CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.863–1	1545–1476
1.863–3	1545–1476
* * * * *	
1.863–3A	1545–0126
* * * * *	

Approved: November 25, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Donald C. Lubick,

Acting Assistant Secretary of Tax Policy.

[FR Doc. 96–30617 Filed 11–27–96; 8:45 am]

BILLING CODE 4830–01–U

26 CFR Parts 20 and 602

[TD 8686]

RIN 1545–AT64

Requirements to Ensure Collection of Section 2056A Estate Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance relating to the additional requirements necessary to ensure the collection of the estate tax imposed under section 2056A(b) with respect to taxable events involving qualified domestic trusts (QDOTs) described in section 2056A(a).

DATES: These regulations are effective November 29, 1996.

For dates of applicability, see § 20.2056A–2(d).

FOR FURTHER INFORMATION CONTACT: Susan Hurwitz (202) 622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1443. Responses to this collection of information are required in order for an estate to be eligible for the estate tax marital deduction in cases where the surviving spouse is not a United States citizen.

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 control number.

The estimated annual burden per respondent varies from 30 minutes to 3 hours, depending on individual circumstances, with an estimated average of 1.39 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this 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.

Background

A notice of proposed rulemaking was published in the Federal Register on January 5, 1993 (58 FR 305), reflecting amendments to the Internal Revenue Code by the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647), the Revenue Reconciliation Act of 1989 (Public Law 101–239), and the Revenue Reconciliation Act of 1990 (Public Law 101–508). The amendments generally relate to sections 2056 and 2523, and affect the availability of the estate and gift tax marital deduction when the surviving spouse or the donee spouse is not a United States citizen. Part of the NPRM was published in the Federal Register as final regulations, in TD 8612, on August 22, 1995 (60 FR 43531). That part of the NPRM that addressed the regulatory requirements to ensure the collection of the estate tax imposed by section 2056A(b)(1) (A) and (B) was published in the Federal Register on August 22, 1995, in the form of temporary and proposed regulations, (60 FR 43554 and 60 FR 43575, respectively) in order to afford the public a further opportunity to comment on these security arrangements.

On January 16, 1996, the IRS held a hearing on the temporary and proposed regulations. These final regulations reflect the comments received in response to the temporary and proposed regulations.

Explanation of Provisions

The following is a summary of the significant comments received and the reasons for accepting or rejecting those comments in the final regulations.

Under the temporary regulations, a qualified domestic trust (QDOT) that has assets in excess of $2 million, may alternate among the three security arrangements provided in the regulations (U.S. bank trustee, bond or letter of credit), provided that at all times, at least one of the three arrangements is in effect. A QDOT with assets of $2 million or less need not satisfy these requirements, if, in general, the trust holdings of foreign situs real property are limited to 35 percent of the fair market value of the trust corpus.

Comments were received that trusts in actual compliance with these regulatory requirements, but which do not explicitly include the required language, will not qualify as a QDOT. In addition, comments suggested that the imposition of numerous governing instrument requirements will increase the difficulty of drafting a QDOT and result in a trust document that will have to include detailed provisions, many of which are not likely to be applicable. A suggestion was made that if the governing instrument requirement is retained in the regulations, then the required security provisions should be permitted to be incorporated by reference in a trust document. This suggestion was adopted. However, in order to assist taxpayers who may wish to specify the required provisions in the governing instrument, the IRS has published guidance in the Internal Revenue Bulletin (see § 602.101(d)(2) of this chapter) providing sample language that may be used in a QDOT instrument to satisfy the additional security requirements contained in the final regulations.

In response to comments, the language of the regulations has been modified to clarify that the QDOT may alternate among the three arrangements provided in the regulations as long as, at any given time, one of the three arrangements is required to be operative.

Comments suggested that the temporary regulations may be viewed as requiring that a QDOT that initially employs the bank trustee security alternative must, irrespective of whether the QDOT has switched to another security option, continue to have at least one U.S. Bank acting as a trustee. In response to this comment, the final regulations clarify that, if the QDOT changes to a different security arrangement, a U.S. bank need not continue to act as trustee.

Under the temporary regulations, in determining whether the value of the assets passing to a QDOT are in excess of, or less than, $2 million, indebtedness with respect to the assets is not taken into account to reduce value. Similarly,

under the temporary regulations, the amount of the bond or letter of credit that is furnished to the IRS must be equal to 65 percent of the fair market value of the trust assets determined "without regard to any indebtedness thereon." Comments suggested that indebtedness should be taken into account in determining whether the $2 million dollar threshold has been exceeded and the amount of the bond or letter of credit required. This change has not been made. The IRS and Treasury believe that the retention of the rule that indebtedness on the property is not taken into account to reduce value most effectively ensures collection of the estate tax imposed under section 2056A(b). For the limited purpose under this section (i.e., to determine whether the $2 million threshold is exceeded and the amount of the bond or letter of credit to be furnished to the IRS) the complexity that would be involved in drafting rules to determine which debts qualify to be taken into account and which do not is not warranted.

Under the temporary regulations, with regard to the bond and letter of credit security options, if the fair market value of the trust assets, is "finally determined" to be in excess of the value of the trust assets as originally reported, the trustee has a reasonable period of time (not exceeding sixty days from the date of the final determination) to adjust the amount of the bond or letter of credit. The temporary regulations also use the term "finally determined" in addressing substantial undervaluations of property passing to a QDOT and the grace period provided to meet the security requirements when a QDOT is determined to contain assets in excess of $2 million. Comments were received suggesting that the regulations provide a definition of "finally determined".

Accordingly, the final regulations provide that the value of the assets will be finally determined on the earliest to occur of—

1. The entry of a decision, judgment, decree, or other order by any court of competent jurisdiction that has become final;
2. The execution of a closing agreement made under section 7121;
3. Any final disposition by the IRS of a claim for refund;
4. The issuance of an estate tax closing letter (if no claim for refund is filed); or
5. The expiration of the statute of limitations for assessment with respect to the decedent's estate tax liability.

In response to comments, the regulation addressing the required duration of the bond or letter of credit has been clarified to provide that the security arrangement must remain in effect until the trust ceases to function as a QDOT.

Comments have been received regarding the amount of the bond or letter of credit that must be furnished to the IRS. One commentator stated that, since the purpose of the bond or letter of credit requirement is to provide a source of funds for the payment of the section 2056A(b) estate tax, the amount of the required bond or letter of credit should be based on either the maximum federal estate tax rate, or the amount of estate tax deferred, rather than 65% of the value of the QDOT, as provided in the regulations. This suggestion has not been adopted. Generally, the regulation requires a bond of 65 percent of the initial fair market value of the trust assets to ensure that the potential estate tax liability is adequately secured if the trust property appreciates in value.

The temporary regulations providing that notice of failure to renew a bond or letter of credit must be "received by the IRS at least 60 days prior to the end of the term of the bond or letter of credit" has been changed to reference the date the notice is "mailed to" the IRS. Further, under the final regulations, the notice must also be mailed to the U.S. Trustee of the QDOT.

Under the regulations, in the case of a QDOT of less than $2 million, if on the last day of a taxable year of the QDOT, the value of foreign real property owned by the QDOT exceeds 35 percent of the QDOT assets because of distributions of principal during that year, or because of fluctuations in the value of the foreign currency in the jurisdiction where the real property is located, a grace period of one year is provided to allow the trustee to comply with the 35 percent limit. Comments suggested that changes in the relative value of the trust assets would also cause the trust to fail to satisfy the 35 percent limit, and failure to comply due to such changes that are beyond the control of the trustee should also be eligible for the grace period. Accordingly, under the final regulations, the trustee will also be accorded the grace period to satisfy the 35 percent limit if, as a result of changes in the relative values of the trust assets, more than 35 percent of the value of the trust consists of foreign real estate.

Under the temporary regulations, for purposes of determining whether the $2 million threshold has been exceeded, and for purposes of determining the amount of the bond or letter of credit, the executor of the decedent's estate may exclude up to $600,000 in value attributable to real property wherever situated (and related furnishings) owned directly by the QDOT that is used by the surviving spouse as the spouse's principal residence. Comments were received that the regulations should be expanded to allow the exclusion of all residential real property that is actually used by the surviving spouse. Thus, a vacation home or second home would qualify for the exclusion. It was also suggested that all personally used residential real property, regardless of value, should be eligible for the exclusion. The final regulations do not change the monetary limit of $600,000 for the exclusion. The $600,000 limit for the exclusion facilitates the reduction of the costs associated with providing security while adequately ensuring the collection of the section 2056A(b) tax. This is especially the case in situations where the residential real property is situated outside the United States so that a significant collection risk is presented. However, under the final regulations the exclusion has been redesignated as a "personal residence" exclusion. The exclusion is now available for the principal residence of the surviving spouse and one additional residence, to the extent the combined value excluded does not exceed $600,000. The second residence will be eligible for the exclusion only if the residence is used by the surviving spouse as a personal residence and not subject to any rental arrangement with any person.

Under the temporary regulations, the residence exclusion election is made by attaching a written statement to the estate tax return on which the QDOT election is made. Commentators suggested that the final regulations allow the election to be made at any time during the term of the QDOT, and not necessarily at the time of filing of the decedent's estate tax return. For example, if the bank trustee alternative is selected by the trustee of the QDOT, but at some future date the trustee desires to change to the bond or letter of credit security arrangement, the trustee should be given the opportunity to make a delayed election of the exclusion. In response to these comments, the final regulations provide that the election may be made at any time during the term of the QDOT. In addition, the final regulation provides for the cancellation of a prior election.

