former subsec. (b) which read as follows: ''If for any calendar year tax is paid under chapter 12 with respect to any person by reason of property treated as transferred by such person under section 2036(c)(4), such person shall be entitled to recover from the original transferee (as defined in section 2036(c)(4)(C)(ii)) the amount which bears the same ratio to the total tax for such year under chapter 12 as—

''(1) the value of such property for purposes of chapter 12, bears to

''(2) the total amount of the taxable gifts for such year.''

Subsec. (c). Pub. L. 101–508, §11601(b)(1), redesignated subsec. (d) as (c) and substituted ''subsection (a)'' for ''subsections (a) and (b)'' and ''subsections (a) and (b)'' for ''subsections (a), (b), and (c)''. Former subsec. (c) redesignated (b).

Subsecs. (d), (e). Pub. L. 101–508, §11601(b)(1)(A), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (d) redesignated (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable with respect to estates of decedents dying after Aug. 5, 1997, see section 1302(c) of Pub. L. 105–34, set out as a note under section 2207A 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

Section effective as if included in provisions of Revenue Act of 1987, Pub. L. 100–203, title X, except that if 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.)

Statutory Notes and Related Subsidiaries

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 2014 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.)

Statutory Notes and Related Subsidiaries

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.

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.

Statutory Notes and Related Subsidiaries

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

Subchapter		Sec.[1]
A.	Determination of Tax Liability	2501
B.	Transfers	2511
C.	Deductions	2521

Subchapter A—Determination of Tax Liability

Sec.
2501. Imposition of tax.
2502. Rate of tax.
2503. Taxable gifts.
2504. Taxable gifts for preceding calendar periods.
2505. Unified credit against gift tax.

Editorial Notes

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.

[1] Section numbers editorially supplied.

§ 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 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.

(6) Transfers to certain exempt organizations

Paragraph (1) shall not apply to the transfer of money or other property to an organization described in paragraph (4), (5), or (6) of section 501(c) and exempt from tax under section 501(a), for the use of such organization.

(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; Pub. L. 114–113, div. Q, title IV, § 408(a), Dec. 18, 2015, 129 Stat. 3120.)

Editorial Notes

AMENDMENTS

2015—Subsec. (a)(6). Pub. L. 114–113 added par. (6).

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 ''decedent''.

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).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title IV, § 408(b), Dec. 18, 2015, 129 Stat. 3121, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to gifts made after the date of the enactment of this Act [Dec. 18, 2015].''

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 2014 of this title.

CONSTRUCTION OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title IV, § 408(c), Dec. 18, 2015, 129 Stat. 3121, provided that: ''Nothing in the amendment made by subsection (a) [amending this section] shall be construed to create any inference with respect to whether any transfer of property (whether made before, on, or after the date of the enactment of this Act [Dec. 18, 2015]) to an organization described in paragraph (4), (5), or (6) of section 501(c) of the Internal Revenue Code of 1986 is a transfer of property by gift for purposes of chapter 12 of such Code.''

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.

(c) Tax to be paid by donor

The tax imposed by section 2501 shall be paid by the donor.

(Aug. 16, 1954, ch. 736, 68A Stat. 403; Pub. L. 91–614, title I, § 102(a)(2), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 94–455, title XX, § 2001(b)(1), Oct. 4, 1976, 90 Stat. 1849; Pub. L. 97–34, title IV, § 442(a)(2), Aug. 13, 1981, 95 Stat. 320; Pub. L. 100–203, title X, § 10401(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330–431; Pub. L. 107–16, title V, § 511(d), June 7, 2001, 115 Stat. 70; Pub. L. 111–312, title III, § 302(b)(2), Dec. 17, 2010, 124 Stat. 3301.)

Editorial Notes

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–312 amended subsec. (a) to read as if amendment by Pub. L. 107–16, § 511(d), had never been enacted. See 2001 Amendment note below.

2001—Subsec. (a). Pub. L. 107–16, § 511(d), amended subsec. (a) generally. Prior to amendment, text read as follows: ''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.''

1987—Subsec. (a)(1). Pub. L. 100–203, § 10401(b)(2)(B)(i), substituted ''under section 2001(c)'' for ''in accordance with the rate schedule set forth in section 2001(c)''.

Subsec. (a)(2). Pub. L. 100–203, § 10401(b)(2)(B)(ii), substituted ''under such section'' for ''in accordance with such rate schedule''.

1981—Subsec. (a). Pub. L. 97–34 substituted in introductory text and par. (1) ''calendar year'' for ''calendar quarter'' and in pars. (1) and (2) ''calendar periods'' for ''calendar years and calendar quarters''.

Subsec. (b). Pub. L. 97–34 substituted definition of ''preceding calendar period'' for ''calendar quarter'', the latter including only the first calendar quarter of the calendar year 1971 and succeeding calendar quarters (covered in par. (2)), the former incorporating former subsec. (c)(1) definition of ''preceding calendar years'' as meaning calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970 and ''calendar year 1932'' as including only the portion of such year after June 6, 1932, and former subsec. (c)(2) definition of ''preceding calendar quarters'' as meaning the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the calendar quarter for which the tax is being computed.

Subsecs. (c), (d). Pub. L. 97–34 redesignated subsec. (d) as (c). Former subsec. (c), defining ''preceding calendar years'' and ''preceding calendar quarters'', was incorporated in subsec. (b).

1976—Subsec. (a). Pub. L. 94–455 inserted ''tentative'' after ''(1) a'' and ''(2) a'' and substituted in par. (1) ''section 2001(c)'' for ''this subsection'' after ''set forth in''.

1970—Subsec. (a). Pub. L. 91–614, § 102(a)(2)(A), substituted a computation of tax formula based on the current calendar quarter, preceding calendar quarters, and preceding calendar years for a formula based entirely on the current and preceding calendar years.

Subsec. (b). Pub. L. 91–614, § 102(a)(2)(B), substituted definition of ''calendar quarter'' for definition of ''calendar year''.

Subsec. (c). Pub. L. 91–614, § 102(a)(2)(B), substituted definition of ''preceding calendar years and quarters'' for definition of ''preceding calendar years''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title III, § 302(b)(2), Dec. 17, 2010, 124 Stat. 3301, provided that the amendment by section 302(b)(2) is effective on and after Jan. 1, 2011.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, § 511(f)(3), June 7, 2001, 115 Stat. 71, provided that: ''The amendments made by subsections (d) and (e) [amending this section and section 2511 of this title] shall apply to gifts made after December 31, 2009.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable in the case of decedents dying, and gifts made, after Dec. 31, 1987, see section 10401(c) of Pub. L. 100–203, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–455, title XX, § 2001(d)(2), Oct. 4, 1976, 90 Stat. 1854, provided that: ''The amendments made by subsections (b) and (c)(2) [enacting section 2505 of this title, amending this section and section 2504 of this title, and repealing section 2521 of this title] 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.

§ 2503. Taxable gifts

(a) General definition

The term ''taxable gifts'' means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (section 2522 and following).

(b) Exclusions from gifts

(1) In general

In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year, the first $10,000 of such gifts to such person shall not, for purposes of subsection (a), be included in the total amount of gifts made during such year. Where there has been a transfer to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying this subsection, if no part of such interest will at any time pass to any other person.

