COMMENTS OF THE
REAL PROPERTY, TRUST AND ESTATE LAW SECTION
OF THE
AMERICAN BAR ASSOCIATION
REG-119532-08 (Graduated Retained Interests)
July 28, 2009

The following is being submitted on behalf of the American Bar Association Section of Real Property, Trust and Estate Law (hereinafter the “Section”). Neither the House of Delegates, nor the Board of Governors of the American Bar Association has approved these comments. Therefore the comments should not be construed as representing the position of the American Bar Association.

The comments were prepared by members of the Estate and Gift Tax Committee of the Trust and Estate Division of the Section. Principal responsibility was exercised by Thomas M. Sheehan. Also participating in the preparation of the comments were Lisa M. Rico, Laurence G. Constable, Jeffrey L. Carson, Bradley W. Lard, Phillip J. Kenny, Anta Cissé-Green and Brooke A. Everley. The comments were reviewed by a Review Committee of the Section, which Review Committee included Carlyn S. McCaffrey, Milford B. Hatcher, Michael Whitty and W. Birch Douglass III. These comments were reviewed by Steven B. Gorin on behalf of the Section’s Committee on Governmental Submissions.

Although the members of the Section who prepared these comments have clients who would be affected by the Federal tax principles addressed, or have advised clients on the application of such principles, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a submission with respect to, or otherwise influence the development or the outcome of, the specific subject matter of these comments.
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I. Executive Summary

By notice of proposed rulemaking in Section 2036 – Graduated Retained Interests, 74 Fed. Reg. 19913 (April 30, 2009) (hereinafter the “Notice”), the United States Department of the Treasury (hereinafter the “Treasury”) issued Proposed Regulations (hereinafter the “Proposed Regulations”) that would amend Treasury Regulation Section 20.2036-1 (hereinafter the “Regulation”) to address the following three (3) substantive issues:

A. how to calculate the amount includible in a grantor’s gross estate when the grantor retained the right to receive an annuity or other payment (other than income) after the death of the current recipient of that interest, and

B. how to calculate the amount includible in the grantor’s gross estate when the grantor retained the right to receive a graduated retained interest in a trust.

C. clarify whether Internal Revenue Code 1 section 2033 applies in the case of a retained interest that continues past the death of the grantor when Section 2036 applies to the retained interest.

While the Section agrees with the methodology adopted by the Proposed Regulations to value a graduated retained interest in a trust, we think the accompanying explanation needs to be clarified. As explained more fully below, we think the Proposed Regulations, by failing to take into account the depletion of trust principal that occurs when a surviving annuitant receives an annuity greater than the amount earned relative to an investment return equal to the section 7520 rate, attribute to the grantor a greater portion of the value of a trust than is appropriate.

Our comments are divided into two sections: first, the background on Regulation section 20.2036-1 and how it will be impacted by the Notice; and second, the Section’s recommendations, along with a detailed discussion of the recommendations and the suggested amendments necessary to implement the recommendations.

II. Background

On June 7, 2007, the Treasury and Internal Revenue Service (hereinafter the “IRS”) caused to be published in the Federal Register at 72 FR 31487 Proposed Regulations (REG-119097-05) providing guidance on the portion of trust corpus includible in a grantor’s gross estate pursuant to sections 2036 and 2039. In response

1 Unless otherwise specified, all cites are to the Internal Revenue Code of 1986, as amended.
to numerous comments, the Treasury and IRS determined that certain comments warranted a reply by separate notice of proposed rulemaking, instead of in the final regulations published on July 14, 2008 (73 FR 40173; as TD 9414).

The Section recognizes that re-proposing regulations is unusual, and appreciates the Treasury’s and IRS’ willingness to accept additional input.

