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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-104946-07]

RIN 1545-BG36

#### Hybrid Retirement Plans; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking (REG-104946-07) that was published in the **Federal Register** on Friday, December 28, 2007 (72 FR 73680) providing guidance relating to sections 411(a)(13) and 411(b)(5) of the Internal Revenue Code concerning certain hybrid defined benefit plans.

**FOR FURTHER INFORMATION CONTACT:** Lauson C. Green or Linda S. F. Marshall at (202) 622-6090 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The correction notice that is the subject of this document is under section 411 of the Internal Revenue Code.

##### Need for Correction

As published, the notice of proposed rulemaking (REG-104946-07) contains errors that may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG-104946-07), which was the subject of FR Doc. E7-25025, is corrected as follows:

1. On page 73683, column 3, in the preamble, first paragraph of the column, line 15, the language “reasonably expected to result in a larger” is corrected to read “reasonably expected to result in a smaller”.

2. On page 73685, column 1, third paragraph of the column, line 8, the language “‘capital’ rule of section 411(b)(5)(b)(i)(II)” is corrected to read “‘capital’ rule of section 411(b)(5)(B)(i)(II)”.

3. On page 73689, column 2, line 3 from the bottom of the fifth paragraph of the column, the language “section 411(d)(6) is available for the” is corrected to read “section 411(d)(6) relief is available for the”.

## PART 1—[CORRECTED]

### § 1.411(a)(13)-1 [Corrected]

4. On page 73691, column 1, § 1.411(a)(13)-1(d)(3)(ii), line 18, the language “larger annual benefit at normal” is corrected to read “smaller annual benefit at normal”.

5. On page 73691, column 2, § 1.411(a)(13)-1(d)(3)(iii)(B), line 9, the language “reasonably expected to result in a larger” is corrected to read “reasonably expected to result in a smaller”.

### § 1.411(b)(5)-1 [Corrected]

6. On page 73693, column 3, § 1.411(b)(5)-1(c)(3)(ii)(A), line 17, the language “participant under the lump sum-based” is corrected to read “participant under the lump sum-based benefit”.

7. On page 73695, column 1, § 1.411(b)(5)-1(c)(5) *Example 1.* (ii), line 17, the language “permitted to elect (with spousal consent)” is corrected to read “permitted to elect (with spousal consent if applicable)”.

8. On page 73695, column 2, § 1.411(b)(5)-1(c)(5) *Example 2.* (iii), line 5, the language “consent) payment in the same generalized” is corrected to read “consent if applicable) payment in the same generalized”.

9. On page 73695, column 3, § 1.411(b)(5)-1(c)(5) *Example 2.* (v), line 12, the language “of 5.5 percent. Thereafter, Participant’s A’s” is corrected to read “of 5.5 percent. Thereafter, Participant A’s”.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 20

[REG-112196-07]

RIN 1545-BH64

#### Gross Estate; Election to Value on Alternate Valuation Date

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations that provide guidance relating to the availability of the election to use the alternate valuation method under section 2032 of

the Internal Revenue Code (Code). The proposed regulations will affect estates that file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and elect to use the alternate valuation method.

**DATES:** Written or electronic comments and requests for a public hearing must be received by July 24, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-112196-07), Internal Revenue Service, Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-112196-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-112196-07).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Theresa M. Melchiorre, at (202) 622-3090; concerning submissions of comments or to request a hearing, Kelly Banks, at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed amendments to the Estate Tax Regulations (26 CFR part 20) under section 2032 of the Code. Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States. Section 2031(a) provides that the value of the decedent's gross estate includes the value at the time of decedent's death of all property, real or personal, tangible or intangible, wherever situated. Section 2032(a) provides that the value of the gross estate instead may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows. Property distributed, sold, exchanged, or otherwise disposed of within 6 months after the decedent's death must be valued as of the date of distribution, sale, exchange, or other disposition. I.R.C. section 2032(a)(1). Property not distributed, sold, exchanged, or otherwise disposed of within 6 months after the decedent's death must be valued as of the date that is 6 months after the decedent's death. I.R.C. section 2032(a)(2). Any interest or estate which is affected by the mere lapse of time is included at its value as of the time of death (instead of the later date), with adjustment for any difference in its value as of the later date

that is not due to the mere lapse of time. I.R.C. section 2032(a)(3).

