount required to pay the guaranteed annuity interest shall be paid to or for the use of a charity. Nevertheless, the amount of the deduction under section 2055 shall be limited to the fair market value of the guaranteed annuity interest as determined under paragraph (f)(2)(iv) of this section.

(*e*) Where a charitable interest in the form of a guaranteed annuity interest is in trust and the present value, on the appropriate valuation date, of all the income interests for a charitable purpose exceeds 60 percent of the aggregate fair market value of all amounts in such trust (after the payment of estate taxes and all other liabilities), the charitable interest will not be considered a guaranteed annuity interest unless the governing instrument of the trust prohibits both the acquisition and the retention of assets which would give rise to a tax under section 4944 if the trustee had acquired such assets.

(*f*) Where a charitable interest in the form of a guaranteed annuity interest is in trust, the charitable interest will not be considered a guaranteed annuity interest if any amount other than an amount in payment of a guaranteed annuity interest may be paid by the trust for a private purpose before the expiration of all the income interests for a charitable purpose, unless such amount for a private purpose is paid from a group of assets which, pursuant to the governing instrument of the trust, are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). The exception in the immediately preceding sentence with respect to any guaranteed annuity for a private purpose shall apply only if the obligation to pay the annuity for a charitable purpose begins as of the date of death of the decedent and the obligation to pay the guaranteed annuity for a private purpose does not precede in point of time the obligation to pay the annuity for a charitable purpose and only if the governing instrument of the trust does not provide for any preference or priority in respect of any payment of the guaranteed annuity for a private purpose as opposed to any

payment of any annuity for a charitable purpose. For purposes of this (*f*), an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

(*g*) Neither the requirement in *(e)* of this subdivision (vi) for a prohibition in the governing instrument against the retention of assets which would give rise to a tax under section 4944 if the trustee had acquired the assets nor the provisions of *(f)* of this subdivision (v) shall apply to—

(1) A trust executed on or before May 21, 1972, if—

(i) The trust is irrevocable on such date,

(ii) The trust is revocable on such date and the decedent dies within 3 years after such date without having amended any dispositive provision of the trust after such date, or

(iii) The trust is revocable on such date and no dispositive provision of the trust is amended within a period ending 3 years after such date and the decedent is, at the end of such 3-year period 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 trust, or

(2) A will executed on or before May 21, 1972, if—

(i) The testator dies within 3 years after such date without having amended any dispositive provision of the will after such date, by codicil or otherwise,

(ii) The testator at no time after such date has the right to change the provisions of the will which pertain to the trust, or

(iii) No dispositive provision of the will is amended by the decedent, by codicil or otherwise, within a period ending 3 years after such date and the decedent is, at the end of such 3-year period 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.

(h) For purposes of this subdivision (vi) and paragraph (f) of this section, the term ''appropriate valuation date'' means the date of death or the alternate valuation date determined pursuant to an election under section 2032.

(i) For rules relating to certain governing instrument requirements and to the imposition of certain excise taxes where the guaranteed annuity interest is in trust and for rules governing payment of private income interests by split-interest trusts, see section 4947(a)(2) and (b)(3)(A), and the regulations thereunder.

(vii) *Unitrust interest. (a)* The charitable interest is a unitrust interest, whether or not such interest is in trust. For purposes of this subdivision (vii), the term ''unitrust interest'' means the right pursuant to the instrument of transfer to receive payment, not less often than annually, of a fixed percentage of the net fair market value, determined annually, of the property which funds the unitrust interest. In computing the net fair market value of the property which funds the unitrust interest, all assets and liabilities shall be taken into account without regard to whether particular items are taken into account in determining the income from the property. The net fair market value of the property which funds the unitrust interest may be determined on any one date during the year or by taking the average of valuations made on more than one date during the year, provided that the same valuation date or dates and valuation methods are used each year. Where the charitable interest is a unitrust interest to be paid by a trust and the governing instrument of the trust does not specify the valuation date or dates, the trustee shall select such date or dates and shall indicate his selection on the first return on Form 1041 which the trust is required to file. Payments under a unitrust interest may be paid for a specified term or for the life or lives of an individual or individuals, each of whom must be living at the date of death of the decedent and can be ascertained at such date. For example, the unitrust interest may be paid for the life of A plus a term of years.

(b) A charitable interest is a unitrust interest only if it is a unitrust interest in every respect. For example, if the charitable interest is the right to receive from a trust each year a payment

equal to the lesser of a sum certain or a fixed percentage of the net fair market value of the trust assets, determined annually, such interest is not a unitrust interest.

(c) Where a charitable interest in the form of a unitrust interest is not in trust, the interest will be considered a unitrust interest only if it is to be paid by an insurance company or by an organization regularly engaged in issuing interests otherwise meeting the requirements of a unitrust interest.

(d) Where a charitable interest in the form of a unitrust interest is in trust, the governing instrument of the trust may provide that income of the trust which is in excess of the amount required to pay the unitrust interest shall be paid to or for the use of a charity. Nevertheless, the amount of the deduction under section 2055 shall be limited to the fair market value of the unitrust interest as determined under paragraph (f)(2)(v) of this section.

(e) Where a charitable interest in the form of a unitrust interest is in trust, the charitable interest will not be considered a unitrust interest if any amount other than an amount in payment of a unitrust interest may be paid by the trust for a private purpose before the expiration of all the income interests for a charitable purpose, unless such amount for a private purpose is paid from a group of assets which, pursuant to the governing instrument of the trust, are devoted exclusively to private purposes and to which section 4947(a)(2) is inapplicable by reason of section 4947(a)(2)(B). The exception in the immediately preceding sentence with respect to any unitrust interest for a private purpose shall apply only if the obligation to pay the unitrust interest for a charitable purpose begins as of the date of death of the decedent and the obligation to pay the unitrust interest for private purpose does not precede in point of time the obligation to pay the unitrust interest for a charitable purpose and only if the governing instrument of the trust does not provide for any preference or priority in respect of any payment of the unitrust interest for a private purpose as opposed to any payment of any unitrust interest for a charitable purpose. For purposes of this *(e)*, an amount is not paid for a private purpose if it is paid for an adequate and full consideration in money or money's worth. See § 53.4947–1(c) of this chapter (Foundation Excise Tax Regulations) for rules relating to the inapplicability of section 4947(a)(2) to segregated amounts in a split-interest trust.

(f) For rules relating to certain governing instrument requirements and to the imposition of certain excise taxes where the unitrust interest is in trust and for rules governing payment of private income interests by a split-interest trust, see section 4947(a)(2) and (b)(3)(A), and the regulations thereunder.

(3) *Effective date.* The provisions of this paragraph apply only in the case of decedents dying after December 31, 1969, except that they do not apply—

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

(a) 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,

(b) 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

(c) 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 (Income Tax Regulations)) to amend the will by codicil or otherwise, or

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

(a) 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,

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

(c) 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.

(4) *Amendment of dispositive provisions.* For purposes of subparagraphs (2) and (3) of this paragraph, an amendment shall generally be considered as one which amends the dispositive provisions of a will or trust if it results in a change in the persons to whom the funds are to be given or makes changes in the conditions under which the funds are given. Examples of amendments which do not amend the dispositive provisions of a will or trust include the substitution of one fiduciary for another to act in the capacity of executor or trustee and the change in the name of a legatee or beneficiary by reason of the legatee's or beneficiary's marriage. On the other hand, examples of amendments which do amend the dispositive provisions of a will or trust include an increase or decrease in the amount of a general bequest, an amendment which increases or decreases the power of a trustee to determine an allocation of income or corpus in such a way as to change the beneficiaries of the funds or a beneficiary's share of the funds, or a change in the allocation of, or in the right to allocate, receipts and expenditures between income and principal in such a way as to change the beneficiaries of the funds or a beneficiary's share of the funds.

(5) *Amendment of wills providing for pour-over into trusts.* For purposes of subparagraphs (2) and (3) of this paragraph, an amendment of a dispositive provision of a trust to which assets are to be transferred under a will shall be considered a dispositive amendment of such will.

(f) *Valuation of charitable interest*—(1) *In general.* The amount of the deduction in the case of a contribution of a partial interest in property to which this section applies is the fair market value of the partial interest at the appropriate valuation date, as defined in paragraph (e)(2)(vi)*(h)* of this section. The fair market value of an annuity, life estate, term for years, remainder, reversion, (or) unitrust interest is its present value.

(2) *Certain decedents dying after July 31, 1969.* In the case of a transfer of an interest described in subdivision (v), (vi), or (vii) of paragraph (e)(2) of this section by decedents dying after July 31, 1969, the present value of such interest is to be determined under the following rules:

(i) The present value of a remainder interest in a charitable remainder annuity trust is to be determined under § 1.664–2(c) of this chapter (Income Tax Regulations).

(ii) The present value of a remainder interest in a charitable remainder unitrust is to be determined under § 1.664–4 of this chapter.

(iii) The present value of a remainder interest in a pooled income fund is to be determined under § 1.642(c)–6 of this chapter.

(iv) The present value of a guaranteed annuity interest described in paragraph (e)(2)(vi) of this section is to be determined under § 20.2031–7 or, for certain prior periods, § 20.2031–7A, except that, if the annuity is issued by a company regularly engaged in the sale of annuities, the present value is to be determined under § 20.2031–8. If by reason of all the conditions and circumstances surrounding a transfer of an income interest in property in trust it appears that the charity may not receive the beneficial enjoyment of the interest, a deduction will be allowed under section 2055 only for the minimum amount it is evident the charity will receive.

Example (1). In 1975, B dies bequeathing $20,000 in trust with the requirement that a designated charity be paid a guaranteed annuity interest (as defined in paragraph (e)(2)(vi) of this section) of $4,100 a year, payable annually at the end of each year, for a period of 6 years and that the remainder be paid to his children. The fair market value of an annuity of $4,100 a year for a period of 6 years is $20,160.93 ($4,100×4.9173), as determined under Table B in § 20.2031–10(f). The deduction with respect to the guaranteed annuity interest will be limited to $20,000, which is the minimum amount it is evident the charity will receive.

Example (2). In 1975, C dies bequeathing $40,000 in trust with the requirement that D,

an individual, and X Charity be paid simultaneously guaranteed annuity interests (as defined in paragraph (e)(2)(vi) of this section) of $5,000 a year each, payable annually at the end of each year, for a period of 5 years and that the remainder be paid to C's children. The fair market value of two annuities of $5,000 each a year for a period of 5 years is $42,124 ([$5,000×4.2124]×2), as determined under Table B in § 20.2031– 10(f). The trust instrument provides that in the event the trust fund is insufficient to pay both annuities in a given year, the trust fund will be evenly divided between the charitable and private annuitants. The deduction with respect to the charitable annuity will be limited to $20,000, which is the minimum amount it is evident the charity will receive.

Example (3). In 1975, D dies bequeathing $65,000 in trust with the requirement that a guaranteed annuity interest (as defined in paragraph (e)(2)(vi) of this section) of $5,000 a year, payable annually at the end of each year, be paid to Y Charity for a period of 10 years and that a guaranteed annuity interest (as defined in paragraph (e)(2)(vi) of this section) of $5,000 a year, payable annually at the end of each year, be paid to W, his widow, aged 62, for 10 years or until her prior death. The annuities are to be paid simultaneously, and the remainder is to be paid to D's children. The fair market value of the private annuity is $33,877 ($5,000×6.7754), as determined pursuant to § 20.2031–10(e) and by the use of factors involving one life and a term of years as published in Publication 723A (12–70). The fair market value of the charitable annuity is $36,800.50 ($5,000×7.3601), as determined under Table B in § 20.2031–10(f). It is not evident from the governing instrument of the trust or from local law that the trustee would be required to apportion the trust fund between the widow and charity in the event the fund were insufficient to pay both annuities in a given year. Accordingly, the deduction with respect to the charitable annuity will be limited to $31,123 ($65,000 less $33,877 [the value of the private annuity]), which is the minimum amount it is evident the charity will receive.

Example (4). In 1975, E dies bequeathing $75,000 in trust with the requirement that an annuity of $5,000 a year, payable annually at the end of each year, be paid to B, an individual, for a period of 5 years and thereafter an annuity of $5,000 a year, payable annually at the end of each year, be paid to M Charity for a period of 5 years. The remainder is to be paid to C, an individual. No deduction is allowed under section 2055(a) with respect to the charitable annuity because it is not a ''guaranteed annuity interest'' within the meaning of paragraph (e)(2)(vi)*(f)* of this section.

(v) The present value of a unitrust interest described in paragraph (e)(2)(vii) of this section is to be determined by subtracting the present value of all interests in the transferred property other than the unitrust interest from the fair market value of the transferred property.

(3) *Certain decedents dying before August 1, 1969.* In the case of decedents dying before August 1, 1969, the present value of an interest described in subparagraph (2) of this paragraph is to be determined under § 20.2031–7 except that, if the interest is an annuity issued by a company regularly engaged in the sale of annuities, the present value is to be determined under § 20.2031–8.

(4) *Other decedents.* The present value of an interest not described in paragraph (f)(2) of this section is to be determined under § 20.2031–7(d) in the case of decedents where the valuation date of the gross estate is after April 30, 1989, or under § 20.2031–7A in the case of decedents where the valuation date of the gross estate is before May 1, 1989.

(5) *Special computations.* If the interest transferred is such that its present value is to be determined by a special computation, a request for a special factor, accompanied by a statement of the date of birth and sex of each individual the duration of whose life may affect the value of the interest, and by copies of the relevant instruments, may be submitted by the fiduciary to the Commissioner who may, if conditions permit, supply the factor requested. If the Commissioner furnishes the factor, a copy of the letter supplying the factor must be attached to the tax return in which the deduction is claimed. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present value made in accordance with the principles set forth in this paragraph.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7318, 39 FR 25453, July 11, 1974, 39 FR 26154, July 17, 1974; T.D. 7340, 40 FR 1240, Jan. 7, 1975; T.D. 7955, 49 FR 19995, May 11, 1984; T.D. 7957, 49 FR 20811, May 17, 1984; T.D. 8069, 51 FR 1507, Jan. 14, 1986; 51 FR 5323, Feb. 13, 1986; T.D. 8095, 51 FR 28368, Aug. 7, 1986; 51 FR 32071, Sept. 9, 1986; T.D 8540, 59 FR 30103, 30170, June 10, 1994]

§ 20.2055–3 Death taxes payable out of charitable transfers.

(a) If under the terms of the will or other governing instruments, the law of the jurisdiction under which the estate is administered, or the law of the jurisdiction imposing the particular tax, the Federal estate tax, or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any property the transfer of which would otherwise be allowable as a deduction under section 2055, section 2055(c) provides that the sum deductible is the amount of the transferred property reduced by the amount of the tax. Section 2055(c) in effect provides that the deduction is based on the amount actually available for charitable uses, that is, the amount of the fund remaining after the payment of all death taxes. Thus, if $50,000 is bequeathed for a charitable purpose and is subjected to a State inheritance tax of $5,000, payable out of the $50,000, the amount deductible is $45,000. If a life estate is bequeathed to an individual with remainder over to a charitable organization, and by the local law the inheritance tax upon the life estate is paid out of the corpus with the result that the charitable organization will be entitled to receive only the amount of the fund less the tax, the deduction is limited to the present value, as of the date of the testator's death, of the remainder of the fund so reduced. If a testator bequeaths his residuary estate, or a portion of it, to charity, and his will contains a direction that certain inheritance taxes, otherwise payable from legacies upon which they were imposed, shall be payable out of the residuary estate, the deduction may not exceed the bequest to charity thus reduced pursuant to the direction of the will. If a residuary estate, or a portion of it, is bequested to charity, and by the local law the Federal estate tax is payable out of the residuary estate, the deduction may not exceed that portion of the residuary estate bequeathed to charity as reduced by the Federal estate tax. The return should fully disclose the computation of the amount to be deducted. If the amount to be deducted is dependent upon the amount of any death tax which has not been paid before the filing of the return, there should be submitted with the return a computation of that tax.

(b) It should be noted that if the Federal estate tax is payable out of a charitable transfer so that the amount of the transfer otherwise passing to charity is reduced by the amount of the tax, the resultant decrease in the amount passing to charity will further reduce the allowable deduction. In such a case, the amount of the charitable deduction can be obtained only by a series of trial-and-error computations, or by a formula. If, in addition, interdependent State and Federal taxes are involved, the computation becomes highly complicated. Examples of methods of computation of the charitable deduction and the marital deduction (with which similar problems are encountered) in various situations are contained in supplemental instructions to the estate tax return.

(c) For the allowance of a deduction to a decedent's estate for certain State death taxes imposed upon charitable transfers, see section 2053(d) and § 20.2053–9.

§ 20.2055–4 Disallowance of charitable, etc., deductions because of "prohibited transactions" in the case of decedents dying before January 1, 1970.

(a) Sections 503(e) and 681(b)(5) provides that no deduction which would otherwise be allowable under section 2055 for the value of property transferred by the decedent during his lifetime or by will for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals) is allowed if (1) the transfer is made in trust, and, for income tax purposes for the taxable year of the trust in which the transfer is made, the deduction otherwise allowable to the trust under section 642(c) is limited by section 681(b)(1) by reason of the trust having engaged in a prohibited transaction described in section 681(b)(2), or (2) the transfer is made to a corporation, community chest, fund or foundation which, for its taxable year in which the transfer is made, is not exempt from income tax under section 501(a) by reason of having engaged in a prohibited transaction described in section 503(c).

(b) For purposes of section 681(b)(5) and section 503(e), the term ''transfer'' includes any gift, contribution, bequest, devise, legacy, or other disposition. In applying such sections for estate tax purposes, a transfer, whether made during the decedent's lifetime or by will, is considered as having been made at the moment of the decedent's death.

(c) The income tax regulations contain the rules for the determination of the taxable year of the trust for which the deduction under section 642(c) is limited by section 681(b) and for the determination of the taxable year of the organization for which an exemption is denied under section 503(a). Generally, such taxable year is a taxable year subsequent to the taxable year during which the trust or organization has been notified by the Commissioner of Internal Revenue that it has engaged in a prohibited transaction. However, if the trust or organization during or prior to the taxable year entered into the prohibited transaction for the purpose of diverting its corpus or income from the charitable or other purposes by reason of which it is entitled to a deduction or exemption, and the transaction involves a substantial part of the income or corpus, then the deduction of the trust under section 642(c) for such taxable year is limited by section 681(b), or exemption of the organization for such taxable year is denied under section 503(a), whether or not the organization has previously received notification by the Commissioner of Internal Revenue that it is engaged in a prohibited transaction. In certain cases, the limitation of section 681 or 503 may be removed or the exemption may be reinstated for certain subsequent taxable years under the rules set forth in the income tax regulations under sections 681 and 503. In cases in which prior notification by the Commissioner of Internal Revenue is not required in order to limit the deduction of the trust under section 681(d) or to deny exemption of the organization under section 503, the deduction otherwise allowable under section 2055 is not disallowed in respect of transfers made during the same taxable year of the trust or organization in which a prohibited transaction occurred or in a prior taxable year unless the decedent or a member of his family was a party to the prohibited transaction. For the purpose of the preceding sentence, the members of the decedent's family include only his brothers and sisters, whether by whole or half blood, spouse, ancestors, and lineal descendants.

(d) This section applies only in the case of decedents dying before January 1, 1970. In the case of decedents dying after December 31, 1969, see § 20.2055–5.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960 as amended by T.D. 7318, 39 FR 25456, July 11, 1974]

§ 20.2055–5 Disallowance of charitable, etc., deductions in the case of decedents dying after December 31, 1969.

(a) *Organizations subject to section 507(c) tax.* Section 508(d)(1) 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 an organization upon which the tax provided by section 507(c) has been imposed shall not be allowed if the transfer is made by the decedent after notification is made under section 507(a) or if the decedent is a substantial contributor (as defined in section 507(d)(2)) who dies on or after the first day on which action is taken by such organization that culminates in the imposition of the tax under section 507(c). This paragraph does not apply if the entire amount of the unpaid portion of the tax imposed by section 507(c) is abated under section 507(g) by the Commissioner or his delegate.

(b) *Taxable private foundations, section 4947 trusts, etc.*—(1) *In general.* Section 508(d)(2) 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 shall not be allowed if the transfer is made to or for the use of—

(i) A private foundation or a trust described in section 4947(a)(2) in a taxable year of such organization for which such organization fails to meet the governing instrument requirements of

section 508(e) (determined without regard to section 508(e)(2) (B) and (C)), or

(ii) Any organization in a period for which it is not treated as an organization described in section 501(c)(3) by reason of its failure to give notification under section 508(a) of its status to the Commissioner.

For additional rules, see § 1.508–2(b) (1) of this chapter (Income Tax Regulations).

(2) *Transfers not covered by section 508(d)(2)(A)*—(i) *In general.* Any deduction which would otherwise be allowable under section 2055 for the value of property transferred by a decedent dying after December 31, 1969, will not 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]

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[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 evidence 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 intervivos 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 spouse is a ''deductible interest'' if it does not fall within one of the following categories of ''nondeductible interests'';

(1) Any property interest which passed from the decedent to his surviving spouse is a ''nondeductible interest'' to the extent it is not included in the decedent's gross estate.

(2) If a deduction is allowed under section 2053 (relating to deductions for expenses and indebtedness) by reason of the passing of a property interest from the decedent to his surviving spouse, such interest is, to the extent of the deduction under section 2053, a ''nondeductible interest.'' Thus, a property interest which passed from the decedent to his surviving spouse in satisfaction of a deductible claim of the spouse against the estate is, to the extent of the claim, a ''nondeductible interest'' (see § 20.2056(b)–4). Similarly, amounts deducted under section 2053(a)(2) for commissioners allowed to the surviving spouse as executor are ''nondeductible interests''. As to the valuation, for the purpose of the marital deduction, of any property interest which passed from the decedent to his surviving spouse subject to a mortgage or other encumbrance, see § 20.2056(b)–4.

(3) If during settlement of the estate a loss deductible under section 2054 occurs with respect to a property interest, then that interest is, to the extent of the deductible loss, a ''nondeductible interest'' for the purpose of the marital deduction.

(4) A property interest passing to a decedent's surviving spouse which is a ''terminable interest'', as defined in § 20.2056(b)–1, is a ''nondeductible interest'' to the extent specified in that section.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8522, 59 FR 9649, Mar. 1, 1994]

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

(a) *In general.* Section 2056(b) provides that no marital deduction is allowed with respect to certain property interests, referred to generally as ''terminable interests'', passing from a decedent to his surviving spouse. The phrase ''terminable interest'' is defined in paragraph (b) of this section. However, the fact that an interest in property passing to a decedent's surviving spouse is a ''terminable interest'' makes it nondeductible only (1) under the circumstances described in paragraph (c) of this section, and (2) if it does not come within one of the exceptions referred to in paragraph (d) of this section.

(b) *Terminable interests.* A ''terminable interest'' in property is an interest which will terminate or fail on the lapse of time or on the occurrence or the failure to occur of some contingency. Life estates, terms for years, annuities, patents, and copyrights are therefore terminable interests. However, a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity or a term for years, is not a terminable interest.

(c) *Nondeductible terminable interests.* (1) A property interest which constitutes a terminable interest, as defined in paragraph (b) of this section, is nondeductible if—

(i) Another interest in the same property passed from the decedent to some other person for less than an adequate and full consideration in money or money's worth, and

(ii) By reason of its passing, the other person or his heirs or assigns may possess or enjoy any part of the property after the termination or failure of the spouse's interest.

(2) Even though a property interest which constitutes a terminable interest is not nondeductible by reason of the rules stated in subparagraph (1) of this paragraph, such an interest is nondeductible if—

(i) The decedent has directed his executor or a trustee to acquire such an interest for the decedent's surviving spouse (see further paragraph (f) of this section), or

(ii) Such an interest passing to the decedent's surviving spouse may be satisfied out of a group of assets which includes a nondeductible interest (see further § 20.2056(b)–2. In this case, however, full nondeductibility may not result.

(d) *Exceptions.* A property interest passing to a decedent's surviving spouse is deductible (if it is not otherwise disqualified under § 20.2056(a)–2) even though it is a terminable interest, and even though an interest therein passed from the decedent to another person, if it is a terminable interest only because—

(1) It is conditioned on the spouse's surviving for a limited period, in the manner described in § 20.2056(b)–3;

(2) It is a right to income for life with a general power of appointment, meeting the requirements set forth in § 20.2056(b)–5;

(3) It consists of life insurance or annuity payments held by the insurer with a general power of appointment in the spouse, meeting the requirements set forth in § 20.2056(b)–6;

(4) It is qualified terminable interest property, meeting the requirements set forth in § 20.2056(b)–7; or

(5) It is an interest in a qualified charitable remainder trust in which the spouse is the only noncharitable beneficiary, meeting the requirements set forth in § 20.2056(b)–8.

(e) *Miscellaneous principles.* (1) In determining whether an interest passed from the decedent to some other person, it is immaterial whether interests in the same property passed to the decedent's spouse and another person at the same time, or under the same instrument.

(2) In determining whether an interest in the same property passed from the decedent both to his surviving spouse and to some other person, a distinction is to be drawn between ''property'', as such term is used in section 2056, and an ''interest in property''. The term ''property'' refers to the underlying property in which various interests exist; each such interest is not for this purpose to be considered as ''property''.

(3) Whether or not an interest is nondeductible because it is a terminable interest is to be determined by reference to the property interests which actually passed from the decedent. Subsequent conversions of the property are immaterial for this purpose. Thus, where a decedent bequeathed his estate to his wife for life with remainder to his children, the interest which passed to his wife is a nondeductible interest, even though the wife agrees with the children to take a fractional share of the estate in fee in lieu of the life interest in the whole, or sells the life estate for cash, or acquires the remainder interest of the children either by purchase or gift.

(4) The terms *passed from the decedent, passed from the decedent to his surviving spouse* and *passed from the decedent to a person other than his surviving spouse* are defined in §§ 20.2056(c)–1 through 20.2056(c)–3.

(f) *Direction to acquire a terminable interest.* No marital deduction is allowed with respect to a property interest which a decedent directs his executor or a trustee to covert after his death into a terminable interest for his surviving spouse. The marital deduction is not allowed even though no interest in the property subject to the terminable interest passes to another person and

even though the interest would otherwise come within the exceptions described in §§ 20.2056(b)–5 and 20.2056(b)–6 (relating to life estates and life insurance and annuity payments with powers of appointment). However, a general investment power, authorizing investments in both terminable interests and other property, is not a direction to invest in a terminable interest.

(g) *Examples.* The application of this section may be illustrated by the following examples. In each example, it is assumed that the executor made no election under section 2056(b)(7) (even if under the specific facts the election would have been available), that any property interest passing from the decedent to a person other than the surviving spouse passed for less than full and adequate consideration in money or money's worth, and that section 2056(b)(8) is inapplicable.

Example (1). H (the decedent) devised real property to W (his surviving wife) for life, with remainder to A and his heirs. The interest which passed from H to W is a nondeductible interest since it will terminate upon her death and A (or his heirs or assigns) will thereafter possess or enjoy the property.

Example (2). H bequeathed the residue of his estate in trust for the benefit of W and A. The trust income is to be paid to W for life, and upon her death the corpus is to be distributed to A or his issue. However, if A should die without issue, leaving W surviving, the corpus is then to be distributed to W. The interest which passed from H to W is a nondeductible interest since it will terminate in the event of her death if A or his issue survive, and A or his issue will thereafter possess or enjoy the property.

Example (3). H during his lifetime purchased an annuity contract providing for payments to himself for life and then to W for life if she should survive him. Upon the death of the survivor of H and W, the excess, if any, of the cost of the contract over the annuity payments theretofore made was to be refunded to A. The interest which passed from H to W is a nondeductible interest since A may possess or enjoy a part of the property following the termination of the interest of W. If, however, the contract provided for no refund upon the death of the survivor of H and W, or provided that any refund was to go to the estate of the survivor, then the interest which passed from H to W is (to the extent it is included in H's gross estate) a deductible interest.

Example (4). H, in contemplation of death, transferred a residence to A for life with remainder to W provided W survives A, but if W predeceases A, the property is to pass to B and his heirs. If it is assumed that H died during A's lifetime, and the value of the residence was included in determining the value of his gross estate, the interest which passed from H to W is a nondeductible interest since it will terminate if W predeceases A and the property will thereafter be possessed or enjoyed by B (or his heirs or assigns). This result is not affected by B's assignment of his interest during H's lifetime, whether made in favor of W or another person, since the term ''assigns'' (as used in section 2056(b)(1)(B)) includes such an assignee. However, if it is assumed that A predeceased H, the interest of B in the property was extinguished, and, viewed as of the time of the subsequent death of H, the interest which passed from him to W is the entire interest in the property and, therefore, a deductible interest.

Example (5). H transferred real property to A by gift (reserving the right to the rentals of the property for a term of 20 years. H died within the 20-year term, bequeathing the right to the remaining rentals to a trust for the benefit of W. The terms of the trust satisfy the five conditions stated in § 20.2056(b)–5, so that the property interest which passed in trust is considered to have passed from H to W. However, the interest is a nondeductible interest since it will terminate upon the expiration of the term and A will thereafter possess or enjoy the property.

Example (6). H bequeathed a patent to W and A as tenants in common. In this case, the interest of W will terminate upon the expiration of the term of the patent, but possession or enjoyment of the property by A must necessarily cease at the same time. Therefore, since A's possession or enjoyment cannot outlast the termination of W's interest, the latter is a deductible interest.

Example (7). A decedent bequeathed $100,000 to his wife, subject to a direction to his executor to use the bequest for the purchase of an annuity for the wife. The bequest is a nondeductible interest.

Example (8). Assume that pursuant to local law an allowance for support is payable to the decedent's surviving spouse during the period of the administration of the decedent's estate, but that upon her death or remarriage during such period her right to any further allowance will terminate. Assume further that the surviving spouse is sole beneficiary of the decedent's estate. Under such circumstances, the allowance constitutes a deductible interest since any part of the allowance not receivable by the surviving spouse during her lifetime will pass to her estate under the terms of the decedent's will. If, in this example, the decedent bequeathed only one-third of his residuary estate to his

surviving spouse, then two-thirds of the allowance for support would constitute a nondeductible terminable interest.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8522, 59 FR 9649, Mar. 1, 1994]

§ 20.2056(b)–2 Marital deduction; interest in unidentified assets.

(a) *In general.* Section 2056(b)(2) provides that if an interest passing to a decedent's surviving spouse may be satisfied out of assets (or their proceeds) which include a particular asset that would be a nondeductible interest if it passed from the decedent to his spouse, the value of the interest passing to the spouse is reduced, for the purpose of the marital deduction, by the value of the particular asset.

(b) *Application of section 2056(b)(2).* In order for section 2056(b)(2) to apply, two circumstances must coexist, as follows:

(1) The property interest which passed from the decedent to his surviving spouse must be payable out of a group of assets included in the gross estate. Examples of property interests payable out of a group of assets are a general legacy, a bequest of the residue of the decedent's estate or of a proportion of the residue, and a right to a share of the corpus of a trust upon its termination.

(2) The group of assets out of which the property interest is payable must include one or more particular assets which, if passing specifically to the surviving spouse, would be nondeductible interests. Therefore, section 2056(b)(2) is not applicable merely because the group of assets includes a terminable interest, but would only be applicable if the terminable interest were nondeductible under the provisions of § 20.2056(b)–1.

(c) *Interest nondeductible if circumstances present.* If both of the circumstances set forth in paragraph (b) of this section are present, the property interest payable out of the group of assets is (except as to any excess of its value over the aggregate value of the particular asset or assets which would not be deductible if passing specifically to the surviving spouse) a nondeductible interest.

(d) *Example.* The application of this section may be illustrated by the following example:

Example. A decedent bequeathed one-third of the residue of his estate to his wife. The property passing under the decedent's will included a right to the rentals of an office building for a term of years, reserved by the decedent under a deed of the building by way of gift to his son. The decedent did not make a specific bequest of the right to such rentals. Such right, if passing specifically to the wife, would be a nondeductible interest (see example (5) of paragraph (g) of § 20.2056(b)–1). It is assumed that the value of the bequest of one-third of the residue of the estate to the wife was $85,000, and that the right to the rentals was included in the gross estate at a value of $60,000. If the decedent's executor had the right under the decedent's will or local law to assign the entire lease in satisfaction of the bequest, the bequest is a nondeductible interest to the extent of $60,000. If the executor could only assign a one-third interest in the lease in satisfaction of the bequest, the bequest is a nondeductible interest to the extent of $20,000. If the decedent's will provided that his wife's bequest could not be satisfied with a nondeductible interest, the entire bequest is a deductible interest. If, in this example, the asset in question had been foreign real estate not included in the decedent's gross estate, the results would be the same.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8522, 59 FR 9649, Mar. 1, 1994]

§ 20.2056(b)–3 Marital deduction; interest of spouse conditioned on survival for limited period.

(a) *In general.* Generally, no marital deduction is allowable if the interest passing to the surviving spouse is a terminable interest as defined in paragraph (b) of § 20.2056(b)(1). However, section 2056(b)(3) provides an exception to this rule so as to allow a deduction if (1) the only condition under which it will terminate is the death of the surviving spouse within 6 months after the decedent's death, or her death as a result of a common disaster which also resulted in the decedent's death, and (2) the condition does not in fact occur.

(b) *Six months' survival.* If the only condition which will cause the interest taken by the surviving spouse to terminate is the death of the surviving spouse and the condition is of such nature that it can occur only within 6 months following the decedent's death,

the exception provided by section 2056(b)(3) will apply, provided the condition does not in fact occur. However, if the condition (unless it relates to death as a result of a common disaster) is one which may occur either within the 6-month period or thereafter, the exception provided by section 2056(b)(3) will not apply.

(c) *Common disaster.* If a property interest passed from the decedent to his surviving spouse subject to the condition that she does not die as a result of a common disaster which also resulted in the decedent's death, the exception provided by section 2056(b)(3) will not be applied in the final audit of the return if there is still a possibility that the surviving spouse may be deprived of the property interest by operation of the common disaster provision as given effect by the local law.

(d) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). A decedent bequeathed his entire estate to his spouse on condition that she survive him by 6 months. In the event his spouse failed to survive him by 6 months, his estate was to go to his niece and her heirs. The decedent was survived by his spouse. It will be observed that, as of the time of the decedent's death, it was possible that the niece would, by reason of the interest which passed to her from the decedent possess or enjoy the estate after the termination of the interest which passed to the spouse. Hence, under the general rule set forth in § 20.2056(b)–1, the interest which passed to the spouse would be regarded as a nondeductible interest. If the surviving spouse in fact died within 6 months after the decedent's death, that general rule is to be applied, and the interest which passed to the spouse is a nondeductible interest. However, if the spouse in fact survived the decedent by 6 months, thus extinguishing the interest of the niece, the case comes within the exception provided by section 2056(b)(3), and the interest which passed to the spouse is a deductible interest. (It is assumed for the purpose of this example that no other factor which would cause the interest to be nondeductible is present.)

Example (2). The facts are the same as in example (1) except that the will provided that the estate was to go to the niece either in case the decedent and his spouse should both die as a result of a common disaster, or in case the spouse should fail to survive the decedent by 3 months. It is assumed that the decedent was survived by his spouse. In this example, the interest which passed from the decedent to his surviving spouse is to be regarded as a nondeductible interest if the surviving spouse in fact died either within 3 months after the decedent's death or as a result of a common disaster which also resulted in the decedent's death. However, if the spouse in fact survived the decedent by 3 months, and did not thereafter die as a result of a common disaster which also resulted in the decedent's death, the exception provided under section 2056(b)(3) will apply and the interest will be deductible.

Example (3). The facts are the same as in example (1) except that the will provided that the estate was to go to the niece if the decedent and his spouse should both die as a result of a common disaster and if the spouse failed to survive the decedent by 3 months. If the spouse in fact survived the decedent by 3 months, the interest of the niece is extinguished, and the interest passing to the spouse is a deductible interest.

Example (4). A decedent devised and bequeathed his residuary estate to his wife if she was living on the date of distribution of his estate. The devise and bequest is a nondeductible interest even though distribution took place within 6 months after the decedent's death and the surviving spouse in fact survived the date of distribution.

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

(a) *In general.* The value, for the purpose of the marital deduction, of any deductible interest which passed from the decedent to his surviving spouse is to be determined as of the date of the decedent's death, except that if the executor elects the alternate valuation method under section 2032 the valuation is to be determined as of the date of the decedent's death but with the adjustment described in paragraph (a)(3) of § 20.2032–1. The marital deduction may be taken only with respect to the net value of any deductible interest which passed from the decedent to his surviving spouse, the same principles being applicable as if the amount of a gift to the spouse were being determined. In determining the value of the interest in property passing to the spouse account must be taken of the effect of any material limitations upon her right to income from the property. An example of a case in which this rule may be applied is a bequest of property in trust for the benefit of the decedent's spouse but the income from the property from the date of the decedent's death until distribution of the property to the trustee is to be used to

pay expenses incurred in the administration of the estate.

(b) *Property interest subject to an encumbrance or obligation.* If a property interest passed from the decedent to his surviving spouse subject to a mortgage or other encumbrance, or if an obligation is imposed upon the surviving spouse by the decedent in connection with the passing of a property interest, the value of the property interest is to be reduced by the amount of the mortgage, other encumbrance, or obligation. However, if under the terms of the decedent's will or under local law the executor is required to discharge, out of other assets of the decedent's estate, a mortgage or other encumbrance on property passing from the decedent to his surviving spouse, or is required to reimburse the surviving spouse for the amount of the mortgage or other encumbrance, the payment or reimbursement constitutes an additional interest passing to the surviving spouse. The passing of a property interest subject to the imposition of an obligation by the decedent does not include a bequest, devise, or transfer in lieu of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate. The passing of a property interest subject to the imposition of an obligation by the decedent does, however, include a bequest, etc., in lieu of the interest of his surviving spouse under community property laws unless such interest was, immediately prior to the decedent's death, a mere expectancy. The following examples are illustrative of property interests which passed from the decedent to his surviving spouse subject to the imposition of an obligation by the decedent:

Example (1). A decedent devised a residence valued at $25,000 to his wife, with a direction that she pay $5,000 to his sister. For the purpose of the marital deduction, the value of the property interest passing to the wife is only $20,000.

Example (2). A decedent devised real property to his wife in satisfaction of a debt owing to her. The debt is a deductible claim under section 2053. Since the wife is obligated to relinquish the claim as a condition to acceptance of the devise, the value of the devise is, for the purpose of the marital deduction, to be reduced by the amount of the claim.

Example (3). A decedent bequeathed certain securities to his wife in lieu of her interest in property held by them as community property under the law of the State of their residence. The wife elected to relinquish her community property interest and to take the bequest. For the purpose of the marital deduction, the value of the bequest is to be reduced by the value of the community property interest relinquished by the wife.

(c) *Effect of death taxes.* (1) In the determination of the value of any property interest which passed from the decedent to his surviving spouse, there must be taken into account the effect which the Federal estate tax, or any estate, succession, legacy, or inheritance tax, has upon the net value to the surviving spouse of the property interest.

(2) For example, assume that the only bequest to the surviving spouse is $100,000 and the spouse is required to pay a State inheritance tax in the amount of $1,500. If no other death taxes affect the net value of the bequest, the value, for the purpose of the marital deduction, is $98,500.

(3) As another example, assume that a decedent devised real property to his wife having a value for Federal estate tax purposes of $100,000 and also bequeathed to her a nondeductible interest for life under a trust. The State of residence valued the real property at $90,000 and the life interest at $30,000, and imposed an inheritance tax (at graduated rates) of $4,800 with respect to the two interests. If it is assumed that the inheritance tax on the devise is required to be paid by the wife, the amount of tax to be ascribed to the devise is:

$$(90{,}000 \div 120{,}000) \times \$4{,}800 = \$3{,}600.$$

Accordingly, if no other death taxes affect the net value of the bequest, the value, for the purpose of the marital deduction, is $100,000 less $3,600, or $96,400.

(4) If the decedent bequeaths his residuary estate, or a portion of it, to his surviving spouse, and his will contains a direction that all death taxes shall be payable out of the residuary estate, the value of the bequest, for the purpose of the marital deduction, is based upon the amount of the residue as reduced

pursuant to such direction, if the residuary estate, or a portion of it, is bequeathed to the surviving spouse, and by the local law the Federal estate tax is payable out of the residuary estate, the value of the bequest, for the purpose of the marital deduction, may not exceed its value as reduced by the Federal estate tax. Methods of computing the deduction, under such circumstances, are set forth in supplemental instructions to the estate tax return.

(d) *Remainder interests.* If the income from property is made payable to another individual for life, or for a term of years, with remainder absolutely to the surviving spouse or to her estate, the marital deduction is based upon the present value of the remainder. The present value of the remainder is to be determined in accordance with the rules stated in § 20.2031–7. For example, if the surviving spouse is to receive $50,000 upon the death of a person aged 31 years, the present value of the remainder is $14,466. If the remainder is such that its value is to be determined by a special computation (see paragraph (b) of § 20.2031–7), a request for a specific factor may be submitted to the Commissioner. The request should be accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the remainder, and copies of the relevant instruments. The Commissioner may, if conditions permit, supply the factor requested. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present value made in accordance with the principles set forth in the applicable paragraphs of § 20.2031–7.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8522, 59 FR 9649, Mar. 1, 1994; T.D. 8540, 59 FR 30103, June 10, 1994]

§ 20.2056(b)–5 Marital deduction; life estate with power of appointment in surviving spouse.

(a) *In general.* Section 2056(b)(5) provides that if an interest in property passes from the decedent to his surviving spouse (whether or not in trust) and the spouse is entitled for life to all the income from the entire interest or all the income from a specific portion of the entire interest, with a power in her to appoint the entire interest or the specific portion, the interest which passes to her is a deductible interest, to the extent that it satisfies all five of the conditions set forth below (see paragraph (b) of this section if one or more of the conditions is satisfied as to only a portion of the interest):

(1) The surviving spouse must be entitled for life to all of the income from the entire interest or a specific portion of the entire interest, or to a specific portion of all the income from the entire interest.

(2) The income payable to the surviving spouse must be payable annually or at more frequent intervals.

(3) The surviving spouse must have the power to appoint the entire interest or the specific portion to either herself or her estate.

(4) The power in the surviving spouse must be exercisable by her alone and (whether exercisable by will or during life) must be exercisable in all events.

(5) The entire interest or the specific portion must not be subject to a power in any other person to appoint any part to any person other than the surviving spouse.

(b) *Specific portion; deductible amount.* If either the right to income or the power of appointment passing to the surviving spouse pertains only to a specific portion of a property interest passing from the decedent, the marital deduction is allowed only to the extent that the rights in the surviving spouse meet all of the five conditions described in paragraph (a) of this section. While the rights over the income and the power must coexist as to the same interest in property, it is not necessary that the rights over the income or the power as to such interest be in the same proportion. However, if the rights over income meeting the required conditions set forth in paragraph (a) (1) and (2) of the section extend over a smaller share of the property interest than the share with respect to which the power of appointment requirements set forth in paragraph (a) (3) through (5) of this section are satisfied, the deductible interest is limited to the smaller share. Correspondingly, if a power of appointment meeting all the

requirements extends to a smaller portion of the property interest than the portion over which the income rights pertain, the deductible interest cannot exceed the value of the portion to which such power of appointment applies. Thus, if the decedent leaves to his surviving spouse the right to receive annually all of the income from a particular property interest and a power of appointment meeting the specifications prescribed in paragraph (a) (3) through (5) of this section as to only one-half of the property interest, then only one-half of the property interest is treated as a deductible interest. Correspondingly, if the income interest of the spouse satisfying the requirements extends to only one-fourth of the property interest and a testamentary power of appointment satisfying the requirements extends to all of the property interest, then only one-fourth of the interest in the spouse qualifies as a deductible interest. Further, if the surviving spouse has no right to income from a specific portion of a property interest but a testamentary power of appointment which meets the necessary conditions over the entire interest, then none of the interest qualifies for the deduction. In addition, if, from the time of the decedent's death, the surviving spouse has a power of appointment meeting all of the required conditions over three-fourths of the entire property interest and the prescribed income rights over the entire interest, but with a power in another person to appoint one-half of the entire interest, the value of the interest in the surviving spouse over only one-half of the property interest will qualify as a deductible interest.

(c) *Meaning of specific portion*—(1) *In general.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, a partial interest in property is not treated as a specific portion of the entire interest. In addition, any specific portion of an entire interest in property is nondeductible to the extent the specific portion is subject to invasion for the benefit of any person other than the surviving spouse, except in the case of a deduction allowable under section 2056(b)(5), relating to the exercise of a general power of appointment by the surviving spouse.

(2) *Fraction or percentage share.* Under section 2056(b)(10), a partial interest in property is treated as a specific portion of the entire interest if the rights of the surviving spouse in income, and the required rights as to the power described in § 20.2056(b)–5(a), constitute a fractional or percentage share of the entire property interest, so that the surviving spouse's interest reflects its proportionate share of the increase or decrease in the value of the entire property interest to which the income rights and the power relate. Thus, if the spouse's right to income and the spouse's power extend to a specified fraction or percentage of the property, or the equivalent, the interest is in a specific portion of the property. In accordance with paragraph (b) of this section, if the spouse has the right to receive the income from a specific portion of the trust property (after applying paragraph (c)(3) of this section) but has a power of appointment over a different specific portion of the property (after applying paragraph (c)(3) of this section), the marital deduction is limited to the lesser specific portion.

(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.* (i) In the case of estates of decedents within the purview of the effective date and transitional rules contained in paragraphs (c)(3) (ii) and (iii) of this section:

(A) A specific sum payable annually, or at more frequent intervals, out of the property and its income that is not limited by the income of the property is treated as the right to receive the income from a specific portion of the property. The specific portion, for purposes of paragraph (c)(2) of this section, is the portion of the property that, assuming the interest rate generally applicable for the valuation of annuities at the time of the decedent's death, would produce income equal to such payments. However, a pecuniary amount payable annually to a surviving spouse is not treated as a right to the income from a specific portion of the trust property for purposes of this paragraph (c)(3)(i)(A) if any person other than the surviving spouse may

receive, during the surviving spouse's lifetime, any distribution of the property. To determine the applicable interest rate for valuing annuities, see sections 2031 and 7520 and the regulations under those sections.

(B) The right to appoint a pecuniary amount out of a larger fund (or trust corpus) is considered the right to appoint a specific portion of such fund or trust for purposes of paragraph (c)(2) in an amount equal to such pecuniary amount.

(ii) The rules contained in paragraphs (c)(3)(i) (A) and (B) of this section apply with respect to estates of decedents dying on or before October 24, 1992.

(iii) The rules contained in paragraphs (c)(3)(i) (A) and (B) of this section apply in the case of decedents dying after October 24, 1992, if property passes to the spouse pursuant to a will or revocable trust agreement executed on or before October 24, 1992, and either—

(A) On that date, the decedent was under a mental disability to change the disposition of the property and did not regain competence to dispose of such property before the date of death; or

(B) The decedent dies prior to October 24, 1995.

(iv) Notwithstanding paragraph (c)(3)(iii) of this section, paragraphs (c)(3)(i) (A) and (B) of this section do not apply if the will or revocable trust is amended after October 24, 1992, in any respect that increases the amount of the transfer qualifying for the marital deduction or alters the terms by which the interest so passes to the surviving spouse of the decedent.

(4) *Local law.* A partial interest in property is treated as a specific portion of the entire interest if it is shown that the surviving spouse has rights under local law that are identical to those the surviving spouse would have acquired had the partial interest been expressed in terms satisfying the requirements of paragraph (c)(2) (or paragraph (c)(3) if applicable) of this section.

(5) *Examples.* The following examples illustrate the application of paragraphs (a) through (c)(4) of this section:

Example 1. Spouse entitled to the lesser of an annuity or a fraction of trust income. The decedent, D, died prior to October 24, 1992. D bequeathed in trust 500 identical shares of X company stock, valued for estate tax purposes at $500,000. The trust provides that during the lifetime of D's spouse, S, the trustee is to pay annually to S the lesser of one-half of the trust income or $20,000. Any trust income not paid to S is to be accumulated in the trust and may not be distributed during S's lifetime. S has a testamentary general power of appointment over the entire trust principal. The applicable interest rate for valuing annuities as of D's date of death under section 7520 is 10 percent. For purposes of paragraphs (a) through (c) of this section, S is treated as receiving all of the income from the lesser of—

(i) One half of the stock ($250,000); or

(ii) $200,000, the specific portion of the stock which, as determined in accordance with § 20.2056(b)–5(c)(3)(i)(A), would produce annual income of $20,000 (20,000/.10). Accordingly, the marital deduction is limited to $200,000 (200,000/500,000 or ⅖ of the value of the trust).

Example 2. Spouse possesses power and income interest over different specific portions of trust. The facts are the same as in *Example 1* except that S's testamentary general power of appointment is exercisable over only ¼ of the trust principal. Consequently, under section 2056(b)(5), the marital deduction is allowable only for the value of ¼ of the trust ($125,000); i.e., the lesser of the value of the portion with respect to which S is deemed to be entitled to all of the income (⅖ of the trust or $200,000), or the value of the portion with respect to which S possesses the requisite power of appointment (¼ of the trust or $125,000).

Example 3. Power of appointment over pecuniary amount. The decedent, D, died prior to October 24, 1992. D bequeathed property valued at $400,000 for estate tax purposes in trust. The trustee is to pay annually to D's spouse, S, one-fourth of the trust income. Any trust income not paid to S is to be accumulated in the trust and may not be distributed during S's lifetime. The will gives S a testamentary general power of appointment over the sum of $160,000. Because D died prior to October 24, 1992, S's power of appointment over $160,000 is treated as a power of appointment over a specific portion of the entire trust interest. The marital deduction allowable under section 2056(b)(5) is limited to $100,000; that is, the lesser of—

(1) The value of the trust corpus ($400,000);

(2) The value of the trust corpus over which S has a power of appointment ($160,000); or

(3) That specific portion of the trust with respect to which S is entitled to all the income ($100,000).

