

Subsec. (c)(5). Pub. L. 100-647, §3031(g)(2), amended par. (5) generally, substituting provisions relating to the making of appropriate adjustments in amounts included in gross estate for provisions relating to coordination with section 2043.

Subsec. (c)(6). Pub. L. 100-647, §3031(b), added par. (6).  
Subsec. (c)(7), (8). Pub. L. 100-647, §3031(b)(c), added pars. (7) and (8).

1987—Subsecs. (c), (d). Pub. L. 100-203 added subsec. (c) and redesignated former subsec. (c) as (d).

1978—Subsec. (a). Pub. L. 95-600, §702(i)(2), struck out provision following par. (2) relating to the retention of voting rights in retained stock.

Subsecs. (b), (c). Pub. L. 95-600, §702(i)(1), added subsec. (b) and redesignated former subsec. (b) as (c).

1976—Subsec. (a). Pub. L. 94-455 provided that, for purposes of par. (1), the retention of voting rights in retained stock be considered to be a retention of the enjoyment of that stock.

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11601(c), Nov. 5, 1990, 104 Stat. 1388-491, provided that: "The amendments made by this section [amending this section and sections 2207B and 2501 of this title] shall apply in the case of property transferred after December 17, 1987."

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title III, §3031(h), Nov. 10, 1988, 102 Stat. 3639, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, any amendment made by this section [enacting section 2207B of this title and amending this section and section 2501 of this title] shall take effect as if included in the provisions of the Revenue Act of 1987 [Pub. L. 100-203, title X] to which such amendment relates.

"(2) SUBSECTION (a).—The amendments made by subsection (a) [amending this section and section 2501 of this title] shall apply in cases where the transfer referred to in section 2036(c)(1)(B) of the 1986 Code is on or after June 21, 1988.

"(3) SUBSECTION (f).—If an amount is included in the gross estate of a decedent under section 2036 of the 1986 Code other than solely by reason of section 2036(c) of the 1986 Code, the amendments made by subsection (f) [enacting section 2207B of this title] shall apply to such amount only with respect to property transferred after the date of the enactment of this Act [Nov. 10, 1988].

"(4) CORRECTION PERIOD.—If section 2036(c)(1) of the 1986 Code would (but for this paragraph) apply to any interest arising from a transaction entered into during the period beginning after December 17, 1987, and ending before January 1, 1990, such section shall not apply to such interest if—

"(A) during such period, such actions are taken as are necessary to have such section 2036(c)(1) not apply to such transaction (and any such interest), or

"(B) the original transferor and his spouse on January 1, 1990 (or, if earlier, the date of the original transferor's death), does not hold any interest in the enterprise involved.

"(5) CLARIFICATION OF EFFECTIVE DATE.—For purposes of section 10402(b) of the Revenue Act of 1987 [Pub. L. 100-203, set out as an Effective Date of 1987 Amendment note below], with respect to property transferred on or before December 17, 1987—

"(A) any failure to exercise a right of conversion,

"(B) any failure to pay dividends, and

"(C) [sic] failures to exercise other rights specified in regulations, shall not be treated as a subsequent transfer."

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, §10402(b), Dec. 22, 1987, 101 Stat. 1330-432, provided that: "The amendment made by

subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1987, but only in the case of property transferred after December 17, 1987." [For clarification of this note, see section 3031(h)(5) of Pub. L. 100-647, set out as an Effective Date of 1988 Amendment note above.]

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, §702(i)(3), Nov. 6, 1978, 92 Stat. 2931, provided that: "The amendments made by this subsection [amending this section] shall apply to transfers made after June 22, 1976."

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XX, §2009(e)(1), Oct. 4, 1976, 90 Stat. 1896, provided that: "The amendment made by subsection (a) [amending this section] shall apply to transfers made after June 22, 1976."

