§ 25.2505–2T Gifts made by a surviving spouse having a DSUE amount available (temporary).

(a) Donor who is surviving spouse is limited to DSUE amount of last deceased spouse.
(1) In general.
(2) No DSUE amount available from last deceased spouse.
(3) Identity of last deceased spouse unchanged by subsequent marriage or divorce.
(b) Manner in which DSUE amount is applied.
(c) Special rule in case of multiple deceased spouses and previously-applied DSUE amount.
(1) In general.
(2) Example.
(d) Date DSUE amount taken into consideration by donor who is a surviving spouse.
(1) General rule.
(2) Special rule when property passes to surviving spouse in a qualified domestic trust.
(e) Authority to examine returns of deceased spouses.
(f) Availability of DSUE amount for nonresidents who are not citizens.
(g) Effective/applicability date.
(h) Expiration date.

[T.D. 9593, 77 FR 36161, June 18, 2012]

§ 25.2505–1T Unified credit against gift tax; in general (temporary).

(a) *General rule.* Section 2505(a) allows a citizen or resident of the United States a credit against the tax imposed by section 2501 for each calendar year. The allowable credit is the applicable credit amount in effect under section 2010(c) that would apply if the donor died as of the end of the calendar year, reduced by the sum of the amounts allowable as a credit against the gift tax due for all preceding calendar periods. See §§ 25.2505–2T, 20.2010–1T, and 20.2010–2T of this chapter for additional rules and definitions related to determining the applicable credit amount in effect under section 2010(c).

(b) *Applicable rate of tax.* In determining the amounts allowable as a credit against the gift tax due for all preceding calendar periods, the unified rate schedule under section 2001(c) in effect for such calendar year applies instead of the rates of tax actually in effect for preceding calendar periods. See sections 2505(a) and 2502(a)(2).

(c) *Special rule in case of certain gifts made before 1977.* The applicable credit amount allowable under paragraph (a) of this section must be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) for gifts made by the decedent after September 8, 1976, and before January 1, 1977.

(d) *Credit limitation.* The applicable credit amount allowed under paragraph (a) of this section for any calendar year shall not exceed the amount of the tax imposed by section 2501 for such calendar year.

(e) *Effective/applicability date.* Paragraph (a) of this section applies to gifts made on or after January 1, 2011. Paragraphs (b), (c), and (d) of this section apply to gifts made on or after June 15, 2012.

(f) *Expiration date.* The applicability of this section expires on or before June 15, 2015.

[T.D. 9593, 77 FR 36161, June 18, 2012]

§ 25.2505–2T Gifts made by a surviving spouse having a DSUE amount available (temporary).

(a) *Donor who is surviving spouse is limited to DSUE amount of last deceased spouse*—(1) *In general.* In computing a surviving spouse's gift tax liability with regard to a transfer subject to the tax imposed by section 2501 (taxable gift), a deceased spousal unused exclusion (DSUE) amount of a decedent, computed under § 20.2010–2T(c) of this chapter, is included in determining the surviving spouse's applicable exclusion amount under section 2010(c)(2), provided:

(i) Such decedent is the last deceased spouse of such surviving spouse within the meaning of § 20.2010–1T(d)(5) of this chapter at the time of the surviving spouse's taxable gift; and

(ii) The executor of the decedent's estate elected portability (see § 20.2010–2T(a) and (b) of this chapter for applicable requirements).

(2) *No DSUE amount available from last deceased spouse.* If on the date of the surviving spouse's taxable gift the last deceased spouse of such surviving spouse had no DSUE amount or if the executor of the estate of such last deceased spouse did not elect portability, the surviving spouse has no DSUE amount (except as and to the extent

provided in paragraph (c)(1)(ii) of this section) to be included in determining his or her applicable exclusion amount, even if the surviving spouse previously had a DSUE amount available from another decedent who, prior to the death of the last deceased spouse, was the last deceased spouse of such surviving spouse. See paragraph (c) of this section for a special rule in the case of multiple deceased spouses.

(3) *Identity of last deceased spouse unchanged by subsequent marriage or divorce.* A decedent is the last deceased spouse (as defined in § 20.2010–1T(d)(5) of this chapter) of a surviving spouse even if, on the date of the surviving spouse's taxable gift, the surviving spouse is married to another (then-living) individual. If a surviving spouse marries again and that marriage ends in divorce or an annulment, the subsequent death of the divorced spouse does not end the status of the prior deceased spouse as the last deceased spouse of the surviving spouse. The divorced spouse, not being married to the surviving spouse at death, is not the last deceased spouse as that term is defined in § 20.2010–1T(d)(5) of this chapter.

(b) *Manner in which DSUE amount is applied.* If a donor who is a surviving spouse makes a taxable gift and a DSUE amount is included in determining the surviving spouse's applicable exclusion amount under section 2010(c)(2), such surviving spouse will be considered to apply such DSUE amount to the taxable gift before the surviving spouse's own basic exclusion amount.

