

an amount is included in the gross estate of a decedent under section 2036 of this title other than solely by reason of section 2036(c) of this title, section applicable to such amount only with respect to property transferred after Nov. 10, 1988, see section 3031(h)(1), (3) of Pub. L. 100-647, set out as an Effective Date of 1988 Amendment note under section 2036 of this title.

§ 2208. Certain residents of possessions considered citizens of the United States

A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a “citizen” of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(Added Pub. L. 85-866, title I, §102(a), Sept. 2, 1958, 72 Stat. 1674.)

EFFECTIVE DATE

Section applicable to estates of decedents dying after Sept. 2, 1958, see section 102(d) of Pub. L. 85-866, set out as an Effective Date of 1958 Amendment note under section 2011 of this title.

§ 2209. Certain residents of possessions considered nonresidents not citizens of the United States

A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a “nonresident not a citizen of the United States” within the meaning of that term wherever used in this title, but only if such person acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(Added Pub. L. 86-779, §4(b)(1), Sept. 14, 1960, 74 Stat. 999.)

EFFECTIVE DATE

Section applicable with respect to estates of decedents dying after Sept. 14, 1960, see section 4(e)(2) of Pub. L. 86-779, set out as an Effective Date of 1960 Amendment note under section 2106 of this title.

[§2210. Repealed. Pub. L. 111-312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]

Section, added Pub. L. 107-16, title V, §501(a), June 7, 2001, 115 Stat. 69, related to termination of applicability of chapter to estates of decedents dying after Dec. 31, 2009.

PRIOR PROVISIONS

A prior section 2210, added Pub. L. 98-369, div. A, title V, §544(a), July 18, 1984, 98 Stat. 892; amended Pub. L. 99-514, title XVIII, §§1854(d)(1)(A), (2)-(6), 1899A(37), Oct. 22, 1986, 100 Stat. 2879, 2880, 2960, related to liability for payment in case of transfer of employer securities to an employee stock ownership plan or a worker-owned cooperative, prior to repeal by Pub. L. 101-239, title VII, §7304(b)(1), (3), Dec. 19, 1989, 103 Stat. 2353, applicable to estates of decedents dying after July 12, 1989.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as

otherwise provided, see section 301(e) of Pub. L. 111-312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

CHAPTER 12—GIFT TAX

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Subchapter A—Determination of Tax Liability

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AMENDMENTS

1981—Pub. L. 97-34, title IV, §442(a)(4)(E), Aug. 13, 1981, 95 Stat. 321, substituted “preceding calendar periods” for “preceding years and quarters” in item 2504.

1976—Pub. L. 94-455, title XX, §2001(c)(2)(B)(i), Oct. 4, 1976, 90 Stat. 1853, added item 2505.

1970—Pub. L. 91-614, title I, §102(a)(4)(B), Dec. 31, 1970, 84 Stat. 1840, substituted “Taxable gifts for preceding years and quarters” for “Taxable gifts for preceding years” in item 2504.

§ 2501. Imposition of tax

(a) Taxable transfers

(1) General rule

A tax, computed as provided in section 2502, is hereby imposed for each calendar year on the transfer of property by gift during such calendar year by any individual resident or nonresident.

(2) Transfers of intangible property

Except as provided in paragraph (3), paragraph (1) shall not apply to the transfer of intangible property by a nonresident not a citizen of the United States.

(3) Exception

(A) Certain individuals

Paragraph (2) shall not apply in the case of a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer.

(B) Credit for foreign gift taxes

The tax imposed by this section solely by reason of this paragraph shall be credited with the amount of any gift tax actually paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph.

(4) Transfers to political organizations

Paragraph (1) shall not apply to the transfer of money or other property to a political organization (within the meaning of section 527(e)(1)) for the use of such organization.

(5) Transfers of certain stock

(A) In general

In the case of a transfer of stock in a foreign corporation described in subparagraph (B) by a donor to whom section 877(b) applies

¹ Section numbers editorially supplied.

for the taxable year which includes the date of the transfer—

- (i) section 2511(a) shall be applied without regard to whether such stock is situated within the United States, and
- (ii) the value of such stock for purposes of this chapter shall be its U.S.-asset value determined under subparagraph (C).

(B) Foreign corporation described

A foreign corporation is described in this subparagraph with respect to a donor if—

- (i) the donor owned (within the meaning of section 958(a)) at the time of such transfer 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation, and
- (ii) such donor owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of such transfer, more than 50 percent of—

(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(II) the total value of the stock of such corporation.

