when added to any other allowable marital deduction without regard to this paragraph (b)(2), they do not exceed the greater of the deductions which would be allowable for the marital deduction without regard to the disclaimer if the surviving spouse exercised the election under State law to take against the will, or an amount equal to one-third of the decedent’s adjusted gross estate. If the disclaimer does not satisfy the requirements of this paragraph (b)(2), the property is treated as passing from the decedent to the person who made the disclaimer, in the same manner as if the disclaimer had not been made.

(3) Decedents dying before October 4, 1966. Unless the rule of paragraph (b)(2) of this section applies, this paragraph (b)(3) applies in the case of a disclaimer of property passing to one other than the surviving spouse from a decedent dying before October 4, 1966. For the purpose of these transfers, it is unnecessary to distinguish for the purpose of the marital deduction between a disclaimer by a person other than the surviving spouse and a transfer by such person. If the surviving spouse becomes entitled to receive an interest in property from the decedent as a result of a disclaimer made by some other person, the interest is, nevertheless, considered as having passed from the decedent, not to the surviving spouse, but to the person who made the disclaimer, as though the disclaimer had not been made.

§ 20.2056A–1 Restrictions on allowance of marital deduction if surviving spouse is not a United States citizen.

(a) General rule.
(b) Marital deduction allowed if resident spouse becomes citizen.
(c) Special rules in the case of certain transfers subject to estate and gift tax treaties.

§ 20.2056A–2 Requirements for qualified domestic trust.

(a) In general.
(b) Qualified marital interest requirements.
(1) Property passing to QDOT.
(2) Property passing outright to spouse.
(3) Property passing under a nontransferable plan or arrangement.
(c) Statutory requirements.
(d) Additional requirements to ensure collection of the section 2056A estate tax.
(1) Security and other arrangements for payment of estate tax imposed under section 2056A(b)(1).
(2) Individual trustees.
(3) Annual reporting requirements.
(4) Request for alternate arrangement or waiver.
(5) Adjustment of dollar threshold and exclusion.
(d) Effective date and special rules.

§ 20.2056A–3 QDOT election.

(a) General rule.
(b) No partial elections.
(c) Protective elections.
(d) Manner of election.

§ 20.2056A–4 Procedures for conforming marital trusts and nontrust marital transfers to the requirements of a qualified domestic trust.

(a) Marital trusts.
(1) In general.
(2) Judicial reformations.
(3) Tolling of statutory assessment period.
(b) Nontrust marital transfers.
(1) In general.
(2) Form of transfer or assignment.
(3) Assets eligible for transfer or assignment.
(4) Pecuniary assignment—special rules.
(5) Transfer tax treatment of transfer or assignment.
(6) Period for completion of transfer.
(7) Retirement accounts and annuities.
(8) Protective assignment.
(c) Nonassignable annuities and other arrangements.
(1) Definition and general rule.
(2) Agreement to remit section 2056A estate tax on corpus portion of each annuity payment.
(3) Agreement to roll over corpus portion of annuity payment to QDOT.
(4) Determination of corpus portion.
(5) Information Statement.
(6) Agreement to pay section 2056A estate tax.
(7) Agreement to roll over annuity payments.
(d) Examples.

§ 20.2056A–5 Imposition of section 2056A estate tax.
(a) In general.
(b) Amounts subject to tax.
(1) Distribution of principal during the spouse’s lifetime.
(2) Death of surviving spouse.
(3) Trust ceases to qualify as QDOT.
(c) Distributions and dispositions not subject to tax.
(1) Distributions of principal on account of hardship.
(2) Distributions of income to the surviving spouse.
(3) Certain miscellaneous distributions and dispositions.

§ 20.2056A–6 Amount of tax.
(a) Definition of tax.
(b) Benefits allowed in determining amount of section 2056A estate tax.
(1) General rule.
(2) Treatment as resident.
(3) Special rule in the case of trusts described in section 2056(b)(8).
(c) Credit for state and foreign death taxes.
(5) Alternate valuation and special use valuation.
(c) Miscellaneous rules.
(d) Examples.

§ 20.2056A–7 Allowance of prior transfer credit under section 2013.
(a) Property subject to QDOT election.
(b) Property not subject to QDOT election.
(c) Example.

§ 20.2056A–8 Special rules for joint property.
(a) Inclusion in gross estate.
(1) General rule.
(5) Consideration furnished by surviving spouse.
(3) Amount allowed to be transferred to QDOT.
(b) Surviving spouse becomes citizen.
(c) Examples.

§ 20.2056A–9 Designated Filer.
§ 20.2056A–10 Surviving spouse becomes citizen after QDOT established.
(a) Section 2056A estate tax no longer imposed under certain circumstances.
(b) Special election by spouse.

§ 20.2056A–11 Filing requirements and payment of the section 2056A estate tax.
(a) Distributions during surviving spouse’s life.
(b) Tax at death of surviving spouse.
(c) Extension of time for paying section 2056A estate tax.
(1) Extension of time for paying tax under section 6161(a)(2).
(2) Extension of time for paying tax under section 6161(a)(1).
(d) Liability for tax.

§ 20.2056A–12 Increased basis for section 2056A estate tax paid with respect to distribution from a QDOT.

§ 20.2056A–13 Effective date.

§ 20.2056A–1 Restrictions on allowance of marital deduction if surviving spouse is not a United States citizen.

(a) General rule. Subject to the special rules provided in section 7815(d)(14) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239; 103 Stat. 2106), in the case of a decedent dying after November 10, 1988, the federal estate tax marital deduction is not allowed for property passing to or for the benefit of a surviving spouse who is not a United States citizen at the date of the decedent’s death (whether or not the surviving spouse is a resident of the United States) unless—
(1) The property passes from the decedent to (or pursuant to)—
(i) A qualified domestic trust (QDOT) described in section 2056A and § 20.2056A–2;
(ii) A trust that, although not meeting all of the requirements for a QDOT, is reformed after the decedent’s death to meet the requirements of a QDOT (see § 20.2056A–4(a));
(iii) The surviving spouse not in trust (e.g., by outright bequest or devise, by operation of law, or pursuant to the terms of an annuity or other similar plan or arrangement) and, prior to the date that the estate tax return is filed and on or before the last date prescribed by law that the QDOT election may be made (no more than one year after the time prescribed by law, including extensions, for filing the return), the surviving spouse either actually transfers the property to a QDOT or irrevocably assigns the property to a QDOT (see § 20.2056A–4(b)); or
(iv) A plan or other arrangement that would have qualified for the marital deduction but for section 2056(d)(1)(A), and whose payments are not assignable.