

Code of Federal Regulations

Title 26. Internal Revenue

Chapter I. Internal Revenue Service, Department of the Treasury

Subchapter B. **Estate** and Gift Taxes

Part 20. **Estate** Tax; **Estates** of Decedents Dying After August 16, 1954 (Refs & Annos)

**Estates** of Citizens or Residents

Taxable **Estate**

26 C.F.R. § 20.2056(b)–4, Treas. Reg. § 20.2056(b)–4

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

### Currentness

(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:

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

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 deduction, 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 determining 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 remainder 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.

## Credits

[T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8522, 59 FR 9649, March 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]

SOURCE: T.D. 6296, 23 FR 4529, June 24, 1958; 25 FR 14021, Dec. 31, 1960; T.D. 9884, 84 FR 64999, Nov. 26, 2019, unless otherwise noted.

AUTHORITY: 26 U.S.C. 7805.; Section 20.2010–0 also issued under 26 U.S.C. 2010(c)(6).; Section 20.2010–1 also issued under 26 U.S.C. 2001(g)(2) and 26 U.S.C. 2010(c)(6).; Section 20.2010–2 also issued under 26 U.S.C. 2010(c)(6).; Section 20.2010–3 also issued under 26 U.S.C. 2010(c)(6).; Section 20.2031–7 also issued under 26 U.S.C. 7520(c)(2).; Section 20.2031–7A also issued under 26 U.S.C. 7520(c)(2).; Section 20.6060–1 also issued under 26 U.S.C. 6060(a).; Section 20.6081–1 also issued under 26 U.S.C. 6081(a).; Section 20.6109–1 also issued under 26 U.S.C. 6109(a).; Section 20.6109–2 also issued under 26 U.S.C. 6109(a).; Section 20.6302–1 also issued under 26 U.S.C. 6302(a) and (h).; Section 20.6695–1 also issued under 26 U.S.C. 6695(b).; Section 20.7520–1 also issued under 26 U.S.C. 7520(c)(2).; Section 20.7520–2 also issued under 26 U.S.C. 7520(c)(2).; Section 20.7520–3 also issued under 26 U.S.C. 7520(c)(2).; Section 20.7520–4 also issued under 26 U.S.C. 7520(c)(2).

## HISTORICAL NOTES

### Effective and Applicability Notes




December 3, 1999.


## Relevant Notes of Decisions (18)


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Notes of Decisions listed below contain your search terms.

### In general


Inasmuch as marital deduction statute allows deduction for qualifying property only to extent of property's value, for federal estate tax purposes, when executors value property for gross estate purposes as of date of death, value of marital deduction will be limited by its date-of-death value. (Per Justice Kennedy, with the Chief Justice and two Justices concurring and three Justices concurring in the judgment.) 26 U.S.C.A. § 2056(a); 26 C.F.R. § 20.2056(b)–4(a). [Commissioner v. Estate of Hubert](#), 1997, 117 S.Ct. 1124, 520 U.S. 93, 137 L.Ed.2d 235. Internal Revenue  4169(5)

Marital deduction is limited to value of property that is actually received by surviving spouse or “net benefit” received by spouse. 26 U.S.C.A. § 2056(a), (b)(4). [Estate of Street v. C.I.R.](#), 1992, 974 F.2d 723, on remand 1994 WL 652242. Internal Revenue  4169(5)


Estate was not required to reduce marital deduction by amounts of federal estate and state death taxes it owed, where those taxes were attributable values of gifts made during decedent's lifetime but included in the gross estate by reason of decedent's retained life estate in the gifted assets, and because portion of decedent's that passed assets to his wife clearly manifested an intention that the marital deduction not be reduced or diminished by estate's tax liabilities, estate executor could recover from beneficiaries who received property during decedent's lifetime an amount equal to federal estate and state death taxes plus interest attributable to those transfers. [Estate of Turner v. Commissioner of Internal Revenue](#), 2018, 151 T.C. 160, 2018 WL 6131549, Unreported, revised, appeal dismissed 2020 WL 2934794. Internal Revenue  4169(5)



Estate was not entitled to increase the marital deduction for estate tax purposes by postdeath income that was generated by marital deduction property, since the income interest was not a qualifying deductible interest because it was not included in the gross estate. [Estate of Turner v. Commissioner of Internal Revenue](#), 2018, 151 T.C. 160, 2018 WL 6131549, Unreported, revised, appeal dismissed 2020 WL 2934794. Internal Revenue  4169(5)