Consequently, on April 30, 2009, the Treasury and IRS caused to be published in the Federal Register at 74 FR 19913 the Proposed Regulations (REG-119532-08) which more specifically addressed the proper amount includible in a grantor’s gross estate if the grantor retained the use of the property, the right to an annuity, unitrust, graduated retained interest, or other payment from such property for life, for any period not ascertainable without reference to the grantor’s death, or for a period that does not in fact end before the grantor’s death. The Proposed Regulations incorporate the methodology provided in Revenue Ruling 76-273, 1976-2 C.B. 268, and Revenue Ruling 82-105, 1982-1 C.B. 133, which provides that the portion of the corpus of a grantor retained trust or a charitable remainder trust includible in the decedent’s gross estate under section 2036 is that portion of the trust corpus necessary to generate a return sufficient to pay the decedent’s retained annuity, unitrust, or other payment. On June 22, 2009 the IRS issued IRS Announcement 2009-50 (hereinafter the “Announcement”) which revised the Proposed Regulations to correct errors in the chart set forth in Proposed Regulation section 20.2036-1(c)(2)(iii) Example 7(iii).

We respectfully suggest that the Treasury and IRS have not sufficiently clarified expectations the Proposed Regulations place on the taxpayer to ensure compliance with regard to calculation of the retained interest includible in the grantor’s gross estate. We do believe the Proposed Regulations support and properly reference a consistent application of the existing methodology as established in the referenced revenue rulings. The greatest area for improvement to assist taxpayer compliance would be in the content and format of the existing explanatory provisions of the Proposed Regulations. Therefore, it is recommended greater emphasis be given to providing clear and consistent, step-by-step analysis and application of the existing methodology.

Further, we believe that the Proposed Regulations fail to take into account the depletion of trust principal that occurs when an annuitant receives an amount that is higher than that that would be earned if the trust assets were invested to produce a return equal to the section 7520 rate. The result is an attribution to the grantor of a greater portion of the value of the trust property. As such, we recommend this issue be addressed in the final regulations.

Finally, we recommend that guidance be provided in the Regulation that would preclude the potential inclusion under section 2033 of a retained interest in
property that continues past the death of the grantor and the property that is subject to inclusion as a retained interest under section 2036. If both sections applied under these circumstances, more than 100% of a property would be included in the gross estate. When a decedent has transferred property and has retained an interest in that property that continues past death, section 2033 should not apply to the value of the retained post-death interest (e.g., the right to receive post-death payments of income or annuities) if section 2036 applies to the transferred property itself.

The Section believes implementation of these recommendations will simplify the rules, thus making it easier for taxpayers to follow.

III. Recommendations

This section contains a description and detailed analysis of the Section’s recommendations and suggests textual changes to the Proposed Regulations that would implement these recommendations.

A. Summary

1. **Revise Regulation section 20.2036-1(b).** Regulation section 20.2036-1(b) should be limited to its definitional purpose. The explanation of the application of the methodology outlined in romanette (ii) should be moved to Regulation section 20.2036-1(c) where the includibility of other retained interests is handled.

2. **Revise Regulation section 20.2036-1(c)(1).** Regulation section 20.2036-1(c)(1) should be revised to delete the “(i)” following “Example 1” while retaining the text of the example, and the example under romanette (ii) of the same section should be moved to Regulation section 20.2036-1(c)(2). This will achieve organizational consistency.

3. **Revise Regulation section 20.2036-1(c)(2).** Regulation section 20.2036-1(c)(2) should be revised to delete references to retained income or use interests. Again, this will achieve organizational consistency.

4. **Revise Regulation section 20.2036-1(b)(1)(ii).** Regulation section 20.2036-1(b)(1)(ii) should be revised to delete the current steps implementing its computational methodology and add the steps detailed below. Again, this example should be moved to Regulation section 20.2036-1(c) for purposes of internal consistency.
5. **Clarify Proposed Regulation section 20.2036-1(c)(2)(ii).**

Proposed Regulation section 20.2036-1(c)(2)(ii) should be revised to clarify the explanation of the methodology used to calculate the retained annuity of a graduated retained annuity.

