

the exception provided by section 2056(b)(3) will apply, provided the condition does not in fact occur. However, if the condition (unless it relates to death as a result of a common disaster) is one which may occur either within the 6-month period or thereafter, the exception provided by section 2056(b)(3) will not apply.

(c) *Common disaster.* If a property interest passed from the decedent to his surviving spouse subject to the condition that she does not die as a result of a common disaster which also resulted in the decedent's death, the exception provided by section 2056(b)(3) will not be applied in the final audit of the return if there is still a possibility that the surviving spouse may be deprived of the property interest by operation of the common disaster provision as given effect by the local law.

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

Example (1). A decedent bequeathed his entire estate to his spouse on condition that she survive him by 6 months. In the event his spouse failed to survive him by 6 months, his estate was to go to his niece and her heirs. The decedent was survived by his spouse. It will be observed that, as of the time of the decedent's death, it was possible that the niece would, by reason of the interest which passed to her from the decedent possess or enjoy the estate after the termination of the interest which passed to the spouse. Hence, under the general rule set forth in § 20.2056(b)-1, the interest which passed to the spouse would be regarded as a nondeductible interest. If the surviving spouse in fact died within 6 months after the decedent's death, that general rule is to be applied, and the interest which passed to the spouse is a nondeductible interest. However, if the spouse in fact survived the decedent by 6 months, thus extinguishing the interest of the niece, the case comes within the exception provided by section 2056(b)(3), and the interest which passed to the spouse is a deductible interest. (It is assumed for the purpose of this example that no other factor which would cause the interest to be nondeductible is present.)

Example (2). The facts are the same as in example (1) except that the will provided that the estate was to go to the niece either in case the decedent and his spouse should both die as a result of a common disaster, or in case the spouse should fail to survive the decedent by 3 months. It is assumed that the decedent was survived by his spouse. In this example, the interest which passed from the decedent to his surviving spouse is to be re-

garded as a nondeductible interest if the surviving spouse in fact died either within 3 months after the decedent's death or as a result of a common disaster which also resulted in the decedent's death. However, if the spouse in fact survived the decedent by 3 months, and did not thereafter die as a result of a common disaster which also resulted in the decedent's death, the exception provided under section 2056(b)(3) will apply and the interest will be deductible.

Example (3). The facts are the same as in example (1) except that the will provided that the estate was to go to the niece if the decedent and his spouse should both die as a result of a common disaster and if the spouse failed to survive the decedent by 3 months. If the spouse in fact survived the decedent by 3 months, the interest of the niece is extinguished, and the interest passing to the spouse is a deductible interest.

Example (4). A decedent devised and bequeathed his residuary estate to his wife if she was living on the date of distribution of his estate. The devise and bequest is a nondeductible interest even though distribution took place within 6 months after the decedent's death and the surviving spouse in fact survived the date of distribution.

§ 20.2056(b)-4 Marital deduction; valuation of interest passing to surviving spouse.

(a) *In general.* The value, for the purpose of the marital deduction, of any deductible interest which passed from the decedent to his surviving spouse is to be determined as of the date of the decedent's death, except that if the executor elects the alternate valuation method under section 2032 the valuation is to be determined as of the date of the decedent's death but with the adjustment described in paragraph (a)(3) of § 20.2032-1. The marital deduction may be taken only with respect to the net value of any deductible interest which passed from the decedent to his surviving spouse, the same principles being applicable as if the amount of a gift to the spouse were being determined.

(b) *Property interest subject to an encumbrance or obligation.* If a property interest passed from the decedent to his surviving spouse subject to a mortgage or other encumbrance, or if an obligation is imposed upon the surviving spouse by the decedent in connection with the passing of a property interest, the value of the property interest is to

be reduced by the amount of the mortgage, other encumbrance, or obligation. However, if under the terms of the decedent's will or under local law the executor is required to discharge, out of other assets of the decedent's estate, a mortgage or other encumbrance on property passing from the decedent to his surviving spouse, or is required to reimburse the surviving spouse for the amount of the mortgage or other encumbrance, the payment or reimbursement constitutes an additional interest passing to the surviving spouse. The passing of a property interest subject to the imposition of an obligation by the decedent does not include a bequest, devise, or transfer in lieu of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate. The passing of a property interest subject to the imposition of an obligation by the decedent does, however, include a bequest, etc., in lieu of the interest of his surviving spouse under community property laws unless such interest was, immediately prior to the decedent's death, a mere expectancy. The following examples are illustrative of property interests which passed from the decedent to his surviving spouse subject to the imposition of an obligation by the decedent:

Example (1). A decedent devised a residence valued at \$25,000 to his wife, with a direction that she pay \$5,000 to his sister. For the purpose of the marital deduction, the value of the property interest passing to the wife is only \$20,000.

