

§ 20.2056A-5

26 CFR Ch. I (4-1-10 Edition)

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, Actuarial Valuations Version 3A. A copy of this publication is available beginning May 1, 2009, at no charge, electronically via the IRS Internet site at <http://www.irs.gov>. If the quotient obtained falls between two terms, the longer term is used.

(c)(5) through (c)(7). [Reserved] For further guidance see § 20.2056A-4(c)(5) through (c)(7).

(d) *Examples 1 through 3.* [Reserved] For further guidance see § 20.2056A-4(d) *Examples 1 through 3.*

Example 4. Computation of corpus portion of annuity payment. (i) At the time of D's death on or after May 1, 2009, 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 6.0 percent. The annuity factor at 6.0 percent for a person age 60 is 11.0625 (1.0000 minus .33625, divided by .06). The adjustment factor at 6.0 percent in Table K for monthly payments is 1.0272. Accordingly, the right to receive \$72,000 per year on a monthly basis is equal to the right to receive \$73,958.40 ($\$72,000 \times 1.0272$) 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: \$73,958.40 \times 11.0625 = \$818,164.80.

(B) Annuity Factor for Expected Annuity Term: \$818,164.80/\$73,958.40 = 11.0625

(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 \$818,164.80. The term certain annuity factor of 11.0625 falls between the annuity factors for 18 and 19 years in a 6.0 percent term certain annuity table (Column 1 of Table B, Publication 1457 Actuarial Valuations Version 3A, which may be obtained on the IRS Internet site). Accordingly, the expected annuity term is 19 years.

(iv) The third step is to determine the corpus amount by dividing the expected term of

19 years into the present value of the hypothetical fund as follows:

Corpus amount of annual payment:
 $\$818,164.80/19 = \$43,061.31$

(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 (adjusted for payments more frequently than annually as in (i) of this *Example 4*) as follows:

Corpus portion of each annuity payment:
 $\$43,061.31/\$73,958.40 = .58$

(vi) Accordingly, 58 percent of each payment to S is deemed to be a distribution of corpus. A marital deduction is allowed for \$818,164.80, 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. [Reserved] For further guidance see § 20.2056A-4(d) *Example 5.*

(e) *Effective/applicability date.* Paragraph (c)(4)(ii)(B) and *Example 4* in paragraph (d) of this section are applicable with respect to decedents dying on or after May 1, 2009.

(f) *Expiration date.* Paragraph (c)(4)(ii)(B) and *Example 4* in paragraph (d) of this section expire on or before May 1, 2012.

[T.D. 9448, 74 FR 21510, May 7, 2009]

§ 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, main-

tenance, 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. However, distributions made to the surviving spouse as the income beneficiary in conformance with applicable local law that defines the term income as a unitrust amount (or permits a right to income to be satisfied by such an amount), or that permits the trustee to adjust between principal and income to fulfill the trustee's duty of impartiality between income and principal beneficiaries, will be considered distributions of trust income if applicable local law provides for a reasonable apportionment between the income and remainder beneficiaries of the total return of the trust and meets the requirements of § 1.643(b)-1 of this chapter. 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 re-

imburse 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, as amended by T.D. 9102, 69 FR 21, Jan. 2, 2004]

§ 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