

§ 20.2056(a)-2

26 CFR Ch. I (4-1-02 Edition)

for *intervivos* gifts to the spouse as prescribed by section 2056(c)(1)(B) prior to repeal by the Economic Recovery Tax Act of 1981 (Pub. L. 97-34).

(3) *Estates of decedents dying after December 31, 1981.* In the case of estates of decedents dying after December 31, 1981, the marital deduction is limited as prescribed in paragraph (c)(2) of this section if the provisions of §403(e)(3) of Pub. L. 97-34 are satisfied.

[T.D. 8522, 59 FR 9648, Mar. 1, 1994]

§ 20.2056(a)-2 Marital deduction; “deductible interests” and “nondeductible interests”.

(a) *In general.* Property interests which passed from a decedent to his surviving spouse fall within two general categories:

(1) Those with respect to which the marital deduction is authorized, and

(2) Those with respect to which the marital deduction is not authorized.

These categories are referred to in this section and other sections of the regulations under section 2056 as “deductible interests” and “nondeductible interests”, respectively (see paragraph (b) of this section). Subject to any applicable limitations set forth in §20.2056(a)-1(c), the amount of the marital deduction is the aggregate value of the *deductible interests*.

(b) *Deductible interests.* An interest passing to a decedent’s surviving spouse is a “deductible interest” if it does not fall within one of the following categories of “nondeductible interests”:

(1) Any property interest which passed from the decedent to his surviving spouse is a “nondeductible interest” to the extent it is not included in the decedent’s gross estate.

(2) If a deduction is allowed under section 2053 (relating to deductions for expenses and indebtedness) by reason of the passing of a property interest from the decedent to his surviving spouse, such interest is, to the extent of the deduction under section 2053, a “nondeductible interest.” Thus, a property interest which passed from the decedent to his surviving spouse in satisfaction of a deductible claim of the spouse against the estate is, to the extent of the claim, a “nondeductible interest” (see §20.2056(b)-4). Similarly,

amounts deducted under section 2053(a)(2) for commissioners allowed to the surviving spouse as executor are “nondeductible interests”. As to the valuation, for the purpose of the marital deduction, of any property interest which passed from the decedent to his surviving spouse subject to a mortgage or other encumbrance, see §20.2056(b)-4.

(3) If during settlement of the estate a loss deductible under section 2054 occurs with respect to a property interest, then that interest is, to the extent of the deductible loss, a “nondeductible interest” for the purpose of the marital deduction.

(4) A property interest passing to a decedent’s surviving spouse which is a “terminable interest”, as defined in §20.2056(b)-1, is a “nondeductible interest” to the extent specified in that section.

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8522, 59 FR 9649, Mar. 1, 1994]

§ 20.2056(b)-1 Marital deduction; limitation in case of life estate or other “terminable interest”.

(a) *In general.* Section 2056(b) provides that no marital deduction is allowed with respect to certain property interests, referred to generally as “terminable interests”, passing from a decedent to his surviving spouse. The phrase “terminable interest” is defined in paragraph (b) of this section. However, the fact that an interest in property passing to a decedent’s surviving spouse is a “terminable interest” makes it nondeductible only (1) under the circumstances described in paragraph (c) of this section, and (2) if it does not come within one of the exceptions referred to in paragraph (d) of this section.

(b) *Terminable interests.* A “terminable interest” in property is an interest which will terminate or fail on the lapse of time or on the occurrence or the failure to occur of some contingency. Life estates, terms for years, annuities, patents, and copyrights are therefore terminable interests. However, a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity or a term for years, is not a terminable interest.