



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20, 25, and 602

[TD 9725]

RIN 1545-BK74

Portability of a Deceased Spousal Unused Exclusion Amount

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance under sections 2010 and 2505 of the Internal Revenue Code 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 statutory provisions underlying the portability rules were enacted as part of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, and these provisions were made permanent by the American Taxpayer Relief Act of 2012. The portability rules affect the estates of married decedents dying on or after January 1, 2011, and the surviving spouses of those decedents.

DATES: Effective Date. These regulations are effective on June 12, 2015.

Applicability Dates: For specific dates of applicability of the final regulations, see §§20.2001-2(b), 20.2010-1(e), 20.2010-2(e), 20.2010-3(f), 25.2505-1(e), and 25.2505-2(g).

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SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these regulations have been reviewed and approved by the Office of Management and Budget under control number 1545-0015. The collections of information are in §§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). Responses to each collection of information are voluntary to obtain the benefit of being able to elect portability or to take advantage of the special reporting requirements applicable to certain assets, and, for certain estates, to opt out of a deemed portability election. The likely respondents are executors of estates of decedents survived by a spouse.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

Books and 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

This document amends the Estate Tax Regulations (26 CFR part 20) under sections 2001 and 2010 of the Internal Revenue Code (Code) and the Gift Tax Regulations (26 CFR part 25) under section 2505 of the Code. On December 17, 2010, in section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111-312 (124 Stat. 3296, 3302) (TRUIRJCA), Congress amended section 2010(c) of the Code to allow portability of the applicable exclusion amount between spouses and made conforming amendments to sections 2505(a), 2631(c), and 6018(a)(1) of the Code. The changes made by TRUIRJCA to sections 2010(c), 2505(a), 2631(c), and 6018(a)(1) of the Code were scheduled to expire after December 31, 2012, pursuant to section 304 of TRUIRJCA. However, on January 2, 2013, Congress enacted the American Taxpayer Relief Act of 2012, Public Law 112-240 (126 Stat. 2313) (ATRA), which made portability permanent. In section 101(c)(2) of ATRA, Congress made a technical correction to section 2010(c)(4)(B) of the Code, retroactive to the original date of enactment of section 303 of TRUIRJCA, by amending clause (i) to replace “basic exclusion amount” with “applicable exclusion amount.”

On June 18, 2012, temporary regulations relating to this topic (TD 9593, 77 FR 36150) (“2012 temporary regulations”) and a notice of proposed rulemaking cross-referencing the temporary regulations (REG-141832-11, 77 FR 36229) (“NPRM”) were published in the **Federal Register**. No requests to speak at the scheduled public hearing were received, and the hearing was canceled. Comments responding to the NPRM were received and are available for public inspection and copying at <http://www.regulations.gov> or upon request. After consideration of all the comments,

the proposed rules in the NPRM are adopted as amended by this Treasury decision.

The public comments and revisions are discussed in this preamble.

Summary of Comments and Explanation of Revisions

1. Availability of Extension of Time to Elect Portability

Section 2010(c) of the Code allows the estate of a decedent who is survived by a spouse to make a portability election, which generally allows the surviving spouse to apply the decedent's deceased spousal unused exclusion (DSUE) amount to the surviving spouse's own transfers during life and at death. Under section 2010(c)(5)(A), a portability election is effective only if made on an estate tax return filed by the executor of the decedent's estate within the time prescribed by law for filing such return. Section 20.2010-2T(a)(1) of the 2012 temporary regulations requires every estate electing portability of a decedent's DSUE amount to file an estate tax return within nine months of the decedent's date of death, unless an extension of time for filing has been granted.

A commenter requested that the final regulations address the availability of an extension of time under §§301.9100-2 and 301.9100-3 of the Procedure and Administration Regulations to elect portability under section 2010(c)(5)(A) of the Code. Section 301.9100-2(b) provides an automatic six-month extension of time for making certain statutory and regulatory elections if the return is timely filed. Because the portability election is deemed to be made by the timely filing of a complete and properly prepared estate tax return, this relief provision will not be helpful with regard to the portability election unless the return that was timely filed was not complete or properly

prepared and that insufficiency is corrected within six months from the unextended due date of the return.

Section 301.9100-3 allows the grant of an extension of time for making regulatory elections that do not meet the requirements for an automatic extension of time under §301.9100-2. An extension under §301.9100-3 to elect portability is not available to estates that are required to file an estate tax return based on the applicable amount in section 6018(a) because, in such a case, the due date for the portability election is prescribed by statute and §301.9100-3 applies only to an election whose due date is prescribed by regulation. See sections 2010(c)(5)(A), 6075(a), and 6018(a); §301.9100-1(b). However, an extension of time under §301.9100-3 to elect portability may be available to estates that are under the value threshold described in section 6018 for being required to file an estate tax return. In such a case, the due date for the portability election is prescribed by regulation, not by statute. See Rev. Proc. 2014-18, 2014-7 IRB 513, section 2.03.

The Treasury Department and the IRS believe that clarifying the availability of an extension of time under §301.9100-3 to elect portability will assist taxpayers in understanding and meeting their tax responsibilities. Accordingly, the final regulations provide that an extension of time to elect portability will not be granted under §301.9100-3 to any estate that is required to file an estate tax return because the value of the gross estate equals or exceeds the threshold amount described in section 6018, but may be granted under the rules set forth in §301.9100-3 to estates with a gross estate value below that threshold amount and thus not otherwise required to file an estate tax return.

As transitional relief in the wake of TRUIRJCA and ATRA, the Treasury Department and the IRS have published guidance regarding the availability of an automatic extension of time for executors of certain estates under the filing threshold of section 6018(a) to file an estate tax return to elect portability of an unused exclusion amount. See Notice 2012-21, 2012-10 IRB 450; Rev. Proc. 2014-18. The Treasury Department and the IRS continue to receive, and are continuing to consider, requests for permanent extensions of this type of relief. However, such relief is not included in the final regulations.

2. Effect of Portability Election Where DSUE Amount is Uncertain

Section 20.2010-2T(a)(2) of the 2012 temporary regulations provides that upon the timely filing of a complete and properly prepared estate tax return, an executor of the estate of a decedent survived by a spouse will have elected portability of the decedent's DSUE amount, unless the executor validly opts out of making the portability election. The inclusion of a computation of the DSUE amount is an essential requirement of a complete and properly prepared estate tax return intended to make the portability election. See section 2010(c)(5)(A) and §20.2010-2T(b)(1). Section 20.2010-3T(c) provides that the portability election applies (and generally is available to the surviving spouse) upon the decedent's death, but, to the extent the DSUE amount subsequently is reduced or cannot be substantiated, the DSUE amount will not be available to the surviving spouse.

A commenter requested that the final regulations address whether an estate can make a "protective" election if a DSUE amount is not reflected on an otherwise complete and properly prepared estate tax return at the time of its timely filing, but

subsequent adjustments to amounts on the estate tax return would result in unused exclusion of that decedent. The following example illustrates such a scenario. An executor files a complete and properly prepared estate tax return that shows a DSUE amount equal to zero at the time of the return's timely filing and does not follow the instructions set forth in the instructions for opting out of portability. At the same time, the executor also files a protective claim for refund attributable to a claim against the estate. Subsequently, the estate becomes entitled to a deduction under section 2053 for a payment made in satisfaction of the claim against the estate which reduces the estate tax and results in unused exemption.

In this example, the Treasury Department and the IRS believe that the executor has elected portability in accordance with §20.2010-2T(a)(2) and that the recomputed DSUE amount will be available to the decedent's surviving spouse. The final regulations clarify this intended result by providing in §20.2010-2(b) that the computation requirement in section 2010(c)(5)(A) will be satisfied if the estate tax return is prepared in accordance with the requirements of §20.2010-2(a)(7). Accordingly, there is no need for a protective election.

3. Persons Permitted to Make the Election

Several commenters requested that the final regulations allow a surviving spouse who is not an executor as defined in section 2203 of the Code to file an estate tax return and make the portability election in several different circumstances. A few of the circumstances described include those in which the spouse is given the right to file the estate tax return in a prenuptial or marital agreement, or the spouse has petitioned the appropriate local court for the spouse's appointment as an executor solely for the limited

purpose of filing the estate tax return and the executor does not make the portability election. The Treasury Department and the IRS recognize the possibility that an executor may exercise the executor's discretion to not make the portability election, thus causing the estate to forfeit the opportunity to elect portability, but note that section 2010(c)(5) of the Code permits only the executor of the decedent's estate to file the estate tax return and make the portability election. The 2012 temporary regulations address the circumstances in which an appointed executor or a non-appointed executor may file the estate tax return and decide whether or not to elect portability. The Treasury Department and the IRS believe that any consideration of what, if any, state law action might bring the surviving spouse within the definition of executor under section 2203 is outside of the scope of this regulation. Accordingly, the final regulations adopt the applicable rules in the 2012 temporary regulations without change.

