of Pub. L. 95–600, set out as a note under section 2055 of this title.

§ 2523. Gift to spouse

(a) Allowance of deduction

Where a donor transfers during the calendar year by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar year an amount with respect to such interest equal to its value.

(b) Life estate or other terminable interest

Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, such interest transferred to the spouse will terminate or fail, no deduction shall be allowed with respect to such interest—

(1) if the donor retains in himself, or transfers or has transferred (for less than an adequate and full consideration in money or money's worth) to any person other than such donee spouse (or the estate of such spouse), an interest in such property, and if by reason of such retention or transfer the donor (or his heirs or assigns) or such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse; or

(2) if the donor immediately after the transfer to the donee spouse has a power to appoint an interest in such property which he can exercise (either alone or in conjunction with any person) in such manner that the appointee may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse. For purposes of this paragraph, the donor shall be considered as having immediately after the transfer to the donee spouse such power to appoint even though such power cannot be exercised until after the lapse of time, upon the occurrence of an event or contingency, or on the failure of an event or contingency to occur.

An exercise or release at any time by the donor, either alone or in conjunction with any person, of a power to appoint an interest in property, even though not otherwise a transfer, shall, for purposes of paragraph (1), be considered as a transfer by him. Except as provided in subsection (e), where at the time of the transfer it is impossible to ascertain the particular person or persons who may receive from the donor an interest in property so transferred by him, such interest shall, for purposes of paragraph (1), be considered as transferred to a person other than the donee spouse.

(c) Interest in unidentified assets

Where the assets out of which, or the proceeds of which, the interest transferred to the donee spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets were transferred from the donor to such spouse, then the value of the interest transferred to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

(d) Joint interests

If the interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, shall not be considered for purposes of subsection (b) as an interest retained by the donor in himself.

(e) Life estate with power of appointment in donee spouse

Where the donor transfers an interest in property, if by such transfer his spouse is entitled for life to all of the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the donee spouse to appoint the entire interest, or such specific portion (exercisable in favor of such donee spouse, or of the estate of such donee spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of such interest, or such portion, to any person other than the donee spouse—

(1) the interest, or such portion, so transferred shall, for purposes of subsection (a) be considered as transferred to the donee spouse, and

(2) no part of the interest, or such portion, so transferred shall, for purposes of subsection (b)(1), be considered as retained in the donor or transferred to any person other than the donee spouse.

This subsection shall apply only if, by such transfer, such power in the donee spouse to appoint the interest, or such portion, whether exercisable by will or during life, is exercisable by such spouse alone and in all events. For purposes of this subsection, the term ''specific portion'' only includes a portion determined on a fractional or percentage basis.

(f) Election with respect to life estate for donee spouse

(1) In general

In the case of qualified terminable interest property—

(A) for purposes of subsection (a), such property shall be treated as transferred to the donee spouse, and

(B) for purposes of subsection (b)(1), no part of such property shall be considered as retained in the donor or transferred to any person other than the donee spouse.

(2) Qualified terminable interest property

For purposes of this subsection, the term ''qualified terminable interest property'' means any property—

(A) which is transferred by the donor spouse,

(B) in which the donee spouse has a qualifying income interest for life, and

(C) to which an election under this subsection applies.

(3) Certain rules made applicable

For purposes of this subsection, rules similar to the rules of clauses (ii), (iii), and (iv) of section 2056(b)(7)(B) shall apply and the rules of section 2056(b)(10) shall apply.

(4) Election

(A) Time and manner

An election under this subsection with respect to any property shall be made on or before the date prescribed by section 6075(b) for filing a gift tax return with respect to the transfer (determined without regard to section 6019(2)) and shall be made in such manner as the Secretary shall by regulations prescribe.

(B) Election irrevocable

An election under this subsection, once made, shall be irrevocable.

(5) Treatment of interest retained by donor spouse

(A) In general

In the case of any qualified terminable interest property—

(i) such property shall not be includible in the gross estate of the donor spouse, and

(ii) any subsequent transfer by the donor spouse of an interest in such property shall not be treated as a transfer for purposes of this chapter.

(B) Subparagraph (A) not to apply after transfer by donee spouse

Subparagraph (A) shall not apply with respect to any property after the donee spouse is treated as having transferred such property under section 2519, or such property is includible in the donee spouse's gross estate under section 2044.