Example 4. Power of appointment over shares of stock constitutes a power over a specific portion. Under D's will, 250 shares of Y company stock were bequeathed in trust pursuant to

which all trust income was payable annually to S, D's spouse, for life. S was given a testamentary general power of appointment over 100 shares of stock. The trust provides that if the trustee sells the Y company stock, S's general power of appointment is exercisable with respect to the sale proceeds or the property in which the proceeds are reinvested. Because the amount of property represented by a single share of stock would be altered if the corporation split its stock, issued stock dividends, made a distribution of capital, etc., a power to appoint 100 shares at the time of S's death is not necessarily a power to appoint the entire interest that the 100 shares represented on the date of D's death. If it is shown that, under local law, S has a general power to appoint not only the 100 shares designated by D but also 100/250 of any distributions by the corporation that are included in trust principal, the requirements of paragraph (c)(2) of this section are satisfied and S is treated as having a general power to appoint 100/250 of the entire interest in the 250 shares. In that case, the marital deduction is limited to 40 percent of the trust principal. If local law does not give S that power, the 100 shares would not constitute a specific portion under § 20.2056(b)–5(c) (including § 20.2056(b)–5(c)(3)(i)(B)). The nature of the asset is such that a change in the capitalization of the corporation could cause an alteration in the original value represented by the shares at the time of D's death and, thus, it does not represent a specific portion of the trust.

(d) *Meaning of entire interest.* Because a marital deduction is allowed for each separate qualifying interest in property passing from the decedent to the decedent's surviving spouse (subject to any applicable limitations in § 20.2056(a)–l(c)), for purposes of paragraphs (a) and (b) of this section, each property interest with respect to which the surviving spouse received any rights is considered separately in determining whether the surviving spouse's rights extend to the entire interest or to a specific portion of the entire interest. A property interest which consists of several identical units of property (such as a block of 250 shares of stock, whether the ownership is evidenced by one or several certificates) is considered one property interest, unless certain of the units are to be segregated and accorded different treatment, in which case each segregated group of items is considered a separate property interest. The bequest of a specified sum of money constitutes the bequest of a separate property interest if immediately following distribution by the executor and thenceforth it, and the investments made with it, must be so segregated or accounted for as to permit its identification as a separate item of property. The application of this paragraph may be illustrated by the following examples:

Example (1). The decedent transferred to a trustee three adjoining farms, Blackacre, Whiteacre, and Greenacre. His will provided that during the lifetime of the surviving spouse the trustee should pay her all of the income from the trust. Upon her death, all of Blackacre, a one-half interest in White- acre, and a one-third interest in Greenacre were to be distributed to the person or persons appointed by her in her will. The surviving spouse is considered as being entitled to all of the income from the entire interest in Blackacre, all of the income from the entire interest in Whiteacre, and all of the income from the entire interest in Greenacre. She also is considered as having a power of appointment over the entire interest in Blackacre, over one-half of the entire interest in Whiteacre, and over one-third of the entire interest in Greenacre.

Example (2). The decedent bequeathed $250,000 to C, as trustee. C is to invest the money and pay all of the income from the investments to W, the decedent's surviving spouse, annually. W was given a general power, exercisable by will, to appoint one-half of the corpus of the trust. Here, immediately following distribution by the executor, the $250,000 will be sufficiently segregated to permit its identification as a separate item, and the $250,000 will constitute an entire property interest. Therefore, W has a right to income and a power of appointment such that one-half of the entire interest is a deductible interest.

Example (3). The decedent bequeathed 100 shares of Z corporation stock to D, as trustee. W, the decedent's surviving spouse, is to receive all of the income of the trust annually and is given a general power, exercisable by will, to appoint out of the trust corpus the sum of $25,000. In this case the $25,000 is not, immediately following distribution, sufficiently segregated to permit its identification as a separate item of property in which the surviving spouse has the entire interest. Therefore, the $25,000 does not constitute the entire interest in a property for the purpose of paragraphs (a) and (b) of this section.

(e) *Application of local law.* In determining whether or not the conditions set forth in paragraph (a) (1) through (5) of this section are satisfied by the instrument of transfer, regard is to be had to the applicable provisions of the law of the jursidiction under which the

interest passes and, if the transfer is in trust, the applicable provisions of the law governing the administration of the trust. For example, silence of a trust instrument as to the frequency of payment will not be regarded as a failure to satisfy the condition set forth in paragraph (a)(2) of this section that income must be payable to the surviving spouse annually or more frequently unless the applicable law permits payment to be made less frequently than annually. The principles outlined in this paragraph and paragraphs (f) and (g) of this section which are applied in determining whether transfers in trust meet such conditions are equally applicable in ascertaining whether, in the case of interests not in trust, the surviving spouse has the equivalent in rights over income and over the property.

(f) *Right to income.* (1) If an interest is transferred in trust, the surviving spouse is ''entitled for life to all of the income from the entire interest or a specific portion of the entire interest'', for the purpose of the condition set forth in paragraph (a)(1) of this section, if the effect of the trust is to give her substantially that degree of beneficial enjoyment of the trust property during her life which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust. Such degree of enjoyment is given only if it was the decedent's intention, as manifested by the terms of the trust instrument and the surrounding circumstances, that the trust should produce for the surviving spouse during her life such an income, or that the spouse should have such use of the trust property as is consistent with the value of the trust corpus and with its preservation. The designation of the spouse as sole income beneficiary for life of the entire interest or a specific portion of the entire interest will be sufficient to qualify the trust unless the terms of the trust and the surrounding circumstances considered as a whole evidence an intention to deprive the spouse of the requisite degree of enjoyment. In determining whether a trust evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for the administration of the trust.

(2) If the over-all effect of a trust is to give to the surviving spouse such enforceable rights as will preserve to her the requisite degree of enjoyment, it is immaterial whether that result is effected by rules specifically stated in the trust instrument, or, in their absence, by the rules for the management of the trust property and the allocation of receipts and expenditures supplied by the State law. For example, a provision in the trust instrument for amortization of bond premium by appropriate periodic charges to interest will not disqualify the interest passing in trust even though there is no State law specifically authorizing amortization, or there is a State law denying amortization which is applicable only in the absence of such a provision in the trust instrument.

(3) In the case of a trust, the rules to be applied by the trustee in allocation of receipts and expenses between income and corpus must be considered in relation to the nature and expected productivity of the assets passing in trust, the nature and frequency of occurrence of the expected receipts, and any provisions as to change in the form of investments. If it is evident from the nature of the trust assets and the rules provided for management of the trust that the allocation to income of such receipts as rents, ordinary cash dividends, and interest will give to the spouse the substantial enjoyment during life required by the statute, provisions that such receipts as stock dividends and proceeds from the conversion of trust assets shall be treated as corpus will not disqualify the interest passing in trust. Similarly, provision for a depletion charge against income in the case of trust assets which are subject to depletion will not disqualify the interest passing in trust, unless the effect is to deprive the spouse of the requisite beneficial enjoyment. The same principle is applicable in the case of depreciation, trustees' commissions, and other charges.

(4) Provisions granting administrative powers to the trustee will not have the effect of disqualifying an interest passing in trust unless the grant of

powers evidences the intention to deprive the surviving spouse of the beneficial enjoyment required by the statute. Such an intention will not be considered to exist if the entire terms of the instrument are such that the local courts will impose reasonable limitations upon the exercise of the powers. Among the powers which if subject to reasonable limitations will not disqualify the interest passing in trust are the power to determine the allocation or apportionment of receipts and disbursements between income and corpus, the power to apply the income or corpus for the benefit of the spouse, and the power to retain the assets passing to the trust. For example, a power to retain trust assets which consist substantially of unproductive property will not disqualify the interest if the applicable rules for the administration of the trust require, or permit the spouse to require, that the trustee either make the property productive or convert it within a reasonable time. Nor will such a power disqualify the interest if the applicable rules for administration of the trust require the trustee to use the degree of judgment and care in the exercise of the power which a prudent man would use if he were owner of the trust assets. Further, a power to retain a residence or other property for the personal use of the spouse will not disqualify the interest passing in trust.

(5) An interest passing in trust will not satisfy the condition set forth in paragraph (a)(1) of this section that the surviving spouse be entitled to all the income if the primary purpose of the trust is to safeguard property without providing the spouse with the required beneficial enjoyment. Such trusts include not only trusts which expressly provide for the accumulation of the income but also trusts which indirectly accomplish a similar purpose. For example, assume that the corpus of a trust consists substantially of property which is not likely to be income producing during the life of the surviving spouse and that the spouse cannot compel the trustee to convert or otherwise deal with the property as described in subparagraph (4) of this paragraph. An interest passing to such a trust will not qualify unless the applicable rules for the administration require, or permit the spouse to require, that the trustee provide the required beneficial enjoyment such as by payments to the spouse out of other assets of the trust.

(6) If a trust is created during the decedent's life, it is immaterial whether or not the interest passing in trust satisfied the conditions set forth in paragraph (a) (1) through (5) of this section prior to the decedent's death. If a trust may be terminated during the life of the surviving spouse, under her exercise of a power of appointment or by distribution of the corpus to her, the interest passing in trust satisfies the condition set forth in paragraph (a)(1) of this section (that the spouse be entitled to all the income) if she (i) is entitled to the income until the trust terminates, or (ii) has the right, exercisable in all events, to have the corpus distributed to her at any time during her life.

(7) An interest passing in trust fails to satisfy the condition set forth in paragraph (a)(1) of this section, that the spouse be entitled to all the income, to the extent that the income is required to be accumulated in whole or in part or may be accumulated in the discretion of any person other than the surviving spouse; to the extent that the consent of any person other than the surviving spouse is required as a condition precedent to distribution of the income; or to the extent that any person other than the surviving spouse has the power to alter the terms of the trust so as to deprive her of her right to the income. An interest passing in trust will not fail to satisfy the condition that the spouse be entitled to all the income merely because its terms provide that the right of the surviving spouse to the income shall not be subject to assignment, alienation, pledge, attachment or claims of creditors.

(8) In the case of an interest passing in trust, the terms ''entitled for life'' and ''payable annually or at more frequent intervals,'' as used in the conditions set forth in paragraph (a) (1) and (2) of this section, require that under the terms of the trust the income referred to must be currently (at least annually; see paragraph (e) of this section) distributable to the spouse or

that she must have such command over the income that it is virtually hers. Thus, the conditions in paragraph (a)(1) and (2) of this section are satisfied in this respect if, under the terms of the trust instrument, the spouse has the right exercisable annually (or more frequently) to require distribution to herself of the trust income, and otherwise the trust income is to be accumulated and added to corpus. Similarly, as respects the income for the period between the last distribution date and the date of the spouse's death, it is sufficient if that income is subject to the spouse's power to appoint. Thus, if the trust instrument provides that income accrued or undistributed on the date of the spouse's death is to be disposed of as if it had been received after her death, and if the spouse has a power of appointment over the trust corpus, the power necessarily extends to the undistributed income.

(9) An interest is not to be regarded as failing to satisfy the conditions set forth in paragraph (a)(1) and (2) of this section (that the spouse be entitled to all the income and that it be payable annually or more frequently) merely because the spouse is not entitled to the income from estate assets for the period before distribution of those assets by the executor, unless the executor is, by the decedent's will, authorized or directed to delay distribution beyond the period reasonably required for administration of the decedent's estate. As to the valuation of the property interest passing to the spouse in trust where the right to income is expressly postponed, see § 20.2056(b)–4.

(g) *Power of appointment in surviving spouse.* (1) The conditions set forth in paragraph (a)(3) and (4) of this section, that is, that the surviving spouse must have a power of appointment exercisable in favor of herself or her estate and exercisable alone and in all events are not met unless the power of the surviving spouse to appoint the entire interest or a specific portion of it falls within one of the following categories:

(i) A power so to appoint fully exercisable in her own favor at any time following the decedent's death (as, for example, an unlimited power to invade); or

(ii) A power so to appoint exercisable in favor of her estate. Such a power, if exercisable during life, must be fully exercisable at any time during life, or, if exercisable by will, must be fully exercisable irrespective of the time of her death (subject in either case to the provisions of § 20.2053(b)–3, relating to interests conditioned on survival for a limited period); or

(iii) A combination of the powers described under subdivisions (i) and (ii) of this subparagraph. For example, the surviving spouse may, until she attains the age of 50 years, have a power to appoint to herself and thereafter have a power to appoint to her estate. However, the condition that the spouse's power must be exercisable in all events is not satisfied unless irrespective of when the surviving spouse may die the entire interest or a specific portion of it will at the time of her death be subject to one power or the other (subject to the exception in § 20.2053(b)–3, relating to interests contingent on survival for a limited period).

(2) The power of the surviving spouse must be a power to appoint the entire interest or a specific portion of it as unqualified owner (and free of the trust if a trust is involved, or free of the joint tenancy if a joint tenancy is involved) or to appoint the entire interest or a specific portion of it as a part of her estate (and free of the trust if a trust is involved), that is, in effect, to dispose of it to whomsoever she pleases. Thus, if the decedent devised property to a son and the surviving spouse as joint tenants with right of survivorship and under local law the surviving spouse has a power of severance exercisable without consent of the other joint tenant, and by exercising this power could acquire a one-half interest in the property as a tenant in common, her power of severance will satisfy the conditions set forth in paragraph (a)(3) of this section that she have a power of appointment in favor of herself or her estate. However, if the surviving spouse entered into a binding agreement with the decedent to exercise the power only in favor of their issue, that condition is not met. An interest passing in trust will not be regarded as failing to satisfy the condition merely because takers in default of the surviving

spouse's exercise of the power are designated by the decedent. The decedent may provide that, in default of exercise of the power, the trust shall continue for an additional period.

(3) A power is not considered to be a power exercisable by a surviving spouse alone and in all events as required by paragraph (a)(4) of this section if the exercise of the power in the surviving spouse to appoint the entire interest or a specific portion of it to herself or to her estate requires the joinder or consent of any other person. The power is not ''exercisable in all events'', if it can be terminated during the life of the surviving spouse by any event other than her complete exercise or release of it. Further, a power is not ''exercisable in all events'' if it may be exercised for a limited purpose only. For example, a power which is not exercisable in the event of the spouse's remarriage is not exercisable in all events. Likewise, if there are any restrictions, either by the terms of the instrument or under applicable local law, on the exercise of a power to consume property (whether or not held in trust) for the benefit of the spouse, the power is not exercisable in all events. Thus, if a power of invasion is exercisable only for the spouse's support, or only for her limited use, the power is not exercisable in all events. In order for a power of invasion to be exercisable in all events, the surviving spouse must have the unrestricted power exercisable at any time during her life to use all or any part of the property subject to the power, and to dispose of it in any manner, including the power to dispose of it by gift (whether or not she has power to dispose of it by will).

(4) The power in the surviving spouse is exercisable in all events only if it exists immediately following the decedent's death. For example, if the power given to the surviving spouse is exercisable during life, but cannot be effectively exercised before distribution of the assets by the executor, the power is not exercisable in all events. Similarly, if the power is exercisable by will, but cannot be effectively exercised in the event the surviving spouse dies before distribution of the assets by the executor, the power is not exercisable in all events. However, an interest will not be disqualified by the mere fact that, in the event the power is exercised during administration of the estate, distribution of the property to the appointee will be delayed for the period of administration. If the power is in existence at all times following the decedent's death, limitations of a formal nature will not disqualify an interest. Examples of formal limitations on a power exercisable during life are requirements that an exercise must be in a particular form, that it must be filed with a trustee during the spouse's life, that reasonable notice must be given, or that reasonable intervals must elapse between successive partial exercises. Examples of formal limitations on a power exercisable by will are that it must be exercised by a will executed by the surviving spouse after the decedent's death or that exercise must be by specific reference to the power.

(5) If the surviving spouse has the requisite power to appoint to herself or her estate, it is immaterial that she also has one or more lesser powers. Thus, if she has a testamentary power to appoint to her estate, she may also have a limited power of withdrawal or of appointment during her life. Similarly, if she has an unlimited power of withdrawal, she may have a limited testamentary power.

(h) *Requirement of survival for a limited period.* A power of appointment in the surviving spouse will not be treated as failing to meet the requirements of paragraph (a)(3) of this section even though the power may terminate, if the only conditions which would cause the termination are those described in paragraph (a) of § 20.2056(b)–3, and if those conditions do not in fact occur. Thus, the entire interest or a specific portion of it will not be disqualified by reason of the fact that the exercise of the power in the spouse is subject to a condition of survivorship described in § 20.2056(b)–3 if the terms of the condition, that is, the survivorship of the surviving spouse, or the failure to die in a common disaster, are fulfilled.

(i) [Reserved]

(j) *Existence of a power in another.* Paragraph (a)(5) of this section provides that a transfer described in paragraph (a) is nondeductible to the extent

that the decedent created a power in the trustee or in any other person to appoint a part of the interest to any person other than the surviving spouse. However, only powers in other persons which are in opposition to that of the surviving spouse will cause a portion of the interest to fail to satisfy the condition set forth in paragraph (a)(5) of this section. Thus, a power in a trustee to distribute corpus to or for the benefit of a surviving spouse will not disqualify the trust. Similarly, a power to distribute corpus to the spouse for the support of minor children will not disqualify the trust if she is legally obligated to support such children. The application of this paragraph may be illustrated by the following examples:

Example (1). Assume that a decedent created a trust, designating his surviving spouse as income beneficiary for life with an unrestricted power in the spouse to appoint the corpus during her life. The decedent further provided that in the event the surviving spouse should die without having exercised the power, the trust should continue for the life of his son with a power in the son to appoint the corpus. Since the power in the son could become exercisable only after the death of the surviving spouse, the interest is not regarded as failing to satisfy the condition set forth in paragraph (a)(5) of this section.

Example (2). Assume that the decedent created a trust, designating his surviving spouse as income beneficiary for life and as donee of a power to appoint by will the entire corpus. The decedent further provided that the trustee could distribute 30 percent of the corpus to the decedent's son when he reached the age of 35 years. Since the trustee has a power to appoint 30 percent of the entire interest for the benefit of a person other than the surviving spouse, only 70 percent of the interest placed in trust satisfied the condition set forth in paragraph (a)(5) of this section. If, in this case, the surviving spouse had a power, exercisable by her will, to appoint only one-half of the corpus as it was constituted at the time of her death, it should be noted that only 35 percent of the interest placed in the trust would satisfy the condition set forth in paragraph (a)(3) of this section.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8522, 59 FR 9649, Mar. 1, 1994]

§ 20.2056(b)–6 Marital deduction; life insurance or annuity payments with power of appointment in surviving spouse.

(a) *In general.* Section 2056(b)(6) provides that an interest in property passing from a decedent to his surviving spouse, which consists of proceeds held by an insurer under the terms of a life insurance, endowment, or annuity contract, is a ''deductible interest'' to the extent that is satisfied all five of the following conditions (see paragraph (b) of this section if one or more of the conditions is satisfied as to only a portion of the proceeds):

(1) The proceeds, or a specific portion of the proceeds, must be held by the insurer subject to an agreement either to pay the entire proceeds or a specific portion thereof in installments, or to pay interest thereon, and all or a specific portion of the installments or interest payable during the life of the surviving spouse must be payable only to her.

(2) The installments or interest payable to the surviving spouse must be payable annually, or more frequently, commencing not later than 13 months after the decedent's death.

(3) The surviving spouse must have the power to appoint all or a specific portion of the amounts so held by the insurer to either herself or her estate.

(4) The power in the surviving spouse must be exercisable by her alone and (whether exercisable by will or during life) must be exercisable in all events.

(5) The amounts or the specific portion of the amounts payable under such contract must not be subject to a power in any other person to appoint any part thereof to any person other than the surviving spouse.

(b) *Specific portion; deductible interest.* If the right to receive interest or installment payments or the power of appointment passing to the surviving spouse pertains only to a specific portion of the proceeds held by the insurer, the marital deduction is allowed only to the extent that the rights of the surviving spouse in the specific portion meet the five conditions described in paragraph (a) of this section. While the rights to interest, or to receive payment in installments, and the

power must coexist as to the proceeds of the same contract, it is not necessary that the rights to each be in the same proportion. If the rights to interest meeting the required conditions set forth in paragraph (a) (1) and (2) of this section extend over a smaller share of the proceeds than the share with respect to which the power of appointment requirements set forth in paragraph (a) (3) through (5) of this section are satisfied, the deductible interest is limited to the smaller share. Similarly, if the portion of the proceeds payable in installments is a smaller portion of the proceeds than the portion to which the power of appointment meeting such requirements relates, the deduction is limited to the smaller portion. In addition, if a power of appointment meeting all the requirements extends to a smaller portion of the proceeds than the portion over which the interest or installment rights pertain, the deductible interest cannot exceed the value of the portion to which such power of appointment applies. Thus, if the contract provides that the insurer is to retain the entire proceeds and pay all of the interest thereon annually to the surviving spouse and if the surviving spouse has a power of appointment meeting the specifications prescribed in paragraph (a) (3) through (5) of this section, as to only one-half of the proceeds held, then only one-half of the proceeds may be treated as a deductible interest. Correspondingly, if the rights of the spouse to receive installment payments or interest satisfying the requirements extend to only one-fourth of the proceeds and a testamentary power of appointment satisfying the requirements of paragraph (a) (3) through (5) of this section extends to all of the proceeds, then only one-fourth of the proceeds qualifies as a deductible interest. Further, if the surviving spouse has no right to installment payments (or interest) over any portion of the proceeds but a testamentary power of appointment which meets the necessary conditions over the entire remaining proceeds, then none of the proceeds qualifies for the deduction. In addition, if, from the time of the decedent's death, the surviving spouse has a power of appointment meeting all of the required conditions over three-fourths of the proceeds and the right to receive interest from the entire proceeds, but with a power in another person to appoint one-half of the entire proceeds, the value of the interest in the surviving spouse over only one-half of the proceeds will qualify as a deductible interest.

(c) *Applicable principles.* (1) The principles set forth in paragraph (c) of § 20.2056(b)–5 for determining what constitutes a ''specific portion of the entire interest'' for the purpose of section 2056(b)(5) are applicable in determining what constitutes a ''specific portion of all such amounts'' for the purpose of section 2056(b)(6). However, the interest in the proceeds passing to the surviving spouse will not be disqualified by the fact that the installment payments or interest to which the spouse is entitled or the amount of the proceeds over which the power of appointment is exercisable may be expressed in terms of a specific sum rather than a fraction or a percentage of the proceeds provided it is shown that such sums are a definite or fixed percentage or fraction of the total proceeds.

(2) The provisions of paragraph (a) of this section are applicable with respect to a property interest which passed from the decedent in the form of proceeds of a policy of insurance upon the decedent's life, a policy of insurance upon the life of a person who predeceased the decedent, a matured endowment policy, or an annuity contract, but only in case the proceeds are to be held by the insurer. With respect to proceeds under any such contract which are to be held by a trustee, with power of appointment in the surviving spouse, see § 20.2056(b)–5. As to the treatment of proceeds not meeting the requirements of § 20.2056(b)–5 or of this section, see § 20.2056(a)–2.

(3) In the case of a contract under which payments by the insurer commenced during the decedent's life, it is immaterial whether or not the conditions in subparagraphs (1) through (5) of paragraph (a) of this section were satisfied prior to the decedent's death.

(d) *Payments of installments or interest.* The conditions in subparagraphs (1) and (2) of paragraph (a) of this section relative to the payments of installments or interest to the surviving

spouse are satisfied if, under the terms of the contract, the spouse has the right exercisable annually (or more frequently) to require distribution to herself of installments of the proceeds or a specific portion thereof, as the case may be, and otherwise such proceeds or interest are to be accumulated and held by the insurer pursuant to the terms of the contract. A contract which otherwise requires the insurer to make annual or more frequent payments to the surviving spouse following the decedent's death, will not be disqualified merely because the surviving spouse must comply with certain formalities in order to obtain the first payment. For example, the contract may satisfy the conditions in subparagraphs (1) and (2) of paragraph (a) of this section even though it requires the surviving spouse to furnish proof of death before the first payment is made. The condition in paragraph (a)(1) of this section is satisfied where interest on the proceeds or a specific portion thereof is payable, annually or more frequently, for a term, or until the occurrence of a specified event, following which the proceeds or a specific portion thereof are to be paid in annual or more frequent installments.

(e) *Powers of appointment.* (1) In determining whether the terms of the contract satisfy the conditions in subparagraph (3), (4), or (5) of paragraph (a) of this section relating to a power of appointment in the surviving spouse or any other person, the principles stated in § 20.2056(b)–5 are applicable. As stated in § 20.2056(b)–5, the surviving spouse's power to appoint is ''exercisable in all events'' only if it is in existence immediately following the decedent's death, subject, however, to the operation of § 20.2056(b)–3 relating to interests conditioned on survival for a limited period.

(2) For examples of formal limitations on the power which will not disqualify the contract, see paragraph (g)(4) of § 20.2056(b)–5. If the power is exercisable from the moment of the decedent's death, the contract is not disqualified merely because the insurer may require proof of the decedent's death as a condition to making payment to the appointee. If the submission of proof of the decedent's death is a condition to the exercise of the power, the power will not be considered ''exercisable in all events'' unless in the event the surviving spouse had died immediately following the decedent, her power to appoint would have been considered to exist at the time of her death, within the meaning of section 2041(a)(2). See paragraph (b) of § 20.2041–3.

(3) It is sufficient for the purposes of the condition in paragraph (a)(3) of this section that the surviving spouse have the power to appoint amounts held by the insurer to herself or her estate if the surviving spouse has the unqualified power, exercisable in favor of herself or her estate, to appoint amounts held by the insurer which are payable after her death. Such power to appoint need not extend to installments or interest which will be paid to the spouse during her life. Further, the power to appoint need not be a power to require payment in a single sum. For example, if the proceeds of a policy are payable in installments, and if the surviving spouse has the power to direct that all installments payable after her death be paid to her estate, she has the requisite power.

(4) It is not necessary that the phrase ''power to appoint'' be used in the contract. For example, the condition in paragraph (a)(3) of this section that the surviving spouse have the power to appoint amounts held by the insurer to herself or her estate is satisfied by terms of a contract which give the surviving spouse a right which is, in substance and effect, a power to appoint to herself or her estate, such as a right to withdraw the amount remaining in the fund held by the insurer, or a right to direct that any amount held by the insurer under the contract at her death shall be paid to her estate.

§ 20.2056(b)–7 Election with respect to life estate for surviving spouse.

(a) *In general.* Subject to section 2056(d), a marital deduction is allowed under section 2056(b)(7) with respect to estates of decedents dying after December 31, 1981, for qualified terminable interest property as defined in paragraph (b) of this section. All of the

property for which a deduction is allowed under this paragraph (a) is treated as passing to the surviving spouse (for purposes of § 20.2056(a)–1), and no part of the property is treated as passing to any person other than the surviving spouse (for purposes of § 20.2056(b)–1).

(b) *Qualified terminable interest property*—(1) *In general.* Section 2056(b)(7)(B)(i) provides the definition of *qualified terminable interest property*.

(i) Terminable interests described in section 2056(b)(1)(C) cannot qualify as qualified terminable interest property. Thus, if the decedent directs the executor to purchase a terminable interest with estate assets, the terminable interest acquired will not qualify as qualified terminable interest property.

(ii) For purposes of section 2056(b)(7)(B)(i), the term *property* generally means the *entire interest in property* (within the meaning of § 20.2056(b)–5(d)) or a *specific portion of the entire interest* (within the meaning of § 20.2056(b)–5(c)).

(2) *Property for which an election may be made*—(i) *In general.* The election may relate to all or any part of property that meets the requirements of section 2056(b)(7)(B)(i), provided that any partial election must be made with respect to a fractional or percentage share of the property so that the elective portion reflects its proportionate share of the increase or decrease in value of the entire property for purposes of applying sections 2044 or 2519. The fraction or percentage may be defined by formula.

(ii) *Division of trusts*—(A) *In general.* A trust may be divided into separate trusts to reflect a partial election that has been made, or is to be made, if authorized under the governing instrument or otherwise permissible under local law. Any such division must be accomplished no later than the end of the period of estate administration. If, at the time of the filing of the estate tax return, the trust has not yet been divided, the intent to divide the trust must be unequivocally signified on the estate tax return.

(B) *Manner of dividing and funding trust.* The division of the trust must be done on a fractional or percentage basis to reflect the partial election. However, the separate trusts do not have to be funded with a pro rata portion of each asset held by the undivided trust.

(C) *Local law.* A trust may be divided only if the fiduciary is required, either by applicable local law or by the express or implied provisions of the governing instrument, to divide the trust on the basis of the fair market value of the assets of the trust at the time of the division.

(3) *Persons permitted to make the election.* The election referred to in section 2056(b)(7)(B)(i)(III) must be made by the executor that is appointed, qualified, and acting within the United States, within the meaning of section 2203, regardless of whether the property with respect to which the election is to be made is in the executor's possession. If there is no executor appointed, qualified, and acting within the United States, the election may be made by any person with respect to property in the actual or constructive possession of that person and may also be made by that person with respect to other property not in the actual or constructive possession of that person if the person in actual or constructive possession of such other property does not make the election. For example, in the absence of an appointed executor, the trustee of an intervivos trust (that is included in the gross estate of the decedent) can make the election.

(4) *Manner and time of making the election*—(i) *In general.* The election referred to in section 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by section 2001 (or section 2101). For purposes of this paragraph, the term *return of tax imposed by section 2001* means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date.

(ii) *Election irrevocable.* The election, once made, is irrevocable, provided that an election may be revoked or modified on a subsequent return filed on or before the due date of the return, including extensions actually granted. If an executor appointed under local law has made an election on the return

of tax imposed by section 2001 (or section 2101) with respect to one or more properties, no subsequent election may be made with respect to other properties included in the gross estate after the return of tax imposed by section 2001 is filed. An election under section 2056(b)(7)(B)(v) is separate from any elections made under section 2056A(a)(3).

(c) *Protective elections*—(1) *In general.* A protective election may be made to treat property as qualified terminable interest property only if, at the time the federal estate tax return is filed, the executor of the decedent's estate reasonably believes that there is a bona fide issue that concerns whether an asset is includible in the decedent's gross estate, or the amount or nature of the property the surviving spouse is entitled to receive, i.e., whether property that is includible is eligible for the qualified terminable interest property election. The protective election must identify either the specific asset, group of assets, or trust to which the election applies and the specific basis for the protective election.

(2) *Protective election irrevocable.* The protective election, once made on the return of tax imposed by section 2001, cannot be revoked. For example, if a protective election is made on the basis that a bona fide question exists regarding the inclusion of a trust corpus in the gross estate and it is later determined that the trust corpus is so includible, the protective election becomes effective with respect to the trust corpus and cannot thereafter be revoked.

(d) *Qualifying income interest for life*—(1) *In general.* Section 2056(b)(7)(B)(ii) provides the definition of *qualifying income interest for life.* For purposes of section 2056(b)(7)(B)(ii)(II), the surviving spouse is included within the prohibited class of powerholders referred to therein.

(2) *Entitled for life to all income.* The principles of § 20.2056(b)–5(f), relating to whether the spouse is entitled for life to all of the income from the entire interest, or a specific portion of the entire interest, apply in determining whether the surviving spouse is entitled for life to all of the income from the property regardless of whether the interest passing to the spouse is in trust.

(3) *Contingent income interests.* (i) An income interest for a term of years, or a life estate subject to termination upon the occurrence of a specified event (e.g., remarriage), is not a qualifying income interest for life. However, a qualifying income interest for life that is contingent upon the executor's election under section 2056(b)(7)(B)(v) will not fail to be a qualifying income interest for life because of such contingency or because the portion of the property for which the election is not made passes to or for the benefit of persons other than the surviving spouse. This paragraph (d)(3)(i) applies with respect to estates of decedents whose estate tax returns are due after February 18, 1997. This paragraph (d)(3)(i) also applies to estates of decedents whose estate tax returns were due on or before February 18, 1997, that meet the requirements of paragraph (d)(3)(ii) of this section.

(ii) Estates of decedents whose estate tax returns were due on or before February 18, 1997, that did not make the election under section 2056(b)(7)(B)(v) because the surviving spouse's income interest in the property was contingent upon the election or because the nonelected portion of the property was to pass to a beneficiary other than the surviving spouse are granted an extension of time to make the QTIP election if the following requirements are satisfied:

(A) The period of limitations on filing a claim for credit or refund under section 6511(a) has not expired.

(B) A claim for credit or refund is filed on Form 843 with a revised Recapitulation and Schedule M, Form 706 (or 706NA) that signifies the QTIP election. Reference to this section should be made on the Form 843.

(C) The following statement is included with the Form 843: ''The undersigned certifies that the property with respect to which the QTIP election is being made will be included in the gross estate of the surviving spouse as provided in section 2044 of the Internal Revenue Code, in determining the federal estate tax liability on the spouse's death.'' The statement must be signed,

under penalties of perjury, by the surviving spouse, the surviving spouse's legal representative (if the surviving spouse is legally incompetent), or the surviving spouse's executor (if the surviving spouse is deceased).

(4) *Income between last distribution date and date of spouse's death.* An income interest does not fail to constitute a qualifying income interest for life solely because income between the last distribution date and the date of the surviving spouse's death is not required to be distributed to the surviving spouse or to the estate of the surviving spouse. See § 20.2044–1 relating to the inclusion of such undistributed income in the gross estate of the surviving spouse.

(5) *Pooled income funds.* An income interest in a pooled income fund described in section 642(c)(5) constitutes a qualifying income interest for life for purposes of section 2056(b)(7)(B)(ii).

(6) *Power to distribute principal to spouse.* An income interest in a trust will not fail to constitute a qualifying income interest for life solely because the trustee has a power to distribute principal to or for the benefit of the surviving spouse. The fact that property distributed to a surviving spouse may be transferred by the spouse to another person does not result in a failure to satisfy the requirement of section 2056(b)(7)(B)(ii)(II). However, if the surviving spouse is legally bound to transfer the distributed property to another person without full and adequate consideration in money or money's worth, the requirement of section 2056(b)(7)(B)(ii)(II) is not satisfied.

(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.* In the case of estates of decedents within the purview of the effective date and transitional rules contained in § 20.2056(b)–7(e)(5), a surviving spouse's lifetime annuity interest payable from a trust or other group of assets passing from the decedent is treated as a qualifying income interest for life for purposes of section 2056(b)(7)(B)(ii).

(2) *Deductible interest.* The deductible interest, for purposes of § 20.2056(a)–2(b), is the specific portion of the property that, assuming the applicable interest rate for valuing annuities, would produce income equal to the minimum amount payable annually to the surviving spouse. If, based on the applicable interest rate, the entire property from which the annuity may be satisfied is insufficient to produce income equal to the minimum annual payment, the value of the deductible interest is the entire value of the property. The value of the deductible interest may not exceed the value of the property from which the annuity is payable. If the annual payment may increase, the increased amount is not taken into account in valuing the deductible interest.

(3) *Distributions permissible only to surviving spouse.* An annuity interest is not treated as a qualifying income interest for life for purposes of section 2056(b)(7)(B)(ii) if any person other than the surviving spouse may receive, during the surviving spouse's lifetime, any distribution of the property or its income (including any distribution under an annuity contract) from which the annuity is payable.

(4) *Applicable interest rate.* To determine the applicable interest rate for valuing annuities, see sections 2031 and 7520 and the regulations under those sections.

(5) *Effective dates.* (i) The rules contained in § 20.2056(b)–7(e) apply with respect to estates of decedents dying on or before October 24, 1992.

(ii) The rules contained in § 20.2056(b)–7(e) apply in the case of decedents dying after October 24, 1992, if property passes to the spouse pursuant to a will or revocable trust executed on or before October 24, 1992, and either—

(A) On that date, the decedent was under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of death; or

(B) The decedent dies prior to October 24, 1995.

(iii) Notwithstanding the foregoing, the rules contained in § 20.2056(b)–7(e) do not apply if the will or revocable trust is amended after October 24, 1992, in any respect that increases the amount of the transfer qualifying for

the marital deduction or alters the terms by which the interest so passes to the surviving spouse.

(f) *Joint and survivor annuities.* [Reserved]

(g) *Application of local law.* The provisions of local law are taken into account in determining whether the conditions of section 2056(b)(7)(B)(ii)(I) are satisfied. For example, silence of a trust instrument as to the frequency of payment is not regarded as a failure to satisfy the requirement that the income must be payable to the surviving spouse annually or more frequently unless applicable local law permits payments less frequently.

(h) *Examples.* The following examples illustrate the application of paragraphs (a) through (g) of this section. In each example, it is assumed that the decedent, D, was survived by S, D's spouse and that, unless stated otherwise, S is not the trustee of any trust established for S's benefit.

Example 1. Life estate in residence. D owned a personal residence valued at $250,000 for estate tax purposes. Under D's will, the exclusive and unrestricted right to use the residence (including the right to continue to occupy the property as a personal residence or to rent the property and receive the income) passes to S for life. At S's death, the property passes to D's children. Under applicable local law, S must consent to any sale of the property. If the executor elects to treat all of the personal residence as qualified terminable interest property, the deductible interest is $250,000, the value of the residence for estate tax purposes.

Example 2. Power to make property productive. D's will established a trust funded with property valued for estate tax purposes at $500,000. The assets include both income producing assets and non-productive assets. S was given the power, exercisable annually, to require distribution of all of the trust income to herself. No trust property may be distributed during S's lifetime to any person other than S. Applicable local law permits S to require that the trustee either make the trust property productive or sell the property and reinvest in productive property within a reasonable time after D's death. If the executor elects to treat all of the trust as qualified terminable interest property, the deductible interest is $500,000. If the executor elects to treat only 20 percent of the trust as qualified terminable interest property, the deductible interest is $100,000, i.e., 20 percent of $500,000.

Example 3. Power of distribution over fraction of trust income. The facts are the same as in *Example 2* except that S is given the right exercisable annually for S's lifetime to require distribution to herself of only 50 percent of the trust income for life. The remaining trust income is to be accumulated or distributed among S and the decedent's children in the trustee's discretion. The maximum amount that D's executor may elect to treat as qualified terminable interest property is $250,000; i.e., the estate tax value of the trust ($500,000) multiplied by the percentage of the trust in which S has a qualifying income interest for life (50 percent). If D's executor elects to treat only 20 percent of the portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the deductible interest is $50,000, i.e., 20 percent of $250,000.

Example 4. Power to distribute trust corpus to other beneficiaries. D's will established a trust providing that S is entitled to receive at least annually all the trust income. The trustee is given the power to use annually during S's lifetime $5,000 from the trust for the maintenance and support of S's minor child, C. Any such distribution does not necessarily relieve S of S's obligation to support and maintain C. S does not have a qualifying income interest for life in any portion of the trust because the bequest fails to satisfy the condition that no person have a power, other than a power the exercise of which takes effect only at or after S's death, to appoint any part of the property to any person other than S. The trust would also be nondeductible under section 2056(b)(7) if S, rather than the trustee, held the power to appoint a portion of the principal to C. However, in the latter case, if S made a qualified disclaimer (within the meaning of section 2518) of the power to appoint to C, the trust could qualify for the marital deduction pursuant to section 2056(b)(7), assuming that the power is personal to S and S's disclaimer terminates the power. Similarly, in either case, if C made a qualified disclaimer of C's right to receive distributions from the trust, the trust would qualify under section 2056(b)(7), assuming that C's disclaimer effectively negates the trustee's power under local law.

Example 5. Spouse's income interest terminable on remarriage. D's will established a trust providing that all of the trust income is payable at least annually to S for S's lifetime, provided that, if S remarries, S's interest in the trust will pass to X. The trust is not deductible under section 2056(b)(7). S's income interest is not a *qualifying income interest for life* because it is not for life but, rather, is terminable upon S's remarriage.

Example 6. Spouse's qualifying income interest for life contingent on executor's election. D's will established a trust providing that S is entitled to receive the income, payable at least annually, from that portion of the trust that the executor elects to treat as qualified terminable interest property. The

portion of the trust which the executor does not elect to treat as qualified terminable interest property passes as of D's date of death to a trust for the benefit of C, D's child. Under these facts, the executor is not considered to have a power to appoint any part of the trust property to any person other than S during S's life.

Example 7. Formula partial election. D's will established a trust funded with the residue of D's estate. Trust income is to be paid annually to S for life, and the principal is to be distributed to D's children upon S's death. S has the power to require that all the trust property be made productive. There is no power to distribute trust property during S's lifetime to any person other than S. D's executor elects to deduct a fractional share of the residuary estate under section 2056(b)(7). The election specifies that the numerator of the fraction is the amount of deduction necessary to reduce the Federal estate tax to zero (taking into account final estate tax values) and the denominator of the fraction is the final estate tax value of the residuary estate (taking into account any specific bequests or liabilities of the estate paid out of the residuary estate). The formula election is of a fractional share. The value of the share qualifies for the marital deduction even though the executor's determinations to claim administration expenses as estate or income tax deductions and the final estate tax values will affect the size of the fractional share.

Example 8. Formula partial election. The facts are the same as in *Example 7* except that, rather than defining a fraction, the executor's formula states: ''I elect to treat as qualified terminable interest property that portion of the residuary trust, up to 100 percent, necessary to reduce the Federal estate tax to zero, after taking into account the available unified credit, final estate tax values and any liabilities and specific bequests paid from the residuary estate.'' The formula election is of a fractional share. The share is equivalent to the fractional share determined in *Example 7.*

Example 9. Severance of QTIP trust. D's will established a trust funded with the residue of D's estate. Trust income is to be paid annually to S for life, and the principal is to be distributed to D's children upon S's death. S has the power to require that all of the trust property be made productive. There is no power to distribute trust property during S's lifetime to any person other than S. D's will authorizes the executor to make the election under section 2056(b)(7) only with respect to the minimum amount of property necessary to reduce estate taxes on D's estate to zero, authorizes the executor to divide the residuary estate into two separate trusts to reflect the election, and authorizes the executor to charge any payment of principal to S to the qualified terminable interest trust. S is the sole beneficiary of both trusts during S's lifetime. The authorizations in the will do not adversely affect the allowance of the marital deduction. Only the property remaining in the marital deduction trust, after payment of principal to S, is subject to inclusion in S's gross estate under section 2044 or subject to gift tax under section 2519.

Example 10. Payments to spouse from individual retirement account. S is the life beneficiary of sixteen remaining annual installments payable from D's individual retirement account. The terms of the account provide for the payment of the account balance in nineteen annual installments that commenced when D reached age 70½. Each installment is equal to all the income earned on the remaining principal in the account plus a share of the remaining principal equal to 1/19 in the first year, 1/18 in the second year, 1/17 in the third year, etc. Under the terms of the account, S has no right to withdraw any other amounts from the account. Any payments remaining after S's death pass to D's children. S's interest in the account qualifies as a qualifying income interest for life under section 2056(b)(7)(B)(ii), without regard to the provisions of section 2056(b)(7)(C).

Example 11. Spouse's interest in trust in the form of an annuity. D died prior to October 24, 1992. D's will established a trust funded with income producing property valued at $500,000 for estate tax purposes. The trustee is required by the trust instrument to pay $20,000 a year to S for life. Trust income in excess of the annuity amount is to be accumulated in the trust and may not be distributed during S's lifetime. S's lifetime annuity interest is treated as a qualifying income interest for life. If the executor elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the value of the deductible interest is (assuming that 10 percent is the applicable interest rate under section 7520 for valuing annuities on the appropriate valuation date) $200,000, because that amount would yield an income to S of $20,000 a year.

Example 12. Value of spouse's annuity exceeds value of trust corpus. The facts are the same as in *Example 11* except that the trustee is required to pay S $70,000 a year for life. If the executor elects to treat the entire portion of the trust in which S has a qualifying income interest as qualified terminable interest property, the value of the deductible interest is $500,000, which is the lesser of the entire value of the property ($500,000), or the amount of property that (assuming a 10 percent interest rate) would yield an income to S of $70,000 a year ($700,000).

Example 13. Pooled income fund. D's will provides for a bequest of $200,000 to a pooled income fund described in section 642(c)(5), designating S as the income beneficiary for life. If D's executor elects to treat the entire

$200,000 as qualified terminable interest property, the deductible interest is $200,000.

Example 14. Funding severed QTIP trusts. D's will established a trust satisfying the requirements of section 2056(b)(7). Pursuant to the authority in D's will and § 20.2056(b)–7(b)(2)(ii), D's executor indicates on the Federal estate tax return that an election under section 2056(b)(7) is being made with respect to 50 percent of the trust, and that the trust will subsequently be divided to reflect the partial election on the basis of the fair market value of the property at the time of the division. D's executor funds the trust at the end of the period of estate administration. At that time, the property available to fund the trusts consists of 100 shares of X Corporation stock with a current value of $400,000 and 200 shares of Y Corporation stock with a current value of $400,000. D may fund each trust with the stock of either or both corporations, in any combination, provided that the aggregate value of the stock allocated to each trust is $400,000.

[T.D. 8522, 59 FR 9651, Mar. 1, 1994, as amended by T.D. 8779, 63 FR 44393, Aug. 19, 1998]

§ 20.2056(b)–8 Special rule for charitable remainder trusts.

(a) *In general*—(1) *Surviving spouse only noncharitable beneficiary.* With respect to estates of decedents dying after December 31, 1981, subject to section 2056(d), if the surviving spouse of the decedent is the only noncharitable beneficiary of a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 (qualified charitable remainder trust), section 2056(b)(1) does not apply to the interest in the trust that is transferred to the surviving spouse. Thus, the value of the annuity or unitrust interest passing to the spouse qualifies for a marital deduction under section 2056(b)(8) and the value of the remainder interest qualifies for a charitable deduction under section 2055. If an interest in property qualifies for a marital deduction under section 2056(b)(8), no election may be made with respect to the property under section 2056(b)(7). For purposes of this section, the term *non-charitable beneficiary* means any beneficiary of the qualified charitable remainder trust other than an organization described in section 170(c).

(2) *Interest for life or term of years.* The surviving spouse's interest need not be an interest for life to qualify for a marital deduction under section 2056(b)(8). However, for purposes of section 664, an annuity or unitrust interest payable to the spouse for a term of years cannot be payable for a term that exceeds 20 years.

(3) *Payment of state death taxes.* A deduction is allowed under section 2056(b)(8) even if the transfer to the surviving spouse is conditioned on the spouse's payment of state death taxes, if any, attributable to the qualified charitable remainder trust. See § 20.2056(b)–4(c) for the effect of such a condition on the amount of the deduction allowable.

(b) *Charitable remainder trusts where the surviving spouse is not the only noncharitable beneficiary.* In the case of a charitable remainder trust where the decedent's spouse is not the only noncharitable beneficiary (for example, where the noncharitable interest is payable to the decedent's spouse for life and then to another individual for life), the qualification of the interest as qualified terminable interest property is determined solely under section 2056(b)(7) and not under section 2056(b)(8). Accordingly, if the decedent died on or before October 24, 1992, or the trust otherwise comes within the purview of the transitional rules contained in § 20.2056(b)–7(e)(5), the spousal annuity or unitrust interest may qualify under § 20.2056(b)–(7)(e) as a qualifying income interest for life.

[T.D. 8522, 59 FR 9653, Mar. 1, 1994]

§ 20.2056(b)–9 Denial of double deduction.

The value of an interest in property may not be deducted for Federal estate tax purposes more than once with respect to the same decedent. For example, where a decedent transfers a life estate in a farm to the spouse with a remainder to charity, the entire property is, pursuant to the executor's election under section 2056(b)(7), treated as passing to the spouse. The entire value of the property qualifies for the marital deduction. No part of the value of the property qualifies for a charitable deduction under section 2055 in the decedent's estate.

[T.D. 8522, 59 FR 9654, Mar. 1, 1994]

§ 20.2056(b)–10 Effective dates.

Except as specifically provided in §§ 20.2056(b)–5(c)(3) (ii) and (iii), 20.2056(b)–7(d)(3), 20.2056(b)–7(e)(5), and 20.2056(b)–8(b), the provisions of §§ 20.2056(b)–5(c), 20.2056(b)–7, 20.2056(b)–8, and 20.2056(b)–9 are applicable with respect to estates of decedents dying after March 1, 1994. With respect to decedents dying on or before such date, the executor of the decedent's estate may rely on any reasonable interpretation of the statutory provisions.

[T.D. 8779, 63 FR 44393, Aug. 19, 1998]

§ 20.2056(c)–1 Marital deduction; definition of "passed from the decedent."

(a) *In general.* The following rules are applicable in determining the person to whom any property interest ''passed from the decedent'':

(1) Property interests devolving upon any person (or persons) as surviving co-owner with the decedent under any form of joint ownership under which the right of survivorship existed are considered as having passed from the decedent to such person (or persons).

(2) Property interests at any time subject to the decedent's power to appoint (whether alone or in conjunction with any person) are considered as having passed from the decedent to the appointee under his exercise of the power, or, in case of the lapse, release or nonexercise of the power, as having passed from the decedent to the taker in default of exercise.

(3) The dower or curtesy interest (or statutory interest in lieu thereof) of the decedent's surviving spouse is considered as having passed from the decedent to his spouse.

(4) The proceeds of insurance upon the life of the decedent are considered as having passed from the decedent to the person who, at the time of the decedent's death, was entitled to receive the proceeds.

(5) Any property interest transferred during life, bequeathed or devised by the decedent, or inherited from the decedent, is considered as having passed to the person to whom he transferred, bequeathed, or devised the interest, or to the person who inherited the interest from him.

(6) The survivor's interest in an annuity or other payment described in section 2039 (see §§ 20.2039–1 and 20.2039–2) is considered as having passed from the decedent to the survivor only to the extent that the value of such interest is included in the decedent's gross estate under that section. If only a portion of the entire annuity or other payment is included in the decedent's gross estate and the annuity or other payment is payable to more than one beneficiary, then the value of the interest considered to have passed to each beneficiary is that portion of the amount payable to each beneficiary that the amount of the annuity or other payment included in the decedent's gross estate bears to the total value of the annuity or other payment payable to all beneficiaries.

(b) *Expectant interest in property under community property laws.* If before the decedent's death the decedent's surviving spouse had merely an expectant interest in property held by her and the decedent under community property laws, that interest is considered as having passed from the decedent to the spouse.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960. Redesignated and amended by T.D. 8522, 59 FR 9654, Mar. 1, 1994]

§ 20.2056(c)–2 Marital deduction; definition of "passed from the decedent to his surviving spouse."

