AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

§ 20.2056(c)–3 Marital deduction; definition of passed from the decedent to a person other than his surviving spouse.
§ 20.2056(d)–1 Marital deduction; special rules for marital deduction if surviving spouse is not a United States citizen.
§ 20.2056(d)–2 Marital deduction; effect of disclaimers of post-December 31, 1976 transfers.
(a) Disclaimer by a surviving spouse.
(b) Disclaimer by a person other than a surviving spouse.
§ 20.2056(d)–3 Marital deduction; effect of disclaimers of pre-January 1, 1977 transfers.
(a) Disclaimers by a surviving spouse.
(b) Disclaimer by a person other than a surviving spouse.
(1) Decedents dying after October 3, 1966, and before January 1, 1977.
(2) Decedents dying after September 30, 1963, and before October 4, 1966.
(3) Decedents dying before October 4, 1966.

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

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

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

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

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

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

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

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

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