Under the temporary regulations, the U.S. Trustee of a QDOT is required to file an annual statement with the IRS containing specified items of information (including a list of all assets held by the QDOT together with the fair market value of each asset determined as of the last day of the taxable year) if the residence exclusion applies during the taxable year. Comments were

received suggesting that the cost of compliance with this annual reporting requirement will limit the utility of the residence exclusion. In response to these comments, annual reporting is no longer required solely because the personal residence exclusion was elected. However, the regulations retain the annual reporting requirement where the residence previously subject to the exclusion is sold, or where the residence ceases to be used as a personal residence during the taxable or calendar year.

Under the temporary regulations, if a residence that is subject to the exclusion is sold during the term of the QDOT, the exclusion will continue to apply if, within 12 months of the date of sale, the amount of the adjusted sales price (as defined in section 1034(d)(1)) is used to purchase a new residence for the spouse. In response to comments, this provision has been amended to provide that if a residence ceases to be used as the personal residence of the spouse, or if the residence is sold during the term of the QDOT, the exclusion may be applied to another residence that is held in either the same QDOT or in another QDOT, if the other residence is used as a personal residence of the spouse. The amount of exclusion that may be applied to the new personal residence under these circumstances can be up to $600,000 (less that amount previously allocated to a residence that continues to qualify for the exclusion) even if the entire $600,000 exclusion was not previously used for the initial personal residence(s).

Also, under the temporary regulations, on the sale of a residence, if less than the entire adjusted sales price is reinvested in a new residence, then the amount of the exclusion initially claimed by the QDOT is reduced proportionately. For example, if a residence is sold for an adjusted sales price of $1,000,000 and a new residence is acquired for $800,000, then, the original exclusion would be reduced by $120,000 to $480,000: $200,000 (adjusted sales price not reinvested)/ $1,000,000 (adjusted sales price) × $600,000. Comments were received suggesting that this rule be changed to provide that the amount of the exclusion as adjusted not be reduced below the amount actually reinvested (up to $600,000). This suggestion was adopted in the final regulations, reflecting that two residences can now qualify for the $600,000 exclusion.

Special Analyses

It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

Drafting Information

The principal author of these regulations is Susan Hurwitz, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 20 and 602 are amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 20.2056A–0, the table of contents is amended by revising the entry for § 20.2056A–2(d) to read as follows:

§ 20.2056A–0 Table of contents.

* * * * *

§ 20.2056A–2 Requirements for qualified domestic trust.

* * * * *

(d) Additional requirements to ensure collection of the section 2056A estate tax.

(1) Security and other arrangements for payment of estate tax imposed under section 2056A(b)(1).

(2) Individual trustees.

(3) Annual reporting requirements.

(4) Request for alternate arrangement or waiver.

(5) Adjustment of dollar threshold and exclusion.

(6) Effective date and special rules.

* * * * *

Par. 3. In § 20.2056A–2, paragraph (d) is added to read as follows:

§ 20.2056A–2 Requirements for qualified domestic trust.

* * * * *

(d) *Additional requirements to ensure collection of the section 2056A estate tax—(1) Security and other arrangements for payment of estate tax imposed under section 2056A(b)(1)*—(i) *QDOTs with assets in excess of $2 million.* If the fair market value of the assets passing, treated, or deemed to have passed to the QDOT (or in the form of a QDOT), determined without reduction for any indebtedness with respect to the assets, as finally determined for federal estate tax purposes, exceeds $2 million as of the date of the decedent's death or, if applicable, the alternate valuation date (adjusted as provided in paragraph (d)(1)(iii) of this section), the trust instrument must meet the requirements of either paragraph (d)(1)(i) (A), (B), or (C) of this section at all times during the term of the QDOT. The QDOT may alternate between any of the arrangements provided in paragraphs (d)(1)(i) (A), (B), and (C) of this section provided that, at any given time, one of the arrangements must be operative. See paragraph (d)(1)(iii) of this section for the definition of finally determined. The QDOT may provide that the trustee has the discretion to use any one of the security arrangements or may provide that the trustee is limited to using only one or two of the arrangements specified in the trust instrument. A trust instrument that specifically states that the trust must be administered in compliance with paragraph (d)(1)(i) (A), (B), or (C) of this section is treated as meeting the requirements of paragraphs (d)(1)(i) (A), (B), or (C) of this section for purposes of paragraphs (d)(1)(i) and, if applicable, (d)(1)(ii) of this section.

(A) *Bank Trustee.* Except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, the trust instrument must provide that whenever the Bank Trustee security alternative is used for the QDOT, at least one U.S. Trustee must be a bank as defined in section 581. Alternatively, except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, at least one trustee must be a United States branch of a foreign bank, provided that, in such cases, during the entire term of the QDOT a U.S. Trustee must act as a trustee with the foreign bank trustee.

(B) *Bond.* Except as otherwise provided in paragraph (d)(6) (ii) or (iii) of this section, the trust instrument must provide that whenever the bond security arrangement alternative is used for the QDOT, the U.S. Trustee must furnish a bond in favor of the Internal Revenue Service in an amount equal to 65 percent of the fair market value of the trust assets (determined without regard to any indebtedness with respect to the assets) as of the date of the decedent's death (or alternate valuation date, if

applicable), as finally determined for federal estate tax purposes (and as further adjusted as provided in paragraph (d)(1)(iv) of this section). If, after examination of the estate tax return, the fair market value of the trust assets, as originally reported on the estate tax return, is adjusted (pursuant to a judicial proceeding or otherwise) resulting in a final determination of the value of the assets as reported on the return, the U.S. Trustee has a reasonable period of time (not exceeding sixty days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to adjust the amount of the bond accordingly. But see, paragraph (d)(1)(i)(D) of this section for a special rule in the case of a substantial undervaluation of QDOT assets. Unless an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C) of this section, or an arrangement prescribed under paragraph (d)(4) of this section, is provided, or the trust is otherwise no longer subject to the requirements of section 2056A pursuant to section 2056A(b)(12), the bond must remain in effect until the trust ceases to function as a QDOT and any tax liability finally determined to be due under section 2056A(b) is paid, or is finally determined to be zero.

(*1*) *Requirements for the bond.* The bond must be with a satisfactory surety, as prescribed under section 7101 and § 301.7101–1 of this chapter (Regulations on Procedure and Administration), and is subject to Internal Revenue Service review as may be prescribed by the Commissioner. The bond may not be cancelled. The bond must be for a term of at least one year and must be automatically renewable at the end of that term, on an annual basis thereafter, unless notice of failure to renew is mailed to the U.S. Trustee and the Internal Revenue Service at least 60 days prior to the end of the term, including periods of automatic extensions. Any notice of failure to renew required to be sent to the Internal Revenue Service must be sent to the Estate and Gift Tax Group in the District Office of the Internal Revenue Service that has examination jurisdiction over the decedent's estate (Internal Revenue Service, District Director, [*specify location*] District Office, Estate and Gift Tax Examination Group, [specify Street Address, City, State, Zip Code]) (or in the case of noncitizen decedents and United States citizens who die domiciled outside the United States, Estate Tax Group, Assistant Commissioner (International), 950 L'Enfant Plaza, CP:IN:D:C:EX:HQ:1114, Washington, DC 20024). The Internal Revenue Service will not draw on the bond if, within 30 days of receipt of the notice of failure to renew, the U.S. Trustee notifies the Internal Revenue Service (at the same address to which notice of failure to renew is to be sent) that an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C) or (d)(4) of this section, has been secured and that the arrangement will take effect immediately prior to or upon expiration of the bond.

(*2*) *Form of bond.* The bond must be in the following form (or in a form that is the same as the following form in all material respects), or in such alternative form as the Commissioner may prescribe by guidance published in the Internal Revenue Bulletin (see § 601 601(d)(2) of this chapter):

Bond in Favor of the Internal Revenue Service To Secure Payment of Section 2056A Estate Tax Imposed Under Section 2056A(b) of the Internal Revenue Code.

KNOW ALL PERSONS BY THESE PRESENTS, That the undersigned, _____, the SURETY, and _____, the PRINCIPAL, are irrevocably held and firmly bound to pay the Internal Revenue Service upon written demand that amount of any tax up to *$[amount determined under paragraph (d)(1)(i)(B) of this section]*, imposed under section 2056A(b)(1) of the Internal Revenue Code (including penalties and interest on said tax) determined by the Internal Revenue Service to be payable with respect to the principal as trustee for: *[Identify trust and governing instrument, name and address of trustee]*, a qualified domestic trust as defined in section 2056A(a) of the Internal Revenue Code, for the payment of which the said Principal and said Surety, bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Internal Revenue Service may demand payment under this bond at any time if the Internal Revenue Service in its sole discretion determines that a taxable event with respect to the trust has occurred; the trust no longer qualifies as a qualified domestic trust as described in section 2056A(a) of the Internal Revenue Code and the regulations promulgated thereunder, or a distribution subject to the tax imposed under section 2056A(b)(1) has been made. Demand by the Internal Revenue Service for payment may be made whether or not the tax and tax return (Form 706–QDT) with respect to the taxable event is due at the time of such demand, or an assessment has been made by the Internal Revenue Service with respect to the tax.

NOW THEREFORE, The condition of this obligation is such that it must not be cancelled and, if payment of all tax liability finally determined to be imposed under section 2056A(b) is made, then this obligation is null and void; otherwise, this obligation is to remain in full force and effect for one year from its effective date and is to be automatically renewable on an annual basis unless, at least 60 days prior to the expiration date, including periods of automatic renewals, the surety mails to the U.S. Trustee and the Internal Revenue Service by Registered or Certified Mail, return receipt requested, notice of the failure to renew. Receipt of this notice of failure to renew by the Internal Revenue Service may be considered a taxable event. The Internal Revenue Service will not draw upon the bond if, within 30 days of receipt of the notice of failure to renew, the trustee notifies the Internal Revenue Service that an alternate security arrangement has been secured and that the arrangement will take effect immediately prior to or upon expiration of the bond. The surety remains liable for all taxable events occurring prior to the date of expiration. All notices required to be sent to the Internal Revenue Service under this instrument should be sent to District Director, *[specify location]* District Office, Estate and Gift Tax Examination Group, Street Address, City, State, Zip Code. (In the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States, all notices should be sent to Estate Tax Group, Assistant Commissioner (International), 950 L'Enfant Plaza, CP:IN:D:C:EX:HQ:1114, Washington, DC 20024).

