

the qualified terminable interest share. Immediately prior to the distribution, the fair market value of the trust property was \$1,100,000 and the qualified terminable interest portion of the trust was 50 percent. Immediately after the distribution, the qualified terminable interest portion of the trust was 45 percent (\$450,000 divided by \$1,000,000). Provided S's executor can establish the relevant facts, the amount included in S's gross estate is \$333,000 (45 percent of \$740,000).

*Example 5. Spouse assigns a portion of income interest during life.* Under D's will, assets valued at \$800,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust with all the income payable to S, for S's life. The will provides that the trust principal is to be distributed to D's children upon S's death. D's executor elected under section 2056(b)(7) to treat the entire trust property as qualified terminable interest property and claimed a marital deduction of \$800,000. During the term of the trust, S transfers to C the right to 40 percent of the income from the trust for S's life. Because S is treated as transferring the entire remainder interest in the trust corpus under section 2519 (as well as 40 percent of the income interest under section 2511), no part of the trust is includible in S's gross estate under section 2044. However, if S retains until death an income interest in 60 percent of the trust corpus (which corpus is treated pursuant to section 2519 as having been transferred by S for both gift and estate tax purposes), 60 percent of the property will be includible in S's gross estate under section 2036(a) and a corresponding adjustment is made in S's adjusted taxable gifts.

*Example 6. Inter vivos trust subject to election under section 2523(f).* D transferred \$800,000 to a trust providing that trust income is to be paid annually to S, for S's life. The trust provides that upon S's death, \$100,000 of principal is to be paid to X charity and the remaining principal distributed to D's children. D elected to treat all of the property transferred to the trust as qualified terminable interest property under section 2523(f). At the time of S's death, the fair market value of the trust is \$1,000,000. S's executor does not elect the alternate valuation date. The amount included in S's gross estate is \$1,000,000; i.e., the fair market value at S's death of the entire trust property. The \$100,000 that passes to X charity on S's death is treated as a transfer by S to X charity for purposes of section 2055. Therefore, S's estate is allowed a charitable deduction for the \$100,000 transferred from the trust to the charity to the same extent that a deduction would be allowed by section 2055 for a bequest by S to X charity.

*Example 7. Spousal interest in the form of an annuity.* D died prior to October 24, 1992, the effective date of the Energy Policy Act of

1992 (Pub. L. 102-486). See § 20.2056(b)-7(e). Under D's will, assets valued at \$500,000 in D's gross estate (net of debts, expenses and other charges, including death taxes, payable from the property) passed in trust pursuant to which an annuity of \$20,000 a year was payable to S for S's life. Trust income not paid to S as an annuity is to be accumulated in the trust and may not be distributed during S's lifetime. D's estate deducted \$200,000 under section 2056(b)(7) and § 20.2056(b)-7(e)(2). S did not assign any portion of S's interest during S's life. At the time of S's death, the value of the trust property is \$800,000. S's executor does not elect the alternate valuation date. The amount included in S's gross estate pursuant to section 2044 is \$320,000 ( $[\$200,000/\$500,000] \times \$800,000$ ).

*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. 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 remaining portion of the trust passes as of D's date of death to a trust for the benefit of C, D's child. 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.

[T.D. 8522, 59 FR 9646, Mar. 1, 1994, as amended by T.D. 8779, 63 FR 44393, Aug. 19, 1998]

#### § 20.2044-2 Effective dates.

Except as specifically provided in *Example 7* of § 20.2044-1(e), the provisions of § 20.2044-1 are effective with respect to estates of a decedent-spouse dying after March 1, 1994. With respect to estates of decedent-spouses dying on or before such date, taxpayers may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of § 20.2044-1 (as well as project LR-211-76, 1984-1 C.B., page 598, see § 601.601(d)(2)(ii)(b) of this chapter), are considered a reasonable interpretation of the statutory provisions.

[T.D. 8522, 59 FR 9647, Mar. 1, 1994]