

by subsection (a)(5) [amending section 2035 of this title] and subparagraphs (K) and (L) of subsection (c)(1) [amending sections 2038 and 2104 of this title] shall not apply to transfers made before January 1, 1977.”

#### SHORT TITLE

Pub. L. 91-614, §1(a), Dec. 31, 1970, 84 Stat. 1836, provided that: “This Act [enacting section 6905 of this title, section 1232a of Title 15, Commerce and Trade, and section 1033 of former Title 31, Money and Finance, amending sections 56, 1015, 1223, 2012, 2032, 2055, 2204, 2501, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 4061, 4063, 4216, 4251, 4491, 6019, 6040, 6075, 6091, 6161, 6212, 6214, 6324, 6412, 6416, 6501, 6504, and 6512 of this title, and enacting provisions set out as notes under sections 56, 2032, 2204, 2501, 4063, 4216, 4251, 4491, and 6905 of this title] may be cited as the ‘Excise, Estate, and Gift Tax Adjustment Act of 1970.’”

#### SPECIAL ELECTION WITH RESPECT TO ESTATES OF DECEDENTS DYING IN 2010

Pub. L. 111-312, title III, §301(c), Dec. 17, 2010, 124 Stat. 3300, provided that: “Notwithstanding subsection (a) [amending sections 121, 170, 684, 1014, 1040, 1221, 1246, 1291, 1296, 4947, 6018, 6019, 6075, and 7701 of this title and repealing sections 1022, 2210, 2664, and 6716 of this title], in the case of an estate of a decedent dying after December 31, 2009, and before January 1, 2011, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986) may elect to apply such Code as though the amendments made by subsection (a) do not apply with respect to chapter 11 of such Code and with respect to property acquired or passing from such decedent (within the meaning of section 1014(b) of such Code). Such election shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary’s delegate shall provide. Such an election once made shall be revocable only with the consent of the Secretary of the Treasury or the Secretary’s delegate. For purposes of section 2652(a)(1) of such Code, the determination of whether any property is subject to the tax imposed by such chapter 11 shall be made without regard to any election made under this subsection.”

#### CLARIFICATION OF TREATMENT OF CERTAIN EXEMPTIONS FOR PURPOSES OF FEDERAL ESTATE AND GIFT TAXES

Section 641 of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) GENERAL RULE.—Nothing in any provision of law exempting any property (or interest therein) from taxation shall exempt the transfer of such property (or interest therein) from Federal estate, gift, and generation-skipping transfer taxes. In the case of any provision of law enacted after the date of the enactment of this Act [July 18, 1984], such provision shall not be treated as exempting the transfer of property from Federal estate, gift, and generation-skipping transfer taxes unless it refers to the appropriate provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

“(b) EFFECTIVE DATE.—

“(1) IN GENERAL.—The provisions of subsection (a) shall apply to the estates of decedents dying, gifts made, and transfers made on or after June 19, 1984.

“(2) TREATMENT OF CERTAIN TRANSFERS TREATED AS TAXABLE.—The provisions of subsection (a) shall also apply in the case of any transfer of property (or interest therein) if at any time there was filed an estate or gift tax return showing such transfer as subject to Federal estate or gift tax.

“(3) NO INFERENCE.—No inference shall arise from paragraphs (1) and (2) that any transfer of property (or interest therein) before June 19, 1984, is exempt from Federal estate and gift taxes.”

#### REPORTS WITH TRANSFERS OF PUBLIC HOUSING BONDS

Section 642 of Pub. L. 98-369 provided that:

“(a) GENERAL RULE.—With respect to transfers of public housing bonds occurring after December 31, 1983,

and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax.

“(b) PENALTY FOR FAILURE TO REPORT.—Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift, or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject.”

#### § 2002. Liability for payment

The tax imposed by this chapter shall be paid by the executor.

(Aug. 16, 1954, ch. 736, 68A Stat. 374; Pub. L. 98-369, div. A, title V, §544(b)(1), July 18, 1984, 98 Stat. 894; Pub. L. 101-239, title VII, §7304(b)(2)(A), Dec. 19, 1989, 103 Stat. 2353.)

#### AMENDMENTS

1989—Pub. L. 101-239 substituted “The” for “Except as provided in section 2210, the”.

1984—Pub. L. 98-369 inserted exception phrase.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Section 7304(b)(3) of Pub. L. 101-239 provided that: “The amendments made by this subsection [amending this section and section 6018 of this title and repealing section 2210 of this title] shall apply to estates of decedents dying after July 12, 1989.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 544(d) of Pub. L. 98-369 provided that: “The amendments made by this section [enacting section 2210 of this title and amending this section and sections 6018 and 6166 of this title] shall apply to those estates of decedents which are required to file returns on a date (including any extensions) after the date of enactment of this Act [July 18, 1984].”