4. Requirement of a "Complete and Properly Prepared" Estate Tax Return

Section 20.2010-2T(a)(2) provides that the estate of a decedent survived by a spouse makes the portability election by timely filing a complete and properly prepared estate tax return for the decedent's estate. Section 20.2010-2T(a)(7)(i) provides that an estate tax return prepared in accordance with all applicable requirements is considered a "complete and properly prepared" estate tax return. Section 20.2010-2T(a)(7)(ii)(A), however, provides a special rule applicable to estates that are not otherwise required to file an estate tax return under section 6018. For these estates, the executor does not need to report the value of certain property that qualifies for the marital or charitable deduction. The 2012 temporary regulations also included exceptions to the application

of the special rule by providing specific circumstances under which the special rule will not apply.

A commenter suggested that the final regulations elaborate on the circumstances under which a timely filed estate tax return may be considered so deficient as to render the estate tax return incomplete for purposes of electing portability. The Treasury Department and the IRS acknowledge that, as with all tax returns, some errors or omissions made with respect to an estate tax return will be considered minor and correctible. However, the Treasury Department and the IRS consider the issue of whether an estate tax return is complete and properly prepared to be determined most appropriately on a case-by-case basis by applying standards as prescribed in current law. Therefore, this suggestion has not been adopted.

A commenter recommended that the final regulations modify the special rule in §20.2010-2T(a)(7)(ii)(A) to narrow the exceptions to the application of the special rule, thus allowing more estates to avoid the expense of a potentially-complicated appraisal to value assets includible in the gross estate. Specifically, the commenter recommended that the special rule in §20.2010-2T(a)(7)(ii)(A) should apply to certain property, the value of which qualifies for the marital deduction or charitable deduction (marital deduction property or charitable deduction property), when: (i) the marital deduction property or charitable deduction property is a stated number of shares of stock and a stated number of shares of the same stock are includible in the gross estate but are not marital deduction property or charitable deduction property; (ii) the property represents the balance of the value of shares remaining after a non-marital or non-charitable bequest of shares based on a specific value; and (iii) the property represents

the marital or charitable portion of a fractional division of property, whether by bequest, spousal election, or disclaimer. In the first two instances, the value of the marital deduction property or charitable deduction property may be relevant to assessing the accuracy of the valuation of the nondeductible interest and whether any valuation premium or discount is warranted. In the last instance, because any beneficiary's share of the estate usually can be satisfied in a manner other than with that beneficiary's proportional share of each individual asset, it will be necessary to know the total value in order to verify the non-deductible portion of the estate. Therefore, the Treasury Department and the IRS continue to believe that §20.2010-2T(a)(7)(ii)(A) appropriately excludes the described circumstances from application of the special rule. While the final regulations do not adopt the commenter's suggestion to narrow the exceptions to the application of the special rule, the final regulations provide flexibility to refine the rules in subregulatory guidance at any time in the future when the IRS may determine that additional guidance would be appropriate with regard to the application of the special rule to particular types of transfers.

The same commenter suggested that the exception in §20.2010-2T(a)(7)(ii)(A)(2) is made unnecessarily broad by its reference to "another provision of the Code." The commenter was concerned that, because the fair market value of a bequeathed asset determines the basis of that asset in the hands of the legatee, the value of all estate assets would have an impact on section 1014, and, thus, all assets would have to be valued. In referring to value needed to determine an estate's eligibility under other Code sections such as sections 2032 and 2032A, the Treasury Department and the IRS

did not intend to include a basis determination under section 1014. Accordingly, the language of §20.2010-2T(a)(7)(ii)(A)(2) has been clarified.

Finally, a commenter repeated a suggestion (first made in response to a request for comments in Notice 2011-82, 2011-42 IRB 516) that the IRS prepare a shorter version of the estate tax return to be used by estates that are not otherwise required to file an estate tax return but do so only to elect portability. The Treasury Department and the IRS have reconsidered this suggestion, taking into account several factors including: the information needed by the IRS to compute and verify the DSUE amount; how such an abbreviated return would differ from a return qualifying for the special rule regarding valuations under §20.2010-2(a)(7)(ii); the past experience of the IRS regarding the accuracy of abbreviated returns; the administrative issues in creating and maintaining alternate return forms; and the reasons provided by commenters. The Treasury Department and the IRS have concluded that, on balance, a timely filed, complete, and properly prepared estate tax return affords the most efficient and administrable method of obtaining the information necessary to compute and verify the DSUE amount, and the alleged benefits to taxpayers from an abbreviated form is far outweighed by the anticipated administrative difficulties in administering the estate tax. In addition, the “Technical Explanation of the Revenue Provisions Contained in the ‘Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010’ Scheduled for Consideration by the United States Senate,” J. Comm. on Tax’n, 111th Cong., JCX-55-10 (December 10, 2010), suggests that estates electing portability that are not otherwise required to file an estate tax return under section 6018(a) are intended to be

subject to the same filing requirements applicable to estates required to file an estate tax return under section 6018(a). For these reasons, this suggestion is not adopted.

5. Special Rules for Qualified Domestic Trusts

The preamble to the 2012 regulations discussed comments and proposals the Treasury Department and the IRS had received on the proper application of the portability rules to qualified domestic trusts (QDOTs) created for spouses who are not U.S. citizens. The preamble noted that each of the proposals raised issues of fairness, complexity, and administrability.

The QDOT rules in the 2012 temporary regulations provide that the executor of a decedent's estate claiming a marital deduction for property passing to a QDOT shall compute the decedent's DSUE amount on the decedent's estate tax return for the purpose of electing portability in the same way the DSUE amount is computed for any other decedent. However, because the estate tax payments made from the QDOT after the decedent's death are part of the decedent's estate tax liability, the decedent's DSUE amount must be redetermined upon the final distribution or other taxable event on which estate tax under section 2056A is imposed (generally, this occurs upon the termination of all QDOTs created by or funded with assets passing from the decedent or upon the death of the surviving spouse). See §20.2010-2T(c)(4). The QDOT rules in the 2012 temporary regulations further provide that the earliest date such a decedent's DSUE amount may be included in determining the applicable exclusion amount available to the surviving spouse or the surviving spouse's estate is the date of the event that triggers the final estate tax liability of the decedent under section 2056A. See §20.2010-

3T(c)(2). The preamble to the 2012 temporary regulations requested further comments on the QDOT issue.

A commenter challenged this delay in the surviving spouse's ability to use the decedent's DSUE amount if the surviving spouse becomes a United States citizen after the decedent's estate tax return is filed and after property passes to a QDOT for the benefit of that surviving spouse.

Under section 2056A(b)(12), the estate tax imposed under section 2056A(b)(1) will cease to apply to property held in a QDOT if the surviving spouse becomes a United States citizen (a fact to be certified to the IRS under §20.2056A-10(a)(2)) and either of the following requirements are met: (A) the spouse was a resident of the United States at all times after the death of the decedent and before the spouse becomes a citizen of the United States, or (B) no tax was imposed by section 2056A(b)(1)(A) with respect to any distribution before the spouse becomes a citizen. If the spouse becomes a U.S. citizen, but does not satisfy either of these two requirements, section 2056A(b)(12)(C) provides that the section 2056A(b)(1) estate tax will cease to apply to the QDOT if the spouse elects (i) to treat any distribution on which tax was imposed by section 2056A(b)(1)(A) as a taxable gift made by the spouse during the year in which the spouse becomes a U.S. citizen or in any subsequent year, and thereby including each such distribution in the spouse's own adjusted taxable gifts for both estate and gift tax purposes, and (ii) to treat any reduction in the tax imposed by section 2056A(b)(1)(A) by reason of the credit allowable under section 2010 with respect to the decedent as a credit allowable to such surviving spouse under section 2505 for purposes of determining the amount of the credit allowable under section 2505 with respect to

taxable gifts made by the surviving spouse during the year in which the spouse becomes a U.S. citizen or any subsequent year.

The Treasury Department and the IRS conclude that, if the surviving spouse of the decedent becomes a citizen of the United States and the requirements under section 2056A(b)(12) and the corresponding regulations are satisfied so that the tax imposed by section 2056A(b)(1) no longer applies, then the decedent's DSUE amount is no longer subject to adjustment and will become available for transfers by the surviving spouse as of the date the surviving spouse becomes a citizen of the United States. Accordingly, the final regulations make clarifying changes in §§20.2010-2(c)(4), 20.2010-3(c)(3), and 25.2505-2(d)(3).

A commenter also requested clarification of the rules in §§20.2010-3T(b), 25.2505-2T(b) and 25.2505-2T(c) as they apply to a QDOT. Section 25.2505-2T(b) provides that, in the case of a surviving spouse making a gift, the surviving spouse will be considered to apply any available DSUE amount to the taxable gift before the surviving spouse's own basic exclusion amount. Sections 20.2010-3T(b) and 25.2505-2T(c) address how to compute the DSUE amount included in the applicable exclusion amount of a surviving spouse who previously has applied a DSUE amount of one or more deceased spouses. These rules are applicable to all surviving spouses but can be applied only after the surviving spouse determines the spouse's available DSUE amount, if any. Sections 20.2010-3T(c)(2) and 25.2505-2T(d)(2) provide rules governing the date DSUE can be taken into consideration by the surviving spouse or the surviving spouse's estate when property passes from a decedent for the benefit of a surviving spouse in one or more QDOTs and the decedent elects portability. The

Treasury Department and the IRS believe that the impact of these rules in the context of QDOTs is sufficiently clear. Thus, the final regulations adopt these rules without change, except that the rule in §25.2505-2T(d)(2) is now provided in §25.2505-2(d)(3).

