

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

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)

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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 .....	\$2,000,000	
Marital Deduction .....	(700,000)	
<b>Taxable Estate .....</b>	<b>\$1,300,000</b>	
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)
<b>Estate Tax .....</b>		<b>\$225,400</b>

(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

<i>D</i> 's Actual Taxable Estate .....	\$1,300,000	
QDOT Property .....	800,000	
<b>Total .....</b>	<b>\$2,100,000</b>	
Gross Tax .....		\$829,800
Less: Unified Credit .....		(192,800)
<b>Pre-2011 section 2056A estate tax .....</b>		<b>\$637,000</b>
(A) State Death Tax Credit Computation:		
(1) State death tax paid by <i>S</i> 's estate with respect to the QDOT [\$40,000] plus state death tax previously paid by <i>D</i> 's estate [\$70,000] = \$110,000. ....		
(2) Credit limit under section 2011(b) (based on <i>D</i> '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)
<b>Net Tax .....</b>		<b>\$530,200</b>

Gross estate .....	\$1,200,000	
Marital Deduction .....	(700,000)	
<b>Taxable Estate .....</b>	<b>\$500,000</b>	
Gross Tax .....		\$155,800
Less: Unified Credit .....		(155,800)
<b>Net Tax .....</b>		<b>0</b>

(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:

<i>D</i> 's actual taxable estate .....	\$500,000	
QDOT property .....	700,000	
<b>Total .....</b>	<b>\$1,200,000</b>	
Gross Tax .....		\$427,800
Less: Unified Credit .....		(192,800)
<b>Net Tax .....</b>		<b>\$235,000</b>
Less: Tax that would have been imposed on <i>D</i> 's actual taxable estate of \$500,000 .....		0
<b>Section 2056A Estate Tax ...</b>		<b>\$235,000</b>

*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 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:

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Less: Tax that would have been imposed on <i>D</i> '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
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(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
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(C) *Second Limitation:*

Paragraph (ii)(A) of this <i>Example</i> .....	\$298,600
Less: Paragraph (ii)(B) of this <i>Example</i> .....	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]