(a) *In general.* In general, the definition stated in § 20.2056(c)–1 is applicable in determining the property interests which ''passed from the decedent to his surviving spouse''. Special rules are provided, however, for the following:

(1) In the case of certain interests with income for life to the surviving spouse with power of appointment in her (see § 20.2056(b)–5);

(2) In the case of certain interests with income for life to the surviving spouse that the executor elects to treat as qualified terminable interest property (see § 20.2056(b)–7);

(3) In the case of proceeds held by the insurer under a life insurance, endowment, or annuity contract with power of appointment in the surviving spouse (see § 20.2056(b)–6);

(4) In case of the disclaimer of an interest by the surviving spouse or by any other person (see § 20.2056(d)–1);

(5) In case of an election by the surviving spouse (see paragraph (c) of this section); and

(6) In case of a controversy involving the decedent's will, see paragraph (d) of this section.

A property interest is treated as passing to the surviving spouse only if it passes to the spouse as beneficial owner, except to the extent otherwise provided in §§ 20.2056(b)–5 through 20.2056(b)–7. For this purpose, where a property interest passed from the decedent in trust, such interest is considered to have passed from him to his surviving spouse to the extent of her beneficial interest therein. The deduction may not be taken with respect to a property interest which passed to such spouse merely as trustee, or subject to a binding agreement by the spouse to dispose of the interest in favor of a third person. An allowance or award paid to a surviving spouse pursuant to local law for her support during the administration of the decedent's estate constitutes a property interest passing from the decedent to his surviving spouse. In determining whether or not such an interest is deductible, however, see generally the terminable interest rules of § 20.2056(b)–1 and especially example (8) of paragraph (g) of that section.

(b) *Examples.* The following illustrate the provisions of paragraph (a) of this section:

(1) A property interest bequeathed in trust by H (the decedent) is considered as having passed from him to W (his surviving spouse)—

(i) If the trust income is payable to W for life and upon her death the corpus is distributable to her executors or administrators;

(ii) If W is entitled to the trust income for a term of years following which the corpus is to be paid to W or her estate;

(iii) If the trust income is to be accumulated for a term of years or for W's life and the augmented fund paid to W or her estate; or

(iv) If the terms of the transfer satisfy the requirements of § 20.2056(b)–5 or § 20.2056(b)–7.

(2) If H devised property—

(i) To A for life with remainder absolutely to W or her estate, the remainder interest is considered to have passed from H to W;

(ii) To W for life with remainder to her estate, the entire property is considered as having passed from H to W; or

(iii) Under conditions which satisfy the provisions of § 20.2056(b)–5 or 20.2056(b)–7, the entire property is considered as having passed from H to W.

(3) Proceeds of insurance upon the life of H are considered as having passed from H to W if the terms of the contract—

(i) Meet the requirements of § 20.2056(b)–6;

(ii) Provide that the proceeds are payable to W in a lump sum;

(iii) Provide that the proceeds are payable in installments to W for life and after her death any remaining installments are payable to her estate;

(iv) Provide that interest on the proceeds is payable to W for life and upon her death the principal amount is payable to her estate; or

(v) Provide that the proceeds are payable to a trustee under an arrangement whereby the requirements of § 20.2056(b)–5 or 20.2056(b)–7 are satisfied.

(c) *Effect of election by surviving spouse.* This paragraph contains rules applicable if the surviving spouse may elect between a property interest offered to her under the decedent's will or other instrument and a property interest to which she is otherwise entitled (such as dower, a right in the decedent's estate, or her interest under community property laws) of which adverse disposition was attempted by the decedent under the will or other instrument. If the surviving spouse elects to take against the will or other instrument, then the property interests offered thereunder are not considered as having ''passed from the decedent to his surviving spouse'' and the dower or other property interest retained by her is considered as having so passed (if it otherwise so qualifies under this section). If the surviving spouse elects to take under the will or other instrument, then the dower or other property

interest relinquished by her is not considered as having ''passed from the decedent to his surviving spouse'' (irrespective of whether it otherwise comes within the definition stated in paragraph (a) of this section) and the interest taken under the will or other instrument is considered as having so passed (if it otherwise so qualifies). As to the valuation of the property interest taken under the will or other instrument, see paragraph (b) of §20.2056(b)–4.

(d) *Will contests.* (1) If as a result of a controversy involving the decedent's will, or involving any bequest or devise thereunder, his surviving spouse assigns or surrenders a property interest in settlement of the controversy, the interest so assigned or surrendered is not considered as having ''passed from the decedent to his surviving spouse.''

(2) If as a result of the controversy involving the decedent's will, or involving any bequest or devise thereunder, a property interest is assigned or surrendered to the surviving spouse, the interest so acquired will be regarded as having ''passed from the decedent to his surviving spouse'' only if the assignment or surrender as a bona fide recognition of enforceable rights of the surviving spouse in the decedent's estate. Such a bona fide recognition will be presumed where the assignment or surrender was pursuant to a decision of a local court upon the merits in an adversary proceeding following a genuine and active contest. However, such a decree will be accepted only to the extent that the court passed upon the facts upon which deductibility of the property interest depends. If the assignment or surrender was pursuant to a decree rendered by consent, or pursuant to an agreement not to contest the will or not to probate the will, it will not necessarily be accepted as a bona fide evaluation of the rights of the spouse.

(e) *Survivorship.* If the order of deaths of the decedent and his spouse cannot be established by proof, a presumption (whether supplied by local law, the decedent's will, or otherwise) that the decedent was survived by his spouse will be recognized as satisfying paragraph (b)(1) of §20.2056(a)–1, but only to the extent that it has the effect of giving to the spouse an interest in property includible in her gross estate under Part III of Subchapter A of Chapter 11. Under these circumstances, if an estate tax return is required to be filed for the estate of the decedent's spouse, the marital deduction will not be allowed in the final audit of the estate tax return of the decedent's estate with respect to any property interest which has not been finally determined to be includible in the gross estate of his spouse.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960. Redesignated and amended by T.D. 8522, 59 FR 9654, Mar. 1, 1994]

§20.2056(c)–3 Marital deduction; definition of "passed from the decedent to a person other than his surviving spouse".

The expression ''passed from the decedent to a person other than his surviving spouse'' refers to any property interest which, under the definition stated in §20.2056(c)–1 is considered as having ''passed from the decedent'' and which under the rules referred to in §20.2056(c)–2 is not considered as having ''passed from the decedent to his surviving spouse.'' Interests which passed to a person other than the surviving spouse include interests so passing under the decedent's exercise, release, or nonexercise of a nontaxable power to appoint. It is immaterial whether the property interest which passed from the decedent to a person other than his surviving spouse is included in the decedent's gross estate. The term ''person other than his surviving spouse'' includes the possible unascertained takers of a property interest, as, for example, the members of a class to be ascertained in the future. As another example, assume that the decedent created a power of appointment over a property interest, which does not come within the purview of §20.2056(b)–5 or §20.2056(b)–6. In such a case, the term ''person other than his surviving spouse'' refers to the possible appointees and possible takers in default (other than the spouse) of such property interest. Whether or not there is a possibility that the ''person other than his surviving spouse'' (or the heirs or assigns of such person) may possess

or enjoy the property following termination or failure of the interest therein which passed from the decedent to his surviving spouse is to be determined as of the time of the decedent's death.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960. Redesignated and amended by T.D. 8522, 59 FR 9654, Mar. 1, 1994]

§ 20.2056(d)–1 Marital deduction; special rules for marital deduction if surviving spouse is not a United States citizen.

Rules pertaining to the application of section 2056(d), including certain transition rules, are contained in §§ 20.2056A–1 through 20.2056A–13.

[T.D. 8612, 60 FR 43538, Aug. 22, 1995]

§ 20.2056(d)–2 Marital deduction; effect of disclaimers of post-December 31, 1976 transfers.

(a) *Disclaimer by a surviving spouse.* If a surviving spouse disclaims an interest in property passing to such spouse from the decedent, which interest was created in a transfer made after December 31, 1976, the effectiveness of the disclaimer will be determined by section 2518 and the corresponding regulations. For rules relating to when the transfer creating the interest occurs, see § 25.2518–2(c)(3) and (c)(4) of this chapter. If a qualified disclaimer is determined to have been made by the surviving spouse, the property interest disclaimed is treated as if such interest had never been transferred to the surviving spouse.

(b) *Disclaimer by a person other than a surviving spouse.* If an interest in property passes from a decedent to a person other than the surviving spouse, and the interest is created in a transfer made after December 31, 1976, and—

(1) The person other than the surviving spouse makes a qualified disclaimer with respect to such interest; and

(2) The surviving spouse is entitled to such interest in property as a result of such disclaimer, the disclaimed interest is treated as passing directly from the decedent to the surviving spouse. For rules relating to when the transfer creating the interest occurs, see § 25.2518–2(c)(3) and (c)(4) of this chapter.

(c) *Effective date.* The first and second sentences of paragraphs (a) and (b) of this section are applicable for transfers creating the interest to be disclaimed made on or after December 31, 1997.

[T.D. 8095, 51 FR 28368, Aug. 7, 1986. Redesignated by T.D. 8612, 60 FR 43538, Aug. 22, 1995, as amended by T.D. 8744, 62 FR 68184, Dec. 31, 1997]

§ 20.2056(d)–3 Marital deduction; effect of disclaimers of pre-January 1, 1977 transfers.

(a) *Disclaimer by a surviving spouse.* If an interest in property passes to a decedent's surviving spouse in a taxable transfer made by a decedent dying before January 1, 1977, and the decedent's surviving spouse makes a disclaimer of this property interest the disclaimed interest is considered as passing from the decedent to the person or persons entitled to receive the interest as a result of the disclaimer. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. It is, therefore, necessary to distinguish between the surviving spouse's disclaimer of a property interest and such surviving spouse's acceptance and subsequent disposal of a property interest. For example, if proceeds of insurance are payable to the surviving spouse and the proceeds are refused so that they consequently pass to an alternate beneficiary designated by the decedent, the proceeds are considered as having passed from the decedent to the alternate beneficiary. On the other hand, if the insurance company is directed by the surviving spouse to hold the proceeds at interest during such spouse's life and, upon this spouse's death, to pay the principal sum to another person designated by the surviving spouse, thus effecting a transfer of a remainder interest, the proceeds are considered as having passed from the decedent to the surviving spouse. See paragraph (c) of § 20.2056(e)–2 with respect to a spouse's exercise or failure to exercise a right to take against a decedent's will.

(b) *Disclaimer by a person other than a surviving spouse*—(1) *Decedents dying after October 3, 1966 and before January 1, 1977.* This paragraph (b)(1) applies in the case of a disclaimer of property passing to one other than the surviving

spouse from a decedent dying after October 3, 1966 and before January 1, 1977. If a surviving spouse is entitled to receive property from the decedent as a result of the timely disclaimer made by the disclaimant, the property received by the surviving spouse is to be treated as passing to the surviving spouse from the decedent. Both a disclaimer of property passing by the laws of intestacy or otherwise, as by insurance or by trust, and a disclaimer of bequests and devises under the will of a decedent are to be fully effective for purposes of computing the marital deduction under section 2056. A disclaimer is a complete and unqualified refusal to accept some or all of the rights to which one is entitled. It must be a valid refusal under State law and must be made without consideration. For example, a disclaimer for the benefit of a surviving spouse who promises to give or bequeath property to a child of the person who disclaims is not a disclaimer within the meaning of this paragraph (b)(1). The disclaimer must be made before the person disclaiming accepts any property under the disclaimed interest. In the case of property transferred by a decedent dying after December 31, 1970, and before January 1, 1977, the disclaimer must be made within 9 months after the decedent's death (or within any extension of time for filing the estate tax return granted pursuant to section 6081). In the case of property transferred by a decedent dying after October 3, 1966, and before January 1, 1971, the disclaimer must be made within 15 months after the decedent's death (or within any extension of time for filing the estate tax return granted pursuant to section 6081). If the disclaimer does not satisfy the requirements of this paragraph (b)(1), for the purpose of the marital deduction, the property is considered as passing from the decedent to the person who made the disclaimer as if the disclaimer had not been made.

(2) *Decedents dying after September 30, 1963 and before October 4, 1966.* This paragraph (b)(2) applies in the case of a disclaimer of property passing to one other than the surviving spouse from a decedent dying after September 30, 1963 and before October 4, 1966. If, as a result of the disclaimer by the disclaimant, the surviving spouse is entitled to receive the disclaimed property interest, then such interest shall, for the purposes of this paragraph (b)(2), be considered as passing from the decedent to the surviving spouse if the following conditions are met. First, the interest disclaimed was bequeathed or devised to the disclaimant. Second, the disclaimant disclaimed all bequests and devises under the will before the date prescribed for the filing of the estate tax return. Third, the disclaimant did not accept any property under the bequest or devise before making the disclaimer.

The interests passing by disclaimer to the surviving spouse under this paragraph (b)(2) are to qualify for the marital deduction only to the extent that, when added to any other allowable marital deduction without regard to this paragraph (b)(2), they do not exceed the greater of the deductions which would be allowable for the marital deduction without regard to the disclaimer if the surviving spouse exercised the election under State law to take against the will, or an amount equal to one-third of the decedent's adjusted gross estate. If the disclaimer does not satisfy the requirements of this paragraph (b)(2), the property is treated as passing from the decedent to the person who made the disclaimer, in the same manner as if the disclaimer had not been made.

(3) *Decedents dying before October 4, 1966.* Unless the rule of paragraph (b)(2) of this section applies, this paragraph (b)(3) applies in the case of a disclaimer of property passing to one other than the surviving spouse from a decedent dying before October 4, 1966. For the purpose of these transfers, it is unnecessary to distinguish for the purpose of the marital deduction between a disclaimer by a person other than the surviving spouse and a transfer by such person. If the surviving spouse becomes entitled to receive an interest in property from the decedent as a result of a disclaimer made by some other person, the interest is, nevertheless, considered as having passed from the decedent, not to the surviving spouse, but to the person who made the disclaimer, as though the disclaimer had not been made. If, as a result of a disclaimer

made by a person other than the surviving spouse, a property interest passes to the surviving spouse under circumstances which meet the conditions set forth in § 20.2056(b)–5 (relating to a life estate with a power of appointment), the rule stated in the preceding sentence applies, not only with respect to the portion of the interest which beneficially vests in the surviving spouse, but also with respect to the portion over which such spouse acquires a power to appoint. The rule applies also in the case of proceeds under a life insurance, endowment, or annuity contract which, as a result of a disclaimer made by a person other than the surviving spouse, are held by the insurer subject to the conditions set forth in § 20.2056(b)–6.

[T.D. 8095, 51 FR 28368, Aug. 7, 1986. Redesignated by T.D. 8612, 60 FR 43538, Aug. 22, 1995]

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[T.D. 8612, 60 FR 43538, Aug. 22, 1995, as amended by T.D. 8686, 61 FR 60553, Nov. 29, 1996]

§ 20.2056A–1 Restrictions on allowance of marital deduction if surviving spouse is not a United States citizen.

(a) *General rule.* Subject to the special rules provided in section 7815(d)(14) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239; 103 Stat. 2106), in the case of a decedent dying after November 10, 1988, the federal estate tax marital deduction is not allowed for property passing to or for the benefit of a surviving spouse who is not a United States citizen at the date of the decedent's death (whether or not the surviving spouse is a resident of the United States) unless—

(1) The property passes from the decedent to (or pursuant to)—

(i) A qualified domestic trust (QDOT) described in section 2056A and § 20.2056A–2;

(ii) A trust that, although not meeting all of the requirements for a QDOT, is reformed after the decedent's death to meet the requirements of a QDOT (see § 20.2056A–4(a));

(iii) The surviving spouse not in trust (e.g., by outright bequest or devise, by operation of law, or pursuant to the terms of an annuity or other similar plan or arrangement) and, prior to the date that the estate tax return is filed and on or before the last date prescribed by law that the QDOT election may be made (no more than one year after the time prescribed by law, including extensions, for filing the return), the surviving spouse either actually transfers the property to a QDOT or irrevocably assigns the property to a QDOT (see § 20.2056A–4(b)); or

(iv) A plan or other arrangement that would have qualified for the marital deduction but for section 2056(d)(1)(A), and whose payments are not assignable or transferable to a QDOT, if the requirements of § 20.2056A–4(c) are met; and

(2) The executor makes a timely QDOT election under § 20.2056A–3.

(b) *Marital deduction allowed if resident spouse becomes citizen.* For purposes of section 2056(d)(1) and paragraph (a) of this section, the surviving spouse is treated as a citizen of the United States at the date of the decedent's death if the requirements of section 2056(d)(4) are satisfied. For purposes of section 2056(d)(4)(A) and notwithstanding § 20.2056A–3(a), a return filed prior to the due date (including extensions) is considered filed on the last date that the return is required to be filed (including extensions), and a late return filed at any time after the due date is considered filed on the date that it is actually filed. A surviving spouse is a resident only if the spouse is a resident under chapter 11 of the Internal Revenue Code. See § 20.0–1(b)(1). The status of the spouse as a resident

under section 7701(b) is not relevant to this determination except to the extent that the income tax residency of the spouse is pertinent in applying § 20.0–1(b)(1).

(c) *Special rules in the case of certain transfers subject to estate and gift tax treaties.* Under section 7815(d)(14) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239, 103 Stat. 2106) certain special rules apply in the case of transfers governed by certain estate and gift tax treaties to which the United States is a party. In the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3342) do not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions. Under this rule, the estate may choose either the statutory deduction under section 2056A or the marital deduction allowed under the treaty. Thus, the estate may not avail itself of both the marital deduction under the treaty and the marital deduction under the QDOT provisions of section 2056A and chapter 11 of the Internal Revenue Code with respect to the remainder of the marital property that is not deductible under the treaty.

[T.D. 8612, 60 FR 43539, Aug. 22, 1995]

§ 20.2056A–2 Requirements for qualified domestic trust.

(a) *In general.* In order to qualify as a qualified domestic trust (QDOT), the requirements of paragraphs (b) and (c) of this section, and the requirements of § 20.2056A–2T(d), must be satisfied. The executor of the decedent's estate and the U.S. Trustee shall establish in such manner as may be prescribed by the Commissioner on the estate tax return and applicable instructions that these requirements have been satisfied or are being complied with. In order to constitute a QDOT, the trust must be maintained under the laws of a state of the United States or the District of Columbia, and the administration of the trust must be governed by the laws of a particular state of the United States or the District of Columbia. For purposes of this paragraph (a), a trust is maintained under the laws of a state of the United States or the District of Columbia if the records of the trust (or copies thereof) are kept in that state (or the District of Columbia). The trust may be established pursuant to an instrument executed under either the laws of a state of the United States or the District of Columbia or pursuant to an instrument executed under the laws of a foreign jurisdiction, such as a foreign will or trust, provided that such foreign instrument designates the law of a particular state of the United States or the District of Columbia as governing the administration of the trust, and such designation is effective under the law of the designated jurisdiction. In addition, the trust must constitute an ordinary trust, as defined in § 301.7701–4(a) of this chapter, and not any other type of entity. For purposes of this paragraph, a trust will not fail to constitute an ordinary trust solely because of the nature of the assets transferred to that trust, regardless of its classification under §§ 301.7701–2 through 301.7701–4 of this chapter.

(b) *Qualified marital interest requirements*—(1) *Property passing to QDOT.* If property passes from a decedent to a QDOT, the trust must qualify for the federal estate tax marital deduction under section 2056(b)(5) (life estate with power of appointment), section 2056(b)(7) (qualified terminable interest property, including joint and survivor annuities under section 2056(b)(7)(C)), or section 2056(b)(8) (surviving spouse is the only noncharitable beneficiary of a charitable remainder trust), or meet the requirements of an estate trust as defined in § 20.2056(c)–2(b)(1)(i) through (iii).

(2) *Property passing outright to spouse.* If property does not pass from a decedent to a QDOT, but passes to a noncitizen surviving spouse in a form that meets the requirements for a marital deduction without regard to section 2056(d)(1)(A), and that is not described in paragraph (b)(1) of this section, the surviving spouse must either actually transfer the property, or irrevocably

assign the property, to a trust (whether created by the decedent, the decedent's executor or by the surviving spouse) that meets the requirements of paragraph (c) of this section and the requirements of § 20.2056A–2T(d) (pertaining, respectively, to statutory requirements and regulatory requirements imposed to ensure collection of tax) prior to the filing of the estate tax return for the decedent's estate and on or before the last date prescribed by law that the QDOT election may be made (see § 20.2056A–3(a)).

(3) *Property passing under a nontransferable plan or arrangement.* If property does not pass from a decedent to a QDOT, but passes under a plan or other arrangement that meets the requirements for a marital deduction without regard to section 2056(d)(1)(A) and whose payments are not assignable or transferable (see § 20.2056A–4(c)), the property is treated as meeting the requirements of this section, and the requirements of § 20.2056A–2T(d), if the requirements of § 20.2056A–4(c) are satisfied. In addition, where an annuity or similar arrangement is described above except that it is assignable or transferable, see § 20.2056A–4(b)(7).

(c) *Statutory requirements.* The requirements of section 2056A(a)(1)(A) and (B) must be satisfied. For purposes of that section, a domestic corporation is a corporation that is created or organized under the laws of the United States or under the laws of any state of the United States or the District of Columbia. The trustee required under that section is referred to herein as the ''U.S. Trustee''.

(d) *Additional requirements to ensure collection of the section 2056A estate tax*—(1) *Security and other arrangements for payment of estate tax imposed under section 2056A(b)(1)*—(i) *QDOTs with assets in excess of $2 million.* If the fair market value of the assets passing, treated, or deemed to have passed to the QDOT (or in the form of a QDOT), determined without reduction for any indebtedness with respect to the assets, as finally determined for federal estate tax purposes, exceeds $2 million as of the date of the decedent's death or, if applicable, the alternate valuation date (adjusted as provided in paragraph (d)(1)(iii) of this section), the trust instrument must meet the requirements of either paragraph (d)(1)(i) (A), (B), or (C) of this section at all times during the term of the QDOT. The QDOT may alternate between any of the arrangements provided in paragraphs (d)(1)(i) (A), (B), and (C) of this section provided that, at any given time, one of the arrangements must be operative. See paragraph (d)(1)(iii) of this section for the definition of finally determined. The QDOT may provide that the trustee has the discretion to use any one of the security arrangements or may provide that the trustee is limited to using only one or two of the arrangements specified in the trust instrument. A trust instrument that specifically states that the trust must be administered in compliance with paragraph (d)(1)(i) (A), (B), or (C) of this section is treated as meeting the requirements of paragraphs (d)(1)(i) (A), (B), or (C) of this section for purposes of paragraphs (d)(1)(i) and, if applicable, (d)(1)(ii) of this section.

(A) *Bank Trustee.* Except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, the trust instrument must provide that whenever the Bank Trustee security alternative is used for the QDOT, at least one U.S. Trustee must be a bank as defined in section 581. Alternatively, except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, at least one trustee must be a United States branch of a foreign bank, provided that, in such cases, during the entire term of the QDOT a U.S. Trustee must act as a trustee with the foreign bank trustee.

(B) *Bond.* Except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, the trust instrument must provide that whenever the bond security arrangement alternative is used for the QDOT, the U.S. Trustee must furnish a bond in favor of the Internal Revenue Service in an amount equal to 65 percent of the fair market value of the trust assets (determined without regard to any indebtedness with respect to the assets) as of the date of

the decedent's death (or alternate valuation date, if applicable), as finally determined for federal estate tax purposes (and as further adjusted as provided in paragraph (d)(1)(iv) of this section). If, after examination of the estate tax return, the fair market value of the trust assets, as originally reported on the estate tax return, is adjusted (pursuant to a judicial proceeding or otherwise) resulting in a final determination of the value of the assets as reported on the return, the U.S. Trustee has a reasonable period of time (not exceeding sixty days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to adjust the amount of the bond accordingly. But see, paragraph (d)(1)(i)(D) of this section for a special rule in the case of a substantial undervaluation of QDOT assets. Unless an alternate arrangement under paragraph (d)(1)(i)(A), (B), or (C) of this section, or an arrangement prescribed under paragraph (d)(4) of this section, is provided, or the trust is otherwise no longer subject to the requirements of section 2056A pursuant to section 2056A(b)(12), the bond must remain in effect until the trust ceases to function as a QDOT and any tax liability finally determined to be due under section 2056A(b) is paid, or is finally determined to be zero.

(*1*) *Requirements for the bond.* The bond must be with a satisfactory surety, as prescribed under section 7101 and § 301.7101–1 of this chapter (Regulations on Procedure and Administration), and is subject to Internal Revenue Service review as may be prescribed by the Commissioner. The bond may not be cancelled. The bond must be for a term of at least one year and must be automatically renewable at the end of that term, on an annual basis thereafter, unless notice of failure to renew is mailed to the U.S. Trustee and the Internal Revenue Service at least 60 days prior to the end of the term, including periods of automatic extensions. Any notice of failure to renew required to be sent to the Internal Revenue Service must be sent to the Estate and Gift Tax Group in the District Office of the Internal Revenue Service that has examination jurisdiction over the decedent's estate (Internal Revenue Service, District Director, [*specify location*] District Office, Estate and Gift Tax Examination Group, [specify Street Address, City, State, Zip Code]) (or in the case of noncitizen decedents and United States citizens who die domiciled outside the United States, Estate Tax Group, Assistant Commissioner (International), 950 L'Enfant Plaza, CP:IN:D:C:EX:HQ:1114, Washington, DC 20024). The Internal Revenue Service will not draw on the bond if, within 30 days of receipt of the notice of failure to renew, the U.S. Trustee notifies the Internal Revenue Service (at the same address to which notice of failure to renew is to be sent) that an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C) or (d)(4) of this section, has been secured and that the arrangement will take effect immediately prior to or upon expiration of the bond.

(*2*) *Form of bond.* The bond must be in the following form (or in a form that is the same as the following form in all material respects), or in such alternative form as the Commissioner may prescribe by guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter):

Bond in Favor of the Internal Revenue Service To Secure Payment of Section 2056A Estate Tax Imposed Under Section 2056A(b) of the Internal Revenue Code.

KNOW ALL PERSONS BY THESE PRESENTS, That the undersigned, _____, the SURETY, and _____, the PRINCIPAL, are irrevocably held and firmly bound to pay the Internal Revenue Service upon written demand that amount of any tax up to *$[amount determined under paragraph (d)(1)(i)(B) of this section],* imposed under section 2056A(b)(1) of the Internal Revenue Code (including penalties and interest on said tax) determined by the Internal Revenue Service to be payable with respect to the principal as trustee for: *[Identify trust and governing instrument, name and address of trustee],* a qualified domestic trust as defined in section 2056A(a) of the Internal Revenue Code, for the payment of which the said Principal and said Surety, bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Internal Revenue Service may demand payment under this bond at any time if the Internal Revenue Service in its sole discretion determines that a taxable event with respect to the trust has occurred; the trust no longer qualifies as a qualified domestic trust as described in section

2056A(a) of the Internal Revenue Code and the regulations promulgated thereunder, or a distribution subject to the tax imposed under section 2056A(b)(1) has been made. Demand by the Internal Revenue Service for payment may be made whether or not the tax and tax return (Form 706–QDT) with respect to the taxable event is due at the time of such demand, or an assessment has been made by the Internal Revenue Service with respect to the tax.

NOW THEREFORE, The condition of this obligation is such that it must not be cancelled and, if payment of all tax liability finally determined to be imposed under section 2056A(b) is made, then this obligation is null and void; otherwise, this obligation is to remain in full force and effect for one year from its effective date and is to be automatically renewable on an annual basis unless, at least 60 days prior to the expiration date, including periods of automatic renewals, the surety mails to the U.S. Trustee and the Internal Revenue Service by Registered or Certified Mail, return receipt requested, notice of the failure to renew. Receipt of this notice of failure to renew by the Internal Revenue Service may be considered a taxable event. The Internal Revenue Service will not draw upon the bond if, within 30 days of receipt of the notice of failure to renew, the trustee notifies the Internal Revenue Service that an alternate security arrangement has been secured and that the arrangement will take effect immediately prior to or upon expiration of the bond. The surety remains liable for all taxable events occurring prior to the date of expiration. All notices required to be sent to the Internal Revenue Service under this instrument should be sent to District Director, *[specify location]* District Office, Estate and Gift Tax Examination Group, Street Address, City, State, Zip Code. (In the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States, all notices should be sent to Estate Tax Group, Assistant Commissioner (International), 950 L'Enfant Plaza, CP:IN:D:C:EX:HQ:1114, Washington, DC 20024).

This bond shall be effective as of _____. Principal _____ Date _____ Surety _____ Date _____

(*3*) *Additional governing instrument requirements.* The trust instrument must provide that in the event the Internal Revenue Service draws on the bond, in accordance with its terms, neither the U.S. Trustee nor any other person will seek a return of any part of the remittance until after April 15th of the calendar year following the year in which the bond is drawn upon. After that date, any such remittance will be treated as a deposit and returned (without interest) upon request of the U.S. Trustee, unless it is determined that assessment or collection of the tax imposed by section 2056A(b)(1) is in jeopardy, within the meaning of section 6861. If an assessment under section 6861 is made, the remittance will first be credited to any tax liability reported on the Form 706–QDT, then to any unpaid balance of a section 2056A(b)(1)(A) tax liability (plus interest and penalties) for any prior taxable years, and any balance will then be returned to the U.S. Trustee.

(*4*) *Procedure.* The bond is to be filed with the decedent's federal estate tax return, Form 706 or 706NA (unless an extension for filing the bond is granted under § 301.9100 of this chapter). The U.S. Trustee must provide a written statement with the bond that provides a list of the assets that will be used to fund the QDOT and the respective values of the assets. The written statement must also indicate whether any exclusions under paragraph (d)(1)(iv) of this section are claimed.

(C) *Letter of credit.* Except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, the trust instrument must provide that whenever the letter of credit security arrangement is used for the QDOT, the U.S. Trustee must furnish an irrevocable letter of credit issued by a bank as defined in section 581, a United States branch of a foreign bank, or a foreign bank with a confirmation by a bank as defined in section 581. The letter of credit must be for an amount equal to 65 percent of the fair market value of the trust assets (determined without regard to any indebtedness with respect to the assets) as of the date of the decedent's death (or alternate valuation date, if applicable), as finally determined for federal estate tax purposes (and as further adjusted as provided in paragraph (d)(1)(iv) of this section). If, after examination of the estate tax return, the fair market value of the trust assets, as originally reported on the estate tax return, is adjusted (pursuant to a judicial proceeding or otherwise) resulting in a final determination of the value of the assets as reported on the return, the U.S. Trustee has a reasonable period of time (not exceeding 60 days after the conclusion of the proceeding

or other action resulting in a final determination of the value of the assets) to adjust the amount of the letter of credit accordingly. But see, paragraph (d)(1)(i)(D) of this section for a special rule in the case of a substantial undervaluation of QDOT assets. Unless an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C) of this section, or an arrangement prescribed under paragraph (d)(4) of this section, is provided, or the trust is otherwise no longer subject to the requirements of section 2056A pursuant to section 2056A(b)(12), the letter of credit must remain in effect until the trust ceases to function as a QDOT and any tax liability finally determined to be due under section 2056A(b) is paid or is finally determined to be zero.

(*1*) *Requirements for the letter of credit.* The letter of credit must be irrevocable and provide for sight payment. The letter of credit must have a term of at least one year and must be automatically renewable at the end of the term, at least on an annual basis, unless notice of failure to renew is mailed to the U.S. Trustee and the Internal Revenue Service at least sixty days prior to the end of the term, including periods of automatic renewals. If the letter of credit is issued by the U.S. branch of a foreign bank and the U.S. branch is closing, the branch (or foreign bank) must notify the U.S. Trustee and the Internal Revenue Service of the closure and the notice of closure must be mailed at least 60 days prior to the date of closure. Any notice of failure to renew or closure of a U.S. branch of a foreign bank required to be sent to the Internal Revenue Service must be sent to the Estate and Gift Tax Group in the District Office of the Internal Revenue Service that has examination jurisdiction over the decedent's estate (Internal Revenue Service, District Director, [*specify location*] District Office, Estate and Gift Tax Examination Group, [Street Address, City State, Zip Code]) (or in the case of noncitizen decedents and United States citizens who die domiciled outside the United States, Estate Tax, Assistant Commissioner (International), 950 L'Enfant Plaza, CP:IN:D:C:EX:HQ:1114, Washington, DC 20024). The Internal Revenue Service will not draw on the letter of credit if, within 30 days of receipt of the notice of failure to renew or closure of the U.S. branch of a foreign bank, the U.S. Trustee notifies the Internal Revenue Service (at the same address to which notice is to be sent) that an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C), or (d)(4) of this section, has been secured and that the arrangement will take effect immediately prior to or upon expiration of the letter of credit or closure of the U.S. branch of the foreign bank.

(*2*) *Form of letter of credit.* The letter of credit must be made in the following form (or in a form that is the same as the following form in all material respects), or an alternative form that the Commissioner prescribes by guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter):

[Issue Date]

To: Internal Revenue Service

Attention: District Director, *[specify location]* District Office

Estate and Gift Tax Examination Group [Street Address, City, State, ZIP Code]

[Or in the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States,

To: Estate Tax Group, Assistant Commissioner (International) 950 L'Enfant Plaza CP:IN:D:C:EX:HQ:1114 Washington, DC 20024].

Dear Sirs: We hereby establish our irrevocable Letter of Credit No. ____ in your favor for drawings up to U.S. $ *[Applicant should provide bank with amount which Applicant determined under paragraph (d)(1)(i)(C)]* effective immediately. This Letter of Credit is issued, presentable and payable at our office at _____ and expires at 3:00 p.m. [EDT, EST, CDT, CST, MDT, MST, PDT, PST] on ____ at said office.

For information and reference only, we are informed that this Letter of Credit relates to [*Applicant should provide bank with the identity of qualified domestic trust and governing instrument*], and the name, address, and identifying number of the trustee is [*Applicant should provide bank with the trustee name, address and the QDOT's TIN number, if any*].

Drawings on this Letter of Credit are available upon presentation of the following documents:

1. Your draft drawn at sight on us bearing our Letter of Credit No. ____; and

2. Your signed statement as follows:

The amount of the accompanying draft is payable under *[identify bank]* irrevocable Letter of Credit No. _____ pursuant to section 2056A of the Internal Revenue Code and the regulations promulgated thereunder, because

the Internal Revenue Service in its sole discretion has determined that a ''taxable event'' with respect to the trust has occurred; e.g., the trust no longer qualifies as a qualified domestic trust as described in section 2056A of the Internal Revenue Code and regulations promulgated thereunder, or a distribution subject to the tax imposed under section 2056A(b)(1) of the Internal Revenue Code has been made.

Except as expressly stated herein, this undertaking is not subject to any agreement, requirement or qualification. The obligation of *[Name of Issuing Bank]* under this Letter of Credit is the individual obligation of [*Name of Issuing Bank*] and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for a period of one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we mail to you and to the U.S. Trustee notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your and the trustee's address indicated above, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt of this notice, you may draw hereunder on or before the then current expiration date, by presentation of your draft and statement as stipulated above.

[In the case of a letter of credit issued by a U.S. branch of a foreign bank the following language must be added]. It is a further condition of this Letter of Credit that if the U.S. branch of *[name of foreign bank]* is to be closed, that at least sixty days prior to closing, we mail to you and the U.S. Trustee notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your and the U.S. Trustee's address indicated above, that this branch will be closing. This notice will specify the actual date of closing. Upon receipt of the notice, you may draw hereunder on or before the date of closure, by presentation of your draft and statement as stipulated above.

Except where otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500. If we notify you of our election not to consider this Letter of Credit renewed and the expiration date occurs during an interruption of business described in Article 17 of said Publication 500, unless you had consented to cancellation prior to the expiration date, the bank hereby specifically agrees to effect payment if this Letter of Credit is drawn against within 30 days after the resumption of business.

Except as stated herein, this Letter of Credit cannot be modified or revoked without your consent.

Authorized Signature _____ Date _____

(*3*) *Form of confirmation.* If the requirements of this paragraph (d)(1)(i)(C) are satisfied by the issuance of a letter of credit by a foreign bank with confirmation by a bank as defined in section 581, the confirmation must be made in the following form (or in a form that is the same as the following form in all material respects), or an alternative form as the Commissioner prescribes by guidance published in the Internal Revenue Bulletin (see § 602.101(d)(2) of this chapter):

[Issue Date]

To: Internal Revenue Service

Attention: District Director, [*specify location*] District Office Estate and Gift Tax Examination Group [State Address, City, State, ZIP Code]

[or in the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States,

To: Estate Tax Group, Assistant Commissioner (International) 950 L'Enfant Plaza CP:IN:D:C:EX:HQ:1114, Washington, DC 20024].

Dear Sirs: We hereby confirm the enclosed irrevocable Letter of Credit No. _____, and amendments thereto, if any, in your favor by _____ [Issuing Bank] for drawings up to U.S. _____ [same amount as in initial Letter of Credit] effective immediately. This confirmation is issued, presentable and payable at our office at _____ and expires at 3:00 p.m. [EDT, EST, CDT, CST, MDT, MST, PDT, PST] on _____ at said office.

For information and reference only, we are informed that this Confirmation relates to [Applicant should provide bank with the identity of qualified domestic trust and governing instrument], and the name, address, and identifying number of the trustee is [Applicant should provide bank with the trustee name, address and the QDOT's TIN number, if any].

We hereby undertake to honor your sight draft(s) drawn as specified in the Letter of Credit.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [*Name of Confirming Bank*] under this Confirmation is the individual obligation of [*Name of Confirming Bank*] and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Confirmation that it is deemed to be automatically extended without amendment for a period of one year from the expiry date hereof, or any future expiration date, unless at least sixty days prior to the expiration date, we send to you and to the U.S. Trustee notice by Registered

Mail or Certified Mail, return receipt requested, or by courier to your and the trustee's addresses, respectively, indicated above, that we elect not to consider this Confirmation renewed for any additional period. Upon receipt of this notice by you, you may draw hereunder on or before the then current expiration date, by presentation of your draft and statement as stipulated above.

Except where otherwise stated herein, this Confirmation is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500. If we notify you of our election not to consider this Confirmation renewed and the expiration date occurs during an interruption of business described in Article 17 of said Publication 500, unless you had consented to cancellation prior to the expiration date, the bank hereby specifically agrees to effect payment if this Confirmation is drawn against within 30 days after the resumption of business.

Except as stated herein, this Confirmation cannot be modified or revoked without your consent.

Authorized Signature _____ Date _____

(*4*) *Additional governing instrument requirements.* The trust instrument must provide that if the Internal Revenue Service draws on the letter of credit (or confirmation) in accordance with its terms, neither the U.S. Trustee nor any other person will seek a return of any part of the remittance until April 15th of the calendar year following the year in which the letter of credit (or confirmation) is drawn upon. After that date, any such remittance will be treated as a deposit and returned (without interest) upon request of the U.S. Trustee after the date specified above, unless it is determined that assessment or collection of the tax imposed by section 2056A(b)(1) is in jeopardy, within the meaning of section 6861. If an assessment under section 6861 is made, the remittance will first be credited to any tax liability reported on the Form 706–QDT, then to any unpaid balance of a section 2056A(b)(1)(A) tax liability (plus interest and penalties) for any prior taxable years, and any balance will then be returned to the U.S. Trustee.

(*5*) *Procedure.* The letter of credit (and confirmation, if applicable) is to be filed with the decedent's federal estate tax return, Form 706 or 706NA (unless an extension for filing the letter of credit is granted under § 301.9100 of this chapter). The U.S. Trustee must provide a written statement with the letter of credit that provides a list of the assets that will be used to fund the QDOT and the respective values of the assets. The written statement must also indicate whether any exclusions under paragraph (d)(1)(iv) of this section are claimed.

(D) *Disallowance of marital deduction for substantial undervaluation of QDOT property in certain situations.* (*1*) If either—

(*i*) The bond or letter of credit security arrangement under paragraph (d)(1)(i) (B) or (C) of this section is chosen by the U.S. Trustee; or

(*ii*) The QDOT property as originally reported on the decedent's estate tax return is valued at $2 million or less but, as finally determined for federal estate tax purposes, the QDOT property is determined to be in excess of $2 million, then the marital deduction will be disallowed in its entirety for failure to comply with the requirements of section 2056A if the value of the QDOT property reported on the estate tax return is 50 percent or less of the amount finally determined to be the correct value of the property for federal estate tax purposes.

(*2*) The preceding sentence does not apply if—

(*i*) There was reasonable cause for the undervaluation; and

(*ii*) The fiduciary of the estate acted in good faith with respect to the undervaluation. For this purpose, § 1.6664–4(b) of this chapter applies, to the extent applicable, with respect to the facts and circumstances to be taken into account in making this determination.

(ii) *QDOTs with assets of $2 million or less.* If the fair market value of the assets passing, treated, or deemed to have passed to the QDOT (or in the form of a QDOT), determined without reduction for any indebtedness with respect to the assets, as finally determined for federal estate tax purposes, is $2 million or less as of the date of the decedent's death or, if applicable, the alternate valuation date (adjusted as provided in paragraph (d)(1)(iv) of this section), the trust instrument must provide that either no more than 35 percent of the fair market value of the trust assets, determined annually on the last day of the taxable year of

the trust (or on the last day of the calendar year if the QDOT does not have a taxable year), will consist of real property located outside of the United States, or the trust will meet the requirements prescribed by paragraph (d)(1)(i)(A), (B), or (C) of this section. See paragraph (d)(1)(ii)(D) of this section for special rules in the case of principal distributions from a QDOT, fluctuations in the value of foreign real property held by a QDOT due to changes in value of foreign currency, and fluctuations in the fair market value of assets held by the QDOT. See paragraph (d)(1)(iv) of this section for a special rule for personal residences. If the fair market value, as originally reported on the decedent's estate tax return, of the assets passing or deemed to have passed to the QDOT (determined without reduction for any indebtedness with respect to the assets) is $2 million or less, but the fair market value of the assets as finally determined for federal estate tax purposes is more than $2 million, the U.S. Trustee has a reasonable period of time (not exceeding sixty days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to meet the requirements prescribed by paragraph (d)(1)(i) (A), (B), or (C) of this section. However, see paragraph (d)(1)(i)(D) of this section in the case of a substantial undervaluation of QDOT assets. See § 20.2056A–2(d)(1)(iii) for the definition of finally determined.

(A) *Multiple QDOTs.* For purposes of this paragraph (d)(1)(ii), if more than one QDOT is established for the benefit of the surviving spouse, the fair market value of all the QDOTs are aggregated in determining whether the $2 million threshold under this paragraph (d)(1)(ii) is exceeded.

(B) *Look-through rule.* For purposes of determining whether no more than 35 percent of the fair market value of the QDOT assets consists of foreign real property, if the QDOT owns more than 20% of the voting stock or value in a corporation with 15 or fewer shareholders, or more than 20% of the capital interest of a partnership with 15 or fewer partners, then all assets owned by the corporation or partnership are deemed to be owned directly by the QDOT to the extent of the QDOT's pro rata share of the assets of that corporation or partnership. For a partnership, the QDOT partner's pro rata share is based on the greater of its interest in the capital or profits of the partnership. For purposes of this paragraph, all stock in the corporation, or interests in the partnership, as the case may be, owned by or held for the benefit of the surviving spouse, or any members of the surviving spouse's family (within the meaning of section 267(c)(4)), are treated as owned by the QDOT solely for purposes of determining the number of partners or shareholders in the entity and the QDOT's percentage voting interest or value in the corporation or capital interest in the partnership, but not for the purpose of determining the QDOT's pro rata share of the assets of the entity.

(C) *Interests in other entities.* Interests owned by the QDOT in other entities (such as an interest in a trust) are accorded treatment consistent with that described in paragraph (d)(1)(ii)(B) of this section.

(D) *Special rule for foreign real property.* For purposes of this paragraph (d)(1)(ii), if, on the last day of any taxable year during the term of the QDOT (or the last day of the calendar year if the QDOT does not have a taxable year), the value of foreign real property owned by the QDOT exceeds 35 percent of the fair market value of the trust assets due to: distributions of QDOT principal during that year; fluctuations in the value of the foreign currency in the jurisdiction where the real estate is located; or fluctuations in the fair market value of any assets held in the QDOT, then the QDOT will not be treated as failing to meet the requirements of this paragraph (d)(1). Accordingly, the QDOT will not cease to be a QDOT within the meaning of § 20.2056A–5(b)(3) if, by the end of the taxable year (or the last day of the calendar year if the QDOT does not have a taxable year) of the QDOT immediately following the year in which the 35 percent limit was exceeded, the value of the foreign real property held by the QDOT does not exceed 35 percent of the fair market value of the trust assets or, alternatively, the QDOT meets the

requirements of either paragraph (d)(1)(i) (A), (B), or (C) of this section on or before the close of that succeeding year.

(iii) *Definition of finally determined.* For purposes of § 20.2056A–2(d)(1) (i) and (ii), the fair market value of assets will be treated as finally determined on the earliest to occur of—

(A) The entry of a decision, judgment, decree, or other order by any court of competent jurisdiction that has become final;

(B) The execution of a closing agreement made under section 7121;

(C) Any final disposition by the Internal Revenue Service of a claim for refund;

(D) The issuance of an estate tax closing letter (Form L–154 or equivalent) if no claim for refund is filed; or

(E) The expiration of the period of assessment.

(iv) *Special rules for personal residence and related personal effects*—(A) *Two million dollar threshold.* For purposes of determining whether the $2 million threshold under paragraphs (d)(1)(i) and (ii) of this section has been exceeded, the executor of the estate may elect to exclude up to $600,000 in value attributable to real property (and related furnishings) owned directly by the QDOT that is used by, or held for the use of the surviving spouse as a personal residence and that passes, or is treated as passing, to the QDOT under section 2056(d). The election may be made regardless of whether the real property is situated within or without the United States. The election is made by attaching to the estate tax return on which the QDOT election is made a written statement claiming the exclusion. The statement must clearly identify the property or properties (i.e. address and location) for which the election is being made.

(B) *Security requirement.* For purposes of determining the amount of the bond or letter of credit required when paragraph (d)(1)(i)(B) or (C) of this section applies, the executor of the estate may elect to exclude, during the term of the QDOT, up to $600,000 in value attributable to real property (and related furnishings) owned directly by the QDOT that is used by, or held for the use of the surviving spouse as a personal residence and that passes, or is treated as passing, to the QDOT under section 2056(d). The election may be made regardless of whether the real property is situated within or without the United States. The election is made by attaching to the estate tax return on which the QDOT election is made a written statement claiming the exclusion. If an election is not made on the decedent's estate tax return, the election may be made, prospectively, at any time, during the term of the QDOT, by attaching to the Form 706–QDT a written statement claiming the exclusion. A statement may also be attached to the Form 706–QDT that cancels a prior election of the personal residence exclusion that was made under this paragraph, either on the decedent's estate tax return or on a Form 706–QDT.

(C) *Foreign real property limitation.* The special rules of this paragraph (d)(1)(iv) do not apply for purposes of determining whether more than 35 percent of the QDOT assets consist of foreign real property under paragraph (d)(1)(ii) of this section.

(D) *Personal residence.* For purposes of this paragraph (d)(1)(iv), a *personal residence* is either the principal residence of the surviving spouse within the meaning of section 1034 or one other residence of the surviving spouse. In order to be used by or held for the use of the spouse as a personal residence, the residence must be available at all times for use by the surviving spouse. The residence may not be rented to another party, even when not occupied by the spouse. A personal residence may include appurtenant structures used by the surviving spouse for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location).

(E) *Related furnishings.* The term *related furnishings* means furniture and commonly included items such as appliances, fixtures, decorative items and china, that are not beyond the value associated with normal household and decorative use. Rare artwork, valuable antiques, and automobiles of any kind or class are not within the meaning of this term.

(F) *Required statement.* If one or both of the exclusions provided in paragraph (d)(1)(iv)(A) or (B) of this section are elected by the executor of the estate and the personal residence is later sold or ceases to be used, or held for use as a personal residence, the U.S. Trustee must file the statement that is required under paragraph (d)(3) of this section at the time and in the manner provided in paragraphs (d)(3)(ii) and (iii) of this section.

(G) *Cessation of use.* Except as provided in this paragraph (d)(1)(iv)(G), if the residence ceases to be used by, or held for the use of, the spouse as a personal residence of the spouse, or if the residence is sold during the term of the QDOT, the exclusions provided in paragraphs (d)(1)(iv)(A) and (B) of this section cease to apply. However, if the residence is sold, the exclusion continues to apply if, within 12 months of the date of sale, the amount of the adjusted sales price (as defined in section 1034(b)(1)) is reinvested to purchase a new personal residence for the spouse. If less than the amount of the adjusted sales price is reinvested, the amount of the exclusion equals the amount reinvested in the new residence plus any amount previously allocated to a residence that continues to qualify for the exclusion, up to a total of $600,000. If the QDOT ceases to qualify for all or any portion of the initially claimed exclusions, paragraph (d)(1)(i) of this section, if applicable (determined as if the portion of the exclusions disallowed had not been initially claimed by the QDOT), must be complied with no later than 120 days after the effective date of the cessation. In addition, if a residence ceases to be used by, or held for the use of the spouse as a personal residence of the spouse or if the personal residence is sold during the term of the QDOT, the personal residence exclusion may be allocated to another residence that is held in either the same QDOT or in another QDOT that is established for the surviving spouse, if the other residence qualifies as being used by, or held for the use of the spouse as a personal residence. The trustee may allocate up to $600,000 to the new personal residence (less the amount previously allocated to a residence that continues to qualify for the exclusion) even if the entire $600,000 exclusion was not previously utilized with respect to the original personal residence(s).

(v) *Anti-abuse rule.* Regardless of whether the QDOT designates a bank as the U.S. Trustee under paragraph (d)(1)(i)(A) of this section (or otherwise complies with paragraph (d)(1)(i)(A) of this section by naming a foreign bank with a United States branch as a trustee to serve with the U.S. Trustee), complies with paragraph (d)(1)(i)(B) or (C) of this section, or is subject to and complies with the foreign real property requirements of paragraph (d)(1)(ii) of this section, the trust immediately ceases to qualify as a QDOT if the trust utilizes any device or arrangement that has, as a principal purpose, the avoidance of liability for the estate tax imposed under section 2056A(b)(1), or the prevention of the collection of the tax. For example, the trust may become subject to this paragraph (d)(1)(v) if the U.S. Trustee that is selected is a domestic corporation established with insubstantial capitalization by the surviving spouse or members of the spouse's family.

(2) *Individual trustees.* If the U.S. Trustee is an individual United States citizen, the individual must have a tax home (as defined in section 911(d)(3)) in the United States.

