

SUPPORTING STATEMENT

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Regulation section 20.2056(b)-(7)(d)(3)(i) amends the estate tax regulations to allow a qualified terminable interest property election to be made and an estate tax marital deduction claimed by estates of decedents whose estate tax returns are due after February 18, 1997, where a surviving spouse's income interest for life is contingent upon the executor's election under § 2056(b)(7)(B)(v) and/or where as a result of the contingency the portion of the property for which the election is not made passes to or for the benefit of persons other than the surviving spouse.

Retroactive relief is also granted to estates whose estate tax returns were due on or before February 18, 1997, that did not make the election as a result of the circumstances described above. In order to obtain this relief the period of limitations on filing a claim for credit or refund under § 6511(a) must not have expired. Relief is obtained by filing a claim for credit or refund on Form 843 with a revised Recapitulation and Schedule M, of Form 706 that signifies the QTIP election. In addition, a statement that is provided in the regulations must be included with the Form 843. The statement must be signed under penalties of perjury, by or on behalf of the surviving spouse. These requirements are necessary for the IRS to provide a procedure for taxpayers to obtain retroactive relief under the regulation.

2. USE OF DATA

The information will be used by the IRS in the administration of the Internal Revenue Code to monitor the estates of decedents that are obtaining retroactive relief and the estates of the surviving spouses of those decedents.

3. USE OF IMPROVED INFORMATION TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency whenever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH THE GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OR INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

On March 1 1994, the IRS published final estate and gift tax regulations (26 CFR part 20 and part 25) under sections 2044, 2056, 2207A, 2519, 2523, and 6019 of the Internal Revenue Code in the Federal Register (59 FR 9642). Temporary and Proposed Regulations (TD 8714 and REG-209830-96) were published in the Federal Register on February 18, 1997 (62 FR 7156 and 7188). A public hearing was held on June 3, 1997. The temporary and proposed regulations did not contain a retroactive relief provision for estates of decedents whose estate tax returns were due on or before February 18, 1997. However, some commentators suggested that retroactive relief should be available for those estates. In response to these comments, the final regulations (TD 8779), provide taxpayers retroactive relief to make a qualified terminable interest property election. To receive this relief, the estates of those decedents for whom relief is available must file a claim for credit or refund on Form 843 with a revised Recapitulation and Schedule M, Form 706 and include with the Form 843 a statement provided in the regulations, signed under penalties of perjury, by the surviving spouse or the legal representative of the surviving spouse.

In response to the Federal Register Notice dated September 16, 2010 (75 FR 56658), we received comments during the comment period regarding TD 8779.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 20.2056(b)-7(d)(3)(ii) permits estates of decedents whose estate tax returns were due on or before February 18, 1997, to obtain retroactive relief to make a qualified terminable interest property election. In order to obtain this relief the estate of the decedent must file a claim for credit or refund on Form 843 containing a revised Recapitulation and Schedule M of Form 706 (or 706NA) that signifies the election and a statement provided in the regulation that is signed, under penalties of perjury by the surviving spouse or the spouse's legal representative. The burden of complying with this requirement is reflected in the burden of Form 843.

Estimates of annualized cost to respondents for the hour burdens shown above are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated September 16, 2010, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not

receive any responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collection of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material on the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

