

cept as otherwise provided in paragraph (g)(2) of this section.

(2) *Exceptions*—(i) *In general.* For purposes of determining the source of the partner's distributive share of partnership income or determining the source of the partner's income from the sale of inventory property which the partnership distributes to the partner in kind, the partner's production or sales activity includes an activity conducted by the partnership. In addition, the production activity of a partnership includes the production activity of a taxpayer that is a partner either directly or through one or more partnerships, to the extent that the partner's production activity is related to inventory that the partner contributes to the partnership in a transaction described under section 721.

(ii) *Attribution of production assets to or from a partnership.* A partner will be treated as owning its proportionate share of the partnership's production assets only to the extent that, under paragraph (g)(2)(i) of this section, the partner's activity includes production activity conducted through a partnership. A partner's share of partnership assets will be determined by reference to the partner's distributive share of partnership income for the year attributable to such production assets. Similarly, to the extent a partnership's activities include the production activities of a partner, the partnership will be treated as owning the partner's production assets related to the inventory that is contributed in kind to the partnership. See paragraph (c)(1)(ii)(B) of this section for rules apportioning the basis of assets to Section 863 Sales.

(iii) *Basis.* For purposes of this section, in those cases where the partner is treated as owning its proportionate share of the partnership's production assets, the partner's basis in production assets held through a partnership shall be determined by reference to the partnership's adjusted basis in its assets (including a partner's special basis adjustment, if any, under section 743). Similarly, a partnership's basis in a partner's production assets is determined with reference to the partner's adjusted basis in its assets.

(iv) *Separate application of methods.* If, under paragraph (g)(2) of this section, a partner is treated as conducting the activity of a partnership, and is treated as owning its proportionate share of a partnership's production assets, a partner must apply the method it has elected under paragraph (b) of this section

separately to Section 863 Sales described in this paragraph (g) and all other Section 863 Sales.

(3) *Examples.* The following examples illustrate the rules of this paragraph (g):

Example 1. Distributive share of partnership income. A, a U.S. corporation, forms a partnership in the United States with B, a country X corporation. A and B each have a 50 percent interest in the income, gains, losses, deductions and credits of the partnership. The partnership is engaged in the manufacture and sale of widgets. The widgets are manufactured in the partnership's plant located in the United States and are sold by the partnership outside the United States. The partnership owns the manufacturing facility and all other production assets used to produce the widgets. A's distributive share of partnership income includes 50 percent of the sales income from these sales. In applying the rules of section 863 to determine the source of its distributive share of partnership income from the export sales of widgets, A is treated as carrying on the activity of the partnership related to production of these widgets and as owning a proportionate share of the partnership's assets related to production of the widgets, based upon its distributive share of partnership income.

Example 2. Distribution in kind. Assume the same facts as in *Example 1* except that the partnership, instead of selling the widgets, distributes the widgets to A and B. A then further processes the widgets and then sells them outside the United States. In determining the source of the income earned by A on the sales outside the United States, A is treated as conducting the activities of the partnership related to production of the distributed widgets. Thus, the source of gross income on the sale of the widgets is determined under section 863 and these regulations. A applies the 50/50 method described in paragraph (b)(1) of this section to determine the source of income from the sales. In applying paragraph (c)(1) of this section, A is treated as owning its proportionate share of the partnership's production assets based upon its distributive share of partnership income.

(h) *Effective dates.* The rules of this section apply to taxable years beginning December 30, 1996. However, taxpayers may apply these regulations for taxable years beginning after July 11, 1995, and before December 30, 1996. For years beginning before December 30, 1996, see §§ 1.863-3A and 1.863-3AT.

Par. 7. Section 1.863-4 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1.863-4 Certain transportation services.

(a) *General.* A taxpayer carrying on the business of transportation service (other than an activity giving rise to transportation income described in section 863(c) or to income subject to other specific provisions of this title) between points in the United States and points outside the United States derives income partly from sources within and partly from sources without the United States.

* * * * *

§ 1.863-5 [Removed]

Par. 8. Section 1.863-5 is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. In § 602.101, paragraph (c) is amended by adding entries for 1.863-1 and 1.863-3A, and revising the entry for 1.863-3 to read as follows:

§ 602.101 OMB Control numbers.

(c) * * *

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
* * *	* * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved November 25, 1996.

Donald C. Lubick,
Acting Assistant Secretary of Tax Policy.

(Filed by the Office of the Federal Register on November 27, 1996, 8:45 a.m., and published in the issue of the Federal Register for November 29, 1996, 61 F.R. 60540)

Section 1491.—Imposition of Tax

If the status of a trust changes from domestic to foreign, what are the consequences for purposes of the section 1491 excise tax? See Notice 96-65, page 28.

Section 2056A.—Qualified Domestic Trust

26 CFR 20.2056A-2: Requirements for qualified domestic trusts.

T.D. 8686

**DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 20 and 602**

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 [1995-2 C.B. 192]). 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 re-

quirements 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 resi-

dential 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) x \$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.

* * * * *

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 arrange-

ments 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) 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 non-citizen 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.

(I) *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 appli-

ances, 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 allo-

cated 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
* * * * *	* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved September 19, 1996.

Donald C. Lubick,
*Acting Assistant Secretary
of the Treasury.*

(Filed by the Office of the Federal Register on November 27, 1996, 8:45 a.m., and published in the issue of the Federal Register for November 29, 1996, 61 F.R. 60551)

Section 6621.— Determination of Interest Rate

26 CFR 301.6621-1: Interest rate

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning October 1, 1996, will be 8 percent for overpayments, 9 percent for underpayments, and 11 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 is 6.5 percent.

Rev. Rul. 96-61

Section 6621 of the Internal Revenue Code establishes different rates for inter-

est on tax overpayments and interest on tax underpayments. Under § 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 2 percentage points, except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under § 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under § 6601 on any large corporate underpayment, the underpayment rate under § 6621(a)(2) is determined by substituting “5 percentage points” for “3 percentage points.” See § 6621(c) and § 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable rate. Section 6621(c) and § 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under § 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(2)(B) provides that in determining the addition to tax under § 6654 for failure to pay estimated tax for any taxable year, the federal short-term rate that applies during the third month following such taxable year also applies during the first 15 days of the fourth month following such taxable year.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments and underpayments of tax under § 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with § 6621 which, pursuant to § 6622, is subject to daily compounding.