This bond shall be effective as of _____. Principal _____ Date _____ Surety _____ Date _____

(*3*) *Additional governing instrument requirements.* The trust instrument must provide that in the event the Internal Revenue Service draws on the bond, in accordance with its terms, neither the U.S. Trustee nor any other person will seek a return of any part of the remittance until after April 15th of the calendar year following the year in which the bond is drawn upon. After that date, any such remittance will be treated as a deposit and returned (without interest) upon request of the U.S. Trustee, unless it is determined that assessment or collection of the tax imposed by section 2056A(b)(1) is in jeopardy, within the meaning of section 6861. If an assessment under section 6861 is made, the remittance will first be credited to any tax liability reported on the Form 706–QDT, then to any unpaid balance of a section 2056A(b)(1)(A) tax liability (plus interest and penalties) for any prior taxable years, and any balance will then be returned to the U.S. Trustee.

(*4*) *Procedure.* The bond is to be filed with the decedent's federal estate tax return, Form 706 or 706NA (unless an extension for filing the bond is granted under § 301.9100 of this chapter). The U.S. Trustee must provide a written statement with the bond that provides a list of the assets that will be used to fund the QDOT and the respective values of the assets. The written statement must also indicate whether

any exclusions under paragraph (d)(1)(iv) of this section are claimed.

(C) *Letter of credit.* Except as otherwise provided in paragraph (d)(6)(ii) or (iii) of this section, the trust instrument must provide that whenever the letter of credit security arrangement is used for the QDOT, the U.S. Trustee must furnish an irrevocable letter of credit issued by a bank as defined in section 581, a United States branch of a foreign bank, or a foreign bank with a confirmation by a bank as defined in section 581. The letter of credit must be for an amount equal to 65 percent of the fair market value of the trust assets (determined without regard to any indebtedness with respect to the assets) as of the date of the decedent's death (or alternate valuation date, if applicable), as finally determined for federal estate tax purposes (and as further adjusted as provided in paragraph (d)(1)(iv) of this section). If, after examination of the estate tax return, the fair market value of the trust assets, as originally reported on the estate tax return, is adjusted (pursuant to a judicial proceeding or otherwise) resulting in a final determination of the value of the assets as reported on the return, the U.S. Trustee has a reasonable period of time (not exceeding 60 days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to adjust the amount of the letter of credit accordingly. But see, paragraph (d)(1)(i)(D) of this section for a special rule in the case of a substantial undervaluation of QDOT assets. Unless an alternate arrangement under paragraph (d)(1)(i) (A), (B), or (C) of this section, or an arrangement prescribed under paragraph (d)(4) of this section, is provided, or the trust is otherwise no longer subject to the requirements of section 2056A pursuant to section 2056A(b)(12), the letter of credit must remain in effect until the trust ceases to function as a QDOT and any tax liability finally determined to be due under section 2056A(b) is paid or is finally determined to be zero.

(*1*) *Requirements for the letter of credit.* The letter of credit must be irrevocable and provide for sight payment. The letter of credit must have a term of at least one year and must be automatically renewable at the end of the term, at least on an annual basis, unless notice of failure to renew is mailed to the U.S. Trustee and the Internal Revenue Service at least sixty days prior to the end of the term, including periods of automatic renewals. If the letter of credit is issued by the U.S. branch of a foreign bank and the U.S. branch is closing, the branch (or foreign bank) must notify the U.S. Trustee and the Internal Revenue Service of the closure and the notice of closure must be mailed at least 60 days prior to the date of closure. Any notice of failure to renew or closure of a U.S. branch of a foreign bank required to be sent to the Internal Revenue Service must be sent to the Estate and Gift Tax Group in the District Office of the Internal Revenue Service that has examination jurisdiction over the decedent's estate (Internal Revenue Service, District Director, [*specify location*] District Office, Estate and Gift Tax Examination Group, [Street Address, City State, Zip Code]) (or in the case of noncitizen decedents and United States citizens who die domiciled outside the United States, Estate Tax, Assistant Commissioner (International), 950 L'Enfant Plaza, CP:IN:D:C:EX:HQ:1114, Washington, DC 20024). The Internal Revenue Service will not draw on the letter of credit if, within 30 days of receipt of the notice of failure to renew or closure of the U.S. branch of a foreign bank, the U.S. Trustee notifies the Internal Revenue Service (at the same address to which notice is to be sent) that an alternate arrangement under paragraph (d)(1)(i)(A), (B), or (C), or (d)(4) of this section, has been secured and that the arrangement will take effect immediately prior to or upon expiration of the letter of credit or closure of the U.S. branch of the foreign bank.

(*2*) *Form of letter of credit.* The letter of credit must be made in the following form (or in a form that is the same as the following form in all material respects), or an alternative form that the Commissioner prescribes by guidance published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter):

[Issue Date]

To: Internal Revenue Service
Attention: District Director, *[specify location]* District Office
Estate and Gift Tax Examination Group
[Street Address, City, State, ZIP Code]

[Or in the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States,

To: Estate Tax Group, Assistant Commissioner (International) 950 L'Enfant Plaza CP:IN:D:C:EX:HQ:1114 Washington, DC 20024].

Dear Sirs: We hereby establish our irrevocable Letter of Credit No. ____ in your favor for drawings up to U.S. $ *[Applicant should provide bank with amount which Applicant determined under paragraph (d)(1)(i)(C)]* effective immediately. This Letter of Credit is issued, presentable and payable at our office at _____ and expires at 3:00 p.m. [EDT, EST, CDT, CST, MDT, MST, PDT, PST] on ___ at said office

For information and reference only, we are informed that this Letter of Credit relates to [*Applicant should provide bank with the identity of qualified domestic trust and governing instrument*], and the name, address, and identifying number of the trustee is [*Applicant should provide bank with the trustee name, address and the QDOT's TIN number, if any*].

Drawings on this Letter of Credit are available upon presentation of the following documents:

1. Your draft drawn at sight on us bearing our Letter of Credit No. ____; and

2. Your signed statement as follows:

The amount of the accompanying draft is payable under *[identify bank]* irrevocable Letter of Credit No. _____ pursuant to section 2056A of the Internal Revenue Code and the regulations promulgated thereunder, because the Internal Revenue Service in its sole discretion has determined that a "taxable event" with respect to the trust has occurred; e.g., the trust no longer qualifies as a qualified domestic trust as described in section 2056A of the Internal Revenue Code and regulations promulgated thereunder, or a distribution subject to the tax imposed under section 2056A(b)(1) of the Internal Revenue Code has been made.

Except as expressly stated herein, this undertaking is not subject to any agreement, requirement or qualification. The obligation of *[Name of Issuing Bank]* under this Letter of Credit is the individual obligation of [*Name of Issuing Bank*] and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for a period of one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we mail to you and to the U.S. Trustee notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your and the trustee's address indicated above, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt of this notice, you may draw hereunder on or before the then current expiration date, by presentation of your draft and statement as stipulated above.

[In the case of a letter of credit issued by a U.S. branch of a foreign bank the following language must be added]. It is a further condition of this Letter of Credit that if the U.S. branch of *[name of foreign bank]* is to be closed, that at least sixty days prior to closing, we mail to you and the U.S. Trustee notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your and the U.S. Trustee's address indicated above, that this branch will be closing. This notice will specify the actual date of closing. Upon receipt of the notice, you may draw hereunder on or before the date of closure, by presentation of your draft and statement as stipulated above.

Except where otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No.

500. If we notify you of our election not to consider this Letter of Credit renewed and the expiration date occurs during an interruption of business described in Article 17 of said Publication 500, unless you had consented to cancellation prior to the expiration date, the bank hereby specifically agrees to effect payment if this Letter of Credit is drawn against within 30 days after the resumption of business.

Except as stated herein, this Letter of Credit cannot be modified or revoked without your consent.

Authorized Signature _____Date _____

(3) Form of confirmation. If the requirements of this paragraph (d)(1)(i)(C) are satisfied by the issuance of a letter of credit by a foreign bank with confirmation by a bank as defined in section 581, the confirmation must be made in the following form (or in a form that is the same as the following form in all material respects), or an alternative form as the Commissioner prescribes by guidance published in the Internal Revenue Bulletin (see § 602.101(d)(2) of this chapter):

[Issue Date]

To: Internal Revenue Service
Attention: District Director, [*specify location*] District Office Estate and Gift Tax Examination Group [State Address, City, State, ZIP Code]

[or in the case of nonresident noncitizen decedents and United States citizens who die domiciled outside the United States,

To: Estate Tax Group, Assistant Commissioner (International) 950 L'Enfant Plaza CP:IN:D:C:EX:HQ:1114, Washington, DC 20024].

Dear Sirs: We hereby confirm the enclosed irrevocable Letter of Credit No. _____, and amendments thereto, if any, in your favor by _____ [Issuing Bank] for drawings up to U S _____ [same amount as in initial Letter of Credit] effective immediately. This confirmation is issued, presentable and payable at our office at _____and expires at 3:00 p.m. [EDT, EST, CDT, CST, MDT, MST, PDT, PST] on _____at said office.

For information and reference only, we are informed that this Confirmation relates to [Applicant should provide bank with the identity of qualified domestic trust and governing instrument], and the name, address, and identifying number of the trustee is [Applicant should provide bank with the trustee name, address and the QDOT's TIN number, if any].