(3) *Annual reporting requirements*—(i) *In general.* The U.S. Trustee must file a written statement described in paragraph (d)(3)(iii) of this section, if the QDOT satisfies any one of the following criteria for the applicable reporting years—

(A) The QDOT directly owns any foreign real property on the last day of its taxable year (or the last day of the calendar year if it has no taxable year), and the QDOT does not satisfy the requirements of paragraph (d)(1)(i) (A), (B), or (C) or (d)(4) of this section by employing a bank as trustee or providing security; or

(B) The personal residence previously subject to the exclusion under paragraph (d)(1)(iv) of this section is sold, or that personal residence ceases to be used, or held for use, as a personal residence, during the taxable year (or during the calendar year if the QDOT does not have a taxable year); or

(C) After the application of the look-through rule contained in paragraph (d)(1)(ii)(B) of this section, the QDOT is treated as owning any foreign real property on the last day of the taxable year (or the last day of the calendar year if the QDOT has no taxable year), and the QDOT does not satisfy the requirements of paragraph (d)(1) (A), (B), (C) or (d)(4) of this section by employing a bank as trustee or providing security.

(ii) *Time and manner of filing.* The written statement, containing the information described in paragraph (d)(3)(iii) of this section, is to be filed for the taxable year of the QDOT (calendar year if the QDOT does not have a taxable year) for which any of the events or conditions requiring the filing of a statement under paragraph (d)(3)(i) of this section have occurred or have been satisfied. The written statement is to be submitted to the Internal Revenue Service by filing a Form 706–QDT, with the statement attached, no later than April 15th of the calendar year following the calendar year in which or with which the taxable year of the QDOT ends (or by April 15th of the following year if the QDOT has no taxable year), unless an extension of time is obtained under § 20.2056A–11(a). The Form 706–QDT, with attached statement, must be filed regardless of whether the Form 706–QDT is otherwise required to be filed under the provisions of this chapter. Failure to file timely the statement may subject the QDOT to the rules of paragraph (d)(1)(v) of this section.

(iii) *Contents of statement.* The written statement must contain the following information—

(A) The name, address, and taxpayer identification number, if any, of the U.S. Trustee and the QDOT; and

(B) A list summarizing the assets held by the QDOT, together with the fair market value of each listed QDOT asset, determined as of the last day of the taxable year (December 31 if the QDOT does not have a taxable year) for which the written statement is filed. If the look-through rule contained in paragraph (d)(1)(ii)(B) of this section applies, then the partnership, corporation, trust or other entity must be identified and the QDOT's pro rata share of the foreign real property and other assets owned by that entity must be listed on the statement as if directly owned by the QDOT; and

(C) If a personal residence previously subject to the exclusion under paragraph (d)(1)(iv) of this section is sold during the taxable year (or during the calendar year if the QDOT does not have a taxable year), the statement must provide the date of sale, the adjusted sales price (as defined in section 1034(b)(1)), the extent to which the amount of the adjusted sales price has been or will be used to purchase a new personal residence and, if not timely reinvested, the steps that will or have been taken to comply with paragraph (d)(1)(i) of this section, if applicable; and

(D) If the personal residence ceases to be used, or held for use, as a personal residence by the surviving spouse during the taxable year (or during the calendar year if the QDOT does not have a taxable year), the written statement must describe the steps that will or have been taken to comply with paragraph (d)(1)(i) of this section, if applicable.

(4) *Request for alternate arrangement or waiver.* If the Commissioner provides guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) pursuant to which a testator, executor, or the U.S. Trustee may adopt an alternate plan or arrangement to assure collection of the section 2056A estate tax, and if the alternate plan or arrangement is adopted in accordance with the published guidance, then the QDOT will be treated, subject to paragraph (d)(1)(v) of this section, as meeting the requirements of paragraph (d)(1) of this section. Until this guidance is published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), taxpayers may submit a request for a private letter ruling for the approval of an alternate plan or arrangement proposed to be adopted to assure collection of the section 2056A estate tax in lieu of the requirements prescribed in this paragraph (d)(4).

(5) *Adjustment of dollar threshold and exclusion.* The Commissioner may increase or decrease the dollar amounts referred to in paragraph (d)(1)(i), (ii) or (iv) of this section in accordance with

guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(6) *Effective date and special rules.* (i) This paragraph (d) is effective for estates of decedents dying after February 19, 1996.

(ii) *Special rule in the case of incompetency.* A revocable trust or a trust created under the terms of a will is deemed to meet the governing instrument requirements of this paragraph (d) notwithstanding that the requirements are not contained in the governing instrument (or otherwise incorporated by reference) if the trust instrument (or will) was executed on or before November 20, 1995, and—

(A) The testator or settlor dies after February 19, 1996;

(B) The testator or settlor is, on November 20, 1995, and at all times thereafter, under a legal disability to amend the will or trust instrument;

(C) The will or trust instrument does not provide the executor or the U.S. Trustee with a power to amend the instrument in order to meet the requirements of section 2056A; and

(D) The U.S. Trustee provides a written statement with the federal estate tax return (Form 706 or 706NA) that the trust is being administered (or will be administered) so as to be in actual compliance with the requirements of this paragraph (d) and will continue to be administered so as to be in actual compliance with this paragraph (d) for the duration of the trust. This statement must be binding on all successor trustees.

(iii) *Special rule in the case of certain irrevocable trusts.* An irrevocable trust is deemed to meet the governing instrument requirements of this paragraph (d) notwithstanding that the requirements are not contained in the governing instrument (or otherwise incorporated by reference) if the trust was executed on or before November 20, 1995, and:

(A) The settlor dies after February 19, 1996;

(B) The trust instrument does not provide the U.S. Trustee with a power to amend the trust instrument in order to meet the requirements of section 2056A; and

(C) The U.S. Trustee provides a written statement with the decedent's federal estate tax return (Form 706 or 706NA) that the trust is being administered in actual compliance with the requirements of this paragraph (d) and will continue to be administered so as to be in actual compliance with this paragraph (d) for the duration of the trust. This statement must be binding on all successor trustees.

[T.D. 8612, 60 FR 43540, Aug. 22, 1995, as amended by T.D. 8686, 61 FR 60553, Nov. 29, 1996]

§ 20.2056A–3 QDOT election.

(a) *General rule.* Subject to the time period prescribed in section 2056A(d), the election to treat a trust as a QDOT must be made on the last federal estate tax return filed before the due date (including extensions of time to file actually granted) or, if a timely return is not filed, on the first federal estate tax return filed after the due date. The election, once made, is irrevocable.

(b) *No partial elections.* An election to treat a trust as a QDOT may not be made with respect to a specific portion of an entire trust that would otherwise qualify for the marital deduction but for the application of section 2056(d). However, if the trust is actually severed in accordance with the applicable requirements of § 20.2056(b)–7(b)(2)(ii) prior to the due date for the election, a QDOT election may be made for any one or more of the severed trusts.

(c) *Protective elections.* A protective election may be made to treat a trust as a QDOT only if at the time the federal estate tax return is filed, the executor of the decedent's estate reasonably believes that there is a bona fide issue that concerns either the residency or citizenship of the decedent, the citizenship of the surviving spouse, whether an asset is includible in the decedent's gross estate, or the amount or nature of the property the surviving spouse is entitled to receive. For example, if at the time the federal estate tax return is filed either the estate is involved in a bona fide will contest, there is uncertainty regarding the inclusion in the gross estate of an asset which, if includible, would be eligible for the QDOT election, or there is uncertainty regarding the status of the decedent as

a resident alien or a nonresident alien for estate tax purposes, or a similar uncertainty regarding the citizenship status of the surviving spouse, a protective QDOT election may be made. The protective election is in addition to, and is not in lieu of, the requirements set forth in § 20.2056A–4. The protective QDOT election must be made on a written statement signed by the executor under penalties of perjury and must be attached to the return described in paragraph (a) of this section, and must identify the specific assets to which the protective election refers and the specific basis for the protective election. However, the protective election may otherwise be defined by means of a formula (such as the minimum amount necessary to reduce the estate tax to zero). Once made, the protective election is irrevocable. For example, if a protective election is made because a bona fide question exists as to the includibility of an asset in the decedent's gross estate and it is later finally determined that the asset is so includible, the protective election becomes effective with respect to the asset and cannot thereafter be revoked.

(d) *Manner of election.* The QDOT election under paragraph (a) of this section is made in the form and manner set forth in the decedent's estate tax return, including applicable instructions.

[T.D. 8612, 60 FR 43540, Aug. 22, 1995]

§ 20.2056A–4 Procedures for conforming marital trusts and nontrust marital transfers to the requirements of a qualified domestic trust.

(a) *Marital trusts*—(1) *In general.* If an interest in property passes from the decedent to a trust for the benefit of a noncitizen surviving spouse and if the trust otherwise qualifies for a marital deduction but for the provisions of section 2056(d)(1)(A), the property interest is treated as passing to the surviving spouse in a QDOT if the trust is reformed, either in accordance with the terms of the decedent's will or trust agreement or pursuant to a judicial proceeding, to meet the requirements of a QDOT. For this purpose, the requirements of a QDOT include all of the applicable requirements set forth in § 20.2056A–2, and the requirements of § 20.2056A–2T(d). A reformation pursuant to the terms of the decedent's will or trust instrument must be completed by the time prescribed (including extensions) for filing the decedent's estate tax return. For purposes of this paragraph (a), a return filed prior to the due date (including extensions) is considered filed on the last date that the return is required to be filed (including extensions), and a late return filed at any time after the due date is considered filed on the date that it is actually filed.

(2) *Judicial reformations.* In general, a reformation pursuant to a judicial proceeding is permitted under this section if the reformation is commenced on or before the due date (determined with regard to extensions actually granted) for filing the return of tax imposed by chapter 11 of the Internal Revenue Code, regardless of the date that the return is actually filed. The reformation (either pursuant to a judicial proceeding or otherwise) must result in a trust that is effective under local law. The reformed trust may be revocable by the spouse, or otherwise be subject to the spouse's general power of appointment, provided that no person (including the spouse) has the power to amend the trust during the continued existence of the trust such that it would no longer qualify as a QDOT. Prior to the time that the judicial reformation is completed, the trust must be treated as a QDOT. Thus, the trustee of the trust is responsible for filing the Form 706–QDT, paying any section 2056A estate tax that becomes due, and filing the annual statement required under § 20.2056A–2T(d)(3), if applicable. Failure to comply with these requirements may cause the trust to be subject to the anti-abuse rule under § 20.2056A–2T(d)(1)(iv). In addition, if the judicial reformation is terminated prior to the time that the reformation is completed, the estate of the decedent is required to pay the increased estate tax imposed on the decedent's estate (plus interest and any applicable penalties) that becomes due at the time of such termination as a result of the failure of the trust to comply with section 2056(d). See section 6511 as to applicable time periods for credit or refund of tax.

(3) *Tolling of statutory assessment period.* For the tolling of the statute of limitations in the case of a judicial reformation, see section 2056(d)(5)(B).

(b) *Nontrust marital transfers*—(1) *In general.* Under section 2056(d)(2)(B), if an interest in property passes outright from a decedent to a noncitizen surviving spouse either by testamentary bequest or devise, by operation of law, or pursuant to an annuity or other similar plan or arrangement, and such property interest otherwise qualifies for a marital deduction except that it does not pass in a QDOT, solely for purposes of section 2056(d)(2)(A), the property is treated as passing to the surviving spouse in a QDOT if the property interest is either actually transferred to a QDOT before the estate tax return is filed and on or before the last date prescribed by law that the QDOT election may be made, or is assigned to a QDOT under an enforceable and irrevocable written assignment made on or before the date on which the return is filed and on or before the last date prescribed by law that the QDOT election may be made. The transfer or assignment of property to a QDOT may be made by the surviving spouse, the surviving spouse's legal representative (if the surviving spouse is incompetent), or the personal representative of the surviving spouse's estate (if the surviving spouse has died). The QDOT to which the property is transferred may be created by the decedent (during life or by will), by the surviving spouse, or by the executor. For purposes of section 2056(d)(2)(B), if no property other than the property passing to the surviving spouse from the decedent is transferred to the QDOT, the transferee QDOT need not be in a form such that the property transferred to the QDOT would qualify for a marital deduction under section 2056(a). However, if other property is or has been transferred to the QDOT, 100 percent of the value of the transferee QDOT must qualify for the marital deduction under section 2056. For example, if the decedent, a U.S. citizen, bequeaths property to a trust that does not satisfy the requirements of section 2056(b)(5) or (7), or to a trust that does not qualify as an estate trust under § 20.2056(c)–2(b)(1)(i)–(iii), that trust cannot be used as a transferee QDOT by the surviving spouse, since after that trust is fully funded the portion of the value of the trust attributable to property bequeathed to the trust by the decedent will not qualify for a marital deduction under section 2056. Similarly, if the decedent, a nonresident not a citizen of the United States, bequeaths foreign situs assets to a trust created under his will, the surviving spouse may not transfer U.S. situs assets passing to the spouse outside of the will to that trust under this paragraph. See § 20.2056A–3(c) with respect to protective elections. See § 20.2056A–3(a) with respect to the time limitations for making the QDOT election.

(2) *Form of transfer or assignment.* A transfer or assignment of property to a QDOT must be in writing and otherwise be in accordance with all local law requirements for such assignment or transfer. The transfer or assignment may be of a specific asset or a group of assets, or a fractional share of either, or may be of a pecuniary amount. A transfer or assignment of less than an entire interest in an asset or a group of assets may be expressed by means of a formula (such as the minimum amount necessary to reduce the estate tax to zero). In the case of a transfer, a copy of the trust instrument evidencing the transfer must be submitted with the decedent's estate tax return. In the case of an assignment, a copy of the assignment must be submitted with the decedent's estate tax return.

(3) *Assets eligible for transfer or assignment.* If a transfer or assignment is of a specific asset or group of assets, only assets included in the decedent's gross estate and passing from the decedent to the spouse (or the proceeds from the sale, exchange or conversion of such assets) may be transferred or assigned to the QDOT. The noncitizen surviving spouse may not transfer or assign to the QDOT property owned by the surviving spouse at the time of the decedent's death in lieu of property included in the decedent's gross estate that passes to the spouse (or in lieu of the proceeds from the sale, exchange or conversion of such includible assets). In addition, if only a portion of an asset is includible in the decedent's gross estate, the spouse may only

transfer the portion that is so includible to the transferee trust under this paragraph (b)(3).

(4) *Pecuniary assignment—special rules.* If the assignment is expressed in the form of a pecuniary amount (such as a fixed dollar amount or a formula designed to reduce the decedent's estate tax to zero), the assignment must specify that—

(i) Assets actually transferred to the QDOT in satisfaction of the assignment have an aggregate fair market value on the date of actual transfer to the QDOT amounting to no less than the amount of the pecuniary transfer or assignment; or

(ii) The assets actually transferred to the QDOT be fairly representative of appreciation or depreciation in the value of all property available for transfer to the QDOT between the valuation date and the date of actual transfer to the QDOT, if the assignment is to be satisfied by accounting for the assets on the basis of their fair market value as of some date before the date of actual transfer to the QDOT.

(5) *Transfer tax treatment of transfer or assignment.* Property assigned or transferred to a QDOT pursuant to section 2056(d)(2)(B) is treated as passing from the decedent to a QDOT solely for purposes of section 2056(d)(2)(A). For all other purposes (e.g., income, gift, estate, generation-skipping transfer tax, and section 1491 excise tax), the surviving spouse is treated as the transferor of the property to the QDOT. However, the spouse is not considered the transferor of property to a QDOT if the transfer by the spouse constitutes a transfer that satisfies the requirements of section 2518(c)(3). For a special exception to the valuation rules of section 2702 in the case of a transfer by the surviving spouse to a QDOT, see § 25.2702–1(c)(8) of this chapter.

(6) *Period for completion of transfer.* Property irrevocably assigned but not actually transferred to the QDOT before the estate tax return is filed must actually be conveyed and transferred to the QDOT under applicable local law before the administration of the decedent's estate is completed. If there is no administration of the decedent's estate (because for example, none of the decedent's assets are subject to probate under local law), the conveyance must be made on or before the date that is one year after the due date (including extensions) for filing the decedent's estate tax return. If an actual transfer to the QDOT is not timely made, section 2056(d)(1)(A) applies and the marital deduction is not allowed. The executor of the decedent's estate (or other authorized legal representative) may request a private letter ruling from the Internal Revenue Service requesting an extension of the time for completing the conveyance or waiving the actual conveyance under specified circumstances under § 301.9100–1(a) of this chapter.

(7) *Retirement accounts and annuities*—(i) *In general.* An assignment otherwise in compliance with this paragraph (b) of rights under annuities or other similar arrangements that are assignable and thus, are not described in paragraph (c) of this section, is treated as a transfer of such property to the QDOT regardless of the method of payment actually elected under such annuity or plan.

(ii) *Individual retirement annuities.* Individual retirement annuities described in section 408(b) are not assignable pursuant to section 408(b)(1) and thus, do not come within the purview of this paragraph (b)(7). See the procedures provided in paragraph (c) of this section.

(iii) *Individual retirement accounts.* Unless the terms of the account provide otherwise, individual retirement accounts described in section 408(a) are assignable and subject to the provisions of this paragraph (b)(7). However, under paragraph (c) of this section, the surviving spouse may treat an individual retirement account as nonassignable and, therefore, eligible for the procedures in paragraph (c) of this section if the spouse timely complies with the requirements in paragraph (c) of this section.

(iv) *Other effects of assignment.* The provisions of this paragraph (b)(7) apply solely for purposes of qualifying the annuity or account under the rules of § 20.2056A–2 and this section. See, for example, section 408(d) and 4980A regarding the consequences of an assignment for purposes other than this paragraph (b)(7).

(8) *Protective assignment.* A protective assignment of property to a QDOT may be made only if, at the time the federal estate tax return is filed, the executor of the decedent's estate reasonably believes that there is a bona fide issue that concerns either the residency or citizenship of the decedent, the citizenship of the surviving spouse, whether all or a portion of an asset is includible in the decedent's gross estate, or the amount or nature of the property the surviving spouse is entitled to receive. For example, if at the time the federal estate tax return is filed, either the estate is involved in a bona fide will contest, there is uncertainty regarding the inclusion in the gross estate of an asset which, if includible, would be eligible for the QDOT election, or there is uncertainty regarding the status of the decedent as a resident alien or a nonresident alien for estate tax purposes, or a similar uncertainty regarding the citizenship status of the surviving spouse, a protective assignment may be made. The protective assignment must be made on a written statement signed by the assignor under penalties of perjury on or before the date prescribed under paragraph (b)(1) of this section, and must identify the specific assets to which the assignment refers and the specific basis for the protective assignment. However, the protective assignment may otherwise be defined by means of a formula (such as the minimum amount necessary to reduce the estate tax to zero). Once made, the protective assignment cannot be revoked. For example, if a protective assignment is made because a bona fide question exists as to the includibility of an asset in the decedent's gross estate and it is later finally determined that the asset is so includible, the protective assignment becomes effective with respect to the asset and cannot thereafter be revoked. Protective assignments are, in all events, subject to paragraph (b)(6) of this section. A copy of the protective assignment must be submitted with the decedent's estate tax return.

(c) *Nonassignable annuities and other arrangements*—(1) *Definition and general rule.* For purposes of this section, a *nonassignable annuity or other arrangement* means a plan, annuity, or other arrangement (whether qualified or not qualified under part I of subchapter D of chapter 1 of subtitle A of the Internal Revenue Code) that qualifies for the marital deduction but for section 2056(d)(1)(A), and whose payments are not assignable or transferable to the QDOT under either federal law (see, e.g., section 401(a)(13)), state law, foreign law, or the terms of the plan or arrangement itself. For purposes of this paragraph (c), a surviving spouse's interest as beneficiary of an individual retirement annuity described in section 408(b) is a nonassignable annuity or other arrangement. See section 408(b)(1). For purposes of this paragraph (c), a surviving spouse's interest as beneficiary of an individual retirement account described in section 408(a), although assignable under that section, is considered to be a nonassignable annuity or other arrangement eligible for the procedures contained in this paragraph (c), at the option of the surviving spouse, if the requirements of this paragraph are otherwise satisfied. See paragraph (b)(7) of this section if the spouse elects to treat the account as assignable. In the case of a plan, annuity, or other arrangement which is not assignable or transferable (or is treated as such), the property passing under the plan from the decedent is treated as meeting the requirements § 20.2056A–2, and the requirements of § 20.2056A–2T(d) (pertaining, respectively, to general requirements, qualified marital interest requirements, statutory requirements, and requirements to ensure collection of the tax) if the requirements of either paragraph (c)(2) or (3) of this section are satisfied. Thus, the property will be treated as passing in the form of a QDOT, notwithstanding that the spouse does not irrevocably transfer or assign the annuity or other payment to the QDOT as provided in paragraph (b) of this section. The Commissioner will prescribe by administrative guidance the extent, if any, to which the provisions of this paragraph (c) apply to a rollover from a qualified trust to an eligible retirement plan within the

meaning of section 402(c) or a distribution from an individual retirement account or an individual retirement annuity that is paid into an individual retirement account or an individual retirement annuity within the meaning of section 408(d)(3).

(2) *Agreement to remit section 2056A estate tax on corpus portion of each annuity payment.* The requirements of this paragraph (c)(2) are satisfied if—

(i) The noncitizen surviving spouse agrees to pay on an annual basis, as described in paragraph (c)(6)(i) of this section, the estate tax imposed under section 2056A(b)(1) due on the corpus portion, as defined in paragraph (c)(4) of this section, of each nonassignable annuity or other payment received under the plan or arrangement. However, for purposes of this paragraph (c)(2), if the financial circumstances of the spouse are such that an amount equal to all or a portion of the corpus portion of a nonassignable annuity payment received by the spouse would be subject to a hardship exemption (as defined in § 20.2056A–5(c)) if paid from a QDOT, then all or a corresponding part of the corpus portion will be exempt from the tax payment requirement under this paragraph (c)(2);

(ii) The executor of the decedent's estate files with the estate tax return the Information Statement described in paragraph (c)(5) of this section;

(iii) The executor files with the estate tax return the Agreement To Pay Section 2056A Estate Tax described in paragraph (c)(6) of this section; and

(iv) The executor makes the election under § 20.2056A–3 with respect to the nonassignable annuity or other payment.

(3) *Agreement to roll over corpus portion of annuity payment to QDOT.* The requirements of this paragraph (c)(3) are satisfied if—

(i) The noncitizen surviving spouse agrees to roll over and transfer, within the time prescribed under paragraph (c)(7)(i) of this section, the corpus portion of each annuity payment to a QDOT, whether the QDOT is created by the decedent's will, the executor of the decedent's estate, or the surviving spouse. However, for purposes of this section, if the financial circumstances of the spouse are such that an amount equal to all or a portion of the corpus portion of a nonassignable annuity payment received by the spouse would be subject to a hardship exemption (as defined in § 20.2056A–5(c)) if paid from a QDOT, then all or a corresponding part of the corpus portion will be exempt from the rollover requirement under this paragraph (c)(3);

(ii) A QDOT for the benefit of the surviving spouse is established prior to the date that the estate tax return is filed and on or prior to the last date prescribed by law that the QDOT election may be made;

(iii) The executor of the decedent's estate files with the estate tax return the Information Statement described in paragraph (c)(5) of this section;

(iv) The executor files with the estate tax return the Agreement To Roll Over Annuity Payments described in paragraph (c)(7) of this section; and

(v) The executor makes the election under § 20.2056A–3 with respect to the nonassignable annuity or other payment. See § 20.2056A–5(c)(3)(iv)(A), regarding distributions from the QDOT reimbursing the spouse for income taxes paid (either by actual payment or withholding) by the spouse with respect to amounts transferred to the QDOT pursuant to this paragraph (c)(3).

(4) *Determination of corpus portion*—(i) *Corpus portion.* For purposes of this paragraph (c), the corpus portion of each nonassignable annuity or other payment is the corpus amount of the annual payment divided by the total annual payment.

(ii) *Corpus amount.* (A) The corpus amount of the annual payment is determined in accordance with the following formula:

$$\text{Corpus Amount} = \frac{\text{Total present value of annuity or other payment}}{\text{Expected annuity term}}$$

(B) The total present value of the annuity or other payment is the present value of the nonassignable annuity or other payment as of the date of the decedent's death, determined in accordance with the interest rates and mortality data prescribed by section 7520. The expected annuity term is the number of years that would be required for the scheduled payments to exhaust a hypothetical fund equal to the present value of the scheduled payments. This is determined by first dividing the total present value of the payments by the annual payment. From the quotient so obtained, the expected annuity term is derived by identifying the term of years that corresponds to the annuity factor equal to the quotient. This is determined by using column 1 of Table B, for the applicable interest rate, contained in Publication 1457, *Alpha Volume*. A copy of this publication may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. If the quotient obtained falls between two terms, the longer term is used.

(5) *Information Statement*—(i) *In general*. In order for a nonassignable annuity or other payment described in this paragraph (c) to qualify under either paragraph (c) (2) or (3) of this section, the Information Statement described in paragraph (c)(5)(ii) of this section must be filed with the decedent's federal estate tax return. The Information Statement must be signed under penalties of perjury by both the executor of the decedent's estate and by the surviving spouse of the decedent (or by the legal representative of the surviving spouse if the surviving spouse is legally incompetent to sign the statement). The Statement must contain all of the information prescribed by this paragraph (c)(5).

(ii) *Annuity source information*—(A) *Employment-related annuity*. If the nonassignable annuity or other payment is employment-related, the following information must be provided—

(*1*) The name and address of the employer;

(*2*) The date of retirement or other separation from employment of the decedent;

(*3*) The name and address of the pension fund, insurance company, or other obligor that is paying the annuity (or similar payment); and

(*4*) The identification number, if any, that the obligor has assigned to the annuity or other payment.

(B) *Annuity not employment-related*. If the nonassignable annuity or other payment is not employment-related, the following information must be provided—

(*1*) The name and address of the person or entity paying the nonassignable annuity or other payment;

(*2*) The date of acquisition of the nonassignable annuity contract by the decedent or by the decedent and the surviving spouse; and

(*3*) The identification number, if any, that the obligor has assigned to the nonassignable annuity or other payment.

(iii) *The total annuity amount payable each year*. The total amount payable annually under the nonassignable annuity or other arrangement, including a description of whether the annuity is payable monthly, quarterly, or at some other interval, and a description of any scheduled changes in the annuity payout amount.

(iv) *The duration of the annuity*. A description of the term of the nonassignable annuity or other payment in years, if it is determined by a term certain, and the name, address, and birthdate of any measuring life if the nonassignable annuity or other payment is determined by one or more lives.

(v) *The market interest rate under section 7520*. The applicable interest rate as determined under section 7520.

(vi) *Determination of corpus portion of each payment (in accordance with paragraph (c)(4) of this section)*. The following items are required in order to determine the corpus portion of each payment—

(A) The present value of the nonassignable annuity or other payment as of the decedent's death;

(B) The expected annuity term;

(C) The corpus amount of the annual annuity payments (paragraph (c)(5)(vi)(A) of this section divided by paragraph (c)(5)(vi)(B) of this section); and

(D) The corpus portion of the annual payments (paragraph (c)(5)(vi)(C) of this section divided by the total amount payable annually).

(vii) *Recipient QDOT.* In the case of an agreement to rollover under paragraph (c)(3) of this section, the following must be provided—

(A) The name and address of the trustee of the QDOT who is the U.S. Trustee; and

(B) The name and taxpayer identification number of the QDOT.

(viii) *Certification statement.* The executor of the decedent's estate and the surviving spouse of the decedent (or the legal representative of the surviving spouse if the surviving spouse is legally incompetent to so certify) must each sign a Certification Statement as follows:

Under penalties of perjury, I hereby certify that, to the best of my knowledge and belief, the information reported in this Information Statement is true, correct and complete.

(6) *Agreement to pay section 2056A estate tax*—(i) *Payment of section 2056A estate tax.* The tax payable under paragraph (c)(2) of this section is payable on an annual basis, commencing in the calendar year following the calendar year of the receipt by the surviving spouse of the spouse's first annuity payment. Form 706QDT and the payment are due on April 15th of each year following the calendar year in which an annuity payment is received except that, in the year of the deceased spouse's death, the Form 706–QDT and the payment are not due prior to the due date, including extensions, for filing the deceased spouse's estate tax return, or if no return is filed, no later than 9 months from the date of the deceased spouse's death; and, in the year of the surviving spouse's death, the Form 706–QDT must be filed and the payment made no later than 9 months from the date of the surviving spouse's death. See § 20.2056A–11 for extensions of time for filing Form 706–QDT and paying the section 2056A estate tax.

(ii) *Agreement.* In order for a nonassignable annuity or other payment described in this paragraph (c) to qualify under paragraph (c)(2) of this section, the executor of the decedent's estate must file with the estate tax return the following Agreement To Pay Section 2056A Estate Tax, which must be signed by the surviving spouse of the decedent (or by the surviving spouse's legal representative if the surviving spouse is legally incompetent to sign the agreement):

I [*name*] hereby agree that I will report all annuity payments received under the [*name of plan or arrangement*] on Form 706–QDT for the calendar year and remit, on an annual basis, to the Internal Revenue Service the estate tax that is imposed under section 2056A(b)(1) of the Internal Revenue Code on the corpus portion of each annuity payment (as defined in § 20.2056A–4(c)(4) of the Estate Tax Regulations) received under the plan during the calendar year. I also agree that Form 706–QDT is to be filed no later than April 15th of the year following the calendar year in which any annuity payments are received except that: in the case of annuity payments received in the year of my spouse's death, Form 706–QDT and the payment shall not be due prior to the due date, including extensions, for filing my spouse's estate tax return or, if no return is filed, no later than 9 months from the date of my spouse's death (except if I am granted an extension of time to file Form 706–QDT under the provisions of § 20.2056A–11); and in the year of my death, the Form 706–QDT must be filed and the payment made no later than the date my estate tax return is filed (or if no return is filed, no later than 9 months from the date of my death). I further agree that if I fail to timely file Form 706–QDT or to timely pay the tax imposed on the corpus portion of any annuity payment (determined after any extensions of time to pay granted to me under the provisions of § 20.2056A- 11), I may become immediately liable to pay the amount of the tax determined by application of section 2056A(b)(1) on the entire remaining present value of the annuity, calculated as of the beginning of the year in which the payment was received with respect to which I failed to timely pay the tax or failed to timely file the return. However, I may make an application for relief under § 301.9100–1 of the Procedure and Administration Regulations, from the consequences of failing to timely file the Form 706–QDT or failing to timely pay the tax on the corpus portion. [The following sentence is applicable only in cases where the plan or arrangement is established and administered by a person or an entity that is located outside of the United States.] I agree, at the request of the District Director, [or the Assistant Commissioner (International) in the case of a surviving spouse of a nonresident noncitizen decedent or a surviving spouse of a United States citizen who died domiciled outside the United States] to enter into a security

agreement to secure my undertakings under this agreement.

(7) *Agreement to roll over annuity payments*—(i) *Roll over of corpus portion.* Beginning in the calendar year of the receipt by the surviving spouse of the spouse's first annuity payment, the corpus portion of each annuity payment, as determined under paragraph (c)(4) of this section, must, within 60 days of receipt, be transferred to a QDOT. In addition, all annuity payments received during the calendar year must be reported on Form 706–QDT no later than April 15th of the year following the year in which the annuity payments are received, except that in the year of the surviving spouse's death, the Form 706–QDT must be filed no later than the date the estate tax return is filed (or if no return is filed, no later than 9 months from the date of the surviving spouse's death). See § 20.2056A–11 for extensions of time for filing Form 706–QDT.

(ii) *Agreement.* In order for a nonassignable annuity or other payment described in this paragraph (c) to qualify under paragraph (c)(3) of this section, the executor of the decedent's estate must file with the estate tax return the following Agreement To Roll Over Annuity Payments, which must be signed by the surviving spouse of the decedent (or by the legal representative of the surviving spouse if the surviving spouse is legally incompetent to sign the agreement):

I [*name*] hereby agree that within 60 days of receipt of each annuity payment paid under the [*name of plan or arrangement*], I will transfer an amount equal to _____ percent (the corpus portion determined under § 20.2056A–4(c)(4) of the Estate Tax Regulations) of each annuity payment to [*identify the QDOT*]. Further, I will report all annuity payments received during the calendar year under the [*name of plan or arrangement*] on Form 706–QDT including a schedule of transfers to the [identify the QDOT]. I also agree that Form 706–QDT is to be filed no later than April 15th of the year following the year in which any annuity payments are received except that: in the case of annuity payments received in the year of my spouse's death, Form 706–QDT shall not be due prior to the due date, including extensions, for filing my spouse's estate tax return, or, if no return is filed, no later than 9 months from the date of my spouse's death (except if I am granted an extension of time to file Form 706–QDT under the provisions of § 20.2056A–11); and in the year of my death, the Form 706–QDT must be filed no later than the date my estate tax return is filed (or if no return is filed, no later than 9 months from the date of my death), and except if I am granted an extension of time to file Form 706–QDT under the provisions of § 20.2056A–11. I further agree that if I fail to timely transfer any required amount with respect to any annuity payment, or fail to timely file Form 706–QDT reporting the transfers for any year, I may become immediately liable to pay the amount of the tax determined by application of section 2056A(b)(1) on the entire remaining present value of the annuity, calculated as of the beginning of the year in which the payment was received with respect to which I failed to make the timely transfer or timely file a return. However, I may make an application for relief under § 301.9100–1 of the Procedure and Administration Regulations, from the consequences of failing to timely file Form 706–QDT or failing to timely transfer the corpus portion of any annuity payment to the QDOT. [The following sentence is applicable only in cases where the plan or arrangement is established and administered by a person or an entity that is located outside of the United States.] I agree, at the request of the District Director [or the Assistant Commissioner (International) in the case of a surviving spouse of a nonresident noncitizen decedent or a surviving spouse of a United States citizen who died domiciled outside the United States] to enter into a security agreement to secure my undertakings under this agreement.

(d) *Examples.* The provisions of this section are illustrated by the following examples. In each of the following examples the decedent, *D*, a citizen of the United States, died after August 22, 1995, and *D*'s surviving spouse, *S*, is not a United States citizen at the time of *D*'s death.

Example 1. Transfer and assignment of probate and nonprobate property to QDOT. (i) *S* is the beneficiary of the following probate and nonprobate assets included in *D*'s gross estate:

Pecuniary bequest under will	$400,000
Proceeds of life insurance	200,000
D's interest in property owned jointly with *S* includible in the gross estate under § 2040(a)	300,000
Devise of real property under will	100,000
Total	$1,000,000

(ii) Before the estate tax return for *D*'s estate is filed and before the date that the QDOT election must be made, *S* creates a

QDOT pursuant to which all income is payable to *S* for life and the remainder is distributable to *S*'s children. *S* retains a power of appointment over the disposition of the remainder to ensure that *S* does not make an immediate gift of the remainder of the trust. Also, before the estate tax return is filed and before the date that the QDOT election must be made, *S* transfers the life insurance proceeds and the specifically devised real property to the QDOT. *S* decides not to transfer the property that had been jointly owned to the QDOT. Because S has not received distribution of the pecuniary bequest before *D*'s estate tax return is filed and before the date that the QDOT election must be made, *S* irrevocably assigns the interest in the pecuniary bequest to the QDOT. Assume that the pecuniary bequest is in fact transferred by *S* to the QDOT before the estate administration is concluded. *D*'s executor makes a QDOT election on the estate tax return for the $700,000 in property that *S* has transferred and assigned to the QDOT. A marital deduction of $700,000 is allowed to *D*'s estate assuming the estate tax return is filed and the QDOT election is made within the time limitation prescribed in § 20.2056A–3(a). No marital deduction is allowed for the $300,000 interest in jointly-owned property not transferred to the QDOT.

Example 2. Formula assignment. Under the terms of *D*'s will, the entire probate estate passes outright to *S*. Prior to the date *D*'s estate tax return is filed and before the date that the QDOT election must be made, *S* establishes a QDOT and *S* executes an irrevocable assignment in which *S* assigns to the QDOT, ''that portion of the gross estate necessary to reduce the estate tax to zero, taking into account all available credits and deductions.'' The assignment meets the requirements of paragraph (b) of this section, assuming that the QDOT is funded by the time that administration of *D*'s estate is completed.

Example 3. Jointly owned property. At the time of *D*'s death, *D* and *S* hold real property as joint tenants with right of survivorship. In accordance with section 2056(d)(1)(B), section 2040(a), and § 20.2056A–8(a), 60 percent of the value of the property is included in *D*'s gross estate. *S* establishes a QDOT and, prior to the date the estate tax return is filed and before the date that the QDOT election must be made, *S* transfers a 60 percent interest in the real property to the QDOT. The transfer satisfies the requirements of paragraph (b) of this section.

Example 4. Computation of corpus portion of annuity payment. (i) At the time of *D*'s death, *D* is a participant in an employees' pension plan described in section 401(a). On *D*'s death, *D*'s spouse *S*, a resident of the United States, becomes entitled to receive a survivor's annuity of $72,000 per year, payable monthly, for life. At the time of *D*'s death, *S* is age 60. Assume that under section 7520, the appropriate discount rate to be used for valuing annuities in the case of this decedent is 9 percent. The annuity factor at 9 percent for a person age 60 is 8.3031. The adjustment factor at 9 percent for monthly payments is 1.0406. Accordingly, the right to receive $72,000 a year on a monthly basis is equal to the right to receive $74,923 ($72,000 × 1.0406) on an annual basis.

(ii) The corpus portion of each annuity payment received by *S* is determined as follows. The first step is to determine the annuity factor for the number of years that would be required to exhaust a hypothetical fund that has a present value and a payout corresponding to *S*'s interest in the payments under the plan, determined as follows:

(A) Present value of *S*'s annuity: $74,923 x 8.3031 = $622,093

(B) Annuity Factor for Expected Annuity Term: $622,093/$74,923 = 8.3031

(iii) The second step is to determine the number of years that would be required for *S*'s annuity to exhaust a hypothetical fund of $622,093. The term certain annuity factor of 8.3031 falls between the annuity factors for 15 and 16 years in a 9 percent term certain annuity table (Column 1 of Table B, Publication 1457 *Alpha Volume* which may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402). Accordingly, the expected annuity term is 16 years.

(iv) The third step is to determine the corpus amount by dividing the expected term of 16 years into the present value of the hypothetical fund as follows:

Corpus amount of annual payment: $622,093/16 = $38,881

(v) In the fourth step, the corpus portion of each annuity payment is determined by dividing the corpus amount of each annual payment by the annual annuity payment as follows:

Corpus portion of each annuity payment: $38,881/$74,923 = .52

(vi) Accordingly, 52 percent of each payment to *S* is deemed to be a distribution of corpus. A marital deduction is allowed for $622,093, the present value of the annuity as of *D*'s date of death, if either: *S* agrees to roll over the corpus portion of each payment to a QDOT and the executor files the Information Statement described in paragraph (c)(5) of this section and the Roll Over Agreement described in paragraph (c)(7) of this section; or *S* agrees to pay the tax due on the corpus portion of each payment and the executor files the Information Statement described in paragraph (c)(5) of this section and the Payment Agreement described in paragraph (c)(6) of this section.

Example 5. Transfer to QDOT subject to gift tax. *D*'s will bequeaths $700,000 outright to *S*.

The bequest qualifies for a marital deduction under section 2056(a) except that it does not pass in a QDOT. *S* creates an irrevocable trust that meets the requirements for a QDOT and transfers the $700,000 to the QDOT. The QDOT instrument provides that *S* is entitled to all the income from the QDOT payable at least annually and that, upon the death of *S*, the property remaining in the QDOT is to be distributed to the grandchildren of *D* and *S* in equal shares. The trust instrument contains all other provisions required to qualify as a QDOT. On *D*'s estate tax return, *D*'s executor makes a QDOT election under section 2056A(a)(3). Solely for purposes of the marital deduction, the property is deemed to pass from *D* to the QDOT. *D*'s estate is entitled to a marital deduction for the $700,000 value of the property passing from *D* to *S*. *S*'s transfer of property to the QDOT is treated as a gift of the remainder interest for gift tax purposes because *S*'s transfer creates a vested remainder interest in the grandchildren of *D* and *S*. Accordingly, as of the date that *S* transfers the property to the QDOT, a gift tax is imposed on the present value of the remainder interest. See § 25.2702–1(c)(8) of this chapter exempting *S*'s transfer from the special valuation rules contained in section 2702. At *S*'s death, *S* is treated as the transferor of the property into the trust for estate tax and generation-skipping transfer tax purposes. See, e.g., sections 2036 and 2652(a)(1). The trust is not eligible for a reverse QTIP election by *D*'s estate under section 2652(a)(3) because a QTIP election cannot be made for the QDOT. This is so because the marital deduction is allowed under section 2056(a) for the outright bequest to the spouse and the spouse is then separately treated as the transferor of the property to the QDOT.

[T.D. 8612, 60 FR 43541, Aug. 22, 1995]

§ 20.2056A–5 Imposition of section 2056A estate tax.

(a) *In general.* An estate tax is imposed under section 2056A(b)(1) on the occurrence of a taxable event, as defined in section 2056A(b)(9). The tax is generally equal to the amount of estate tax that would have been imposed if the amount involved in the taxable event had been included in the decedent's taxable estate and had not been deductible under section 2056. See section 2056A(b)(3) and paragraph (c) of this section for certain exceptions from taxable events.

(b) *Amounts subject to tax*—(1) *Distribution of principal during the spouse's lifetime.* If a taxable event occurs during the noncitizen surviving spouse's lifetime, the amount on which the section 2056A estate tax is imposed is the amount of money and the fair market value of the property that is the subject of the distribution (including property distributed from the trust pursuant to the exercise of a power of appointment), including any amount withheld from the distribution by the U.S. Trustee to pay the tax. If, however, the tax is not withheld by the U.S. Trustee but is paid by the U.S. Trustee out of other assets of the QDOT, an amount equal to the tax so paid is treated as an additional distribution to the spouse in the year that the tax is paid.

(2) *Death of surviving spouse.* If a taxable event occurs as a result of the death of the surviving spouse, the amount subject to tax is the fair market value of the trust assets on the date of the spouse's death (or alternate valuation date if applicable). See also section 2032A. Any corpus portion amounts, within the meaning of § 20.2056A–4(c)(4)(i), remaining in a QDOT upon the surviving spouse's death, are subject to tax under section 2056A(b)(1)(B), as well as any residual payments resulting from a nonassignable plan or arrangement that, upon the surviving spouse's death, are payable to the spouse's estate or to successor beneficiaries.

(3) *Trust ceases to qualify as QDOT.* If a taxable event occurs as a result of the trust ceasing to qualify as a QDOT (for example, the trust ceases to have at least one U.S. Trustee), the amount subject to tax is the fair market value of the trust assets on the date of disqualification.

(c) *Distributions and dispositions not subject to tax*—(1) *Distributions of principal on account of hardship.* Section 2056A(b)(3)(B) provides an exemption from the section 2056A estate tax for distributions to the surviving spouse on account of hardship. A distribution of principal is treated as made on account of hardship if the distribution is made to the spouse from the QDOT in response to an immediate and substantial financial need relating to the spouse's health, maintenance, education, or support, or the health, maintenance, education, or support of any

person that the surviving spouse is legally obligated to support. A distribution is not treated as made on account of hardship if the amount distributed may be obtained from other sources that are reasonably available to the surviving spouse; e.g., the sale by the surviving spouse of personally owned, publicly traded stock or the cashing in of a certificate of deposit owned by the surviving spouse. Assets such as closely held business interests, real estate and tangible personalty are not considered sources that are reasonably available to the surviving spouse. Although a hardship distribution of principal is exempt from the section 2056A estate tax, it must be reported on Form 706–QDT even if it is the only distribution that occurred during the filing period. See § 20.2056A–11 regarding filing requirements for Form 706–QDT.

(2) *Distributions of income to the surviving spouse.* Section 2056A(b)(3)(A) provides an exemption from the section 2056A estate tax for distributions of income to the surviving spouse. In general, for purposes of section 2056A(b)(3)(A), the term *income* has the same meaning as is provided in section 643(b), except that income does not include capital gains. In addition, income does not include any other item that would be allocated to corpus under applicable local law governing the administration of trusts irrespective of any specific trust provision to the contrary. In cases where there is no specific statutory or case law regarding the allocation of such items under the law governing the administration of the QDOT, the allocation under this paragraph (c)(2) will be governed by general principles of law (including but not limited to any uniform state acts, such as the Uniform Principal and Income Act, or any Restatements of applicable law). Further, except as provided in this paragraph (c)(2) or in administrative guidance published by the Internal Revenue Service, income does not include items constituting income in respect of a decedent (IRD) under section 691. However, in cases where a QDOT is designated by the decedent as a beneficiary of a pension or profit sharing plan described in section 401(a) or an individual retirement account or annuity described in section 408, the proceeds of which are payable to the QDOT in the form of an annuity, any payments received by the QDOT may be allocated between income and corpus using the method prescribed under § 20.2056A–4(c) for determining the corpus and income portion of an annuity payment.

(3) *Certain miscellaneous distributions and dispositions.* Certain miscellaneous distributions and dispositions of trust assets are exempt from the section 2056A estate tax, including but not limited to the following—

(i) Payments for ordinary and necessary expenses of the QDOT (including bond premiums and letter of credit fees);

(ii) Payments to applicable governmental authorities for income tax or any other applicable tax imposed on the QDOT (other than a payment of the section 2056A estate tax due on the occurrence of a taxable event as described in paragraph (b) of this section);

(iii) Dispositions of trust assets by the trustees (such as sales, exchanges, or pledging as collateral) for full and adequate consideration in money or money's worth; and

(iv) Pursuant to section 2056A(b)(15), amounts paid from the QDOT to reimburse the surviving spouse for any tax imposed on the spouse under Subtitle A of the Internal Revenue Code on any item of income of the QDOT to which the surviving spouse is not entitled under the terms of the trust. Such distributions include (but are not limited to) amounts paid from the QDOT to reimburse the spouse for income taxes paid by the spouse (either by actual payment or through withholding) with respect to amounts received from a nonassignable annuity or other arrangement that are transferred by the spouse to a QDOT pursuant to § 20.2056A– 4(c)(3); and income taxes paid by the spouse (either by actual payment or through withholding) with respect to amounts received in a lump sum distribution from a qualified plan if the lump sum distribution is assigned by the surviving spouse to a QDOT. For purposes of this paragraph (c)(3)(iv), the amount of attributable tax eligible for reimbursement is the difference between the actual income

tax liability of the spouse and the spouse's income tax liability determined as if the item had not been included in the spouse's gross income in the applicable taxable year.

[T.D. 8612, 60 FR 43546, Aug. 22, 1995]

§ 20.2056A–6 Amount of tax.

(a) *Definition of tax.* Section 2056A(b)(2) provides for the computation of the section 2056A estate tax. For purposes of sections 2056A(b)(2)(A)(i) and (ii), in determining the tax that would have been imposed under section 2001 on the estate of the first decedent, the rates in effect on the date of the first decedent's death are used. For this purpose, the provisions of section 2001(c)(2) (pertaining to phaseout of graduated rates and unified credit) apply. In addition, for purposes of sections 2056A(b)(2)(A) (i) and (ii), *the tax which would have been imposed by section 2001 on the estate of the decedent* means the net tax determined under section 2001 or 2101, as the case may be, after allowance of any allowable credits, including the unified credit allowable under section 2010, the credit for state death taxes under section 2011, the credit for tax on prior transfers under section 2013, and the credit for foreign death taxes under section 2014. See paragraph (b)(4) of this section regarding the application of the credits under sections 2011 and 2014. In the case of a decedent nonresident not a citizen of the United States, the applicable credits are determined under section 2102. The estate tax (net of any applicable credits) imposed under section 2056A(b)(1) constitutes an estate tax for purposes of section 691(c)(2)(A).

(b) *Benefits allowed in determining amount of section 2056A estate tax*—(1) *General rule.* Section 2056A(b)(10) provides for the allowance of certain benefits in computing the section 2056A estate tax. Except as provided in this section, the rules of each of the credit, deduction and deferral provisions, as provided in the Internal Revenue Code must be complied with.

(2) *Treatment as resident.* For purposes of section 2056A(b)(10)(A), a noncitizen spouse is treated as a resident of the United States for purposes of determining whether the QDOT property is includible in the spouse's gross estate under chapter 11 of the Internal Revenue Code, and for purposes of determining whether any of the credits, deductions or deferral provisions are allowable with respect to the QDOT property to the estate of the spouse.

(3) *Special rule in the case of trusts described in section 2056(b)(8).* In the case of a QDOT in which the spouse's interest qualifies for a marital deduction under section 2056(b)(8), the provisions of section 2056A(b)(10)(A) apply in determining the allowance of a charitable deduction in computing the section 2056A estate tax, notwithstanding that the QDOT is not includible in the spouse's gross estate.

(4) *Credit for state and foreign death taxes.* If the assets of the QDOT are included in the surviving spouse's gross estate for federal estate tax purposes, or would have been so includible if the spouse had been a United States resident, and state or foreign death taxes are paid by the spouse's estate with respect to the QDOT, the taxes paid by the spouse's estate with respect to the QDOT are creditable, to the extent allowable under section 2011 or 2014, as applicable, in computing the section 2056A estate tax. In addition, state or foreign death taxes previously paid by the decedent/transferor's estate are also creditable in computing the section 2056A estate tax to the extent allowable under sections 2011 and 2014. Specifically, the tax that would have been imposed on the decedent's estate if the taxable estate had been increased by the value of the QDOT assets on the spouse's death plus the amount involved in prior taxable events (section 2056A(b)(2)(A)(i)), is determined after allowance of a credit equal to the lesser of the state or foreign death tax previously paid by the decedent's estate, or the amount prescribed under section 2011(b) or 2014(b) computed based on a taxable estate increased by such amounts. Similarly, the tax that would have been imposed on the decedent's estate if the taxable estate had been increased only by the amount involved in prior taxable events (section 2056A(b)(2)(A)(ii)) is determined after allowance of a credit equal to the lesser of the state or foreign death tax previously paid by the decedent's estate, or the amount prescribed under section

2011(b) or 2014(b) computed based on a taxable estate increased by the amount involved in such prior taxable events. See paragraph (d), *Example 2*, of this section.