6. **Clarify Proposed Regulation section 20.2036-1(c)(2)(iii)**

*Example 7.* Proposed Regulation section 20.2036-1(c)(2)(iii) *Example 7* should be revised to provide consistent headings in the charts and clarify the discrepancy in the amounts used in subsections (ii) and (iii) of the example.

**B. Advantages**

The recommendations included herein are intended to: 1) clarify the methodology meant to be employed by the Proposed Regulations; 2) provide a consistent internal structure, and 3) provide examples that properly reflect the computational methodology.

**C. Detailed Discussion of Recommendations**

1. **Regulation section 20.2036-1(b) – Meaning of terms**

Regulation section 20.2036-1(b) is a definitional section. In its current form, the function of Regulation section 20-2036-1(b)(ii) is to tell us that the term “for any period not ascertainable without reference to his [the grantor’s] death” includes a period of time that has not commenced because another person is enjoying the trust income at the time of the decedent’s death. Without this definition, it might be possible to argue that the decedent had not retained enjoyment of the property at all within the meaning of section 2036 because he or she was not receiving anything from the property at death.

The definitional statement in Regulation section 20.2036-1(b)(ii) refers to a decedent who reserved an income interest. The Proposed Regulations appropriately expand this statement to include a decedent who “reserved the right to receive the income, annuity, or other payment from transferred property at the time of the decedent’s death.”

In addition to the expanded definition, the Proposed Regulations provide a description as to how to determine the portion of the transferred property that should be included in the case of a reserved annuity interest that follows an annuity interest held by another. This is an awkward position for this description because the
more basic description of the method of determining portion includibility in the case of a reserved annuity interest that the decedent was entitled to receive at the time of death appears later in the Regulations. We suggest that this inclusion description be moved to Regulation section 20.2036-1(c), which describes how to determine the portion of the transferred property that should be included in a decedent’s gross estate in the case of all other reserved interests.

We suggest, therefore, that Proposed Regulation section 20.2036-1(b)(1)(ii) be changed to read as follows:

“(ii) A decedent reserved the right, to receive the income, annuity, or other payment from transferred property after the death of another person who was in fact enjoying the income, annuity, or other payment at the time of the decedent’s death. In such a case, the amount to be included in the decedent’s gross estate under this section does not include the value of the outstanding interest of the other person. The methods of accounting for that interest are explained in paragraph (c) of this section. If the other person predeceased the decedent, the reservation by the decedent may be considered to be either for life, or for a period which does not in fact end before death.”

2. Regulation section 20.2036-1(c)(1) – Amount included in gross estate

In its current form Regulation section 20.2036-1(c)(1) appears to deal only with the includible portion determination in the case of reserved income and use interests. The method of determining portion includibility in the case of retained annuity and unitrust interests is explained in detail in Regulation section 20.2036-1(c)(2).

The Proposed Regulations would change Regulation section 20.2036-1(c)(1) by adding a two-part example that deals with determining the includible portion in the case of both reserved income interests and reserved annuity interests that follow an income interest or annuity interest held by another. Because we believe that the explanation of the method illustrated in second part of this example should follow the explanation of the method to be used to determine the includible portion in the case of a reserved annuity interest that the decedent was entitled to receive at the time of death, we suggest deleting the “(i)” that follows “Example 1.” and adding an example
dealing with reserved annuity interests that follow annuity interests held by others to the set of examples in Section 20.2036-(1)(c)(2).

In addition, the Regulation does not address the interaction between sections 2033 and 2036. Many grantor retained annuity trusts and grantor retained unitrusts trusts are established for a term of years, and provide for continuing annuity or unitrust payments to the grantor's estate if the grantor dies during the term, consistent with Regulation section 25.2702-3(e) Example 5, and Walton v. Comm'r, 115 T.C. 589 (2000), acq. IRS Notice 2003-72, 2003-44 I.R.B. 964. The actuarial value of the right to receive post-death annuity or unitrust payments is includible in the grantor's gross estate under section 2033. The interest retained by the grantor would also be includible in the grantor's estate under section 2036(a)(1). We believe the amount includible in the grantor's gross estate under section 2036(a)(1) should be the same whether or not the annuity or unitrust payments terminate at the death of the grantor. This is so because the amount includible in the grantor's gross estate under section 2036(a)(1), as computed under the Regulation, would be that portion of the trust corpus necessary to generate the annuity or unitrust payment in perpetuity as if those payments constituted an income interest in the trust. Accordingly, whether the payments terminate upon the grantor's death or terminate a period of years later should not affect the amount of property included in the grantor's estate under section 2036(a)(1).

