

§ 2703. Certain rights and restrictions disregarded**(a) General rule**

For purposes of this subtitle, the value of any property shall be determined without regard to—

- (1) any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property (without regard to such option, agreement, or right), or
- (2) any restriction on the right to sell or use such property.

(b) Exceptions

Subsection (a) shall not apply to any option, agreement, right, or restriction which meets each of the following requirements:

- (1) It is a bona fide business arrangement.
- (2) It is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration in money or money's worth.
- (3) Its terms are comparable to similar arrangements entered into by persons in an arms' length transaction.

(Added Pub. L. 101-508, title XI, § 11602(a), Nov. 5, 1990, 104 Stat. 1388-498.)

§ 2704. Treatment of certain lapsing rights and restrictions**(a) Treatment of lapsed voting or liquidation rights****(1) In general**

For purposes of this subtitle, if—

- (A) there is a lapse of any voting or liquidation right in a corporation or partnership, and
- (B) the individual holding such right immediately before the lapse and members of such individual's family hold, both before and after the lapse, control of the entity,

such lapse shall be treated as a transfer by such individual by gift, or a transfer which is includible in the gross estate of the decedent, whichever is applicable, in the amount determined under paragraph (2).

(2) Amount of transfer

For purposes of paragraph (1), the amount determined under this paragraph is the excess (if any) of—

- (A) the value of all interests in the entity held by the individual described in paragraph (1) immediately before the lapse (determined as if the voting and liquidation rights were nonlapsing), over
- (B) the value of such interests immediately after the lapse.

(3) Similar rights

The Secretary may by regulations apply this subsection to rights similar to voting and liquidation rights.

(b) Certain restrictions on liquidation disregarded**(1) In general**

For purposes of this subtitle, if—

- (A) there is a transfer of an interest in a corporation or partnership to (or for the ben-

efit of) a member of the transferor's family, and

- (B) the transferor and members of the transferor's family hold, immediately before the transfer, control of the entity,

any applicable restriction shall be disregarded in determining the value of the transferred interest.

(2) Applicable restriction

For purposes of this subsection, the term "applicable restriction" means any restriction—

- (A) which effectively limits the ability of the corporation or partnership to liquidate, and

- (B) with respect to which either of the following applies:

- (i) The restriction lapses, in whole or in part, after the transfer referred to in paragraph (1).
- (ii) The transferor or any member of the transferor's family, either alone or collectively, has the right after such transfer to remove, in whole or in part, the restriction.

(3) Exceptions

The term "applicable restriction" shall not include—

- (A) any commercially reasonable restriction which arises as part of any financing by the corporation or partnership with a person who is not related to the transferor or transferee, or a member of the family of either, or
- (B) any restriction imposed, or required to be imposed, by any Federal or State law.

(4) Other restrictions

The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee.

(c) Definitions and special rules

For purposes of this section—

(1) Control

The term "control" has the meaning given such term by section 2701(b)(2).

(2) Member of the family

The term "member of the family" means, with respect to any individual—

- (A) such individual's spouse,
- (B) any ancestor or lineal descendant of such individual or such individual's spouse,
- (C) any brother or sister of the individual, and
- (D) any spouse of any individual described in subparagraph (B) or (C).

(3) Attribution

The rule of section 2701(e)(3) shall apply for purposes of determining the interests held by any individual.

(Added Pub. L. 101-508, title XI, § 11602(a), Nov. 5, 1990, 104 Stat. 1388-498; amended Pub. L. 104-188, title I, § 1702(f)(3)(C), Aug. 20, 1996, 110 Stat. 1871.)

AMENDMENTS

1996—Subsec. (c)(3). Pub. L. 104-188 substituted “section 2701(e)(3)” for “section 2701(e)(3)(A)”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

CHAPTER 15—GIFTS AND BEQUESTS FROM EXPATRIATES

Sec.

2801. Imposition of tax.

§ 2801. Imposition of tax

(a) In general

If, during any calendar year, any United States citizen or resident receives any covered gift or bequest, there is hereby imposed a tax equal to the product of—

- (1) the highest rate of tax specified in the table contained in section 2001(c) as in effect on the date of such receipt (or, if greater, the highest rate of tax specified in the table applicable under section 2502(a) as in effect on the date), and
- (2) the value of such covered gift or bequest.

(b) Tax to be paid by recipient

The tax imposed by subsection (a) on any covered gift or bequest shall be paid by the person receiving such gift or bequest.

(c) Exception for certain gifts

Subsection (a) shall apply only to the extent that the value of covered gifts and bequests received by any person during the calendar year exceeds the dollar amount in effect under section 2503(b) for such calendar year.

(d) Tax reduced by foreign gift or estate tax

The tax imposed by subsection (a) on any covered gift or bequest shall be reduced by the amount of any gift or estate tax paid to a foreign country with respect to such covered gift or bequest.

(e) Covered gift or bequest

(1) In general

For purposes of this chapter, the term “covered gift or bequest” means—

- (A) any property acquired by gift directly or indirectly from an individual who, at the time of such acquisition, is a covered expatriate, and
- (B) any property acquired directly or indirectly by reason of the death of an individual who, immediately before such death, was a covered expatriate.

(2) Exceptions for transfers otherwise subject to estate or gift tax

Such term shall not include—

- (A) any property shown on a timely filed return of tax imposed by chapter 12 which is a taxable gift by the covered expatriate, and
- (B) any property included in the gross estate of the covered expatriate for purposes of chapter 11 and shown on a timely filed re-

turn of tax imposed by chapter 11 of the estate of the covered expatriate.

(3) Exceptions for transfers to spouse or charity

Such term shall not include any property with respect to which a deduction would be allowed under section 2055, 2056, 2522, or 2523, whichever is appropriate, if the decedent or donor were a United States person.

(4) Transfers in trust

(A) Domestic trusts

In the case of a covered gift or bequest made to a domestic trust—

- (i) subsection (a) shall apply in the same manner as if such trust were a United States citizen, and
- (ii) the tax imposed by subsection (a) on such gift or bequest shall be paid by such trust.

(B) Foreign trusts

(i) In general

In the case of a covered gift or bequest made to a foreign trust, subsection (a) shall apply to any distribution attributable to such gift or bequest from such trust (whether from income or corpus) to a United States citizen or resident in the same manner as if such distribution were a covered gift or bequest.

(ii) Deduction for tax paid by recipient

There shall be allowed as a deduction under section 164 the amount of tax imposed by this section which is paid or accrued by a United States citizen or resident by reason of a distribution from a foreign trust, but only to the extent such tax is imposed on the portion of such distribution which is included in the gross income of such citizen or resident.

(iii) Election to be treated as domestic trust

Solely for purposes of this section, a foreign trust may elect to be treated as a domestic trust. Such an election may be revoked with the consent of the Secretary.

(f) Covered expatriate

For purposes of this section, the term “covered expatriate” has the meaning given to such term by section 877A(g)(1).

(Added Pub. L. 110-245, title III, §301(b)(1), June 17, 2008, 122 Stat. 1644.)

EFFECTIVE DATE

Pub. L. 110-245, title III, §301(g), June 17, 2008, 122 Stat. 1647, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this chapter and section 877A of this title and amending sections 877, 6039G, and 7701 of this title] shall apply to any individual whose expatriation date (as so defined) is on or after the date of the enactment of this Act [June 17, 2008].

“(2) GIFTS AND BEQUESTS.—Chapter 15 of the Internal Revenue Code of 1986 (as added by subsection (b)) shall apply to covered gifts and bequests (as defined in section 2801 of such Code, as so added) received on or after the date of the enactment of this Act from transferors