(5) *Alternate valuation and special use valuation*—(i) *In general.* In order to claim the benefits of alternate valuation under section 2032, or special use valuation under section 2032A, for purposes of computing the section 2056A estate tax, an election must be made on the Form 706–QDT that is filed with respect to the balance remaining in the QDOT upon the death of the surviving spouse. In addition, the separate requirements for making the section 2032 and/or section 2032A elections under those sections and the regulations thereunder must be complied with except that, for this purpose, the surviving spouse is treated as a resident of the United States regardless of the surviving spouse's actual residency status. Solely for purposes of this paragraph (b)(5), the citizenship of the first decedent is immaterial.

(ii) *Alternate valuation.* For purposes of the alternate valuation election under section 2032, the election may not be made unless the election decreases both the value of the property remaining in the QDOT upon the death of the surviving spouse and the net amount of section 2056A estate tax due. Once made, the election is irrevocable.

(iii) *Special use valuation.* For purposes of section 2032A, the Designated Filer (in the case of multiple QDOTs) or the U.S. Trustee may elect to value certain farm and closely held business real property at its farm or business use value, rather than its fair market value, if all of the requirements under section 2032A and the applicable regulations are met, except that, for this purpose, the surviving spouse is treated as a resident of the United States regardless of the spouse's actual residency status. The total value of property valued under section 2032A in the QDOT cannot be decreased from fair market value by more than $750,000.

(c) *Miscellaneous rules.* See sections 2056A(b)(2)(B)(i) and 2056A(b)(2)(C) for special rules regarding the appropriate rate of tax. See section 2056A(b)(2)(B)(ii) for provisions regarding a credit or refund with respect to the section 2056A estate tax.

(d) *Examples.* The rules of this section are illustrated by the following examples.

Example 1. (i) *D*, a United States citizen, dies in 1995 a resident of State X, with a gross estate of $1,200,000. Under *D*'s will, a pecuniary bequest of $700,000 passes to a QDOT for the benefit of *D*'s spouse S, who is a resident but not a citizen of the United States. *D*'s estate tax is computed as follows:

Gross estate	$1,200,000	
Marital Deduction	(700,000)	
Taxable Estate	$500,000	
Gross Tax		$155,800
Less: Unified Credit		(155,800)
Net Tax		0

(ii) *S* dies in 1997 at which time *S* is still a resident of the United States and the value of the assets of the QDOT is $700,000. Assuming there were no taxable events during *S*'s lifetime with respect to the QDOT, the estate tax imposed under section 2056A(b)(1)(B) is $235,000, computed as follows:

D's actual taxable estate	$500,000	
QDOT property	700,000	
Total	$1,200,000	
Gross Tax		$427,800
Less: Unified Credit		(192,800)
Net Tax		$235,000
Less: Tax that would have been imposed on *D*'s actual taxable estate of $500,000		0
Section 2056A Estate Tax		$235,000

Example 2. (i) The facts are the same as in *Example 1*, except that *D*'s gross estate was $2,000,000 and *D*'s estate paid $70,000 in state death taxes to State X. *D*'s estate tax is computed as follows:

Gross Estate	$2,000,000		

Marital Deduction	(700,000)	.....	.....
Taxable Estate	$1,300,000	.....	.....
Gross Tax	.....	.....	$469,800
Less: Unified Credit	.....	192,800	.....
State Death Tax Credit Limitation (lesser of $51,600 or $70,000 tax paid)	.....	51,600	(244,400)
Estate Tax	.....	.....	$225,400

(ii) *S* dies in 1997 at which time *S* is still a resident of the United States and the value of the assets of the QDOT is $800,000. *S*'s estate pays $40,000 in State X death taxes with respect to the inclusion of the QDOT in *S*'s gross estate for state death tax purposes. Assuming there were no taxable events during *S*'s lifetime with respect to the QDOT, the estate tax imposed under section 2056A(b)(1)(B) is $304,800 computed as follows:

D's Actual Taxable Estate	$1,300,000	.....
QDOT Property	800,000	.....
Total	$2,100,000	.....
Gross Tax	.....	$829,800
Less: Unified Credit	.....	(192,800)
Pre-2011 section 2056A estate tax	.....	$637,000
(A) State Death Tax Credit Computation:		
(1) State death tax paid by *S*'s estate with respect to the QDOT [$40,000] plus state death tax previously paid by *D*'s estate [$70,000] = $110,000.	.....	.....
(2) Credit limit under section 2011(b) (based on *D*'s adjusted taxable estate of $2,040,000 under sections 2056A(b)(2)(A) and 2011(b)) = $106,800.	.....	.....
(B) State death tax credit allowable against section 2056A estate tax (lesser of paragraph (ii)(A)(1) or (2) of this Example 2	.....	(106,800)
Net Tax	.....	$530,200
Less: Tax that would have been imposed on *D*'s taxable estate of $1,300,000	.....	225,400
Section 2056A Estate Tax	.....	$304,800

[T.D. 8612, 60 FR 43547, Aug. 22, 1995]

§20.2056A–7 Allowance of prior transfer credit under section 2013.

(a) *Property subject to QDOT election.* Section 2056(d)(3) provides special rules for computing the section 2013 credit allowed with respect to property subject to a QDOT election. In computing the credit under section 2013, the amount of the credit is determined under section 2013 and the regulations thereunder, except that—

(1) The first limitation as described in section 2013(b) and §20.2013–2 is the amount of the estate tax imposed under section 2056A(b)(1)(A), with respect to distributions during the spouse's life, and under section 2056A(b)(1)(B), with respect to the value of the QDOT assets on the spouse's death;

(2) In computing the second limitation as described in section 2013(c) and §20.2013–3, the value of the property transferred to the decedent (as defined in section 2013(d) and §20.2013–4) is deemed to be the value of the QDOT assets on the date of death of the surviving spouse. The value as so determined is not reduced by the section 2056A estate tax imposed at the time of the spouse's death; and

(3) The amount of the credit is determined without regard to the percentage limitations contained in section 2013(a).

(b) *Property not subject to QDOT election.* If property includible in a decedent's gross estate passes to a noncitizen surviving spouse (the transferee) and no deduction is allowed to the decedent's estate for that interest in property under section 2056(a) solely because the requirements of section 2056(d)(2) are not satisfied, and the transferee spouse dies with an estate that is subject to tax under section 2001 or 2101, as the case may be, any credit for tax on prior transfers allowable to the estate of the transferee spouse under section 2013 with respect to such interest in property is determined in accordance with the rules of section 2013 and the regulations thereunder, except that the amount of the credit is determined without regard to the percentage limitations contained in section 2013(a).

(c) *Example.* The application of this section may be illustrated by the following example:

Example. The facts are the same as in § 20.2056A–6, *Example 2*(ii). *D*, a United States citizen, dies in 1994, a resident of State X, with a gross estate of $2,000,000. Under *D*'s will, a pecuniary bequest of $700,000 passes to a QDOT for the benefit of *D*'s spouse *S*, who is a resident but not a citizen of the United States. *S* dies in 1997 at which time *S* is still a resident of the United States and the value of the assets of the QDOT is $800,000. There were no taxable events during *S*'s lifetime. An estate tax of $304,800 is imposed under section 2056A(b)(1)(B). *S*'s taxable estate, including the value of the QDOT ($800,000), is $1,500,000.

(i) Under paragraph (a)(1) of this section, the first limitation for purposes of section 2013(b) is $304,800, the amount of the section 2056A estate tax.

(ii) Under paragraph (a)(2) of this section, the second limitation for purposes of section 2013(c) is computed as follows:

(A) *S*'s net estate tax payable under § 20.2013–3(a)(1), as modified under paragraph (a)(2) of this section, is computed as follows:

Taxable estate	.....	$1,500,000
Gross estate tax	.....	555,800
Less: Unified credit	$192,800	.....
Credit for state death taxes	64,400	257,200
Pre-2013 net estate tax payable	.....	$298,600

(B) *S*'s net estate tax payable under § 20.2013–3(a)(2), as modified under paragraph (a)(2) of this section, is computed as follows:

Taxable estate	.....	$700,000
Gross estate tax	.....	229,800
Less: Unified credit	$192,800	.....
Credit for state death taxes	18,000	210,800
Net tax payable	.....	$19,000
(C) *Second Limitation:*		
Paragraph (ii)(A) of this *Example*	$298,600	.....
Less: Paragraph (ii)(B) of this *Example*	19,000	
		$279,600

(iii) Credit for tax on prior transfers = $279,600 (lesser of paragraphs (i) or (ii) of this *Example.*

[T.D. 8612, 60 FR 43549, Aug. 22, 1995]

§ 20.2056A–8 Special rules for joint property.

(a) *Inclusion in gross estate*—(1) *General rule.* If property is held by the decedent and the surviving spouse of the decedent as joint tenants with right of survivorship, or as tenants by the entirety, and the surviving spouse is not a United States citizen (or treated as a United States citizen) at the time of the decedent's death, the property is subject to inclusion in the decedent's gross estate in accordance with the rules of section 2040(a) (general rule for includibility of joint interests), and section 2040(b) (special rule for includibility of certain joint interests of husbands and wives) does not apply. Accordingly, the rules contained in section 2040(a) and § 20.2040–1 govern the extent to which such joint interests are includible in the gross estate of a decedent who was a citizen or resident of the United States. Under § 20.2040–1(a)(2), the entire value of jointly held property is included in the decedent's gross estate unless the executor submits facts sufficient to show that property was not entirely acquired with consideration furnished by the decedent, or was acquired by the decedent and the other joint owner by

gift, bequest, devise or inheritance. If the decedent is a nonresident not a citizen of the United States, the rules of this paragraph (a)(1) apply pursuant to sections 2103, 2031, 2040(a), and 2056(d)(1)(B).

(2) *Consideration furnished by surviving spouse.* For purposes of applying section 2040(a), in determining the amount of consideration furnished by the surviving spouse, any consideration furnished by the decedent with respect to the property before July 14, 1988, is treated as consideration furnished by the surviving spouse to the extent that the consideration was treated as a gift to the spouse under section 2511, or to the extent that the decedent elected to treat the transfer as a gift to the spouse under section 2515 (to the extent applicable). For purposes of determining whether the consideration was a gift by the decedent under section 2511, it is presumed that the decedent was a citizen of the United States at the time the consideration was so furnished to the spouse. The special rule of this paragraph (a)(2) is applicable only if the donor spouse predeceases the donee spouse and not if the donee spouse predeceases the donor spouse. In cases where the donee spouse predeceases the donor spouse, any portion of the consideration treated as a gift to the donee spouse/decedent on the creation of the tenancy (or subsequently thereafter), regardless of the date the tenancy was created, is not treated as consideration furnished by the donee spouse/decedent for purposes of section 2040(a).

(3) *Amount allowed to be transferred to QDOT.* If, as a result of the application of the rules described above, only a portion of the value of a jointly-held property interest is includible in a decedent's gross estate, only that portion that is so includible may be transferred to a QDOT under section 2056(d)(2). See § 20.2056A–4(b)(1) and (d), *Example 3.*

(b) *Surviving spouse becomes citizen.* Paragraph (a) of this section does not apply if the surviving spouse meets the requirements of section 2056(d)(4). For the definition of resident in applying section 2056(d)(4), see § 20.0–1(b).

(c) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. In 1987, *D*, a United States citizen, purchases real property and takes title in the names of *D* and *S*, *D*'s spouse (a noncitizen, but a United States resident), as joint tenants with right of survivorship. In accordance with § 25.2511–1(h)(5) of this chapter, one-half of the value of the property is a gift to *S*. *D* dies in 1995. Because *S* is not a United States citizen, the provisions of section 2040(a) are determinative of the extent to which the real property is includible in *D*'s gross estate. Because the joint tenancy was established before July 14, 1988, and under the applicable provisions of the Internal Revenue Code and regulations the transfer was treated as a gift of one-half of the property, one-half of the value of the property is deemed attributable to consideration furnished by *S* for purposes of section 2040(a). Accordingly, only one-half of the value of the property is includible in *D*'s gross estate under section 2040(a).

Example 2. The facts are the same as in *Example 1*, except that *S* dies in 1995 survived by *D* who is not a citizen of the United States. For purposes of applying section 2040(a), *D*'s gift to *S* on the creation of the tenancy is not treated as consideration furnished by *S* toward the acquisition of the property. Accordingly, since *S* made no other contributions with respect to the property, no portion of the property is includible in *S*'s gross estate.

Example 3. The facts are the same as in *Example 1*, except that *D* and *S* purchase real property in 1990 making the down payment with funds from a joint bank account. All subsequent mortgage payments and improvements are paid from the joint bank account. The only funds deposited in the joint bank account are the earnings of *D* and *S*. It is established that *D* earned approximately 60% of the funds and *S* earned approximately 40% of the funds. *D* dies in 1995. The establishment of *S*'s contribution to the joint bank account is sufficient to show that *S* contributed 40% of the consideration for the property. Thus, under paragraph § 20.2040–1(a)(2), 60% of the value of the property is includible in *D*'s gross estate.

[T.D. 8612, 60 FR 43549, Aug. 22, 1995]

§ 20.2056A–9 Designated Filer.

Section 2056A(b)(2)(C) provides special rules where more than one QDOT is established with respect to a decedent. The designation of a person responsible for filing a return under section 2056A(b)(2)(C)(i) (the Designated Filer) must be made on the decedent's federal estate tax return, or on the first Form 706–QDT that is due and is filed by its prescribed date, including extensions. The Designated Filer must be a U.S. Trustee. If the U.S. Trustee is

an individual, that individual must have a tax home (as defined in section 911(d)(3)) in the United States. At least sixty days before the due date for filing the tax returns for all of the QDOTs, the U.S. Trustee(s) of each of the QDOTs must provide to the Designated Filer all of the necessary information relating to distributions from their respective QDOTs. The section 2056A estate tax due from each QDOT is allocated on a pro rata basis (based on the ratio of the amount of each respective distribution constituting a taxable event to the amount of all such distributions), unless a different allocation is required under the terms of the governing instrument or under local law. Unless the decedent has provided for a successor Designated Filer, if the Designated Filer ceases to qualify as a U.S. Trustee, or otherwise becomes unable to serve as the Designated Filer, the remaining trustees of each QDOT must select a qualifying successor Designated Filer (who is also a U.S. Trustee) prior to the due date for the filing of Form 706–QDT (including extensions). The selection is to be indicated on the Form 706–QDT. Failure to select a successor Designated Filer will result in the application of section 2056A(b)(2)(C).

[T.D. 8612, 60 FR 43550, Aug. 22, 1995]

§ 20.2056A–10 Surviving spouse becomes citizen after QDOT established.

(a) *Section 2056A estate tax no longer imposed under certain circumstances.* Section 2056A(b)(12) provides that a QDOT is no longer subject to the imposition of the section 2056A estate tax if the surviving spouse becomes a citizen of the United States and the following conditions are satisfied—

(1) The spouse either was a United States resident (for the definition of resident for this purpose, see § 20.2056A–1(b)) at all times after the death of the decedent and before becoming a United States citizen, or no taxable distributions are made from the QDOT before the spouse becomes a United States citizen (regardless of the residency status of the spouse); and

(2) The U.S. Trustee(s) of the QDOT notifies the Internal Revenue Service and certifies in writing that the surviving spouse has become a United States citizen. Notice is to be made by filing a final Form 706–QDT on or before April 15th of the calendar year following the year in which the surviving spouse becomes a United States citizen, unless an extension of time for filing is granted under section 6081.

(b) *Special election by spouse.* If the surviving spouse becomes a United States citizen and the spouse is not a United States resident at all times after the death of the decedent and before becoming a United States citizen, and a tax was previously imposed under section 2056A(b)(1)(A) with respect to any distribution from the QDOT before the surviving spouse becomes a United States citizen, the estate tax imposed under section 2056A(b)(1) does not apply to distributions after the spouse becomes a citizen if—

(1) The spouse elects to treat any taxable distribution from the QDOT prior to the spouse's election as a taxable gift made by the spouse for purposes of section 2001(b)(1)(B) (referring to adjusted taxable gifts), and for purposes of determining the amount of the tax imposed by section 2501 on actual taxable gifts made by the spouse during the year in which the spouse becomes a citizen or in any subsequent year;

(2) The spouse elects to treat any previous reduction in the section 2056A estate tax by reason of the decedent's unified credit (under either section 2010 or section 2102(c)) as a reduction in the spouse's unified credit under section 2505 for purposes of determining the amount of the credit allowable with respect to taxable gifts made by the surviving spouse during the taxable year in which the spouse becomes a citizen, or in any subsequent year; and

(3) The elections referred to in this paragraph (b) are made by timely filing a Form 706–QDT on or before April 15th of the year following the year in which the surviving spouse becomes a citizen (unless an extension of time for filing is granted under section 6081) and attaching notification of the election to the return.

[T.D. 8612, 60 FR 43550, Aug. 22, 1995]

§ 20.2056A–11 Filing requirements and payment of the section 2056A estate tax.

(a) *Distributions during surviving spouse's life.* Section 2056A(b)(5)(A) provides the due date for payment of the section 2056A estate tax imposed on distributions during the spouse's lifetime. An extension of not more than 6 months may be obtained for the filing of Form 706–QDT under section 6081(a) if the conditions specified therein are satisfied. See also § 20.2056A- 5(c)(1) regarding the requirements for filing a Form 706–QDT in the case of a distribution to the surviving spouse on account of hardship, and § 20.2056A–2T(d)(3) regarding the requirements for filing Form 706–QDT in the case of the required annual statement.

(b) *Tax at death of surviving spouse.* Section 2056A(b)(5)(B) provides the due date for payment of the section 2056A estate tax imposed on the death of the spouse under section 2056A(b)(1)(B). An extension of not more than 6 months may be obtained for the filing of the Form 706–QDT under section 6081(a), if the conditions specified therein are satisfied. The obtaining of an extension of time to file under section 6081(a) does not extend the time to pay the section 2056A estate tax as prescribed under section 2056A(b)(5)(B).

(c) *Extension of time for paying section 2056A estate tax*—(1) *Extension of time for paying tax under section 6161(a)(2).* Pursuant to sections 2056A(b)(10)(C) and 6161(a)(2), upon a showing of reasonable cause, an extension of time for a reasonable period beyond the due date may be granted to pay any part of the estate tax that is imposed upon the surviving spouse's death under section 2056A(b)(1)(B) and shown on the final Form 706–QDT, or any part of any installments of such tax payable under section 6166 (including any part of a deficiency prorated to any installment under such section). The extension may not exceed 10 years from the date prescribed for payment of the tax (or in the case of an installment or part of a deficiency prorated to an installment, if later, not beyond the date that is 12 months after the due date for the last installment). Such extension may be granted by the district director or the director of the service center where the Form 706–QDT is filed.

(2) *Extension of time for paying tax under section 6161(a)(1).* An extension of time beyond the due date to pay any part of the estate tax imposed on lifetime distributions under section 2056A(b)(1)(A), or imposed at the death of the surviving spouse under section 2056A(b)(1)(B), may be granted for a reasonable period of time, not to exceed 6 months (12 months in the case of the estate tax imposed under section 2056A(b)(1)(B) at the surviving spouse's death), by the district director or the director of the service center where the Form 706–QDT is filed.

(d) *Liability for tax.* Under section 2056A(b)(6), each trustee (and not solely the U.S. Trustee(s)) of a QDOT is personally liable for the amount of the estate tax imposed in the case of any taxable event under section 2056A(b)(1). In the case of multiple QDOTs with respect to the same decedent, each trustee of a QDOT is personally liable for the amount of the section 2056A estate tax imposed on any taxable event with respect to that trustee's QDOT, but is not personally liable for tax imposed with respect to taxable events involving QDOTs of which that person is not a trustee. However, the assets of any QDOT are subject to collection by the Internal Revenue Service for any tax resulting from a taxable event with respect to any other QDOT established with respect to the same decedent. The trustee may also be personally liable as a withholding agent under section 1461 or other applicable provisions of the Internal Revenue Code.

[T.D. 8612, 60 FR 43551, Aug. 22, 1995]

§ 20.2056A–12 Increased basis for section 2056A estate tax paid with respect to distribution from a QDOT.

Under section 2056A(b)(13), in the case of any distribution from a QDOT on which an estate tax is imposed under section 2056A(b)(1)(A), the distribution is treated as a transfer by gift for purposes of section 1015, and any estate tax paid under section 2056A(b)(1)(A) is treated as a gift tax. See § 1.1015–5(c)(4) and (5) of this chapter for rules for determining the

amount by which the basis of the distributed property is increased.

[T.D. 8612, 60 FR 43551, Aug. 22, 1995]

§ 20.2056A–13 Effective date.

The provisions of §§ 20.2056A–1 through 20.2056A–12 are effective with respect to estates of decedents dying after August 22, 1995.

[T.D. 8612, 60 FR 43551, Aug. 22, 1995]

ESTATES OF NONRESIDENTS NOT CITIZENS

§ 20.2101–1 Estates of nonresidents not citizens; tax imposed.

(a) *Imposition of tax.* Section 2101 imposes a tax on the transfer of the taxable estate of a nonresident who is not a citizen of the United States at the time of death. In the case of estates of decedents dying after November 10, 1988, the tax is computed at the same rates as the tax that is imposed on the transfer of the taxable estate of a citizen or resident of the United States in accordance with the provisions of sections 2101(b) and (c). For the meaning of the terms *resident, nonresident,* and *United States,* as applied to a decedent for purposes of the estate tax, see § 20.0–1(b)(1) and (2). For the liability of the executor for the payment of the tax, see section 2002. For special rules as to the phaseout of the graduated rates and unified credit, see sections 2001(c)(2) and 2101(b).

(b) *Special rates in the case of certain decedents.* In the case of an estate of a nonresident who was not a citizen of the United States and who died after December 31, 1976, and on or before November 10, 1988, the tax on the nonresident's taxable estate is computed using the formula provided under section 2101(b), except that the rate schedule in paragraph (c) of this section is to be used in lieu of the rate schedule in section 2001(c).

(c) *Rate schedule for decedents dying after December 31, 1976 and on or before November 10, 1988.*

If the amount for which the tentative tax to be computed is:	The tentative tax is:
Not over $100,000	6% of such amount.
Over $100,000 but not over $500,000	$6,000, plus 12% of excess over $100,000.
Over $500,000 but not over $1,000,000	$54,000, plus 18% of excess over $500,000.
Over $1,000,000 but not over $2,000,000	$144,000, plus 24% of excess over $1,000,000.
Over $2,000,000	$384,000, plus 30% of excess over $2,000,000.

[T.D. 8612, 60 FR 43551, Aug. 22, 1995]

§ 20.2102–1 Estates of nonresidents not citizens; credits against tax.

(a) *In general.* In arriving at the net estate tax payable with respect to the transfer of an estate of a nonresident who was not a citizen of the United States at the time of his death, the following credits are subtracted from the tax imposed by section 2101:

(1) The State death tax credit under section 2011, to the extent permitted by section 2102(b) and paragraph (b) of this section;

(2) The gift tax credit under section 2012; and

(3) The credit under section 2013 for tax on prior transfers.

Except as provided in section 2102(b) and paragraph (b) of this section (relating to a special limitation on the amount of the credit for State death taxes), the amount of each of these credits is determined in the same manner as that prescribed for its determination in the case of estates of citizens or residents of the United States. See §§ 20.2011–1 through 20.2013–6. Subject to the additional special limitation contained in section 2102(b) in the case of section 2015, the provisions of sections 2015 and 2016, relating respectively to the credit for death taxes on remainders and the recovery of taxes claimed as a credit, are applicable with respect to the credit for State death taxes in the case of the estates of nonresidents not citizens. However, no credit is allowed under section 2014 for foreign death taxes.

(b) *Special limitation*—(1) *In general.* In the case of estates of decedents dying on or after November 14, 1966, other than estates the estate tax treatment of which is subject to a Presidential

proclamation made pursuant to section 2108(a), the maximum credit allowable under section 2011 for State death taxes against the tax imposed by section 2101 on the transfer of estates of nonresidents not citizens of the United States is an amount which bears the same ratio to the maximum credit computed as provided in section 2011(b) (and without regard to this special limitation) as the value of the property (determined in the same manner as that prescribed in paragraph (b) of § 20.2031–1 for the estates of citizens or residents of the United States) in respect of which a State death tax was actually paid and which is included in the gross estate under section 2103 or, if applicable, section 2107(b) bears to the value (as so determined) of the total gross estate under section 2103 or 2107(b). For purposes of this special limitation, the term ''State death taxes'' means the taxes described in section 2011(a) and paragraph (a) of § 20.2011–1.

(2) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). A, a nonresident not a citizen of the United States, died on February 15, 1967, owning real property in State Z valued at $50,000 and stock in various domestic corporations valued at $100,000 and not subject to death taxes in any State. State Z's inheritance tax actually paid with respect to the real property in State Z is $2,000. A's taxable estate for Federal estate tax purposes is $110,000, in respect of which the maximum credit under section 2011 would be $720 in the absence of the special limitation contained in section 2102(b). However, under section 2102(b) and this paragraph the amount of the maximum credit allowable in respect to A's estate for State death taxes is limited to the amount which bears the same ratio to $720 (the maximum credit computed as provided in section 2011(b)) as $50,000 (the value of the property in respect of which a State death tax was actually paid and which is included in A's gross estate under section 2103) bears to $150,000 (the value of A's total gross estate under section 2103). Accordingly, the maximum credit allowable under section 2102 and this section for all State death taxes actually paid is $240 ($720×$50,000/$150,000).

Example (2). B, a nonresident not a citizen of the United States, died on January 15, 1967, owning real property in State X valued at $100,000, real property in State Y valued at $200,000, and stock in various domestic corporations valued at $300,000 and not subject to death taxes in any State. States X and Y both imposed inheritance taxes. State X has, in addition to its inheritance tax, an estate tax equal to the amount by which the maximum State death tax credit allowable to an estate against its Federal estate tax exceeds the amount of the inheritance tax imposed by State X plus the amount of death taxes paid to other States. State Y has no estate tax. The amount of the inheritance tax actually paid to State X with respect to the real property situated in State X is $4,000; the amount of the inheritance tax actually paid to State Y with respect to the real property situated in State Y is $9,000. B's taxable estate for Federal estate tax purposes is $550,000, in respect of which the maximum credit under section 2011 would be $14,400 in the absence of the special limitation contained in section 2102(b). However, under section 2102(b) and this paragraph the amount of the maximum credit allowable in respect of B's estate for State death taxes is limited to the amount which bears the same ratio to $14,400 (the maximum credit computed as provided in section 2011(b)) as $300,000 (the value of the property in respect of which a State death tax was actually paid and which is included in B's gross estate under section 2103) bears to $600,000 (the value of B's total gross estate under section 2103). Accordingly, the maximum credit allowable under section 2102 and this section for all State death taxes actually paid is $7,200 ($14,400×$300,000/$600,000), and the estate tax of State X is not applicable to B's estate.

(c) *Unified credit*—(1) *In general.* Subject to paragraph (c)(2) of this section, in the case of estates of decedents dying after November 10, 1988, a unified credit of $13,000 is allowed against the tax imposed by section 2101 subject to the limitations of section 2102(c).

(2) *When treaty is applicable.* To the extent required under any treaty obligation of the United States, the estate of a nonresident not a citizen of the United States is allowed the unified credit permitted to a United States citizen or resident of $192,800, multiplied by the proportion that the total gross estate of the decedent situated in the United States bears to the decedent's total gross estate wherever situated.

(3) *Certain residents of possessions.* In the case of a decedent who is considered to be a nonresident not a citizen of the United States under section 2209, there is allowed a unified credit equal to the greater of $13,000, or $46,800 multiplied by the proportion that the decedent's gross estate situated in the United States bears to the total gross

estate of the decedent wherever situated.

[T.D. 7296, 38 FR 34194, Dec. 12, 1973, as amended at T.D. 8612, 60 FR 43552, Aug. 22, 1995]

§ 20.2103–1 Estates of nonresidents not citizens; "entire gross estate".

The ''entire gross estate'' wherever situated of a nonresident who was not a citizen of the United States at the time of his death is made up in the same way as the ''gross estate'' of a citizen or resident of the United States. See §§ 20.2031–1 through 20.2044–1. See paragraphs (a) and (c) of § 20.2031–1 for the circumstances under which real property situated outside the United States is excluded from the gross estate of a citizen or resident of the United States. However, except as provided in section 2107(b) with respect to the estates of certain expatriates, in the case of a nonresident not a citizen, only that part of the entire gross estate which on the date of the decedent's death is situated in the United States is included in his taxable estate. In fact, property situated outside the United States need not be disclosed on the return unless section 2107 is applicable, certain deductions are claimed, or information is specifically requested. See §§ 20.2106–1, 20.2106–2, and 20.2107–1. For a description of property considered to be situated in the United States, see § 20.2104–1. For a description of property considered to be situated outside the United States, see § 20.2105–1.

[T.D. 7296, 38 FR 34195, Dec. 12, 1973]

§ 20.2104–1 Estates of nonresidents not citizens; property within the United States.

(a) *In general.* Property of a nonresident who was not a citizen of the United States at the time of his death is considered to be situated in the United States if it is—

(1) Real property located in the United States.

(2) Tangible personal property located in the United States, except certain works of art on loan for exhibition (see paragraph (b) of § 20.2105–1).

(3) In the case of an estate of a decedent dying before November 14, 1966, written evidence of intangible personal property which is treated as being the property itself, such as a bond for the payment of money, if it is physically located in the United States; except that this subparagraph shall not apply to obligations of the United States (but not its instrumentalities) issued before March 1, 1941, if the decedent was not engaged in business in the United States at the time of his death. See section 2106(c).

(4) Except as specifically provided otherwise in this section or in § 20.2105–1 (which specific exceptions, in the case of estates of decedents dying on or after November 14, 1966, cause this subparagraph to have relatively limited applicability), intangible personal property the written evidence of which is not treated as being the property itself, if it is issued by or enforceable against a resident of the United States or a domestic corporation or governmental unit.

(5) Shares of stock issued by a domestic corporation, irrespective of the location of the certificates (see, however, paragraph (i) of § 20.2105–1 for a special rule with respect to certain withdrawable accounts in savings and loan or similar associations).

(6) In the case of an estate of a decedent dying before November 14, 1966, moneys deposited in the United States by or for the decedent with any person carrying on the banking business, if the decedent was engaged in business in the United States at the time of his death.

(7) In the case of an estate of a decedent dying on or after November 14, 1966, except as specifically provided otherwise in paragraph (d), (i), (j), (l), or (m) of § 20.2105–1, any debt obligation, including a bank deposit, the primary obligor of which is—

(i) A United States person (as defined in section 7701(a)(30)), or

(ii) The United States, a State or any political subdivision thereof, the District of Columbia, or any agency or instrumentality of any such government.

This paragraph applies irrespective of whether the written evidence of the debt obligation is treated as being the property itself or whether the decedent was engaged in business in the United States at the time of his death. For purposes of this subparagraph and

paragraphs (k), (l), and (m) of § 20.2105–1, a debt obligation on which there are two or more primary obligors shall be apportioned among such obligors, taking into account to the extent appropriate under all the facts and circumstances any choate or inchoate rights of contribution existing among such obligors with respect to the indebtedness. The term ''agency or instrumentality,'' as used in paragraph (a)(7)(ii) of this section does not include a possession of the United States or an agency or instrumentality of a possession. Currency is not a debt obligation for purposes of this subparagraph.

(8) In the case of an estate of a decedent dying on or after January 1, 1970, except as specifically provided otherwise in paragraph (i) or (l) of § 20.2105–1, deposits with a branch in the United States of a foreign corporation, if the branch is engaged in the commercial banking business, whether or not the decedent was engaged in business in the United States at the time of his death.

(b) *Transfers.* Property of which the decedent has made a transfer taxable under sections 2035 through 2038 is deemed to be situated in the United States if it is determined, under the provisions of paragraph (a) of this section, to be so situated either at the time of the transfer or at the time of the decedent's death. See §§ 20.2035–1 through 20.2038–1.

(c) *Death tax convention.* It should be noted that the situs rules described in this section may be modified for various purposes under the provisions of an applicable death tax convention with a foreign country.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7296, 38 FR 34195, Dec. 12, 1973; T.D. 7321, 39 FR 29597, Aug. 16, 1974]

§ 20.2105–1 Estates of nonresidents not citizens; property without the United States.

Property of a nonresident who was not a citizen of the United States at the time of his death is considered to be situated outside the United States if it is—

(a)(1) Real property located outside the United States, except to the extent excludable from the entire gross estate wherever situated under § 20.2103–1.

(2) Tangible personal property located outside the United States.

(b) Works of art owned by the decedent if they were—

(1) Imported into the United States solely for exhibition purposes,

(2) Loaned for those purposes to a public gallery or museum, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and

(3) At the time of the death of the owner, on exhibition, or en route to or from exhibition, in such a public gallery or museum.

(c) In the case of an estate of a decedent dying before November 14, 1966, written evidence of intangible personal property which is treated as being the property itself, such as a bond for the payment of money, if it is not physically located in the United States.

(d) Obligations of the United States issued before March 1, 1941, even though physically located in the United States, if the decedent was not engaged in business in the United States at the time of his death.

(e) Except as specifically provided otherwise in this section or in § 20.2104–1, intangible personal property the written evidence of which is not treated as being the property itself, if it is not issued by or enforceable against a resident of the United States or a domestic corporation or governmental unit.

(f) Shares of stock issued by a corporation which is not a domestic corporation, regardless of the location of the certificates.

(g) Amounts receivable as insurance on the decedent's life.

(h) In the case of an estate of a decedent dying before November 14, 1966, moneys deposited in the United States by or for the decedent with any person carrying on the banking business, if the decedent was not engaged in business in the United States at the time of his death.

(i) In the case of an estate of a decedent dying on or after November 14, 1966, and before January 1, 1976, any amount deposited in the United States which is described in section 861(c) (relating to certain bank deposits,

withdrawable accounts, and amounts held by an insurance company under an agreement to pay interest), if any interest thereon, were such interest received by the decedent at the time of his death, would be treated under section 862(a)(1) as income from sources without the United States by reason of section 861(a)(1)(A) (relating to interest on amounts described in section 861(c) which is not effectively connected with the conduct of a trade or business within the United States) and the regulations thereunder. If such interest would be treated by reason of those provisions as income from sources without the United States only in part, the amount described in section 861(c) shall be considered situated outside the United States in the same proportion as the part of the interest which would be treated as income from sources without the United States bears to the total amount of the interest. This paragraph applies whether or not the decedent was engaged in business in the United States at the time of his death, and, except with respect to amounts described in section 861(c)(3) (relating to amounts held by an insurance company under an agreement to pay interest), whether or not the deposit or other amount is in fact interest bearing.

(j) In the case of an estate of a decedent dying on or after November 14, 1966, deposits with a branch outside of the United States of a domestic corporation or domestic partnership, if the branch is engaged in the commercial banking business. This paragraph applies whether or not the decedent was engaged in business in the United States at the time of his death, and whether or not the deposits, upon withdrawal, are payable in currency of the United States.

(k) In the case of an estate of a decedent dying on or after November 14, 1966, except as specifically provided otherwise in paragraph (a)(8) of § 20.2104–1 with respect to estates of decedents dying on or after January 1, 1970, any debt obligation, including a bank deposit, the primary obligor of which is neither—

(1) A United States person (as defined in section 7701(a)(30)), nor

(2) The United States, a State or any political subdivision thereof, the District of Columbia, or any agency or instrumentality of any such government.

This paragraph applies irrespective of whether the written evidence of the debt obligation is treated as being the property itself or whether the decedent was engaged in business in the United States at the time of his death. See paragraph (a)(7) of § 20.2104–1 for the treatment of a debt obligation on which there are two or more primary obligors. The term ''agency or instrumentality,'' as used in subparagraph (2) of this paragraph, does not include a possession of the United States or an agency or instrumentality of a possession. Currency is not a debt obligation for purposes of this paragraph.

(l) In the case of an estate of a decedent dying on or after November 14, 1966, any debt obligation to the extent that the primary obligor on the debt obligation is a domestic corporation, if any interest thereon, were the interest received from such obligor by the decedent at the time of his death, would be treated under section 862(a)(1) as income from sources without the United States by reason of section 861(a)(1)(B) (relating to interest received from a domestic corporation less than 20 percent of whose gross income for a 3-year period was derived from sources within the United States) and the regulations thereunder. For such purposes the 3-year period referred to in section 861(a)(1)(B) is the period of 3 years ending with the close of the domestic corporation's last taxable year terminating before the decedent's death. This paragraph applies whether or not (1) the obligation is in fact interest bearing, (2) the written evidence of the debt obligation is treated as being the property itself, or (3) the decedent was engaged in business in the United States at the time of his death. See paragraph (a)(7) of § 20.2104–1 for the treatment of a debt obligation on which there are two or more primary obligors.

(m)(1) In the case of an estate of a decedent dying after December 31, 1972, except as otherwise provided in paragraph (m)(2) of this section any debt obligation to the extent that the primary obligor on the debt obligation is

a domestic corporation or domestic partnership, if any interest thereon, were the interest received from such obligor by the decedent at the time of his death, would be treated under section 862(a)(1) as income from sources without the United States by reason of section 861(a)(1)(G) (relating to interest received on certain debt obligations with respect to which elections have been made under section 4912(c)) and the regulations thereunder. This paragraph applies whether or not (i) the obligation is in fact interest bearing, (ii) the written evidence of the debt obligation is treated as being the property itself, or (iii) the decedent was engaged in business in the United States at the time of his death. See paragraph (a)(7) of § 20.2104–1 for the treatment of a debt obligation on which there are two or more primary obligors.

(2) In the case of an estate of a decedent dying before January 1, 1974, this paragraph does not apply to any debt obligation of a foreign corporation assumed by a domestic corporation which is treated under section 4912(c)(2) as issued by such domestic corporation during 1973.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6684, 28 FR 11410, Oct. 24, 1963; T.D. 7296, 38 FR 34196, Dec. 12, 1973; T.D. 7321, 39 FR 29597, Aug. 16, 1974]

§ 20.2106–1 Estates of nonresidents not citizens; taxable estate; deductions in general.

(a) The taxable estate of a nonresident who was not a citizen of the United States at the time of his death is determined by adding the value of that part of his gross estate which, at the time of his death, is situated in the United States and, in the case of an estate to which section 2107 (relating to expatriation to avoid tax) applies, any amounts includible in his gross estate under section 2107(b), and then subtracting from the sum thereof the total amount of the following deductions:

(1) The deductions allowed in the case of estates of decedents who were citizens or residents of the United States under sections 2053 and 2054 (see §§ 20.2053–1 through 20.2053–9 and § 20.2054–1) for expenses, indebtedness and taxes, and for losses, to the extent provided in § 20.2106–2.

(2) A deduction computed in the same manner as the one allowed under section 2055 (see §§ 20.2055–1 through 20.2055–5) for charitable, etc., transfers, except—

(i) That the deduction is allowed only for transfers to corporations and associations created or organized in the United States, and to trustees for use within the United States, and

(ii) That the provisions contained in paragraph (c)(2) of § 20.2055–2 relating to termination of a power to consume are not applicable.

(3) Subject to the special rules set forth at § 20.2056A–1(c), the amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principles of section 2056. Thus, if the surviving spouse of the decedent is a citizen of the United States at the time of the decedent's death, a marital deduction is allowed with respect to the estate of the decedent if all other applicable requirements of section 2056 are satisfied. If the surviving spouse of the decedent is not a citizen of the United States at the time of the decedent's death, the provisions of section 2056, including specifically the provisions of section 2056(d) and (unless section 2056(d)(4) applies) the provisions of section 2056A (QDOTs) must be satisfied.

(b) Section 2106(b) provides that no deduction is allowed under paragraph (a) (1) or (2) of this section unless the executor discloses in the estate tax return the value of that part of the gross estate not situated in the United States. See § 20.2105–1. Such part must be valued as of the date of the decedent's death, or if the alternate valuation method under section 2032 is elected, as of the applicable valuation date.

[T.D. 6296, 23 FR 5429, June 24, 1958, as amended by T.D. 6526, 26 FR 417, Jan. 19, 1961; T.D. 7296, 38 FR 34197, Dec. 12, 1973; T.D. 7318, 39 FR 25457, July 11, 1974; T.D. 8612, 60 FR 43552, Aug. 22, 1995]

§ 20.2106–2 Estates of nonresidents not citizens; deductions for expenses, losses, etc.

(a) In computing the taxable estate of a nonresident who was not a citizen of the United States at the time of his

death, deductions are allowed under sections 2053 and 2054 for expenses, indebtedness and taxes, and for losses, to the following extent:

(1) A pledge or subscription is deductible if it is an enforceable claim against the estate and if it would constitute an allowable deduction under paragraph (a)(2) of § 20.2106–1, relating to charitable, etc., transfers, if it had been a bequest.

(2) That proportion of other deductions under sections 2053 and 2054 is allowed which the value of that part of the decedent's gross estate situated in the United States at the time of his death bears to the value of the decedent's entire gross estate wherever situated. It is immaterial whether the amounts to be deducted were incurred or expended within or without the United States. For purposes of this subparagraph, an amount which is includible in the decedent's gross estate under section 2107(b) with respect to stock in a foreign corporation shall be included in the value of the decedent's gross estate situated in the United States.

No deduction is allowed under this paragraph unless the value of the decedent's entire gross estate is disclosed in the estate tax return. See paragraph (b) of § 20.2106–1.

(b) In order that the Internal Revenue Service may properly pass upon the items claimed as deductions, the executor should submit a certified copy of the schedule of liabilities, claims against the estate, and expenses of administration filed under any applicable foreign death duty act. If no such schedule was filed, the executor should submit a certified copy of the schedule of these liabilities, claims and expenses filed with the foreign court in which administration was had. If the items of deduction allowable under section 2106(a)(1) were not included in either such schedule, or if no such schedules were filed, then there should be submitted a written statement of the foreign executor containing a declaration that it is made under the penalties of perjury setting forth the facts relied upon as entitling the estate to the benefit of the particular deduction or deductions.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7296, 38 FR 34197, Dec. 12, 1973; T.D. 8612, 60 FR 43552, Aug. 22, 1995]

§ 20.2107–1 Expatriation to avoid tax.

(a) *Rate of tax.* The tax imposed by section 2107(a) on the transfer of the taxable estates of certain nonresident expatriate decedents who were formerly citizens of the United States is computed in accordance with the table contained in section 2001, relating to the rate of the tax imposed on the transfer of the taxable estates of decedents who were citizens or residents of the United States. Except for any amounts included in the gross estate solely by reason of section 2107(b) and paragraph (b)(1) (ii) and (iii) of this section, the value of the taxable estate to be used in this computation is determined as provided in section 2106 and § 20.2106–1. The decedents to which section 2107(a) and this section apply are described in paragraph (d) of this section.

(b) *Gross estate*—(1) *Determination of value*—(i) *General rule.* Except as provided in subdivision (ii) of this subparagraph with respect to stock in certain foreign corporations, for purposes of the tax imposed by section 2107(a) the value of the gross estate of every estate the transfer of which is subject to the tax imposed by that section is determined as provided in section 2103 and § 20.2103–1.

(ii) *Amount includible with respect to stock in certain foreign corporations.* If at the time of his death a nonresident expatriate decedent the transfer of whose estate is subject to the tax imposed by section 2107(a)—

(a) Owned (within the meaning of section 958(a) and the regulations thereunder) 10 percent or more of the total combined voting power of all classes of stock entitled to vote in a foreign corporation, and

(b) Owned (within the meaning of section 958(a) and the regulations thereunder), or is considered to have owned (by applying the ownership rules of section 958(b) and the regulations thereunder), more than 50 percent of the total combined voting power of all

classes of stock entitled to vote in such foreign corporation,

then section 2107(b) requires the inclusion in the decedent's gross estate, in addition to amounts otherwise includible therein under subdivision (i) of this subparagraph, of an amount equal to that proportion of the fair market value (determined at the time of the decedent's death or, if so elected by the executor of the decedent's estate, on the alternate valuation date as provided in section 2032) of the stock in such foreign corporation owned (within the meaning of section 958(a) and the regulations thereunder) by the decedent at the time of his death, which the fair market value of any assets owned by such foreign corporation and situated in the United States, at the time of his death, bears to the total fair market value of all assets owned by such foreign corporation at the time of his death.

(iii) *Rules of application. (a)* In determining the proportion of the fair market value of the stock which is includible in the gross estate under subdivision (ii) of this subparagraph, the fair market value of the foreign corporation's assets situated in the United States and of its total assets shall be determined without reduction for any outstanding liabilities of the corporation.

(*b*) For purposes of subdivision (ii) of this subparagraph, the foreign corporation's assets which are situated in the United States shall be all its property which, by applying the provisions of sections 2104, 2105, and §§ 20.2104–1 and 20.2105–1, would be considered to be situated in the United States if such property were property of a nonresident who was not a citizen of the United States.

(*c*) For purposes of subdivision (ii)(*a*) of this subparagraph, a decedent is treated as owning stock in a foreign corporation at the time of his death to the extent he owned (within the meaning of section 958(a) and the regulations thereunder) the stock at the time he made a transfer of the stock in a transfer described in sections 2035 to 2038, inclusive (relating respectively to transfers made in contemplation of death, transfers with a retained life estate, transfers taking effect at death, and revocable transfers). For purposes of subdivision (ii)*(b)* of this subparagraph, a decedent is treated as owning stock in a foreign corporation at the time of his death to the extent he owned (within the meaning of section 958(a) and the regulations thereunder), or is considered to have owned (by applying the ownership rules of section 958(b) and the regulations thereunder), the stock at the time he made a transfer of the stock in a transfer described in sections 2035 to 2038, inclusive. In applying the proportion rule of section 2107(b) and subdivision (ii) of this subparagraph where a decedent is treated as owning stock in a foreign corporation at the time of his death by reason of having transferred his interest in such stock in a transfer described in sections 2035 to 2038, inclusive, the proportionate value of the interest includible in his gross estate is based upon the value as of the applicable valuation date described in section 2031 or 2032 of the amount, determined as of the date of transfer, of his interest in the stock. See example (2) in subparagraph (2) of this paragraph.

(*d*) For purposes of applying subdivision (ii)*(b)* of this subparagraph, the same shares of stock may not be counted more than once. See example (2) in subparagraph (2) of this paragraph.

(*e*) The principles applied in paragraph (b) of § 1.957–1 of this chapter (Income Tax Regulations) for determining what constitutes total combined voting power of all classes of stock entitled to vote in a foreign corporation for purposes of section 957(a) shall be applied in determining what constitutes total combined voting power of all classes of stock entitled to vote in a foreign corporation for purposes of section 2107(b) and subdivision (ii) of this subparagraph. In applying such principles under this paragraph changes in language shall be made, where necessary, in order to treat the nonresident expatriate decedent, rather than U.S. shareholders, as owning such total combined voting power.

(2) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (1). (a) At the time of his death, H, a nonresident expatriate decedent the transfer of whose estate is subject to the tax imposed by section 2107(a), owned a 60-percent interest in M Company, a foreign partnership, which in turn owned stock issued by N Corporation, a foreign corporation. The stock in N Corporation held by M Company, which constituted 50 percent of the total combined voting power of all classes of stock entitled to vote in N Corporation, was valued at $50,000 at the time of H's death. In addition, W, H's wife, also a nonresident not a citizen of the United States, owned at the time of H's death stock in N Corporation constituting 25 percent of the total combined voting power of all classes of stock entitled to vote in that corporation. The fair market value of the assets of N Corporation which, at the time of H's death, were situated in the United States constituted 40 percent of the fair market value of all assets of that corporation. It is assumed for purposes of this example that the executor of H's estate has not elected to value the estate on the alternate valuation date provided in section 2032.

(b) The test contained in subparagraph (1)(ii)*(a)* of this paragraph is met since at the time of his death H indirectly owned (within the meaning of section 958(a) and the regulations thereunder) 30 percent (60 percent of 50 percent) of the total combined voting power of all classes of stock entitled to vote in N Corporation; and the test contained in subparagraph (1)(ii)*(b)* of this paragraph is met since at such time H owned or is considered to have owned (within the meaning of section 958 (a) and (b) and the regulations thereunder) 55 percent of the total combined voting power of all classes of stock entitled to vote in N Corporation (having constructive ownership of his wife's 25 percent, in addition to his own indirect ownership of 30 percent, of the total combined voting power). Accordingly, $12,000 is included in H's gross estate by reason of section 2107(b) and this paragraph. This $12,000 is the amount which is equal to 40 percent (the percentage of the fair market value of N Corporation's asset which were situated within the United States at H's death) of $30,000 (the fair market value of the stock then owned by H within the meaning of section 958(a) and the regulations thereunder, *i.e.,* H's 60-percent interest in the $50,000 fair market value of stock held by M Company).

Example (2). (a) Assume the same facts as those given in example (1) except that H made a transfer to W in contemplation of his death (within the meaning of section 2035) of his 60-percent interest in M Company, that on the date of the transfer M Company held stock in N Corporation constituting 80 percent of the total combined voting power of all classes of stock entitled to vote in that corporation (rather than the 50 percent of total combined voting power held by M Company on the date of H's death), and that the 80 percent of total combined voting power owned by M Company on the date of the transfer is valued at $70,000 on that date and at $85,000 at the time of H's death. It is assumed for purposes of this example that the 60-percent interest in M Company was held by W at the time of H's death.

(b) The test contained in subparagraph (1)(ii)*(a)* of this paragraph is met since, under subparagraph (1)(iii)*(c)* of this paragraph, H is treated as owning (within the meaning of section 958(a) and the regulations thereunder), at the time of his death, the 48 percent (60 percent of 80 percent) of the total combined voting power of all classes of stock entitled to vote in N Corporation represented by his transferred interest in M Company; and the test contained in subparagraph (1)(ii)*(b)* of this paragraph is met since, under that subparagraph and subparagraph (1)(iii)*(c)* of this paragraph, H is treated as owning (within the meaning of section 958 (a) or (b)), at the time of his death, 73 percent (48 percent plus 25 percent) of the total combined voting power of all classes of stock entitled to vote in N Corporation. Accordingly, $20,400 is included in H's gross estate by reason of section 2107(b) and this paragraph. This $20,400 is the amount which is equal to 40 percent (the percentage of the fair market value of N Corporation's assets which were situated within the United States at H's death) of $51,000 (the fair market value at the time of H's death of the transferred interest which under subparagraph (1)(iii)*(c)* of this paragraph H is considered to own within the meaning of section 958(a) and the regulations thereunder at that time, *i.e.,* the 60-percent interest in the $85,000 fair market value at that time of the 80-percent total combined voting power held by M Company on the date of transfer).

