

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 2056A: Qualified domestic trust.

Rev. Proc. 96-54

SECTION 1. PURPOSE

This revenue procedure provides sample paragraphs that may be used to satisfy the governing instrument requirements contained in §§ 20.2056A-2(d)(1)(i) and (d)(1)(ii) of the Estate Tax Regulations for a qualified domestic trust (QDOT) as described in § 2056A(a) of the Internal Revenue Code.

SEC. 2. BACKGROUND

Section 2056A(a)(2) authorizes the Internal Revenue Service to promulgate regulations that will ensure the collection of the additional estate tax imposed under § 2056A(b)(1)(A) and (B). Final regulations were issued pursuant to this authorization on December 9, 1996.

Under § 20.2056A-2(d)(1)(i), if the fair market value of the assets passing to the QDOT is in excess of \$2 million, either: (A) at least one Trustee must be a United States bank described in § 581, or a U.S. Branch of a foreign bank; (B) the trustee must furnish a bond in favor of the Internal Revenue Service in an amount equal to 65 percent of the fair market value of the trust corpus; or (C) the trustee must furnish an irrevocable letter of credit in an amount equal to 65 percent of the fair market value of the trust corpus. The regulations provide detailed descriptions of the required terms of the bond and letter of credit and sample forms for each.

Under § 20.2056A-2(d)(1)(i), the QDOT may alternate among the arrangements provided in paragraphs (d)(1)(i)(A), (B), and (C), provided that at any given time at least one of the arrangements is in effect.

Under § 20.2056A-2(d)(1)(ii), if the fair market value of the QDOT assets is \$2 million or less, the QDOT must provide that the trustee will either satisfy the requirements listed above, or limit the fair market value of real property that is held by the trust and situated outside the United States to 35 percent of the value of the trust at the close of the taxable year. A special look-through rule applies for interests in corporations or partnerships that own real property. In addition, an executor may elect to exclude up to \$600,000 in value of a principal residence passing to the QDOT

in determining if the \$2 million threshold has been exceeded.

This revenue procedure contains sample trust language that, if adopted in the trust instrument, will be recognized as meeting the requirements of § 20.2056A-2(d)(1)(i)(A), (B), and (C), and (d)(1)(ii).

SEC. 3. SCOPE AND OBJECTIVE

The sample trust language contained in section 4 of this revenue procedure meets all of the requirements under § 20.2056A-2(d)(1)(i)(A), (B), and (C), and (d)(1)(ii). If the trust instrument expressly adopts language that is the same in all material respects to the sample paragraphs provided herein, and otherwise meets the requirements of a qualified domestic trust under § 2056A(a) and § 20.2056A-2, the Service will recognize the trust as satisfying the applicable requirements of § 2056A(a) and the corresponding regulations.

SEC. 4. SAMPLE QUALIFIED DOMESTIC TRUST LANGUAGE THAT MAY BE USED TO SATISFY THE "GOVERNING INSTRUMENT" REQUIREMENTS OF § 20.2056A-2(d)(1)(i) and (ii).

My trustee shall comply with the requirements for security arrangements for qualified domestic trusts as set forth in Treas. Reg. § 20.2056A-2(d)(1)(i) or (ii), summarized as follows:

(a) *Trust in Excess of \$2 Million.* If the fair market value of the assets passing to the trust (determined without reduction for any indebtedness thereon) exceeds \$2 million on the relevant valuation date, then my Trustee must at all times during the term of the Trust either satisfy the U.S. Bank as Trustee requirement (see Treas. Reg. § 20.2056A-2(d)(1)(i)(A)), or furnish a bond that satisfies the requirements of Treas. Reg. § 20.2056A-2(d)(1)(i)(B), or furnish an irrevocable letter of credit that satisfies the requirements of Treas. Reg. § 20.2056A-2(d)(1)(i)(C), (hereinafter referred to as the U.S. Bank, Bond, or Letter of Credit Requirement). My Trustee may alternate between any of the security arrangements described in the preceding sentence provided that, at all times during the term of the trust, one of the arrangements is operative.

If my Trustee elects to furnish a bond or letter of credit as security, then in the

event the Internal Revenue Service draws on the instrument in accordance with its terms, neither my U.S. Trustee nor any other person will seek a return of any part of the remittance until after April 15th of the calendar year following the year in which the bond or letter of credit is drawn upon.

(b) *Trust of \$2 Million or Less.* If the fair market value of the assets passing to the trust (determined without reduction for any indebtedness) is \$2 million or less on the relevant valuation date, then my Trustee must comply with either the U.S. Bank, Bond, or Letter of Credit Requirement only if more than 35% of the fair market value of the trust assets, determined annually on the last day of the taxable year of the trust, consists of real property located outside the United States. For purposes of determining whether more than 35% of the trust assets consist of foreign real property, Treas. Reg. § 20.2056A-2(d)(1)(ii)(B) applies.

(c) *Determination of Value.* For purposes of determining whether the fair market value of the trust assets exceeds \$2 million, my Trustee is authorized to make the election under Treas. Reg. § 20.2056A-2(d)(1)(iv)(A) with respect to real property used as my spouse's personal residence.

(d) *Amount of Bond or Letter of Credit.* For purposes of determining the amount of the bond or letter of credit, my Trustee is authorized to make the election under Treas. Reg. § 20.2056A-2(d)(1)(iv)(B) with respect to real property used as my spouse's personal residence.

(e) *Annual Statements.* My Trustee is directed to file any annual statements required under Treas. Reg. § 20.2056A-2(d)(3).

(f) *General Conduct.* Notwithstanding anything contained herein to the contrary, my U.S. Trustee is hereby authorized to enter into alternative plans or arrangements with the Internal Revenue Service pursuant to Treas. Reg. § 20.2056A-2(d)(4) to assure collection of the deferred estate tax, in lieu of the provisions contained herein.

(g) *References to Regulations.* All references to "Treas. Reg." in this document shall be references to regulations published under 26 CFR as in effect on the date of execution of this document, or, in the event that any such regulation is amended or superseded thereafter, to

the regulation (or any successor regulation) as so amended.

(h) *Dollar Values.* The use of the dollar sign (\$) shall indicate amounts stated in U.S. dollars.

SEC. 5. APPLICATION

The Service will recognize a trust as meeting all of the requirements of § 20.2056A-2(d)(1)(i) and (ii) if the trust contains language that is the same in all material respects to the paragraphs provided in section 4, and the trust operates in a manner consistent with the terms of the trust instrument.

SEC. 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Susan B. Hurwitz of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Ms. Hurwitz at (202) 622-3090 (not a toll-free number).

SEC. 7. EFFECTIVE DATE

This revenue procedure is effective for trusts for which qualified domestic trust elections are made after December 9, 1996, the date of publication of this revenue procedure in the Internal Revenue Bulletin.