#### PART II—CREDITS AGAINST TAX

Sec.	
2010.	Unified credit against estate tax.
2011.	Credit for State death taxes.
2012.	Credit for gift tax.
2013.	Credit for tax on prior transfers.
2014.	Credit for foreign death taxes.
2015.	Credit for death taxes on remainders.
2016.	Recovery of taxes claimed as credit.

#### AMENDMENT OF ANALYSIS

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note set out under section 1 of this title.*

#### AMENDMENTS

2004—Pub. L. 108-311, title IV, §408(a)(20), Oct. 4, 2004, 118 Stat. 1192, added item 2011.

2001—Pub. L. 107-16, title V, §532(c)(13), (d), title IX, §901, June 7, 2001, 115 Stat. 75, 150, temporarily struck out item 2011 “Credit for State death taxes”.

1976—Pub. L. 94-455, title XX, §2001(c)(1)(N)(ii), Oct. 4, 1976, 90 Stat. 1853, added item 2010.

#### § 2010. Unified credit against estate tax

##### (a) General rule

A credit of the applicable credit amount shall be allowed to the estate of every decedent against the tax imposed by section 2001.

**(b) Adjustment to credit for certain gifts made before 1977**

The amount of the credit allowable under subsection (a) shall be reduced by an amount equal to 20 percent of the aggregate amount allowed as a specific exemption under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) with respect to gifts made by the decedent after September 8, 1976.

**(c) Applicable credit amount****(1) In general**

For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under section 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount.

**(2) Applicable exclusion amount**

For purposes of this subsection, the applicable exclusion amount is the sum of—

(A) the basic exclusion amount, and

(B) in the case of a surviving spouse, the deceased spousal unused exclusion amount.

**(3) Basic exclusion amount****(A) In general**

For purposes of this subsection, the basic exclusion amount is \$5,000,000.

**(B) Inflation adjustment**

In the case of any decedent dying in a calendar year after 2011, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting “calendar year 2010” for “calendar year 1992” in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the nearest multiple of \$10,000.

**(4) Deceased spousal unused exclusion amount**

For purposes of this subsection, with respect to a surviving spouse of a deceased spouse dying after December 31, 2010, the term “deceased spousal unused exclusion amount” means the lesser of—

(A) the basic exclusion amount, or

(B) the excess of—

(i) the basic exclusion amount of the last such deceased spouse of such surviving spouse, over

(ii) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.

**(5) Special rules****(A) Election required**

A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under paragraph (2) unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an

election on such return that such amount may be so taken into account. Such election, once made, shall be irrevocable. No election may be made under this subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return.

**(B) Examination of prior returns after expiration of period of limitations with respect to deceased spousal unused exclusion amount**

Notwithstanding any period of limitation in section 6501, after the time has expired under section 6501 within which a tax may be assessed under chapter 11 or 12 with respect to a deceased spousal unused exclusion amount, the Secretary may examine a return of the deceased spouse to make determinations with respect to such amount for purposes of carrying out this subsection.

**(6) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection.

**(d) Limitation based on amount of tax**

The amount of the credit allowed by subsection (a) shall not exceed the amount of the tax imposed by section 2001.

(Added Pub. L. 94-455, title XX, §2001(a)(2), Oct. 4, 1976, 90 Stat. 1848; amended Pub. L. 97-34, title IV, §401(a)(1), (2)(A), Aug. 13, 1981, 95 Stat. 299; Pub. L. 101-508, title XI, §11801(a)(39), (c)(19)(A), Nov. 5, 1990, 104 Stat. 1388-521, 1388-528; Pub. L. 105-34, title V, §501(a)(1)(A), (B), Aug. 5, 1997, 111 Stat. 845; Pub. L. 107-16, title V, §521(a), June 7, 2001, 115 Stat. 71; Pub. L. 111-312, title III, §§302(a)(1), 303(a), Dec. 17, 2010, 124 Stat. 3301, 3302.)

**INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS**

*For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.*

**AMENDMENT OF SECTION**

*For termination of amendment by section 304 of Pub. L. 111-312, see Effective and Termination Dates of 2010 Amendment note below.*

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

**REFERENCES IN TEXT**

The Tax Reform Act of 1976, referred to in subsec. (b), is Pub. L. 94-455, Oct. 4, 1976, 90 Stat. 1520, as amended. For complete classification of this Act to the Code, see Tables.

Section 2521 of this title, referred to in subsec. (b), was repealed by section 2001(b)(3) of Pub. L. 94-455, applicable to gifts made after Dec. 31, 1976.

**AMENDMENTS**

2010—Subsec. (c). Pub. L. 111-312, §§302(a)(1), 304, temporarily amended subsec. (c) generally, substituting pars. (1) and (2) for text which provided that the applicable credit amount for purposes of this section was the amount of the tentative tax which would be determined under the rate schedule set forth in section 2001(c) if the amount with respect to which such tentative tax was to be computed were the applicable exclusion

amount determined in accordance with the table, covering years 2002 to 2009, included in that text. See Effective and Termination Dates of 2010 Amendment note below.