(c) The fact that the stock in N Corporation owned by M Company is considered under subparagraph (1)(ii)*(b)* of this paragraph to be owned by H for two independent reasons (*i.e.,* under section 958(a) and the regulations thereunder, because H transferred his 60-percent interest in M Company to W in contemplation of death, and under section 958(b) and the regulations thereunder, because H is considered to own the stock in N Corporation indirectly owned by his wife, W, by reason of her ownership of such transferred interest) does not cause the shares of stock represented by the transferred interest in M Company to be counted twice in determining whether the test contained in that subparagraph is met. See subparagraph (1)(iii)*(d)* of this paragraph.

Example (3). (a) At the time of his death, H, a nonresident expatriate decedent the transfer of whose estate is subject to the tax imposed by section 2107(a), owned a 40-percent beneficial interest in a domestic trust; at that time he also directly owned stock in P

Corporation, a foreign corporation, constituting 15 percent of the total combined voting power of all classes of stock entitled to vote in that corporation. The trust owned stock in P Corporation constituting 51 percent of the total combined voting power of all classes of stock entitled to vote in that corporation. The stock in P Corporation owned directly by H was valued at $20,000 on the alternate valuation date determined pursuant to an election under section 2032. The fair market value of the assets of P Corporation which, at the time of H's death, were situated in the United States constituted 20 percent of the fair market value of all assets of that corporation.

(b) By reason of section 958(b)(2) and the regulations thereunder, the trust is considered to own all the stock entitled to vote in P Corporation since it owns more than 50 percent of the total combined voting power of all classes of stock entitled to vote in that corporation. The test contained in subparagraph (1)(ii)*(a)* of this paragraph is met since at the time of his death H owned (within the meaning of section 958(a) and the regulations thereunder) 15 percent of the total combined voting power of all classes of stock entitled to vote in P Corporation; the stock in P Corporation owned by the trust is not considered to have been owned by H under section 958(a)(2) since the trust is not a foreign trust. In addition, the test contained in subparagraph (1)(ii)*(b)* of this paragraph is met since at the time of his death H owned or is considered to have owned (within the meaning of section 958 (a) and (b) and the regulations thereunder) 55 percent of the total combined voting power of all classes of stock entitled to vote in that corporation (his 15 percent directly owned plus his 40 percent (40 percent of 100 percent) considered to be owned). Accordingly, $4,000 is included in H's gross estate by reason of section 2107(b) and this paragraph. This $4,000 is the amount which is equal to 20 percent (the percentage of the fair market value of P Corporation's assets which were situated within the United States at H's death) of $20,000 (the fair market value of the stock then owned by H within the meaning of section 958(a) and the regulations thereunder). In addition, the value of H's interest in the domestic trust is included in his gross estate under section 2103 to the extent it constitutes property having a situs in the United States.

(c) *Credits.* Credits against the tax imposed by section 2107(a) are allowed for any amounts determined in accordance with section 2102 and § 20.2102–1 (relating to credits against the estate tax for State death taxes, gift tax, and tax on prior transfers). In computing the special limitation on the credit for State death taxes contained in section 2102(b) and paragraph (b) of § 20.2102–1, amounts included in the gross estate under section 2107(b) and paragraph (b)(1) of this section are to be taken into account.

(d) *Decedents to whom the tax imposed by section 2107(a) applies*—(1) *General rule.* The tax imposed by section 2107(a) applies to the transfer of the taxable estate of every decedent nonresident not a citizen of the United States dying on or after November 14, 1966, who lost his U.S. citizenship after March 8, 1965, and within the 10-year period ending with the date of his death, except in the case of the estate of a decedent whose loss of U.S. citizenship either—

(i) Resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487); or

(ii) Did not have for one of its principal purposes (but not necessarily its only principal purpose) the avoidance of Federal income, estate, or gift tax.

Section 301(b) of the Immigration and Nationality Act provides generally that a U.S. citizen, who is born outside the United States of parents one of whom is an alien and the other is a U.S. citizen who was physically present in the United States for a specified period, shall lose his U.S. citizenship if, within a specified period preceding the age of 28 years, he fails to be continuously physically present in the United States for at least 5 years. Section 350 of that Act provides that under certain circumstances a person, who at birth acquired the nationality of the United States and of a foreign country and who has voluntarily sought or claimed benefits of the nationality of any foreign country, shall lose his U.S. nationality if, after attaining the age of 22 years, he has a continuous residence for 3 years in the foreign country of which he is a national by birth. Section 355 of that Act provides that a person having U.S. nationality, who is under 21 years of age and whose residence is in a foreign country with or under the legal custody of a parent who loses his U.S. nationality under specified circumstances, shall lose his U.S. nationality if he has or acquires the nationality of that foreign country and attains the age of 25 years without having established his residence in the

United States. Section 2107 and this section do not apply to the transfer of any estate the estate tax treatment of which is subject to a Presidential proclamation made pursuant to section 2108(a) (relating to the application of pre-1967 estate tax provisions in the case of a foreign country which imposes a more burdensome tax than the United States).

(2) *Burden of proof*—(i) *General rule.* In determining for purposes of subparagraph (1)(ii) of this paragraph whether a principal purpose for the loss of U.S. citizenship by a decedent was the avoidance of Federal income, estate, or gift tax, the Commissioner must first establish that it is reasonable to believe that the decedent's loss of U.S. citizenship would, but for section 2107 and this section, result in a substantial reduction in the sum of *(a)* the Federal estate tax and *(b)* all estate, inheritance, legacy, and succession taxes imposed by foreign countries and political subdivisions thereof, in respect of the transfer of the decedent's estate. Once the Commissioner has so established, the burden of proving that the loss of citizenship by the decedent did not have for one of its principal purposes the avoidance of Federal income, estate, or gift tax shall be on the executor of the decedent's estate.

(ii) *Tentative determination of substantial reduction in Federal and foreign death taxes.* In the absence of complete factual information, the Commissioner may make a tentative determination, based on the information available, that the decedent's loss of U.S. citizenship would, but for section 2107 and this section, result in a substantial reduction in the sum of the Federal and foreign death taxes described in subdivision (i) *(a)* and *(b)* of this subparagraph. This tentative determination may be based upon the fact that the laws of the foreign country of which the decedent became a citizen and the laws of the foreign country of which the decedent was a resident at the time of his death, including the laws of any political subdivisions of those foreign countries, would ordinarily result, in the case of an estate of a nonexpatriate decedent having the same citizenship and residence as the decedent, in liability for total death taxes under such laws substantially lower than the amount of the Federal estate tax which would be imposed on the transfer of a comparable estate of a citizen of the United States. In the absence of a preponderance of evidence to the contrary, this tentative determination shall be sufficient to establish that it is reasonable to believe that the decedent's loss of U.S. citizenship would, but for section 2107 and this section, result in a substantial reduction in the sum of the Federal and foreign death taxes described in subdivision (i) *(a)* and *(b)* of this subparagraph.

[T.D. 7296, 38 FR 34197, Dec. 12, 1973]

MISCELLANEOUS

§ 20.2201–1 Members of the Armed Forces dying during an induction period.

(a) The additional estate tax as defined in section 2011(d) does not apply to the transfer of the taxable estate of a citizen or resident of the United States dying during an induction period as defined in section 112(c)(5) (see paragraph (b) of this section) and while in active service as a member of the Armed Forces of the United States, if the decedent—

(1) Was killed in action while serving in a combat zone, as determined under section 112(c) (2) and (3) (see paragraph (c) of this section), or

(2) Died as a result of wounds, disease, or injury suffered while serving in such a combat zone and while in line of duty, by reason of a hazard to which he was subject as an incident of such service.

(b) Section 112(c)(5) defines the term ''induction period'' as meaning any period during which individuals are liable for induction, for reasons other than prior deferment, for training and service in the Armed Forces of the United States.

(c) Section 112(c) (2) and (3) provides that service is performed in a combat zone only—

(1) If it is performed in an area which the President of the United States has designated by Executive order for purposes of section 112(c) as an area in which the Armed Forces of the United States are, or have, engaged in combat, and

(2) If it is performed on or after the date designated by the President by Executive order as the date of the commencing of combatant activities in such zone and on or before the date designated by the President by Executive order as the date of termination of combatant activities in such zone.

(d) If the official record of the branch of the Armed Forces of which the decedent was a member at the time of his death states that the decedent was killed in action while serving in a combat zone, or that death resulted from wounds or injuries received or disease contracted while in line of duty in a combat zone, this fact shall, in the absence of evidence establishing to the contrary, be presumed to be established for the purposes of the exemption. Moreover, wounds, injuries or disease suffered while in line of duty will be considered to have been caused by a hazard to which the decedent was subjected as an incident of service as a member of the Armed Forces, unless the hazard which caused the wounds, injuries, or disease was clearly unrelated to such service.

(e) A person was in active service as a member of the Armed Forces of the United States if he was at the time of his death actually serving in such forces. A member of the Armed Forces in active service in a combat zone who thereafter becomes a prisoner of war or missing in action, and occupies such status at death or when the wounds, disease, or injury resulting in death were incurred, is considered for purposes of this section as serving in a combat zone.

(f) The exemption from tax granted by section 2201 does not apply to the basic estate tax as defined in section 2011(d).

§ 20.2202–1 Missionaries in foreign service.

Section 2202 provides that a duly commissioned missionary, dying while in foreign missionary service under a board of foreign missions of a religious denomination in the United States, is presumed to have retained a United States residence (see paragraph (b)(1) of § 20.0–1) held at the time of his commission and departure for foreign service, in the absence of relevant facts other than his intention to remain permanently in such foreign service.

§ 20.2203–1 Definition of executor.

The term *executor* means the executor or administrator of the decedent's estate. However, if there is no executor or administrator appointed, qualified and acting within the United States, the term means any person in actual or constructive possession of any property of the decedent. The term ''person in actual or constructive possession of any property of the decedent'' includes, among others, the decedent's agents and representatives; safe-deposit companies, warehouse companies, and other custodians of property in this country; brokers holding, as collateral, securities belonging to the decedent; and debtors of the decedent in this country.

§ 20.2204–1 Discharge of executor from personal liability.

(a) *General rule.* The executor of a decedent's estate may make written application to the applicable internal revenue officer with whom the estate tax return is required to be filed, as provided in § 20.6091–1, for a determination of the Federal estate tax and for a discharge of personal liability therefrom. Within 9 months after receipt of the application, or if the application is made before the return is filed then within 9 months after the return is filed, the executor will be notified of the amount of the tax and, upon payment thereof, he will be discharged from personal liability for any deficiency in the tax thereafter found to be due. If no such notification is received, the executor is discharged at the end of such 9 month period from personal liability for any deficiency thereafter found to be due. The discharge of the executor from personal liability under this section applies only to him in his personal capacity and to his personal assets. The discharge is not applicable to his liability as executor to the extent of the assets of the estate in his possession or control. Further, the discharge is not to operate as a release of any part of the gross estate from the lien for estate tax for any deficiency that may thereafter be determined to be due.

(b) *Special rule in the case of extension of time for payment of tax.* In addition to the provisions of paragraph (a) of this section, an executor of the estate of a decedent dying after December 31, 1970, may make written application to be discharged from personal liability for the amount of Federal estate tax for which the time for payment has been extended under section 6161, 6163, or 6166. In such a case, the executor will be notified of the amount of bond, if any, to be furnished within 9 months after receipt of the application, or, if the application is made before the return is filed, within 9 months after the return is filed. The amount of any bond required under the provisions of this paragraph shall not exceed the amount of tax the payment of which has been extended. Upon furnishing the bond in the form required under § 301.7101–1 of this chapter (Regulations on Procedure and Administration), or upon receipt of the notification that no bond is required, the executor will be discharged from personal liability for the tax the payment of which has been extended. If no notification is received, the executor is discharged at the end of such 9 month period from personal liability for the tax the payment of which has been extended.

[T.D. 7238, 37 FR 28720, Dec. 29, 1972, as amended by T.D. 7941, 49 FR 4468, Feb. 7, 1984]

§ 20.2204–2 Discharge of fiduciary other than executor from personal liability.

(a) A fiduciary (not including a fiduciary of the estate of a nonresident decedent, other than the executor, who as a fiduciary holds, or has held at any time since the decedent's death, property transferred to the fiduciary from a decedent dying after December 31, 1970, or his estate, may make written application to the applicable internal revenue officer with whom the estate tax return is required to be filed, as provided in § 20.6091–1, for a determination of the Federal estate tax liability with respect to such property and for a discharge of personal liability therefrom. The application must be accompanied by a copy of the instrument, if any, under which the fiduciary is acting, a description of all the property transferred to the fiduciary from the decedent or his estate, and any other information that would be relevant to a determination of the fiduciary's tax liability.

(b) Upon the discharge of the executor from personal liability under § 20.2204–1, or, if later, within 6 months after the receipt of the application filed by a fiduciary pursuant to the provisions of paragraph (a) of this section, such fiduciary will be notified either (1) of the amount of tax for which it has been determined the fiduciary is liable, or (2) that it has been determined that the fiduciary is not liable for any such tax. The fiduciary will also be notified of the amount of bond, if any, to be furnished for any Federal estate tax for which the time for payment has been extended under section 6161, 6163, or 6166. The amount of any bond required under the provisions of this paragraph shall not exceed the amount of tax the payment of which has been so extended. Upon payment of the amount for which it has been determined the fiduciary is liable, and upon furnishing any bond required under this paragraph in the form specified under § 301.7101–1 of this chapter (Regulations on Procedure and Administration), or upon receipt by the fiduciary of notification of a determination that he is not liable for such tax or that a bond is not required, the fiduciary will be discharged from personal liability for any deficiency in the tax thereafter found to be due. If no such notification is received, the fiduciary is discharged at the end of such 6 months (or upon discharge of the executor, if later) from personal liability for any deficiency thereafter found to be due. The discharge of the fiduciary from personal liability under this section applies only to him in his personal capacity and to his personal assets. The discharge is not applicable to his liability as a fiduciary (such as a trustee) to the extent of the assets of the estate in his possession or control. Further, the discharge is not to operate as a release of any part of the gross estate from the lien for estate tax for any deficiency that may thereafter be determined to be due.

[T.D. 7238, 37 FR 28720, Dec. 29, 1972]

§ 20.2204–3 Special rules for estates of decedents dying after December 31, 1976; special lien under section 6324A.

For purposes of §§ 20.2204–1(b) and 20.2204–2(b), in the case of a decedent dying after December 31, 1976, if the executor elects a special lien in favor of the United States under section 6324A, relating to special lien for estate taxes deferred under sections 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981), such lien shall be treated as the furnishing of a bond with respect to the amount for which the time for payment has been extended under section 6166. If an election has been made under section 6324A, the executor may not thereafter substitute a bond pursuant to section 2204 in lieu of that lien. If a bond has been supplied under section 2204, however,the executor may, by filing a proper notice of election and agreement, substitute a lien under section 6324A for any part or all of such bond. See §§ 20.6324A–1 and 301.6324A–1 for rules relating to a special lien under section 6324A.

[T.D. 7941, 49 FR 4468, Feb. 7, 1984]

§ 20.2205–1 Reimbursement out of estate.

If any portion of the tax is paid by or collected out of that part of the estate passing to, or in the possession of, any person other than the duly qualified executor or administrator, that person may be entitled to reimbursement, either out of the undistributed estate or by contribution from other beneficiaries whose shares or interests in the estate would have been reduced had the tax been paid before distribution of the estate, or whose shares or interests are subject either to an equal or prior liability for the payment of taxes, debts, or other charges against the estate. For specific provisions giving the executor the right to reimbursement from life insurance beneficiaries and from recipients of property over which the decedent had a power of appointment, see sections 2206 and 2207. These provisions, however, are not designed to curtail the right of the district director to collect the tax from any person, or out of any property, liable for its payment. The district director cannot be required to apportion the tax among the persons liable nor to enforce any right of reimbursement or contribution.

§ 20.2206–1 Liability of life insurance beneficiaries.

With respect to the right of the district director to collect the tax without regard to the provisions of section 2206, see § 20.2205–1.

§ 20.2207–1 Liability of recipient of property over which decedent had power of appointment.

With respect to the right of the district director to collect the tax without regard to the provisions of section 2207, see § 20.2205–1.

§ 20.2207A–1 Right of recovery of estate taxes in the case of certain marital deduction property.

(a) *In general*—(1) *Right of recovery from person receiving the property*. If the gross estate includes the value of property that is includible by reason of section 2044 (relating to certain property in which the decedent had a qualifying income interest for life under sections 2056(b)(7) or 2523(f)), the estate of the surviving spouse is entitled to recover from the *person receiving the property* (as defined in paragraph (d) of this section) the amount of Federal estate tax attributable to that property. The right of recovery arises when the Federal estate tax with respect to the property includible in the gross estate by reason of section 2044 is paid by the estate. There is no right of recovery from any person for the property received by that person for which a deduction was allowed from the gross estate if no tax is attributable to that property.

(2) *Failure to exercise right of recovery*. Failure of an estate to exercise a right of recovery under this section upon a transfer subject to section 2044 is treated as a transfer for Federal gift tax purposes of the unrecovered amounts from the persons who would benefit from the recovery to the persons from whom the recovery could have been obtained. See § 25.2511–1 of this chapter. The transfer is considered made when the right of recovery is no longer enforceable under applicable local law. A

delay in the exercise of the right of recovery may be treated as an interest-free loan with appropriate gift tax consequences under section 7872 depending on the facts of the particular case.

(3) *Waiver of right of recovery*. The provisions of § 20.2207A–1(a)(2) do not apply to the extent that the surviving spouse's will provides that a recovery shall not be made or to the extent that the beneficiaries cannot otherwise compel recovery. Thus, e.g., if the surviving spouse gives the executor of the estate discretion to waive the right of recovery and the executor waives the right, no gift occurs under § 25.2511–1 of this chapter if the persons who would benefit from the recovery cannot compel the executor to exercise the right of recovery.

(b) *Amount of estate tax attributable to property includible under section 2044.* The amount of Federal estate tax attributable to property includible in the gross estate under section 2044 is the amount by which the total Federal estate tax (including penalties and interest attributable to the tax) under chapter 11 of the Internal Revenue Code that has been paid, exceeds the total Federal estate tax (including penalties and interest attributable to the tax) under chapter 11 of the Internal Revenue Code that would have been paid if the value of the property includible in the gross estate by reason of section 2044 had not been so included.

(c) *Amount of estate tax attributable to a particular property*. An estate's right of recovery with respect to a particular property is an amount equal to the amount determined in paragraph (b) of this section multiplied by a fraction. The numerator of the fraction is the value for Federal estate tax purposes of the particular property included in the gross estate by reason of section 2044, less any deduction allowed with respect to the property. The denominator of the fraction is the total value of all properties included in the gross estate by reason of section 2044, less any deductions allowed with respect to those properties.

(d) *Person receiving the property*. If the property is in a trust at the time of the decedent's death, the *person receiving the property* is the trustee and any person who has received a distribution of the property prior to the expiration of the right of recovery if the property does not remain in trust. This paragraph (d) does not affect the right, if any, under local law, of any person with an interest in property to reimbursement or contribution from another person with an interest in the property.

(e) *Example.* The following example illustrates the application of paragraphs (a) through (d) of this section.

Example. D died in 1994. D's will created a trust funded with certain income producing assets included in D's gross estate at $1,000,000. The trust provides that all the income is payable to D's wife, S, for life, remainder to be divided equally among their four children. In computing D's taxable estate, D's executor deducted, pursuant to section 2056(b)(7), $1,000,000. Assume that S received no other property from D and that S died in 1996. Assume further that S made no section 2519 disposition of the property, that the property was included in S's gross estate at a value of $1,080,000, and that S's will contained no provision regarding section 2207A(a). The tax attributable to the property is equal to the amount by which the total Federal estate tax (including penalties and interest) paid by S's estate exceeds the Federal estate tax (including penalties and interest) that would have been paid if S's gross estate had been reduced by $1,080,000. That amount of tax may be recovered by S's estate from the trust. If, at the time S's estate seeks reimbursement, the trust has been distributed to the four children, S's estate is also entitled to recover the tax from the children.

[T.D. 8522, 59 FR 9654, Mar. 1, 1994]

§ 20.2207A–2 Effective date.

The provisions of § 20.2207A–1 are effective with respect to estates of decedents dying after March 1, 1994. With respect to estates of decedent dying on or before such date, the executor of the decedent's estate may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 20.2207A–1 (as well as project LR–211–76, 1984–1 C.B., page 598, see § 601.601(d)(2)(ii)(*b*) of this chapter), are considered a reasonable interpretation of the statutory provisions.

[T.D. 8522, 59 FR 9655, Mar. 1, 1994]

§ 20.2208–1 Certain residents of possessions considered citizens of the United States.

As used in this part, the term ''citizen of the United States'' is considered to include a decedent dying after September 2, 1958, who, at the time of his death, was domiciled in a possession of the United States and was a United States citizen, and who did not acquire his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The estate of such a decedent is, therefore, subject to the tax imposed by section 2001. See paragraph (a)(2) of § 20.0–1 and § 20.2209–1 for further information relating to the application of the Federal estate tax to the estates of decedents who were residents of possessions of the United States. The application of this section may be illustrated by the following example and the examples set forth in § 20.2209–1:

Example. A, a citizen of the United States by reason of his birth in the United States at San Francisco, established residence in Puerto Rico and acquired a Puerto Rican citizenship. A died on September 4, 1958, while a citizen and domiciliary of Puerto Rico. A's estate is, by reason of the provisions of section 2208, subject to the tax imposed by section 2001 inasmuch as his United States citizenship is based on birth in the United States and is not based solely on being a citizen of a possession or solely on birth or residence in a possession.

[T.D. 6526, 26 FR 417, Jan. 19, 1961]

§ 20.2209–1 Certain residents of possessions considered nonresidents not citizens of the United States.

As used in this part, the term ''nonresident not a citizen of the United States'' is considered to include a decedent dying after September 14, 1960, who, at the time of his death, was domiciled in a possession of the United States and was a United States citizen, and who acquired his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The estate of such a decedent is, therefore, subject to the tax imposed by section 2101 which is the tax applicable in the case of a ''nonresident not a citizen of the United States.'' See paragraph (a)(2) of § 20.0–1 and § 20.2208–1 for further information relating to the application of the Federal estate tax to the estates of decedents who were residents of possessions of the United States. The application of this section may be illustrated by the following examples and the example set forth in § 20.2208–1. In each of the following examples the decedent is deemed a ''nonresident not a citizen of the United States'' and his estate is subject to the tax imposed by section 2101 since the decedent died after September 14, 1960, but would not have been so deemed and subject to such tax if the decedent had died on or before September 14, 1960.

Example (1). C, who acquired his United States citizenship under section 5 of the Act of March 2, 1917 (39 Stat. 953), by reason of being a citizen of Puerto Rico, died in Puerto Rico on October 1, 1960, while domiciled therein. C is considered to have acquired his United States citizenship solely by reason of his being a citizen of Puerto Rico.

Example (2). E, whose parents were United States citizens by reason of their birth in Boston, was born in the Virgin Islands on March 1, 1927. On September 30, 1960, he died in the Virgin Islands while domiciled therein. E is considered to have acquired his United States citizenship solely by reason of his birth in the Virgin Islands (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)).

Example (3). N, who acquired United States citizenship by reason of being a native of the Virgin Islands and a resident thereof on June 28, 1932 (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)), died on October 1, 1960, while domiciled in the Virgin Islands. N is considered to have acquired his United States citizenship solely by reason of his birth or residence in the Virgin Islands.

Example (4). P, a former Danish citizen, who on January 17, 1917, resided in the Virgin Islands, made the declaration to preserve his Danish citizenship required by Article 6 of the treaty entered into on August 4, 1916, between the United States and Denmark. Subsequently P acquired United States citizenship when he renounced such declaration before a court of record (section 306 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C. 1406)). P died on October 1, 1960, while domiciled in the Virgin Islands. P is considered to have acquired his United States citizenship solely by reason of his birth or residence in the Virgin Islands.

Example (5). R, a former French citizen, acquired his United States citizenship through naturalization proceedings in a court located in the Virgin Islands after having qualified

for citizenship by residing in the Virgin Islands for 5 years. R died on October 1, 1960, while domiciled in the Virgin Islands. R is considered to have acquired his United States citizenship solely by reason of his birth or residence within the Virgin Islands.

[T.D. 6526, 26 FR 418, Jan. 19, 1961]

PROCEDURE AND ADMINISTRATION

§ 20.6001–1 Persons required to keep records and render statements.

(a) It is the duty of the executor to keep such complete and detailed records of the affairs of the estate for which he acts as will enable the district director to determine accurately the amount of the estate tax liability. All documents and vouchers used in preparing the estate tax return (§ 20.6018–1) shall be retained by the executor so as to be available for inspection whenever required.

(b) In addition to filing an estate tax return (see § 20.6018–1) and, if applicable, a preliminary notice (see § 20.6036–1), the executor shall furnish such supplemental data as may be necessary to establish the correct estate tax. It is therefore the duty of the executor (1) to furnish, upon request, copies of any documents in his possession (or on file in any court having jurisdiction over the estate) relating to the estate, appraisal lists of any items included in the gross estate, copies of balance sheets or other financial statements obtainable by him relating to the value of stock, and any other information obtainable by him that may be found necessary in the determination of the tax, and (2) to render any written statement, containing a declaration that it is made under penalties of perjury, of facts within his knowledge which the district director may require for the purpose of determining whether a tax liability exists and, if so, the extent thereof. Failure to comply with such a request will render the executor liable to penalties (see section 7269), and proceedings may be instituted in the proper court of the United States to secure compliance therewith (see section 7604).

(c) Persons having possession or control of any records or documents containing or supposed to contain any information concerning the estate, or having knowledge of or information about any fact or facts which have a material bearing upon the liability, or the extent of liability, of the estate for the estate tax, shall, upon request of the district director, make disclosure thereof. Failure on the part of any person to comply with such request will render him liable to penalties (section 7269), and compliance with the request may be enforced in the proper court of the United States (section 7604).

(d) Upon notification from the Internal Revenue Service, a corporation (organized or created in the United States) or its transfer agent is required to furnish the following information pertaining to stocks or bonds registered in the name of a nonresident decedent (regardless of citizenship): (1) The name of the decedent as registered; (2) the date of the decedent's death; (3) the decedent's residence and his place of death; (4) the names and addresses of executors, attorneys, or other representatives of the estate, within and without the United States; and (5) a description of the securities, the number of shares or bonds and the par values thereof.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7238, 37 FR 28720, Dec. 29, 1972]

§ 20.6011–1 General requirement of return, statement, or list.

(a) *General rule.* Every person made liable for any tax imposed by subtitle B of the Code shall make such returns or statements as are required by the regulations in this part. The return or statement shall include therein the information required by the applicable regulations or forms.

(b) *Use of prescribed forms.* Copies of the forms prescribed by §§ 20.6018–1 and 20.6036–1 may be obtained from district directors. The fact that an executor has not been furnished with copies of these forms will not excuse him from making a return or, if applicable, from filing a preliminary notice. Application for a form shall be made to the district director in ample time for the executor to have the form prepared, verified, and filed with the appropriate internal revenue office on or before the date prescribed for the filing thereof (see §§ 20.6071–1 and 20.6075–1). The executor shall carefully prepare the return and,

if applicable, the preliminary notice so as to set forth fully and clearly the data called for therein. A return or, if applicable, a preliminary notice which has not been so prepared will not be accepted as meeting the requirements of §§ 20.6018–1 through 20.6018–4, and § 20.6036–1.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7238, 37 FR 28720, Dec. 29, 1972]

§ 20.6018–1 Returns.

(a) *Estates of citizens or residents.* A return must be filed on Form 706 for the estate of every citizen or resident of the United States whose gross estate exceeded $60,000 in value on the date of his death. The value of the gross estate at the date of death governs with respect to the filing of the return regardless of whether the value of the gross estate is, at the executor's election, finally determined as of a date subsequent to the date of death pursuant to the provisions of section 2032. Duplicate copies of the return are not required to be filed. For the contents of the return, see § 20.6018–3.

(b) *Estates of nonresidents not citizens*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, a return must be filed on Form 706 or Form 706NA for the estate of every nonresident not a citizen of the United States if the value of that part of the gross estate situated in the United States on the date of his death exceeded $30,000 in the case of a decedent dying on or after November 14, 1966, or $2,000 in the case of a decedent dying before November 14, 1966. Under certain conditions the return may be made only on Form 706. See the instructions on Form 706NA for circumstances under which that form may not be used. Duplicate copies of the return are not required to be filed. For the contents of the return, see § 20.6018–3. For the determination of the gross estate situated in the United States, see §§ 20.2103–1 and 20.2104–1.

(2) *Certain estates of decedents dying on or after November 14, 1966.* In the case of an estate of a nonresident not a citizen of the United States dying on or after November 14, 1966—

(i) *Transfers subject to the tax imposed by section 2107(a).* If the transfer of the estate is subject to the tax imposed by section 2107(a) (relating to expatriation to avoid tax), any amounts includible in the decedent's gross estate under section 2107(b) are to be added to the value on the date of his death of that part of his gross estate situated in the United States, for purposes of determining under subparagraph (1) of this paragraph whether his gross estate exceeded $30,000 on the date of his death.

(ii) *Transfers subject to a Presidential proclamation.* If the transfer of the estate is subject to tax pursuant to a Presidential proclamation made under section 2108(a) (relating to Presidential proclamations of the application of pre-1967 estate tax provisions), the return must be filed on Form 706 or Form 706NA if the value on the date of the decedent's death of that part of his gross estate situated in the United States exceeded $2,000.

(c) *Place for filing.* See § 20.6091–1 for the place where the return shall be filed.

(d) *Time for filing.* See § 20.6075–1 for the time for filing the return.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7296, 38 FR 34200, Dec. 12, 1973]

§ 20.6018–2 Returns; person required to file return.

It is required that the duly qualified executor or administrator shall file the return. If there is more than one executor or administrator, the return must be made jointly by all. If there is no executor or administrator appointed, qualified and acting within the United States, every person in actual or constructive possession of any property of the decedent situated in the United States is constituted an executor for purposes of the tax (see § 20.2203–1), and is required to make and file a return. If in any case the executor is unable to make a complete return as to any part of the gross estate, he is required to give all the information he has as to such property, including a full description, and the name of every person holding a legal or beneficial interest in the property. If the executor is unable to make a return as to any property, every person holding a legal or beneficial interest therein shall, upon notice from the district director, make a

return as to that part of the gross estate. For delinquency penalty for failure to file return, see section 6651 and § 301.6651–1 of this chapter (Regulations on Procedure and Administration). For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, 7207, and 7269.

§ 20.6018–3 Returns; contents of returns.

(a) *Citizens or residents.* The return of an estate of a decedent who was a citizen or resident of the United States at the time of his death must contain an itemized inventory by schedule of the property constituting the gross estate and lists of the deductions under the proper schedules. The return shall set forth (1) the value of the gross estate (see §§ 20.2031–1 through 20.2044–1), (2) the deduction claimed (see §§ 20.2052–1 through 20.2056(e)–3), (3) the taxable estate (see § 20.2051–1), and (4) the gross estate tax, reduced by any credits (see §§ 20.2011–1 through 20.2014–6) against the tax. In listing upon the return the property constituting the gross estate (other than household and personal effects for which see § 20.2031–6), the description of it shall be such that the property may be readily identified for the purpose of verifying the value placed on it by the executor.

(b) *Nonresidents not citizens.* The return of an estate of a decedent who was not a citizen or resident of the United States at the time of his death must contain the following information:

(1) An itemized list of that part of the gross estate situated in the United States (see §§ 20.2103–1 and 20.2104–1);

(2) In the case of an estate the transfer of which is subject to the tax imposed by section 2107(a) (relating to expatriation to avoid tax), a list of any amounts with respect to stock in a foreign corporation which are includible in the gross estate under section 2107(b), together with an explanation of how the amounts were determined;

(3) An itemized list of any deductions claimed (see §§ 20.2106–1 and 20.2106–2);

(4) The amount of the taxable estate (see § 20.2106–1); and

(5) The gross estate tax, reduced by any credits against the tax (see § 20.2102–1).

For the disallowance of certain deductions if the return does not disclose that part of the gross estate not situated in the United States, see §§ 20.2106–1 and 20.2106–2.

(c) *Provisions applicable to returns described in paragraphs (a) and (b) of this section.* (1) A legal description shall be given of each parcel of real estate, and, if located in a city, the name of the street and number, its area, and, if improved, a short statement of the character of the improvements.

(2) A description of bonds shall include the number held, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number if there is more than one issue, and the principal exchange upon which listed, or the principal business office of the obligor, if unlisted. A description of stocks shall include number of shares, whether common or preferred, and, if preferred, what issue, par value, quotation at which returned, exact name of corporation, and, if the stock is unlisted, the location of the principal business office and State in which incorporated and the date of incorporation, or if the stock is listed, the principal exchange upon which sold. A description of notes shall include name of maker, date on which given, date of maturity, amount of principal, amount of principal unpaid, rate of interest and whether simple or compound, date to which interest has been paid and amount of unpaid interest. A description of the seller's interest in land contracts shall include name of buyer, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal and accrued interest, interest rate and date prior to decedent's death to which interest had been paid.

(3) A description of bank accounts shall disclose the name and address of depository, amount on deposit, whether a checking, savings, or a time-deposit account, rate of interest, if any payable, amount of interest accrued and payable, and serial number. A description of life insurance shall give the name of the insurer, number of policy, name of the beneficiary, and the amount of the proceeds.

(4) In describing an annuity, the name and address of the grantor of the annuity shall be given, or, if the annuity is payable out of a trust or other funds, such a description as will fully identify it. If the annuity is payable for a term of years, the duration of the term and the date on which it began shall be given, and if payable for the life of a person other than the decedent, the date of birth of such person shall be stated. If the executor has not included in the gross estate the full value of an annuity or other payment described in section 2039, he shall nevertheless fully describe the annuity and state its total purchase price and the amount of the contribution made by each person (including the decedent's employer) toward the purchase price. If the executor believes that any part of the annuity or other payment is excludable from the gross estate under the provisions of section 2039, or for any other reason, he shall state in the return the reason for his belief.

(5) Judgments should be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of the judgment debtor, amount of judgment, and rate of interest to which subject, and by stating whether any payments have been made thereon, and, if so, when and in what amounts.

(6) If, pursuant to section 2032, the executor elects to have the estate valued at a date or dates subsequent to the time of the decedent's death, there must be set forth on the return: (i) An itemized description of all property included in the gross estate on the date of the decedent's death, together with the value of each item as of that date; (ii) an itemized disclosure of all distributions, sales, exchanges, and other dispositions of any property during the 6 month (1 year, if the decedent died on or before December 31, 1970) period after the date of the decedent's death, together with the dates thereof; and (iii) the value of each item of property in accordance with the provisions of section 2032 (see § 20.2032–1). Interest and rents accrued at the date of the decedent's death and dividends declared to stockholders of record on or before the date of the decedent's death and not collected at that date are to be shown separately. (See also paragraph (e) of § 20.6018–4 with respect to documents required to be filed with the return.)

(7) All transfers made by the decedent within 3 years before the date of his death of a value of $1,000 or more and all transfers (other than outright transfers not in trust) made by the decedent at any time during his life of a value of $5,000 or more, except bona fide sales for an adequate and full consideration in money or money's worth, must be disclosed in the return, whether or not the executor regards the transfers as subject to the tax. If the executor believes that such a transfer is not subject to the tax, a brief statement of the pertinent facts shall be made.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 7238, 37 FR 28721, Dec. 29, 1972; T.D. 7296, 38 FR 34200, Dec. 12, 1973]

§ 20.6018–4 Returns; documents to accompany the return.

(a) A certified copy of the will, if the decedent died testate, must be submitted with the return, together with copies of such other documents as are required in Form 706 and in the applicable sections of these regulations. There may also be filed copies of any documents which the executor may desire to submit in explanation of the return.

(b) In the case of an estate of a nonresident citizen, the executor shall also file the following documents with the return:

(1) A copy of any inventory of property and schedule of liabilities, claims against the estate and expenses of administration filed with the foreign court of probate jurisdiction, certified by a proper official of the court; and

(2) A copy of any return filed under any applicable foreign inheritance, estate, legacy, or succession tax act, certified by a proper official of the foreign tax department.

(c) In the case of an estate of a nonresident not a citizen of the United States, the executor must also file with the return, but only if deductions are claimed or the transfer of the estate is subject to the tax imposed by section 2107(a) (relating to expatriation to avoid tax), a copy of the inventory of

property filed under the foreign death duty act; or, if no such inventory was filed, a certified copy of the inventory filed with the foreign court of probate jurisdiction.

(d) For every policy of life insurance listed on the return, the executor must procure a statement, on Form 712, by the company issuing the policy and file it with the return.

(e) If, pursuant to section 2032, the executor elects to have the estate valued at a date or dates subsequent to the time of the decedent's death, the executor shall file with the return evidence in support of any statements made by him in the return as to distributions, sales, exchanges, or other dispositions of property during the 6 month (1 year, if the decedent died on or before December 31, 1970) period which followed the decedent's death. If the court having jurisdiction over the estate makes an order or decree of distribution during that period, a certified copy thereof must be submitted as part of the evidence. The district director, or the director of a service center, may require the submission of such additional evidence as is deemed necessary.

(f) In any case where a transfer, by trust or otherwise, was made by a written instrument, a copy thereof shall be filed with the return if (1) the property is included in the gross estate, or (2) the executor pursuant to the provisions of paragraph (c)(7) of § 20.6018–3 has made a disclosure of the transfer on the return but has not included its value in the gross estate in the belief that it is not so includible. If the written instrument is of public record, the copy shall be certified, or if it is not of record, the copy shall be verified. If the decedent was a nonresident, not a citizen at the time of his death, the copy may be either certified or verified.

(g) If the executor contends that the value of property transferred by the decedent within a period of three years ending with the date of the decedent's death should not be included in the gross estate because he considers that the transfer was not made in contemplation of death, he shall file with the return (1) a copy of the death certificate, and (2) a statement, continuing a declaration that it is made under the penalties of perjury, of all the material facts and circumstances, including those directly or indirectly indicating the decedent's motive in making the transfer and his mental and physical condition at that time. However, this data need not be furnished with respect to transfers of less than $1,000 in value unless requested by the district director.

[T.D. 6996, 23 FR 4529, June 24, 1958, as amended by T.D. 7238, 37 FR 28721, Dec. 29, 1972; T.D. 7296, 38 FR 34200, Dec. 12, 1973]

§ 20.6036–1 Notice of qualification as executor of estate of decedent dying before 1971.

(a) *Preliminary notice for estates of decedents dying before January 1, 1971.* (1) A preliminary notice must be filed on Form 704 for the estate of every citizen or resident of the United States whose gross estate exceeded $60,000 in value on the date of his death.

(2) In the case of a nonresident not a citizen of the United States dying on or after November 14, 1966—

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, a preliminary notice must be filed on Form 705 if that part of the decedent's gross estate situated in the United States exceeded $30,000 in value on the date of his death (see §§ 20.2103–1 and 20.2104–1).

(ii) If the transfer of the estate is subject to the tax imposed by section 2107(a) (relating to expatriation to avoid tax), any amounts includible in the decedent's gross estate under section 2107(b) are to be added to the value on the date of his death of that part of his gross estate situated in the United States, for purposes of determining under subdivision (i) of this subparagraph whether his gross estate exceeded $30,000 in value on the date of his death.

(iii) If the transfer of the estate is subject to tax pursuant to a Presidential proclamation made under section 2108(a) (relating to Presidential proclamations of the application of pre-1967 estate tax provisions), a preliminary notice must be filed on Form 705 if the value on the date of the decedent's death of that part of his gross estate situated in the United States exceeded $2,000.

(3) A preliminary notice must be filed on Form 705 for the estate of every nonresident not a citizen of the United States dying before November 14, 1966, if the value on the date of his death of that part of his gross estate situated in the United States exceeded $2,000.

(4) The value of the gross estate on the date of death governs with respect to the requirement for filing the preliminary notice irrespective of whether the value of the gross estate is, at the executor's election, finally determined pursuant to the provisions of section 2032 as of a date subsequent to the date of death. If there is doubt as to whether the gross estate exceeds $60,000, $30,000, or $2,000, as the case may be, the notice shall be filed as a matter of precaution in order to avoid the possibility of penalties attaching.

(5) The primary purpose of the preliminary notice is to advise the Internal Revenue Service of the existence of taxable estates, and filing shall not be delayed beyond the period provided for in § 20.6071–1 merely because of uncertainty as to the exact value of the assets. The estimate of the gross estate called for by the notice shall be the best approximation of value which can be made within the time allowed. Duplicate copies of the preliminary notice are not required to be filed.

(6) For criminal penalties for failure to file a notice and filing a false or fraudulent notice, see sections 7203, 7207, and 7269. See § 20.6091–1 for the place for filing the notice. See § 20.6071–1 for the time for filing the notice.

(b) *Persons required to file.* In the case of an estate of a citizen or resident of the United States described in paragraph (a) of this section, the preliminary notice must be filed by the duly qualified executor or administrator, or if none qualifies within two months after the decedent's death, by every person in actual or constructive possession of any property of the decedent at or after the time of the decedent's death. The signature of one executor or administrator on the preliminary notice is sufficient. In the case of a nonresident not a citizen, the notice must be filed by every duly qualified executor or administrator within the United States, or if none qualifies within two months after the decedent's death, by every person in actual or constructive possession of any property of the decedent at or after the time of the decedent's death.

[T.D. 7238, 37 FR 28721, Dec. 29, 1972, as amended by T.D. 7296, 38 FR 34200, Dec. 12, 1973]

§ 20.6036–2 Notice of qualification as executor of estate of decedent dying after 1970.

In the case of the estate of a decedent dying after December 31, 1970, no special notice of qualification as executor of an estate is required to be filed. The requirement of section 6036 for notification of qualification as executor of an estate shall be satisfied by the filing of the estate tax return required by section 6018 and the regulations thereunder.

[T.D. 7238, 37 FR 28721, Dec. 29, 1972]

§ 20.6061–1 Signing of returns and other documents.

Any return, statement, or other document required to be made under any provision of Chapter 11 or Subtitle F of the Code or regulations prescribed thereunder with respect to any tax imposed by Chapter 11 of the Code shall be signed by the executor, administrator or other person required or duly authorized to sign in accordance with the regulations, forms or instructions prescribed with respect to such return, statement, or other document. See section 2203 for definition of executor, administrator, etc. The person required or duly authorized to make the return may incur liability for the penalties provided for erroneous, false, or fraudulent returns. For criminal penalties see sections 7201, 7203, 7206, 7207, and 7269.

[T.D. 6600, 27 FR 4986, May 29, 1962]

§ 20.6065–1 Verification of returns.

(a) *Penalties of perjury.* If a return, statement, or other document made under the provisions of Chapter 11 or Subtitle F of the Code or the regulations thereunder with respect to any tax imposed by Chapter 11 of the Code, or the form and instructions issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under

the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement or other document. In addition, any other statement or document submitted under any provision of Chapter 11 or Subtitle F of the Code or regulations thereunder with respect to any tax imposed by Chapter 11 of the Code may be required to contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) *Oath.* Any return, statement, or other document required to be submitted under Chapter 11 or Subtitle F of the Code or regulations prescribed thereunder with respect to any tax imposed by Chapter 11 of the Code may be required to be verified by an oath.

[T.D. 6600, 27 FR 4986, May 29, 1962]

§ 20.6071–1 Time for filing preliminary notice required by § 20.6036–1.

In the case of the estate of a decedent dying before January 1, 1971, if a duly qualified executor or administrator of the estate of such a decedent who was a resident or a citizen of the United States qualifies within 2 months after a decedent's death, or if a duly qualified executor or administrator of the estate of such a decedent who was a nonresident not a citizen qualifies within the United States within 2 months after the decedent's death, the preliminary notice required by § 20.6036–1 must be filed within 2 months after his qualification. If no such executor or administrator qualifies within that period, the preliminary notice must be filed within 2 months of the decedent's death.

[T.D. 7238, 37 FR 28721, Dec. 29, 1972]

§ 20.6075–1 Returns; time for filing estate tax return.

The estate tax return required by section 6018 must be filed on or before the due date. The due date is the date on or before which the return is required to be filed in accordance with the provisions of section 6075(a) or the last day of the period covered by an extension of time granted by the district director or the director of a service center as provided in § 20.6081–1. The due date, with respect to a decedent dying after December 31, 1970, is, unless an extension of time for filing has been granted, the day of the 9th calendar month after the decedent's death numerically corresponding to the day of the calendar month on which death occurred, except that, if there is no numerically corresponding day in such ninth month, the last day of the ninth month is the due date. For example, if the decedent dies on July 31, 1972, the estate tax return and tax payment must be made on or before April 30, 1973. The due date, with respect to a decedent dying before January 1, 1971, is, unless an extension of time for filing has been granted, the day of the 15th calendar month after the decedent's death numerically corresponding to the day of the calendar month on which death occurred, except that, if there is no numerically corresponding day in such 15th month, the last day of the 15th month is the due date. When the due date falls on Saturday, Sunday, or a legal holiday, the due date for filing the return is the next succeeding day which is not Saturday, Sunday, or a legal holiday. For definition of a legal holiday, see section 7503 and § 301.7503–1 of this chapter (Regulations on Procedure and Administration). As to additions to the tax in the case of failure to file the return or pay the tax within the prescribed time, see section 6651 and § 301.6651–1 of this chapter (Regulations on Procedure and Administration). For rules with respect to the right to elect to have the property valued as of a date or dates subsequent to the decedent's death, see § 20.2032–1, and section 7502 and § 301.7502–1 of this chapter (Regulations on Procedure and Administration).

[T.D. 7238, 37 FR 28721, Dec. 29, 1972]

§ 20.6081–1 Extension of time for filing the return.

(a) In case it is impossible or impracticable for the executor to file a reasonably complete return within 9 months (15 months in the case of a decedent dying before January 1, 1971) from the date of death, the district director or the director of a service center may, upon a showing of good and

sufficient cause, grant a reasonable extension of time for filing the return required by section 6018. Unless the executor is abroad, the extension may not be for more than 6 months from the date for filing provided by section 6075(a). Therefore, unless the executor is abroad, the due date for filing the return under any extension granted by a district director or a director of a service center may not be later than 15 months (21 months in the case of a decedent dying before January 1, 1971) from the date of the decedent's death. The extension may, of course, be for a lesser period of time.

(b) Except as provided in paragraph (b) of § 301.6091–1 of this chapter (Regulations on Procedure and Administration), relating to hand-carried documents, such application shall be made to the internal revenue officer with whom the estate tax return is required to be filed and must contain a full recital of the causes for the delay. It should be made before the expiration of the time within which the return otherwise must be filed and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit the internal revenue officer to consider the matter and reply before what otherwise would be the due date of the return.

(c) A return as complete as possible must be filed before the expiration of the extension period granted. The return thus filed will be the return required by section 6018(a) and any tax shown thereon will be the ''amount determined by the executor as the tax'' referred to in section 6161(a)(2), or the ''amount shown as the tax by the taxpayer upon his return'' referred to in section 6211(a)(1)(A). Except as provided in §§ 20.2032A–8(d) and 20.6166–1(h), the return cannot be amended after the expiration of the extension period although supplemental information may subsequently be filed that may result in a finally determined tax different from the amount shown as the tax by the executor on the return. An extension of time for filing the return does not operate to extend the time for payment of the tax. See § 20.6151–1 for the time for payment of the tax, and §§ 20.6161–1 and 20.6163–1 for extensions of time for payment of the tax.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6711, 29 FR 3656, Mar. 24, 1964; T.D. 7238, 37 FR 28722, Dec. 29, 1972; T.D. 7710, 45 FR 50745, July 31, 1980]

§ 20.6091–1 Place for filing returns or other documents.

(a) *General rule.* If the decedent was domiciled in the United States at the time of his death, the preliminary notice required by § 20.6036–1 in the case of the estate of a decedent dying before January 1, 1971, and the estate tax return required by § 20.6018–1 shall be filed with:

(1) The service center serving the district in which the decedent was domiciled at the time of his death, if the instructions applicable to the estate tax return provide that the return shall be filed with a service center, or

(2) The district director (or with any person assigned the administrative supervision of an area, zone or local office constituting a permanent post of duty within the internal revenue district of such director) in whose district the decedent was domiciled at the time of his death, if paragraph (a)(1) of this section does not apply.

Paragraph (a)(1) of this section does not apply if the return is made by hand-carrying or if the instructions applicable to the preliminary notice or to the return do not provide that it shall be filed with a service center.

(b) *Non-U.S. domiciliaries.* If the decedent was not domiciled in the United States at the time of his death, the preliminary notice required by § 20.6036–1 in the case of the estate of a decedent dying before January 1, 1971, and the estate tax return required by § 20.6018–1 shall be filed with the Internal Revenue Service Center, Philadelphia, Pa. or the Director of International Operations, Washington, DC, depending upon the place designated on the return form or in the instructions issued with respect to such form. This paragraph applies whether or not the decedent was a citizen of the United States and whether or not the return is made by hand-carrying.

[T.D. 7238, 37 FR 28722, Dec. 29, 1972, as amended by T.D. 7302, 39 FR 796, Jan. 3, 1974; T.D. 7495, 42 FR 33726, July 1, 1977]

§ 20.6091–2 Exceptional cases.

Notwithstanding the provisions of § 20.6091–1 the Commissioner may permit the filing of the preliminary notice required by § 20.6036–1 and the estate tax return required by § 20.6018–1 in any internal revenue district.

[T.D. 6600, 27 FR 4986, May 29, 1962]

§ 20.6151–1 Time and place for paying tax shown on the return.

(a) *General rule.* The tax shown on the estate tax return is to be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return). For provisions relating to the time and place for filing the return, see §§ 20.6075–1 and 20.6091–1. For the duty of the executor to pay the tax, see § 20.2002–1.

(b) *Extension of time for paying*—(1) *In general.* For general provisions relating to extension of time for paying the tax, see § 20.6161–1.

(2) *Reversionary or remainder interests.* For provisions relating to extension of time for payment of estate tax on the value of a reversionary or remainder interest in property, see § 20.6163–1.

(3) *Interest in a closely held business.* For provisions relating to payment in installments of the estate tax attributable to inclusion in the gross estate of an interest in a closely held business, see §§ 20.6166–1 through 20.6166–4.