We hereby undertake to honor your sight draft(s) drawn as specified in the Letter of Credit.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of [*Name of Confirming Bank*] under this Confirmation is the individual obligation of [*Name of Confirming Bank*] and is in no way contingent upon reimbursement with respect thereto.

It is a condition of this Confirmation that it is deemed to be automatically extended without amendment for a period of one year from the expiry date hereof, or any future expiration date, unless at least sixty days prior to the expiration date, we send to you and to the U.S. Trustee notice by Registered Mail or Certified Mail, return receipt requested, or by courier to your and the trustee's addresses, respectively, indicated above, that we elect not to consider this Confirmation renewed for any additional period. Upon receipt of this notice by you, you may draw hereunder on or before the then current expiration date, by presentation of your draft and statement as stipulated above.

Except where otherwise stated herein, this Confirmation is subject to the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500. If we notify you of our election not to consider this Confirmation renewed and the expiration date occurs during an interruption of business described in Article 17 of said Publication 500, unless you had consented to cancellation prior to the expiration date, the bank hereby specifically agrees to effect payment if this Confirmation is drawn against within 30 days after the resumption of business.

Except as stated herein, this Confirmation cannot be modified or revoked without your consent.

Authorized Signature _____ Date _____

(4) Additional governing instrument requirements. The trust instrument must provide that if the Internal Revenue Service draws on the letter of credit (or confirmation) in accordance with its terms, neither the U.S. Trustee nor any other person will seek a return of any part of the remittance until April 15th of the calendar year following the year in which the letter of credit (or confirmation) is drawn upon. After that date, any such remittance will be treated as a deposit and returned (without interest) upon request of the U.S. Trustee after the date specified above, unless it is determined that assessment or collection of the tax imposed by section 2056A(b)(1) is in jeopardy, within the meaning of section 6861. If an assessment under section 6861 is made, the remittance will first be credited to any tax liability reported on the Form 706–QDT, then to any unpaid balance of a section 2056A(b)(1)(A) tax liability (plus interest and penalties) for any prior taxable years, and any balance will then be returned to the U.S. Trustee.

(5) Procedure. The letter of credit (and confirmation, if applicable) is to be filed with the decedent's federal estate tax return, Form 706 or 706NA (unless an extension for filing the letter of credit is granted under § 301.9100 of this chapter). The U.S. Trustee must provide a written statement with the letter of credit that provides a list of the assets that will be used to fund the QDOT and the respective values of the assets. The written statement must also indicate whether any exclusions under paragraph (d)(1)(iv) of this section are claimed.

(D) *Disallowance of marital deduction for substantial undervaluation of QDOT property in certain situations.* (*1*) If either—

(*i*) The bond or letter of credit security arrangement under paragraph (d)(1)(i)(B) or (C) of this section is chosen by the U.S. Trustee; or

(*ii*) The QDOT property as originally reported on the decedent's estate tax return is valued at $2 million or less but, as finally determined for federal estate tax purposes, the QDOT property is determined to be in excess of $2 million, then the marital deduction will be disallowed in its entirety for failure to comply with the requirements of section 2056A if the value of the QDOT property reported on the estate tax return is 50 percent or less of the amount finally determined to be the correct value of the property for federal estate tax purposes.

(*2*) The preceding sentence does not apply if—

(*i*) There was reasonable cause for the undervaluation; and

(*ii*) The fiduciary of the estate acted in good faith with respect to the undervaluation. For this purpose, § 1.6664–4(b) of this chapter applies, to the extent applicable, with respect to the facts and circumstances to be taken into account in making this determination.

(ii) *QDOTs with assets of $2 million or less.* If the fair market value of the assets passing, treated, or deemed to have passed to the QDOT (or in the form of a QDOT), determined without reduction for any indebtedness with respect to the assets, as finally determined for federal estate tax purposes, is $2 million or less as of the date of the decedent's death or, if applicable, the alternate valuation date (adjusted as provided in paragraph (d)(1)(iv) of this section), the trust instrument must provide that either no more than 35 percent of the fair market value of the trust assets, determined annually on the last day of the taxable year of the trust (or on the last day of the calendar year if the QDOT does not have a taxable year), will consist of real property located outside of the United States, or the trust will meet the requirements prescribed by paragraph (d)(1)(i)(A), (B), or (C) of this section. See paragraph (d)(1)(ii)(D) of this section for special rules in the case of principal distributions from a QDOT, fluctuations in the value of foreign real property held by a QDOT due to changes in value of foreign currency, and fluctuations in the fair market value

of assets held by the QDOT. See paragraph (d)(1)(iv) of this section for a special rule for personal residences. If the fair market value, as originally reported on the decedent's estate tax return, of the assets passing or deemed to have passed to the QDOT (determined without reduction for any indebtedness with respect to the assets) is $2 million or less, but the fair market value of the assets as finally determined for federal estate tax purposes is more than $2 million, the U.S. Trustee has a reasonable period of time (not exceeding sixty days after the conclusion of the proceeding or other action resulting in a final determination of the value of the assets) to meet the requirements prescribed by paragraph (d)(1)(i) (A), (B), or (C) of this section. However, see paragraph (d)(1)(i)(D) of this section in the case of a substantial undervaluation of QDOT assets. See § 20.2056A-2(d)(1)(iii) for the definition of finally determined.

(A) *Multiple QDOTs.* For purposes of this paragraph (d)(1)(ii), if more than one QDOT is established for the benefit of the surviving spouse, the fair market value of all the QDOTs are aggregated in determining whether the $2 million threshold under this paragraph (d)(1)(ii) is exceeded.

(B) *Look-through rule.* For purposes of determining whether no more than 35 percent of the fair market value of the QDOT assets consists of foreign real property, if the QDOT owns more than 20% of the voting stock or value in a corporation with 15 or fewer shareholders, or more than 20% of the capital interest of a partnership with 15 or fewer partners, then all assets owned by the corporation or partnership are deemed to be owned directly by the QDOT to the extent of the QDOT's pro rata share of the assets of that corporation or partnership. For a partnership, the QDOT partner's pro rata share is based on the greater of its interest in the capital or profits of the partnership. For purposes of this paragraph, all stock in the corporation, or interests in the partnership, as the case may be, owned by or held for the benefit of the surviving spouse, or any members of the surviving spouse's family (within the meaning of section 267(c)(4)), are treated as owned by the QDOT solely for purposes of determining the number of partners or shareholders in the entity and the QDOT's percentage voting interest or value in the corporation or capital interest in the partnership, but not for the purpose of determining the QDOT's pro rata share of the assets of the entity.

(C) *Interests in other entities.* Interests owned by the QDOT in other entities (such as an interest in a trust) are accorded treatment consistent with that described in paragraph (d)(1)(ii)(B) of this section.

(D) *Special rule for foreign real property.* For purposes of this paragraph (d)(1)(ii), if, on the last day of any taxable year during the term of the QDOT (or the last day of the calendar year if the QDOT does not have a taxable year), the value of foreign real property owned by the QDOT exceeds 35 percent of the fair market value of the trust assets due to: distributions of QDOT principal during that year; fluctuations in the value of the foreign currency in the jurisdiction where the real estate is located; or fluctuations in the fair market value of any assets held in the QDOT, then the QDOT will not be treated as failing to meet the requirements of this paragraph (d)(1). Accordingly, the QDOT will not cease to be a QDOT within the meaning of § 20.2056A-5(b)(3) if, by the end of the taxable year (or the last day of the calendar year if the QDOT does not have a taxable year) of the QDOT immediately following the year in which the 35 percent limit was exceeded, the value of the foreign real property held by the QDOT does not exceed 35 percent of the fair market value of the trust assets or, alternatively, the QDOT meets the requirements of either paragraph (d)(1)(i) (A), (B), or (C) of this section on or before the close of that succeeding year.

(iii) *Definition of finally determined.* For purposes of § 20.2056A-2(d)(1) (i) and (ii), the fair market value of assets will be treated as finally determined on the earliest to occur of—

(A) The entry of a decision, judgment, decree, or other order by any court of competent jurisdiction that has become final;

(B) The execution of a closing agreement made under section 7121;

(C) Any final disposition by the Internal Revenue Service of a claim for refund;

(D) The issuance of an estate tax closing letter (Form L-154 or equivalent) if no claim for refund is filed; or

(E) The expiration of the period of assessment.

(iv) *Special rules for personal residence and related personal effects—*

(A) *Two million dollar threshold.* For purposes of determining whether the $2 million threshold under paragraphs (d)(1)(i) and (ii) of this section has been exceeded, the executor of the estate may elect to exclude up to $600,000 in value attributable to real property (and related furnishings) owned directly by the QDOT that is used by, or held for the use of the surviving spouse as a personal residence and that passes, or is treated as passing, to the QDOT under section 2056(d). The election may be made regardless of whether the real property is situated within or without the United States. The election is made by attaching to the estate tax return on which the QDOT election is made a written statement claiming the exclusion. The statement must clearly identify the property or properties (i.e. address and location) for which the election is being made.

(B) *Security requirement.* For purposes of determining the amount of the bond or letter of credit required when paragraph (d)(1)(i)(B) or (C) of this section applies, the executor of the estate may elect to exclude, during the term of the QDOT, up to $600,000 in value attributable to real property (and related furnishings) owned directly by the QDOT that is used by, or held for the use of the surviving spouse as a personal residence and that passes, or is treated as passing, to the QDOT under section 2056(d). The election may be made regardless of whether the real property is situated within or without the United States. The election is made by attaching to the estate tax return on which the QDOT election is made a written statement claiming the exclusion. If an election is not made on the decedent's estate tax return, the election may be made, prospectively, at any time, during the term of the QDOT, by attaching to the Form 706-QDT a written statement claiming the exclusion. A statement may also be attached to the Form 706-QDT that cancels a prior election of the personal residence exclusion that was made under this paragraph, either on the decedent's estate tax return or on a Form 706-QDT.