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

## § 2037. Transfers taking effect at death

### (a) General rule

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time after September 7, 1916, made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, if—

(1) possession or enjoyment of the property can, through ownership of such interest, be obtained only by surviving the decedent, and

(2) the decedent has retained a reversionary interest in the property (but in the case of a transfer made before October 8, 1949, only if such reversionary interest arose by the express terms of the instrument of transfer), and the value of such reversionary interest immediately before the death of the decedent exceeds 5 percent of the value of such property.

### (b) Special rules

For purposes of this section, the term "reversionary interest" includes a possibility that property transferred by the decedent—

(1) may return to him or his estate, or

(2) may be subject to a power of disposition by him,

but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, under regulations prescribed by the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate. Notwithstanding the foregoing, an interest so transferred shall not be included in the decedent's gross estate under this section if possession or enjoyment of the property could have been ob-

tained by any beneficiary during the decedent's life through the exercise of a general power of appointment (as defined in section 2041) which in fact was exercisable immediately before the decedent's death.

(Aug. 16, 1954, ch. 736, 68A Stat. 382; Pub. L. 87-834, §18(a)(2)(E), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

### § 2038. Revocable transfers

#### (a) In general

The value of the gross estate shall include the value of all property—

##### (1) Transfers after June 22, 1936

To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power (in whatever capacity exercisable) by the decedent alone or by the decedent in conjunction with any other person (without regard to when or from what source the decedent acquired such power), to alter, amend, revoke, or terminate, or where any such power is relinquished during the 3 year period ending on the date of the decedent's death.

##### (2) Transfers on or before June 22, 1936

To the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power during the 3 year period ending on the date of the decedent's death. Except in the case of transfers made after June 22, 1936, no interest of the decedent of which he has made a transfer shall be included in the gross estate under paragraph (1) unless it is includible under this paragraph.

#### (b) Date of existence of power

For purposes of this section, the power to alter, amend, revoke, or terminate shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, revocation,

or termination takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose, if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

(Aug. 16, 1954, ch. 736, 68A Stat. 383; Pub. L. 86-141, §1, Aug. 7, 1959, 73 Stat. 288; Pub. L. 87-834, §18(a)(2)(F), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XIX, §1902(a)(3), title XX, §2001(c)(1)(K), Oct. 4, 1976, 90 Stat. 1804, 1852.)

#### AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94-455, §2001(c)(1)(K)(i), substituted “during the 3-year period ending on the date of the decedent's death” for “in contemplation of decedent's death”.

Subsec. (a)(2). Pub. L. 94-455, §2001(c)(1)(K)(ii), substituted “during the 3-year period ending on the date of the decedent's death” for “in contemplation of his death”.

Subsec. (c). Pub. L. 94-455, §1902(a)(3), struck out subsec. (c) which covered the effect of a disability in certain cases by relating a mental disability to relinquish a power to a power, the relinquishment of which would be deemed not to be a transfer for purposes of chapter 4 of the Internal Revenue Code of 1939.

1962—Subsec. (a). Pub. L. 87-834 struck out provisions which excepted real property situated outside of the United States.

1959—Subsec. (c). Pub. L. 86-141 added subsec. (c).

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(3) of Pub. L. 94-455 applicable to estates of decedents dying after Oct. 4, 1976, see section 1902(c)(1) of Pub. L. 94-455, set out as a note under section 2012 of this title.

Amendment by section 2001(c)(1)(K)(i), (ii) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976 but not to transfers made before Jan. 1, 1977, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable to estates of decedents dying after Oct. 16, 1962, except as otherwise provided, see section 18(b) of Pub. L. 87-834, set out as a note under section 2031 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Pub. L. 86-141, §2, Aug. 7, 1959, 73 Stat. 289, provided that: “The amendment made by the first section of this Act [amending this section] shall apply only with respect to estates of decedents dying after August 16, 1954. No interest shall be allowed or paid on any overpayment resulting from the application of the amendment made by the first section of this Act with respect to any payment made before the date of the enactment of this Act [Aug. 7, 1959].”

### § 2039. Annuities

#### (a) General

The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than as in-