6. Issues Related to Examination of Returns to Determine DSUE Amount

Section 2010(c)(5)(B) grants the IRS the authority to examine returns of each deceased spouse of the surviving spouse to determine the DSUE amount allowed to be included in the applicable exclusion amount of the surviving spouse, even if the period of limitations under section 6501 has expired for assessing gift or estate tax with respect to the returns of the deceased spouse. The Treasury Department and the IRS received several comments and recommendations related to this examination authority.

First, a commenter requested that the final regulations provide that, during an examination to determine the allowable DSUE amount, the examination authority of the IRS be limited to issues of the reporting and valuation of assets, and not extend to other legal issues that may impact the availability of the DSUE amount to the surviving spouse. The Treasury Department and the IRS note that section 2010(c)(5)(B) grants broad statutory authority to the IRS to examine the correctness of any return, without regard to the period of limitations on assessment, “to make determinations with respect to [the allowable DSUE] amount for purposes of carrying out [section 2010(c) of the Code].” Thus, the Treasury Department and the IRS conclude that limiting such authority is inconsistent with the statute. Accordingly, this suggestion is not adopted.

Second, a commenter requested confirmation that, in the examination of a return for the purpose of determining the allowable DSUE amount that takes place after the expiration of the period of limitations on assessment of tax, the valuation of assets may

be adjusted upward or downward with a possible result that the allowable DSUE amount may decrease or increase. The accurate valuation of assets reported on an estate or gift tax return, regardless of whether the valuation is higher or lower than the reported value, is fundamental to the examination of such a return and fundamental to the accurate determination of the DSUE amount available to the surviving spouse. The Treasury Department and the IRS accordingly conclude no clarifying change is necessary on this issue.

Third, a commenter suggested the final regulations consider whether, in the examination of a return for the purpose of determining the allowable DSUE amount that takes place after the expiration of the period of limitations on assessment of tax, an adjustment to the value of an asset reported on the return affects the basis of that asset under section 1014. Section 1014 generally provides that the basis of property acquired from a decedent is the fair market value of such property on the decedent's date of death. The Treasury Department and the IRS believe that a change to the date-of-death value of an asset included in the estate of a decedent survived by a spouse, made pursuant to an examination of a return of that decedent after the expiration of the period of limitations on the assessment of tax on that return, does not necessarily result in a change to the basis of that asset under section 1014. Rather, the basis of property acquired from a decedent is determined in accordance with the existing principles of section 1014. The Treasury Department and the IRS conclude that the scope of the examination authority granted in section 2010(c)(5)(B) is sufficiently clear and, therefore, make no change in the final regulations.

Fourth, a commenter suggested that the final regulations clarify the deductibility of administrative expenses associated with the examination to determine the allowable DSUE amount. The Treasury Department and the IRS conclude that any expenses associated with an examination to determine the DSUE amount to be included in the applicable exclusion amount of the surviving spouse should be treated as any other expense associated with the preparation of the surviving spouse's return. Thus, in the case of an examination arising with respect to a gift tax return of the surviving spouse, such expenses are not deductible and, in the case of an examination arising with respect to an estate tax return of the surviving spouse, such expenses may be deductible if such expenses meet all of the applicable requirements for deductibility under section 2053. The Treasury Department and the IRS believe that the standards for deducting expenses for estate and gift tax purposes are sufficiently clear so that no change to the 2012 temporary regulations is necessary.

Finally, a commenter suggested clarifying who may participate in the examination to determine the DSUE amount to be included in the applicable exclusion amount of the surviving spouse. In general, pursuant to the current rules, each taxpayer has the authority to participate in the resolution of the issues raised in the audit of his or her return. However, the Treasury Department and the IRS believe addressing this issue is outside the scope of this final regulation and, therefore, make no change in the final regulation.

7. Availability of DSUE Amount by Surviving Spouse Who Becomes a Citizen of the United States

A commenter requested further guidance on the rules in §§20.2010-3T(e) and 25.2505-2T(f), which prohibit a noncitizen, nonresident surviving spouse, or the estate

of such a surviving spouse, from taking into account the DSUE amount of any deceased spouse except to the extent allowed under any treaty obligation of the United States. First, the commenter suggested the final regulations clarify the specificity a treaty must employ in referencing portability or the DSUE amount for the exception to apply. The Treasury Department and the IRS consider this question regarding the interpretation of treaty language to be outside the scope of these final regulations and, thus, decline to make this change.

Next, the commenter requested that the final regulations allow a surviving spouse who becomes a U.S. citizen after the death of the deceased spouse to take into account the DSUE amount of such deceased spouse. Because a surviving spouse who becomes a U.S. citizen is subject to the estate and gift tax rules of chapter 11 and 12 that apply to U.S. citizens and residents, the Treasury Department and the IRS believe it is appropriate that such a surviving spouse be permitted to take into account the DSUE amount available from any deceased spouse as of the date such surviving spouse becomes a U.S. citizen, provided the deceased spouse's executor has made the portability election. Accordingly, the final regulations include such a rule in §§20.2010-3 and 25.2505-2.

8. Effect of Portability Election on Application of Rev. Proc. 2001-38

Multiple commenters have requested guidance on the application of Rev. Proc. 2001-38, 2001-24 IRB 1335, when an estate makes a portability election under section 2010(c)(5)(A) as well as an election under section 2056(b)(7) to treat qualified terminable interest property (QTIP) as passing to the surviving spouse for purposes of the marital deduction.

Rev. Proc. 2001-38 provides a procedure by which the IRS will disregard and treat as a nullity for Federal estate, gift, and generation-skipping transfer tax purposes a QTIP election made under section 2056(b)(7) in cases where the election was not necessary to reduce the estate tax liability to zero. The commenter notes that, with the introduction of portability of a deceased spouse's unused exclusion amount, an executor may purposefully elect both portability and QTIP treatment and the rationale for the rule voiding the election in Rev. Proc. 2001-38 (that the election was of no benefit to the taxpayer) is no longer applicable. The Treasury Department and the IRS intend to provide guidance, by publication in the Internal Revenue Bulletin, to clarify whether a QTIP election made under section 2056(b)(7) may be disregarded and treated as null and void when an executor has elected portability of the DSUE amount under section 2010(c)(5)(A).

9. Incorrect Basic Exclusion Amount in Examples

A commenter noted that §§20.2010-3T and 25.2505-2T include an incorrect basic exclusion amount for the applicable year in the examples. The final regulations correct this mistake.

10. Order of Credits

The NPRM requested comments on, and reserved §20.2010-2(c)(3) to provide guidance on, the impact of the credits in sections 2012 through 2015 on computing the DSUE amount. One comment was received, and advocated for a rule in computing the DSUE amount that the tentative tax is equal to the net estate tax after the application of all available credits. The commenter stated that a deceased spouse's applicable credit

amount should not be applied to the extent one or more of the estate tax credits are available to reduce the decedent's estate tax.

The amount of the allowable credit in sections 2012 through 2015 can be determined only after subtracting from the tax imposed by section 2001 the applicable credit amount determined under section 2010. Accordingly, to the extent the applicable credit amount is applied to reduce the tax imposed by section 2001 to zero, the credits in sections 2012 through 2015 are not available. The rule in section 2010(c)(4) for computing the DSUE amount does not take into account any unused credits arising under sections 2012 through 2015. Based on these considerations, the Treasury Department and the IRS conclude that no adjustment to the computation of the DSUE amount to account for any unused credits is warranted. Accordingly, §20.2010-2(c)(3) of the final regulations clarifies that eligibility for credits against the tax imposed by section 2001 does not factor into the computation of the DSUE amount.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory flexibility assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these final 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

affected. 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, the 2012 temporary regulations, as well as the cross-referencing notice of proposed rulemaking preceding these final regulations, were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small entities, and no comments were received.

Statement of Availability for Documents Published in the Internal Revenue Bulletin

For copies of recently issued revenue procedures, revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin, please visit the IRS Web site at <http://www.irs.gov>.

Drafting Information

The principal author of these final 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.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 20, 25, and 602 are 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 removing the entries for §§20.2010-0T, 20.2010-1T, 20.2010-2T, and 20.2010-3T and adding entries in numerical order to read in part 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.

(a) General rule. Notwithstanding §20.2001-1(b), §§20.2010-2(d) and 20.2010-3(d) provide additional rules regarding the authority of the Internal Revenue Service to examine any gift or other tax return(s), even if the time within which a tax may be assessed under section 6501 has expired, for the purpose of determining the deceased spousal unused exclusion amount available under section 2010(c) of the Internal Revenue Code.

(b) Effective/applicability date. Paragraph (a) of this section applies to the estates of decedents dying on or after June 12, 2015. See 26 CFR 20.2001-2T(a), as contained in 26 CFR part 20, revised as of April 1, 2015, for the rules applicable to estates of decedents dying on or after January 1, 2011, and before June 12, 2015.

§20.2001-2T [Removed]

Par. 3. Section 20.2001-2T is removed.

Par. 4. Section 20.2010-0 is added to read as follows:

§20.2010-0 Table of contents.

This section lists the table of contents for §§20.2010-1 through 20.2010-3.