(c) *Payment with obligations of the United States.* Treasury bonds of certain issues which were owned by the decedent at the time of his death or which were treated as part of his gross estate under the rules contained in § 306.28 of Treasury Department Circular No. 300, Revised (31 CFR part 306), may be redeemed at par plus accrued interest for the purpose of payment of the estate tax, as provided in said section. Whether bonds of particular issues may be redeemed for this purpose will depend on the terms of the offering circulars cited on the face of the bonds. A current list of eligible issues may be obtained from any Federal reserve bank or branch, or from the Bureau of Public Debt, Washington, DC. See section 6312 and §§ 301.6312–1 and 301.6312–2 of this chapter (Regulations on Procedure and Administration) for provisions relating to the payment of taxes with United States Treasury obligations.

(d) *Receipt for payment.* For provisions relating to duplicate receipts for payment of the tax, see § 20.6314–1.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6522, 25 FR 13885, Dec. 29, 1960]

§ 20.6161–1 Extension of time for paying tax shown on the return.

(a) *Basis for granting an extension of time*—(1) *Reasonable cause.* With respect to the estate of a decedent dying after December 31, 1970, an extension of time beyond the due date to pay any part of the tax shown on the estate tax return may be granted for a reasonable period of time, not to exceed 12 months, by the district director or the director of a service center, at the request of the executor, if an examination of all the facts and circumstances discloses that such request is based upon reasonable cause. (See paragraph (b) of this section for rules relating to application for extension.) The following examples illustrate cases involving reasonable cause for granting an extension of time pursuant to this paragraph:

Example (1). An estate includes sufficient liquid assets to pay the estate tax when otherwise due. The liquid assets, however, are located in several jurisdictions and are not immediately subject to the control of the executor. Consequently, such assets cannot readily be marshaled by the executor, even with the exercise of due diligence.

Example (2). An estate is comprised in substantial part of assets consisting of rights to receive payments in the future (i.e., annuities, copyright royalties, contingent fees, or accounts receivable). These assets provide insufficient present cash with which to pay the estate tax when otherwise due and the estate cannot borrow against these assets except upon terms which would inflict loss upon the estate.

Example (3). An estate includes a claim to substantial assets which cannot be collected without litigation. Consequently, the size of the gross estate is unascertainable as of the time the tax is otherwise due.

Example (4). An estate does not have sufficient funds (without borrowing at a rate of interest higher than that generally available) with which to pay the entire estate tax when otherwise due, to provide a reasonable allowance during the remaining period of administration of the estate for the decedent's widow and dependent children, and to satisfy claims against the estate that are due and

payable. Furthermore, the executor has made a reasonable effort to convert assets in his possession (other than an interest in a closely held business to which section 6166 applies) into cash.

(2) *Undue hardship*—(i) *General rule.* In any case where the district director finds that payment on the due date of any part of the tax shown on the return, or payment of any part of an installment under section 6166 (including any part of a deficiency prorated to an installment the date for payment of which had not arrived) on the date fixed for payment thereof, would impose undue hardship upon the estate, he may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed 10 years from the date prescribed in section 6151(a) for payment of the tax. See paragraph (a) of § 20.6151–1. In addition, if the district director finds that payment upon notice and demand of any part of a deficiency prorated under the provisions of section 6166 to installments the date for payment of which had arrived would impose undue hardship upon the estate, he may extend the time for payment for a similar period or periods.

(ii) *Definition of ''undue hardship''.* The extension provided under this subparagraph on the basis of undue hardship to the estate will not be granted upon a general statement of hardship or merely upon a showing of reasonable cause. The term ''undue hardship'' means more than an inconvenience to the estate. A sale of property at a price equal to its current fair market value, where a market exists, is not ordinarily considered as resulting in an undue hardship to the estate. The following examples illustrate cases in which an extension of time will be granted based on undue hardship pursuant to this paragraph:

Example (1). A farm (or other closely held business) comprises a significant portion of an estate, but the percentage requirements of section 6166(a) (relating to an extension where the estate includes a closely held business) are not satisfied and, therefore, that section does not apply. Sufficient funds for the payment of the estate tax when otherwise due are not readily available. The farm (or closely held business) could be sold to unrelated persons at a price equal to its fair market value, but the executor seeks an extension of time to facilitate the raising of funds from other sources for the payment of the estate tax.

Example (2). The assets in the gross estate which must be liquidated to pay the estate tax can only be sold at a sacrifice price or in a depressed market if the tax is to be paid when otherwise due.

(b) *Application for extension.* An application containing a request for an extension of time for paying the tax shown on the return shall be in writing, shall state the period of the extension requested, and shall include a declaration that it is made under penalties of perjury. If the application is based upon reasonable cause (see paragraph (a)(1) of this section), a statement of such reasonable cause shall be included in the application. If the application is based upon undue hardship to the estate (see paragraph (a)(2) of this section), the application shall include a statement explaining in detail the undue hardship to the estate that would result if the requested extension were refused. At the option of the executor, an application for an extension of time based upon undue hardship may contain an alternative request for an extension based upon reasonable cause if the application for an extension based upon undue hardship is denied. However, an application for an extension of time based solely upon reasonable cause will be treated as such even though an examination of all the facts and circumstances discloses that an application for an extension of time based upon undue hardship might have been granted had such an application therefor been made. If the application is based solely on reasonable cause, it shall be filed with the internal revenue officer with whom the estate tax return is required to be filed under the provisions of § 20.6091–1(a). If the application is based on undue hardship (including an application in which the executor makes an alternative request for an extension based on reasonable cause), it shall be filed with the appropriate district director referred to in paragraph (a)(2) of § 20.6091–1 whether or not the return is to be filed with, orthe tax is to be paid to, such district director. An application, for an extension of time, relating to the estate of a decedent who was not domiciled in the United States at the time of death,

shall be filed with the Director of International Operations, Internal Revenue Service, Washington, DC. 20225. When received, the application will be examined, and, if possible, within 30 days will be denied, granted, or tentatively granted subject to certain conditions of which the executor will be notified. An application for an extension of time for payment of the tax, or of an installment under section 6166 (including any part of a deficiency prorated to an installment the date for payment of which had not arrived), will not be considered unless the extension is applied for on or before the date fixed for payment of the tax or installment. Similarly, an application for such an extension of time for payment of any part of a deficiency prorated under the provisions of section 6166 to installments the date for payment of which had arrived, will not be considered unless the extension is applied for on or before the date prescribed for payment of the deficiency as shown by the notice and demand from the district director. If the executor desires to obtain an additional extension of time for payment of any part of the tax shown on the return, or any part of an installment under section 6166 (including any part of a deficiency prorated to installment), it must be applied for on or before the date of the expiration of the previous extension. The granting of the extension of time for paying the tax is discretionary with the appropriate internal revenue officer and his authority will be exercised under such conditions as he may deem advisable. However, if a request for an extension of time for payment of estate tax under this section is denied by a district director or a director of a service center, a written appeal may be made, by registered or certified mail or hand delivery, to the regional commissioner with authority over such district director or service center director within 10 days after the denial is mailed to the executor. The provisions of sections 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday) apply in the case of appeals filed under this paragraph. When received, the appeal will be examined, and if possible, within 30 days will be denied, granted, or tentatively granted subject to certain conditions of which the executor will be notified. If, in the mistaken belief that an estate satisfies the requirements of section 6166, the executor, within the time prescribed in paragraph (e) of § 20.6166–1, files a notification of election to pay estate tax in installments, the notification of election to pay tax in installments will be treated as a timely filed application for an extension, under section 6161, of time for payment of the tax if the executor so requests, in writing, within a reasonable time after being notified by the district director that the estate does not satisfy the requirements of section 6166. A request that the election under section 6166 be treated as a timely filed application for an extension under section 6161 must contain, or be supported by the same information required by this paragraph with respect to an application for such an extension.

(c) *Special rules*—(1) *Payment pursuant to extension.* The amount of the tax for which an extension is granted, with the additions thereto, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the district director.

(2) *Interest.* The granting of an extension of the time for payment of the tax will not relieve the estate from liability for the payment of interest thereon during the period of the extension. See section 6601.

(3) *Duty to file timely return.* The granting of an extension of time for paying the tax will not relieve the executor from the duty of filing the return on or before the date provided for in § 20.6075–1.

(4) *Credit for taxes.* An extension of time to pay the tax may extend the period within which State and foreign death taxes allowed as a credit under sections 2011 and 2014 are required to be paid and the credit therefor claimed. See paragraph (c) of § 20.2011–1 and § 20.2014–6.

(d) *Cross references.* For provisions requiring the furnishing of security for the payment of the tax for which an extension is granted, see paragraph (a) of § 20.6165–1. For provisions relating to

extensions of time for payment of tax on the value of a reversionary or remainder interest in property, see § 20.6163–1.

[T.D. 7238, 37 FR 28722, Dec. 29, 1972, as amended by T.D. 7384, 40 FR 49323, Oct. 22, 1975]

§ 20.6161–2 Extension of time for paying deficiency in tax.

(a) In any case in which the district director finds that payment, on the date prescribed therefor, of any part of a deficiency would impose undue hardship upon the estate, he may extend the time for payment for a period or periods not to exceed one year for any one period and for all periods not to exceed four years from the date prescribed for payment thereof. However, see § 20.6161–1 for extensions of time for payment of the part of a deficiency which is prorated to installments under the provisions of section 6166.

(b) The extension will not be granted upon a general statement of hardship. The term ''undue hardship'' means more than an inconvenience to the estate. It must appear that a substantial financial loss, for example, due to the sale of property at a sacrifice price, will result to the estate from making payment of the deficiency at the date prescribed therefor. If a market exists, a sale of property at the current market price is not ordinarily considered as resulting in an undue hardship. No extension will be granted if the deficiency is due to negligence or intentional disregard of rules and regulations or to fraud with intent to evade the tax.

(c) An application for such an extension must be in writing and must contain, or be supported by, information in a written statement declaring that it is made under penalties of perjury showing the undue hardship that would result to the estate if the extension were refused. The application, with the supporting information, must be filed with the district director. When received, it will be examined, and, if possible, within thirty days will be denied, granted, or tentatively granted subject to certain conditions of which the executor will be notified. The district director will not consider an application for such an extension unless it is applied for on or before the date prescribed for payment of the deficiency, as shown by the notice and demand from the district director. If the executor desires to obtain an additional extension, it must be applied for on or before the date of the expiration of the previous extension. The granting of the extension of time for paying the deficiency is discretionary with the district director.

(d) The amount of the deficiency for which an extension is granted, with the additions thereto, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the district director.

(e) The granting of an extension of time for paying the deficiency will not operate to prevent the running of interest. See section 6601. An extension of time to pay the deficiency may extend the period within which State and foreign death taxes allowed as a credit under sections 2011 and 2014 are required to be paid and the credit therefor claimed. See paragraph (c) of § 20.2011–1 and § 20.2014–6.

(f) For provisions requiring the furnishing of security for the payment of the deficiency for which an extension is granted, see § 20.6165–1.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6522, 25 FR 13885, Dec. 29, 1960]

§ 20.6163–1 Extension of time for payment of estate tax on value of reversionary or remainder interest in property.

(a)(1) In case there is included in the gross estate a reversionary or remainder interest in property, the payment of the part of the tax attributable to that interest may, at the election of the executor, be postponed until six months after the termination of the precedent interest or interests in the property. The provisions of this section are limited to cases in which the reversionary or remainder interest is included in the decedent's gross estate as such and do not extend to cases in which the decedent creates future interests by his own testamentary act.

(2) If the district director finds that the payment of the tax at the expiration of the period of postponement described in subparagraph (1) of this paragraph would result in undue hardship to the estate, he may—

(i) After September 2, 1958, and before February 27, 1964, extend the time for payment for a reasonable period or periods not to exceed in all 2 years from the expiration of the period of postponement, but only if the precedent interest or interests in the property terminated after March 2, 1958, or

(ii) After February 26, 1964, extend the time for payment for a reasonable period or periods not to exceed in all 3 years from the expiration of the period of postponement, but only if the time for payment of the tax, including any extensions thereof, did not expire before February 26, 1964.

See paragraph (a)(2)(ii) of § 20.6161–1 for the meaning of the term ''undue hardship''. An example of undue hardship is a case where, by reason of the time required to settle the complex issues involved in a trust, the decedent's heirs or beneficiaries cannot reasonably expect to receive the decedent's remainder interest in the trust before the expiration of the period of postponement. The extension will be granted only in the manner provided in paragraph (b) of § 20.6161–1, and the amount of the tax for which the extension is granted, with the additions thereto, shall be paid on or before the expiration of the period of extension without the necessity of notice and demand from the district director.

(b) Notice of the exercise of the election to postpone the payment of the tax attributable to a reversionary or remainder interest should be filed with the district director before the date prescribed for payment of the tax. The notice of election may be made in the form of a letter addressed to the district director. There shall be filed with the notice of election a certified copy of the will or other instrument under which the reversionary or remainder interest, was created, or a copy verified by the executor if the instrument is not filed of record. The district director may require the submission of such additional proof as he deems necessary to disclose the complete facts. If the duration of the precedent interest is dependent upon the life of any person, the notice of election must show the date of birth of that person.

(c) If the decedent's gross estate consists of both a reversionary or remainder interest in property and other property, the tax attributable to the reversionary or remainder interest, within the meaning of this section, is an amount which bears the same ratio to the total tax as the value of the reversionary or remainder interest (reduced as provided in the following sentence) bears to the entire gross estate (reduced as provided in the last sentence of this paragraph). In applying this ratio, the value of the reversionary or remainder interest is reduced by (1) the amount of claims, mortgages, and indebtedness which is a lien upon such interest; (2) losses in respect of such interest during the settlement of the estate which are deductible under the provisions of section 2054 or section 2106(a)(1); (3) any amount deductible in respect of such interest under section 2055 or 2106(a)(2) for charitable, etc., transfers; and (4) the portion of the marital deduction allowed under the provisions of section 2056 on account of bequests, etc., of such interests to the decedent's surviving spouse. Likewise, in applying the ratio, the value of the gross estate is reduced by such deductions having similar relationship to the items comprising the gross estate.

(d) For provisions requiring the payment of interest during the period of the extension occurring before July 1, 1975, see section 6601(b) prior to its amendment by section 7(d)(1) of the Act of Jan. 3, 1975 (Pub. L. 93–625, 88 Stat. 2115). For provisions requiring the furnishing of security for the payment of the tax for which the extension is granted, see paragraph (b) of § 20.6165–1. For provisions concerning the time within which credit for State and foreign death taxes on such a reversionary or remainder interest may be taken, see section 2015 and the regulations thereunder.

[T.D. 6296, 23 FR 4529, June 24, 1958, as amended by T.D. 6716, 29 FR 3757, Mar. 26, 1964; T.D. 7238, 37 FR 28724, Dec. 29, 1972; T.D. 7384, 40 FR 49323, Oct. 22, 1975]

§ 20.6165–1 Bonds where time to pay tax or deficiency has been extended.

(a) *Extensions under sections 6161 and 6163(b) of time to pay tax or deficiency.* If an extension of time for payment of tax or deficiency is granted under section 6161 or 6163(b), the district director may, if he deems it necessary, require the executor to furnish a bond for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension. However, such bond shall not exceed double the amount with respect to which the extension is granted. For other provisions relating to bonds required where extensions of time to pay estate taxes or deficiencies are granted under sections 6161 and 6163(b), see the regulations under section 7101 contained in part 301 of this chapter (Regulations on Procedure and Administration).

(b) *Extensions under section 6163 of time to pay estate tax attributable to reversionary or remainder interests.* As a prerequisite to the postponement of the payment of the tax attributable to a reversionary or remainder interest as provided in § 20.6163–1, a bond equal to double the amount of the tax and interest for the estimated duration of the precedent interest must be furnished conditioned upon the payment of the tax and interest accrued thereon within six months after the termination of the precedent interest. If after the acceptance of a bond it is determined that the amount of the tax attributable to the reversionary or remainder interest was understated in the bond, a new bond or a supplemental bond may be required, or the tax, to the extent of the understatement, may be collected. The bond must be conditioned upon the principal or surety promptly notifying the district director when the precedent interest terminates and upon the principal or surety notifying the district director during the month of September of each year as to the continuance of the precedent interest, if the duration of the precedent interest is dependent upon the life or lives of any person or persons, or is otherwise indefinite. For other provisions relating to bonds where an extension of time has been granted for paying the tax, see the regulations under section 7101 contained in part 301 of this chapter (Regulations on Procedure and Administration).

[T.D. 6526, 26 FR 418, Jan. 19, 1961, as amended by T.D. 6600, 27 FR 4986, May 29, 1962]

§ 20.6166–1 Election of alternate extension of time for payment of estate tax where estate consists largely of interest in closely held business.

(a) *In general.* Section 6166 allows an executor to elect to extend payment of part or all of the portion of the estate tax which is attributable to a closely held business interest (as defined in section 6166(b)(1)). If it is made at the time the estate tax return is filed, the election is applicable both to the tax originally determined to be due and to certain deficiencies. If no election is made when the estate tax return is filed, up to the full amount of certain later deficiencies (but not any tax originally determined to be due) may be paid in installments.

(b) *Time and manner of election.* The election provided under section 6166(a) is made by attaching to a timely filed estate tax return a notice of election containing the following information:

(1) The decedent's name and taxpayer identification number as they appear on the estate tax return;

(2) The amount of tax which is to be paid in installments;

(3) The date selected for payment of the first installment;

(4) The number of annual installments, including the first installment, in which the tax is to be paid;

(5) The properties shown on the estate tax return which constitute the closely held business interest (identified by schedule and item number); and

(6) The facts which formed the basis for the executor's conclusion that the estate qualifies for payment of the estate tax in installments.

In the absence of a statement in the notice of election as to the amount of tax to be paid in installments, the date selected for payment of the first installment, or the number of installments, the election is presumed to be for the maximum amount so payable and for payment thereof in 10 equal installments, the first of which is due on the date which is 5 years after the date

prescribed in section 6151(a) for payment of estate tax.

(c) *Treatment of certain deficiencies*—(1) *No election before assessment of deficiency.* Where a deficiency is assessed and no election, including a protective election, has been made under section 6166(a) to pay any tax in installments, the executor may elect under section 6166(h) to pay the portion of the deficiency attributable to the closely held business interest in installments. However, this is true only if the estate qualifies under section 6166 based upon values as finally determined (or agreed to following examination of a return). Such an election is exercised by filing a notice of election with the Internal Revenue Service office where the estate tax return was filed. The notice of election must be filed within 60 days after issuance of notice and demand for payment of the deficiency, and it must contain the same information as is required under paragraph (b) of this section. The notice of election is to be accompanied by payment of the amount of tax and interest, the date for payment of which has arrived as determined under paragraphs (e) and (f) of this section, plus any amount of unpaid tax and interest which is not attributable to the closely held business interest and which is not eligible for further extension (or currently extended) under another section (other than section 6166A).

(2) *Election made with estate tax return.* If the executor makes an election under section 6166(a) (other than a protective election) at the time the estate tax return is filed and a deficiency is later assessed, the portion of the deficiency which is attributable to the closely held business interest (but not any accrued interest thereon) will be prorated to the installments payable pursuant to the original section 6166(a) election. Any part of the deficiency prorated to an installment, the date for payment of which has arrived, is due upon notice and demand. Interest for any such period, including the deferral period, is payable upon notice and demand.

(3) *Portion of deficiency attributable to closely held business interest.* Only that portion of any deficiency which is attributable to a closely held business interest may be paid in installments under section 6166. The amount of any deficiency which is so attributable is the difference between the amount of tax which the executor has previously elected to pay in installments under section 6166 and the maximum amount of tax which the executor could have elected to pay in installments on the basis of a return which reflects the adjustments that resulted in the deficiency.

(d) *Protective election.* A protective election may be made to defer payment of any portion of tax remaining unpaid at the time values are finally determined (or agreed to following examination of a return) and any deficiencies attributable to the closely held business interest (within the meaning of paragraph (c)(3) of this section). Extension of tax payments pursuant to this election is contingent upon final values meeting the requirements of section 6166. A protective election does not, however, extend the time for payment of any amount of tax. Rules for such extensions are contained in sections 6161, 6163, and 6166A. A protective election is made by filing a notice of election with a timely filed estate tax return stating that the election is being made. Within 60 days after values are finally determined (or agreed to following examination of a return), a final notice of election which sets forth the information required under paragraph (b) of this section must be filed with the Internal Revenue Service office where the original estate tax return was filed. That notice of final election is to be accompanied by payment of any amount of previously unpaid tax and interest, the date for payment of which has arrived as determined under paragraphs (e) and (f) of this section, plus any amount of unpaid tax and interest which is not attributable to the closely held business interest and which is not eligible for further extension (or currently extended) under another section (other than section 6166A).

(e) *Special rules*—(1) *Effect of deficiencies and protective elections upon payment.* Upon election to extend the time for payment of a deficiency or

upon final determination of values following a protective election, the executor must prorate the tax or deficiency attributable to the closely held business interest among all installments. All amounts attributed to installments which would have been due had the election been made at the time the tax was due to be paid under section 6151(a) and all accrued interest must be paid at the time the election is made.

(2) *Determination of date for payment of first installment.* The executor may defer payment of tax (but not interest) for any period up to 5 years from the date determined under section 6151(a) for payment of the estate tax. The date chosen for payment of the first installment of tax is not required to be on an annual anniversary of the original due date of the tax; however, it must be the date within any month which corresponds to the day of the month determined under section 6151(a).

(f) *Rule for computing interest.* Section 6601(j) provides a special 4 percent interest rate for the amount of tax (including deficiencies) which is to be paid in installments under section 6166. This special interest rate applies only to that amount of tax which is to be paid in installments and which does not exceed the limitation of section 6601(j)(2). Where payment of a greater amount of tax than is subject to section 6601(j)(2) is extended under section 6166, each installment is deemed to be comprised of both tax subject to the 4 percent interest rate and tax subject to the rate otherwise prescribed by section 6621. The percentage of any installment subject to the special 4 percent rate is equal to the percentage of the total tax payable in installments which is subject to the 4 percent rate. Where an election is made under the provisions of paragraphs (b) or (c) (1) of this section, the 4 percent rate applies from the date on which the estate tax was originally due to be paid. If only a protective election is made, section 6601(j) applies to the amount which is to be paid in installments, limited to the amount of any deficiency, from the due date for payment of estate tax. After the date upon which the section 6166 election is made final, section 6601(j) applies to the entire amount to be paid in installments.

(g) *Relation of sections 6166 and 6166A.* No election may be made under section 6166 if an election under section 6166A applies with respect to an estate. For example, no election can be made under section 6166(h) where an executor has made an election under section 6166A. If an election is timely made under either section 6166 or section 6166A, however, a protective election can be made under the other section at the same time. If the executor then files a timely notice of final election under the section protectively elected and pays any amounts determined to be due currently following final determination of (or agreement as to) estate tax values, the original election under the other provision will be deemed never to have applied to the estate.

(h) *Special rule for estates for which elections under section 6166 are made on or before August 30, 1980.* An election to extend payment of estate tax under section 6166 that is made on or before August 30, 1980, may be revoked. To revoke an election, the executor must file a notice of revocation with the Internal Revenue Service office where the original estate tax return was filed on or before January 31, 1981 (or if earlier, the date on which the period of limitation on assessment expires). This notice of revocation must contain the decedent's name, date of death, and taxpayer identification number, and is to be accompanied by remittance of any additional amount of estate tax and interest determined to be due.

(i) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). (i) Based upon values shown on decedent A's timely filed estate tax return, 60 percent of the value of A's adjusted gross estate consisted of a farm which was a closely held business within the meaning of section 6166. A's executor, B, made a protective election under section 6166 when he filed A's estate tax return. B also applied for an extension of time under section 6161 to pay $15,000 of the $30,000 of estate tax shown due on the return. The requested extension was granted and was renewed at the end of 1 year. Eighteen months after the return was filed and after examination of A's estate tax return, the value of the farm was found to constitute 67 percent of the adjusted gross estate. B entered into an agreement consenting to the values as established on examination and to a deficiency of $5,000. B then

filed a final notice of election under section 6166, choosing a 5-year deferral followed by 10 annual installment payments and thereby terminated his extension under section 6161 because that amount of tax was then included under the section 6166 election. B could have extended payment of 67 percent of the total estate tax, or $23,450. $23,450 is eligible for installment payments under section 6166 and the section section 6166 election is considered to be for that amount. B is considered to have prepaid $3,450 of tax since only $20,000 of tax remained unpaid. The $3,450 is attributed to the first installment of $2,345 and to $1,105 of the second installment which would have been payable under the section 6166 election.

(ii) Had B been granted an extension of time under section 6161 to pay $20,000 of tax, $25,000 would remain upaid when the final section 6166 election is made. Payment of the full $23,450 (67 percent) of tax which is attributable to the closely held business interest is included under the section 6166 election. The balance of unpaid tax ($1,550) is due upon expiration of the estate's section 6161 extension.

(iii) Assume the facts under example (1) (i). B must pay all unpaid accrued interest with his notice of final election. Since only 18 months have passed, no installments of tax are due. Interest on the $5,000 deficiency is computed at 4 percent per annum for the entire 18 months, and interest for 12 months of that period is currently due to be paid. Interest for the remaining 6 months is due at the next succeeding date for payment of interest. Interest on the $15,000 of tax extended under section 6161 is computed at the rate determined under section 6621 until the date of the final section 6166 election and is due upon termination of the section 6161 extension. After that date, the interest on the $15,000 will also accrue at 4 percent per annum.

Example (2). Assume the facts as in example (1), except B initially made an election under section 6166A and made no protective election under section 6166. Following final determination of values, B is not permitted to make any election under section 6166; however, had B protectively elected section 6166 at the time he made the section 6166A election, he could have terminated the section 6166A election and finally elected under section 6166. In such a case, the full $23,450 of tax attributable to the farm would have been eligible for extension under section 6166. The 4 percent interest rate would apply to the $5,000 deficiency from the original due date of the tax, and, as with the extension under section 6161, it would apply to the amounts extended under section 6166A only from the date on which the election under section 6166 was finalized.

Example (3). C died in 1977. His estate owes Federal estate taxes of $750,000, $500,000 of which is attributable to a closely held business interest. Payment of the $500,000 was extended under section 6166. A 5-year deferral followed by 10 annual installment payments was chosen by C's executor. Under paragraph (f) of this section, only 63.16 percent of each installment will be subject to the special 4 percent interest rate and the remainder will be subject to the rate determined under section 6621. The same rule applies in computing interest for the 5 years during which payment of tax is deferred. (This is so because the 4 percent interest rate applies only to a maximum of $345,800 of tax less the $30,000 of credit allowable under section 2010(a) rather than to the entire $500,000 extended amount).

[T.D. 7710, 45 FR 50745, July 31, 1980]

§ 20.6166A–1 Extension of time for payment of estate tax where estate consists largely of interest in closely held business.

(a) *In general.* Section 6166 provides that where the value of an interest in a closely held business, which is included in the gross estate of a decedent who was a citizen or resident of the United States at the time of his death, exceeds either (1) 35 percent of the value of the gross estate, or (2) 50 percent of the taxable estate, the executor may elect to pay part or all of the Federal estate tax in installments. The election to pay the tax in installments applies to deficiencies in tax as well as to the tax shown on the return, unless the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax. Except as otherwise provided in section 6166(i) and § 20.6166–4, the provisions of section 6166 and this section apply only if the due date of the return is after September 2, 1958. See § 20.6166–4 for special rules applicable where the decedent died after August 16, 1954, and the due date of the return was on or before September 2, 1958. See also § 20.6075–1 for the due date of the return, and § 20.6166–2 for definition of the term ''interest in a closely held business.'' Since the election must be made on or before the due date of the return, the provisions of section 6166 will not apply to a deficiency in a case where, for whatever reason, no election was made to pay in installments the tax shown on the return. However, see

paragraph (e)(3) of this section concerning a protective election. The general administrative provisions of Subtitle F of the Code are applicable in connection with an election by the executor to pay the estate tax in installments in the same manner in which they are applied in a case where an extension of time under section 6161 is granted for payment of the tax. See paragraph (a) of § 20.6165–1 for provisions requiring the furnishing of security for the payment of the tax in cases where an extension is granted under section 6161.

(b) *Limitation on amount of tax payable in installments.* The amount of estate tax which the executor may elect to pay in installments is limited to an amount A, which bears the same ratio to B (the gross Federal estate tax, reduced by the credits authorized by sections 2011 through 2014 and any death tax convention) as C (the value of the interest in a closely held business which is included in the gross estate) bears to D (the value of the gross estate). Stated algebraically, the limitation (A) equals:

Value of interest in a closely held business which is included in the gross estate (C) ÷ Value of gross estate (D) × Gross Federal estate tax reduced by the credits authorized by sections 2011 through 2014 and any death tax convention (B).

The executor may elect to pay in installments an amount less than the amount computed under the limitation in this paragraph. For example, if the total estate tax payable is $100,000 and the amount computed under the limitation in this paragraph is $60,000, the executor may elect to pay in installments some lesser sum such as $30,000, in which event the executor must pay $73,000 to the district director on or before the date prescribed by section 6151(a) for payment of the tax. Of such payment, $70,000 represents tax which the executor either could not elect to pay in installments or did not choose to so elect, and $3,000 represents a payment of the first installment of the tax which the executor elected to pay in installments.

(c) *Number of installments and dates for payment.* The executor may elect to pay part or all of the tax (determined after application of the limitation contained in paragraph (b) of this section) in two or more, but not exceeding 10, equal annual installments. The first installment shall be paid on or before the date prescribed by section 6151(a) for payment of the tax (see paragraph (a) of § 20.6151–1), and each succeeding installment shall be paid on or before the date which is one year after the date prescribed for the payment of the preceding installment. See § 20.6166–3 for the circumstances under which the privilege of paying the tax in installments will terminate.

(d) *Deficiencies.* The amount of a deficiency which may be paid in installments shall not exceed the difference between the amount of tax which the executor elected to pay in installments and the maximum amount of tax (determined under paragraph (b) of this section) which the executor could have elected to pay in installments on the basis of a return which reflects in adjustments which resulted in the deficiency. This amount is then prorated to the installments in which the executor elected to pay the tax. The part of the deficiency prorated to installments not yet due shall be paid at the same time as, and as a part of, such installments. The part of the deficiency prorated to installments already paid or due shall be paid upon notice and demand from the district director. At the time the executor receives such notice and demand he may, of course, prepay the portions of the deficiency which have been prorated to installments not yet due. See paragraph (h) of this section.

(e) *Notice of election*—(1) *Filing of notice.* The notice of election to pay the estate tax in installments shall be filed with the district director on or before the due date of the return. However, if the due date of the return is after September 2, 1958, but before November 3, 1958, the election will be considered as timely made if the notice is filed with the district director on or before November 3, 1958. See § 20.6075–1 for the due date of the return.

(2) *Form of notice.* The notice of election to pay the estate tax in installments may be in the form of a letter addressed to the district director. The executor shall state in the notice the

amount of tax which he elects to pay in installments, and the total number of installments (including the installment due 9 months (15 months, in the case of a decedent dying before January 1, 1971) after the date of the decedent's death, in which he elects to pay the tax. The properties in the gross estate which constitute the decedent's interest in a closely held business should be listed in the notice, and identified by the schedule and item number at which they appear on the estate tax return. The notice should set forth the facts which formed the basis for the executor's conclusion that the estate qualifies for the payment of the estate tax in installments.

(3) *Protective election.* In a case where the estate does not qualify under section 6166(a) on the basis of the values as returned, or where the return shows no tax as due, an election may be made, contingent upon the values as finally determined meeting the percentage requirements set forth in section 6166(a), to pay in installments any portion of the estate tax, including a deficiency, which may be unpaid at the time of such final determination and which does not exceed the limitation provided in section 6166(b). The protective election must be made on or before the due date of the return and should state that it is a protective election. In the absence of a statement in the protective election as to the amount of tax to be paid in installments and the number of installments, the election will be presumed to be made for the maximum amount so payable and for the payment thereof in 10 equal annual installments, the first of which would have been due on the date prescribed in section 6151(a) for payment of the tax. The unpaid portion of the tax which may be paid in installments is prorated to the installments which would have been due if the provisions of section 6166(a) had applied to the tax, if any, shown on the return. The part of the unpaid portion of the tax so prorated to installments the date for payment of which would not have arrived before the deficiency is assessed shall be paid at the time such installments would have been due. The part of the unpaid portion of the tax so prorated to any installment the date for payment of which would have arrived before the deficiency is assessed shall be paid upon receipt of notice and demand from the district director. At the time the executor receives such notice and demand he may, of course, prepay the unpaid portions of the tax which have been prorated to installments not yet due. See paragraph (h) of this section.

(f) *Time for paying interest.* Under the provisions of section 6601, interest at the annual rate referred to in the regulations under section 6621 shall be paid on the unpaid balance of the estate tax which the executor has elected to pay in installments, and on the unpaid balance of any deficiency prorated to the installments. Interest on such unpaid balance of estate tax shall be paid annually at the same time as, and as a part of, each installment of the tax. Accordingly, interest is computed on the entire unpaid balance for the period from the preceding installment date to the current installment date, and is paid with the current installment. In making such a computation, proper adjustment shall be made for any advance payments made during the period, whether the advance payments are voluntary or are brought about by the operation of section 6166(h)(2). In computing the annual interest payment, the portion of any deficiency which is prorated to installments the date for payment of which has not arrived shall be added to the unpaid balance at the beginning of the annual period during which the assessment of the deficiency occurs. Interest on such portion of the deficiency for the period from the original due date of the tax to the date fixed for the payment of the last installment preceding the date of assessment of a deficiency shall be paid upon notice and demand from the district director. Any extension of time under section 6161(a)(2) (on account of undue hardship to the estate) for payment of an installment will not extend the time for payment of the interest which is due on the installment date.

(g) *Extensions of time for payment in hardship cases.* The provisions of section 6161, under which extensions of time may be granted for payment of estate tax in cases involving undue hardship, apply to both the portion of the tax which may be paid in installments

under section 6166 and the portion of the tax which is not so payable. Therefore, in a case involving undue hardship, the executor may elect under section 6166 to pay in installments the portion of the tax which is attributable to the interest in the closely held business and, in addition, may file an application under section 6161 for an extension of time to pay both the portion of the tax which is not attributable to the interest in the closely held business and such of the installments as are payable within the period of the requested extension. If an executor files a notice of election to pay the tax in installments and thereafter it is determined that the estate does not qualify for the privilege of paying the tax in installments, the executor is not deprived of the right to request an extension under section 6161 of time for payment of the tax to which the purported election applied. See § 20.6161–1 for the circumstances under which a timely filed election to pay the tax in installments will be treated as a timely filed application for an extension of time to pay the tax on account of undue hardship to the estate.

(h) *Prepayments.* Voluntary prepayment may be made at any time of all, or of any part, of the unpaid portion of the tax (including deficiencies) payable in installments. Voluntary prepayments shall be applied in payment of such installments, installment, or part of an installment as the person making the prepayment shall designate. For purposes of this paragraph, a payment described in paragraph (d) (2) of § 20.6166–3 of tax in an amount not less than the amount of money or other property distributed in a section 303 redemption is considered to be a voluntary prepayment to the extent paid before the date prescribed for payment of the first installment after the redemption or, if paid on the date prescribed for payment of such installment, to the extent it exceeds the amount due on the installment. See paragraph (b)(3) of § 20.6166–3 for the application to be made of the prepayment required by section 6166(h)(2).

[T.D. 6522, 25 FR 13886, Dec. 29, 1960, as amended by T.D. 7238, 37 FR 28724, Dec. 29, 1972; T.D. 7384, 40 FR 49323, Oct. 22, 1975. Redesignated by T.D. 7710, 45 FR 50745, July 31, 1980]

§ 20.6166A–2 Definition of an interest in a closely held business.

(a) *In general.* For purposes of §§ 20.6166–1, 20.6166–3, and 20.6166–4, the term ''interest in a closely held business'' means:

(1) An interest as a proprietor in a trade or business carried on as a proprietorship.

(2) An interest as a partner in a partnership carrying on a trade or business if 20 percent or more of the total capital interest in the partnership is included in determining the decedent's gross estate or if the partnership had 10 or less partners.

(3) Stock in a corporation carrying on a trade or business if 20 percent or more in value of the voting stock of the corporation is included in determining the decedent's gross estate or if the corporation had 10 or less shareholders.

(b) *Number of partners or shareholders.* The number of partners of the partnership or shareholders of the corporation is determined as of the time immediately before the decedent's death. Where an interest in a partnership, or stock in a corporation, is the community property of husband and wife, both the husband and the wife are counted as partners or shareholders in arriving at the number of partners or shareholders. Similarly, if stock is held by co-owners, tenants in common, tenants by the entirety, or joint tenants, each co-owner, tenant in common, tenant by the entirety, or joint tenant is counted as a shareholder.

(c) *Carrying on a trade or business.* (1) In order for the interest in a partnership or the stock of a corporation to qualify as an interest in a closely held business it is necessary that the partnership or the corporation be engaged in carrying on a trade or business at

the time of the decedent's death. However, it is not necessary that all the assets of the partnership or the corporation be utilized in the carrying on of the trade or business.

(2) In the case of a trade or business carried on as a proprietorship, the interest in the closely held business includes only those assets of the decedent which were actually utilized by him in the trade or business. Thus, if a building was used by the decedent in part as a personal residence and in part for the carrying on of a mercantile business, the part of the building used as a residence does not form any part of the interest in the closely held business. Whether an asset will be considered as used in the trade or business will depend on the facts and circumstances of the particular case, for example, if a bank account was held by the decedent in his individual name (as distinguished from the trade or business name) and it can be clearly shown that the amount on deposit represents working capital of the business as well as nonbusiness funds (e.g., receipts from investments, such as dividends and interest), then that part of the amount on deposit which represents working capital of the business will constitute a part of the interest in the closely held business. On the other hand, if a bank account is held by the decedent in the trade or business name and it can be shown that the amount represents nonbusiness funds as well as working capital, then only that part of the amount on deposit which represents working capital of the business will constitute a part of the interest in the closely held business. In a case where an interest in a partnership or stock of a corporation qualifies as an interest in a closely held business, the decedent's entire interest in the partnership, or the decedent's entire holding of stock in the corporation, constitutes an interest in a closely held business even though a portion of the partnership or corporate assets is used for a purpose other than the carrying on of a trade or business.

(d) *Interests in two or more closely held businesses.* For purpose of paragraphs (a) and (b) of § 20.6166–1 and paragraphs (d) and (e) of § 20.6166–3, interests in two or more closely held businesses shall be treated as an interest in a single closely held business if more than 50 percent of the total value of each such business is included in determining the value of the decedent's gross estate. For the purpose of the 50 percent requirement set forth in the preceding sentence, an interest in a closely held business which represents the surviving spouse's interest in community property shall be considered as having been included in determining the value of the decedent's gross estate.

[T.D. 6522, 25 FR 13888, Dec. 29, 1960. Redesignated by T.D. 7710, 45 FR 50745, July 31, 1980]

§ 20.6166A–3 Acceleration of payment.

(a) *In general.* Under the circumstances described in this section all or a part of the tax which the executor has elected to pay in installments shall be paid before the dates fixed for payment of the installments. Upon an estate's having undistributed net income described in paragraph (b) of this section for any taxable year after its fourth taxable year, the executor shall pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments. Upon the happening of any of the events described in paragraphs (c), (d), and (e) of this section, any unpaid portion of the tax payable in installments shall be paid upon notice and demand from the district director.

(b) *Undistributed net income of estate.* (1) If an estate has undistributed net income for any taxable year after its fourth taxable year, the executor shall pay an amount equal to such undistributed net income in liquidation of the unpaid portion of the tax payable in installments. The amount shall be paid to the district director on or before the time prescribed for the filing of the estate's income tax return for such taxable year. For this purpose extensions of time granted for the filing of the income tax return are taken into consideration in determining the time prescribed for filing the return and making such payment. In determining the number of taxable years, a short taxable year is counted as if it were a full taxable year.

(2) The term ''undistributed net income'' of the estate for any taxable

year for purposes of this section is the amount by which the distributable net income of the estate, as defined in section 643, exceeds the sum of—

(i) The amount for such year specified in section 661(a) (1) and (2),

(ii) The amount of the Federal income tax imposed on the estate for such taxable year under Chapter I of the Code, and

(iii) The amount of the Federal estate tax, including interest thereon, paid for the estate during such taxable year (other than any amount paid by reason of the application of this acceleration rule).

(3) The payment described in subparagraph (1) of this paragraph shall be applied against the total unpaid portion of the tax which the executor elected to pay in installments, and shall be divided equally among the installments due after the date of such payment. The application of this subparagraph may be illustrated by the following example:

Example. The decedent died on January 1, 1959. The executor elects under section 6166 to pay tax in the amount of $100,000 in 10 installments of $10,000. The first installment is due on April 1, 1960. The estate files its income tax returns on a calendar year basis. For its fifth taxable year (calendar year 1963) it has undistributed net income of $6,000. If the prepayment of $6,000 required by section 6166(h)(2)(A), and due on or before April 15, 1964, is paid before the fifth installment (due April 1, 1964), the $6,000 is apportioned equally among installments 5 through 10, leaving $9,000 as the amount due on each of such installments. However, if the prepayment of $6,000 is paid after the fifth installment, it is apportioned equally among installments 6 through 10, leaving $8,800 as the amount due on each of such installments.

(c) *Failure to pay installment on or before due date.* If any installment of tax is not paid on or before the date fixed for its payment (including any extension of time for the payment thereof), the whole of the unpaid portion of the tax which is payable in installments becomes due and shall be paid upon notice and demand from the district director. See paragraph (c) of § 20.6166–1 for the dates fixed for the payment of installments. See also § 20.6161–1 for the circumstances under which an extension of time for the payment of an installment will be granted.

(d) *Withdrawal of funds from business.* (1) In any case where money or other property is withdrawn from the trade or business and the aggregate withdrawals of money or other property equal or exceed 50 percent of the value of the trade or business, the privilege of paying the tax in installments terminates and the whole of the unpaid portion of the tax which is payable in installments becomes due and shall be paid upon notice and demand from the district director. The withdrawals of money or other property from the trade or business must be in connection with the interest therein included in the gross estate, and must equal or exceed 50 percent of the value of the entire trade or business (and not just 50 percent of the value of the interest therein included in the gross estate). The withdrawal must be a withdrawal of money or other property which constitutes ''included property'' within the meaning of that term as used in paragraph (d) of § 20.2032–1. The provisions of this section do not apply to the withdrawal of money or other property which constitutes ''excluded property'' within the meaning of that term as used in such paragraph (d).

(2) If a distribution in redemption of stock is (by reason of the provisions of section 303 or so much of section 304 as relates to section 303) treated for income tax purposes as a distribution in full payment in exchange for the stock so redeemed, the amount of such distribution is not counted as a withdrawal of money or other property made with respect to the decedent's interest in the trade or business for purposes of determining whether the withdrawals of money or other property made with respect to the decedent's interest in the trade or business equal or exceed 50 percent of the value of the trade or business. However, in the case described in the preceding sentence the value of the trade or business for purposes of applying the rule set forth in subparagraph (1) of this paragraph is the value thereof reduced by the proportionate part thereof which such distribution represents. The proportionate part of the value of the trade or business which the distribution represents is determined at the time of the distribution, but the reduction in the

value of the trade or business represented by it relates back to the time of the decedent's death, or the alternate valuation date if an election is made under section 2032, for purposes of determining whether other withdrawals with respect to the decedent's interest in the trade or business constitute withdrawals equaling or exceeding 50 percent of the value of the trade or business. See example (3) of paragraph (e)(6) of this section for illustration of this principle. The rule stated in the first sentence of this subparagraph does not apply unless after the redemption, but on or before the date prescribed for payment of the first installment which becomes due after the redemption, there is paid an amount of estate tax not less than the amount of money or other property distributed. Where there are a series of section 303 redemptions, each redemption is treated separately and the failure of one redemption to qualify under the rule stated in the first sentence of this subparagraph does not necessarily mean that another redemption will not qualify.

(3) The application of this paragraph may be illustrated by the following examples, in each of which the executor elected to pay the estate tax in installments:

Example (1). A, who died on July 1, 1957, owned an 80 percent interest in a partnership which qualified as an interest in a closely held business. B owned the other 20 percent interest in the partnership. On the date of A's death the value of the business was $200,000 and the value of A's interest therein was included in his gross estate at $160,000. On October 1, 1958, when the value of the business was the same as at A's death, the executor withdrew $80,000 from the business. On December 1, 1958, when the value of the remaining portion of the business was $160,000, the executor withdrew $20,000 from the business and B withdrew $10,000. On February 1, 1959, when the value of the then remaining portion of the business was $150,000 the executor withdrew $15,000. The withdrawals of money or other property from the trade or business with respect to the interest therein included in the gross estate are considered as not having equaled or exceeded 50 percent of the value of the trade or business until February 1, 1959. The executor is considered as having withdrawn 40 percent of the value of the trade or business on October 1, 1958, computed as follows:

$80,000 (withdrawal) ÷ $200,000 (value of trade or business at time of withdrawal) × 100 percent = 40 percent

Immediately following the October withdrawal the remaining portion of the business represents 60 percent of the value of the trade or business in existence at the time of A's death (100 percent less 40 percent withdrawn). The executor is considered as having withdrawn 7.5 percent of the value of the trade or business on December 1, 1958, and B as having withdrawn 3.75 percent of the value thereof at that time, computed as follows:

Executor's withdrawal—

$20,000 (withdrawal) ÷ $160,000 (value of trade or business at time of withdrawal) × 60 percent = 7.5 percent

B's withdrawal—

$10,000 (withdrawal) ÷ $160,000 (value of trade or business at time of withdrawal) × 60 percent = 3.75 percent

Immediately following the December withdrawal the then remaining portion of the business represented 48.75 percent of the value of the trade or business in existence at the time of A's death (100 percent less 40 percent withdrawn by executor in October, 7.5 percent withdrawn by executor in December, and 3.75 percent withdrawn by B in December). It should be noted that while at this point the total withdrawals by the executor and B from the trade or business exceed 50 percent of the value thereof, the aggregate of the withdrawals by the executor were less than 50 percent of the value of the trade or business. Also it should be noted that while the total withdrawals by the executor exceeded 50 percent of the value of A's interest in the trade or business, they did not exceed 50 percent of the value of the entire trade or business. The executor is considered as having withdrawn 4.875 percent of the value of the trade or business on February 1, 1959, computed as follows:

$15,000 (withdrawal) ÷ $150,000 (value of trade or business at time of withdrawal) × 48.75 percent = 4.875 percent

As of February 1, 1959, the total withdrawals from the trade or business made with respect to A's interest therein was 52.375 percent of the value of the trade or business.

Example (2). The decedent's 40-percent interest in the XYZ partnership constituted an interest in a closely held business. Since the decedent's interest in the closely held business amounted to less than 50 percent of the value of the business, money or other property equaling or exceeding 50 percent of the value of the business could not be withdrawn from the decedent's interest in the business. Therefore, withdrawals of money or other property from this trade or business never would accelerate the payment of the tax under the provisions of this paragraph.

Example (3). The decedent died on September 1, 1957. He owned 100 shares of B Corporation (the total number of shares outstanding at the time of his death) and a 75 percent interest in a partnership of which C was the other partner. The B Corporation stock and the interest in the partnership together make up the interest in the closely held business which was included in the decedent's gross estate. The B Corporation stock was included in the gross estate at a value of $400,000 and the interest in the partnership was included at a value of $300,000. On November 1, 1957, at which time the value of the corporation's assets had not changed, in a section 303 redemption the executor surrendered 26 shares of B Corporation stock for $104,000. On December 1, 1957, at which time the value of the partnership's assets had not changed, the partners withdrew 90 percent of the assets of the partnership, with the executor receiving $270,000 and C receiving $90,000. The estate tax amounts to $240,000, of which the executor elected under section 6166 to pay $140,000 in 10 installments of $14,000 each. On December 1, 1958, the due date for paying the estate tax which was not payable in installments and for paying the first installment under section 6166, the executor paid estate tax of $114,000, of which $100,000 represented the tax not payable in installments and $14,000 represented the first installment. Inasmuch as after the section 303 distribution and on or before the due date of the first installment (December 1, 1958) after the section 303 distribution the executor paid as estate tax an amount not less than the amount of the distribution, the section 303 distribution does not constitute a withdrawal of money or other property from the business for purposes of section 6166(h)(1). Therefore, the value of the trade or business is reduced by the amount of the section 303 distribution. Accordingly, the value of the entire trade or business is $696,000, of which $400,000 represents the value of the partnership and $296,000 represents the value of the B Corporation stock. Since the executor is considered as having withdrawn only $270,000 (the withdrawal from the partnership) from the trade or business, the withdrawal of money or other property from the trade or business made with respect to the decedent's interest therein was 270,000/696,000 of the value of the entire trade or business, or less than 50 percent thereof.

(e) *Disposition of interest in business.* (1) In any case where in the aggregate 50 percent or more of the decedent's interest in a closely held business has been distributed, sold, exchanged, or otherwise disposed of, the privilege of paying the tax in installments terminates and the whole of the unpaid portion of the tax which is payable in installments becomes due and shall be paid upon notice and demand from the district director. A transfer by the executor of an interest in the closely held business to a beneficiary or trustee named in the decedent's will or to an heir who is entitled to receive it under the applicable intestacy law does not constitute a distribution thereof for purposes of determining whether 50 percent or more of an interest in a closely held business has been distributed, sold, exchanged, or otherwise disposed of. However, a subsequent transfer of the interest by the beneficiary, trustee, or heir will constitute a distribution, sale, exchange, or other disposition thereof for such purposes. The disposition must be a disposition of an interest which constitutes ''included property'' within the meaning of that term as used in paragraph (d) of § 20.2032–1. The provisions of this section do not apply to the disposition of an interest which constitutes ''excluded property'' within the meaning of that term as used in such paragraph (d).