For that reason, the Proposed Regulations should include a provision, similar to the provision in Regulation section 20.2039-1(e), providing that, in the case of a retained interest that continues past death of the grantor, section 2033 would not apply to the value of future payments if the retained interest is includible in the grantor's gross estate under section 2036. The application of two different inclusion sections to the same property interests should not result in a double estate tax. In order to avoid this result, and because the amount of trust corpus that is necessary to yield the annual annuity payment to the grantor must always be greater than the actuarial value of the post-death annuity payments, the amount includible should be limited to the value determined pursuant to Section 2036(a)(1).

For organizational clarity and to preclude possible double inclusion under sections 2033 and 2036, we also suggest that Regulation section 20.2036-1(c)(1) be changed to read as follows:

“(1) Amount included in gross estate in the case of retained income or use interests.”
(i) In general. If the decedent retained or reserved an income interest in or right to use all of the property transferred by him, the amount to be included in his gross estate under section 2036 is the value of the entire property, less only the value of any outstanding income interest which is not subject to the decedent's interest or right and which is actually being enjoyed by another person at the time of the decedent's death. If the decedent retained or reserved such an interest or right with respect to a part only of the property transferred by him, the amount to be included in his gross estate under section 2036 is only a corresponding proportion of the amount described in the preceding sentence. An interest or right is treated as having been retained or reserved if at the time of the transfer there was an understanding, express or implied, that the interest or right would later be conferred. If the reserved right to receive income continues after the death of the decedent, the value of the right to receive post-death payments will not be separately included under section 2033.”

3. Regulation section 20.2036-1(c)(2) – Retained annuity, unitrust, and other income interests in trusts.

Despite the caption of this paragraph of the Regulations, its function is to describe the method for determining portion includibility when the grantor has reserved an annuity or unitrust interest. It does not provide any guidance as to the determination of portion includibility in the case of retained income or use interests that is not already provided in Regulation section 20.2036-1(c)(1). For organizational clarity, we suggest that the references to retained income and use interests be deleted from the caption of section 20.2036-1(c)(2) and from section 20.2036-1(c)(2)(i) so that it would read as follows:

“(2) Retained annuity and unitrust interests in trusts. (i) In general. This paragraph (c)(2) applies to a grantor's retained annuity, unitrust, or other interest (other than a retained income or use interest) in any trust (other than a trust constituting an employee benefit) including without limitation the following (collectively referred to in this paragraph (c)(2) as “trusts”): Certain charitable remainder trusts (collectively CRT’s) such as a charitable remainder unitrust (CRUT) within the meaning of section 664(d)(1), a charitable remainder unitrust (CRUT) within the meaning of section 664(d)(2) or (d)(3), and any
charitable remainder trust that does not qualify under section 664(d), whether because the CRT was created prior to 1969, there was a defect in the drafting of the CRT, there was no intention to qualify the CRT for the charitable deduction, or otherwise; other trusts established by a grantor (collectively GRTs) such as a grantor retained annuity trust (GRAT) paying out a qualified annuity interest within the meaning of §25.2702-3(b) of this chapter, and a grantor retained unitrust (GRUT) paying out a qualified unitrust interest within the meaning of § 25.2702-3(c) of this chapter. If a decedent transferred property into such a trust and retained or reserved the right to an annuity or unitrust in such trust with respect to the property decedent so transferred for decedent's life, any period not ascertainable without reference to the decedent's death, or for a period that does not in fact end before the decedent's death, then the decedent's right to use the property or the retained annuity or unitrust (whether payable from income and/or principal) constitutes the retention of the possession or enjoyment of, or the right to the income from, the property for purposes of section 2036. The portion of the trust's corpus includible in the decedent's gross estate for Federal estate tax purposes is that portion of the trust corpus necessary to provide the decedent's retained annuity or unitrust (without reducing or invading principal) as determined in accordance with § 20.2031-7 (or § 20.2031-7A, if applicable). The portion of the trust's corpus includible in the decedent's gross estate under section 2036, however, shall not exceed the fair market value of the trust's corpus at the decedent's date of death. If the retained annuity, unitrust or other interest in any continues after the death of the decedent, the value of the right to receive post death payments will not be separately included under section 2033.”