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

- (a) General rule.
- (b) Special rule in case of certain gifts made before 1977.
- (c) Credit limitation.
- (d) Explanation of terms.
 - (1) Applicable credit amount.
 - (2) Applicable exclusion amount.
 - (3) Basic exclusion amount.
 - (4) Deceased spousal unused exclusion (DSUE) amount.
 - (5) Last deceased spouse.
- (e) Effective/applicability date.

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

- (a) Election required for portability.
 - (1) Timely filing required.
 - (2) Portability election upon filing of estate tax return.
 - (3) Portability election not made; requirements for election not to apply.
 - (4) Election irrevocable.
 - (5) Estates eligible to make the election.
 - (6) Persons permitted to make the election.
 - (7) Requirements of return.
- (b) Requirement for DSUE computation on estate tax return.
- (c) Computation of the DSUE amount.
 - (1) General rule.
 - (2) Special rule to consider gift taxes paid by decedent.
 - (3) Impact of applicable credits.
 - (4) Special rule in case of property passing to qualified domestic trust.
 - (5) Examples.
- (d) Authority to examine returns of decedent.
- (e) Effective/applicability date.

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

- (a) Surviving spouse's estate limited to DSUE amount of last deceased spouse.
 - (1) In general.

- (2) No DSUE amount available from last deceased spouse.
- (3) Identity of last deceased spouse unchanged by subsequent marriage or divorce.
- (b) Special rule in case of multiple deceased spouses and previously-applied DSUE amount.
 - (1) In general.
 - (2) Example.
- (c) Date DSUE amount taken into consideration by surviving spouse's estate.
 - (1) General rule.
 - (2) Exception when surviving spouse not a U.S. citizen on date of deceased spouse's death.
 - (3) Special rule when property passes to surviving spouse in a qualified domestic trust.
- (d) Authority to examine returns of deceased spouses.
- (e) Availability of DSUE amount for estates of nonresidents who are not citizens.
- (f) Effective/applicability date.

§20.2010-0T [Removed]

Par. 5. Section 20.2010-0T is removed.

Par. 6. Section 20.2010-1 is added to read as follows:

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

(a) General rule. Section 2010(a) allows the estate of every decedent a credit against the estate tax imposed by section 2001. The allowable credit is the applicable credit amount. See paragraph (d)(1) of this section for an explanation of the term applicable credit amount.

(b) Special rule in case of certain gifts made before 1977. The applicable credit amount allowable under paragraph (a) of this section must be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) for gifts made by the decedent after September 8, 1976, and before January 1, 1977.

(c) Credit limitation. The applicable credit amount allowed under paragraph (a) of this section cannot exceed the amount of the estate tax imposed by section 2001.

(d) Explanation of terms. The explanation of terms in this section applies to this section and to §§20.2010-2 and 20.2010-3.

(1) Applicable credit amount. The term applicable credit amount refers to the allowable credit against estate tax imposed by section 2001 and gift tax imposed by section 2501. The applicable credit amount equals the amount of the tentative tax that would be determined under section 2001(c) if the amount on which such tentative tax is to be computed were equal to the applicable exclusion amount. The applicable credit amount is determined by applying the unified rate schedule in section 2001(c) to the applicable exclusion amount.

(2) Applicable exclusion amount. The applicable exclusion amount equals the sum of the basic exclusion amount and, in the case of a surviving spouse, the deceased spousal unused exclusion (DSUE) amount.

(3) Basic exclusion amount. The basic exclusion amount is the sum of--

(i) For any decedent dying in calendar year 2011, \$5,000,000; and

(ii) For any decedent dying after calendar year 2011, \$5,000,000 multiplied by the cost-of-living adjustment determined under section 1(f)(3) for that calendar year by substituting “calendar year 2010” for “calendar year 1992” in section 1(f)(3)(B) and by rounding to the nearest multiple of \$10,000.

(4) Deceased spousal unused exclusion (DSUE) amount. The term DSUE amount refers, generally, to the unused portion of a decedent’s applicable exclusion amount to the extent this amount does not exceed the basic exclusion amount in effect in the year of the decedent’s death. For the rules on computing the DSUE amount, see §§20.2010-2(c) and 20.2010-3(b).

(5) Last deceased spouse. The term last deceased spouse means the most recently deceased individual who, at that individual's death after December 31, 2010, was married to the surviving spouse. See §§20.2010-3(a) and 25.2505-2(a) for additional rules pertaining to the identity of the last deceased spouse for purposes of determining the applicable exclusion amount of the surviving spouse.

(e) Effective/applicability date. This section applies to the estates of decedents dying on or after June 12, 2015. See 26 CFR 20.2010-1T, as contained in 26 CFR part 20, revised as of April 1, 2015, for the rules applicable to estates of decedents dying on or after January 1, 2011, and before June 12, 2015.

§20.2010-1T [Removed]

Par. 7. Section 20.2010-1T is removed.

Par. 8. 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

(a) Election required for portability. To allow a decedent's surviving spouse to take into account that decedent's deceased spousal unused exclusion (DSUE) amount, the executor of the decedent's estate must elect portability of the DSUE amount on a timely filed Form 706, "United States Estate (and Generation-Skipping Transfer) Tax Return" (estate tax return). This election is referred to in this section and in §20.2010-3 as the portability election.

(1) Timely filing required. An estate that elects portability will be considered, for purposes of subtitle B and subtitle F of the Internal Revenue Code (Code), to be required to file a return under section 6018(a). Accordingly, the due date of an estate

tax return required to elect portability is nine months after the decedent's date of death or the last day of the period covered by an extension (if an extension of time for filing has been obtained). See §§20.6075-1 and 20.6081-1 for additional rules relating to the time for filing estate tax returns. An extension of time to elect portability under this paragraph (a) will not be granted under §301.9100-3 of this chapter to an estate that is required to file an estate tax return under section 6018(a), as determined without regard to this paragraph (a). Such an extension, however, may be available under the procedures applicable under §§301.9100-1 and 301.9100-3 of this chapter to an estate that is not required to file a return under section 6018(a), as determined without regard to this paragraph (a).

(2) Portability election upon filing of estate tax return. Upon the timely filing of a complete and properly prepared estate tax return, an executor of an estate of a decedent survived by a spouse will have elected portability of the decedent's DSUE amount unless the executor chooses not to elect portability and satisfies the requirement in paragraph (a)(3)(i) of this section. See paragraph (a)(7) of this section for the return requirements related to the portability election.

(3) Portability election not made; requirements for election not to apply. The executor of the estate of a decedent survived by a spouse will not make or be considered to make the portability election if either of the following applies:

(i) The executor states affirmatively on a timely filed estate tax return, or in an attachment to that estate tax return, that the estate is not electing portability under section 2010(c)(5). The manner in which the executor may make this affirmative

statement on the estate tax return is as set forth in the instructions issued with respect to such form (“Instructions for Form 706”).

(ii) The executor does not timely file an estate tax return in accordance with paragraph (a)(1) of this section.

(4) Election irrevocable. An executor of the estate of a decedent survived by a spouse who timely files an estate tax return may make or may supersede a portability election previously made, provided that the estate tax return reporting the election or the superseding election is filed on or before the due date of the return, including extensions actually granted. However, see paragraph (a)(6) of this section when contrary elections are made by more than one person permitted to make the election. The portability election, once made, becomes irrevocable once the due date of the estate tax return, including extensions actually granted, has passed.

(5) Estates eligible to make the election. An executor may elect portability on behalf of the estate of a decedent survived by a spouse if the decedent dies on or after January 1, 2011. However, an executor of the estate of a nonresident decedent who was not a citizen of the United States at the time of death may not elect portability on behalf of that decedent, and the timely filing of such a decedent’s estate tax return will not constitute the making of a portability election.

(6) Persons permitted to make the election--(i) Appointed executor. An executor or administrator of the estate of a decedent survived by a spouse that is appointed, qualified, and acting within the United States, within the meaning of section 2203 (an appointed executor), may timely file the estate tax return on behalf of the estate of the decedent and, in so doing, elect portability of the decedent’s DSUE amount. An

appointed executor also may elect not to have portability apply pursuant to paragraph (a)(3) of this section.

(ii) Non-appointed executor. If there is no appointed executor, any person in actual or constructive possession of any property of the decedent (a non-appointed executor) may timely file the estate tax return on behalf of the estate of the decedent and, in so doing, elect portability of the decedent's DSUE amount, or, by complying with paragraph (a)(3) of this section, may elect not to have portability apply. A portability election made by a non-appointed executor when there is no appointed executor for that decedent's estate can be superseded by a subsequent contrary election made by an appointed executor of that same decedent's estate on an estate tax return filed on or before the due date of the return, including extensions actually granted. An election to allow portability made by a non-appointed executor cannot be superseded by a contrary election to have portability not apply made by another non-appointed executor of that same decedent's estate (unless such other non-appointed executor is the successor of the non-appointed executor who made the election). See §20.6018-2 for additional rules relating to persons permitted to file the estate tax return.

(7) Requirements of return--(i) General rule. An estate tax return will be considered complete and properly prepared for purposes of this section if it is prepared in accordance with the instructions issued for the estate tax return (Instructions for Form 706) and if the requirements of §§20.6018-2, 20.6018-3, and 20.6018-4 are satisfied. However, see paragraph (a)(7)(ii) of this section for reduced requirements applicable to certain property of certain estates.