The predecessor to section 2032 is section 302(j) of the Revenue Act of 1926, as added by section 202(a) of the Revenue Act of 1935. Revenue Act of 1935, 74 Public Law 407, 49 Stat. 1014 (1935). Section 302(j) allowed executors to elect to use a date that was one year after the date of decedent's death to value estate property. Section 302(j) contained provisions for valuing the property on the date of its sale or disposition during the alternate valuation period and for not taking into account changes in value due to a mere lapse of time. Congress enacted section 302(j) in response to "the hardships which were experienced after 1929 when market values decreased very materially between the period from the date of death and the date of distribution to the beneficiaries." 79 Cong. Rec. 14632 (1935) (statement of Mr. Samuel B. Hill). See, also, H.R. Rep. No. 74-1681, at 9 (1935); S. Rep. No. 74-1240, part 1, at 9-10 (1935); and S. Rep. No. 74-1240, part 2, at 8-9 (1935). Section 302(j) was codified as section 811(j) in the Internal Revenue Code of 1939.

In 1941, the U.S. Supreme Court addressed whether rents, dividends, and interest received and accrued during the alternate valuation period are includible in the decedent's gross estate under section 811(j). *Maass v. Higgins*, 312 U.S. 443 (1941). In that case, the Court stated that the purpose of section 811(j) is "to mitigate the hardship consequent upon shrinkage in the value of estates during the year following death. Congress enacted it in the light of the fact that, due to such shrinkages, many estates were almost obliterated by the necessity of paying a tax on the value of the assets at the date of decedent's death." *Id.* at 446.

In 1954, section 811(j) was recodified as section 2032. Congress considered proposals to amend section 811(j) and, again, Congress stated that, "The option to value property [on the alternate valuation date] initially was provided during the Depression of the early 1930s because by the time estate taxes were paid, property values had dropped substantially, sometimes to such an extent that the proceeds of the sale would not pay the estate tax due." H. Rep. No. 83-1337 at 90 (1954). See, also, S. Rep. No. 83-1622, at 122-123 (1954).

In 1958, § 20.2032-1 of the Estate Tax Regulations was published. This regulation restates the rule in section 2032(a)(3) and provides an example that illustrates the rule that only changes in the value of the decedent's gross estate due to market conditions, and not

changes to the value due to a mere lapse of time, are to be considered in valuing the decedent's gross estate under the alternate valuation method. See example in § 20.2032-1(f)(1).

Two judicial decisions have interpreted the language of section 2032 and its legislative history differently in determining whether post-death events other than market conditions may be taken into account under the alternate valuation method. In *Flanders v. United States*, 347 F. Supp. 95 (N.D. Cal. 1972), the district court held that the reduction in value of property included in the decedent's estate as a result of a voluntary act by the trustee, instead of as a result of market conditions, could not be taken into consideration in valuing the property under the alternate valuation method. In that case, a few months after the death of the decedent, the trustee of the trust owning decedent's undivided one-half interest in real property entered into a Land Conservation Agreement pursuant to the California Land Conservation Act of 1965. In exchange for restricting the property to agricultural uses for a period of 10 years, the trustee was allowed to reduce the assessed value of the land for purposes of paying property taxes. The estate elected to use the alternate valuation method for estate tax purposes and reported the value of the decedent's interest in the land as \$25,000. This value represented one-half of the value of the ranch after the land use restriction was placed upon it, less a lack of marketability discount.

The district court stated that, "It seems clear that Congress intended that the character of the property be established for valuation purposes at the date of death. The option to select the alternate valuation date is merely to allow an estate to pay a lesser tax if unfavorable market conditions (as distinguished from voluntary acts changing the character of the property) result in a lessening of its fair market value." *Id.* at 98.

In *Kohler v. Commissioner*, T.C. Memo. 2006-152, the U.S. Tax Court held that valuation discounts attributable to restrictions imposed on closely-held corporate stock pursuant to a post-death reorganization of the Kohler Company should be taken into consideration in valuing stock on the alternate valuation date. In that case, approximately two months after the death of the decedent, the Kohler Company underwent a reorganization that qualified as a tax-free reorganization under section 368(a) and, thus, was not a sale or disposition for purposes of section 2032(a)(1). The estate opted to receive new Kohler

shares that were subject to transfer restrictions. The estate elected to use the alternate valuation method under section 2032(a)(2) and took into account discounts attributable to the transfer restrictions on the stock in determining the value for Federal estate tax purposes. In the Internal Revenue Bulletin No. 2008-9 on March 3, 2008, the IRS nonacquiesced to the Tax Court opinion in *Kohler (AOD 2008-1)*.

#### Explanation of Provisions

The proposed regulations will amend § 20.2032-1 by restructuring paragraph (f) of this section to clarify that the election to use the alternate valuation method under section 2032 is available to estates that experience a reduction in the value of the gross estate following the date of the decedent's death due to market conditions, but not due to other post-death events. The term *market conditions* is defined in the proposed regulations and examples are provided, which are not intended to be exclusive.

