

Notice of Proposed Rulemaking and Notice of Public Hearing

Estate and Gift Tax Marital Deduction

REG-209830-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In T.D. 8714, page 5, the IRS is issuing temporary regulations relating to the estate tax marital deduction to conform the Estate Tax Regulations to recent court decisions. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by May 19, 1997. Outlines of topics to be discussed at the public hearing scheduled for June 3, 1997, at 10 a.m. must be received by May 13, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-209830-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-209830-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Susan B. Hurwitz, (202) 622-3090; concerning submissions and the hearing, Evangelista Lee, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in T.D. 8714 amend the Estate Tax Regulations (26 CFR part 20) relating to sections 2044 and 2056. The temporary regulations conform the estate tax marital deduction regulations to recent court decisions in *Estate of Clayton v. Commissioner*, 976 F.2d 1486 (5th Cir. 1992), *rev'g* 97 T.C. 327 (1991); *Estate of Robertson v. Commissioner*, 15 F.3d 779 (8th Cir. 1994), *rev'g* 98 T.C. 678 (1992); *Estate of Spencer v. Commissioner*, 43 F.3d 226 (6th Cir. 1995), *rev'g* T.C. Memo. 1992-579; and *Estate of Clack v. Commissioner*, 106 T.C. 131 (1996).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely (in the manner described in ADDRESSES) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 3, 1997, at 10 a.m. in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW, Washing-

ton, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments by May 19, 1997, and submit an outline of the topics to be discussed and the time to be devoted to each topic by May 13, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of the proposed regulations is Susan B. Hurwitz, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 20 is proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 20.2044-1, paragraph (e) Example 8 is added to read as follows:

§ 20.2044-1 *Certain property for which marital deduction was previously allowed.*

[The text of paragraph (e) *Example 8* as proposed is the same as the text of § 20.2044-1T(e) *Example 8* published in T.D. 8714].

Par. 3. Section 20.2056(b)-7 is amended to read as follows:

§ 20.2056(b)-7 *Election with respect to life estate for surviving spouse.*

[The text of paragraphs (d)(3), and (h) *Example 6* is the same as the text of

§ 20.2056(b)-7T(d)(3)(ii), and (h) *Example 6* published in T.D. 8714].

Par. 4. Section 20.2056(b)-10 is revised to read as follows:

§ 20.2056(b)-10 Effective dates.

Except as specifically provided in §§ 20.2056(b)-5(c)(3)(ii) and (iii), 20.2056(b)-7T(d)(3), 20.2056(b)-7(e)-(5), and 20.2056(b)-8(b), the provisions of §§ 20.2056(b)-5(c), 20.2056(b)-7, 20.2056(b)-8, and 20.2056(b)-9 are effective with respect to estates of decedents dying after March 1, 1994. With respect to decedents dying on or before March 1, 1994, the executor of the decedent's estate may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of §§ 20.2056(b)-5(c), 20.2056(b)-7, 20.2056(b)-8, and 20.2056(b)-9 (as well as project LR-211-76 (1984-1 C.B. 598), see § 601.601(d)(2)(ii)(b) of this chapter), are considered a reasonable interpretation of the statutory provisions.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on February 14, 1997, 8:45 a.m., and published in the issue of the Federal Register for February 18, 1997, 62 F.R. 7156)