(C) *Foreign real property limitation.* The special rules of this paragraph (d)(1)(iv) do not apply for purposes of determining whether more than 35 percent of the QDOT assets consist of foreign real property under paragraph (d)(1)(ii) of this section.

(D) *Personal residence.* For purposes of this paragraph (d)(1)(iv), a *personal residence* is either the principal residence of the surviving spouse within the meaning of section 1034 or one other residence of the surviving spouse. In order to be used by or held for the use of the spouse as a personal residence, the residence must be available at all times for use by the surviving spouse. The residence may not be rented to another party, even when not occupied by the spouse. A personal residence may include appurtenant structures used by the

surviving spouse for residential purposes and adjacent land not in excess of that which is reasonably appropriate for residential purposes (taking into account the residence's size and location).

(E) Related furnishings. The term *related furnishings* means furniture and commonly included items such as appliances, fixtures, decorative items and china, that are not beyond the value associated with normal household and decorative use. Rare artwork, valuable antiques, and automobiles of any kind or class are not within the meaning of this term.

(F) *Required statement.* If one or both of the exclusions provided in paragraph (d)(1)(iv)(A) or (B) of this section are elected by the executor of the estate and the personal residence is later sold or ceases to be used, or held for use as a personal residence, the U.S. Trustee must file the statement that is required under paragraph (d)(3) of this section at the time and in the manner provided in paragraphs (d)(3)(ii) and (iii) of this section.

(G) *Cessation of use.* Except as provided in this paragraph (d)(1)(iv)(G), if the residence ceases to be used by, or held for the use of, the spouse as a personal residence of the spouse, or if the residence is sold during the term of the QDOT, the exclusions provided in paragraphs (d)(1)(iv)(A) and (B) of this section cease to apply. However, if the residence is sold, the exclusion continues to apply if, within 12 months of the date of sale, the amount of the adjusted sales price (as defined in section 1034(b)(1)) is reinvested to purchase a new personal residence for the spouse. If less than the amount of the adjusted sales price is reinvested, the amount of the exclusion equals the amount reinvested in the new residence plus any amount previously allocated to a residence that continues to qualify for the exclusion, up to a total of $600,000. If the QDOT ceases to qualify for all or any portion of the initially claimed exclusions, paragraph (d)(1)(i) of this section, if applicable (determined as if the portion of the exclusions disallowed had not been initially claimed by the QDOT), must be complied with no later than 120 days after the effective date of the cessation. In addition, if a residence ceases to be used by, or held for the use of the spouse as a personal residence of the spouse or if the personal residence is sold during the term of the QDOT, the personal residence exclusion may be allocated to another residence that is held in either the same QDOT or in another QDOT that is established for the surviving spouse, if the other residence qualifies as being used by, or held for the use of the spouse as a personal residence. The trustee may allocate up to $600,000 to the new personal residence (less the amount previously allocated to a residence that continues to qualify for the exclusion) even if the entire $600,000 exclusion was not previously utilized with respect to the original personal residence(s).

(v) *Anti-abuse rule.* Regardless of whether the QDOT designates a bank as the U.S. Trustee under paragraph (d)(1)(i)(A) of this section (or otherwise complies with paragraph (d)(1)(i)(A) of this section by naming a foreign bank with a United States branch as a trustee to serve with the U.S. Trustee), complies with paragraph (d)(1)(i)(B) or (C) of this section, or is subject to and complies with the foreign real property requirements of paragraph (d)(1)(ii) of this section, the trust immediately ceases to qualify as a QDOT if the trust utilizes any device or arrangement that has, as a principal purpose, the avoidance of liability for the estate tax imposed under section 2056A(b)(1), or the prevention of the collection of the tax. For example, the trust may become subject to this paragraph (d)(1)(v) if the U.S. Trustee that is selected is a domestic corporation established with insubstantial capitalization by the surviving spouse or members of the spouse's family.

(2) *Individual trustees.* If the U.S. Trustee is an individual United States citizen, the individual must have a tax home (as defined in section 911(d)(3)) in the United States.

(3) *Annual reporting requirements*—(i) *In general.* The U.S. Trustee must file a written statement described in paragraph (d)(3)(iii) of this section, if the QDOT satisfies any one of the following criteria for the applicable reporting years—

(A) The QDOT directly owns any foreign real property on the last day of its taxable year (or the last day of the calendar year if it has no taxable year), and the QDOT does not satisfy the requirements of paragraph (d)(1)(i) (A), (B), or (C) or (d)(4) of this section by employing a bank as trustee or providing security; or

(B) The personal residence previously subject to the exclusion under paragraph (d)(1)(iv) of this section is sold, or that personal residence ceases to be used, or held for use, as a personal residence, during the taxable year (or during the calendar year if the QDOT does not have a taxable year); or

(C) After the application of the look-through rule contained in paragraph (d)(1)(ii)(B) of this section, the QDOT is treated as owning any foreign real property on the last day of the taxable year (or the last day of the calendar year if the QDOT has no taxable year), and the QDOT does not satisfy the requirements of paragraph (d)(1) (A), (B), (C) or (d)(4) of this section by employing a bank as trustee or providing security.

(ii) *Time and manner of filing.* The written statement, containing the information described in paragraph (d)(3)(iii) of this section, is to be filed for the taxable year of the QDOT (calendar year if the QDOT does not have a taxable year) for which any of the events or conditions requiring the filing of a statement under paragraph (d)(3)(i) of this section have occurred or have been satisfied. The written statement is to be submitted to the Internal Revenue Service by filing a Form 706–QDT, with the statement attached, no later than April 15th of the calendar year following the calendar year in which or with which the taxable year of the QDOT ends (or by April 15th of the following year if the QDOT has no taxable year), unless an extension of time is obtained under § 20.2056A–11(a). The Form 706–QDT, with attached statement, must be filed regardless of whether the Form 706–QDT is otherwise required to be filed under the provisions of this chapter. Failure to file timely the statement may subject the QDOT to the rules of paragraph (d)(1)(v) of this section.

(iii) *Contents of statement.* The written statement must contain the following information—

(A) The name, address, and taxpayer identification number, if any, of the U.S. Trustee and the QDOT; and

(B) A list summarizing the assets held by the QDOT, together with the fair market value of each listed QDOT asset, determined as of the last day of the taxable year (December 31 if the QDOT does not have a taxable year) for which the written statement is filed. If the look-through rule contained in paragraph (d)(1)(ii)(B) of this section applies, then the partnership, corporation, trust or other entity must be identified and the QDOT's pro rata share of the foreign real property and other assets owned by that entity must be listed on the statement as if directly owned by the QDOT; and

(C) If a personal residence previously subject to the exclusion under paragraph (d)(1)(iv) of this section is sold during the taxable year (or during the calendar year if the QDOT does not have a taxable year), the statement must provide the date of sale, the adjusted sales price (as defined in section 1034(b)(1)), the extent to which the amount of the adjusted sales price has been or will be used to purchase a new

personal residence and, if not timely reinvested, the steps that will or have been taken to comply with paragraph (d)(1)(i) of this section, if applicable; and

(D) If the personal residence ceases to be used, or held for use, as a personal residence by the surviving spouse during the taxable year (or during the calendar year if the QDOT does not have a taxable year), the written statement must describe the steps that will or have been taken to comply with paragraph (d)(1)(i) of this section, if applicable.

(4) *Request for alternate arrangement or waiver.* If the Commissioner provides guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) pursuant to which a testator, executor, or the U.S. Trustee may adopt an alternate plan or arrangement to assure collection of the section 2056A estate tax, and if the alternate plan or arrangement is adopted in accordance with the published guidance, then the QDOT will be treated, subject to paragraph (d)(1)(v) of this section, as meeting the requirements of paragraph (d)(1) of this section. Until this guidance is published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter), taxpayers may submit a request for a private letter ruling for the approval of an alternate plan or arrangement proposed to be adopted to assure collection of the section 2056A estate tax in lieu of the requirements prescribed in this paragraph (d)(4).

(5) *Adjustment of dollar threshold and exclusion.* The Commissioner may increase or decrease the dollar amounts referred to in paragraph (d)(1)(i), (ii) or (iv) of this section in accordance with guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(6) *Effective date and special rules.* (i) This paragraph (d) is effective for estates of decedents dying after February 19, 1996.

(ii) *Special rule in the case of incompetency.* A revocable trust or a trust created under the terms of a will is deemed to meet the governing instrument requirements of this paragraph (d) notwithstanding that the requirements are not contained in the governing instrument (or otherwise incorporated by reference) if the trust instrument (or will) was executed on or before November 20, 1995, and—

(A) The testator or settlor dies after February 19, 1996;

(B) The testator or settlor is, on November 20, 1995, and at all times thereafter, under a legal disability to amend the will or trust instrument;

(C) The will or trust instrument does not provide the executor or the U.S. Trustee with a power to amend the instrument in order to meet the requirements of section 2056A; and

(D) 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 the requirements of this paragraph (d) and will continue to be administered so as to be in actual compliance with this paragraph (d) for the duration of the trust. This statement must be binding on all successor trustees.

(iii) *Special rule in the case of certain irrevocable trusts.* An irrevocable trust is deemed to meet the governing instrument requirements of this paragraph (d) notwithstanding that the requirements are not contained in the governing instrument (or otherwise incorporated by reference) if the trust was executed on or before November 20, 1995, and:

(A) The settlor dies after February 19, 1996;

(B) The trust instrument does not provide the U.S. Trustee with a power to amend the trust instrument in order to meet the requirements of section 2056A; and

(C) The U.S. Trustee provides a written statement with the decedent's federal estate tax return (Form 706 or 706NA) that the trust is being administered in actual compliance with the requirements of this paragraph (d) and will continue to be administered so as to be in actual compliance with this paragraph (d) for the duration of the trust. This statement must be binding on all successor trustees.

