

SUPPORTING STATEMENT [PS-102-88] (T.D. 8612)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The attached final regulations provide amendments to the regulations under the Internal Revenue Code relating to the availability of the gift and estate tax marital deduction when the donee spouse or the surviving spouse is not a United States citizen. These amendments are necessary because Section 2056(d), section 2056A and section 2523(i) that were added to the Internal Revenue Code by section 5033 of the Technical and Miscellaneous Revenue Act of 1988, restrict the availability of the gift and estate tax marital deduction where the donee spouse or the surviving spouse is not a United States citizen. (Pub L. 100-647, 102 Stat. 3670).

2. USE OF DATA

The information will be processed by the IRS and used in the administration of the Internal Revenue laws to assess the reported tax and to determine whether taxpayers have complied with the statutory provisions (sections 2056(d), 2056A and 2523(i)) relating to the availability of the gift and estate tax marital deductions when the surviving spouse is not a United States citizen.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in Accordance with the IRS Return and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

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

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

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS

OR POLICY ACTIVITIES

Not applicable.

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

Not applicable.

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

The Notice of Proposed Rulemaking was published in the Federal Register on January 5, 1993 (58 FR 305), and provided the public with a period in which to review and provide comments relating to any aspect of the proposed regulations. A public hearing was held on April 2, 1993. The final regulations were published in the Federal Register on August 22, 1995 (60 FR 43531).

In response to the Federal Register Notice dated August 23, 2010 (75 FR 51882), we received no comments during the comment period regarding PS-102-88.

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

Not applicable.

10. **ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. **JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

Section 2056(d) and section 2056A provide for the making of an election on the federal estate tax return (Form 706) to treat a trust as a qualified domestic trust (QDOT) in cases where a decedent is survived by a spouse who is not a

citizen of the United States, so that the decedent's estate will be entitled to a marital deduction. Any subsequent distributions of principal from the QDOT are subject to an additional estate tax under section 2056A(b) and must be reported on an annual basis on Form 706QDT. The election, as described in section 20.2056A-3 of the final regulations is made on Form 706. The burden for this requirement is reflected in the burden of Form 706.

Section 20.2056A-4(c) of the final regulations provides a rule that allows taxpayers to treat a nonassignable annuity or other arrangement as property passing in the form of a QDOT. Taxpayers may choose one of two options, each of which requires the filing of an Information Statement and an Agreement to either remit the additional estate tax on the corpus portion or to roll over the corpus portion of each annuity payment to a QDOT. We estimate that approximately 2,000 taxpayers will be affected and it will take approximately 3 hours to prepare this information. The estimated total burden for this requirement is 6,000 hours.

Sections 20.2056A-10(a) and (b) of the final regulations provide that the additional estate tax is no longer imposed if the surviving spouse becomes a citizen of the United States after a QDOT has been established. If certain conditions are met, the trustee must certify in writing that the surviving spouse has become a citizen. Notice is made by filing a final Form 706QDT. If other conditions exist, upon becoming a citizen the surviving spouse must make certain elections in order for the imposition of the additional estate tax to be suspended. We estimate that approximately 150 taxpayers will be affected with respect to paragraph (a) and 150 taxpayers with respect to paragraph (b) and it will take approximately 30 minutes to prepare this information in both cases. The estimated total burden for these requirements is 150 hours.

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

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated August 23, 2010 (75 FR 51882), requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and

purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

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

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

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

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

Not applicable.

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

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