

**26 CFR Part 20**

[TD 8714]

RIN 1545-AU81

**Estate and Gift Tax Marital Deduction****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations amending the final estate tax marital deduction regulations. The amendments are made to conform the estate tax regulations to recent court decisions. The amendments affect estates of decedents electing the marital deduction for qualified terminable interest property (QTIP) and the estates of the surviving spouses of such decedents. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

**DATES:** These regulations are effective February 18, 1997.

For dates of applicability of these regulations, see Effective Date under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hurwitz at (202) 622-3090 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

On March 1, 1994, the IRS published final Estate and Gift Tax Regulations (26 CFR part 20 and part 25) under sections 2044, 2056, 2207A, 2519, 2523, and 6019 of the Internal Revenue Code (Code) in the Federal Register (59 FR 9642). At the time the regulations were published, the position contained in § 20.2056(b)-7(d)(3) was the subject of litigation in a number of cases and had been rejected by two circuit courts in *Estate of Clayton v. Commissioner*, 976 F.2d 1486 (5th Cir. 1992), *rev'g* 97 T.C. 327 (1991), and *Estate of Robertson v. Commissioner*, 15 F.3d 779 (8th Cir. 1994), *rev'g* 98 T.C. 678 (1992). Since that time, *Estate of Spencer v. Commissioner*, 43 F.3d 226 (6th Cir. 1995), *rev'g* T.C. Memo. 1992-579, also rejecting the IRS position, has been decided. Additionally, in *Estate of Clack v. Commissioner*, 106 T.C. 131 (1996), the Tax Court reversed the position it had taken previously in *Estate of Clayton*, *Estate of Robertson*, and *Estate of Spencer*. This temporary regulation amends the final regulations in accordance with the circuit courts' decisions in *Estate of Clayton*, *Estate of*

*Robertson*, and *Estate of Spencer*, and the Tax Court's decision in *Estate of Clack*.

**Explanation of Provisions**

Section 20.2056(b)-7T(d)(3)(ii) has been added. As a result of the addition, an income interest (or life estate) that is contingent upon the executor's election under section 2056(b)(7)(B)(v) will not be precluded, on that basis, from qualification as a "qualifying income interest for life" within the meaning of section 2056(b)(7)(B)(ii).

In accordance with the addition of § 20.2056(b)-7T(d)(3)(ii), § 20.2056(b)-7T(h) *Example 6(ii)* and § 20.2044-1T *Example 8* are added.

**Effective Date**

These regulations are effective in the case of qualified terminable interest property elections made after February 18, 1997.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Susan B. Hurwitz, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 20**

Estate taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 20 is amended as follows:

**PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954**

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

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

Par. 2. Section 20.2044-1T is added to read as follows:

**§ 20.2044-1T Certain property for which marital deduction was previously allowed (temporary).**

(a) through (d). [Reserved]. For further guidance, see § 20.2044-1 (a) through (d).

(e) *Examples*. [Reserved]. For further guidance, see § 20.2044-1 (e).

*Example 1* through *Example 7*. [Reserved]. For further guidance, see § 20.2044-1 (e) *Example 1* through *Example 7*.

*Example 8. Inclusion of trust property when surviving spouse dies before first decedent's estate tax return is filed.* D dies on July 1, 1997. D's estate tax return is due after February 18, 1997. Under the terms of D's will, a trust is established for the benefit of D's spouse, S. The will provides that S is entitled to receive the income from that portion of the trust that the executor elects to treat as qualified terminable interest property. The trust terms otherwise provide S with a qualifying income interest for life under section 2056(b)(7)(B)(ii). S dies on February 10, 1998. On April 1, 1998, D's executor files D's estate tax return on which an election is made to treat a portion of the trust as qualified terminable interest property under section 2056(b)(7). S's estate tax return is filed on November 10, 1998. The value on the date of S's death of the portion of the trust for which D's executor made a QTIP election is includible in S's gross estate under section 2044.

Par. 3. Section 20.2056(b)-7T is added to read as follows:

**§ 20.2056(b)-7T Election with respect to life estate for surviving spouse (temporary).**

(a) through (d)(2) [Reserved]. For further guidance, see § 20.2056(b)-7(a) through (d)(2).

(d)(3) *Contingent income interests*. (i) [Reserved]. For further guidance, see § 20.2056(b)-7(d)(3).

(ii) An income interest for a term of years, or a life estate subject to termination upon the occurrence of a specified event (e.g., remarriage), is not a qualifying income interest for life. However, an income interest for life (or life estate) that is contingent upon the executor's election under section 2056(b)(7)(B)(v) will not, on that basis, fail to be a qualifying income interest for life. This paragraph (d)(3)(ii) applies with respect to estates of decedents whose estate tax returns are due after February 18, 1997.

(d)(4) through (g) [Reserved]. For further guidance see § 20.2056(b)–7(d)(4) through (g).