§ 20.2056A–2T [Removed]

Par. 3a. Section 20.2056A–2T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended by:

1. Removing the following entry from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
20.2056A–2T(d)	1545–1443
* * * * *	

2. Adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
20.2056A–2	1545–1443
* * * * *	

Approved: September 19, 1996.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Donald C. Lubick,

Acting Assistant Secretary of the Treasury.

[FR Doc. 96–29827 Filed 11–27–96; 8:45 am]

BILLING CODE 4830–01–U

Customs Service

31 CFR Part 1

Privacy Act of 1974, as Amended; Exemption of System of Records From Certain Provisions

AGENCY: Customs Service, Treasury.

ACTION: Final Rule; determination.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, Customs has determined to exempt a system of records, the Pacific Basin Reporting Network (Treasury/ Customs .171) from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

EFFECTIVE DATE: November 29, 1996.

FOR FURTHER INFORMATION CONTACT: Marvin M. Amernick, Acting Chief, Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service, (202) 482–6970.

SUPPLEMENTARY INFORMATION: As a law enforcement agency, the U.S. Customs Service has a wide variety of

Amendments

P.L. 94-455, § 1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective on 2-1-77.

[Sec. 7803(c)]

(c) DELINQUENT INTERNAL REVENUE OFFICERS AND EMPLOYEES.—If any officer or employee of the Treasury Department acting in connection with the internal revenue laws fails to account for and pay over any amount of money or property collected or received by him in connection with the internal revenue laws, the Secretary shall issue notice and demand to such officer or employee for payment of the amount which he failed to account for and pay over, and, upon failure to pay the amount demanded within the time specified in such notice, the amount so demanded shall be deemed imposed upon such officer or employee and assessed upon the date of such notice and demand, and the provisions of chapter 64 and all other provisions of law relating to the collection of assessed taxes shall be applicable in respect of such amount.

Amendments

P.L. 94-455, § § 1906(a)(58), 1906(b)(13)(A):

Amended Code Sec. 7803(c) as follows:

§ 1906(a)(58) redesignated former Code Sec. 7803(d) to be Code Sec. 7803(c). Former Code Sec. 7803(c) had been repealed by P.L. 92-310 (see below).

§ 1906(b)(13)(A) amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective on 2-1-77.

P.L. 92-310, § 230(e):

Repealed former Code Sec. 7803(c), effective June 6, 1972. Prior to repeal, Code Sec. 7803(c) read as follows:

(c) BONDS OF EMPLOYEES.—Whenever the Secretary or his delegate deems it proper, he may require any such officer or employee to furnish such bond, or he may purchase such blanket or schedule bonds, as the Secretary or his delegate deems appropriate. The premium of any such bond or bonds may, in the discretion of the Secretary or his delegate, be paid from the appropriation for expenses of the Internal Revenue Service.

[Sec. 7804]

SEC. 7804. EFFECT OF REORGANIZATION PLANS.

[Sec. 7804(a)]

(a) APPLICATION.—The provisions of Reorganization Plan Numbered 26 of 1950 and Reorganization Plan Numbered 1 of 1952 shall be applicable to all functions vested by this title, or by any act amending this title (except as otherwise expressly provided in such amending act), in any officer, employee, or agency, of the Department of the Treasury.

Source: Sec. 616, 1951 Rev. Act (65 Stat. 569).

[Sec. 7804(b)]

(b) PRESERVATION OF EXISTING RIGHTS AND REMEDIES.—Nothing in Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952 shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary, shall be deemed to refer to the officer whose act or acts referred to in the preceding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.

Amendments

P.L. 94-455, § 1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective on 2-1-77.

[Sec. 7805]

SEC. 7805. RULES AND REGULATIONS.

[Sec. 7805(a)]

(a) AUTHORIZATION.—Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules

[The next page is 6889-3.]

and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

Amendments

P.L. 94-455, § 1906(b)(13)(A):
Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective on 2-1-77

[Sec. 7805(b)]

(b) RETROACTIVITY OF REGULATIONS OR RULINGS.—The Secretary may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

Amendments

P.L. 94-455, § 1906(b)(13)(A):
Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective on 2-1-77.

[Sec. 7805(c)]

(c) PREPARATION AND DISTRIBUTION OF REGULATIONS, FORMS, STAMPS, AND OTHER MATTERS.—The Secretary shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

Amendments

P.L. 94-455, § 1906(b)(13)(A):
Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective on 2-1-77.

[Sec. 7805(d)]

(d) MANNER OF MAKING ELECTIONS PRESCRIBED BY SECRETARY.—Except to the extent otherwise provided by this title, any election under this title shall be made at such time and in such manner as the Secretary shall by regulations or forms prescribe.

Amendments

P.L. 98-369, § 43(b):
Act Sec. 43(b) amended Code Sec. 7805 by adding at the end thereof new subsection (d) to read as above.

The above amendment applies to tax years ending after July 18, 1984.

[Sec. 7805(e)]

(e) TEMPORARY REGULATIONS.—

(1) ISSUANCE.—Any temporary regulation issued by the Secretary shall also be issued as a proposed regulation.

(2) 3-YEAR DURATION.—Any temporary regulation shall expire within 3 years after the date of issuance of such regulation.

Amendments

P.L. 100-647, § 6232(a):
Act Sec. 6232(a) amended Code Sec. 7805 by adding at the end thereof new subsection (e) to read as above.

The above amendment applies to any regulation issued after the date which is 10 days after the date of enactment of this Act.

[Sec. 7805(f)]

(f) REVIEW OF IMPACT OF REGULATIONS ON SMALL BUSINESS.—

(1) SUBMISSIONS TO SMALL BUSINESS ADMINISTRATION.—After publication of any proposed or temporary regulation by the Secretary, the Secretary shall submit such regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small business. Not later than the date 4 weeks after the date of such submission, the Chief Counsel for Advocacy shall submit comments on such regulation to the Secretary.

(2) CONSIDERATION OF COMMENTS.—In prescribing any final regulation which supersedes a proposed or temporary regulation which had been submitted under this subsection to the Chief Counsel for Advocacy of the Small Business Administration—

(A) the Secretary shall consider the comments of the Chief Counsel for Advocacy on such proposed or temporary regulation, and

(B) the Secretary shall discuss any response to such comments in the preamble of such final regulation.

(3) SUBMISSION OF CERTAIN FINAL REGULATIONS.—In the case of the promulgation by the Secretary of any final regulation (other than a temporary regulation) which does not supersede a proposed regulation, the requirements of paragraphs (1) and (2) shall apply; except that—

(A) the submission under paragraph (1) shall be made at least 4 weeks before the date of such promulgation, and

(B) the consideration (and discusssion) required under paragraph (2) shall be made in connection with the promulgation of such final regulation.

Amendments

P.L. 101-508, § 11621(a):

Act Sec. 11621(a) amended Code Sec. 7805(f) to read as above. Prior to amendment, Code Sec. 7805(f) read as follows.

(f) IMPACT OF REGULATIONS ON SMALL BUSINESS REVIEWED.—After the publication of any proposed regulation by the Secretary and before the promulgation of any final regulation by the Secretary which does not supersede a proposed regulation, the Secretary shall submit such regulation to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business. The Administrator shall have 4 weeks from the date of submission to respond.

The above amendment applies to regulations issued after the date which is 30 days after the date of the enactment of this Act.

P.L. 100-647, § 6232(a):

Act Sec. 6232(a) amended Code Sec. 7805 by adding at the end thereof new subsection (f) to read as above.

The above amendment applies to any regulation issued after the date which is 10 days after the date of enactment of this Act.

[Sec. 7806]

SEC. 7806. CONSTRUCTION OF TITLE.

[Sec. 7806(a)]

(a) CROSS REFERENCES.—The cross references in this title to other portions of the title, or other provisions of law, where the word "see" is used, are made only for convenience, and shall be given no legal effect.

[Sec. 7806(b)]

(b) ARRANGEMENT AND CLASSIFICATION.—No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law.

[Sec. 7807]

SEC. 7807. RULES IN EFFECT UPON ENACTMENT OF THIS TITLE.

[Sec. 7807(a)]

(a) INTERIM PROVISION FOR ADMINISTRATION OF TITLE.—Until regulations are promulgated under any provision of this title which depends for its application upon the promulgation of regulations (or

(6) the decedent had a power (either alone or in conjunction with any person) to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default on the release or nonexercise of such power; or

(7) such interest consists of proceeds of insurance on the life of the decedent receivable by such person

Except as provided in paragraph (5) or (6) of subsection (b), where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for purposes of subparagraphs (A) and (B) of subsection (b) (1), be considered as passing from the decedent to a person other than the surviving spouse.

Amendments

P.L. 97-34, § 403(a)(1)(A):

Redesignated Code Sec. 2056(d) as Code Sec. 2056(c), applicable to estates of decedents dying after December 31, 1981

P.L. 94-455, § 2009(b)(4)(D), (e)(2):

Redesignated Code Sec. 2056(e) as Code Sec. 2056(d) Effective for transfers creating an interest in the person disclaiming made after December 31, 1976.

[Sec. 2056(d)—Repealed]

Amendments

P.L. 94-455, § 2009(b)(4)(D), (e)(2):

Deleted Code Sec. 2056(d) and redesignated Code Sec. 2056(e) as Code Sec. 2056(d), effective for transfers creating an interest in the person disclaiming made after December 31, 1976 Prior to deletion, Code Sec. 2056(d) read as follows.