(6) Treatment of joint and survivor annuities

In the case of a joint and survivor annuity where only the donor spouse and donee spouse have the right to receive payments before the death of the last spouse to die—

(A) the donee spouse's interest shall be treated as a qualifying income interest for life,

(B) the donor spouse shall be treated as having made an election under this subsection with respect to such annuity unless the donor spouse otherwise elects on or before the date specified in paragraph (4)(A),

(C) paragraph (5) and section 2519 shall not apply to the donor spouse's interest in the annuity, and

(D) if the donee spouse dies before the donor spouse, no amount shall be includible in the gross estate of the donee spouse under section 2044 with respect to such annuity.

An election under subparagraph (B), once made, shall be irrevocable.

(g) Special rule for charitable remainder trusts

(1) In general

If, after the transfer, the donee spouse is the only noncharitable beneficiary (other than the donor) of a qualified charitable remainder trust, subsection (b) shall not apply to the interest in such trust which is transferred to the donee spouse.

(2) Definitions

For purposes of paragraph (1), the term ''noncharitable beneficiary'' and ''qualified charitable remainder trust'' have the meanings given to such terms by section 2056(b)(8)(B).[1]

(h) Denial of double deduction

Nothing in this section or any other provision of this chapter shall allow the value of any interest in property to be deducted under this chapter more than once with respect to the same donor.

(i) Disallowance of marital deduction where spouse not citizen

If the spouse of the donor is not a citizen of the United States—

(1) no deduction shall be allowed under this section,

(2) section 2503(b) shall be applied with respect to gifts which are made by the donor to such spouse and with respect to which a deduction would be allowable under this section but for paragraph (1) by substituting ''$100,000'' for ''$10,000'', and

(3) the principles of sections 2515 and 2515A (as such sections were in effect before their repeal by the Economic Recovery Tax Act of 1981) shall apply, except that the provisions of such section 2515 providing for an election shall not apply.

This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6).

(Aug. 16, 1954, ch. 736, 68A Stat. 412; Pub. L. 91–614, title I, §102(c)(3), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94–455, title XIX, §1902(a)(12)(E), title XX, §2002(b), Oct. 4, 1976, 90 Stat. 1806, 1854; Pub. L. 97–34, title IV, §403(b)(1), (2), (d)(2), Aug. 13, 1981, 95 Stat. 301, 303; Pub. L. 97–448, title I, §104(a)(2)(B), (4)–(6), Jan. 12, 1983, 96 Stat. 2380, 2381; Pub. L. 99–514, title XVIII, §1879(n)(1), Oct. 22, 1986, 100 Stat. 2910; Pub. L. 100–647, title V, §5033(b), title VI, §6152(b), Nov. 10, 1988, 102 Stat. 3672, 3725; Pub. L. 101–239, title VII, §7815(d)(1)(A), (2), Dec. 19, 1989, 103 Stat. 2415; Pub. L. 101–508, title XI, §11702(g)(1), Nov. 5, 1990, 104 Stat. 1388–515; Pub. L. 102–486, title XIX, §1941(b), Oct. 24, 1992, 106 Stat. 3036; Pub. L. 105–34, title XVI, §1604(g)(4), Aug. 5, 1997, 111 Stat. 1099.)

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.

REFERENCES IN TEXT

Section 2056 of this title, referred to in subsec. (g)(2), was subsequently amended, and section 2056(b)(8)(B) no longer defines the term ''noncharitable beneficiary''.

Sections 2515 and 2515A, referred to in subsec. (i)(3), were repealed by Pub. L. 97–34, title IV, §403(c)(3)(B), Aug. 13, 1981, 95 Stat. 302.

[1] See References in Text note below.

AMENDMENTS

1997—Subsec. (g)(1). Pub. L. 105–34 substituted ''qualified charitable remainder trust'' for ''qualified remainder trust''.

1992—Subsec. (e). Pub. L. 102–486, § 1941(b)(1), in closing provisions, inserted at end ''For purposes of this subsection, the term 'specific portion' only includes a portion determined on a fractional or percentage basis.''

Subsec. (f)(3). Pub. L. 102–486, § 1941(b)(2), inserted before period at end ''and the rules of section 2056(b)(10) shall apply''.

1990—Subsec. (i). Pub. L. 101–508 inserted at end ''This subsection shall not apply to any transfer resulting from the acquisition of rights under a joint and survivor annuity described in subsection (f)(6).''

1989—Subsec. (a). Pub. L. 101–239, § 7815(d)(2), struck out ''who is a citizen or resident'' after ''Where a donor''.

Subsec. (i)(2). Pub. L. 101–239, § 7815(d)(1)(A), substituted ''which are made by the donor to such spouse and with respect to which a deduction would be allowable under this section but for paragraph (1)'' for ''made by the donor to such spouse''.