(C) U.S.-asset value

For purposes of subparagraph (A), the U.S.-asset value of stock shall be the amount which bears the same ratio to the fair market value of such stock at the time of transfer as—

- (i) the fair market value (at such time) of the assets owned by such foreign corporation and situated in the United States, bears to
- (ii) the total fair market value (at such time) of all assets owned by such foreign corporation.

(b) Certain residents of possessions considered citizens of the United States

A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a “citizen” of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(c) Certain residents of possessions considered nonresidents not citizens of the United States

A donor who is a citizen of the United States and a resident of a possession thereof shall, for purposes of the tax imposed by this chapter, be considered a “nonresident not a citizen of the United States” within the meaning of that term wherever used in this title, but only if such donor acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

(d) Cross references

(1) For increase in basis of property acquired by gift for gift tax paid, see section 1015(d).

(2) For exclusion of transfers of property outside the United States by a nonresident who is not a citizen of the United States, see section 2511(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 403; Pub. L. 85-866, title I, §§ 43(b), 102(b), Sept. 2, 1958, 72 Stat. 1641, 1674; Pub. L. 86-779, § 4(d), Sept. 14, 1960, 74 Stat. 1000; Pub. L. 89-809, title I, § 109(a), Nov. 13, 1966, 80 Stat. 1574; Pub. L. 91-614, title I, § 102(a)(1), Dec. 31, 1970, 84 Stat. 1838; Pub. L. 93-625, § 14(a), Jan. 3, 1975, 88 Stat. 2121; Pub. L. 94-455, title XIX, §§ 1902(a)(10), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1805, 1834; Pub. L. 97-34, title IV, § 442(a)(1), Aug. 13, 1981, 95 Stat. 320; Pub. L. 100-647, title III, § 3031(a)(2), Nov. 10, 1988, 102 Stat. 3635; Pub. L. 101-508, title XI, § 11601(b)(2), Nov. 5, 1990, 104 Stat. 1388-490; Pub. L. 104-191, title V, § 511(e)(2), (f)(2)(B), Aug. 21, 1996, 110 Stat. 2098, 2100; Pub. L. 105-34, title XVI, § 1602(g)(5), Aug. 5, 1997, 111 Stat. 1095; Pub. L. 108-357, title VIII, § 804(d), Oct. 22, 2004, 118 Stat. 1571.)

AMENDMENTS

2004—Subsec. (a)(3) to (5). Pub. L. 108-357 added pars. (3) and (5), redesignated former par. (5) as (4), and struck out former pars. (3) and (4) which related to exception of certain individuals from taxable transfers and burden of proof.

1997—Subsec. (a)(3)(C). Pub. L. 105-34 substituted “donor” for “decendent”.

1996—Subsec. (a)(3). Pub. L. 104-191, § 511(e)(2), substituted “Exception” for “Exceptions” in heading and amended text generally. Prior to amendment, text read as follows: “Paragraph (2) shall not apply in the case of a donor who at any time after March 8, 1965, and within the 10-year period ending with the date of transfer lost United States citizenship unless—

“(A) such donor’s loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487), or

“(B) such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A.”

Subsec. (a)(3)(E). Pub. L. 104-191, § 511(f)(2)(B), added subpar. (E).

1990—Subsec. (d)(3). Pub. L. 101-508 struck out par. (3) which read as follows: “For treatment of certain transfers related to estate tax valuation freezes as gifts to which this chapter applies, see section 2036(c)(4).”

1988—Subsec. (d)(3). Pub. L. 100-647 added par. (3).

1981—Subsec. (a)(1), (4). Pub. L. 97-34 substituted “calendar year” for “calendar quarter” wherever appearing.

1976—Subsec. (a)(1). Pub. L. 94-455 inserted “for each calendar quarter” after “hereby imposed” and struck out “For the first calendar quarter of calendar year 1971 and each calendar quarter thereafter” after “General rule-”.

Subsec. (a)(4). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1975—Subsec. (a)(5). Pub. L. 93-625 added par. (5).

1970—Subsec. (a)(1). Pub. L. 91-614, § 102(a)(1)(A), substituted “For the first calendar quarter of the calendar year 1971 and each calendar quarter thereafter” for “For the calendar year 1955 and each calendar year thereafter” and “during such calendar quarter” for “during such calendar year”.

Subsec. (a)(4). Pub. L. 91-614, § 102(a)(1)(B), substituted “calendar quarter” for “calendar year”.

1966—Subsec. (a). Pub. L. 89-809 redesignated existing provisions as par. (1), struck out “, except transfers of intangible property by a nonresident not a citizen of the United States and who was not engaged in business in the United States during such calendar year” after “resident or nonresident”, and added pars. (2) to (4).

1960—Subsec. (a). Pub. L. 86-779, § 4(d)(2), struck out “who is” before “not a citizen”.