(2) Inflation adjustment

In the case of gifts made in a calendar year after 1998, the $10,000 amount contained in paragraph (1) shall be increased by an amount equal to—

(A) $10,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''calendar year 1997'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $1,000, such amount shall be rounded to the next lowest multiple of $1,000.

(c) Transfer for the benefit of minor

No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom—

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended—

(A) pass to the donee on his attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c).

[(d) Repealed. Pub. L. 97–34, title III, § 311(h)(5), Aug. 13, 1981, 95 Stat. 282]

(e) Exclusion for certain transfers for educational expenses or medical expenses

(1) In general

Any qualified transfer shall not be treated as a transfer of property by gift for purposes of this chapter.

(2) Qualified transfer

For purposes of this subsection, the term ''qualified transfer'' means any amount paid on behalf of an individual—

(A) as tuition to an educational organization described in section 170(b)(1)(A)(ii) for the education or training of such individual, or

(B) to any person who provides medical care (as defined in section 213(d)) with respect to such individual as payment for such medical care.

(f) Waiver of certain pension rights

If any individual waives, before the death of a participant, any survivor benefit, or right to such benefit, under section 401(a)(11) or 417, such waiver shall not be treated as a transfer of property by gift for purposes of this chapter.

(g) Treatment of certain loans of artworks

(1) In general

For purposes of this subtitle, any loan of a qualified work of art shall not be treated as a transfer (and the value of such qualified work of art shall be determined as if such loan had not been made) if—

(A) such loan is to an organization described in section 501(c)(3) and exempt from tax under section 501(c) (other than a private foundation), and

(B) the use of such work by such organization is related to the purpose or function constituting the basis for its exemption under section 501.

(2) Definitions

For purposes of this section—

(A) Qualified work of art

The term ''qualified work of art'' means any archaeological, historic, or creative tangible personal property.

(B) Private foundation

The term ''private foundation'' has the meaning given such term by section 509, except that such term shall not include any private operating foundation (as defined in section 4942(j)(3)).

(Aug. 16, 1954, ch. 736, 68A Stat. 404; Pub. L. 91–614, title I, §102(a)(3), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 95–600, title VII, §702(j)(2), Nov. 6, 1978, 92 Stat. 2931; Pub. L. 97–34, title III, §311(h)(5), title IV, §§441(a), (b), 442(a)(3), Aug. 13, 1981, 95 Stat. 282, 319, 320; Pub. L. 99–514, title XVIII, §1898(h)(1)(B), Oct. 22, 1986, 100 Stat. 2957; Pub. L. 100–647, title I, §1018(s)(2)(A), (u)(52), Nov. 10, 1988, 102 Stat. 3586, 3593; Pub. L. 101–239, title VII, §7811(m)(1), Dec. 19, 1989, 103 Stat. 2412; Pub. L. 105–34, title V, §501(c), Aug. 5, 1997, 111 Stat. 846; Pub. L. 115–97, title I, §11002(d)(1)(EE), Dec. 22, 2017, 131 Stat. 2060.)

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.

Editorial Notes

AMENDMENTS

2017—Subsec. (b)(2)(B). Pub. L. 115–97 substituted ''for 'calendar year 2016' in subparagraph (A)(ii)'' for ''for 'calendar year 1992' in subparagraph (B)''.

1997—Subsec. (b). Pub. L. 105–34 designated existing provisions as par. (1), inserted par. heading, realigned margins, and added par. (2).

1989—Subsecs. (f), (g). Pub. L. 101–239 redesignated subsec. (f), relating to treatment of certain loans of artworks, as (g).

1988—Subsec. (e)(2)(B). Pub. L. 100–647, §1018(u)(52), substituted ''section 213(d)'' for ''section 213(e)''.

Subsec. (f). Pub. L. 100–647, §1018(s)(2)(A), added subsec. (f) relating to treatment of certain loans of artworks.

1986—Subsec. (f). Pub. L. 99–514 added subsec. (f).

1981—Subsec. (a). Pub. L. 97–34, §442(a)(3)(A), substituted ''the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (section 2522 and following)'' for '', in the case of gifts made after December 31, 1970, the total amount of gifts made during calendar quarter, less the deductions provided in subchapter C (sec. 2521 and following'' and struck out provision that in the case of gifts made before Jan. 1, 1971, ''taxable gifts'' means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C.

Subsec. (b). Pub. L. 97–34, §442(a)(3)(B), substituted provision that in the case of gifts, other than gifts of future interests in property, made to any person by the donor during the calendar year, the first $10,000 of such gifts to such person shall not, for purposes of subsec. (a), be included in the total amount of gifts made during such year for provision that in computing taxable gifts for the calendar quarter, in the case of gifts, other than gifts of future interests in property, made to any person by the donor during the calendar year 1971 and subsequent calendar years, $10,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of the calendar year shall not, for purposes of subsec. (a), be included in the total amount of gifts made during such quarter.

Pub. L. 97–34, §441(a), substituted ''$10,000'' for ''$3,000''.

Subsec. (d). Pub. L. 97–34, §311(h)(5), repealed subsec. (d) which related to individual retirement accounts, etc., for spouse.

Subsec. (e). Pub. L. 97–34, §441(b), added subsec. (e).

1978—Subsec. (d). Pub. L. 95–600 added subsec. (d).

1970—Subsec. (a). Pub. L. 91–614, §102(a)(3)(A), divided definition of ''taxable gifts'' into gifts made after Dec. 31, 1970, where taxable gifts are based on the total amount of gifts made during the calendar quarter, less the applicable deductions, and gifts made before Jan. 1, 1971, where taxable gifts are based on the total amount of gifts made during the calendar year, less the applicable deductions.

Subsec. (b). Pub. L. 91–614, §102(a)(3)(B), substituted provisions with regard to computing taxable gifts for the calendar quarter, in the case of gifts made to any persons by the donor during the calendar year 1971 and subsequent calendar years, $3,000 of such gifts to such person less the aggregate of the amounts of such gifts to such person during all preceding calendar quarters of the calendar year shall not be included in the total amount of gifts made during such quarter for provisions requiring in the case of gifts made to any person by the donor during the calendar year 1955 and subsequent calendar years, the first $3,000 of such gifts to such person shall not be included in the total amount of gifts made during such year.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115–97, 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 1989 AMENDMENT

Amendment by 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 I, §1018(s)(2)(B), Nov. 10, 1988, 102 Stat. 3587, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to loans after July 31, 1969.''

Amendment by section 1018(u)(52) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(h)(5) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Pub. L. 97–34, title IV, §441(c), Aug. 13, 1981, 95 Stat. 319, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to transfers after December 31, 1981.

''(2) TRANSITIONAL RULE.—If—

''(A) an instrument executed before the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981] provides for a power of appointment which may be exercised during any period after December 31, 1981,

''(B) such power of appointment is expressly defined in terms of, or by reference to, the amount of the gift tax exclusion under section 2503(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (or the corresponding provision of prior law),

''(C) the instrument described in subparagraph (A) has not been amended on or after the date which is 30 days after the date of the enactment of this Act [Aug. 13, 1981], and

''(D) the State has not enacted a statute applicable to such gift under which such power of appointment is to be construed as being defined in terms of, or by reference to, the amount of the exclusion under such section 2503(b) after its amendment by subsection (a),

then the amendment made by subsection (a) shall not apply to such gift.''