(2) The phrase ''distributed, sold, exchanged, or otherwise disposed of'' comprehends all possible ways by which an interest in a closely held business ceases to form a part of the gross estate. The term includes the surrender of a stock certificate for corporate assets in complete or partial liquidation of a corporation pursuant to section 331. The term also includes the surrender of stock for stock pursuant to a transaction described in subparagraphs (A), (B), or (C) of section 368(a)(1). In general the term does not, however, extend to transactions which are mere changes in form. It does not include a transfer of assets to a corporation in exchange for its stock in a transaction with respect to which no gain or loss would be recognizable for income tax purposes under section 351. It does not include an exchange of stock in a corporation for stock in the same corporation or another corporation pursuant to a plan of reorganization described in subparagraph (D), (E), or (F) of section 368(a)(1), nor to an exchange to which section 355 (or so much of section 356 as relates to section 355) applies. However, any stock received in an exchange to which the

two preceding sentences apply shall for purposes of this paragraph be treated as an interest in a closely held business.

(3) An interest in a closely held business may be ''distributed'' by either a trustee who received it from the executor, or a trustee of an interest which is included in the gross estate under sections 2035 through 2038, or section 2041. See subparagraph (1) of this paragraph relative to the distribution of an interest by the executor to the person entitled to receive it under the decedent's will or an intestacy law.

(4) An interest in a closely held business may be ''sold, exchanged, or otherwise disposed of'' by (i) the executor; (ii) a trustee or other donee to whom the decedent in his lifetime transferred the interest included in his gross estate under section 2035 through 2038, or section 2041; (iii) a beneficiary, trustee, or heir entitled to receive the property from the executor under the decedent's will or under the applicable law of descent and distribution, or to whom title to the interest passed directly under local law; (iv) a surviving joint tenant or tenant by the entirety; or (v) any other person.

(5) If a distribution in redemption of stock is (by reason of the provisions of section 303 or so much of section 304 as relates to section 303) treated for income tax purposes as a distribution in full payment in exchange for the stock redeemed, the stock so redeemed is not counted as distributed, sold, exchanged, or otherwise disposed of for purposes of determining whether 50 percent or more of the decedent's interest in a closely held business has been distributed, sold, exchanged, or otherwise disposed of. However, in the case described in the preceding sentence the interest in the closely held business for purposes of applying the rule set forth in subparagraph (1) of this paragraph is such interest reduced by the proportionate part thereof which the redeemed stock represents. The proportionate part of the interest which the redeemed stock represents is determined at the time of the redemption, but the reduction in the interest represented by it relates back to the time of the decedent's death, or the alternate valuation date if an election is made under section 2032, for purposes of determining whether other distributions, sales, exchanges, and dispositions of the decedent's interest in the closely held business equal or exceed in the aggregate 50 percent of such interest. See example (3) of subparagraph (6) of this paragraph for illustration of this principle. The rule stated in the first sentence of this subparagraph does not apply unless after the redemption, but on or before the date prescribed for payment of the first installment which becomes due after the redemption, there is paid an amount of estate tax not less than the amount of money or other property distributed. Where there are a series of section 303 redemptions, each redemption is treated separately and the failure of one redemption to qualify under the rule stated in the first sentence of this subparagraph does not necessarily mean that another redemption will not qualify.

(6) The application of this paragraph may be illustrated by the following examples, in each of which the executor elected to pay the tax in installments:

Example (1). The decedent died on October 1, 1957. He owned 8,000 of the 12,000 shares of D Corporation outstanding at the time of his death and 3,000 of the 5,000 shares of E Corporation outstanding at that time. The D Corporation stock was included in the gross estate at $50 per share, or a total of $400,000. The E Corporation stock was included in the gross estate at $100 per share, or a total of $300,000. On November 1, 1958, the executor sold the 3,000 shares of E Corporation and on February 1, 1959, he sold 1,000 shares of D Corporation. Since the decedent's shares of D Corporation and E Corporation together constituted the interest in a closely held business, the value of such interest was $700,000 ($400,000 plus $300,000) and the D Corporation stock represented 400,000/700,000 thereof and the E Corporation stock represented 300,000/700,000 thereof. While the sale of 3,000 shares of E Corporation on November 1, 1958, was a sale of the decedent's entire interest in E Corporation and a sale of more than 50 percent of the outstanding stock of E Corporation, nevertheless it constituted a sale of only 300,000/700,000 of the interest in the closely held business. The sale of 1,000 shares of D Corporation stock on February 1, 1959, represented a sale of 50,000/700,000 of the interest in the closely held business. The numerator of $50,000 is determined as follows:

1,000 (shares sold) ÷ 8,000 (shares owned) × $400,000 (value of shares owned, as included in gross estate)

Taken together the two sales represented a sale of 50 percent (350,000/700,000) of the interest in the closely held business. Therefore, as of February 1, 1959 (the date of the sale of 1,000 shares of E Corporation), 50 percent or more in value of the interest in the closely held business is considered as distributed, sold, exchanged, or otherwise disposed of.

Example (2). The decedent died on September 1, 1958. The interest owned by him in a closely held business consisted of 100 shares of the M Corporation. On February 1, 1959, in a section 303 redemption, 20 shares were redeemed for cash and an amount equivalent to the proceeds was paid on the Federal estate tax before the date of the next installment. On July 1, 1959, the executor sold 40 of the remaining shares of the stock. The section 303 redemption is not considered to be a distribution, sale, exchange, or other disposition of the portion of the interest represented by the 20 shares redeemed. As a result of the section 303 redemption the remaining 80 shares represent the decedent's entire interest in the closely held business for purposes of determining whether in the aggregate 50 percent or more of the interest in the closely held business has been distributed, sold, exchanged, or otherwise disposed of. The sale on July 1, 1959, of the 40 shares represents a sale of 50 percent of the interest in the closely held business.

Example (3). The facts are the same as in example (2) except that the 40 shares were sold on December 1, 1958 (before the section 303 redemption was made) instead of on July 1, 1959 (after the section 303 redemption was made). The sale of the 40 shares in December represents, as of that date, a sale of 40 percent of the interest in the closely held business. However, the section 303 redemption of 20 shares does not count as a distribution, sale, exchange, or other disposition of the interest, but it does reduce the interest to 80 shares (100 shares less 20 shares redeemed) for purposes of determining whether other distributions, sales, exchanges, and dispositions in the aggregate equal or exceed 50 percent of the interest in the closely held business. Since the reduction of the interest to 80 shares relates back to the time of the decedent's death, or the alternate valuation date if an election is made under section 2032, the sale of the 40 shares, as recomputed represents a sale of 50 percent of the interest. However, since the sale of the 40 shares did not represent a sale of 50 percent of the interest until the section 303 distribution was made, February 1, 1959 (the date of the section 303 distribution) is considered the date on which 50 percent of the interest was distributed, sold, exchanged, or otherwise disposed of.

(f) *Information to be furnished by executor.* (1) If the executor acquires knowledge of the happening of any transaction described in paragraph (d) or (e) of this section which, in his opinion, standing alone or when taken together with other transactions of which he has knowledge, would result in—

(i) Aggregate withdrawals of money or other property from the trade or business equal to or exceeding 50 percent of the value of the entire trade or business, or

(ii) Aggregate distributions, sales, exchanges, and other dispositions equal to or exceeding 50 percent of the interest in the closely held business which was included in the gross estate, the executor shall so notify the district director, in writing, within 30 days of acquiring such knowledge.

(2) On the date fixed for payment of each installment of tax (determined without regard to any extension of time for the payment thereof), other than the final installment, the executor shall furnish the district director, in writing, with either—

(i) A complete disclosure of all transactions described in paragraphs (d) and (e) of this section of which he has knowledge and which have not previously been made known by him to the district director, or

(ii) A statement that to the best knowledge of the executor all transactions described in paragraphs (d) and (e) of this section which have occurred have not produced a result described in subparagraph (1) (i) or (ii) of this paragraph.

(3) The district director may require the submission of such additional information as is deemed necessary to establish the estate's right to continue payment of the tax in installments.

[T.D. 6522, 25 FR 13888, Dec. 29, 1960. Redesignated by T.D. 7710, 45 FR 50745, July 31, 1980]

§ 20.6166A–4 Special rules applicable where due date of return was before September 3, 1958.

(a) *In general.* Section 206(f) of the Small Business Tax Revision Act of 1958 (72 Stat. 1685) provides that section 6166(i) of the Code shall apply in cases where the decedent died after August 16, 1954, but only if the date for filing

the estate tax return (including extensions thereof) expired before September 3, 1958. Therefore, the privilege of paying the estate tax in installments as described in §§ 20.6166–1 through 20.6166–3 is available also in cases where the due date of the return is before September 3, 1958, but under somewhat different circumstances. These differences are explained in paragraphs (b) through (e) of this section. Therefore except as otherwise provided in paragraphs (b) through (e) of this section, the regulations contained in §§ 20.6166–1 through 20.6166–3 apply also in cases where the due date of the return is before September 3, 1958. See § 20–6075–1 for the due date of the return. The value of the gross estate as determined for purposes of a deficiency in tax assessed after September 2, 1958, and the value at which the interest in the closely held business, to which the election applies, is included in such value of the gross estate are used in ascertaining whether an estate coming within the purview of section 6166(i) and this section satisfies the percentage requirements as to qualification set forth in section 6166(a).

(b) *Tax to which election applies.* In a case where the due date of the return was before September 3, 1958, an election to pay estate tax in installments does not apply to the tax shown on the return nor to a deficiency in tax assessed before that date. It does apply to a deficiency in tax assessed after September 2, 1958, unless the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax. The amount of the deficiency which may be paid in installments shall not exceed that proportion of the total tax (including the deficiency) which is determined by applying thereto the ratio set forth in paragraph (b) of § 20.6166–1. See paragraph (c) of this section for the method of prorating the deficiency to the installments.

(c) *Proration of deficiency to installments.* The deficiency in tax which may be paid in installments is prorated to the installments which would have been due if the provisions of section 6166(a) had applied to the tax shown on the return and if an election had been timely made at the time the estate tax return was filed. The part of the deficiency so prorated to any installment the date for payment of which would have arrived before the election is made shall be paid at the time the election is made. The portion of the deficiency so prorated to installments the date for payment of which would not have arrived before the election is made shall be paid at the time such installments would have been due if such an election had been made.

(d) *Notice of election.* The notice of election to pay the deficiency in installments shall be filed with the district director not later than 60 days after issuance of notice and demand by the district director for payment of the deficiency. The number of installments in which the executor elects to pay the deficiency includes those installments the dates for payment of which would have arrived within the meaning of paragraph (c) of this section. See paragraph (e)(2) of § 20.6166–1 for further information relative to the notice of election.

(e) *Undistributed income of estate.* In any case where the due date of the estate tax return was before September 3, 1958, the provisions of paragraph (b) of § 20.6166–3 (providing for acceleration of payment of estate tax by amount of estate's undistributed net income for any taxable year after its fourth taxable year) shall not apply with respect to the estate's undistributed net income for any taxable year ending before January 1, 1960.

[T.D. 6522, 25 FR 13891, Dec. 29, 1960. Redesignated by T.D. 7710, 45 FR 50745, July 31, 1980]

§ 20.6314–1 Duplicate receipts for payment of estate taxes.

The internal revenue officer with whom the estate tax return is filed will, upon request, give to the person paying the tax duplicate receipts, either of which will be sufficient evidence of such payment and entitle the executor to be credited with the amount by any court having jurisdiction to audit or settle his accounts.

[T.D. 7238, 37 FR 28724, Dec. 29, 1972]

§ 20.6321 Statutory provisions; lien for taxes.

SEC. 6321. *Lien for taxes.* If any person liable to pay any tax neglects or refuses to pay the

same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

§ 20.6321–1 Lien for taxes.

For regulations concerning the lien for taxes, see § 301.6321–1 of this chapter (Regulations on Procedure and Administration).

[T.D. 7710, 45 FR 50747, July 31, 1980]

§ 20.6323–1 Validity and priority against certain persons.

For regulations concerning the validity of the lien imposed by section 6321 against certain persons, see §§ 301.6323(a)–1 through 301.6323(i)–1 of this chapter (Regulations on Procedure and Administration).

[T.D. 7429, 41 FR 35495, Aug. 23, 1976]

§ 20.6324–1 Special lien for estate tax.

For regulations concerning the special lien for the estate tax, see § 301.6324–1 of this chapter (Regulations on Procedure and Administration).

§ 20.6324A–1 Special lien for estate tax deferred under section 6166 or 6166A.

(a) *In general.* If the executor of an estate of a decedent dying after December 31, 1976, makes an election under section 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981) to defer the payment of estate tax, the executor may make an election under section 6324A. An election under section 6324A will cause a lien in favor of the United States to attach to the estate's section 6166 lien property, as defined in paragraph (b)(1) of this section. This lien is in lieu of the bonds required by sections 2204 and 6165 and in lieu of any lien under section 6324 on the same property with respect to the same estate. The value of the property which the district director may require under section 6324A as section 6166 lien property may not exceed the sum of the deferred amount (as defined in paragraph (e)(1) of this section) and the required interest amount (as defined in paragraph (e)(2) of this section). The unpaid portion of the deferred amount (plus any unpaid interest, additional amount, addition to tax, assessable penalty, and cost attributable to the deferred amount) shall be a lien in favor of the United States on the section 6166 lien property. See § 301.6324A–1 of this chapter (Regulations on Procedure and Administration) for provisions relating to the election of and agreement to the special lien for estate tax deferred under section 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981).

(b) *Section 6166 lien property*—(1) *In general.* Section 6166 lien property consists of those interests in real and personal property designated in the agreement referred to in section 6324A (c) (see paragraph (b) of § 301.6324A–1 of this chapter). An interest in property may be designated as section 6166 lien property only to the extent such interest can be expected to survive the deferral period (as defined in paragraph (e)(3) of this section). Property designated, however, need not be property included in the decedent's estate.

(2) *Maximum value of required property.* The fair market value of the property required by the district director to be designated as section 6166 lien property with respect to any estate shall not be greater than the sum of the deferred amount and the required interest amount, as these terms are defined in paragraphs (e) (1) and (2) of this section. However, the parties to the agreement referred to in section 6324A (c) may voluntarily designate property having a fair market value in excess of that sum. The fair market value of the section 6166 lien property shall be determined as of the date prescribed in section 6151(a) (without regard to any extension) for payment of the estate tax. Such value must take into account any encumbrance on the property (such as a mortgage or a lien under section 6324B).

(3) *Additional lien property may be required.* If, at any time, the unpaid portion of the deferred amount and the required interest amount exceeds the fair market value of the section 6166 lien property, the district director may require the addition of property to the

agreement in an amount up to such excess. When additional property is required, the district director shall make notice and demand upon the agent designated in the agreement setting forth the amount of additional property required. Property having the required value (or other security equal to the required value must be added to the agreement within 90 days after notice and demand from the district director. Failure to comply with the demand within the 90-day period shall be treated as an act accelerating payment of installments under section 6166(g) or 6166A(h) (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981).

(4) *Partial substitution of bond.* See paragraph (c) of § 301.6324A–1 of this chapter for rules relating to the partial substitution of a bond for the lien where the value of property designated as section 6166 lien property is less than the amount of unpaid estate tax plus interest.

(c) *Special rules*—(1) *Period of lien.* The lien under section 6324A arises at the earlier of the date—

(i) The executor is discharged from liability under section 2204; or

(ii) Notice of lien is filed in accordance with § 301.6323(f)–1 of this chapter.

The section 6324A lien continues until the liability for the deterred amount is satisfied or becomes unenforceable by reason of lapse of time. The provisions of § 301.6325–1(c), relating to release of lien or discharge of property, shall apply to this paragraph (c)(1).

(2) *Requirement that lien be filed.* The lien imposed by section 6324A is not valid against a purchaser (as defined in paragraph (f) of § 301.6323(h)–1), holder of a security interest (as defined in paragraph (a) of § 301.6323(h)–1), mechanic's lienor (as defined in paragraph (b) of § 301.6323(h)–1), or judgment lien creditor (as defined in paragraph (g) of § 301.6323(h)–1) until notice of the lien is filed. Once filed, the notice of lien remains effective without being refiled.

(3) *Priorities.* Although a notice of lien under section 6324A had been properly filed, that lien is not valid—

(i) To the extent provided in section 6323(b)(6), relating to real property tax and special assessment liens, regardless of whether such liens came into existence before or after the filing of the notice of Federal tax lien;

(ii) In the case of any real property subject to a lien for repair or improvement, as against a mechanic's lienor, whether or not such lien came into existence before or after the notice of tax lien was filed; and

(iii) As against any security interest set forth in section 6323(c)(3), relating to real property construction or improvement financing agreements, regardless whether such security interest came into existence before or after filing of the notice of tax lien.

However, paragraphs (c)(3) (ii) and (iii) of this section shall not apply to any security interest that came into existence after the date of filing of notice (in a manner similar to a notice filed under section 6323(f)) that payment of the deferred amount has been accelerated under section 6166(g) or 6166A(h) (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981).

(d) *Release or discharge of lien.* For rules relating to release of the lien imposed by section 6324A or discharge of the section 6166 lien property, see section 6325 and § 301.6325–1 of this chapter.

(e) *Definitions.* For purposes of section 6324A of this section—

(1) *Deferred amount.* The deferred amount is the aggregate amount of estate tax deferred under section 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981) determined as of the date prescribed by section 6151(a) for payment of the estate tax.

(2) *Required interest amount.* The required interest amount is the aggregate amount of interest payable over the first four years of the deferral period. For purposes of computing the required interest amount, the interest rate prescribed by section 6621 in effect on the date prescribed by section 6151(a) for payment of the estate tax shall be used for computing the interest for the first four years of the deferral period. The 4-percent interest rate prescribed by section 6601(j) shall apply to the extent provided in that section. For purposes of computing interest during deferral periods beginning after December 31, 1982, interest shall be compounded daily.

(3) *Deferral period.* The deferral period is the period for which the payment of tax is deferred pursuant to the election under section 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981).

(4) *Application of definitions.* In the case of a deficiency, a separate deferred amount, required interest amount, and deferral period shall be determined as of the due date of the first installment after the deficiency is prorated to installments under section 6166 or 6166A (as in effect prior to its repeal by the Economic Recovery Tax Act of 1981).

[T.D. 7941, 49 FR 4468, Feb. 7, 1984]

§ 20.6324B–1 Special lien for additional estate tax attributable to farm, etc., valuation.

(a) *General rule.* In the case of an estate of a decedent dying after December 31, 1976, which includes any interest in qualified real property, if the executor elects to value part or all of such property pursuant to section 2032A, a lien arises in favor of the United States on the property to which the election applies. The lien is in the amount equal to the adjusted tax difference attributable to such interest (as defined by section 2032A(c)(2)(B)). The term ''qualified real property'' means qualified real property as defined in section 2032A(b), qualified replacement property within the meaning of section 2032A(h)(3)(B), and qualified exchange property within the meaning of section 2032A(i)(3). The rules set forth in the regulations under section 2032A shall apply in determining whether this section is applicable to otherwise qualified real property held by a partnership, corporation or trust.

(b) *Period of lien.* The lien shall arise at the time the executor files an election under section 2032A. It shall remain in effect until one of the following occurs:

(1) The liability for the additional estate tax under section 2032A(c) with respect to such interest has been satisfied; or

(2) Such liability has become unenforceable by reason of lapse of time; or

(3) The district director is satisfied that no further liability for additional estate tax with respect to such interest may arise under section 2032A(c), i.e., the required time period has elapsed since the decedent's death without the occurrence of an event described in section 2032A(c)(1), or the qualified heir (as defined in section 2032A(e)(1)) had died.

For procedures regarding the release or subordination of liens or discharge of property from liens, see § 301.6325–1 of this chapter (Regulations on Procedure and Administration).

(c) *Substitution of security for lien.* The district director may, upon written application of the qualified heir (as defined in section 2032A(e) (1)) acquiring any interest in qualified real property to which a lien imposed by section 6324B attaches, issue a certificate of discharge of any or all property subject to such lien, after receiving a bond or other security in an amount or value determined by the district director as sufficient security for the maximum potential liability for additional estate tax with respect to such interest. Any bond shall be in the form and with the security prescribed in § 301.7101–1 of this chapter.

(d) *Special rules.* The rules set forth in section 6324A(d) (1), (3), and (4), and the regulations thereunder, shall apply with respect to a lien imposed by section 6324B as if it were a lien imposed by section 6324A.

[T.D. 7847, 47 FR 50856, Nov. 10, 1982]

§ 20.6325–1 Release of lien or partial discharge of property; transfer certificates in nonresident estates.

(a) A transfer certificate is a certificate permitting the transfer of property of a nonresident decedent without liability. Except as provided in paragraph (b) of this section, no domestic corporation or its transfer agent should transfer stock registered in the name of a non-resident decedent (regardless of citizenship) except such shares which have been submitted for transfer by a duly qualified executor or administrator who has been appointed and is acting in the United States, without first requiring a transfer certificate covering all of the decedent's stock of the corporation and showing that the transfer may be made without liability. Corporations, transfer agents of domestic corporations, transfer agents of foreign corporations (except

as to shares held in the name of a nonresident decedent not a citizen of the United States), banks, trust companies, or other custodians in actual or constructive possession of property, of such a decedent can insure avoidance of liability for taxes and penalties only by demanding and receiving transfer certificates before transfer of property of nonresident decedents.

(b)(1) Subject to the provisions of paragraph (b)(2) of this section—

(i) In the case of a nonresident not a citizen of the United States dying on or after January 1, 1977, a transfer certificate is not required with respect to the transfer of any property of the decedent if the value on the date of death of that part of the decedent's gross estate situated in the United States did not exceed the lesser of $60,000 or $60,000 reduced by the adjustments, if any, required by section 6018(a)(4) for certain taxable gifts made by the decedent and for the aggregate amount of certain specific exemptions.

(ii) In the case of a nonresident not a citizen of the United States dying on or after November 14, 1966, a transfer certificate is not required with respect to the transfer before June 24, 1981 of any property of the decedent if the value on the date of death of that part of the decedent's gross estate situated in the United States did not exceed $30,000.

(2)(i) If the transfer of the estate is subject to the tax imposed by section 2107(a) (relating to expatriation to avoid tax), any amounts which are includible in the decedent's gross estate under section 2107(b) must be added to the date of death value of the decedent's gross estate situated in the United States to determine the value on the date of death of the decedent's gross estate for purposes of paragraph (b)(1) of this section.

(ii) If the transfer of the estate is subject to tax pursuant to a Presidential proclamation made under section 2108(a) (relating to Presidential proclamations of the application of pre-1967 estate tax provisions), a transfer certificate is not required with respect to the transfer of any property of the decedent if the value on the date of death of that part of the decedent's gross estate situated in the United States did not exceed $2,000.

(3) A corporation, transfer agent, bank, trust company, or other custodian will not incur liability for a transfer of the decedent's property without a transfer certificate if the corporation or other person, having no information to the contrary, first receives from the executor or other responsible person, who may be reasonably regarded as in possession of the pertinent facts, a statement of the facts relating to the estate showing that the sum of the value on the date of the decedent's death of that part of his gross estate situated in the United States, and, if applicable, any amounts includible in his gross estate under section 2107(b), is such an amount that, pursuant to the provisions of paragraph (b) (1) and (2) of this section, a transfer certificate is not required.

(4) For the determination of the gross estate situated in the United States, see §§ 20.2103–1 and 20.2104–1.

(c) A transfer certificate will be issued by the service center director or the district director when he is satisfied that the tax imposed upon the estate, if any, has been fully discharged or provided for. The tax will be considered fully discharged for purposes of the issuance of a transfer certificate only when investigation has been completed and payment of the tax, including any deficiency finally determined, has been made. If the tax liability has not been fully discharged, transfer certificates may be issued permitting the transfer of particular items of property without liability upon the filing with the district director of such security as he may require. No transfer certificate is required in an estate of a resident decedent. Further, in the case of an estate of a nonresident decedent (regardless of citizenship) a transfer certificate is not required with respect to property which is being administered by an executor or administrator appointed, qualified, and acting within the United States. For additional regulations under section 6325, see § 301.6325–1 of this chapter (Regulations on Procedure and Administration).

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7296, 38 FR 34201, Dec. 12, 1973; T.D. 7302, 39 FR 796, Jan. 3, 1974; T.D. 7825, 47 FR 35189, Aug. 13, 1982]

§ 20.6601–1 Interest on underpayment, nonpayment, or extensions of time for payment, of tax.

For regulations concerning interest on underpayments, etc., see § 301.6601–1 of this chapter (Regulations on Procedure and Administration).

§ 20.6905–1 Discharge of executor from personal liability for decedent's income and gift taxes.

For regulations concerning the discharge of an executor from personal liability for a decedent's income and gift taxes, see § 301.6905–1 of this chapter (Regulations on Procedure and Administration).

[T.D. 7238, 37 FR 28725, Dec. 29, 1972]

§ 20.7101–1 Form of bonds.

See paragraph (b) of § 20.6165–1 for provisions relating to the bond required in any case in which the payment of the tax attributable to a reversionary or remainder interest has been postponed under the provisions of § 20.6163–1. For further provisions relating to bonds, see § 20.6165–1 of these regulations and the regulations under section 7101 contained in part 301 of this chapter (Regulations on Procedure and Administration).

[T.D. 6600, 27 FR 4987, May 29, 1962]

GENERAL ACTUARIAL VALUATIONS

SOURCE: Sections 20.7520–1 through 20.7520–4 appear at T.D. 8540, 59 FR 30170, June 10, 1994, unless otherwise noted.

§ 20.7520–1 Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests.

(a) *General actuarial valuations.* (1) Except as otherwise provided in this section and in § 20.7520–3 (relating to exceptions to the use of prescribed tables under certain circumstances), in the case of estates of decedents with valuation dates after April 30, 1989, the fair market value of annuities, interests for life or for a term of years (including unitrust interests), remainders, and reversions is their present value determined under this section. See § 20.2031–7(d) (and, for certain prior periods, § 20.2031–7A) of this chapter for the computation of the value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions, other than interests described in paragraphs (a)(2) and (a)(3) of this section.

(2) In the case of a transfer to a pooled income fund with a valuation date after April 30, 1989, see § 1.642(c)–6(e) (or, for certain prior periods, § 1.642(c)–6A) of this chapter (Income Tax Regulations) with respect to the valuation of the remainder interest.

(3) In the case of a transfer to a charitable remainder annuity trust with a valuation date after April 30, 1989, see § 1.664–2 of this chapter with respect to the valuation of the remainder interest. See § 1.664–4 (or, for certain prior periods, § 1.664–4A) of this chapter with respect to the valuation of the remainder interest in property transferred to a charitable remainder unitrust.

(b) *Components of valuation*—(1) *Interest rate component*—(i) *Section 7520 Interest rate.* The section 7520 interest rate is the rate of return, rounded to the nearest two-tenths of one percent, that is equal to 120 percent of the applicable Federal mid-term rate, compounded annually, for purposes of section 1274(d)(1), for the month in which the valuation date falls. In rounding the rate to the nearest two-tenths of a percent, any rate that is midway between one two-tenths of a percent and another is rounded up to the higher of those two rates. For example, if 120 percent of the applicable Federal mid-term rate is 10.30, the section 7520 interest rate component is 10.4. The section 7520 interest rate is published monthly by the Internal Revenue Service in the Internal Revenue Bulletin (See § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Valuation date.* Generally, the valuation date is the date on which the transfer takes place. For estate tax purposes, the valuation date is the date of the decedent's death, unless the executor elects the alternate valuation date in accordance with section 2032, in which event, and under the limitations prescribed in section 2032 and the regulations thereunder, the valuation date is the alternate valuation date. For special rules in the case of charitable transfers, see § 20.7520–2.

(2) *Mortality component.* The mortality component reflects the mortality data most recently available from the United States census. As new mortality data becomes available after each decennial census, the mortality component described in this section will be revised periodically and the revised mortality component tables will be published in the regulations at that time. For decedents' estates with valuation dates after April 30, 1989, the mortality component table (Table 80CNSMT) is included in § 20.2031–7(d)(6). See § 20.2031–7A for mortality component tables applicable to decedent's estates with valuation dates before May 1, 1989.

(c) *Tables.* The present value on the valuation date of an annuity, life estate, term of years, remainder, or reversion is computed by using the section 7520 interest rate component that is described in paragraph (b)(1) of this section and the mortality component that is described in paragraph (b)(2) of this section. Actuarial factors for determining these present values are included in tables in these regulations and in publications by the Internal Revenue Service. If a special factor is required in order to value an interest, the Internal Revenue Service will furnish the factor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts, including the date of birth for each measuring life and copies of relevant instruments. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see Rev. Proc. 94–1, 1994–1 I.R.B. 10, and the first Rev. Proc. published each year, and §§ 601.201 and 601.601(d)(2)(ii)(*b*) of this chapter) and include payment of the required user fee.

(1) *Regulation sections containing tables with interest rates between 4.2 and 14 percent.* Section 1.642(c)–6(e)(4) of this chapter contains Table S used for determining the present value of a single life remainder interest in a pooled income fund as defined in § 1.642(c)–5 of this chapter (Income Tax Regulations). Section 1.664–4(e)(6) of this chapter contains Table D (actuarial factors used in determining the present value of a remainder interest postponed for a term of years), Table U(1) (actuarial factors for one life), and Table F (payout factors) used in determining the present value of a remainder interest in a charitable remainder unitrust as defined in § 1.664–3 of this chapter. Section 20.2031–7(d)(6) contains Table S (actuarial factors for one life), Table B (actuarial factors used in determining the present value of an interest for a term of years), Table K (annuity end-of-interval adjustment factors), Table J (term certain annuity beginning-of-interval adjustment factors), and Table 80CNSMT (mortality components) used in determining the present value of annuities, life estates, remainders, and reversions. The regulations will be revised periodically to include new mortality component tables and new tables of factors.

(2) *Internal Revenue Service publications containing tables with interest rates between 2.2 and 26 percent.* The following documents (except for Publication 1459) have been published for sale by the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402:

(i) Internal Revenue Service Publication 1457, ''Actuarial Values, Alpha Volume,'' (8/89). This publication includes tables of valuation factors, as well as examples that show how to compute other valuation factors, for determining the present value of annuities, life estates, terms of years, remainders, and reversions, measured by one or two lives. These factors may also be used in the valuation of interests in a charitable remainder annuity trust as defined in § 1.664–2 of this chapter (Income Tax Regulations) and a pooled income fund as defined in § 1.642(c)–5 of this chapter.

(ii) Internal Revenue Service Publication 1458, ''Actuarial Values, Beta Volume,'' (8/89). This publication includes term certain tables and tables of one and two life valuation factors for determining the present value of remainder interests in a charitable remainder unitrust as defined in § 1.664–3 of this chapter.

(iii) Internal Revenue Service Publication 1459, ''Actuarial Values, Gamma Volume,'' (8–89) is no longer available for purchase from the Superintendent

of Documents. However, it may be obtained by requesting a copy from: CC:DOM:CORP:T:R (IRS Publication 1459), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. This publication includes tables for computing depreciation adjustment factors. See § 1.170A–12 of this chapter (Income Tax Regulations).

(d) *Effective date.* This section is effective as of May 1, 1989.

§ 20.7520–2 Valuation of charitable interests.

(a) *In general*—(1) *Valuation.* Except as otherwise provided in this section and in § 20.7520–3 (relating to exceptions to the use of prescribed tables under certain circumstances), the fair market value of annuities, interests for life or for a term of years, remainders, and reversions for which an estate tax charitable deduction is allowable is the present value of such interests determined under § 20.7520–1.

(2) *Prior-month election rule.* If any part of the property interest transferred qualifies for an estate tax charitable deduction under section 2055 or 2106, the executor may compute the present value of the transferred interest by use of the section 7520 interest rate for the month during which the interest is transferred or the section 7520 interest rate for either of the 2 months preceding the month during which the interest is transferred. Paragraph (b) of this section explains how a prior-month election is made. The interest rate for the month so elected is the applicable section 7520 interest rate. If the executor elects the alternate valuation date under section 2032 and also elects to use the section 7520 interest rate for either of the 2 months preceding the month in which the interest is transferred, the month so elected (either of the 2 months preceding the month in which the alternate valuation date falls) is the valuation date. If the actuarial factor for either or both of the 2 months preceding the month during which the interest is transferred is based on a mortality experience that is different from the mortality experience at the date of the transfer and if the executor elects to use the section 7520 rate for a prior month with the different mortality experience, the executor must use the actuarial factor derived from the mortality experience in effect during the month of the section 7520 rate elected. All actuarial computations relating to the transfer must be made by applying the interest rate component and the mortality component of the month elected by the executor.

(3) *Transfers of more than one interest in the same property.* If a decedent's estate includes the transfer of more than one interest in the same property, the executor must, for purposes of valuing the transferred interests, use the same interest rate and mortality components for each interest in the property transferred.

(4) *Information required with tax return.* The following information must be attached to the estate tax return (or be filed subsequently as supplemental information to the return) if the estate claims a charitable deduction for the present value of a temporary or remainder interest in property—

(i) A complete description of the interest that is transferred, including a copy of the instrument of transfer;

(ii) The valuation date of the transfer;

(iii) The names and identification numbers of the beneficiaries of the transferred interest;

(iv) The names and birthdates of any measuring lives, a description of any relevant terminal illness condition of any measuring life, and (if applicable) an explanation of how any terminal illness condition was taken into account in valuing the interest; and

(v) A computation of the deduction showing the applicable section 7520 interest rate that is used to value the transferred interest.

(5) *Place for filing returns.* See section 6091 of the Internal Revenue Code and the regulations thereunder for the place for filing the return or other document required by this section.

(b) *Election of interest rate component*—(1) *Time for making election.* An executor makes a prior-month election under paragraph (a)(2) of this section by attaching the information described in paragraph (b)(2) of this section to the decedent's estate tax return or by filing a supplemental statement of the

election information within 24 months after the later of the date the original estate tax return was filed or the due date for filing the return.

(2) *Manner of making election.* A statement that the prior-month election under section 7520(a) of the Internal Revenue Code is being made and that identifies the elected month must be attached to the estate tax return (or by subsequently filing the statement as supplemental information to the return).

(3) *Revocability.* The prior-month election may be revoked by filing a statement of supplemental information within 24 months after the later of the date the original return of tax for the decedent's estate was filed or the due date for filing the return. The revocation must be filed in the place referred to in paragraph (a)(5) of this section.

(c) *Effective dates.* Paragraph (a) of this section is effective as of May 1, 1989. Paragraph (b) of this section is effective for elections made after June 10, 1994.

§ 20.7520–3 Limitation on the application of section 7520.

(a) *Internal Revenue Code sections to which section 7520 does not apply.* Section 7520 of the Internal Revenue Code does not apply for purposes of:

(1) Part I, subchapter D of subtitle A (section 401 et. seq.), relating to the income tax treatment of certain qualified plans. (However, section 7520 does apply to the estate and gift tax treatment of certain qualified plans and for purposes of determining excess accumulations under section 4980A);

(2) Sections 72 and 101(b), relating to the income taxation of life insurance, endowment, and annuity contracts, unless otherwise provided for in the regulations under sections 72, 101, and 1011 (see, particularly, §§ 1.101–2(e)(1)(iii)(*b*)(*2*), and 1.1011–2(c), *Example 8*);

(3) Sections 83 and 451, unless otherwise provided for in the regulations under those sections;

(4) Section 457, relating to the valuation of deferred compensation, unless otherwise provided for in the regulations under section 457;

(5) Sections 3121(v) and 3306(r), relating to the valuation of deferred amounts, unless otherwise provided for in the regulations under those sections;

(6) Section 6058, relating to valuation statements evidencing compliance with qualified plan requirements, unless otherwise provided for in the regulations under section 6058;

(7) Section 7872, relating to income and gift taxation of interest-free loans and loans with below-market interest rates, unless otherwise provided for in the regulations under section 7872; or

(8) Section 2702(a)(2)(A), relating to the value of a nonqualified retained interest upon a transfer of an interest in trust to or for the benefit of a member of the transferor's family; and

(9) Any other sections of the Internal Revenue Code to the extent provided by the Internal Revenue Service in revenue rulings or revenue procedures. (See §§ 601.201 and 601.601 of this chapter).

(b) *Other limitations on the application of section 7520*—(1) *In general*—(i) *Ordinary beneficial interests.* For purposes of this section:

(A) An *ordinary annuity interest* is the right to receive a fixed dollar amount at the end of each year during one or more measuring lives or for some other defined period. A standard section 7520 annuity factor for an ordinary annuity interest represents the present worth of the right to receive $1.00 per year for a defined period, using the interest rate prescribed under section 7520 for the appropriate month. If an annuity interest is payable more often than annually or is payable at the beginning of each period, a special adjustment must be made in any computation with a standard section 7520 annuity factor.

(B) An *ordinary income interest* is the right to receive the income from or the use of property during one or more measuring lives or for some other defined period. A standard section 7520 income factor for an ordinary income interest represents the present worth of the right to receive the use of $1.00 for a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(C) An *ordinary remainder or reversionary interest* is the right to receive an interest in property at the end of one or more measuring lives or some

other defined period. A standard section 7520 remainder factor for an ordinary remainder or reversionary interest represents the present worth of the right to receive $1.00 at the end of a defined period, using the interest rate prescribed under section 7520 for the appropriate month.

(ii) *Certain restricted beneficial interests.* A *restricted beneficial interest* is an annuity, income, remainder, or reversionary interest that is subject to any contingency, power, or other restriction, whether the restriction is provided for by the terms of the trust, will, or other governing instrument or is caused by other circumstances. In general, a standard section 7520 annuity, income, or remainder factor may not be used to value a restricted beneficial interest. However, a special section 7520 annuity, income, or remainder factor may be used to value a restricted beneficial interest under some circumstances. See paragraphs (b)(2)(v) *Example 4* and (b)(4) *Example 1* of this section, which illustrate situations where special section 7520 actuarial factors are needed to take into account limitations on beneficial interests. See § 20.7520–1(c) for requesting a special factor from the Internal Revenue Service.

(iii) *Other beneficial interests.* If, under the provisions of this paragraph (b), the interest rate and mortality components prescribed under section 7520 are not applicable in determining the value of any annuity, income, remainder, or reversionary interest, the actual fair market value of the interest (determined without regard to section 7520) is based on all of the facts and circumstances if and to the extent permitted by the Internal Revenue Code provision applicable to the property interest.

(2) *Provisions of governing instrument and other limitations on source of payment*—(i) *Annuities.* A standard section 7520 annuity factor may not be used to determine the present value of an annuity for a specified term of years or the life of one or more individuals unless the effect of the trust, will, or other governing instrument is to ensure that the annuity will be paid for the entire defined period. In the case of an annuity payable from a trust or other limited fund, the annuity is not considered payable for the entire defined period if, considering the applicable section 7520 interest rate at the valuation date of the transfer, the annuity is expected to exhaust the fund before the last possible annuity payment is made in full. For this purpose, it must be assumed that it is possible for each measuring life to survive until age 110. For example, for a fixed annuity payable annually at the end of each year, if the amount of the annuity payment (expressed as a percentage of the initial corpus) is less than or equal to the applicable section 7520 interest rate at the date of the transfer, the corpus is assumed to be sufficient to make all payments. If the percentage exceeds the applicable section 7520 interest rate and the annuity is for a definite term of years, multiply the annual annuity amount by the Table B term certain annuity factor, as described in § 20.7520–1(c)(1), for the number of years of the defined period. If the percentage exceeds the applicable section 7520 interest rate and the annuity is payable for the life of one or more individuals, multiply the annual annuity amount by the Table B annuity factor for 110 years minus the age of the youngest individual. If the result exceeds the limited fund, the annuity may exhaust the fund, and it will be necessary to calculate a special section 7520 annuity factor that takes into account the exhaustion of the trust or fund. This computation would be modified, if appropriate, to take into account annuities with different payment terms. See § 25.7520–3(b)(2)(v) *Example 5* of this chapter, which provides an illustration involving an annuity trust that is subject to exhaustion.

(ii) *Income and similar interests*—(A) *Beneficial enjoyment.* A standard section 7520 income factor for an ordinary income interest may not be used to determine the present value of an income or similar interest in trust for a term of years, or for the life of one or more individuals, unless the effect of the trust, will, or other governing instrument is to provide the income beneficiary with that degree of beneficial enjoyment of the property during the term of the income interest that the principles of the law of trusts accord to

a person who is unqualifiedly designated as the income beneficiary of a trust for a similar period of time. This degree of beneficial enjoyment is provided only if it was the transferor's intent, as manifested by the provisions of the governing instrument and the surrounding circumstances, that the trust provide an income interest for the income beneficiary during the specified period of time that is consistent with the value of the trust corpus and with its preservation. In determining whether a trust arrangement evidences that intention, the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for in the administration of the subject trust. Similarly, in determining the present value of the right to use tangible property (whether or not in trust) for one or more measuring lives or for some other specified period of time, the interest rate component prescribed under section 7520 and § 1.7520–1 of this chapter may not be used unless, during the specified period, the effect of the trust, will or other governing instrument is to provide the beneficiary with that degree of use, possession, and enjoyment of the property during the term of interest that applicable state law accords to a person who is unqualifiedly designated as a life tenant or term holder for a similar period of time.

(B) *Diversions of income and corpus.* A standard section 7520 income factor for an ordinary income interest may not be used to value an income interest or similar interest in property for a term of years, or for one or more measuring lives, if—

(*1*) The trust, will, or other governing instrument requires or permits the beneficiary's income or other enjoyment to be withheld, diverted, or accumulated for another person's benefit without the consent of the income beneficiary; or

(*2*) The governing instrument requires or permits trust corpus to be withdrawn from the trust for another person's benefit without the consent of the income beneficiary during the income beneficiary's term of enjoyment and without accountability to the income beneficiary for such diversion.

(iii) *Remainder and reversionary interests.* A standard section 7520 remainder interest factor for an ordinary remainder or reversionary interest may not be used to determine the present value of a remainder or reversionary interest (whether in trust or otherwise) unless, consistent with the preservation and protection that the law of trusts would provide for a person who is unqualifiedly designated as the remainder beneficiary of a trust for a similar duration, the effect of the administrative and dispositive provisions for the interest or interests that precede the remainder or reversionary interest is to assure that the property will be adequately preserved and protected (e.g., from erosion, invasion, depletion, or damage) until the remainder or reversionary interest takes effect in possession and enjoyment. This degree of preservation and protection is provided only if it was the transferor's intent, as manifested by the provisions of the arrangement and the surrounding circumstances, that the entire disposition provide the remainder or reversionary beneficiary with an undiminished interest in the property transferred at the time of the termination of the prior interest.

(iv) *Pooled income fund interests.* In general, pooled income funds are created and administered to achieve a special rate of return. A beneficial interest in a pooled income fund is not ordinarily valued using a standard section 7520 income or remainder interest factor. The present value of a beneficial interest in a pooled income fund is determined according to rules and special remainder factors prescribed in § 1.642(c)–6 of this chapter and, when applicable, the rules set forth under paragraph (b)(3) of this section if the individual who is the measuring life is terminally ill at the time of the transfer.

(v) *Examples.* The provisions of this paragraph (b)(2) are illustrated by the following examples:

Example 1. Unproductive property. A died, survived by B and C. B died two years after A. A's will provided for a bequest of corporation stock in trust under the terms of which all of the trust income was paid to B for life. After the death of B, the trust terminated and the trust property was distributed to C. The trust specifically authorized, but did not require, the trustee to retain the shares of

stock. The corporation paid no dividends on this stock during the 5 years before A's death and the 2 years before B's death. There was no indication that this policy would change after A's death. Under applicable state law, the corporation is considered to be a sound investment that satisfies fiduciary standards. The facts and circumstances, including applicable state law, indicate that B did not have the legal right to compel the trustee to make the trust corpus productive in conformity with the requirements for a lifetime trust income interest under applicable local law. Therefore, B's life income interest in this case is considered nonproductive. Consequently, B's income interest may not be valued actuarially under this section.

Example 2. Beneficiary's right to make trust productive. The facts are the same as in *Example 1,* except that the trustee is not specifically authorized to retain the shares of stock. Further, the terms of the trust specifically provide that B, the life income beneficiary, may require the trustee to make the trust corpus productive consistent with income yield standards for trusts under applicable state law. Under that law, the minimum rate of income that a productive trust may produce is substantially below the section 7520 interest rate for the month of A's death. In this case, because B has the right to compel the trustee to make the trust productive for purposes of applicable local law during the beneficiary's lifetime, the income interest is considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 life income interest factor may be used to determine the present value of B's income interest.

Example 3. Discretionary invasion of corpus. The decedent, A, transferred property to a trust under the terms of which all of the trust income is to be paid to A's child for life and the remainder of the trust is to be distributed to a grandchild. The trust authorizes the trustee without restriction to distribute corpus to A's surviving spouse for the spouse's comfort and happiness. In this case, because the trustee's power to invade trust corpus is unrestricted, the exercise of the power could result in the termination of the income interest at any time. Consequently, the income interest is not considered an ordinary income interest for purposes of this paragraph, and may not be valued actuarially under this section.

Example 4. Limited invasion of corpus. The decedent, A, bequeathed property to a trust under the terms of which all of the trust income is to be paid to A's child for life and the remainder is to be distributed to A's grandchild. The trust authorizes the child to withdraw up to $5,000 per year from the trust corpus. In this case, the child's power to invade trust corpus is limited to an ascertainable amount each year. Annual invasions of any amount would be expected to progressively diminish the property from which the child's income is paid. Consequently, the income interest is not considered an ordinary income interest for purposes of this paragraph, and the standard section 7520 income interest factor may not be used to determine the present value of the income interest. Nevertheless, the present value of the child's income interest is ascertainable by making a special actuarial calculation that would take into account not only the initial value of the trust corpus, the section 7520 interest rate for the month of the transfer, and the mortality component for the child's age, but also the assumption that the trust corpus will decline at the rate of $5,000 each year during the child's lifetime. The child's right to receive an amount not in excess of $5,000 per year may be separately valued in this instance and, assuming the trust corpus would not exhaust before the child would attain age 110, would be considered an ordinary annuity interest.

Example 5. Power to consume. The decedent, A, devised a life estate in 3 parcels of real estate to A's surviving spouse with the remainder to a child, or, if the child doesn't survive, to the child's estate. A also conferred upon the spouse an unrestricted power to consume the property, which includes the right to sell part or all of the property and to use the proceeds for the spouse's support, comfort, happiness, and other purposes. Any portion of the property or its sale proceeds remaining at the death of the surviving spouse is to vest by operation of law in the child at that time. The child predeceased the surviving spouse. In this case, the surviving spouse's power to consume the corpus is unrestricted, and the exercise of the power could entirely exhaust the remainder interest during the life of the spouse. Consequently, the remainder interest that is includible in the child's estate is not considered an ordinary remainder interest for purposes of this paragraph and may not be valued actuarially under this section.

(3) *Mortality component*—(i) *Terminal illness.* Except as provided in paragraph (b)(3)(ii) of this section, the mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if an individual who is a measuring life is terminally ill at the time of the decedent's death. For purposes of this paragraph (b)(3), an individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50 percent probability that the individual will die

within 1 year. However, if the individual survives for eighteen months or longer after the date of the decedent's death, that individual shall be presumed to have not been terminally ill at the date of death unless the contrary is established by clear and convincing evidence.

(ii) *Terminal illness exceptions.* In the case of the allowance of the credit for tax on a prior transfer under section 2013, if a final determination of the federal estate tax liability of the transferor's estate has been made under circumstances that required valuation of the life interest received by the transferee, the value of the property transferred, for purposes of the credit allowable to the transferee's estate, shall be the value determined previously in the transferor's estate. Otherwise, for purposes of section 2013, the provisions of paragraph (b)(3)(i) of this section shall govern in valuing the property transferred. The value of a decedent's reversionary interest under sections 2037(b) and 2042(2) shall be determined without regard to the physical condition, immediately before the decedent's death, of the individual who is the measuring life.

(iii) *Death resulting from common accidents.* The mortality component prescribed under section 7520 may not be used to determine the present value of an annuity, income interest, remainder interest, or reversionary interest if the decedent, and the individual who is the measuring life, die as a result of a common accident or other occurrence.

(4) *Examples.* The provisions of paragraph (b)(3) of this section are illustrated by the following examples:

Example 1. Terminal illness. The decedent bequeaths $1,000,000 to a trust under the terms of which the trustee is to pay $103,000 per year to a charitable organization during the life of the decedent's child. Upon the death of the child, the remainder in the trust is to be distributed to the decedent's grandchild. The child, who is age 60, has been diagnosed with an incurable illness, and there is at least a 50 percent probability of the child dying within 1 year. Assuming the presumption provided for in paragraph (b)(3)(i) of this section does not apply, the standard life annuity factor for a person age 60 may not be used to determine the present value of the charitable organization's annuity interest because there is at least a 50 percent probability that the child, who is the measuring life, will die within 1 year. Instead, a special section 7520 annuity factor must be computed that takes into account the projection of the child's actual life expectancy.

Example 2. Deaths resulting from common accidents, etc. The decedent's will establishes a trust to pay income to the decedent's surviving spouse for life. The will provides that, upon the spouse's death or, if the spouse fails to survive the decedent, upon the decedent's death the trust property is to pass to the decedent's children. The decedent and the decedent's spouse die simultaneously in an accident under circumstances in which it was impossible to determine who survived the other. Even if the terms of the will and applicable state law presume that the decedent died first with the result that the property interest is considered to have passed in trust for the benefit of the spouse for life, after which the remainder is to be distributed to the decedent's children, the spouse's life income interest may not be valued by use of the mortality component described under section 7520. The result would be the same even if it was established that the spouse survived the decedent.

(5) *Additional limitations.* Section 7520 does not apply to the extent as may otherwise be provided by the Commissioner.

(c) *Effective date.* Section § 20.7520–3(a) is effective as of May 1, 1989. The provisions of paragraph (b) of this section are effective with respect to estates of decedents dying after December 13, 1995.

[T.D. 8540, 59 FR 30170, June 10, 1994, as amended by T.D. 8630, 60 FR 63916, Dec. 13, 1995]

§ 20.7520–4 Transitional rules.

(a) *Reliance.* If the valuation date is after April 30, 1989, and before June 10, 1994, an executor can rely on Notice 89–24, 1989–1 C.B. 660, or Notice 89–60, 1989–1 C.B. 700 (See § 601.601(d)(2)(ii)(*b*) of this chapter), in valuing the transferred interest.

(b) *Effective date.* This section is effective as of May 1, 1989.

PART 22—TEMPORARY ESTATE TAX REGULATIONS UNDER THE ECONOMIC RECOVERY TAX ACT OF 1981

AUTHORITY: 26 U.S.C. 7805.