4. Determining Portion Includibility When a Reserved Annuity Interest Follows a Preceding Annuity Interest

Proposed Regulation section 20.2036-1(b)(1)(ii) prescribes the following method for determining portion includibility when a grantor has retained an annuity interest that follows in whole or in part an annuity interest held by another:

“(A) Step 1: Determine the fair market value of the trust corpus on the date of death.
(B) Step 2: Determine, in accordance with paragraph (c)(2)(i) of this section, the amount of corpus required to generate sufficient income to pay the annuity, unitrust, or other payment (determined on the date of the decedent's death) payable to the decedent for the trust year in which the decedent's death occurred.

(C) Step 3: Determine, in accordance with paragraph (c)(2)(i) of this section, the amount of corpus required to generate sufficient income to pay the annuity, unitrust, or other payment that the decedent would have been entitled to receive for each trust year if the decedent had survived the current recipient.

(D) Step 4: Determine the present value of the current recipient's annuity, unitrust, or other payment.

(E) Step 5: Reduce the amount determined in Step 3 by the amount determined in Step 4, but not to below the amount determined in Step 2.

(F) Step 6: The amount includible in the decedent's gross estate under section 2036 is the lesser of the amounts determined in Step 5 and Step 1.”

We believe that these steps do not produce an appropriate result when the annuity, expressed as a percentage of the trust property, is higher than the section 7520 rate because they fail to reflect accurately the principal depletion that will occur under these circumstances. The following simple example illustrates this.

D creates an irrevocable trust the terms of which require the trustee to pay C an annuity of $10,000 per year at the end of each year for 12 years. If C dies before the 12 year period is over, the payments will be made to C’s estate. At the termination of the 12-year period, the annuity is to be paid to D for the rest of D’s life. D dies immediately after C has received her second annuity payment. The trust property is worth $100,000; the Section 7520 rate is 7%.

The Proposed Regulation would require D to include $72,621 of the trust’s value in her gross estate calculated as follows:

(A) Step 1: Fair market value of corpus - $100,000
(B) Step 2: Corpus required to produce D’s date of death annuity - $0 because D was not receiving an annuity at death.

(C) Step 3: Corpus required to produce D’s annuity if D had survived the 12-year term - $10,000/.07 = $142,857

(D) Step 4: Present value of C’s interest - $70,236

(E) Step 5: The amount determined in Step 3 reduced by the amount determined in Step 4, but not to below the amount determined in Step 2. - $142,857-70,236 = $72,621.

(F) Step 6: The lesser of the amounts determined in Step 5 and Step 1 - $72,621.

This result is inappropriate because, if the trust earns a 7% investment return and pays out $10,000 per year, only $58,551 of corpus will remain at the end of 10 years to pay the annuity to D, and the present value of that corpus at the time of D’s death is only $29,764. This amount, of course, is also equal to the value of the trust property at D’s death reduced by the present value of C’s annuity interest. Limiting the inclusion to that amount is entirely consistent with the manner in which the regulations have long valued retained income interests that follow the income interests of another.

The portion of the corpus included in D’s gross estate should be no greater than the present value of the amount of trust property that will remain after paying C’s annuity, calculated in a manner consistent with section 7520.