1988—Subsec. (f)(6). Pub. L. 100–647, § 6152(b), added par. (6).

Subsec. (i). Pub. L. 100–647, § 5033(b), added subsec. (i).

1986—Subsec. (f)(4)(A). Pub. L. 99–514 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''An election under this subsection with respect to any property shall be made on or before the first April 15th after the calendar year in which the interest was transferred and shall be made in such manner as the Secretary shall by regulations prescribe.''

1983—Subsec. (f)(3). Pub. L. 97–448, § 104(a)(6), substituted ''rules similar to the rules of clauses (ii)'' for ''the rules of clauses (ii)''.

Subsec. (f)(4). Pub. L. 97–448, § 104(a)(4), divided existing provisions into subpars. (A) and (B), in subpar. (A) as so designated substituted ''shall be made on or before the first April 15th after the calendar year in which the interest was transferred and shall be made in such manner as the Secretary shall by regulations prescribe'' for ''shall be made on the return of the tax imposed by section 2501 for the calendar year in which the interest was transferred'', and in subpar. (B) as so designated substituted ''An election under this subsection'' for ''Such an election''.

Subsec. (f)(5). Pub. L. 97–448, § 104(a)(5), added par. (5).

Subsec. (h). Pub. L. 97–448, § 104(a)(2)(B), added subsec. (h).

1981—Subsec. (a). Pub. L. 97–34, § 403(b)(1), struck out ''(1) In general'' designation for existing text and struck out par. (2) which declared that the aggregate of the allowed deductions for any calendar quarter should not exceed the sum of $100,000 reduced, but not below zero, by the aggregate of the allowed deductions for preceding calendar quarters beginning after Dec. 31, 1976, plus 50 percent of the lesser of the amount of the allowed deductions for such calendar quarter, determined without regard to par. (2), or the amount, if any, by which the aggregate determined under cl. (i) of par. (2) for the calendar quarter and for each preceding calendar quarter beginning after Dec. 31, 1976, exceeds $200,000.

Subsec. (f). Pub. L. 97–34, § 403(b)(2), (d)(2), substituted provision relating to election with respect to life estate for donee spouse for provision relating to community property.

Subsec. (g). Pub. L. 97–34, § 403(d)(2), added subsec. (g).

1976—Subsec. (a). Pub. L. 94–455 designated existing provisions as par. (1), struck out ''one-half of'' after ''interest equal to'', and added par. (2) relating to limitations on aggregate amount of deductions.

Subsec. (f)(1). Pub. L. 94–455, § 1902(a)(12)(E), struck out ''Territory'' after ''any State''.

1970—Subsec. (a). Pub. L. 91–614 substituted ''quarter'' for ''year'' in two places.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–486 applicable to gifts made after Oct. 24, 1992, see section 1941(c)(2) of Pub. L. 102–486, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 11702(j) of Pub. L. 101–508, set out as a note under section 59 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101–239, title VII, § 7815(d)(1)(B), Dec. 19, 1989, 103 Stat. 2415, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to gifts made after June 29, 1989.''

Amendment by section 7815(d)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, title V, § 5033(d)(2), Nov. 10, 1988, 102 Stat. 3673, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to gifts on or after July 14, 1988.''

Amendment by section 6152(b) of Pub. L. 100–647 applicable to transfers after Dec. 31, 1981, and, in the case of any estate or gift tax return filed before Nov. 10, 1988, such amendment inapplicable to the extent it would be inconsistent with the treatment of the annuity on such return unless executor or donor otherwise elects before the day 2 years after Nov. 10, 1988, the time for making such an election not to expire before such date, see section 6152(c), of Pub. L. 100–647, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XVIII, § 1879(n)(2), Oct. 22, 1986, 100 Stat. 2910, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to transfers made after December 31, 1985.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to gifts made after Dec. 31, 1981, see section 403(e)(2) of Pub. L. 97–34, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XX, § 2002(d)(2), Oct. 4, 1976, 90 Stat. 1856, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to gifts made after December 31, 1976.''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

APPLICATION OF AMENDMENTS BY SECTION 5033 OF PUB. L. 100–647 TO ESTATES OF, OR GIFTS BY, NONCITIZEN AND NONRESIDENT INDIVIDUALS

