

**FEDERAL TRADE COMMISSION****16 CFR Part 455****[Project No. P087604]****Used Motor Vehicle Trade Regulation Rule****AGENCY:** Federal Trade Commission.**ACTION:** Reopening of comment period.

**SUMMARY:** On July 21, 2008, the Federal Trade Commission (“FTC” or “Commission”) published a **Federal Register** notice soliciting public comments in connection with its review of the Used Motor Vehicle Trade Regulation Rule (“Used Car Rule” or “Rule”).<sup>1</sup> The notice stated that comments must be received by September 19, 2008. The Commission subsequently extended the time within which to submit comments until November 19, 2008.<sup>2</sup> On March 17, 2009, the Commission received supplemental comments from the National Automobile Dealers Association and the National Independent Dealers Association responding to comments made by other interested parties during the comment period. In response to those comments and to provide all interested parties with the same opportunity to comment, the Commission has decided to reopen the comment period for forty-five days.

**DATES:** Comments addressing the Used Car Rule must be received on or before June 15, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Used Car Regulatory Review, Matter No. P087604” to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (<http://www.ftc.gov/os/publiccomments.shtml>).

Because comments will be made public, they should not include any sensitive personal information, such as an individual’s Social Security Number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include

any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .” as provided in Section 6(f) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>3</sup>

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (<http://secure.commentworks.com/ftc-UsedCarRuleReopen>) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (<http://secure.commentworks.com/ftc-UsedCarRuleReopen>). If this Notice appears at (<http://www.regulations.gov/search/index.jsp>), you may also file an electronic comment through that website. The Commission will consider all comments that [regulations.gov](http://www.regulations.gov) forwards to it. You may also visit the FTC website at (<http://www.ftc.gov/opa/2008/07/ucr.shtml>) to read the **Federal Register** notice announcing the request for public comments and the news release describing it.

A comment filed in paper form should include the “Used Car Regulatory Review, Matter No. P087604” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex H), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will

<sup>3</sup> The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. See FTC Rule 4.9(c), 16 CFR 4.9(c).

consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Website, to the extent practicable, at (<http://www.ftc.gov/os/publiccomments.shtml>). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at (<http://www.ftc.gov/ftc/privacy.shtml>).

**FOR FURTHER INFORMATION CONTACT:** John C. Hallerud, Attorney, Midwest Region, Federal Trade Commission, 55 West Monroe Street, Suite 1825, Chicago, Illinois 60603, (312) 960-5615.

**SUPPLEMENTARY INFORMATION:** The Commission’s July 21, 2008 **Federal Register** notice sought comments on the Rule’s costs, benefits, and effectiveness. The notice also requested comments on whether the Rule should permit used car dealers to use a single bilingual Buyers Guide and, if so, on how to design a bilingual Buyers Guide. In addition, it asked for comments on the Buyers Guide’s pre-printed list of major defects that may occur in used motor vehicles. Finally, the notice solicited comments on whether the Rule should be revised to permit dealers to use alternative Buyers Guides intended to facilitate the disclosure of manufacturer’s warranties and other third-party warranties.

The comment period closed on November 19, 2008. Twenty comments were received during the comment period.

On March 17, 2009, the Commission received supplemental comments from the National Automobile Dealers Association and the National Independent Automobile Dealers Association responding to comments made by other interested parties during the comment period. To provide all interested parties with the same opportunity to comment further, the Commission has decided to reopen the comment period. The Commission believes that the benefit of enhancing the record by reopening the comment period outweighs any delay. Accordingly, the Commission has decided to reopen the comment period for forty-five days.

<sup>1</sup> 73 Fed. Reg. 42,285 (July 21, 2008).