If, at the time of the decedent’s death, decedent is receiving an annuity from a trust fund that will pay her an additional annuity after the termination of an annuity being paid to another, before calculating the amount of the trust to be included as a result of the deferred annuity, the trust fund should be bifurcated into two parts, the first part consisting of the portion of the trust corpus needed to provide the decedent’s current annuity and the second part consisting of the balance of the trust corpus. The calculation of the includibility portion with respect to the deferred annuity should be done with reference to the second portion.

We suggest, therefore, adding the following section 20.2036-1(c)(2)(ii):

“(ii) Reserved annuity interests that follow annuity interests held by another.
If the decedent reserved the right to receive an annuity after the termination of an annuity interest held by the current recipient of that interest measured by a term of years or by the recipient’s life, then the amount includible in the decedent’s gross estate under section 2036 is the lesser of (a) the amount of trust corpus required to produce sufficient income to satisfy the entire annuity the decedent would have been entitled to receive if the decedent had survived the current recipient and (b) the fair market value of the trust corpus on the date of death reduced by the present value of the current recipient's interest.

The following steps implement this computation.

(A) Step 1: Determine the fair market value of the trust corpus on the date of death.

(B) Step 2: Determine, in accordance with paragraph (c)(2)(i) of this section, the amount of corpus required to generate sufficient income to pay the annuity that the decedent would have been entitled to receive for each trust year if the decedent had survived the preceding term.

(C) Step 3: Determine the present value of the current recipient's annuity.

(D) Step 4: Reduce the amount determined in Step 1 by the amount determined in Step 3.

(E) Step 5: The amount includible in the decedent's gross estate under section 2036 is the lesser of the amounts determined in Step 2 and Step 4.”

We also suggest adding the following example to the examples in Regulation section 20.2031-1(c)(2):

“Example (___)(i). In Year N, D creates an irrevocable inter vivos trust. The terms of the trust provide that D’s child C is to receive an annuity of $10,000 per year for 12 years. At the termination of the 12-year period, the annuity is to be paid to D for the rest of D’s life. D dies in Year N+2 immediately after C had received the second annuity payment. On D’s date of death, the fair market value of the trust is $100,000 and the section 7520 rate is 7 percent. At the date of death, the amount of trust corpus needed to produce C's annuity interest ($10,000 per year) is $142,857 ($10,000/.07). The present
value of C's right to receive $10,000 annually for the next 10 years is $70,236. The portion of the trust corpus includible in D's gross estate under Section 2036(a)(1) is $29,764, determined as follows:

(A) Step 1: Fair market value of corpus - $100,000

(B) Step 2: Corpus required to produce D's annuity if D had survived C ($10,000/.07) - $142,857

(C) Step 3: Present value of C's interest - $70,236

(D) Step 4: Reduce the amount determined in Step 1 by the amount determined in Step 3 - $29,764

(E) Step 5: The lesser of the amounts determined in Steps 2 and 4 ($142,857 or $29,764) - $29,764.

5. Proposed Regulation section 20.2036-1(c)(2)(ii) - Clarification of the Explanation of How to Calculate the Retained Annuity For a Graduated Retained Annuity

Proposed Regulation section 20.2036-1(c)(2)(ii) prescribes the method for determining the amount to be included in a grantor's estate when a grantor retains a graduated retained annuity. While we believe the Proposed Regulations adopt an appropriate methodology in calculating the amount to be included in the grantor's estate in this situation, we request that the explanation of the methodology be clarified. For example, we recommend that the last sentence in Proposed Regulation section 20-2036-1(c)(3) be revised to include language that the corpus amount is the present value of the periodic addition. The language could read as follows:

“(3) For each trust year in which a periodic addition occurs (increase year), the corpus amount is the amount of trust corpus which, starting from the decedent's date of death, is necessary to generate an amount of income sufficient to pay the periodic addition, beginning in the increase year and continuing in perpetuity, without reducing or invading principal. For each year with a periodic addition, the corpus amount required as of the date of death is the present value of the periodic addition for such year determined by taking the product of two factors: the first is the result of dividing the periodic addition (adjusted for payments made more frequently than annually, if applicable, and for payments due at the beginning, rather than the end, of a
payment period (see Table K or J of §20.2031-7(d)(6)) by the section 7520 rate (periodic addition / rate); and the second is 1 divided by the sum of 1 and the section 7520 rate raised to the T power (1 / (1 + rate)^T).”