### Alternate valuation


Where, under equalization clause of decedent's inter vivos trust, his surviving spouse would take nothing if values of assets owned by her at his death were subsequently determined, at alternate valuation date, to be in excess of certain amounts, in which event entire value of trust would be taxed in decedent's estate, and where there was no possibility of surviving spouse's interest in trust passing to others without payment of estate or gift tax, tax court properly refused to apply terminable interest rule to disqualify for marital deduction for federal estate tax purposes spouse's interest in trust. 26 U.S.C.A. (I.R.C.1954) § 2056(b), (b)(1). [Estate of Smith](#), 1977, 565 F.2d 455. Internal Revenue  4169(4)

### Effect of death taxes



If any part of property transferred to surviving spouse is used to pay inheritance taxes, value of marital deduction is reduced by amount of taxes so paid. 26 U.S.C.A. (I.R.C.1954) § 2056(a). [Estate of Wycoff v. C.I.R.](#), 1974, 506 F.2d 1144, certiorari denied 95 S.Ct. 2398, 421 U.S. 1000, 44 L.Ed.2d 667. Internal Revenue  4169(5)



Even though decedent in will directed that inheritance, estate and transfer taxes be paid out of nonmarital trust portion of estate and executor paid death taxes from nonmarital trust portion, where testator in will empowered executor in his sole discretion to pay death taxes out of widow's marital trust if executor considered it prudent from a business standpoint, marital share available to surviving spouse was subject to payment of death taxes and value of marital deduction had to be reduced by amount of death taxes. 26 U.S.C.A. (I.R.C.1954) § 2056(a, b), (b)(4, 5). **Estate of Wycoff v. C.I.R.**, 1974, 506 F.2d 1144, certiorari denied 95 S.Ct. 2398, 421 U.S. 1000, 44 L.Ed.2d 667. Internal Revenue  4169(5); Internal Revenue  4824


Marital deduction for federal estate tax purposes was to be reduced by inheritance tax imposed by Commonwealth of Pennsylvania upon widow's interest in estate only to extent that the tax had an effect upon net value to the widow of such interest. 26 U.S.C.A. (I.R.C.1939) § 812(e)(1). **Babcock's Estate v. C.I.R.**, 1956, 234 F.2d 837. Internal Revenue  4169(5)

Provisions of will wherein Wisconsin testator directed estate to pay “debts, expenses of last illness, funeral expenses, cost of administering my estate, and all federal estate taxes which may be assessed by reason of my death” and set aside “a portion of my estate of value sufficient to obtain the maximum marital deduction allowable” fell short of a clear expression of intent that amount of property to be set aside for surviving spouse was not to be reduced by payment of Wisconsin inheritance taxes thereon and, hence, did not preclude marital deduction claimed on testator's federal estate tax return from being reduced for federal estate tax purposes by surviving spouse's share of Wisconsin inheritance taxes. 26 U.S.C.A. §§ 2001(a), 2056, 2056(a), (b)(4), (c)(1). **Murphy's Estate v. U.S.**, W.D.Wis.1981, 524 F.Supp. 862. Internal Revenue  4169(5)



#### Effect of administration expenses


Estate was not required to reduce its marital and charitable deductions by amount of administration expenses paid from income generated by assets allocated to marital and charitable bequests, notwithstanding Commissioner of Internal Revenue's contention that dollar-for-dollar reduction was required, where Tax Court concluded that discretion granted under will to pay expenses out of income was not material limitation on right of surviving spouse and charitable beneficiary to receive income, and Commissioner did not challenge estate's determination of expected future administration expenses as of date-of-death in calculating deduction amounts. (Per Justice Kennedy, with the Chief Justice and two Justices concurring and three Justices concurring in the judgment.) 26 U.S.C.A. §§ 2055, 2056(a); 26 C.F.R. § 20.2056(b)—4(a). **Commissioner v. Estate of Hubert**, 1997, 117 S.Ct. 1124, 520 U.S. 93, 137 L.Ed.2d 235. Internal Revenue  4169(4); Internal Revenue  4172(6)



Assuming necessity of valuing income from estate property that may be used to pay administration expenses for purposes of calculating amounts of marital and charitable deductions for federal estate taxes, valuation would be done by subtracting from value of bequest, computed as if income were not subject to administrative expense charges, present value, as of controlling valuation date, of income expected to be used to pay administrative expenses. (Per Justice Kennedy, with the Chief Justice and two Justices concurring and three Justices concurring in the judgment.) 26 U.S.C.A. §§ 2055, 2056(a); 26 C.F.R. § 20.2056(b)—4(a). **Commissioner v. Estate of Hubert**, 1997, 117 S.Ct. 1124, 520 U.S. 93, 137 L.Ed.2d 235. Internal Revenue  4169(5); Internal Revenue  4172(6)