<sup>2</sup> 73 Fed. Reg. 55,458 (Sept. 25, 2008).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 20

[REG-119532-08]

RIN 1545-BH94

#### Section 2036—Graduated Retained Interests

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that provide guidance on the portion of trust property includible in the grantor's gross estate if the grantor has retained the use of the property, the right to an annuity, unitrust, graduated retained interest, 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. The proposed regulations will affect estates that file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

**DATES:** Written or electronic comments and requests for a public hearing must be received by July 29, 2009.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-119532-08), Internal Revenue Service, Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-119532-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-119532-08).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Theresa M. Melchiorre, at (202) 622-3090; concerning submissions of comments or to request a hearing, Richard A. Hurst at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov) or (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

On June 7, 2007, proposed regulations (REG-119097-05) were published in the **Federal Register** [72 FR 31487] providing guidance on the portion of trust corpus properly includible in a grantor's gross estate under sections 2036 and 2039. The IRS and Treasury Department determined that certain comments received in response to the proposed regulations should be addressed in a separate notice of proposed rulemaking, instead of in the final regulations published on July 14, 2008 [73 FR 40173], as TD 9414. Accordingly, this notice of proposed rulemaking proposes additional changes to the regulations in response to those comments.

The proposed regulations (REG-119097-05) addressed the amount includible in the gross estate under sections 2036 and 2039 if the grantor retains the right to receive an annuity, unitrust, or other payment from a trust 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. The trusts that were the subject of the proposed regulations included grantor retained interest trusts (GRTs), such as grantor retained income trusts (GRITs), grantor retained annuity trusts (GRATs) and grantor retained unitrusts (GRUTs) described in section 2702, whether or not the grantor's retained interest was a "qualified interest" under section 2702(b), as well as other trust forms, including charitable remainder trusts (CRTs), such as charitable remainder unitrusts (CRUTs) and charitable remainder annuity trusts (CRATs) described in section 664 whether or not the trust met the qualifications of section 664(d)(1), (2), or (3). The proposed regulations incorporated the methodology provided in Rev. Rul. 76-273, 1976-2 C.B. 268, and Rev. Rul. 82-105, 1982-1 C.B. 133. See § 601.601(d)(2)(ii)(b). Under this methodology, the portion of the corpus of a GRT or a CRT includible in the decedent's gross estate under section 2036 is that portion of the trust corpus necessary to generate a return sufficient to pay the decedent's retained annuity, unitrust, or other payment.

One commentator suggested that the regulations address the portion of trust corpus of a GRAT includible in the grantor's gross estate under section 2036 if the deceased grantor retains an interest described in § 25.2702-3(b)(1)(ii)(A); that is, the annuity interest retained by the grantor increases annually during the term of the trust (a graduated retained interest). The

commentator suggested two possible methods for determining the portion of GRAT corpus includible in the grantor's gross estate if the grantor dies during the term of such a GRAT.

Another commentator questioned the result in the example contained in § 20.2036-1(c)(1)(ii) of the proposed regulations. This example considered the situation where the decedent (D) creates an irrevocable inter vivos trust, under the terms of which all trust income is to be paid to D and E, D's spouse, in equal shares during their joint lives and, on the death of the first to die of D and E, all trust income is to be paid to the survivor. On the death of the survivor of D and E, the remainder is to be paid to another individual, F. D dies survived by E. The example concludes that, because D retained the right to receive 50 percent of the trust income for a period that did not in fact end before D's death, 50 percent of the trust's corpus is includible in D's gross estate under section 2036. The example also concludes that, if instead E had predeceased D, D would have died while entitled to all of the income from the trust, so that the entire trust corpus would have been includible in D's gross estate under section 2036.

The commentator noted that, because E is identified as D's spouse, the example unnecessarily raises issues under section 2523 (gift tax marital deduction). In addition, the commentator opined that, under the facts presented, D has retained the right to receive one-half of trust income during the joint lives of D and E, and the right to receive 100 percent of the trust income if D survives E. Thus, 50 percent of the trust corpus is includible in D's gross estate by virtue of D's retained right to receive 50 percent of the trust income during D's life, and the remaining 50 percent of the trust corpus (reduced by the actuarial value of E's income interest) is includible in D's gross estate under section 2036 by virtue of D's retained right to receive all of the trust income provided D survives E.

### Explanation of Provisions

In response to the comments, these proposed regulations provide the method to be used to determine the portion of trust corpus includible in the grantor's gross estate if the grantor reserves a graduated retained interest in a trust. This method applies to graduated retained interests in property whether or not the property is held in trust.

The portion of the corpus of a GRT or a CRT includible in the decedent's gross estate under section 2036 is that portion of the trust corpus necessary to generate