Example (2). A decedent devised real property to his wife in satisfaction of a debt owing to her. The debt is a deductible claim under section 2053. Since the wife is obligated to relinquish the claim as a condition to acceptance of the devise, the value of the devise is, for the purpose of the marital deduction, to be reduced by the amount of the claim.

Example (3). A decedent bequeathed certain securities to his wife in lieu of her interest in property held by them as community property under the law of the State of their residence. The wife elected to relinquish her community property interest and to take the bequest. For the purpose of the marital deduction, the value of the bequest is to be reduced by the value of the community property interest relinquished by the wife.

(c) *Effect of death taxes.* (1) In the determination of the value of any property interest which passed from the decedent to his surviving spouse, there must be taken into account the effect which the Federal estate tax, or any estate, succession, legacy, or inheritance tax, has upon the net value to the surviving spouse of the property interest.

(2) For example, assume that the only bequest to the surviving spouse is \$100,000 and the spouse is required to pay a State inheritance tax in the amount of \$1,500. If no other death taxes affect the net value of the bequest, the value, for the purpose of the marital deduction, is \$98,500.

(3) As another example, assume that a decedent devised real property to his wife having a value for Federal estate tax purposes of \$100,000 and also bequeathed to her a nondeductible interest for life under a trust. The State of residence valued the real property at \$90,000 and the life interest at \$30,000, and imposed an inheritance tax (at graduated rates) of \$4,800 with respect to the two interests. If it is assumed that the inheritance tax on the devise is required to be paid by the wife, the amount of tax to be ascribed to the devise is:

$$(90,000+120,000)\times\$4,800=\$3,600.$$

Accordingly, if no other death taxes affect the net value of the bequest, the value, for the purpose of the marital deduction, is \$100,000 less \$3,600, or \$96,400.

(4) If the decedent bequeaths his residuary estate, or a portion of it, to his surviving spouse, and his will contains a direction that all death taxes shall be payable out of the residuary estate, the value of the bequest, for the purpose of the marital deduction, is based upon the amount of the residue as reduced pursuant to such direction, if the residuary estate, or a portion of it, is bequeathed to the surviving spouse, and by the local law the Federal estate tax is payable out of the residuary estate, the value of the bequest, for the purpose of the marital deduction, may not exceed its value as reduced by the Federal estate tax. Methods of computing

the deduction, under such circumstances, are set forth in supplemental instructions to the estate tax return.

(d) *Effect of administration expenses—*

(1) *Definitions—(i) Management expenses.* Estate management expenses are expenses that are incurred in connection with the investment of estate assets or with their preservation or maintenance during a reasonable period of administration. Examples of these expenses could include investment advisory fees, stock brokerage commissions, custodial fees, and interest.

(ii) *Transmission expenses.* Estate transmission expenses are expenses that would not have been incurred but for the decedent's death and the consequent necessity of collecting the decedent's assets, paying the decedent's debts and death taxes, and distributing the decedent's property to those who are entitled to receive it. Estate transmission expenses include any administration expense that is not a management expense. Examples of these expenses could include executor commissions and attorney fees (except to the extent of commissions or fees specifically related to investment, preservation, or maintenance of the assets), probate fees, expenses incurred in construction proceedings and defending against will contests, and appraisal fees.

(iii) *Marital share.* The marital share is the property or interest in property that passed from the decedent for which a deduction is allowable under section 2056(a). The marital share includes the income produced by the property or interest in property during the period of administration if the income, under the terms of the governing instrument or applicable local law, is payable to the surviving spouse or is to be added to the principal of the property interest passing to, or for the benefit of, the surviving spouse.

(2) *Effect of transmission expenses.* For purposes of determining the marital deduction, the value of the marital share shall be reduced by the amount of the estate transmission expenses paid from the marital share.

(3) *Effect of management expenses attributable to the marital share.* For purposes of determining the marital de-

duction, the value of the marital share shall not be reduced by the amount of the estate management expenses attributable to and paid from the marital share. Pursuant to section 2056(b)(9), however, the amount of the allowable marital deduction shall be reduced by the amount of any such management expenses that are deducted under section 2053 on the decedent's Federal estate tax return.

(4) *Effect of management expenses not attributable to the marital share.* For purposes of determining the marital deduction, the value of the marital share shall be reduced by the amount of the estate management expenses paid from the marital share but attributable to a property interest not included in the marital share.