(ii) Reporting of value not required for certain property--(A) In general. A special rule applies with respect to certain property of estates in which the executor is not required to file an estate tax return under section 6018(a), as determined without regard to paragraph (a)(1) of this section. With respect to such an estate, for bequests, devises, or transfers of property included in the gross estate, the value of which is deductible under section 2056 or 2056A (marital deduction property) or under section 2055(a) (charitable deduction property), an executor is not required to report a value for such property on the estate tax return (except to the extent provided in this paragraph (a)(7)(ii)(A)) and will be required to report only the description, ownership, and/or beneficiary of such property, along with all other information necessary to establish the right of the estate to the deduction in accordance with §§20.2056(a)-1(b)(i) through (iii) and 20.2055-1(c), as applicable. However, this rule does not apply in certain circumstances as provided in this paragraph (a) and as may be further described in guidance issued from time to time by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter). In particular, this rule does not apply to marital deduction property or charitable deduction property if--

(1) The value of such property relates to, affects, or is needed to determine, the value passing from the decedent to a recipient other than the recipient of the marital or charitable deduction property;

(2) The value of such property is needed to determine the estate's eligibility for the provisions of sections 2032, 2032A, or another estate or generation-skipping transfer tax provision of the Code for which the value of such property or the value of

the gross estate or adjusted gross estate must be known (not including section 1014 of the Code);

(3) Less than the entire value of an interest in property includible in the decedent's gross estate is marital deduction property or charitable deduction property; or

(4) A partial disclaimer or partial qualified terminable interest property (QTIP) election is made with respect to a bequest, devise, or transfer of property includible in the gross estate, part of which is marital deduction property or charitable deduction property.

(B) Return requirements when reporting of value not required for certain property.

Paragraph (a)(7)(ii)(A) of this section applies only if the executor exercises due diligence to estimate the fair market value of the gross estate, including the property described in paragraph (a)(7)(ii)(A) of this section. Using the executor's best estimate of the value of properties to which paragraph (a)(7)(ii)(A) of this section applies, the executor must report on the estate tax return, under penalties of perjury, the amount corresponding to the particular range within which falls the executor's best estimate of the total gross estate, in accordance with the Instructions for Form 706.

(C) Examples. The following examples illustrate the application of paragraph (a)(7)(ii) of this section. In each example, assume that Husband (H) dies in 2015, survived by his wife (W), that both H and W are U.S. citizens, that H's gross estate does not exceed the excess of the applicable exclusion amount for the year of his death over the total amount of H's adjusted taxable gifts and any specific exemption

under section 2521, and that H's executor (E) timely files Form 706 solely to make the portability election.

Example 1. (i) Facts. The assets includible in H's gross estate consist of a parcel of real property and bank accounts held jointly with W with rights of survivorship, a life insurance policy payable to W, and a survivor annuity payable to W for her life. H made no taxable gifts during his lifetime.

(ii) Application. E files an estate tax return on which these assets are identified on the proper schedule, but E provides no information on the return with regard to the date of death value of these assets in accordance with paragraph (a)(7)(ii)(A) of this section. To establish the estate's entitlement to the marital deduction in accordance with §20.2056(a)-1(b) (except with regard to establishing the value of the property) and the instructions for the estate tax return, E includes with the estate tax return evidence to verify the title of each jointly held asset, to confirm that W is the sole beneficiary of both the life insurance policy and the survivor annuity, and to verify that the annuity is exclusively for W's life. Finally, E reports on the estate return E's best estimate, determined by exercising due diligence, of the fair market value of the gross estate in accordance with paragraph (a)(7)(ii)(B) of this section. The estate tax return is considered complete and properly prepared and E has elected portability.

Example 2. (i) Facts. H's will, duly admitted to probate and not subject to any proceeding to challenge its validity, provides that H's entire estate is to be distributed outright to W. The non-probate assets includible in H's gross estate consist of a life insurance policy payable to H's children from a prior marriage, and H's individual retirement account (IRA) payable to W. H made no taxable gifts during his lifetime.

(ii) Application. E files an estate tax return on which all of the assets includible in the gross estate are identified on the proper schedule. In the case of the probate assets and the IRA, no information is provided with regard to date of death value in accordance with paragraph (a)(7)(ii)(A) of this section. However, E attaches a copy of H's will and describes each such asset and its ownership to establish the estate's entitlement to the marital deduction in accordance with the instructions for the estate tax return and §20.2056(a)-1(b) (except with regard to establishing the value of the property). In the case of the life insurance policy payable to H's children, all of the regular return requirements, including reporting and establishing the fair market value of such asset, apply. Finally, E reports on the estate return E's best estimate, determined by exercising due diligence, of the fair market value of the gross estate in accordance with paragraph (a)(7)(ii)(B) of this section. The estate tax return is considered complete and properly prepared and E has elected portability.

Example 3. (i) Facts. H's will, duly admitted to probate and not subject to any proceeding to challenge its validity, provides that 50 percent of the property passing under the terms of H's will is to be paid to a marital trust for W and 50 percent is to be paid to a trust for W and their descendants.

(ii) Application. The amount passing to the non-marital trust cannot be verified without knowledge of the full value of the property passing under the will. Therefore, the value of the property of the marital trust relates to or affects the value passing to the trust for W and the descendants of H and W. Accordingly, the general return requirements apply to all of the property includible in the gross estate and the provisions of paragraph (a)(7)(ii) of this section do not apply.

(b) Requirement for DSUE computation on estate tax return. Section 2010(c)(5)(A) requires an executor of a decedent's estate to include a computation of the DSUE amount on the estate tax return to elect portability and thereby allow the decedent's surviving spouse to take into account that decedent's DSUE amount. This requirement is satisfied by the timely filing of a complete and properly prepared estate tax return, as long as the executor has not elected out of portability as described in paragraph(a)(3)(i) of this section. See paragraph (a)(7) of this section for the requirements for a return to be considered complete and properly prepared.

(c) Computation of the DSUE amount--(1) General rule. Subject to paragraphs (c)(2) through (4) of this section, the DSUE amount of a decedent with a surviving spouse is the lesser of the following amounts--

(i) The basic exclusion amount in effect in the year of the death of the decedent;

or

(ii) The excess of--

(A) The decedent's applicable exclusion amount; over

(B) The sum of the amount of the taxable estate and the amount of the adjusted taxable gifts of the decedent, which together is the amount on which the tentative tax on the decedent's estate is determined under section 2001(b)(1).

(2) Special rule to consider gift taxes paid by decedent. Solely for purposes of computing the decedent's DSUE amount, the amount of the adjusted taxable gifts of the decedent referred to in paragraph (c)(1)(ii)(B) of this section is reduced by the amount, if any, on which gift taxes were paid for the calendar year of the gift(s).

(3) Impact of applicable credits. An estate's eligibility under sections 2012 through 2015 for credits against the tax imposed by section 2001 does not impact the computation of the DSUE amount.

(4) Special rule in case of property passing to qualified domestic trust--(i) In general. When property passes for the benefit of a surviving spouse in a qualified domestic trust (QDOT) as defined in section 2056A(a), the DSUE amount of the decedent is computed on the decedent's estate tax return for the purpose of electing portability in the same manner as this amount is computed under paragraph (c)(1) of this section, but this DSUE amount is subject to subsequent adjustments. The DSUE amount of the decedent must be redetermined upon the occurrence of the final distribution or other event (generally, the termination of all QDOTs created by or funded with assets passing from the decedent or the death of the surviving spouse) on which estate tax is imposed under section 2056A. See §20.2056A-6 for the rules on determining the estate tax under section 2056A. See §20.2010-3(c)(3) regarding the timing of the availability of the decedent's DSUE amount to the surviving spouse.

(ii) Surviving spouse becomes a U.S. citizen. If the surviving spouse becomes a U.S. citizen and if the requirements of section 2056A(b)(12) and the corresponding regulations are satisfied, the estate tax imposed under section 2056A(b)(1) ceases to apply. Accordingly, no estate tax will be imposed under section 2056A either on

subsequent QDOT distributions or on the property remaining in the QDOT on the surviving spouse's death and the decedent's DSUE amount is no longer subject to adjustment.

(5) Examples. The following examples illustrate the application of this paragraph (c):

Example 1. Computation of DSUE amount. (i) Facts. In 2002, having made no prior taxable gift, Husband (H) makes a taxable gift valued at \$1,000,000 and reports the gift on a timely filed gift tax return. Because the amount of the gift is equal to the applicable exclusion amount for that year (\$1,000,000), \$345,800 is allowed as a credit against the tax, reducing the gift tax liability to zero. H dies in 2015, survived by Wife (W). H and W are U.S. citizens and neither has any prior marriage. H's taxable estate is \$1,000,000. The executor of H's estate timely files H's estate tax return and elects portability, thereby allowing W to benefit from H's DSUE amount.

(ii) Application. The executor of H's estate computes H's DSUE amount to be \$3,430,000 (the lesser of the \$5,430,000 basic exclusion amount in 2015, or the excess of H's \$5,430,000 applicable exclusion amount over the sum of the \$1,000,000 taxable estate and the \$1,000,000 amount of adjusted taxable gifts).