Amendment by section 442(a)(3) of Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, § 702(j)(3)(B), Nov. 6, 1978, 92 Stat. 2932, provided that: ''The amendment made by paragraph (2) [amending this section] shall apply to transfers 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.

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.

§ 2504. Taxable gifts for preceding calendar periods

(a) In general

In computing taxable gifts for preceding calendar periods for purposes of computing the tax for any calendar year—

(1) there shall be treated as gifts such transfers as were considered to be gifts under the gift tax laws applicable to the calendar period in which the transfers were made,

(2) there shall be allowed such deductions as were provided for under such laws, and

(3) the specific exemption in the amount (if any) allowable under section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) shall be applied in all computations in respect of preceding calendar periods ending before January 1, 1977, for purposes of computing the tax for any calendar year.

(b) Exclusions from gifts for preceding calendar periods

In the case of gifts made to any person by the donor during preceding calendar periods, the amount excluded, if any, by the provisions of gift tax laws applicable to the periods in which the gifts were made shall not, for purposes of subsection (a), be included in the total amount of the gifts made during such preceding calendar periods.

(c) Valuation of gifts

If the time has expired under section 6501 within which a tax may be assessed under this chapter 12 (or under corresponding provisions of prior laws) on—

(1) the transfer of property by gift made during a preceding calendar period (as defined in section 2502(b)); or

(2) an increase in taxable gifts required under section 2701(d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined (within the meaning of section 2001(f)(2)) for purposes of this chapter.

(d) Net gifts

The term ''net gifts'' as used in the corresponding provisions of prior laws shall be read as ''taxable gifts'' for purposes of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 405; Pub. L. 91–614, title I, § 102(a)(4)(A), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 94–455, title XX, § 2001(c)(2)(A), Oct. 4, 1976, 90 Stat. 1853; Pub. L. 97–34, title IV, § 442(a)(4)(A)–(D), Aug. 13, 1981, 95 Stat. 321; Pub. L. 105–34, title V, § 506(d), Aug. 5, 1997, 111 Stat. 856; Pub. L. 105–206, title VI, § 6007(e)(2)(B)[(C)], July 22, 1998, 112 Stat. 810.)

Editorial Notes

REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (a)(3), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1520. Section 2521 of this title was repealed by section 2001(b)(3) of Pub. L. 94–455. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–206 substituted ''gifts'' for ''certain gifts for preceding calendar periods'' in heading and amended text generally. Prior to amendment, text read as follows: ''If the time has expired within which a tax may be assessed under this chapter or under corresponding provisions of prior laws on the transfer of property by gift made during a preceding calendar period, as defined in section 2502(b), the value of such gift made in such preceding calendar period shall, for purposes of computing the tax under this chapter for any calendar year, be the value of such gift which was used in computing the tax for the last preceding calendar period for which a tax under this chapter or under corresponding provisions of prior laws was assessed or paid.''

1997—Subsec. (c). Pub. L. 105–34 struck out '', and if a tax under this chapter or under corresponding provisions of prior laws has been assessed or paid for such preceding calendar period'' after ''as defined in section 2502(b)''.

1981—Pub. L. 97–34, § 442(a)(4)(D), substituted ''calendar periods'' for ''years and quarters'' in section catchline.

Subsec. (a). Pub. L. 97–34, § 442(a)(4)(A), substituted in introductory text ''preceding calendar periods'' and ''calendar year'' for ''preceding calendar years or calendar quarters'' and ''calendar quarter'', incorporated existing text in provisions designated pars. (1) to (3), and substituted in par. (1) ''calendar period'' for ''years or calendar quarters'' and in par. (3) ''preceding calendar periods'' and ''calendar year'' for ''calendar years or calendar quarters'' and ''calendar quarter''.

Subsec. (b). Pub. L. 97–34, § 442(a)(4)(B), substituted in heading ''calendar periods'' for ''years and quarters'' and in text ''preceding calendar periods'' for ''preceding calendar years and calendar quarters'', ''the periods'' for ''the years and calendar quarters'', and ''such preceding calendar periods'' for ''such years and calendar quarters''.

Subsec. (c). Pub. L. 97–34, § 442(a)(4)(C), substituted in heading ''calendar periods'' for ''calendar years and quarters'' and in text ''preceding calendar period'' for ''preceding calendar year or calendar quarter'' in four places, ''any calendar year'' for ''any calendar quarter'', and ''section 2502(b)'' for ''section 2502(c)''.

1976—Subsec. (a). Pub. L. 94–455 inserted ''(as in effect before its repeal by the Tax Reform Act of 1976)'' after ''section 2521'' and ''ending before January 1, 1977'' after ''years or calendar quarters'' and substituted ''of'' for ''to previous'' after ''computations in respect''.

1970—Pub. L. 91–614 substituted ''Taxable gifts for preceding years and quarters'' for ''Taxable gifts for preceding years'' in section catchline.

Subsec. (a). Pub. L. 91–614 substituted ''In computing taxable gifts for the preceding calendar years or calendar quarters for the purpose of computing the tax for any calendar quarter,'' for ''In computing taxable gifts for the calendar year 1954 and preceding calendar years for the purpose of computing the tax for the calendar year 1955 or any calendar year thereafter,'' provided that the laws applicable in the calendar quarters as well as the years in which the transfers in question were made shall apply, and substituted ''previous calendar years or calendar quarters for the purpose of computing the tax for any calendar year or calendar quarter'' for ''the calendar year 1954 and previous calendar years for the purpose of computing the tax for the calendar year 1955 or any calendar year thereafter''.

Subsec. (b). Pub. L. 91–614 inserted reference to calendar quarters in heading, substituted ''during preceding calendar years and calendar quarters,'' for ''during the calendar year 1954 and preceding calendar years,'' made reference to the amount excluded by gift tax laws applicable to the calendar quarters as well as years in which the gifts were made, and substituted ''during such years and calendar quarters'' for ''during such year''.

Subsec. (c). Pub. L. 91–614 inserted reference to calendar quarters in heading, inserted ''or calendar quarter'' after ''calendar year'' in four places, and substituted ''for any calendar quarter,'' for ''for the calendar year 1955 and subsequent calendar years,''.

Subsec. (d). Pub. L. 91–614 struck out ''For years before the calendar year 1955'' from explanation of term ''net gifts'' as used in corresponding provisions of prior laws.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to gifts made after Aug. 5, 1997, see section 506(e)(1) of Pub. L. 105–34, as amended, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

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.

§ 2505. Unified credit against gift tax

(a) General rule

In the case of a citizen or resident of the United States, there shall be allowed as a credit against the tax imposed by section 2501 for each calendar year an amount equal to—

(1) the applicable credit amount in effect under section 2010(c) which would apply if the donor died as of the end of the calendar year, reduced by

(2) the sum of the amounts allowable as a credit to the individual under this section for all preceding calendar periods.

For purposes of applying paragraph (2) for any calendar year, the rates of tax in effect under section 2502(a)(2) for such calendar year shall, in lieu of the rates of tax in effect for preceding calendar periods, be used in determining the amounts allowable as a credit under this section for all preceding calendar periods.

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

The amount 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 individual after September 8, 1976.