(5) *Examples.* The following examples illustrate the application of this paragraph (d):

Example 1. The decedent dies after 2006 having made no lifetime gifts. The decedent makes a bequest of shares of ABC Corporation stock to the decedent's child. The bequest provides that the child is to receive the income from the shares from the date of the decedent's death. The value of the bequeathed shares on the decedent's date of death is \$3,000,000. The residue of the estate is bequeathed to a trust for which the executor properly makes an election under section 2056(b)(7) to treat as qualified terminable interest property. The value of the residue on the decedent's date of death, before the payment of administration expenses and Federal and State estate taxes, is \$6,000,000. Under applicable local law, the executor has the discretion to pay administration expenses from the income or principal of the residuary estate. All estate taxes are to be paid from the residue. The State estate tax equals the State death tax credit available under section 2011.

During the period of administration, the estate incurs estate transmission expenses of \$400,000, which the executor charges to the residue. For purposes of determining the marital deduction, the value of the residue is reduced by the Federal and State estate taxes and by the estate transmission expenses. If the transmission expenses are deducted on the Federal estate tax return, the marital deduction is \$3,500,000 (\$6,000,000 minus \$400,000 transmission expenses and minus \$2,100,000 Federal and State estate taxes). If the transmission expenses are deducted on the estate's Federal income tax return rather than on the estate tax return, the marital deduction is \$3,011,111 (\$6,000,000 minus \$400,000 transmission expenses and

minus \$2,588,889 Federal and State estate taxes).

Example 2. The facts are the same as in Example 1, except that, instead of incurring estate transmission expenses, the estate incurs estate management expenses of \$400,000 in connection with the residue property passing for the benefit of the spouse. The executor charges these management expenses to the residue. In determining the value of the residue passing to the spouse for marital deduction purposes, a reduction is made for Federal and State estate taxes payable from the residue but no reduction is made for the estate management expenses. If the management expenses are deducted on the estate's income tax return, the net value of the property passing to the spouse is \$3,900,000 (\$6,000,000 minus \$2,100,000 Federal and State estate taxes). A marital deduction is claimed for that amount, and the taxable estate is \$5,100,000.

Example 3. The facts are the same as in Example 1, except that the estate management expenses of \$400,000 are incurred in connection with the bequest of ABC Corporation stock to the decedent's child. The executor charges these management expenses to the residue. For purposes of determining the marital deduction, the value of the residue is reduced by the Federal and State estate taxes and by the management expenses. The management expenses reduce the value of the residue because they are charged to the property passing to the spouse even though they were incurred with respect to stock passing to the child. If the management expenses are deducted on the estate's Federal income tax return, the marital deduction is \$3,011,111 (\$6,000,000 minus \$400,000 management expenses and minus \$2,588,889 Federal and State estate taxes). If the management expenses are deducted on the estate's Federal estate tax return, rather than on the estate's Federal income tax return, the marital deduction is \$3,500,000 (\$6,000,000 minus \$400,000 management expenses and minus \$2,100,000 in Federal and State estate taxes).

Example 4. The decedent, who dies in 2000, has a gross estate of \$3,000,000. Included in the gross estate are proceeds of \$150,000 from a policy insuring the decedent's life and payable to the decedent's child as beneficiary. The applicable credit amount against the tax was fully consumed by the decedent's lifetime gifts. Applicable State law requires the child to pay any estate taxes attributable to the life insurance policy. Pursuant to the decedent's will, the rest of the decedent's estate passes outright to the surviving spouse. During the period of administration, the estate incurs estate management expenses of \$150,000 in connection with the property passing to the spouse. The value of the property passing to the spouse is \$2,850,000 (\$3,000,000 less the insurance proceeds of \$150,000 passing to the child). For purposes of deter-

mining the marital deduction, if the management expenses are deducted on the estate's income tax return, the marital deduction is \$2,850,000 (\$3,000,000 less \$150,000) and there is a resulting taxable estate of \$150,000 (\$3,000,000 less a marital deduction of \$2,850,000). Suppose, instead, the management expenses of \$150,000 are deducted on the estate's estate tax return under section 2053 as expenses of administration. In such a situation, claiming a marital deduction of \$2,850,000 would be taking a deduction for the same \$150,000 in property under both sections 2053 and 2056 and would shield from estate taxes the \$150,000 in insurance proceeds passing to the decedent's child. Therefore, in accordance with section 2056(b)(9), the marital deduction is limited to \$2,700,000, and the resulting taxable estate is \$150,000.