#### Proposed Effective Date

The fourth sentence of § 20.2032-1(f)(2)(i) is applicable to decedents dying after May 1, 1999, subject to transition rules for certain incapacitated individuals. The fifth sentence of § 20.2032-1(f)(2)(i) is applicable to decedents dying after November 30, 1983, subject to transition rules for certain incapacitated individuals. The first, second, and third sentences of § 20.2032-1(f)(2)(i), § 20.2032-1(f)(2)(ii), and all but the last sentence in § 20.2032-1(f)(2) are applicable to decedent's dying after August 16, 1954. When adopted as final regulations, the rules contained in § 20.2032-1(f)(1), § 20.2032-1(f)(3), and the last sentence of § 20.2032-1(f)(2), will be made applicable to estates of decedents dying on or after April 25, 2008.

#### Special Analyses

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has 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 regulation has been submitted to the Chief Counsel for Advocacy of the Small Business

Administration for comment on its impact on small business.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department also request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these proposed regulations is Theresa M. Melchiorre, Office of Associate Chief Counsel (Passthroughs and Special Industries).

#### List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

#### 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.** Section 20.2032-1 is amended as follows:

1. Paragraph (f)(1) is redesignated as paragraph (f)(2)(i).
2. Paragraph (f)(2) is redesignated as paragraph (f)(2)(ii).
3. Paragraph (f) introductory text is redesignated as paragraph (f)(2) introductory text and the last sentence is revised.
4. New paragraphs (f)(1) and (f)(3) are added.
5. The heading for paragraph (h) is revised and four sentences are added at the end of the paragraph.

The additions and revisions read as follows.

**§ 20.2032-1** Alternate valuation.

\* \* \* \* \*

(f) *Post-death market conditions and other post-death events*—(1) *In general.*

The election to use the alternate valuation method under section 2032 permits the property included in the gross estate to be valued as of the alternate valuation date to the extent that the change in value during the alternate valuation period is the result of market conditions. The term *market conditions* is defined as events outside of the control of the decedent (or the decedent's executor or trustee) or other person whose property is being valued that affect the fair market value of the property being valued. Changes in value due to mere lapse of time or to other post-death events other than market conditions will be ignored in determining the value of decedent's gross estate under the alternate valuation method.

(2) *Mere lapse of time.* \* \* \* The application of this paragraph (f)(2) is illustrated in paragraphs (f)(2)(i) and (f)(2)(ii) of this section:

\* \* \* \* \*

(3) *Post-death events*—(i) *In general.* In order to eliminate changes in value due to post-death events other than market conditions, any interest or estate affected by post-death events other than market conditions is included in a decedent's gross estate under the alternate valuation method at its value as of the date of the decedent's death, with adjustment for any change in value that is due to market conditions. The term *post-death events* includes, but is not limited to, a reorganization of an entity (for example, corporation, partnership, or limited liability company) in which the estate holds an interest, a distribution of cash or other property to the estate from such entity, or one or more distributions by the estate of a fractional interest in such entity.

(ii) *Examples.* The following examples illustrate the application of this paragraph (f)(3). In each example, decedent's (D's) estate elects to value D's gross estate under the alternate valuation method, so that the valuation date of the property included in D's gross estate as of D's date of death is either the date the property is distributed, sold, exchanged, or disposed of under section 2032(a)(1) (the date of distribution (distribution date)) or the date that is 6 months after the date of the decedent's death under section 2032(a)(2) (the six month alternate valuation date (AVD)).

*Example 1.* At D's death, D owned common stock in Corporation, a closely-held subchapter C corporation. At that time, the common stock was not subject to transfer restrictions. D's stock was valued at \$50X at the date of death. Two months after D's death, D's estate participated in a tax-free

reorganization of Corporation that qualified under section 368(a) with respect to which no gain or loss was recognized for income tax purposes under section 354 or 355. Pursuant to the reorganization, D's estate opted to exchange its stock for stock subject to transfer restrictions. Although the value of the stock did not change during the alternate valuation period, discounts for lack of marketability and lack of control (totaling \$20X) were applied in determining the value of the stock held by D's estate on the AVD, and D's estate reported the value of the stock on the AVD as \$30X. Because the claimed reduction in value is not attributable to market conditions, the discounts may not be taken into account in determining the value of the stock on the AVD. Accordingly, the value on the AVD is \$50X.

*Example 2.* The facts are the same as in *Example 1* except that the value of the stock declined from \$50X to \$40X during the alternate valuation period because of changes in market conditions during that period. D's estate may report the value of the stock as \$40X on the AVD. As in *Example 1*, however, no discounts resulting from the reorganization are allowed in computing the value on the AVD.

