

SUPPORTING STATEMENT
T.D. 8612 (PS-102-88)
Income Gift and Estate Tax
OMB Control No. 1545-1360

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The regulations in Treasury Decision 8612 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 Internal Revenue Code §§ 2056(d), 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).

A taxpayer is allowed to treat a non-assignable annuity or other arrangement as property passing in the form of a qualified domestic trust (QDOT) if an Information Statement and an Agreement to either remit the additional tax or to roll over the corpus portion of each annuity payment to a qualified domestic trust (QDOT) is filed (§20.2056A-4(c)).

Additional estate tax is no longer imposed if the surviving spouse becomes a citizen of the United States 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 (§§ 20.2056A-10(a) and (b)).

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. Since, there is no reporting requirements associated with T.D. 8612, electronic filing is not applicable.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

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

There is no burden on small businesses or entities by this collection due to the inapplicability of the authorizing statute to this type of entity.

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

Consequences of less frequent collection on federal programs or policy activities would result in the IRS unable 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, thereby engendering the inability of the IRS to meet its mission.

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

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

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

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding TD 8612.

In response to the **Federal Register** notice (82 FR 18212) dated April 17, 2017, we received no comments during the comment period regarding TD 8612.

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

No payment or gift has been provided to any respondents.

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

The personally identifiable information (PII) for T.D. 8612 is captured on forms 706 and 706-QDT.

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 non-assignable 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.

Total annual responses under this information collection request are 2,300 responses and the total burden is 6,150 hours.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Average Hours per Response	Total Burden
20.2056A-4(c)	T. D. 8612	2000	1	2000	3	6000
20.2056A-10(a) and (b)	T. D. 8612	300	1	300	.5	150
Totals		2300	1	2300		6150

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

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

There are no plans for tabulation, statistical analysis and publication.

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

There are no exceptions to the certification statement.

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.