

surviving spouse, then two-thirds of the allowance for support would constitute a non-deductible terminable interest.

[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)-2 Marital deduction; interest in unidentified assets.

(a) *In general.* Section 2056(b)(2) provides that if an interest passing to a decedent's surviving spouse may be satisfied out of assets (or their proceeds) which include a particular asset that would be a nondeductible interest if it passed from the decedent to his spouse, the value of the interest passing to the spouse is reduced, for the purpose of the marital deduction, by the value of the particular asset.

(b) *Application of section 2056(b)(2).* In order for section 2056(b)(2) to apply, two circumstances must coexist, as follows:

(1) The property interest which passed from the decedent to his surviving spouse must be payable out of a group of assets included in the gross estate. Examples of property interests payable out of a group of assets are a general legacy, a bequest of the residue of the decedent's estate or of a proportion of the residue, and a right to a share of the corpus of a trust upon its termination.

(2) The group of assets out of which the property interest is payable must include one or more particular assets which, if passing specifically to the surviving spouse, would be nondeductible interests. Therefore, section 2056(b)(2) is not applicable merely because the group of assets includes a terminable interest, but would only be applicable if the terminable interest were nondeductible under the provisions of § 20.2056(b)-1.

(c) *Interest nondeductible if circumstances present.* If both of the circumstances set forth in paragraph (b) of this section are present, the property interest payable out of the group of assets is (except as to any excess of its value over the aggregate value of the particular asset or assets which would not be deductible if passing specifically to the surviving spouse) a nondeductible interest.

(d) *Example.* The application of this section may be illustrated by the following example:

Example. A decedent bequeathed one-third of the residue of his estate to his wife. The property passing under the decedent's will included a right to the rentals of an office building for a term of years, reserved by the decedent under a deed of the building by way of gift to his son. The decedent did not make a specific bequest of the right to such rentals. Such right, if passing specifically to the wife, would be a nondeductible interest (see example (5) of paragraph (g) of § 20.2056(b)-1). It is assumed that the value of the bequest of one-third of the residue of the estate to the wife was \$85,000, and that the right to the rentals was included in the gross estate at a value of \$60,000. If the decedent's executor had the right under the decedent's will or local law to assign the entire lease in satisfaction of the bequest, the bequest is a nondeductible interest to the extent of \$60,000. If the executor could only assign a one-third interest in the lease in satisfaction of the bequest, the bequest is a nondeductible interest to the extent of \$20,000. If the decedent's will provided that his wife's bequest could not be satisfied with a nondeductible interest, the entire bequest is a deductible interest. If, in this example, the asset in question had been foreign real estate not included in the decedent's gross estate, the results would be the same.

[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)-3 Marital deduction; interest of spouse conditioned on survival for limited period.

(a) *In general.* Generally, no marital deduction is allowable if the interest passing to the surviving spouse is a terminable interest as defined in paragraph (b) of § 20.2056(b)(1). However, section 2056(b)(3) provides an exception to this rule so as to allow a deduction if (1) the only condition under which it will terminate is the death of the surviving spouse within 6 months after the decedent's death, or her death as a result of a common disaster which also resulted in the decedent's death, and (2) the condition does not in fact occur.

(b) *Six months' survival.* If the only condition which will cause the interest taken by the surviving spouse to terminate is the death of the surviving spouse and the condition is of such nature that it can occur only within 6 months following the decedent's death,