(c) Limitation based on amount of tax

The amount of the credit allowed under subsection (a) for any calendar year shall not exceed the amount of the tax imposed by section 2501 for such calendar year.

(Added Pub. L. 94–455, title XX, § 2001(b)(2), Oct. 4, 1976, 90 Stat. 1849; amended Pub. L. 97–34, title IV, §§ 401(b), 442(a)(5), Aug. 13, 1981, 95 Stat. 299, 321; Pub. L. 101–508, title XI, § 11801(a)(40), (c)(19)(B), Nov. 5, 1990, 104 Stat. 1388–521, 1388–528; Pub. L. 105–34, title V, § 501(a)(2), Aug. 5, 1997, 111 Stat. 845; Pub. L. 107–16, title V, § 521(b), June 7, 2001, 115 Stat. 71; Pub. L. 111–312, title III, §§ 301(b), 302(b)(1)(A), (d)(2), 303(b)(1), Dec. 17, 2010, 124 Stat. 3300–3303.)

Editorial Notes

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. Section 2521 of this title was repealed by section 2001(b)(3) of Pub. L. 94–455. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–312, § 302(d)(2), inserted concluding provisions.

Subsec. (a)(1). Pub. L. 111–312, § 303(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the applicable credit amount in effect under section 2010(c) for such calendar year, reduced by''.

Pub. L. 111–312, § 302(b)(1)(A), struck out ''(determined as if the applicable exclusion amount were $1,000,000)'' after ''calendar year''.

Pub. L. 111–312, § 301(b), amended subsec. (a)(1) to read as if amendment by Pub. L. 107–16, § 521(b)(2), had never been enacted. See 2001 Amendment note below.

2001—Subsec. (a)(1). Pub. L. 107–16, § 521(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the applicable credit amount in effect under section 2010(c) for such calendar year (determined as if the applicable exclusion amount were $1,000,000), reduced by''.

Pub. L. 107–16, § 521(b)(1), inserted ''(determined as if the applicable exclusion amount were $1,000,000)'' after ''calendar year''.

1997—Subsec. (a)(1). Pub. L. 105–34 substituted ''the applicable credit amount in effect under section 2010(c) for such calendar year'' for ''$192,800''.

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

1981—Subsec. (a). Pub. L. 97–34, § 442(a)(5)(A), substituted in provision preceding par. (1) ''year'' for ''quarter'', and ''periods'' for ''quarters'' in par. (2).

Subsec. (a)(1). Pub. L. 97–34, § 401(b)(1), substituted ''$192,800'' for ''$47,000''.

Subsec. (b). Pub. L. 97–34, § 401(b)(2), struck out from heading ''$47,000'' before ''credit'', substituted subsec. (a)(1) substitutions for ''$192,800'' of amounts of ''$62,800'', ''$79,300'', ''$96,300'', ''$121,800'', and ''$155,800'' in the case of gifts made in 1982, 1983, 1984, 1985, and 1986, respectively, for subsec. (a)(1) substitutions for ''$47,000'' of amounts of ''$6,000'', ''$30,000'', ''$34,000'', ''$38,000'', and ''$42,500'' in the case of gifts made after Dec. 31, 1976, and before July 1, 1977, after June 30, 1977, and before Jan. 1, 1978; after Dec. 31, 1977, and before Jan. 1, 1979, after Dec. 31, 1978, and before Jan. 1, 1980, and after Dec. 31, 1979, and before Jan. 1, 1981, respectively.

Subsec. (d). Pub. L. 97–34, § 442(a)(5)(B), substituted ''year'' for ''quarter'' in two places.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title III, § 301(b), Dec. 17, 2010, 124 Stat. 3300, provided that the amendment by section 301(b) is effective on and after Jan. 1, 2011.

Pub. L. 111–312, title III, § 302(b)(1)(B), Dec. 17, 2010, 124 Stat. 3301, provided that: ''The amendment made by this paragraph [amending this section] shall apply to gifts made after December 31, 2010.''

Amendment by section 302(d)(2) 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.

Amendment by section 303(b)(1) of Pub. L. 111–312 applicable to estates of decedents dying and gifts made after Dec. 31, 2010, see section 303(c)(1) of Pub. L. 111–312, set out as a note under section 2010 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 521(b)(1) of Pub. L. 107–16 applicable to estates of decedents dying, and gifts made, after Dec. 31, 2001, and amendment by section 521(b)(2) of Pub. L. 107–16 applicable to gifts made after Dec. 31, 2009, see section 521(e)(1), (2) of Pub. L. 107–16, set out as a note under section 2010 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

Pub. L. 97–34, title IV, § 401(c)(2), Aug. 13, 1981, 95 Stat. 300, provided that: ''The amendments made by subsection (b) [amending this section] shall apply to gifts made after such date [Dec. 31, 1981].''

Amendment by section 442(a)(5) of Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

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.

Subchapter B—Transfers

Sec.
2511. Transfers in general.
2512. Valuation of gifts.
2513. Gift by husband or wife to third party.
2514. Powers of appointment.
2515. Treatment of generation-skipping transfer tax.
[2515A. Repealed.]
2516. Certain property settlements.
[2517. Repealed.]
2518. Disclaimers.
2519. Dispositions of certain life estates.

Editorial Notes

AMENDMENTS

1986—Pub. L. 99–514, title XIV, § 1432(d)(2), title XVIII, § 1852(e)(2)(B), Oct. 22, 1986, 100 Stat. 2730, 2868, added item 2515 and struck out item 2517 ''Certain annuities under qualified plans''.

1981—Pub. L. 97–34, title IV, § 403(c)(3)(C), (d)(3)(B)(ii), Aug. 13, 1981, 95 Stat. 302, 304, as amended Pub. L. 97–448, title I, § 104(a)(3)(B), Jan. 12, 1983, 96 Stat. 2380, struck out items 2515 ''Tenancies by the entirety in real property'' and 2515A ''Tenancies by the entirety in personal property'' and added item 2519.

1978—Pub. L. 95–600, title VII, § 702(k)(1)(C), Nov. 6, 1978, 92 Stat. 2932, substituted in item 2515 ''Tenancies by the entirety in real property'' for ''Tenancies by the entirety'' and added item 2515A.

1976—Pub. L. 94–455, title XX, § 2009(b)(3)(A), Oct. 4, 1976, 90 Stat. 1894, added item 2518.

1958—Pub. L. 85–866, title I, § 68(b), Sept. 2, 1958, 72 Stat. 1659, added item 2517.

§ 2511. Transfers in general

(a) Scope

Subject to the limitations contained in this chapter, the tax imposed by section 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

(b) Intangible property

For purposes of this chapter, in the case of a nonresident not a citizen of the United States who is excepted from the application of section 2501(a)(2)—

(1) shares of stock issued by a domestic corporation, and

(2) debt obligations of—

(A) a United States person, or

(B) the United States, a State or any political subdivision thereof, or the District of Columbia,

which are owned and held by such nonresident shall be deemed to be property situated within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 406; Pub. L. 89–809, title I, § 109(b), Nov. 13, 1966, 80 Stat. 1575;

Pub. L. 107–16, title V, § 511(e), June 7, 2001, 115 Stat. 71; Pub. L. 107–147, title IV, § 411(g)(1), Mar. 9, 2002, 116 Stat. 46; Pub. L. 111–312, title III, § 302(e), Dec. 17, 2010, 124 Stat. 3302.)