Example 5. The decedent dies after 2006 having made no lifetime gifts. The value of the decedent's residuary estate on the decedent's date of death is \$3,000,000, before the payment of administration expenses and Federal and State estate taxes. The decedent's will provides a formula for dividing the decedent's residuary estate between two trusts to reduce the estate's Federal estate taxes to zero. Under the formula, one trust, for the benefit of the decedent's child, is to be funded with that amount of property equal in value to so much of the applicable exclusion amount under section 2010 that would reduce the estate's Federal estate tax to zero. The other trust, for the benefit of the surviving spouse, satisfies the requirements of section 2056(b)(7) and is to be funded with the remaining property in the estate. The State estate tax equals the State death tax credit available under section 2011. During the period of administration, the estate incurs transmission expenses of \$200,000. The transmission expenses of \$200,000 reduce the value of the residue to \$2,800,000. If the transmission expenses are deducted on the Federal estate tax return, then the formula divides the residue so that the value of the property passing to the child's trust is \$1,000,000 and the value of the property passing to the marital trust is \$1,800,000. The allowable marital deduction is \$1,800,000. The applicable exclusion amount shields from Federal estate tax the entire \$1,000,000 passing to the child's trust so that the amount of Federal and State estate taxes is zero. Alternatively, if the transmission expenses are deducted on the estate's Federal income tax return, the formula divides the residue so that the value of the property passing to the child's trust is \$800,000 and the value of the property passing to the marital trust is \$2,000,000. The allowable marital deduction is \$2,000,000. The applicable exclusion amount shields from Federal estate tax the entire \$800,000 passing to the child's trust so that the amount of Federal and State estate taxes remains zero.

Example 6. The facts are the same as in *Example 5*, except that the decedent's will provides that the child's trust is to be funded with that amount of property equal in value to the applicable exclusion amount under section 2010 allowable to the decedent's estate. The residue of the estate, after the payment of any debts, expenses, and Federal and State estate taxes, is to pass to the marital trust. The applicable exclusion amount in this case is \$1,000,000, so the value of the property passing to the child's trust is \$1,000,000. After deducting the \$200,000 of transmission expenses, the residue of the estate is \$1,800,000 less any estate taxes. If the transmission expenses are deducted on the Federal estate tax return, the allowable marital deduction is \$1,800,000, the taxable estate is zero, and the Federal and State estate taxes are zero. Alternatively, if the transmission expenses are deducted on the estate's Federal income tax return, the net value of the property passing to the spouse is \$1,657,874 (\$1,800,000 minus \$142,106 estate taxes). A marital deduction is claimed for that amount, the taxable estate is \$1,342,106, and the Federal and State estate taxes total \$142,106.

Example 7. The decedent, who dies in 2000, makes an outright pecuniary bequest of \$3,000,000 to the decedent's surviving spouse, and the residue of the estate, after the payment of all debts, expenses, and Federal and State estate taxes, passes to the decedent's child. Under the terms of the governing instrument and applicable local law, a beneficiary of a pecuniary bequest is not entitled to any income on the bequest. During the period of administration, the estate pays estate transmission expenses from the income earned by the property that will be distributed to the surviving spouse in satisfaction of the pecuniary bequest. The income earned on this property is not part of the marital share. Therefore, the allowable marital deduction is \$3,000,000, unreduced by the amount of the estate transmission expenses.

(6) *Effective date.* The provisions of this paragraph (d) apply to estates of decedents dying on or after December 3, 1999.

(e) *Remainder interests.* If the income from property is made payable to another individual for life, or for a term of years, with remainder absolutely to the surviving spouse or to her estate, the marital deduction is based upon the present value of the remainder. The present value of the remainder is to be determined in accordance with the rules stated in § 20.2031-7. For example, if the surviving spouse is to receive \$50,000 upon the death of a person aged 31 years, the present value of the re-

mainder is \$14,466. If the remainder is such that its value is to be determined by a special computation (see paragraph (b) of § 20.2031-7), a request for a specific factor may be submitted to the Commissioner. The request should be accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the remainder, and copies of the relevant instruments. The Commissioner may, if conditions permit, supply the factor requested. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present value made in accordance with the principles set forth in the applicable paragraphs of § 20.2031-7.

[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; T.D. 8540, 59 FR 30103, June 10, 1994; T.D. 8846, 64 FR 67765, Dec. 3, 1999; 64 FR 71022, Dec. 20, 1999]

§ 20.2056(b)-5 Marital deduction; life estate with power of appointment in surviving spouse.

(a) *In general.* Section 2056(b)(5) provides that if an interest in property passes from the decedent to his surviving spouse (whether or not in trust) and the spouse is entitled for life to all the income from the entire interest or all the income from a specific portion of the entire interest, with a power in her to appoint the entire interest or the specific portion, the interest which passes to her is a deductible interest, to the extent that it satisfies all five of the conditions set forth below (see paragraph (b) of this section if one or more of the conditions is satisfied as to only a portion of the interest):

(1) The surviving spouse must be entitled for life to all of the income from the entire interest or a specific portion of the entire interest, or to a specific portion of all the income from the entire interest.

(2) The income payable to the surviving spouse must be payable annually or at more frequent intervals.

(3) The surviving spouse must have the power to appoint the entire interest or the specific portion to either herself or her estate.

(4) The power in the surviving spouse must be exercisable by her alone and