

(B) The plan year in which the plan fails to satisfy the requirements of paragraph (d)(1) of this section (regarding use of substitute mortality tables by controlled group members);

(C) The second plan year following the plan year in which there is a significant change in individuals covered by the plan as described in paragraph (d)(4)(ii) of this section;

(D) The plan year following the plan year in which a substitute mortality table used for a plan population is no longer accurately predictive of future mortality of that population, as determined by the Commissioner or as certified by the plan's actuary to the satisfaction of the Commissioner; or

(E) The date specified in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) pursuant to a replacement of mortality tables specified under section 430(h)(3)(A) and § 1.430(h)(3)-1 (other than annual updates to the static mortality tables issued pursuant to § 1.430(h)(3)-1(a)(3)).

(ii) *Significant change in coverage—*
(A) *Change in coverage from time of experience study.* For purposes of applying the rules of paragraph (d)(4)(i)(C) of this section, a significant change in the individuals covered by a substitute mortality table occurs if there is an increase or decrease in the number of individuals of at least 20 percent compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used for the plan population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the population).

(B) *Change in coverage from time of certification.* For purposes of applying the rules of paragraph (d)(4)(i)(C) of this section, a significant change in the individuals covered by a substitute mortality table occurs if there is an increase or decrease in the number of individuals covered by a substitute mortality table of at least 20 percent compared to the number of individuals in a plan year for which a certification described in paragraph (d)(4)(ii)(A) of this section was made on account of a prior change in coverage. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used by the plan with

respect to the covered population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the plan population).

(e) *Effective/Applicability date.* This section applies for plan years beginning on or after January 1, 2009.

■ **Par. 4.** Section 1.431(c)(6)-1 is added to read as follows:

§ 1.431(c)(6)-1 Mortality tables used to determine current liability.

(a) *Mortality tables used to determine current liability.* The mortality assumptions that apply to a defined benefit plan for the plan year pursuant to section 430(h)(3)(A) and § 1.430(h)(3)-1(a)(2) are used to determine a multiemployer plan's current liability for purposes of applying the rules of section 431(c)(6). A multiemployer plan is permitted to apply either the static mortality tables used pursuant to § 1.430(h)(3)-1(a)(3) or generational mortality tables used pursuant to § 1.430(h)(3)-1(a)(4) for this purpose. However, for this purpose, a multiemployer plan is not permitted to use substitute mortality tables under § 1.430(h)(3)-2.

(b) *Effective/applicability date.* This section applies for plan years beginning on or after January 1, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[TD 9414]

RIN 1545-BE52

**Grantor Retained Interest Trusts—
Application of Sections 2036 and 2039;
Correction**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9414) that were published in the **Federal Register** on Monday, July 14, 2008 (73 FR 40173). The final regulations provide guidance on the portion of property transferred to a trust or otherwise, that

is properly includible in a grantor's gross estate under Internal Revenue Code (Code) sections 2036 and 2039 if the grantor has retained the use of the property or the right to an annuity, unitrust, or other payment from such property for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death.

DATES: The correction is effective on July 31, 2008 and applicable to the estates of decedents dying after August 16, 1954.

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9414) that is the subject of this correction are under sections 2036 and 2039 of the Code.

List of Subjects for 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 20 is corrected by making the following correcting amendment:

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 20.2036-1 is amended by adding paragraph (a)(3)(ii) to read as follows:

§ 20.2036-1 Transfers with retained life estate.

(a) * * *

(3) * * *

(ii) The right, either alone or in conjunction with any other person or persons, to designate the person or persons who shall possess or enjoy the transferred property or its income (except that, if the transfer was made before June 7, 1932, the right to designate must be retained by or reserved to the decedent alone).

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