Editorial Notes

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–312 struck out subsec. (c). Text read as follows: ''Notwithstanding any other provision of this section and except as provided in regulations, a transfer in trust shall be treated as a transfer of property by gift, unless the trust is treated as wholly owned by the donor or the donor's spouse under subpart E of part I of subchapter J of chapter 1.''

2002—Subsec. (c). Pub. L. 107–147 substituted ''transfer of property by gift,'' for ''taxable gift under section 2503,''.

2001—Subsec. (c). Pub. L. 107–16 added subsec. (c).

1966—Subsec. (b). Pub. L. 89–809 inserted reference to nonresidents who are excepted from the application of section 2501(a)(2) and expanded section to include debt obligations of United States persons or the United States, a State or any political subdivision thereof, or the District of Columbia.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to gifts made after Dec. 31, 2009, see section 511(f)(3) of Pub. L. 107–16, set out as a note under section 2502 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to calendar year 1967 and all calendar years thereafter, see section 109(c) of Pub. L. 89–809, set out as a note under section 2501 of this title.

§ 2512. Valuation of gifts

(a) If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

(b) Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

(c) Cross reference

For individual's right to be furnished on request a statement regarding any valuation made by the Secretary of a gift by that individual, see section 7517.

(Aug. 16, 1954, ch. 736, 68A Stat. 406; Pub. L. 91–614, title I, § 102(b)(1), Dec. 31, 1970, 84 Stat. 1840; Pub. L. 94–455, title XX, § 2008(a)(2)(B), Oct. 4, 1976, 90 Stat. 1891; Pub. L. 97–34, title IV, § 442(b)(1), Aug. 13, 1981, 95 Stat. 322.)

Editorial Notes

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–34 substituted ''calendar year'' for ''calendar quarters''.

1976—Subsec. (c). Pub. L. 94–455 added subsec. (c).

1970—Subsec. (b). Pub. L. 91–614 substituted ''calendar quarter'' for ''calendar year''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

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.

§ 2513. Gift by husband or wife to third party

(a) Considered as made one-half by each

(1) In general

A gift made by one spouse to any person other than his spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. This paragraph shall not apply with respect to a gift by a spouse of an interest in property if he creates in his spouse a general power of appointment, as defined in section 2514(c), over such interest. For purposes of this section, an individual shall be considered as the spouse of another individual only if he is married to such individual at the time of the gift and does not remarry during the remainder of the calendar year.

(2) Consent of both spouses

Paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

(b) Manner and time of signifying consent

(1) Manner

A consent under this section shall be signified in such manner as is provided under regulations prescribed by the Secretary.

(2) Time

Such consent may be so signified at any time after the close of the calendar year in which the gift was made, subject to the following limitations—

(A) The consent may not be signified after the 15th day of April following the close of such year, unless before such 15th day no return has been filed for such year by either spouse, in which case the consent may not be signified after a return for such year is filed by either spouse.

(B) The consent may not be signified after a notice of deficiency with respect to the tax for such year has been sent to either spouse in accordance with section 6212(a).

(c) Revocation of consent

Revocation of a consent previously signified shall be made in such manner as in provided under regulations prescribed by the Secretary, but the right to revoke a consent previously signified with respect to a calendar year—

(1) shall not exist after the 15th day of April following the close of such year if the consent was signified on or before such 15th day; and

(2) shall not exist if the consent was not signified until after such 15th day.

(d) Joint and several liability for tax

If the consent required by subsection (a)(2) is signified with respect to a gift made in any calendar year, the liability with respect to the entire tax imposed by this chapter of each spouse for such year shall be joint and several.

(Aug. 16, 1954, ch. 736, 68A Stat. 406; Pub. L. 91–614, title I, § 102(b)(2), Dec. 31, 1970, 84 Stat. 1840; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title IV, § 442(b)(2), Aug. 13, 1981, 95 Stat. 322.)

Editorial Notes

AMENDMENTS

1981—Subsec. (a)(1), (2). Pub. L. 97–34, § 442(b)(2)(A), substituted ''calendar year'' for ''calendar quarter''.

Subsec. (b)(2). Pub. L. 97–34, § 442(b)(2)(B)–(D), in introductory text, substituted ''calendar year'' for ''calendar quarter'', in subpar. (A), substituted ''The consent'' for ''the consent'', ''15th day of April following the close of such year'' for ''15th day of the second month following the close of such calendar quarter'', and ''such year'' for ''such calendar quarter'' in two other places, and in subpar. (B) substituted ''The consent'' and ''such year'' for ''the consent'' and ''such calendar quarter''.

Subsec. (c). Pub. L. 97–34, § 442(b)(2)(E), in provision preceding par. (1) substituted ''calendar year'' for ''calendar quarter'' and in par. (1) ''15th day of April following the close of such year'' for ''15th day of the second month following the close of such quarter''.

Subsec. (d). Pub. L. 97–34, § 442(b)(2)(F), substituted ''any calendar year'' and ''such year'' for ''any calendar quarter'' and ''such calendar quarter''.

1976—Subsecs. (b)(1), (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1970—Subsecs. (a), (b)(2). Pub. L. 91–614, § 102(b)(2)(A), substituted ''calendar quarter'' for ''calendar year''.

Subsec. (b)(2)(A). Pub. L. 91–614, § 102(b)(2)(B), substituted ''the 15th day of the second month'' for ''the 15th day of April'' and substituted ''such calendar quarter'' for ''such year''.

Subsec. (b)(2)(B). Pub. L. 91–614, § 102(b)(2)(C), substituted ''such calendar quarter'' for ''such year''.

Subsec. (c). Pub. L. 91–614, § 102(b)(2)(A), substituted ''calendar quarter'' for ''calendar year''.

Subsec. (c)(1). Pub. L. 91–614, § 102(b)(2)(D), substituted ''15th day of the second month following the close of such calendar quarter'' for ''15th day of April following the close of such year''.

Subsec. (d). Pub. L. 91–614, § 102(b)(2)(A), (E), substituted ''calendar quarter'' for ''calendar year'' and ''such calendar quarter'' for ''such year''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

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.

§ 2514. Powers of appointment

(a) Powers created on or before October 21, 1942

An exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment if—

(1) such partial release occurred before November 1, 1951, or

(2) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than six months after the termination of such legal disability.

(b) Powers created after October 21, 1942

The exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power.

(c) Definition of general power of appointment

For purposes of this section, the term ''general power of appointment'' means a power which is exercisable in favor of the individual possessing the power (hereafter in this subsection referred to as the ''possessor''), his estate, his creditors, or the creditors of his estate; except that—

(1) A power to consume, invade, or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.

(2) A power of appointment created on or before October 21, 1942, which is exercisable by the possessor only in conjunction with another person shall not be deemed a general power of appointment.

(3) In the case of a power of appointment created after October 21, 1942, which is exercisable by the possessor only in conjunction with another person—

(A) if the power is not exercisable by the possessor except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment;

(B) if the power is not exercisable by the possessor except in conjunction with a person having a substantial interest, in the property subject to the power, which is adverse to exercise of the power in favor of the possessor—such power shall not be deemed a general power of appointment. For the purposes of this subparagraph a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall

be deemed adverse to such exercise of the possessor's power;

(C) if (after the application of subparagraphs (A) and (B)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the possessor) in favor of whom such power is exercisable.