Example 2. Computation of DSUE amount when gift tax paid. (i) Facts. The facts are the same as in Example 1 of this paragraph (c)(5) except that the value of H's taxable gift in 2002 is \$2,000,000. After application of the applicable credit amount, H owes gift tax on \$1,000,000, the amount of the gift in excess of the applicable exclusion amount for that year. H pays the gift tax owed on the 2002 transfer.

(ii) Application. On H's death, the executor of H's estate computes the DSUE amount to be \$3,430,000 (the lesser of the \$5,430,000 basic exclusion amount in 2015, or the excess of H's \$5,430,000 applicable exclusion amount over the sum of the \$1,000,000 taxable estate and \$1,000,000 of adjusted taxable gifts sheltered from tax by H's applicable credit amount). H's adjusted taxable gifts of \$2,000,000 were reduced for purposes of this computation by \$1,000,000, the amount of taxable gifts on which gift taxes were paid.

Example 3. Computation of DSUE amount when QDOT created. (i) Facts. Husband (H), a U.S. citizen, makes his first taxable gift in 2002, valued at \$1,000,000, and reports the gift on a timely filed gift tax return. No gift tax is due because the applicable exclusion amount for that year (\$1,000,000) equals the fair market value of the gift. H dies in 2015 with a gross estate of \$2,000,000. H's surviving spouse (W) is a resident, but not a citizen, of the United States and, under H's will, a pecuniary bequest of \$1,500,000 passes to a QDOT for the benefit of W. H's executor timely files an estate tax return and makes the QDOT election for the property passing to the QDOT,

and H's estate is allowed a marital deduction of \$1,500,000 under section 2056(d) for the value of that property. H's taxable estate is \$500,000. On H's estate tax return, H's executor computes H's preliminary DSUE amount to be \$3,930,000 (the lesser of the \$5,430,000 basic exclusion amount in 2015, or the excess of H's \$5,430,000 applicable exclusion amount over the sum of the \$500,000 taxable estate and the \$1,000,000 adjusted taxable gifts). No taxable events within the meaning of section 2056A occur during W's lifetime with respect to the QDOT, and W makes no taxable gifts. At all times since H's death, W has been a U.S. resident. In 2017, W dies and the value of the assets of the QDOT is \$1,800,000.

(ii) Application. H's DSUE amount is redetermined to be \$2,130,000 (the lesser of the \$5,430,000 basic exclusion amount in 2015, or the excess of H's \$5,430,000 applicable exclusion amount over \$3,300,000 (the sum of the \$500,000 taxable estate augmented by the \$1,800,000 of QDOT assets and the \$1,000,000 adjusted taxable gifts)).

Example 4. Computation of DSUE amount when surviving spouse with QDOT becomes a U.S. citizen. (i) Facts. The facts are the same as in Example 3 of this paragraph (c)(5) except that W becomes a U.S. citizen in 2016 and dies in 2018. The U.S. Trustee of the QDOT notifies the IRS that W has become a U.S. citizen by timely filing a final estate tax return (Form 706-QDT). Pursuant to section 2056A(b)(12), the estate tax under section 2056A no longer applies to the QDOT property.

(ii) Application. Because H's DSUE amount no longer is subject to adjustment once W becomes a citizen of the United States, H's DSUE amount is \$3,930,000, as it was preliminarily determined as of H's death. Upon W's death in 2018, the value of the QDOT property is includible in W's gross estate.

(d) Authority to examine returns of decedent. The IRS may examine returns of a decedent in determining the decedent's DSUE amount, regardless of whether the period of limitations on assessment has expired for that return. See §20.2010-3(d) for additional rules relating to the IRS's authority to examine returns. See also section 7602 for the IRS's authority, when ascertaining the correctness of any return, to examine any returns that may be relevant or material to such inquiry.

(e) Effective/applicability date. This section applies to the estates of decedents dying on or after June 12, 2015. See 26 CFR 20.2010-2T, as contained in 26 CFR part

20, revised as of April 1, 2015, for the rule applicable to estates of decedents dying on or after January 1, 2011, and before June 12, 2015.

§20.2010-2T [Removed]

Par. 9. Section 20.2010-2T is removed.

Par. 10. Section 20.2010-3 is added to read as follows:

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

(a) Surviving spouse's estate limited to DSUE amount of last deceased spouse--

(1) In general. The deceased spousal unused exclusion (DSUE) amount of a decedent, computed under §20.2010-2(c), is included in determining the surviving spouse's applicable exclusion amount under section 2010(c)(2), provided--

(i) Such decedent is the last deceased spouse of such surviving spouse within the meaning of §20.2010-1(d)(5) on the date of the death of the surviving spouse; and

(ii) The executor of the decedent's estate elected portability (see §20.2010-2(a) and (b) for applicable requirements).

(2) No DSUE amount available from last deceased spouse. If the last deceased spouse of such surviving spouse had no DSUE amount, or if the executor of such a decedent's estate did not make a portability election, the surviving spouse's estate has no DSUE amount (except as provided in paragraph (b)(1)(ii) of this section) to be included in determining the applicable exclusion amount, even if the surviving spouse previously had a DSUE amount available from another decedent who, prior to the death of the last deceased spouse, was the last deceased spouse of such surviving spouse. See paragraph (b) of this section for a special rule in the case of multiple deceased spouses and a previously applied DSUE amount.

(3) Identity of last deceased spouse unchanged by subsequent marriage or divorce. A decedent is the last deceased spouse (as defined in §20.2010-1(d)(5)) of a surviving spouse even if, on the date of the death of the surviving spouse, the surviving spouse is married to another (then-living) individual. If a surviving spouse marries again and that marriage ends in divorce or an annulment, the subsequent death of the divorced spouse does not end the status of the prior deceased spouse as the last deceased spouse of the surviving spouse. The divorced spouse, not being married to the surviving spouse at death, is not the last deceased spouse as that term is defined in §20.2010-1(d)(5).

(b) Special rule in case of multiple deceased spouses and previously-applied DSUE amount--(1) In general. A special rule applies to compute the DSUE amount included in the applicable exclusion amount of a surviving spouse who previously has applied the DSUE amount of one or more deceased spouses to taxable gifts in accordance with §25.2505-2(b) and (c). If a surviving spouse has applied the DSUE amount of one or more (successive) last deceased spouses to the surviving spouse's transfers during life, and if any of those last deceased spouses is different from the surviving spouse's last deceased spouse as defined in §20.2010-1(d)(5) at the time of the surviving spouse's death, then the DSUE amount to be included in determining the applicable exclusion amount of the surviving spouse at the time of the surviving spouse's death is the sum of--

(i) The DSUE amount of the surviving spouse's last deceased spouse as described in paragraph (a)(1) of this section; and

(ii) The DSUE amount of each other deceased spouse of the surviving spouse, to the extent that such amount was applied to one or more taxable gifts of the surviving spouse.

(2) Example. The following example, in which all described individuals are U.S. citizens, illustrates the application of this paragraph (b):

Example. (i) Facts. Husband 1 (H1) dies in 2011, survived by Wife (W). Neither has made any taxable gifts during H1's lifetime. H1's executor elects portability of H1's DSUE amount. The DSUE amount of H1 as computed on the estate tax return filed on behalf of H1's estate is \$5,000,000. In 2012, W makes taxable gifts to her children valued at \$2,000,000. W reports the gifts on a timely filed gift tax return. W is considered to have applied \$2,000,000 of H1's DSUE amount to the amount of taxable gifts, in accordance with §25.2505-2(c), and, therefore, W owes no gift tax. W has an applicable exclusion amount remaining in the amount of \$8,120,000 (\$3,000,000 of H1's remaining DSUE amount plus W's own \$5,120,000 basic exclusion amount). W marries Husband 2 (H2) in 2013. H2 dies in 2014. H2's executor elects portability of H2's DSUE amount, which is properly computed on H2's estate tax return to be \$2,000,000. W dies in 2015.

(ii) Application. The DSUE amount to be included in determining the applicable exclusion amount available to W's estate is \$4,000,000, determined by adding the \$2,000,000 DSUE amount of H2 and the \$2,000,000 DSUE amount of H1 that was applied by W to W's 2012 taxable gifts. The \$4,000,000 DSUE amount added to W's \$5,430,000 basic exclusion amount (for 2015), causes W's applicable exclusion amount to be \$9,430,000.

(c) Date DSUE amount taken into consideration by surviving spouse's estate--

(1) General rule. A portability election made by an executor of a decedent's estate (see §20.2010-2(a) and (b) for applicable requirements) generally applies as of the date of the decedent's death. Thus, such decedent's DSUE amount is included in the applicable exclusion amount of the decedent's surviving spouse under section 2010(c)(2) and will be applicable to transfers made by the surviving spouse after the decedent's death (subject to the limitations in paragraph (a) of this section). However, such decedent's DSUE amount will not be included in the applicable

exclusion amount of the surviving spouse, even if the surviving spouse had made a transfer in reliance on the availability or computation of the decedent's DSUE amount:

(i) If the executor of the decedent's estate supersedes the portability election by filing a subsequent estate tax return in accordance with §20.2010-2(a)(4);

(ii) To the extent that the DSUE amount subsequently is reduced by a valuation adjustment or the correction of an error in calculation; or

(iii) To the extent that the surviving spouse cannot substantiate the DSUE amount claimed on the surviving spouse's return.