(d) DISCLAIMERS —

(1) BY SURVIVING SPOUSE.—If under this section an interest would, in the absence of a disclaimer by the surviving spouse, be considered as passing from the decedent to such spouse, and if a disclaimer of such interest is made by such spouse, then such interest shall, for the purposes of this section, be considered as passing to the person or persons entitled to receive such interest as a result of the disclaimer.

(2) BY ANY OTHER PERSON.—If under this section an interest would, in the absence of a disclaimer by any person other than the surviving spouse, be considered as passing from the decedent to such person, and if a disclaimer of such interest is made by such person and as a result of such disclaimer the surviving spouse is entitled to receive such interest, then—

(A) if the disclaimer of such interest is made by such person before the date prescribed for the filing of the estate tax return and if such person does not accept such interest before making the disclaimer, such interest shall, for purposes of this section, be considered as passing from the decedent to the surviving spouse, and

(B) if subparagraph (A) does not apply, such interest shall, for purposes of this section, be considered as passing, not to the surviving spouse, but to the person who made the disclaimer, in the same manner as if the disclaimer had not been made.

P. L. 89-621, § [1]:

Amended Code Sec. 2056(d)(2) to read as above. Prior to amendment, Sec. 2056(d)(2) read as follows:

"(2) BY ANY OTHER PERSON.—If under this section an interest would, in the absence of a disclaimer by any person other than the surviving spouse, be considered as passing from the decedent to such person, and if a disclaimer of such interest is made by such person and as a result of such disclaimer the surviving spouse is entitled to receive such interest, then such interest shall, for purposes of this section, be considered as passing, not to the surviving spouse, but to the person who made the disclaimer, in the same manner as if the disclaimer had not been made."

Except as provided below, the amendment is effective with respect to estates of decedents dying on or after October 4, 1966

In the case of the estate of a decedent dying before October 4, 1966 for which the date prescribed for the filing of the estate tax return (determined without regard to any extension of time for filing) occurs on or after January 1, 1965, if, under section 2056 of the Internal Revenue Code of 1954, an interest would, in the absence of a disclaimer by any person other than the surviving spouse, be considered as passing from the decedent to such person, and if a disclaimer of such interest is made by such person and as a result of such disclaimer the surviving spouse is entitled to receive such interest, then such interest shall, for purposes of such section, be considered as passing from the decedent to the surviving spouse, if—

(1) the interest disclaimed was bequeathed or devised to such person,

(2) before the date prescribed for the filing of the estate tax return such person disclaimed all bequests and devises under such will, and

(3) such person did not accept any property under any such bequest or devise before making the disclaimer

The amount of the deductions allowable under section 2056 of such Code by reason of this subsection, when added to the amount of the deductions allowable under such section without regard to this subsection, shall not exceed the greater of (A) the amount of the deductions which would be allowable under such section without regard to the disclaimer if the surviving spouse elected to take against the will, or (B) an amount equal to one-third of the adjusted gross estate (within the meaning of subsection (c)(2) of such section).

[Sec. 2056(d)]

(d) DISALLOWANCE OF MARITAL DEDUCTION WHERE SURVIVING SPOUSE NOT UNITED STATES CITIZEN.—

(1) IN GENERAL —Except as provided in paragraph (2), if the surviving spouse of the decedent is not a citizen of the United States—

(A) no deduction shall be allowed under subsection (a), and

(B) section 2040(b) shall not apply.

(2) MARITAL DEDUCTION ALLOWED FOR CERTAIN TRANSFERS IN TRUST.—

(A) IN GENERAL —Paragraph (1) shall not apply to any property passing to the surviving spouse in a qualified domestic trust.

(B) SPECIAL RULE.—If any property passes from the decedent to the surviving spouse of the decedent, for purposes of subparagraph (A), such property shall be treated as passing to such spouse in a qualified domestic trust if—

(i) such property is transferred to such a trust before the date on which the return of the tax imposed by this chapter is made, or

(ii) such property is irrevocably assigned to such a trust under an irrevocable assignment made on or before such date which is enforceable under local law.

(3) ALLOWANCE OF CREDIT TO CERTAIN SPOUSES.—If—

(A) property passes to the surviving spouse of the decedent (hereinafter in this paragraph referred to as the "first decedent"),

(B) without regard to this subsection, a deduction would be allowable under subsection (a) with respect to such property, and

(C) such surviving spouse dies and the estate of such surviving spouse is subject to the tax imposed by this chapter,

the Federal estate tax paid (or treated as paid under section 2056A(b)(7) by the first decedent with respect to such property shall be allowed as a credit under section 2013 to the estate of such surviving spouse and the amount of such credit shall be determined under such section without regard to when the first decedent died and without regard to subsection (d)(3) of such section.

(4) SPECIAL RULE WHERE RESIDENT SPOUSE BECOMES CITIZEN.—Paragraph (1) shall not apply if—

(A) the surviving spouse of the decedent becomes a citizen of the United States before the day on which the return of the tax imposed by this chapter is made, and

(B) such spouse was a resident of the United States at all times after the date of the death of the decedent and before becoming a citizen of the United States.

(5) REFORMATIONS PERMITTED.—

(A) IN GENERAL.—In the case of any property with respect to which a deduction would be allowable under subsection (a) but for this subsection, the determination of whether a trust is a qualified domestic trust shall be made—

(i) as of the date on which the return of the tax imposed by this chapter is made, or

(ii) if a judicial proceeding is commenced on or before the due date (determined with regard to extensions) for filing such return to change such trust into a trust which is a qualified domestic trust, as of the time when the changes pursuant to such proceeding are made.

(B) STATUTE OF LIMITATIONS.—If a judicial proceeding described in subparagraph (A)(ii) is commenced with respect to any trust, the period for assessing any deficiency of tax attributable to any failure of such trust to be a qualified domestic trust shall not expire before the date 1 year after the date on which the Secretary is notified that the trust has been changed pursuant to such judicial proceeding or that such proceeding has been terminated.

Amendments

P.L. 101-508, § 11701(l)(1):

Act Sec. 11701(l)(1) amended Code Sec. 2056(d) by redesignating paragraph (4)[5] as paragraph (5).

The above amendment is effective as if included in the provision of the Revenue Reconciliation Act of 1989 (P.L. 101-239) to which it relates.

Act Sec. 11701(l)(2) provides:

(2) The period during which a proceeding may be commenced under section 2056(d)(5)(A)(ii) of the Internal Revenue Code of 1986 (as redesignated by paragraph (1)) shall not expire before the date 6 months after the date of the enactment of this Act.

P.L. 101-508, § 11702(g)(5):

Act Sec. 11702(g)(5) amended Code Sec. 2056(d)(3) by striking "section 2056A(b)(6)" and inserting "section 2056A(b)(7)".

The above amendment is effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) to which it relates.

P.L. 101-239, § 7815(d)(4)(A):

Act Sec. 7815(d)(4)(A) amended Code Sec. 2056(d)(2)(B) to read as above. Prior to amendment, Code Sec. 2056(d)(2)(B) read as follows:

(B) PROPERTY PASSING OUTSIDE OF PROBATE ESTATE.—If any property passes from the decedent to the surviving spouse of the decedent outside of the decedent's probate estate, for purposes of subparagraph (A), such property shall be treated as passing to such spouse in a qualified domestic trust if such property is transferred to such a trust before the day on which the return of the tax imposed by section 2001 is made.

P.L. 101-239, § 7815(d)(5):

Act Sec. 7815(d)(5) amended Code Sec. 2056(d) by adding at the end thereof a new paragraph (4) to read as above.

P.L. 101-239, § 7815(d)(6)(A)-(B):

Act Sec. 7815(d)(6)(A)-(B) amended Code Sec. 2056(d)(3) by striking "section 2001" and inserting "this chapter", and by inserting "and without regard to subsection (d)(3) of such section" before the period at the end thereof.

P.L. 101-239, § 7815(d)(8):

Act Sec. 7815(d)(8) amended Code Sec. 2056(d) by adding at the end thereof a new paragraph (4)[5] to read as above.

The above amendments are effective as if included in the provisions of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) to which they relate.

P.L. 101-239, § 7815(d)(4)(B) provides:

(B) In the case of the estate of a decedent dying before the date of the enactment of this Act, the period during which

the transfer (or irrevocable assignment) referred to in section 2056(d)(2)(B) of the Internal Revenue Code of 1986 (as amended by subparagraph (A)) may be made shall not expire before the date 1 year after such date of enactment.

P.L. 101-239, § 7815(d)(16) provides:

(16) For purposes of applying section 2040(a) of the Internal Revenue Code of 1986 with respect to any joint interest to which section 2040(b) of such Code does not apply solely by reason of section 2056(d)(1)(B) of such Code, any consideration furnished before July 14, 1988, by the decedent for such interest to the extent treated as a gift to the spouse of the decedent for purposes of chapter 12 of such Code (or would have been so treated if the donor were a citizen of the United States) shall be treated as consideration originally belonging to such spouse and never acquired by such spouse from the decedent.

P.L. 100-647, § 5033(a)(1):

Act Sec. 5033(a)(1) amended Code Sec. 2056 by adding at the end thereof a new subsection (d) to read as above.

The above amendment applies to estates of decedents dying after the date of enactment of this Act.

[Sec. 2056A]

SEC. 2056A. QUALIFIED DOMESTIC TRUST.

[Sec. 2056A(a)]

(a) QUALIFIED DOMESTIC TRUST DEFINED.—For purposes of this section and section 2056(d), the term "qualified domestic trust" means, with respect to any decedent, any trust if—

(1) the trust instrument—

(A) requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation, and

(B) provides that no distribution (other than a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or domestic corporation has the right to withhold from such distribution the tax imposed by this section on such distribution,

(2) such trust meets such requirements as the Secretary may by regulations prescribe to ensure the collection of any tax imposed by subsection (b), and

(3) an election under this section by the executor of the decedent applies to such trust.