For purposes of subparagraphs (B) and (C), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(d) Creation of another power in certain cases

If a power of appointment created after October 21, 1942, is exercised by creating another power of appointment which, under the applicable local law, can be validly exercised so as to postpone the vesting of any estate or interest in the property which was subject to the first power, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power, such exercise of the first power shall, to the extent of the property subject to the second power, be deemed a transfer of property by the individual possessing such power.

(e) Lapse of power

The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The rule of the preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by exercise of such lapsed powers exceeds in value the greater of the following amounts:

(1) $5,000, or

(2) 5 percent of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

(f) Date of creation of power

For purposes of this section a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

(Aug. 16, 1954, ch. 736, 68A Stat. 407; Pub. L. 94–455, title XX, §2009(b)(4)(F), Oct. 4, 1976, 90 Stat. 1894.)

Editorial Notes

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out ''A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power.''

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to transfers creating an interest in person disclaiming made after Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94–455, set out as a note under section 2518 of this title.

§ 2515. Treatment of generation-skipping transfer tax

In the case of any taxable gift which is a direct skip (within the meaning of chapter 13), the amount of such gift shall be increased by the amount of any tax imposed on the transferor under chapter 13 with respect to such gift.

(Added Pub. L. 99–514, title XIV, §1432(d)(1), Oct. 22, 1986, 100 Stat. 2730.)

Editorial Notes

PRIOR PROVISIONS

A prior section, acts Aug. 16, 1954, ch. 736, 68A Stat. 409; Dec. 31, 1970, Pub. L. 91–614, title I, §102(b)(3), 84 Stat. 1841; Oct. 4, 1976, Pub. L. 94–455, title XX, §2002(c)(2), 90 Stat. 1855; Nov. 6, 1978, Pub. L. 95–600, title VII, §702(k)(1)(B), 92 Stat. 2932, related to tenancies by the entirety in real property, prior to repeal applicable to gifts made after Dec. 31, 1981, by Pub. L. 97–34, title IV, §403(c)(3)(B), (e)(2), Aug. 13, 1981, 95 Stat. 302, 305.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

[§ 2515A. Repealed. Pub. L. 97–34, title IV, § 403(c)(3)(B), Aug. 13, 1981, 95 Stat. 302]

Section, added Pub. L. 95–600, title VII, §702(k)(1)(A), Nov. 6, 1978, 92 Stat. 2932, related to tenancies by the entirety in personal property.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

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

§ 2516. Certain property settlements

Where a husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement—

(1) to either spouse in settlement of his or her marital or property rights, or

(2) to provide a reasonable allowance for the support of issue of the marriage during minority,

shall be deemed to be transfers made for a full and adequate consideration in money or money's worth.

(Aug. 16, 1954, ch. 736, 68A Stat. 409; Pub. L. 98–369, div. A, title IV, §425(b), July 18, 1984, 98 Stat. 804.)

Editorial Notes

AMENDMENTS

1984—Pub. L. 98–369 substituted in introductory text ''within the 3-year period beginning on the date 1 year before such agreement is entered into'' for ''within 2 years thereafter''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, § 425(c)(2), July 18, 1984, 98 Stat. 804, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to transfers after the date of the enactment of this Act [July 18, 1984].''

[§ 2517. Repealed. Pub. L. 99–514, title XVIII, § 1852(e)(2)(A), Oct. 22, 1986, 100 Stat. 2868]

Section, added and amended Pub. L. 85–866, title I, §§ 23(f), 68(a), Sept. 2, 1958, 72 Stat. 1623, 1659; Pub. L. 87–792, § 7(j), Oct. 10, 1962, 76 Stat. 830; Mar. 8, 1966, Pub. L. 89–365, § 2(b), 80 Stat. 33; Dec. 30, 1969, Pub. L. 91–172, title I, § 101(j)(24), 83 Stat. 528; Pub. L. 94–455, title XX, § 2009(c) (4), (5), Oct. 4, 1976, 90 Stat. 1895, 1896; Pub. L. 97–34, title III, § 311(d)(2), Aug. 13, 1981, 95 Stat. 280; Pub. L. 98–369, div. A, title IV, § 491(d)(35), July 18, 1984, 98 Stat. 851, related to the transfers of certain annuities under qualified plans.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal applicable to transfers after Oct. 22, 1986, see section 1852(e)(2)(E) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 406 of this title.

§ 2518. Disclaimers

(a) General rule

For purposes of this subtitle, if a person makes a qualified disclaimer with respect to any interest in property, this subtitle shall apply with respect to such interest as if the interest had never been transferred to such person.

(b) Qualified disclaimer defined

For purposes of subsection (a), the term ''qualified disclaimer'' means an irrevocable and unqualified refusal by a person to accept an interest in property but only if—

(1) such refusal is in writing,

(2) such writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of—

(A) the day on which the transfer creating the interest in such person is made, or

(B) the day on which such person attains age 21,

(3) such person has not accepted the interest or any of its benefits, and

(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either—

(A) to the spouse of the decedent, or

(B) to a person other than the person making the disclaimer.

(c) Other rules

For purposes of subsection (a)—

(1) Disclaimer of undivided portion of interest

A disclaimer with respect to an undivided portion of an interest which meets the requirements of the preceding sentence shall be treated as a qualified disclaimer of such portion of the interest.

(2) Powers

A power with respect to property shall be treated as an interest in such property.

(3) Certain transfers treated as disclaimers

A written transfer of the transferor's entire interest in the property—

(A) which meets requirements similar to the requirements of paragraphs (2) and (3) of subsection (b), and

(B) which is to a person or persons who would have received the property had the transferor made a qualified disclaimer (within the meaning of subsection (b)),

shall be treated as a qualified disclaimer.

(Added Pub. L. 94–455, title XX, § 2009(b)(1), Oct. 4, 1976, 90 Stat. 1893; amended Pub. L. 95–600, title VII, § 702(m)(1), Nov. 6, 1978, 92 Stat. 2935; Pub. L. 97–34, title IV, § 426(a), Aug. 13, 1981, 95 Stat. 318; Pub. L. 97–448, title I, § 104(e), Jan. 12, 1983, 96 Stat. 2384.)

Editorial Notes

AMENDMENTS

1983—Subsec. (c)(3). Pub. L. 97–448 substituted ''A written transfer'' for ''For purposes of subsection (a), a written transfer''.

1981—Subsec. (c)(3). Pub. L. 97–34 added par. (3).

1978—Subsec. (b)(4). Pub. L. 95–600 inserted provision relating to spouse of decedent.

Statutory Notes and Related Subsidiaries

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

Pub. L. 97–34, title IV, § 426(b), Aug. 13, 1981, 95 Stat. 318, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transfers creating an interest in the person disclaiming made after December 31, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title VII, § 702(m)(2), Nov. 6, 1978, 92 Stat. 2935, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to transfers creating an interest in the person disclaiming made after December 31, 1976.''

EFFECTIVE DATE

Pub. L. 94–455, title XX, § 2009(e)(2), Oct. 4, 1976, 90 Stat. 1896, provided that: ''The amendments made by subsection (b) [enacting this section and section 2046 of this title and amending sections 2041, 2055, 2056, and 2514 of this title] shall apply with respect to transfers creating an interest in the person disclaiming made after December 31, 1976.''