*Example 3.* At D's death, D owned property valued at \$100X. Two months after D's death, the executor of D's estate and other family members formed four limited partnerships. The estate contributed the estate's property to the partnerships in exchange for a 25% interest in each partnership. Discounts for lack of marketability and lack of control (totaling \$25X) were applied in determining the value of the estate's partnership interests, and the estate reported \$75X as the total value of the estate's partnership interests on the AVD. Because the reduction in value is not attributable to market conditions, the discounts for lack of marketability and control may not be taken into account in determining the value of the partnership interests on the AVD. The result would be the same if the limited partnerships were formed prior to D's death, and the estate transferred property into the partnerships after D's death but prior to the AVD.

*Example 4.* At D's death, D owned 100% of the units of a limited liability company (LLC). The executor elected the alternative valuation method. During the 6 months following D's death and in accordance with D's will, the executor made 6 distributions, each to a different residuary legatee on a different date and each of a 10% interest in the LLC. Pursuant to section 2032(a)(1), each distribution is valued on the distribution date. On the AVD, the estate held 40% of the units in the LLC. Pursuant to section 2032(a)(2), the 40% is valued on the AVD. In valuing the 10% interests distributed and the 40% interest held on the AVD, discounts for lack of control and lack of marketability were applied. The reduction in value of the units is not attributable to market conditions. Accordingly, the discounts for lack of marketability and control may not be taken into account in determining the value of the units distributed or held by the estate. The value of each 10% distribution is determined by taking 10% of the value on the distribution date of the units (100%) owned

by the estate at D's death. The value of the units held by the estate on the AVD is determined by taking 40% of the value on the AVD of all of the units (100%) owned by the estate at D's death. If because of market conditions, the units had declined in value as of each distribution date or as of the AVD, D's estate would take such reduction in value into account.

*Example 5.* D died owning 100% of Blackacre. D's will directs that Blackacre be divided between two trusts, 70% to Trust A for the benefit of S, D's surviving spouse, and 30% to Trust B for the benefit of C, D's surviving child. The executor of D's estate distributed a 70% interest in Blackacre to Trust A three months after D's death, and distributed a 30% interest in Blackacre to Trust B four months after D's death. On the estate tax return, the executor elected to value the estate's property under the alternate valuation method under section 2032. There was no change in the value of Blackacre during the four-month period following D's death. The 70% interest in Blackacre is to be valued as of the distribution date to Trust A, and that value is determined by taking 70% of the value of all (100%) of Blackacre as of the distribution date. The 30% interest in Blackacre is to be valued as of the distribution date to Trust B, and that value is determined by taking 30% of the value of all (100%) of Blackacre as of the distribution date. If, however, because of market conditions such as a decline in the real estate market, Blackacre's value had declined by 10% between D's date of death and the distribution date of the 30% interest, the value of the 30% interest would be determined by ascertaining 30% of the value of all (100%) of Blackacre as of the distribution date, which would equal 30% of 90% of the date of death value of Blackacre.

\* \* \* \* \*

(h) *Effective/applicability date.* \* \* \*  
The fourth sentence of paragraph (f)(2)(i) of this section is applicable to decedents dying after May 1, 1999, subject to transition rules for certain incapacitated individuals. The fifth sentence of paragraph (f)(2)(i) of this section is applicable to decedents dying after November 30, 1983, subject to transition rules for certain incapacitated individuals. The first, second, and third sentences of paragraph (f)(2)(i), paragraph (f)(2)(ii), and all but the last sentence in paragraph (f)(2) of this section are applicable to decedents dying after August 16, 1954. When adopted as final regulations, the rules contained in paragraphs (f)(1), (f)(3), and the last sentence of paragraph (f)(2) of this section, will be made applicable to estates of decedents dying on or after April 25, 2008.

\* \* \* \* \*

**Linda E. Stiff,**  
*Deputy Commissioner for Services and Enforcement.*  
[FR Doc. E8-9025 Filed 4-24-08; 8:45 am]  
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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[USCG-2008-0220]

RIN 1625-AA08

### Regattas and Marine Parades; Great Lakes Annual Marine Events

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend special local regulations for annual regattas and marine parades in the Captain of the Port Detroit zone. This proposed rule is intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after regattas or marine parades. This proposed rule will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after regattas or marine parades.

**DATES:** Comments and related materials must reach the Coast Guard on or before May 27, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2008-0220 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

- (1) *Online:* <http://www.regulations.gov>.
- (2) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- (3) *Hand delivery:* Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.
- (4) *Fax:* 202-493-2251.

**FOR FURTHER INFORMATION CONTACT:** LT Jeff Ahlgren, Waterways Management, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313) 568-9580.

### I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov>.