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. If, as a result of a disclaimer made by a person other than the surviving spouse, a property interest passes to the surviving spouse under circumstances which meet the conditions set forth in §20.2056(b)–5 (relating to a life estate with a power of appointment), the rule stated in the preceding sentence applies, not only with respect to the portion of the interest which beneficially vests in the surviving spouse, but also with respect to the portion over which such spouse acquires a power to appoint. The rule applies also in the case of proceeds under a life insurance, endowment, or annuity contract which, as a result of a disclaimer made by a person other than the surviving spouse, are held by the insurer subject to the conditions set forth in §20.2056(b)–6.


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(2) Treatment as resident.

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(2) Extension of time for paying tax under section 6161(a)(1).

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§ 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 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 or transferable to a QDOT, if the requirements of § 20.2056A–4(c) are met; and

(2) The executor makes a timely QDOT election under § 20.2056A–3.

§ 20.2056A–2 Definitions.

(a) Qualified domestic trust (QDOT). (1) Definition. A QDOT is any trust described in section 2056A, including any trust established after December 31, 1988, that meets the minimum funding requirements of section 2056A(b)(3) and all the other requirements of section 2056A.

(b) Sections 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 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 or transferable to a QDOT, if the requirements of § 20.2056A–4(c) are met; and

(2) The executor makes a timely QDOT election under § 20.2056A–3.

§ 20.2056A–3 Special elections.

(a) In general. A QDOT election is made by the executor of the decedent’s estate and a surviving spouse by giving written notice to the IRS, as prescribed in § 20.2056A–4(b) and § 20.2056A–4(c). The election is binding on the estate and surviving spouse and is irrevocable.

(b) When made. A QDOT election is made on or before the last date prescribed by law for filing the estate tax return (including extensions).

(c) Effect of election. A QDOT election shall be treated in the estate tax return for the decedent as if the marital deduction were not allowed for any property included in the gross estate and shall be treated in the tax return of the surviving spouse as if the marital deduction were not allowed for any property included in the gross estate of the surviving spouse.

(d) When revoked. A QDOT election is revoked when the executor and surviving spouse timely agree upon the date of such revocation and file a written notice of revocation with the IRS, as prescribed in § 20.2056A–4(b) and § 20.2056A–4(c).

§ 20.2056A–4 Filing requirements and payment of the section 2056A estate tax.

(a) General rule. Filing and payment of the section 2056A estate tax is made as required by section 6161 and the regulations thereunder.

(b) Special election by surviving spouse. (1) General rule. A surviving spouse may elect to be treated as if a domestic trust (QDOT) described in section 2056A and § 20.2056A–2, including any trust established after December 31, 1988, that meets the minimum funding requirements of section 2056A(b)(3) and all the other requirements of section 2056A, had been established by the decedent as of the date of the decedent’s death.

(2) Regulations. The regulations prescribed in § 20.2056A–4(b) and § 20.2056A–4(c) provide the procedures governing the making and revoking of the election by a surviving spouse.

§ 20.2056A–5 Imposition of section 2056A estate tax.

(a) In general. The section 2056A estate tax is imposed in the case of a decedent dying after November 10, 1988, if the decedent was a United States citizen at the date of death and if the decedent is not a United States citizen at the date of death (whether or not the surviving spouse is 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 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 or transferable to a QDOT, if the requirements of § 20.2056A–4(c) are met; and

(2) The executor makes a timely QDOT election under § 20.2056A–3.

§ 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).

(4) Credit for state and foreign death taxes.

(5) Alternate valuation and special use valuation.

(c) Miscellaneous rules.

(d) Examples.