For provisions directing that in the case of the estate of, or gift by, an individual who was not a citizen or resident of the United States but was a resident of a

foreign country with which the United States has a tax treaty with respect to estate, inheritance, or gift taxes, the amendments made by section 5033 of Pub. L. 100–647 shall not apply to the extent such amendments would be inconsistent with the provisions of such treaty relating to estate, inheritance, or gift tax marital deductions, but that in the case of the estate of an individual dying before the date 3 years after Dec. 19, 1989, or a gift by an individual before the date 3 years after Dec. 19, 1989, the requirement of the preceding provision that the individual not be a citizen or resident of the United States shall not apply, see section 7815(d)(14) of Pub. L. 101–239, set out as a note under section 2056 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR CERTAIN TRANSFERS IN OCTOBER 1984

Pub. L. 99–514, title XVIII, §1879(n)(3), Oct. 22, 1986, 100 Stat. 2910, provided that: ''An election under section 2523(f) of the Internal Revenue Code of 1954 [now 1986] with respect to an interest in property which—

''(A) was transferred during October 1984, and

''(B) was transferred pursuant to a trust instrument stating that the grantor's intention was that the property of the trust would constitute qualified terminable interest property as to which a Federal gift tax marital deduction would be allowed upon the grantor's election,

shall be made on the return of tax imposed by section 2501 of such Code for the calendar year 1984 which is filed on or before the due date of such return or, if a timely return is not filed, on the first such return filed after the due date of such return and before December 31, 1986.''

§ 2524. Extent of deductions

The deductions provided in sections 2522 and 2523 shall be allowed only to the extent that the gifts therein specified are included in the amount of gifts against which such deductions are applied.

(Aug. 16, 1954, ch. 736, 68A Stat. 414.)

CHAPTER 13—TAX ON GENERATION-SKIPPING TRANSFERS

AMENDMENTS

1986—Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2717, struck out ''CERTAIN'' after ''TAX ON'' in chapter heading, substituted ''Generation-skipping transfers'' for ''Definitions and special rules'' in item for subchapter B and ''Taxable amount'' for ''Administration'' in item for subchapter C, and added items for subchapters D, E, and F.

[1] Section numbers editorially supplied.

Subchapter A—Tax Imposed

AMENDMENTS

2014—Pub. L. 113–295, div. A, title II, §221(a)(95)(B)(i), Dec. 19, 2014, 128 Stat. 4051, which directed amendment of subchapter A of chapter 13 of this title by striking out item 2604 in the table of sections for ''such subpart'', was executed by striking out item 2604 ''Credit for certain State taxes'' in the table of sections for this subchapter, to reflect the probable intent of Congress.

2004—Pub. L. 108–311, title IV, §408(a)(21), Oct. 4, 2004, 118 Stat. 1192, added item 2604.

2001—Pub. L. 107–16, title V, §532(c)(15), June 7, 2001, 115 Stat. 75, struck out item 2604 ''Credit for certain State taxes''.

1986—Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2717, in amending analysis of subchapter A generally, added item 2604.

§ 2601. Tax imposed

A tax is hereby imposed on every generation-skipping transfer (within the meaning of subchapter B).

(Added Pub. L. 94–455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1879; amended Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718.)

AMENDMENTS

1986—Pub. L. 99–514 amended section generally, substituting ''(within the meaning of subchapter B)'' for ''in the amount determined under section 2602''.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–514, title XIV, §1433, Oct. 22, 1986, 100 Stat. 2731, as amended by Pub. L. 100–647, title I, §1014(h)(1)–(3)(A), (4), Nov. 10, 1988, 102 Stat. 3567, 3568, provided that:

''(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle D (§§1431–1433) of title XIV of Pub. L. 99–514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] shall apply to any generation-skipping transfer (within the meaning of section 2611 of the Internal Revenue Code of 1986) made after the date of the enactment of this Act [Oct. 22, 1986].

''(b) SPECIAL RULES.—

''(1) TREATMENT OF CERTAIN INTER VIVOS TRANSFERS MADE AFTER SEPTEMBER 25, 1985.—For purposes of subsection (a) (and chapter 13 of the Internal Revenue Code of 1986 as amended by this part), any inter vivos transfer after September 25, 1985, and on or before the date of the enactment of this Act [Oct. 22, 1986] shall be treated as if it were made on the 1st day after the date of enactment of this Act.

''(2) EXCEPTIONS.—The amendments made by this subtitle shall not apply to—

''(A) any generation-skipping transfer under a trust which was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added),

''(B) any generation-skipping transfer under a will or revocable trust executed before the date of the enactment of this Act [Oct. 22, 1986] if the decedent dies before January 1, 1987, and

''(C) any generation-skipping transfer—

''(i) under a trust to the extent such trust consists of property included in the gross estate of a decedent (other than property transferred by the