Whether limitation on spouse's right to income from estate property is material, for purposes of determining whether payment of administration expenses from that income must be considered in valuing property passing to spouse to calculate estate's marital deduction, will depend in part on nature of spouse's interest in assets generating income. (Per Justice Kennedy, with the Chief Justice and two Justices concurring and three Justices concurring in the judgment.) 26 U.S.C.A. § 2056(a); 26 C.F.R. § 20.2056(b)—4(a). **Commissioner v. Estate of Hubert**, 1997, 117 S.Ct. 1124, 520 U.S. 93, 137 L.Ed.2d 235. Internal Revenue  4169(5)

When will requires or allows estate to pay administration expenses from income that would otherwise go to surviving spouse or charitable beneficiary, marital or charitable deduction must reflect date-of-death value of expected future administration expenses chargeable to income if they are material as compared with date-of-death value of expected future income; under this approach, estate will arrive at net economic interest received by surviving spouse or charitable beneficiary. (Per Justice


Kennedy, with the Chief Justice and two Justices concurring and three Justices concurring in the judgment.) 26 U.S.C.A. § 2056(b)(4)(B). *Commissioner v. Estate of Hubert*, 1997, 117 S.Ct. 1124, 520 U.S. 93, 137 L.Ed.2d 235. Internal Revenue  4169(5); Internal Revenue  4172(6)

Regulation for valuing interest passing to surviving spouse, when calculating marital deduction for federal estate tax purposes, does not mandate a setoff against marital deduction for administration expenses allocable to income; regulation merely requires that material limitations on right to receive income be taken into account when valuing interest passing to surviving spouse. 29 C.F.R. § 20.2056(b)—4(a). *Estate of Hubert v. C.I.R.*, C.A.111995, 63 F.3d 1083, certiorari granted 116 S.Ct. 1564, 517 U.S. 1166, 134 L.Ed.2d 664, affirmed 117 S.Ct. 1124, 520 U.S. 93, 137 L.Ed.2d 235. Internal Revenue  4169(5)


Marital and charitable deductions for federal estate tax purposes were to be reduced only by portion of administration expenses allocated to principal and not by amounts allocated to income; Georgia law and will of decedent, who was Georgia resident, authorized allocation of expenses to income rather than principal. 26 U.S.C.A. § 2056; O.C.G.A. § 53–2–101; § 53–15–3 (Repealed). *Estate of Hubert v. C.I.R.*, C.A.111995, 63 F.3d 1083, certiorari granted 116 S.Ct. 1564, 517 U.S. 1166, 134 L.Ed.2d 664, affirmed 117 S.Ct. 1124, 520 U.S. 93, 137 L.Ed.2d 235. Internal Revenue  4169(5); Internal Revenue  4172(6)

Marital deduction must be reduced by amount of administrative expenses paid from estate income between date of decedent's death and date of distribution as income earned by estate during that period builds up marital share and expenses paid from income during that period decrease amount of estate property distributable to spouse. 26 U.S.C.A. § 2056(a), (b)(4). *Estate of Street v. C.I.R.*, 1992, 974 F.2d 723, on remand 1994 WL 652242. Internal Revenue  4169(5)

### Special use valuation

Calculation of amount and funding of surviving spouse's marital deduction bequest was determined based on special use value of woodlands property included in estate, rather than upon inventory value, under paragraph of will making bequest, which provided that values to be used in fraction to be applied to determine “fractional value” of the estate were values used in “finally settling my estate tax liabilities,” that is, the values used on decedent's estate tax return, which included special use valuation of some of the property. 26 U.S.C.A. § 2032A. *Estate of Libeu* (App. 1 Dist. 1988) 205 Cal.App.3d 1436, 253 Cal.Rptr. 456, review denied. Internal Revenue  4169(5)

### Election of surviving spouse—Taking under will

A widow who elected to take under her deceased husband's will in lieu of claiming her community property rights was entitled in computation of taxable value of property or estate received by her for purposes of determining federal estate tax to claim as deduction or exemption value of property she would have received had she elected to claim her community property rights. Probate Code, §§ 970 to 973; 26 U.S.C.A. § 811. *In re Buckhantz' Estate* (App. 2 Dist. 1953) 120 Cal.App.2d 92, 260 P.2d 794. Internal Revenue  4169(5)

Current through February 7, 2025, 90 FR 9128. Some sections may be more current. See credits for details.