(c) *Special rule in case of multiple deceased spouses and previously-applied DSUE amount*—(1) *In general.* A special rule applies to compute the DSUE amount included in the applicable exclusion amount of a surviving spouse who previously has applied the DSUE amount of one or more deceased spouses. If a surviving spouse applied the DSUE amount of one or more last deceased spouses to the surviving spouse's previous lifetime transfers, and if any of those last deceased spouses is different from the surviving spouse's last deceased spouse as defined in § 20.2010–1T(d)(5) of this chapter at the time of the current taxable gift by the surviving spouse, then the DSUE amount to be included in determining the applicable exclusion amount of the surviving spouse that will be applicable at the time of the current taxable gift is the sum of—

(i) The DSUE amount of the surviving spouse's last deceased spouse as described in paragraph (a)(1) of this section; and

(ii) The DSUE amount of each other deceased spouse of the surviving spouse to the extent that such amount was applied to one or more previous taxable gifts of the surviving spouse.

(2) *Example.* The following example, in which all described individuals are US citizens, illustrates the application of this paragraph (c):

Example. (i) *Facts.*

Husband 1 (H1) dies on January 15, 2011, survived by Wife (W). Neither has made any taxable gifts during H1's lifetime. H1's executor elects portability of H1's deceased spousal unused exclusion (DSUE) amount. The DSUE amount of H1 as computed on the estate tax return filed on behalf of H1's estate is $5,000,000. On December 31, 2011, W makes taxable gifts to her children valued at $2,000,000. W reports the gifts on a timely-filed gift tax return. W is considered to have applied $2,000,000 of H1's DSUE amount to the 2011 taxable gifts, in accordance with paragraph (b) of this section, and, therefore, W owes no gift tax. W is considered to have an applicable exclusion amount remaining in the amount of $8,000,000 ($3,000,000 of H1's remaining DSUE amount plus W's own $5,000,000 basic exclusion amount). After the death of H1, W marries Husband 2 (H2). H2 dies on June 30, 2012. H2's executor elects portability of H2's DSUE amount, which is properly computed on H2's estate tax return to be $2,000,000.

(ii) *Application.* The DSUE amount to be included in determining the applicable exclusion amount available to W for gifts during the second half of 2012 is $4,000,000, determined by adding the $2,000,000 DSUE amount of H2 and the $2,000,000 DSUE amount of H1 that was applied by W to W's 2011 taxable gifts. Thus, W's applicable exclusion amount during the balance of 2012 is $9,000,000.

(d) *Date DSUE amount taken into consideration by donor who is a surviving spouse*—(1) *General rule.* A portability election made by an executor of a decedent's estate (see § 20.2010–2T(a) and (b) of this chapter for applicable requirements) applies as of the date of the decedent's death. Thus, the decedent's DSUE amount is included in the applicable exclusion amount of the decedent's surviving spouse under section

2010(c)(2) and will be applicable to transfers made by the surviving spouse after the decedent's death. However, such decedent's DSUE amount will not be included in the applicable exclusion amount of the surviving spouse, even if the surviving spouse had made a taxable gift in reliance on the availability or computation of the decedent's DSUE amount:

(i) If the executor of the decedent's estate supersedes the portability election by filing a subsequent estate tax return in accordance with § 20.2010–2T(a)(4) of this chapter;

(ii) To the extent that the DSUE amount subsequently is reduced by a valuation adjustment or the correction of an error in calculation; or

(iii) To the extent that the DSUE amount claimed on the decedent's return cannot be determined.

(2) *Special rule when property passes to surviving spouse in a qualified domestic trust*—(i) *In general.* When property passes from a decedent for the benefit of a surviving spouse in one or more qualified domestic trusts (QDOT) as defined in section 2056A(a) and the decedent's executor elects portability, the DSUE amount available to be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) is the DSUE amount of the decedent as redetermined in accordance with § 20.2010–2T(c)(4) of this chapter. The earliest date on which the decedent's DSUE amount may be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) is the date of the occurrence of the final QDOT distribution or final other event (generally, the death of the surviving spouse or the earlier termination of all QDOTs for that surviving spouse) on which tax under section 2056A is imposed. However, the decedent's DSUE amount as redetermined in accordance with § 20.2010–2T(c)(4) of this chapter may be applied to the surviving spouse's taxable gifts made in the year of the surviving spouse's death, or if the terminating event occurs prior to the surviving spouse's death, then in the year of that terminating event and/or any subsequent year during the surviving spouse's life.

