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[4830-01-p]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20 and 25

REG-141832-11

RIN 1545-BK74

Portability of a Deceased Spousal Unused Exclusion Amount

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the estate and gift tax applicable exclusion amount, in general, as well as on the applicable requirements for electing portability of a deceased spousal unused exclusion (DSUE) amount to the surviving spouse and on the applicable rules for the surviving spouse's use of this DSUE amount. The text of the temporary regulations also serves as the text of the proposed regulations set forth in this notice of proposed rulemaking. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Outlines of topics to be discussed at the public hearing scheduled for October 18, 2012, at 10 a.m., must be received by September 27, 2012.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-141832-11), Room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-141832-11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-141832-11). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Karlene Lesho at (202) 622-3090; concerning the submission of comments, the hearing, or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been approved by the Office of Management and Budget, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), under Form 706, "United States Estate (and Generation-Skipping Transfer) Tax Return," and assigned control number 1545-0015.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received

by **[INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in proposed §§20.2010-2(a), 20.2010-2(a)(1), 20.2010-2(a)(3)(i), 20.2010-2(a)(7)(ii)(B), and 20.2010-2(b). The information in §§20.2010-2(a), 20.2010-2(a)(1), and 20.2010-2(b) as it affects estates not otherwise required to file an estate tax return under section 6018(a) is necessary in order for an executor of a decedent's estate to elect portability of a DSUE amount to the surviving spouse. The information in §20.2010-2(a)(3)(i) is necessary in order for an executor of a decedent's estate to signify that the estate is not electing portability of a DSUE amount to the surviving spouse. The information in §20.2010-2(a)(7)(ii)(B) is necessary in order to evaluate whether an estate qualifies for

a special rule relating to applicable estate tax return requirements. The collection of information is voluntary to obtain a benefit. The likely respondents are executors of estates of decedents having a date of death in 2011 or 2012 or any subsequent period in which portability of a DSUE amount is in effect.

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 assigned by the Office of Management and Budget.

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.

## **Background**

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** make additions to the Estate Tax Regulations (26 CFR part 20) under sections 2001 and 2010 of the Internal Revenue Code (Code) and Gift Tax Regulations (26 CFR part 25) under section 2505 of the Code. The temporary regulations provide guidance on the estate and gift tax applicable credit amount under sections 2010 and 2505 of the Code. In addition, the temporary regulations provide guidance on the portability of a deceased spousal unused exclusion (DSUE) amount under section 2010(c) of the Code, including the applicable requirements for electing portability of a DSUE amount to the surviving spouse, for computing the deceased spouse's DSUE amount, and for the surviving spouse's use of the DSUE amount. The text of those regulations also serves as the text of these regulations. The preamble to

the temporary regulations explains the temporary regulations and these proposed regulations.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not considered a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory flexibility assessment is not required. In addition, section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect estates of a decedent which generally are not small entities under the Act. Thus, we do not expect a substantial number of small entities to be effected. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or for public inspection and copying.

A public hearing has been scheduled for October 18, 2012, in the IRS auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments (a signed original and eight (8) copies) and an outline of the topics to be discussed and the time to be devoted to each topic by September 27, 2012. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### **Drafting Information**

The principal author of these regulations is Karlene Lesho, Office of the Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the IRS and the Treasury Department participated in their development.

### **List of Subjects**

#### 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 20 and 25 are proposed to be amended as follows:

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

Paragraph 1. The authority citation for part 20 is amended by adding entries in numerical order to read as follows:

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

Section 20.2010-0 also issued under 26 U.S.C. 2010(c)(6).  
Section 20.2010-1 also issued under 26 U.S.C. 2010(c)(6).  
Section 20.2010-2 also issued under 26 U.S.C. 2010(c)(6).  
Section 20.2010-3 also issued under 26 U.S.C. 2010(c)(6). \* \* \*

Par. 2. Section 20.2001-2 is added to read as follows:

§20.2001-2 Valuation of adjusted taxable gifts for purposes of determining the deceased spousal unused exclusion amount of last deceased spouse.

[The text of the proposed amendments to §20.2001-2(a) and (b) is the same as the text of §20.2001-2T(a) and (b) published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 20.2010-0 is added to read as follows:

§20.2010-0 Table of contents.

[The entries in the table of contents for the proposed amendments to §20.2010-0 are the same as the entries in the table of contents for §20.2010-0T published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 20.2010-1 is added to read as follows:

§20.2010-1 Unified credit against estate tax; in general.

[The text of the proposed amendments to §20.2010-1(a) through (e) is the same as the text of §20.2010-1T(a) through (e) published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 20.2010-2 is added to read as follows:

§20.2010-2 Portability provisions applicable to estate of a decedent survived by a spouse.

[The text of the proposed amendments to §20.2010-2(a) through (e) is the same as the text of §20.2010-2T(a) through (e) published elsewhere in this issue of the **Federal Register**].

Par. 6. Section 20.2010-3 is added to read as follows:

§20.2010-3 Portability provisions applicable to the surviving spouse's estate.

[The text of the proposed amendments to §20.2010-3(a) through (f) is the same as the text of §20.2010-3T(a) through (f) published elsewhere in this issue of the **Federal Register**].

#### PART 25--GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 7. The authority citation for part 25 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805.

Section 25.2505-2T also issued under 26 U.S.C. 2010(c)(6). \* \* \*

Par. 8. Section 25.2505-0 is added to read as follows:

§ 25.2505-0 Table of contents.

[The entries in the table of contents for the proposed amendments to §25.2505-0 are the same as the entries in the table of contents for §25.2505-0T published elsewhere in this issue of the **Federal Register**].



Par. 9. Section 25.2505-1 is added to read as follows:

§25.2505-1 Unified credit against gift tax; in general.

[The text of the proposed amendments to §25.2505-1(a) through (e) is the same as the text of §25.2505-1T(a) through (e) published elsewhere in this issue of the **Federal Register**].

Par. 10. Section 25.2505-2 is added to read as follows:

§25.2505-2 Gifts made by a surviving spouse having a DSUE amount available.

[The text of the proposed amendments to §25.2505-2(a) through (g) is the same as the text of §25.2505-2T(a) through (g) published elsewhere in this issue of the **Federal Register**].

Steven T. Miller  
Deputy Commissioner for Services and Enforcement.

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