Amendments

P.L. 101-508, § 11702(g)(2)(A):

Act Sec. 11702(g)(2)(A) amended Code Sec. 2056A(a)(1) to read as above. Prior to amendment, paragraph (1) read as follows:

(1) the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation and that no distribution from the trust may be made without the approval of such a trustee,

The above amendment is effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) to which it relates.

P.L. 101-239, § 7815(d)(7)(A)(i)-(ii):

Act Sec. 7815(d)(7)(A)(i)-(ii) amended Code Sec. 2056A(a) by amending paragraph (1) to read as above, and by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively. Prior to amendment, Code Sec. 2056A(a)(1)-(2) read as follows:

(1) the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations,

(2) the surviving spouse of the decedent is entitled to all the income from the property in such trust, payable annually or at more frequent intervals,

The above amendment is effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) to which it relates.

[Sec. 2056A(b)]

(b) TAX TREATMENT OF TRUST.—

(1) IMPOSITION OF ESTATE TAX.—There is hereby imposed an estate tax on—

(A) any distribution before the date of the death of the surviving spouse from a qualified domestic trust, and

(B) the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

(2) AMOUNT OF TAX.—

(A) IN GENERAL.—In the case of any taxable event, the amount of the estate tax imposed by paragraph (1) shall be the amount equal to—

(i) the tax which would have been imposed under section 2001 on the estate of the decedent if the taxable estate of the decedent had been increased by the sum of—

(I) the amount involved in such taxable event, plus

(II) the aggregate amount involved in previous taxable events with respect to qualified domestic trusts of such decedent, reduced by

(ii) the tax which would have been imposed under section 2001 on the estate of the decedent if the taxable estate of the decedent had been increased by the amount referred to in clause (i)(II).

(B) TENTATIVE TAX WHERE TAX OF DECEDENT NOT FINALLY DETERMINED.—

(i) IN GENERAL.—If the tax imposed on the estate of the decedent under section 2001 is not finally determined before the taxable event, the amount of the tax imposed by paragraph (1) on such event shall be determined by using the highest rate of tax in effect under section 2001 as of the date of the decedent's death.

(ii) REFUND OF EXCESS WHEN TAX FINALLY DETERMINED.—If—

(I) the amount of the tax determined under clause (i), exceeds

(II) the tax determined under subparagraph (A) on the basis of the final determination of the tax imposed by section 2001 on the estate of the decedent,

such excess shall be allowed as a credit or refund (with interest) if claim therefor is filed not later than 1 year after the date of such final determination.

(C) SPECIAL RULE WHERE DECEDENT HAS MORE THAN 1 QUALIFIED DOMESTIC TRUST.—If there is more than 1 qualified domestic trust with respect to any decedent, the amount of the tax imposed by paragraph (1) with respect to such trusts shall be determined by using the highest rate of tax in effect under section 2001 as of the date of the decedent's death (and the provisions of paragraph (3)(B) shall not apply) unless, pursuant to a designation made by the decedent's executor, there is 1 person—

(i) who is an individual citizen of the United States or a domestic corporation and is responsible for filing all returns of tax imposed under paragraph (1) with respect to such trusts and for paying all tax so imposed, and

(ii) who meets such requirements as the Secretary may by regulations prescribe.

(3) CERTAIN LIFETIME DISTRIBUTIONS EXEMPT FROM TAX.—

(A) INCOME DISTRIBUTIONS.—No tax shall be imposed by paragraph (1)(A) on any distribution of income to the surviving spouse.

(B) HARDSHIP EXEMPTION.—No tax shall be imposed by paragraph (1)(A) on any distribution to the surviving spouse on account of hardship.

(4) TAX WHERE TRUST CEASES TO QUALIFY.—If any qualified domestic trust ceases to meet the requirements of paragraphs (1) and (2) of subsection (a), the tax imposed by paragraph (1) shall apply as if the surviving spouse died on the date of such cessation.

(5) DUE DATE.—

(A) TAX ON DISTRIBUTIONS.—The estate tax imposed by paragraph (1)(A) shall be due and payable on the 15th day of the 4th month following the calendar year in which the taxable event occurs, except that the estate tax imposed by paragraph (1)(A) on distributions during the calendar year in which the surviving spouse dies shall be due and payable not later than the date on which the estate tax imposed by paragraph (1)(B) is due and payable.

(B) TAX AT DEATH OF SPOUSE.—The estate tax imposed by paragraph (1)(B) shall be due and payable on the date 9 months after the date of such death.

(6) LIABILITY FOR TAX.—Each trustee shall be personally liable for the amount of the tax imposed by paragraph (1). Rules similar to the rules of section 2204 shall apply for purposes of the preceding sentence.

(7) TREATMENT OF TAX.—For purposes of section 2056(d), any tax paid under paragraph (1) shall be treated as a tax paid under section 2001 with respect to the estate of the decedent.

(8) LIEN FOR TAX.—For purposes of section 6324, any tax imposed by paragraph (1) shall be treated as an estate tax imposed under this chapter with respect to a decedent dying on the date of the taxable event (and the property involved shall be treated as the gross estate of such decedent)

(9) TAXABLE EVENT.—The term "taxable event" means the event resulting in tax being imposed under paragraph (1).

(10) CERTAIN BENEFITS ALLOWED.—

(A) IN GENERAL.—If any property remaining in the qualified domestic trust on the date of the death of the surviving spouse is includible in the gross estate of such spouse for purposes of this chapter (or would be includible if such spouse were a citizen or resident of the United States), any benefit which is allowable (or would be allowable if such spouse were a citizen or resident of the United States) with respect to such property to the estate of such spouse under

(4) TAX IMPOSED WHERE TRUST CEASES TO QUALIFY.—If any person other than an individual citizen of the United States or a domestic corporation becomes a trustee of a qualified domestic trust (or such trust ceases to meet the requirements of subsection (a)(3)), the tax imposed by paragraph (1) shall apply as if the surviving spouse died on the date on which such person became such a trustee or the date of such cessation, as the case may be.

P.L. 101-239, § 7815(d)(9):

Act Sec. 7815(d)(9) amended Code Sec. 2056A(b) by adding at the end thereof new paragraphs (10)-(13) to read as above.

P.L. 101-239, § 7815(d)(11):

Act Sec. 7815(d)(11) amended Code Sec. 2056A(b)(2)(B)(ii) by striking "as a credit or refund" and inserting "as a credit or refund (with interest)".

P.L. 101-239, § 7815(d)(12):

Act Sec. 7815(d)(12) amended Code Sec. 2056A(b)(2) by adding at the end thereof a new subparagraph (C) to read as above.

P.L. 101-239, § 7815(d)(15):

Act Sec. 7815(d)(15) amended Code Sec. 2056A(b)(3), as redesignated by section (7)(B), to read as above. Prior to amendment, Code Sec. 2056A(b)(5) read as follows:

(5) DUE DATE.—The estate tax imposed by paragraph (1) shall be due and payable on the 15th day of the 4th month following the calendar year in which the taxable event occurs.

The above amendments are effective as if included in the provisions of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) to which they relate.

[Sec. 2056A(c)]

(c) DEFINITIONS.—For purposes of this section—

(1) PROPERTY INCLUDES INTEREST THEREIN.—The term "property" includes an interest in property.

(2) INCOME.—Except as provided in regulations, the term "income" has the meaning given to such term by section 643(b).

Amendments

P.L. 101-239, § 7815(d)(10):

Act Sec. 7815(d)(10) amended Code Sec. 2056A(c)(2) by striking "The term" and inserting "Except as provided in regulations, the term".

The above amendment is effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) to which it relates.

[Sec. 2056A(d)]

(d) ELECTION.—An election under this section with respect to any trust shall be made by the executor on the return of the tax imposed by section 2001. Such an election, once made, shall be irrevocable. No election may be made under this section on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.

Amendments

P.L. 101-508, § 11702(g)(3)(A):

Act Sec. 11702(g)(3)(A) amended Code Sec. 2056A(d) by adding at the end thereof a new sentence to read as above.

The above amendment shall not apply to any election made before the date 6 months after the date of the enactment of this Act.

P.L. 100-647, § 5033(a)(2):

Act Sec. 5033(a)(2) amended Part IV of subchapter A of chapter 11 by inserting after section 2056 a new section 2056A to read as above.

The above amendment applies to estates of decedents dying after the date of enactment of this Act.

[Sec. 2056A(e)]

(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations under which there may be treated as a qualified domestic trust any annuity or other payment which is includible in the decedent's gross estate and is by its terms payable for life or a term of years.

Amendments

P.L. 101-239, § 7815(d)(13):

Act Sec. 7815(d)(13) amended Code Sec. 2056A by adding at the end thereof a new subsection (e) to read as above.

The above amendment is effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647) to which it relates.

P.L. 101-239, § 7815(d)(14) provides:

(14) In the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of the 1988 Act shall not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions. In the case of the estate of an individual dying before the date 3 years after the date of the enactment of this Act, or a gift by an individual before the date 3 years after the date of the enactment of this Act, the requirement of the preceding sentence that the individual not be a citizen or resident of the United States shall not apply.

[Sec. 2057—Repealed]

Amendments

P.L. 97-34, § 427(a):

Repealed Code Sec. 2057, applicable to estates of decedents dying after December 31, 1981. Prior to its repeal, Code Sec. 2057 read as follows:

SEC. 2057. BEQUESTS, ETC., TO CERTAIN MINOR CHILDREN.

(a) ALLOWANCE OF DEDUCTION.—For purposes of the tax imposed by section 2001, if—

(1) the decedent does not have a surviving spouse, and

(2) the decedent is survived by a minor child who, immediately after the death of the decedent, has no known parent,