(ii) *Example.* The following example illustrates the application of this paragraph (d)(2):

Example. (i) *Facts.* Husband (H), a US citizen, dies in January 2011 having made no taxable gifts during his lifetime. H's gross estate is $3,000,000. H's wife (W) is a US resident but not a citizen of the United States and, under H's will, a pecuniary bequest of $2,000,000 passes to a QDOT for the benefit of W. H's executor timely files an estate tax return and makes the QDOT election for the property passing to the QDOT, and H's estate is allowed a marital deduction of $2,000,000 under section 2056(d) for the value of that property. H's taxable estate is $1,000,000. On H's estate tax return, H's executor computes H's preliminary DSUE amount to be $4,000,000. No taxable events within the meaning of section 2056A occur during W's lifetime with respect to the QDOT. W makes a taxable gift of $1,000,000 to X in December 2011 and a taxable gift of $1,000,000 to Y in January 2012. W dies in September 2012, not having married again, when the value of the assets of the QDOT is $2,200,000.

(ii) *Application.* H's DSUE amount is redetermined to be $1,800,000 (the lesser of the $5,000,000 basic exclusion amount in 2011, or the excess of H's $5,000,000 applicable exclusion amount over $3,200,000 (the sum of the $1,000,000 taxable estate augmented by the $2,200,000 of QDOT assets)). On W's gift tax return filed for 2011, W cannot apply any DSUE amount to the gift made to X. However, because W's gift to Y was made in the year that W died, W's executor will apply $1,000,000 of H's redetermined DSUE amount to the gift on W's gift tax return filed for 2012. The remaining $800,000 of H's redetermined DSUE amount is included in W's applicable exclusion amount to be used in computing W's estate tax liability.

(e) *Authority to examine returns of deceased spouses.* For the purpose of determining the DSUE amount to be included in the applicable exclusion amount of the surviving spouse, the Internal Revenue Service (IRS) may examine returns of each of the surviving spouse's deceased spouses whose DSUE amount is claimed to be included in the surviving spouse's applicable exclusion amount, regardless of whether the period of limitations on assessment has expired for any such return. The IRS's authority to examine returns of a deceased spouse applies with respect to each transfer by the surviving spouse to which a DSUE amount is or has been applied. Upon examination, the IRS may adjust or eliminate the DSUE amount reported on such a return;

however, the IRS may assess additional tax on that return only if that tax is assessed within the period of limitations on assessment under section 6501 applicable to the tax shown on that return. See also section 7602 for the IRS's authority, when ascertaining the correctness of any return, to examine any returns that may be relevant or material to such inquiry.

(f) *Availability of DSUE amount for nonresidents who are not citizens.* A nonresident surviving spouse who was not a citizen of the United States at the time of making a transfer subject to tax under chapter 12 of the Internal Revenue Code shall not take into account the DSUE amount of any deceased spouse except to the extent allowed under any applicable treaty obligation of the United States. See section 2102(b)(3).

(g) *Effective/applicability date.* This section applies to gifts made in calendar year 2011 or in a subsequent year in which the applicable exclusion amount is determined under section 2010(c) of the Code by adding the basic exclusion amount and, in the case of a surviving spouse, the DSUE amount.

(h) *Expiration date.* The applicability of this section expires on or before June 15, 2015.

[T.D. 9593, 77 FR 36161, June 18, 2012]

TRANSFERS

§ 25.2511–1 Transfers in general.

(a) The gift tax applies to a transfer by way of gift whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. For example, a taxable transfer may be effected by the creation of a trust, the forgiving of a debt, the assignment of a judgment, the assignment of the benefits of an insurance policy, or the transfer of cash, certificates of deposit, or Federal, State or municipal bonds. 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 not applicable to the gift tax, since the gift tax is an excise tax on the transfer, and is not a tax on the subject of the gift.

(b) In the case of a gift by a nonresident not a citizen of the United States—

(1) If the gift was made on or after January 1, 1967, by a donor who was not an expatriate to whom section 2501(a)(2) was inapplicable on the date of the gift by reason of section 2501(a)(3) and paragraph (a)(3) of § 25.2501–1, or

(2) If the gift was made before January 1, 1967, by a donor who was not engaged in business in the United States during the calendar year in which the gift was made, the gift tax applies only if the gift consisted of real property or tangible personal property situated within the United States at the time of the transfer. See §§ 25.2501–1 and 25.2511–3.

(c)(1) The gift tax also applies to gifts indirectly made. Thus, any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax. See further § 25.2512–8 relating to transfers for insufficient consideration. However, in the case of a transfer creating an interest in property (within the meaning of § 25.2518–2(c)(3) and (c)(4)) made after December 31, 1976, this paragraph (c)(1) shall not apply to the donee if, as a result of a qualified disclaimer by the donee, the interest passes to a different donee. Nor shall it apply to a donor if, as a result of a qualified disclaimer by the donee, a completed transfer of an interest in property is not effected. See section 2518 and the corresponding regulations for rules relating to a qualified disclaimer.

(2) In the case of taxable transfers creating an interest in the person disclaiming made before January 1, 1977, where the law governing the administration of the decedent's estate gives a beneficiary, heir, or next-of-kin a right completely and unqualifiedly to refuse to accept ownership of property transferred from a decedent (whether the transfer is effected by the decedent's will or by the law of descent and distribution), a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a reasonable time after knowledge of the existence of the transfer. The refusal