§ 2519. Dispositions of certain life estates

(a) General rule

For purposes of this chapter and chapter 11, any disposition of all or part of a qualifying in-

come interest for life in any property to which this section applies shall be treated as a transfer of all interests in such property other than the qualifying income interest.

(b) Property to which this subsection applies

This section applies to any property if a deduction was allowed with respect to the transfer of such property to the donor—

(1) under section 2056 by reason of subsection (b)(7) thereof, or

(2) under section 2523 by reason of subsection (f) thereof.

(c) Cross reference

For right of recovery for gift tax in the case of property treated as transferred under this section, see section 2207A(b).

(Added Pub. L. 97–34, title IV, § 403(d)(3)(B)(i), Aug. 13, 1981, 95 Stat. 304; amended Pub. L. 97–448, title I, § 104(a)(3), (7), Jan. 12, 1983, 96 Stat. 2380, 2381.)

Editorial Notes

AMENDMENTS

1983—Pub. L. 97–448, § 104(a)(3)(B), amended directory language of Pub. L. 97–34, § 403(d)(3)(B)(i), to clarify that this section be inserted at end of subchapter B of chapter 12, rather than at end of subchapter B of chapter 11, and did not involve any change in text.

Subsec. (a). Pub. L. 97–448, § 104(a)(3)(A), substituted ''For purposes of this chapter and chapter 11, any disposition'' for ''Any disposition'' and ''treated as a transfer of all interests in such property other than the qualifying income interest'' for ''treated as a transfer of such property''.

Subsec. (c). Pub. L. 97–448, § 104(a)(7), added subsec. (c).

Statutory Notes and Related Subsidiaries

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

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

Subchapter C—Deductions

Sec.

[2521. Repealed.]
2522. Charitable and similar gifts.
2523. Gift to spouse.
2524. Extent of deductions.

Editorial Notes

AMENDMENTS

1976—Pub. L. 94–455, title XX, § 2001(c)(2)(B)(ii), Oct. 4, 1976, 90 Stat. 1853, struck out item 2521 ''Specific exemption''.

[§ 2521. Repealed. Pub. L. 94–455, title XX, § 2001(b)(3), Oct. 4, 1976, 90 Stat. 1849]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 410, allowed a deduction, in the case of a citizen or resident, an exemption of $30,000, less amounts claimed and allowed for calendar year 1932 and calendar years intervening between that year and year for which tax is being computed.

§ 2522. Charitable and similar gifts

(a) Citizens or residents

In computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings insures to the benefit of any private shareholder or individual.

Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

(b) Nonresidents

In the case of a nonresident not a citizen of the United States, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of state-

ments), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

(c) Disallowance of deductions in certain cases

(1) No deduction shall be allowed under this section for a gift to or for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where a donor transfers an interest in property (other than an interest described in section 170(f)(3)(B)) to a person, or for a use, described in subsection (a) or (b) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b), no deduction shall be allowed under this section for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) or (b), unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) Rules similar to the rules of section 2055(e)(4) shall apply for purposes of paragraph (2).

(4) Reformations to comply with paragraph (2)

(A) In general

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) Rules similar to section 2055(e)(3) to apply

For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(5) Contributions to donor advised funds

A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3) or (4) of subsection (a), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

(d) Special rule for irrevocable transfers of easements in real property

A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

(e) Special rules for fractional gifts

(1) Denial of deduction in certain cases

(A) In general

No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interests in the property are held immediately before such contribution by—

(i) the taxpayer, or

(ii) the taxpayer and the donee.

(B) Exceptions

The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

(2) Recapture of deduction in certain cases; addition to tax

(A) In general

The Secretary shall provide for the recapture of an amount equal to any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property—

(i) in any case in which the donor does not contribute all of the remaining inter-

ests in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) on or before the earlier of—

(I) the date that is 10 years after the date of the initial fractional contribution, or

(II) the date of the death of the donor, and

(ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)—

(I) had substantial physical possession of the property, and

(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

(B) Addition to tax

The tax imposed under this chapter for any taxable year for which there is a recapture under subparagraph (A) shall be increased by 10 percent of the amount so recaptured.

(C) Initial fractional contribution

For purposes of this paragraph, the term ''initial fractional contribution'' means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).

(f) Cross references

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For exemption of certain gifts to or for the benefit of the United States and for rules of construction with respect to certain bequests, see section 2055(f).

(3) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(Aug. 16, 1954, ch. 736, 68A Stat. 410; Pub. L. 85–866, title I, §30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 91–172, title II, §201(d)(3), (4)(C), (D), Dec. 30, 1969, 83 Stat. 561, 562; Pub. L. 91–614, title I, §102(c)(2), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94–455, title XII, §§1307(d)(1)(B)(iv), (v), 1313(b)(3), title XIX, §1902(a)(11), (12)(D), title XXI, §2124(e)(3), Oct. 4, 1976, 90 Stat. 1727, 1730, 1805, 1806, 1920; Pub. L. 97–34, title IV, §§423(b), 442(c), Aug. 13, 1981, 95 Stat. 317, 322; Pub. L. 97–248, title II, §286(b)(3), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97–473, title II, §202(b)(7), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98–369, div. A, title X, §§1022(c), 1032(b)(3), July 18, 1984, 98 Stat. 1028, 1034; Pub. L. 99–514, title XIV, §1422(b), Oct. 22, 1986, 100 Stat. 2717; Pub. L. 100–203, title X, §10711(a)(5), (6), Dec. 22, 1987, 101 Stat. 1330–464; Pub. L. 109–280, title XII, §§1218(c), 1234(c), Aug. 17, 2006, 120 Stat. 1082, 1101; Pub. L. 110–172, §§3(d)(2), 11(a)(16), Dec. 29, 2007, 121 Stat. 2474, 2485; Pub. L. 115–141, div. U, title IV, §401(a)(204), Mar. 23, 2018, 132 Stat. 1194.)

Editorial Notes

CODIFICATION

Sections 1218(c) and 1234(c) of Pub. L. 109–280, which directed the amendment of section 2522 without specifying the act to be amended, were executed to this section, which is section 2522 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

AMENDMENTS

2018—Subsec. (c)(1). Pub. L. 115–141 substituted ''gift to or for'' for ''gift to of for''.

2007—Subsec. (e)(1)(A). Pub. L. 110–172, §11(a)(16)(A), in introductory provisions, substituted ''all interests in the property are'' for ''all interest in the property is''.

Subsec. (e)(2). Pub. L. 110–172, §3(d)(2)(A), (B), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: ''In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

''(A) the fair market value of the property at the time of the initial fractional contribution, or

''(B) the fair market value of the property at the time of the additional contribution.''

Subsec. (e)(2)(A)(i). Pub. L. 110–172, §11(a)(16)(B), substituted ''interests'' for ''interest'' and ''on or before'' for ''before''.

Subsec. (e)(2)(C). Pub. L. 110–172, §3(d)(2)(C), added subpar. (C).

Subsec. (e)(3). Pub. L. 110–172, §3(d)(2)(B), redesignated par. (3) as (2).