(2) Exception when surviving spouse not a U.S. citizen on date of deceased spouse's death. If a surviving spouse becomes a citizen of the United States after the death of the surviving spouse's last deceased spouse, the DSUE amount of the surviving spouse's last deceased spouse becomes available to the surviving spouse on the date the surviving spouse becomes a citizen of the United States (subject to the limitations in paragraph (a) of this section). However, when the special rule regarding qualified domestic trusts in paragraph (c)(3) of this section applies, the earliest date on which a decedent's DSUE amount may be included in the applicable exclusion amount of such decedent's surviving spouse who becomes a U.S. citizen is as provided in paragraph (c)(3) of this section.

(3) Special rule when property passes to surviving spouse in a qualified domestic trust--(i) In general. When property passes from a decedent for the benefit of the decedent's surviving spouse in one or more qualified domestic trusts (QDOT) as defined in section 2056A(a) and the decedent's executor elects portability, the DSUE amount available to be included in the applicable exclusion amount of the surviving

spouse under section 2010(c)(2) is the DSUE amount of the decedent as redetermined in accordance with §20.2010-2(c)(4) (subject to the limitations in paragraph (a) of this section). The earliest date on which such decedent's DSUE amount may be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) is the date of the occurrence of the final QDOT distribution or final other event (generally, the termination of all QDOTs created by or funded with assets passing from the decedent or the death of the surviving spouse) on which tax under section 2056A is imposed. However, the decedent's DSUE amount as redetermined in accordance with §20.2010-2(c)(4) may be applied to certain taxable gifts of the surviving spouse. See §25.2505-2(d)(3)(i).

(ii) Surviving spouse becomes a U.S. citizen. If a surviving spouse for whom property has passed from a decedent in one or more QDOTs becomes a citizen of the United States and the requirements in section 2056A(b)(12) and the corresponding regulations are satisfied, then the date on which such decedent's DSUE amount may be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) (subject the limitations in paragraph (a) of this section) is the date on which the surviving spouse becomes a citizen of the United States. See §20.2010-2(c)(4) for the rules for computing the decedent's DSUE amount in the case of a qualified domestic trust.

(d) Authority to examine returns of deceased spouses. For the purpose of determining the DSUE amount to be included in the applicable exclusion amount of a surviving spouse, the Internal Revenue Service (IRS) may examine returns of each of the surviving spouse's deceased spouses whose DSUE amount is claimed to be

included in the surviving spouse's applicable exclusion amount, regardless of whether the period of limitations on assessment has expired for any such return. The IRS's authority to examine returns of a deceased spouse applies with respect to each transfer by the surviving spouse to which a DSUE amount is or has been applied. Upon examination, the IRS may adjust or eliminate the DSUE amount reported on such a return of a deceased spouse; however, the IRS may assess additional tax on that return only if that tax is assessed within the period of limitations on assessment under section 6501 applicable to the tax shown on that return. See also section 7602 for the IRS's authority, when ascertaining the correctness of any return, to examine any returns that may be relevant or material to such inquiry. For purposes of these examinations to determine the DSUE amount, the surviving spouse is considered to have a material interest that is affected by the return information of the deceased spouse within the meaning of section 6103(e)(3).

(e) Availability of DSUE amount for estates of nonresidents who are not citizens.

The estate of a nonresident surviving spouse who is not a citizen of the United States at the time of such surviving spouse's death shall not take into account the DSUE amount of any deceased spouse of such surviving spouse within the meaning of §20.2010-1(d)(5) except to the extent allowed under any applicable treaty obligation of the United States. See section 2102(b)(3).

(f) Effective/applicability date. This section applies to the estates of decedents dying on or after June 12, 2015. See 26 CFR 20.2010-3T, as contained in 26 CFR part 20, revised as of April 1, 2015, for the rules applicable to estates of decedents dying on or after January 1, 2011, and before June 12, 2015.

§20.2010-3T [Removed]

Par. 11. Section 20.2010-3T is removed.

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

Par. 12. The authority citation for part 25 is amended by removing the entry for §25.2505-2T and adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805.

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

* * * * *

Par. 13. Section 25.2505-0 is added to read as follows:

§25.2505-0 Table of contents.

This section lists the table of contents for §§25.2505-1 and 25.2505-2.

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

- (a) General rule.
- (b) Applicable rate of tax.
- (c) Special rule in case of certain gifts made before 1977.
- (d) Credit limitation.
- (e) Effective/applicability date.

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

- (a) Donor who is surviving spouse is limited to DSUE amount of last deceased spouse.
 - (1) In general.
 - (2) No DSUE amount available from last deceased spouse.
 - (3) Identity of last deceased spouse unchanged by subsequent marriage or divorce.
- (b) Manner in which DSUE amount is applied.
- (c) Special rule in case of multiple deceased spouses and previously-applied DSUE amount.
 - (1) In general.
 - (2) Example.
 - (d) Date DSUE amount taken into consideration by donor who is a surviving spouse.
 - (1) General rule.
 - (2) Exception when surviving spouse not a U.S. citizen on date of deceased spouse's death.
 - (3) Special rule when property passes to surviving spouse in a qualified domestic trust.

- (e) Authority to examine returns of deceased spouses.
- (f) Availability of DSUE amount for nonresidents who are not citizens.
- (g) Effective/applicability date.

§25.2505-0T [Removed]

Par. 14. Section 25.2505-0T is removed.

Par. 15. Section 25.2505-1 is added to read as follows:

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

(a) General rule. Section 2505(a) allows a citizen or resident of the United States a credit against the tax imposed by section 2501 for each calendar year. The allowable credit is the applicable credit amount in effect under section 2010(c) that would apply if the donor died as of the end of the calendar year, reduced by the sum of the amounts allowable as a credit against the gift tax due for all preceding calendar periods. See §§25.2505-2, 20.2010-1, and 20.2010-2 for additional rules and definitions related to determining the applicable credit amount in effect under section 2010(c).

(b) Applicable rate of tax. In determining the amounts allowable as a credit against the gift tax due for all preceding calendar periods, the unified rate schedule under section 2001(c) in effect for such calendar year applies instead of the rates of tax actually in effect for preceding calendar periods. See sections 2505(a) and 2502(a)(2).

(c) Special rule in case of certain gifts made before 1977. The applicable credit amount allowable under paragraph (a) of this section must be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) for gifts made by the decedent after September 8, 1976, and before January 1, 1977.

(d) Credit limitation. The applicable credit amount allowed under paragraph (a) of this section for any calendar year shall not exceed the amount of the tax imposed by section 2501 for such calendar year.

(e) Effective/applicability date. This section applies to gifts made on or after June 12, 2015. See 26 CFR 25.2505-1T, as contained in 26 CFR part 25, revised as of April 1, 2015, for the rules applicable to gifts made on or after January 1, 2011, and before June 12, 2015.

§25.2505-1T [Removed]

Par. 16. Section 25.2505-1T is removed.

Par. 17. Section 25.2505-2 is added to read as follows:

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

(a) Donor who is surviving spouse is limited to DSUE amount of last deceased spouse--(1) In general. In computing a surviving spouse's gift tax liability with regard to a transfer subject to the tax imposed by section 2501 (taxable gift), a deceased spousal unused exclusion (DSUE) amount of a decedent, computed under §20.2010-2(c), is included in determining the surviving spouse's applicable exclusion amount under section 2010(c)(2), provided:

(i) Such decedent is the last deceased spouse of such surviving spouse within the meaning of §20.2010-1(d)(5) at the time of the surviving spouse's taxable gift; and

(ii) The executor of the decedent's estate elected portability (see §20.2010-2(a) and (b) for applicable requirements).

(2) No DSUE amount available from last deceased spouse. If on the date of the surviving spouse's taxable gift the last deceased spouse of such surviving spouse had

no DSUE amount or if the executor of the estate of such last deceased spouse did not elect portability, the surviving spouse has no DSUE amount (except as and to the extent provided in paragraph (c)(1)(ii) of this section) to be included in determining his or her applicable exclusion amount, even if the surviving spouse previously had a DSUE amount available from another decedent who, prior to the death of the last deceased spouse, was the last deceased spouse of such surviving spouse. See paragraph (c) of this section for a special rule in the case of multiple deceased spouses.

(3) Identity of last deceased spouse unchanged by subsequent marriage or divorce. A decedent is the last deceased spouse (as defined in §20.2010-1(d)(5)) of a surviving spouse even if, on the date of the surviving spouse's taxable gift, the surviving spouse is married to another (then-living) individual. If a surviving spouse marries again and that marriage ends in divorce or an annulment, the subsequent death of the divorced spouse does not end the status of the prior deceased spouse as the last deceased spouse of the surviving spouse. The divorced spouse, not being married to the surviving spouse at death, is not the last deceased spouse as that term is defined in §20.2010-1(d)(5).

(b) Manner in which DSUE amount is applied. If a donor who is a surviving spouse makes a taxable gift and a DSUE amount is included in determining the surviving spouse's applicable exclusion amount under section 2010(c)(2), such surviving spouse will be considered to apply such DSUE amount to the taxable gift before the surviving spouse's own basic exclusion amount.

