

**SUPPORTING STATEMENT  
(PS-25-94)**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 2056(d) and section 2056A were added to the Internal Revenue Code by section 5033 of the Technical and Miscellaneous Revenue Act of 1988. These sections restrict the availability of the estate tax marital deduction when the surviving spouse is not a United States citizen to situations where the marital property passes to a qualified domestic trust (QDOT). An additional estate tax is imposed under section 2056A(b) on certain taxable events (i.e., distributions of property from the QDOT). Section 2056A(e) authorizes the Secretary to prescribe regulations as may be necessary or appropriate to carry out the purposes of the section. The regulations provide amendments to the regulations under the Internal Revenue Code concerning the additional requirements necessary to ensure the collection of the additional estate tax imposed under section 2056A(b) in the case of taxable events involving QDOTs.

**2. USE OF DATA**

The information relating to the bond and letter of credit requirements under §20.2056A-2(d)(1)(i) will be processed by the IRS and used in the administration of the Internal Revenue laws to ensure that QDOTs in excess of \$2 million have provided the required security arrangements to ensure the collection of the additional estate tax that is imposed under section 2056A(b). The information collected under the annual reporting requirement of §20.2056A-2(d)(3) will be used to monitor the foreign real property holdings of QDOTs of less than \$2 million and the compliance with the requirements for the availability of the principal residence exclusion contained in §20.2056A-2(d)(1)(iii).

**3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

We have no plans to offer electronic filing. IRS publication, regulations, notices and letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACITIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A notice of proposed rulemaking was published simultaneously with temporary regulations (60 FR 43554 and 60 FR 43575, respectively) in the Federal Register on August 22, 1995. A public hearing was held on January 16, 1996. The final regulations (TD 8686) were published in the Federal Register on November 29, 1996 (61 FR 60551).

In response to the Federal Register Notice dated June 11, 2010 (75 FR 33389), we received no comments during the comment period regarding PS-25-94.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are

confidential as required by 26 USC 6103.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

(1) Section 20.2056A-2(d)(1)(i) requires that where the fair market value of the assets passing to a QDOT exceeds \$2 million, the QDOT must either: (1) have a United States bank serving as the trustee of the QDOT; (2) furnish a bond in favor of the IRS in an amount equal to 65 percent of the fair market value of the trust assets; or (3) furnish a letter of credit issued by a bank, as defined in section 581, or issued by a foreign bank and confirmed by a bank as defined in section 581, in favor of the IRS in an amount equal to 65 percent of the fair market value of the trust assets. The bond or letter of credit (and confirmation, if applicable) is to be filed with the decedent's federal estate tax return. The U.S. Trustee must provide a written statement with the bond or letter of credit that provides a list of the assets that will be used to fund the QDOT and the respective value of such assets. We estimate that approximately 1,500 taxpayers will be affected by this requirement and that it will take approximately 3 hours to prepare this information. The burden for this requirement is 4,500 hours.

(2) Under section 20.2056A-2(d)(1)(i)(B) and (C), a bond or letter of credit security arrangement with respect to a QDOT must be for a term of at least one year and must be automatically renewable at the end of such term, on an annual basis thereafter, unless notice of failure to renew is received by the IRS at least 60 days prior to the end of the term. In addition, the IRS will not draw on the bond or letter of credit if within 30 days of receipt of notice of failure to renew or closure of the U.S. branch, the U.S. Trustee notifies the IRS that an alternate security arrangement under section 20.2056A-2(d)(1)(i)(A), (B) or (C) has been secured and that such arrangement will take effect immediately prior to or upon expiration of the bond or letter of credit, or closure of the U.S. branch of a foreign bank. We estimate that approximately 220 taxpayers will be affected by this requirement and that it will take approximately 30 minutes to prepare this information. The burden for this requirement is 110 hours.

(3) Under §20.2056A-2(d)(1)(i)(C), if a letter of credit is issued by a U.S. branch of a foreign bank and such U.S. branch is closing, the branch (or foreign bank) must notify the IRS of such closing and the notice of closure must be received at least 60 days prior to the date of closure. We estimate that this requirement will affect 20 taxpayers and that it will take approximately 30 minutes to prepare this information. The burden for this requirement is 10 hours.

(4) Section 20.2056A-2(d)(iv)(A) provides that the executor of the estate may elect to exclude up to \$600,000 in value with respect to the surviving spouse's personal residence in determining whether the QDOT exceeds the \$2 million threshold under section 20.2056A-2(d)(1)(i) or (ii). The executor of the estate may also elect to exclude, during the term of the QDOT, up to \$600,000 attributable to the surviving spouse's personal residence for purposes of determining the amount of the bond or letter of credit required. Both elections are made by attaching a written statement claiming the exclusion to the estate tax return on which the election is made. We estimate that approximately 1,000 taxpayers will be affected by this requirement and that it will take approximately 30 minutes to prepare this information. The burden for this requirement is 500 hours.

(5) Under §20.2056A-2(d)(1)(iv)(B) the executor of the estate may elect to exclude up to \$600,000 in value with respect to the surviving spouse's principal residence and one other residence in determining the \$2 million threshold under §20.2056A-2(d)(1)(i) and (ii) and for purposes of determining the amount of the bond or letter of credit required. The election to exclude \$600,000 in value attributable to the surviving spouse's principal and one other residence for purposes of determining the amount of the bond or letter of credit required may be made at a time other than the filing of the decedent's estate tax return and may be canceled at a later time. Either of these actions are made by attaching to the Form 706-QDT a written statement either claiming or canceling the election. We estimate that 100 taxpayers will be affected by this requirement and that it will take approximately 30 minutes to prepare this information. The burden for this requirement is 50 hours.

(6) Under section 20.2056A-2(d)(4), taxpayers may submit a request for a private letter ruling for the approval of an alternative plan or arrangement proposed to be adopted in order

to ensure the collection of the section 2056A estate tax in lieu of the security options provided in the regulations. We estimate that 50 taxpayers will take advantage of this option and that it will take approximately 3 hours to prepare the ruling request. The burden for this requirement is 150 hours.

(7) Section 20.2056A-2(d)(6) provides that in certain cases where the settlor of a QDOT is under a legal disability to amend the will or trust or the trust does not provide the U.S. Trustee with a power to amend the trust instrument in order to meet the requirements of section 2056A, the trust is not required to contain the governing instrument requirements contained in section 20.2056A-2(d)(l) if 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 section 20.2056A-2(d)(l) for the duration of the trust. We estimate that 200 taxpayers will be affected by this requirement and that it will take approximately 30 minutes to prepare this information. The burden for this requirement is 100 hours.

(8) Section 20.2056A-2(d)(3) requires the U.S. Trustee of a QDOT to file an annual statement if the QDOT owns directly, or in some cases, indirectly, any foreign real property on the last day of the taxable year and the QDOT does not satisfy any of the security requirements contained in §20.2056A-2(d)(l)(i). We estimate that approximately 1,300 taxpayers will be affected by this requirement and it will take approximately 30 minutes to prepare the information. The burden for this requirement is 650 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

### **13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our Federal Register notice dated June 11, 2010, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