Given the complexity of this computation the Section recommends that a step-by-step explanation of the computation be added to Proposed Regulation section 20.2036-1(c)(2)(ii) in addition to the tables currently provided in Example 7 of Proposed Regulation section 20.2036-1(c)(2)(iii). In this explanation, the names used for each portion of the computation should be made consistent. For example, if the term “present value factor” is used in a table set forth in Example 7, it should also be referred to as the “present value factor” in the step-by-step explanation and in the text of Proposed Regulation section 20.2036-1. We suggest that the following step-by-step explanation be added as Proposed Regulation Section 20.2036-1(c)(ii)(D):

“(D) Step-by-Step Computation. The following is a step-by-step explanation of the computation set forth in paragraph (c)(ii):

Step A: GRAT Year: Determine the remaining GRAT Years for which payment has not been made under the terms of the GRAT.

Step B: Annual Annuity Payment: Determine the amount of the annuity payment in the year of the decedent's date of death and for the remaining GRAT Years by increasing each succeeding annual payment amount, after the first annual payment, by the percentage the annuity is increasing each year.

Step C: Periodic Addition: Determine the periodic addition amount by determining the amount by which the annuity payment for each year would exceed the annuity payment for the year immediately preceding such year.

Step D: First, determine the "base amount" pursuant to (c)(2)(ii)(B)(1) (annuity payment in year of date of death divided by the section 7520 rate). Next, determine the first factor of the "corpus amount" pursuant to (c)(2)(ii)(B)(3) for each year with a periodic addition.
Step E: Determine the deferral period for the years in which there are periodic additions in accordance with (c)(2)(ii)(B)(3)(ii).

Step F: Calculate the present value factor (the second factor of the Corpus Amount) pursuant to the formula set forth in (c)(2)(ii)(B)(3) $(1/(1 + \text{section 7520 rate})^T$, where $T$ equals the time period in years from the date of death through the last day of the trust year immediately before the year for which the periodic addition is first payable (Step E)).

Step G: Determine the Base Amount for annuity payment in the year of death and the Corpus Amount for each year with a periodic addition by multiplying the results in Step D and Step F and the Total Corpus by adding the Base Amount and the Corpus Amounts for each year.

6. Proposed Regulation section 20.2036-1(c)(2)(iii) Example 7 - Clarification of the Example 7

We believe that Example 7 is very useful in illustrating how to calculate the amount includible in the grantor's gross estate when the grantor retained the right to receive a graduated retained interest in a trust. However, we believe it would be helpful if Example 7 were further clarified.

First, we recommend that column G of the chart in (ii) of Example 7 should refer to the Base Amount, as well as the Corpus Amount. We recommend this because the amount set forth for GRAT Year 3 in column G is the Base Amount as defined under Proposed Regulations section 20.2036-1(c)(1)(ii)(B)(1).

Further, we believe that the numbers in the corrected chart in Proposed Regulation section 20.2036-1(c)(2)(iii), Example 7(iii) as set forth in the Announcement should be consistent with the numbers set forth in the chart in Proposed Regulation Section 20.2036-1(c)(2)(iii) Example 7(ii). As corrected by the Announcement subsection (ii) and subsection (iii) of Example 7 have different Corpus Amounts for GRAT Years 4 and 5. This discrepancy should be clarified. Also, we recommend for clarity purposes the label “Additional Annuity” in the corrected chart in section (iii) of Example 7 should be re-labeled as “Periodic Addition” to be consistent with the definition terms used in paragraph (c)(1)(2).