(h) *Examples.* [Reserved]. See § 20.2056(b)–7(h).

*Example 1 through Example 5.* [Reserved]. For further guidance, see § 20.2056(b)–7(h) *Example 1 through Example 5.*

*Example 6.* (i) [Reserved]. For further guidance, see § 20.2056(b)–7(h) *Example 6.*

(ii) D's estate tax return is due after February 18, 1997. D's will established a trust providing that S is entitled to receive the income from that portion of the trust that the executor elects to treat as qualified terminable interest property. S's interest in the trust otherwise meets the requirements of a qualifying income interest for life under section 2056(b)(7)(B)(ii). Accordingly, the executor may elect qualified terminable interest treatment for any portion of the trust.

Par. 4. Section 20.2056(b)–10T is added to read as follows:

**§ 20.2056(b)–10T Effective dates (temporary).**

In addition to the effective dates set out in § 20.2056(b)–10, § 20.2056(b)–7T(d)(3)(ii) is effective with respect to estates of decedents dying after March 1, 1994. For further guidance, see § 20.2056(b)–10.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

Approved: January 8, 1997.

Donald C. Lubick,

*Acting Assistant Secretary of the Treasury.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[IN68–1–7308a; FRL–5678–5]

### Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** On October 25, 1994, the Indiana Department of Environmental Management (IDEM) submitted revisions to its State Implementation Plan (SIP). EPA made a finding of completeness in a letter dated November 25, 1994. The revisions to the SIP add or revise definitions in the Indiana SIP's general provisions (326 IAC 1–1, 326 IAC 1–2), the applicability criteria of the rule for malfunctions (326 IAC 1–6), and the applicability criteria for state construction and operating permit requirements (326 IAC 2–1). The revisions to the SIP also revise Indiana's

construction permit program (326 IAC 2–1) and its "Permit no defense" regulation (326 IAC 2–1). With this rule, EPA is approving these SIP revisions because they are in compliance with the Code of Federal Regulations (CFR) and the Clean Air Act (Act). Elsewhere in this Federal Register, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final rule and address the comments received in a new final rule. Unless this direct final rule is withdrawn, no further rulemaking will occur on this requested SIP revision.

**DATES:** This action will be effective April 21, 1997 unless adverse or critical comments are received by March 20, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

**FOR FURTHER INFORMATION CONTACT:** Alvin Choi, EPA (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3507.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

IDEM submitted revisions to the Indiana SIP on October 25, 1994. The revisions included rule changes to the State's permit review rules and adoption of the federally enforceable state operating permits program (326 IAC 2–8), source specific operating agreements (326 IAC 2–9), and enhanced new source review (NSR) rules (326 IAC 2–1–3.2). EPA has already promulgated its approval of regulations governing federally enforceable state operating permits and enhanced new source review rules (60 FR 43099) and the source specific operating agreements (61 FR 14487). The EPA is now proposing to approve the final portion of the October 25, 1994 SIP submittal which alters some prefatory language and affects applicability of some rules. The EPA is approving the following revisions to Title 326 of the Indiana

Administrative Code (326 IAC)—Article One: General Provisions, Rule One: Sections 2 and 3; Rule Two: Sections 2, 4, 12, 33.1, 33.2, 33.5; Rule Six: Section 1. The EPA is also approving revisions to 326 IAC—Article Two: Permit Review Rules, Rule One: Sections 1, 3, and 10. The purpose of this revision is to update and revise the SIP to reflect statutorily-mandated changes to the permit programs. The rationale for EPA's approval is summarized in this rule. A more detailed analysis is set forth in a technical support document which is available for inspection at the Region 5 Office listed above.

#### II. Summary of State Submittal

The following sections of Article One, Rule One have been revised to include recent amendments to the Act and the CFR.

##### 326 IAC 1–1–2 References to Federal Act

This section was revised specifically to reference the Clean Air Act Amendments of 1990 because the SIP incorporated changes required by the 1990 Amendments.

##### 326 IAC 1–1–3 References to the Code of Federal Regulations

This section updates the reference to the CFR from the 1989 edition to the 1992 edition and specifically references the July 21, 1992 Federal Register with regard to 40 CFR Part 70.

The following sections of Article One have been revised to include new definitions and revisions to existing regulations.

##### 326 IAC 1–2–2 "Allowable emissions" Definition

The previous definition calculated an allowable emission rate by combining the most stringent of three listed criteria with the maximum rated capacity of the facility (unless the facility was subject to a limit on the operating rate or hours of operation, or both). This definition has been expanded to include potential emissions and daily emission rates for noncontinuous batch manufacturing operations.

##### 326 IAC 1–2–4 "Applicable state and federal regulations" Definition

This section has been revised to clarify that this definition includes rules adopted under 326 IAC by the air pollution control board, all regulations included in the CFR by EPA, and specific requirements established by the Act.