(c) Special rule in case of multiple deceased spouses and previously-applied DSUE amount--(1) In general. A special rule applies to compute the DSUE amount

included in the applicable exclusion amount of a surviving spouse who previously has applied the DSUE amount of one or more deceased spouses. If a surviving spouse applied the DSUE amount of one or more (successive) last deceased spouses to the surviving spouse's previous lifetime transfers, and if any of those last deceased spouses is different from the surviving spouse's last deceased spouse as defined in §20.2010-1(d)(5) at the time of the current taxable gift by the surviving spouse, then the DSUE amount to be included in determining the applicable exclusion amount of the surviving spouse that will be applicable at the time of the current taxable gift is the sum of--

(i) The DSUE amount of the surviving spouse's last deceased spouse as described in paragraph (a)(1) of this section; and

(ii) The DSUE amount of each other deceased spouse of the surviving spouse to the extent that such amount was applied to one or more previous taxable gifts of the surviving spouse.

(2) Example. The following example, in which all described individuals are U.S. citizens, illustrates the application of this paragraph (c):

Example. (i) Facts. Husband 1 (H1) dies in 2011, survived by Wife (W). Neither has made any taxable gifts during H1's lifetime. H1's executor elects portability of H1's deceased spousal unused exclusion (DSUE) amount. The DSUE amount of H1 as computed on the estate tax return filed on behalf of H1's estate is \$5,000,000. In 2012, W makes taxable gifts to her children valued at \$2,000,000. W reports the gifts on a timely filed gift tax return. W is considered to have applied \$2,000,000 of H1's DSUE amount to the 2012 taxable gifts, in accordance with paragraph (b) of this section, and, therefore, W owes no gift tax. W is considered to have an applicable exclusion amount remaining in the amount of \$8,120,000 (\$3,000,000 of H1's remaining DSUE amount plus W's own \$5,120,000 basic exclusion amount). In 2013, W marries Husband 2 (H2). H2 dies on June 30, 2015. H2's executor elects portability of H2's DSUE amount, which is properly computed on H2's estate tax return to be \$2,000,000.

(ii) Application. The DSUE amount to be included in determining the applicable exclusion amount available to W for gifts during the second half of 2015 is \$4,000,000, determined by adding the \$2,000,000 DSUE amount of H2 and the \$2,000,000 DSUE amount of H1 that was applied by W to W's 2012 taxable gifts. Thus, W's applicable exclusion amount during the balance of 2015 is \$9,430,000 (\$4,000,000 DSUE plus \$5,430,000 basic exclusion amount for 2015).

(d) Date DSUE amount taken into consideration by donor who is a surviving spouse--(1) General rule. A portability election made by an executor of a decedent's estate (see §20.2010-2(a) and (b) for applicable requirements) generally applies as of the date of such decedent's death. Thus, the decedent's DSUE amount is included in the applicable exclusion amount of the decedent's surviving spouse under section 2010(c)(2) and will be applicable to transfers made by the surviving spouse after the decedent's death (subject to the limitations in paragraph (a) of this section). However, such decedent's DSUE amount will not be included in the applicable exclusion amount of the surviving spouse, even if the surviving spouse had made a taxable gift in reliance on the availability or computation of the decedent's DSUE amount:

(i) If the executor of the decedent's estate supersedes the portability election by filing a subsequent estate tax return in accordance with §20.2010-2(a)(4);

(ii) To the extent that the DSUE amount subsequently is reduced by a valuation adjustment or the correction of an error in calculation; or

(iii) To the extent that the DSUE amount claimed on the decedent's return cannot be determined.

(2) Exception when surviving spouse not a U.S. citizen on date of deceased spouse's death. If a surviving spouse becomes a citizen of the United States after the death of the surviving spouse's last deceased spouse, the DSUE amount of the

surviving spouse's last deceased spouse becomes available to the surviving spouse on the date the surviving spouse becomes a citizen of the United States (subject to the limitations in paragraph (a) of this section). However, when the special rule regarding qualified domestic trusts in paragraph (d)(3) of this section applies, the earliest date on which a decedent's DSUE amount may be included in the applicable exclusion amount of such decedent's surviving spouse who becomes a U.S. citizen is as provided in paragraph (d)(3) of this section.

(3) Special rule when property passes to surviving spouse in a qualified domestic trust--(i) In general. When property passes from a decedent for the benefit of the decedent's surviving spouse in one or more qualified domestic trusts (QDOT) as defined in section 2056A(a) and the decedent's executor elects portability, the DSUE amount available to be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) is the DSUE amount of the decedent as redetermined in accordance with §20.2010-2(c)(4) (subject to the limitations in paragraph (a) of this section). The earliest date on which such decedent's DSUE amount may be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) is the date of the occurrence of the final QDOT distribution or final other event (generally, the termination of all QDOTs created by or funded with assets passing from the decedent or the death of the surviving spouse) on which tax under section 2056A is imposed. However, the decedent's DSUE amount as redetermined in accordance with §20.2010-2(c)(4) may be applied to the surviving spouse's taxable gifts made in the year of the surviving spouse's death or, if the terminating event occurs prior to the

surviving spouse's death, then in the year of that terminating event and/or in any subsequent year during the surviving spouse's life.

(ii) Surviving spouse becomes a U.S. citizen. If a surviving spouse for whom property has passed from a decedent in one or more QDOTs becomes a citizen of the United States and the requirements in section 2056A(b)(12) and the corresponding regulations are satisfied, then the date on which such decedent's DSUE amount may be included in the applicable exclusion amount of the surviving spouse under section 2010(c)(2) (subject to the limitations in paragraph (a) of this section) is the date on which the surviving spouse becomes a citizen of the United States. See §20.2010-2(c)(4) for the rules for computing the decedent's DSUE amount in the case of a qualified domestic trust.

(iii) Example. The following example illustrates the application of this paragraph (d)(3):

Example. (i) Facts. Husband (H), a U.S. citizen, dies in 2011 having made no taxable gifts during his lifetime. H's gross estate is \$3,000,000. H's wife (W) is not a citizen of the United States and, under H's will, a pecuniary bequest of \$2,000,000 passes to a QDOT for the benefit of W. H's executor timely files an estate tax return and makes the QDOT election for the property passing to the QDOT, and H's estate is allowed a marital deduction of \$2,000,000 under section 2056(d) for the value of that property. H's taxable estate is \$1,000,000. On H's estate tax return, H's executor computes H's preliminary DSUE amount to be \$4,000,000. No taxable events within the meaning of section 2056A occur during W's lifetime with respect to the QDOT, and W resides in the United States at all times after H's death. W makes a taxable gift of \$1,000,000 to X in 2012 and a taxable gift of \$1,000,000 to Y in January 2015, in each case from W's own assets rather than from the QDOT. W dies in September 2015, not having married again, when the value of the assets of the QDOT is \$2,200,000.

(ii) Application. H's DSUE amount is redetermined to be \$1,800,000 (the lesser of the \$5,000,000 basic exclusion amount for 2011, or the excess of H's \$5,000,000 applicable exclusion amount over \$3,200,000 (the sum of the \$1,000,000 taxable estate augmented by the \$2,200,000 of QDOT assets)). On W's gift tax return filed for 2012, W cannot apply any DSUE amount to the gift made to X. However, because W's gift to Y was made in the year that W died, W's executor will apply \$1,000,000 of H's

redetermined DSUE amount to the gift on W's gift tax return filed for 2015. The remaining \$800,000 of H's redetermined DSUE amount is included in W's applicable exclusion amount to be used in computing W's estate tax liability.

(e) Authority to examine returns of deceased spouses. For the purpose of determining the DSUE amount to be included in the applicable exclusion amount of a surviving spouse, the Internal Revenue Service (IRS) may examine returns of each of the surviving spouse's deceased spouses whose DSUE amount is claimed to be included in the surviving spouse's applicable exclusion amount, regardless of whether the period of limitations on assessment has expired for any such return. The IRS's authority to examine returns of a deceased spouse applies with respect to each transfer by the surviving spouse to which a DSUE amount is or has been applied. Upon examination, the IRS may adjust or eliminate the DSUE amount reported on such a return of a deceased spouse; however, the IRS may assess additional tax on that return only if that tax is assessed within the period of limitations on assessment under section 6501 applicable to the tax shown on that return. See also section 7602 for the IRS's authority, when ascertaining the correctness of any return, to examine any returns that may be relevant or material to such inquiry.

(f) Availability of DSUE amount for nonresidents who are not citizens. A nonresident surviving spouse who was not a citizen of the United States at the time of making a transfer subject to tax under chapter 12 of the Internal Revenue Code shall not take into account the DSUE amount of any deceased spouse except to the extent allowed under any applicable treaty obligation of the United States. See section 2102(b)(3).

(g) Effective/applicability date. This section applies to gifts made on or after June 12, 2015. See 26 CFR 25.2505-2T, as contained in 26 CFR part 25, revised as of April 1, 2015, for the rules applicable to gifts made on or after January 1, 2011, and before June 12, 2015.

§25.2505-2T [Removed]

Par. 18. Section 25.2505-2T is removed.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 19. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 20. In §602.101, paragraph (b) is amended by:

1. Removing the entry for 20.2010-2T.
2. Adding in numerical order an entry for 20.2010-2.

The addition reads as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described * * * * *	Current OMB control No.
20.2010-2	1545-0015

* * * * *

John M. Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: June 8, 2015.

Mark J. Mazur,
Assistant Secretary of Treasury (Tax Policy).

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