Subsecs. (c), (d). Pub. L. 86-779, §4(d)(1), added subsec. (c) and redesignated former subsec. (c) as (d).

1958—Subsec. (b). Pub. L. 85-866, §102(b), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c). Pub. L. 85-866, §102(b), redesignated former subsec. (b) as (c) and Pub. L. 85-866, §43(b), made the heading read in the plural, designated existing provisions as par. (2) and added par. (1).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to individuals who expatriate after June 3, 2004, see section 804(f) of Pub. L. 108-357, set out as a note under section 877 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, to which such amendment relates, see section 1602(i) of Pub. L. 105-34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to individuals losing United States citizenship on or after Feb. 6, 1995, and to long-term residents of the United States with respect to whom an event described in section 877(e)(1)(A) or (B) of this title occurs on or after Feb. 6, 1995, with special rule for certain individuals who performed an act of expatriation specified in section 1481(a)(1)–(4) of Title 8, Aliens and Nationality, before Feb. 6, 1995, see section 511(g) of Pub. L. 104-191, set out as a note under section 877 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable in the case of property transferred after Dec. 17, 1987, see section 11601(c) of Pub. L. 101-508, set out as a note under section 2036 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 applicable in cases where transfer referred to in section 2036(c)(1)(B) of this title is on or after June 21, 1988, see section 3031(h)(2) of Pub. L. 100-647, set out as a note under section 2036 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title IV, §442(e), Aug. 13, 1981, 95 Stat. 323, provided that: “The amendments made by this section [amending this section and sections 1015, 2502, 2503, 2504, 2505, 2512, 2513, 2522, 6019, 6075, and 6212 of this title] shall apply with respect to gifts made after December 31, 1981.”

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIX, §1902(c)(2), Oct. 4, 1976, 90 Stat. 1806, as amended by Pub. L. 95-600, title VII, §703(j)(12), Nov. 6, 1978, 92 Stat. 2942, provided that: “The amendments made by paragraphs (10), (11), and (12)(D) and (E) of subsection (a) [amending this section and sections 2522 and 2523 of this title] shall apply with respect to gifts made after December 31, 1976.”

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93-625, §14(b), Jan. 3, 1975, 88 Stat. 2121, provided that: “The amendment made by subsection (a) [amending this section] shall apply to transfers made after May 7, 1974.”

EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91-614, title I, §102(e), Dec. 31, 1970, 84 Stat. 1842, provided that: “The amendments made by this section [amending this section and sections 1015, 2012, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 6019, 6075, 6212, 6214, 6324, 6501, and 6512 of this title and enacting provisions set out as a note under this section] shall

apply with respect to gifts made after December 31, 1970.”

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-809, title I, §109(c), Nov. 13, 1966, 80 Stat. 1575, provided that: “The amendments made by this section [amending this section and section 2511 of this title] shall apply with respect to the calendar year 1967 and all calendar years thereafter.”

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-779, §4(e)(3), Sept. 14, 1960, 74 Stat. 1000, provided that: “The amendments made by subsection (d) [amending this section] shall apply with respect to gifts made after the date of the enactment of this Act [Sept. 14, 1960].”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable to gifts made after September 2, 1958, see section 102(d) of Pub. L. 85-866, set out as a note under section 2011 of this title.

ELECTION TO HAVE AMENDMENTS BY TITLE IV OF THE ECONOMIC RECOVERY TAX ACT OF 1981 NOT APPLY

Pub. L. 97-448, title I, §104(d)(3), Jan. 12, 1983, 96 Stat. 2383, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) In the case of any decedent—

“(i) who dies before August 13, 1984, and

“(ii) who made a gift (before August 13, 1981, and during the 3-year period ending on the date of the decedent’s death) on which tax imposed by chapter 12 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] has been paid before April 16, 1982,

such decedent’s executor may make an election to have subtitle B of such Code (relating to estate and gift taxes) applied with respect to such decedent without regard to any of the amendments made by title IV of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34, title IV].

“(B) An election under subparagraph (A) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

“(C) An election under subparagraph (A), once made, shall be irrevocable.”

§ 2502. Rate of tax

(a) Computation of tax

The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

(1) a tentative tax, computed under section 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

(2) a tentative tax, computed under such section, on the aggregate sum of the taxable gifts for each of the preceding calendar periods.

(b) Preceding calendar period

Whenever used in this title in connection with the gift tax imposed by this chapter, the term “preceding calendar period” means—

(1) calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970,

(2) the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the first calendar quarter of calendar year 1982, and

(3) all calendar years after 1981 and before the calendar year for which the tax is being computed.

For purposes of paragraph (1), the term “calendar year 1932” includes only that portion of such year after June 6, 1932.