Subsec. (c)(2) to (6). Pub. L. 111-312, §§303(a), 304, temporarily added pars. (2) to (6) and struck out former par. (2). Prior to amendment, text of par. (2) read as follows:

“(A) IN GENERAL.—For purposes of this subsection, the applicable exclusion amount is \$5,000,000.

“(B) INFLATION ADJUSTMENT.—In the case of any decedent dying in a calendar year after 2011, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

- “(i) such dollar amount, multiplied by
- “(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘calendar year 2010’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the nearest multiple of \$10,000.”

See Effective and Termination Dates of 2010 Amendment note below.

2001—Subsec. (c). Pub. L. 107-16, §§521(a), 901, in table, temporarily substituted provision that in the case of estates of decedents dying during the years 2002 and 2003, the years 2004 and 2005, the years 2006, 2007, and 2008, and the year 2009, the applicable exclusion amount is \$1,000,000, \$1,500,000, \$2,000,000, and \$3,500,000, respectively, for provision that in the case of decedents dying, and gifts made, during the year 1998, the year 1999, the years 2000 and 2001, the years 2002 and 2003, the year 2004, the year 2005, and the year 2006 or thereafter, the applicable exclusion amount is \$625,000, \$650,000, \$675,000, \$700,000, \$850,000, \$950,000, and \$1,000,000, respectively. See Effective and Termination Dates of 2001 Amendment note below.

1997—Subsec. (a). Pub. L. 105-34, §501(a)(1)(A), substituted “the applicable credit amount” for “\$192,800”.

Subsecs. (c), (d). Pub. L. 105-34, §501(a)(1)(B), added subsec. (c) and redesignated former subsec. (c) as (d).

1990—Subsecs. (b) to (d). Pub. L. 101-508 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which provided for a phase-in of the unified credit against estate tax.

1981—Subsec. (a). Pub. L. 97-34, §401(a)(1), substituted “\$192,800” for “\$47,000”.

Subsec. (b). Pub. L. 97-34, §401(a)(2)(A), struck out “\$47,000” before “credit” from heading and in text substituted in subsec. (a) substitutions for “\$192,800” amounts of “\$62,800”, “\$79,300”, “\$96,300”, “\$121,800”, and “\$155,800” in the case of decedents dying in 1982, 1983, 1984, 1985, and 1986, respectively, for subsec. (a) substitutions for “\$47,000” amounts of “\$30,000”, “\$34,000”, “\$38,000”, and “\$42,500” in the case of decedents dying in 1977, 1978, 1979, and 1980, respectively.

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by section 302(a)(1) of Pub. L. 111-312 applicable to estates of decedents dying, generation-skipping transfers, and gifts made, after Dec. 31, 2009, see section 302(f) of Pub. L. 111-312, set out as a note under section 2001 of this title.

Pub. L. 111-312, title III, §303(c), Dec. 17, 2010, 124 Stat. 3303, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 2505, 2631, and 6018 of this title] shall apply to estates of decedents dying and gifts made after December 31, 2010.

“(2) CONFORMING AMENDMENT RELATING TO GENERATION-SKIPPING TRANSFERS.—The amendment made by subsection (b)(2) [amending section 2631 of this title] shall apply to generation-skipping transfers after December 31, 2010.”

Section 901 of Pub. L. 107-16 applicable to amendments by sections 302(a)(1) and 303(a) of Pub. L. 111-312,

see section 304 of Pub. L. 111-312, set out as a note under section 121 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107-16, title V, §521(e), June 7, 2001, 115 Stat. 72, provided that:

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 2057, 2505, and 2631 of this title] shall apply to estates of decedents dying, and gifts made, after December 31, 2001.

“(2) SUBSECTION (b)(2).—The amendments made by subsection (b)(2) [amending section 2505 of this title] shall apply to gifts made after December 31, 2009.

“(3) SUBSECTIONS (c) AND (d).—The amendments made by subsections (c) and (d) [amending sections 2057 and 2631 of this title] shall apply to estates of decedents dying, and generation-skipping transfers, after December 31, 2003.”

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105-34, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 401(c)(1) of Pub. L. 97-34 provided that: “The amendments made by subsection (a) [amending this section and section 6018 of this title] shall apply to the estates of decedents dying after December 31, 1981”.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

§ 2011. Credit for State death taxes

(a) In general

The tax imposed by section 2001 shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

(b) Amount of credit

(1) In general

Except as provided in paragraph (2), the credit allowed by this section shall not exceed the appropriate amount stated in the following table:

<b>If the adjusted taxable estate is:</b>	<b>The maximum tax credit shall be:</b>
Not over \$90,000 .....	$\frac{1}{40}$ ths of 1% of the amount by which the adjusted taxable estate exceeds \$40,000.
Over \$90,000 but not over \$140,000.	\$400 plus 1.6% of the excess over \$90,000.
Over \$140,000 but not over \$240,000.	\$1,200 plus 2.4% of the excess over \$140,000.