Subsec. (e)(4). Pub. L. 110–172, §3(d)(2)(A), struck out heading and text of par. (4). Text read as follows: ''For purposes of this subsection—

''(A) ADDITIONAL CONTRIBUTION.—The term 'additional contribution' means any gift for which a deduction is allowed under subsection (a) or (b) of any interest in a property with respect to which the donor has previously made an initial fractional contribution.

''(B) INITIAL FRACTIONAL CONTRIBUTION.—The term 'initial fractional contribution' means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).''

2006—Subsec. (c)(5). Pub. L. 109–280, §1234(c), added par. (5). See Codification note above.

Subsecs. (e), (f). Pub. L. 109–280, §1218(c), added subsec. (e) and redesignated former subsec. (e) as (f). See Codification note above.

1987—Subsecs. (a)(2), (b)(2), (3). Pub. L. 100–203 inserted ''(or in opposition to)'' after ''on behalf of''.

1986—Subsecs. (d), (e). Pub. L. 99–514 added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (c)(4). Pub. L. 98–369, §1022(c), added par. (4).

Subsec. (d). Pub. L. 98–369, §1032(b)(3), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

1983—Subsec. (d). Pub. L. 97–473 designated existing provisions as par. (1), substituted ''bequests'' for ''gifts'' second time appearing in par. (1) as so designated, and added par. (2).

1982—Subsec. (a). Pub. L. 97–248 inserted provision that rules similar to rules of section 501(j) apply for purposes of par. (2).

1981—Subsec. (a). Pub. L. 97–34, §442(c), substituted ''year'' for ''quarter'' in two places in provision preceding par. (1).

Subsec. (b). Pub. L. 97–34, §442(c), substituted ''year'' for ''quarter'' in provision preceding par. (1).

Subsec. (c)(3). Pub. L. 97–34, §423(b), added par. (3).

1976—Subsec. (a)(1). Pub. L. 94–455, §1902(a)(12)(D), struck out ''Territory'' after ''any State''.

Subsec. (a)(2). Pub. L. 94–455, §§1307(d)(1)(B)(iv), 1313(b)(3), substituted ''which is not disqualified for tax

exemption under section 501(c)(3) by reason of attempting to influence legislation'' for ''no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation'' after ''shareholder or individual'' and inserted ''or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)'' after ''or educational purposes''.

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

Subsec. (b)(2). Pub. L. 94–455, § 1307(d)(1)(B)(v), substituted ''which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation'' for ''no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation'' after ''shareholder or individual''.

Subsec. (c)(2). Pub. L. 94–455, § 2124(e)(3), substituted ''(other than an interest described in section 170(f)(3)(B))'' for ''(other than a remainder interest in a personal residence or farm or an undivided portion of the donor's entire interest in property)'' after ''an interest in property''.

Subsec. (d). Pub. L. 94–455, § 1902(a)(11), substituted subsec. (d) for former subsec. (d), pars. (1) through (10), which dealt with cross references to specific exemptions and rules of construction for gifts to the United States and its instrumentalities.

1970—Pub. L. 91–614 substituted ''quarter'' for ''year'' in three places.

1969—Subsecs. (a)(2), (b)(2), (3). Pub. L. 91–172, § 201(d)(4)(C), (D), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (c). Pub. L. 91–172, § 201(d)(3), substituted substantive provisions for simple reference to sections 503 and 681 in which such substantive provisions were formerly set out.

1958—Subsec. (c). Pub. L. 85–866 substituted ''503'' for ''504''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 3(d)(2) of Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1218(c) of Pub. L. 109–280 applicable to contributions, bequests, and gifts made after Aug. 17, 2006, see section 1218(d) of Pub. L. 109–280, set out as a note under section 170 of this title.

Amendment by section 1234(c) of Pub. L. 109–280 applicable to contributions made after the date which is 180 days after Aug. 17, 2006, see section 1234(d) of Pub. L. 109–280, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100–203, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to transfers and contributions made after Dec. 31, 1986, see section 1422(e) of Pub. L. 99–514, set out as a note under section 2055 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1022(c) of Pub. L. 98–369 applicable to reformations after Dec. 31, 1978, but inapplicable to any reformation to which section 2055(e)(3) of this title as in effect before July 18, 1984, applies, see section 1022(e)(1) of Pub. L. 98–369, set out as a note under section 2055 of this title.

Amendment by section 1032(b)(3) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98–369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97–473, see section 204(4) of Pub. L. 97–473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97–248, set out as a note under section 501 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97–34, title IV, § 423(c)(2), Aug. 13, 1981, 95 Stat. 317, provided that: ''The amendment made by subsection (b) [amending this section] shall apply to transfers after December 31, 1981.''

Amendment by section 442(c) of Pub. L. 97–34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97–34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2124(e)(3) of Pub. L. 94–455 applicable with respect to contributions or transfers made after June 13, 1976, see section 2124(e)(4) of Pub. L. 94–455, set out as a note under section 170 of this title.

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.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(d)(3) of Pub. L. 91–172 applicable to gifts made after Dec. 31, 1969, except that the amendment of par. (2) of subsec. (c) applicable to gifts made after July 31, 1969, see section 201(g)(4)(D) of Pub. L. 91–172, set out as a note under section 170 of this title.

Amendment by section 201(d)(4)(C), (D) of Pub. L. 91–172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201(g)(4)(E) of Pub. L. 91–172, set out as a note under section 170 of this title.

CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

For inclusion of provisions comparable to section 2055(e)(3) of this title in this section, see section 514(b) 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 beneficiary who is not a charitable 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 ''charitable beneficiary'' and ''qualified charitable remainder trust'' have the meanings given to such terms by section 2056(b)(8)(B).

(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; Pub. L. 115–141, div. U, title IV, § 401(a)(205), (206), Mar. 23, 2018, 132 Stat. 1194.)

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.

Editorial Notes

REFERENCES IN TEXT

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.

AMENDMENTS

2018—Subsec. (g)(1). Pub. L. 115–141, § 401(a)(205), substituted ''beneficiary who is not a charitable beneficiary'' for ''noncharitable beneficiary''.

Subsec. (g)(2). Pub. L. 115–141, § 401(a)(206), substituted ''term 'charitable beneficiary' '' for ''term 'noncharitable beneficiary' ''.

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.

Statutory Notes and Related Subsidiaries

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

Subchapter		Sec.[1]
A.	Tax imposed	2601
B.	Generation-skipping transfers	2611
C.	Taxable amount	2621
D.	GST exemption	2631
E.	Applicable rate; inclusion ratio	2641
F.	Other definitions and special rules	2651
G.	Administration	2661

Editorial Notes

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.

Subchapter A—Tax Imposed

Sec.	
2601.	Tax imposed.
2602.	Amount of tax.
2603.	Liability for tax.
[2604.	Repealed.]

Editorial Notes

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.)

Editorial Notes

AMENDMENTS

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

Statutory Notes and Related Subsidiaries

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 decedent during his life after the date of the enactment of this Act [Oct. 22, 1986]), or reinvestments thereof, or

''(ii) which is a direct skip which occurs by reason of the death of any decedent;

but only if such decedent was, on the date of the enactment of this Act [Oct. 22, 1986], under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.

''(3) TREATMENT OF CERTAIN TRANSFERS TO GRANDCHILDREN.—

[1] Section numbers editorially supplied.