

Sec.	
2041.	Powers of appointment.
2042.	Proceeds of life insurance.
2043.	Transfers for insufficient consideration.
2044.	Certain property for which marital deduction was previously allowed.
2045.	Prior interests.
2046.	Disclaimers.

Editorial Notes

AMENDMENTS

1998—Pub. L. 105-206, title VI, §6007(b)(1)(E), July 22, 1998, 112 Stat. 808, struck out item 2033A “Family-owned business exclusion”.

1997—Pub. L. 105-34, title V, §502(b), title XIII, §1310(b), Aug. 5, 1997, 111 Stat. 852, 1044, added item 2033A and substituted “certain gifts” for “gifts” in item 2035.

1981—Pub. L. 97-34, title IV, §403(d)(3)(A)(ii), Aug. 13, 1981, 95 Stat. 304, added item 2044 and redesignated former items 2044 and 2045 as items 2045 and 2046, respectively.

1976—Pub. L. 94-455, title XX, §§2001(c)(1)(N)(iii), 2003(d)(1), 2009(b)(3)(B), Oct. 4, 1976, 90 Stat. 1853, 1862, 1894, added items 2032A and 2045 and substituted “Adjustments for gifts made within 3 years of decedent’s death” for “Transactions in contemplation of death” in item 2035.

§ 2031. Definition of gross estate

(a) General

The value of the gross estate of the decedent shall be determined by including to the extent provided for in this part, the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated.

(b) Valuation of unlisted stock and securities

In the case of stock and securities of a corporation the value of which, by reason of their not being listed on an exchange and by reason of the absence of sales thereof, cannot be determined with reference to bid and asked prices or with reference to sales prices, the value thereof shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities of corporations engaged in the same or a similar line of business which are listed on an exchange.

(c) Estate tax with respect to land subject to a qualified conservation easement

(1) In general

If the executor makes the election described in paragraph (6), then, except as otherwise provided in this subsection, there shall be excluded from the gross estate the lesser of—

- (A) the applicable percentage of the value of land subject to a qualified conservation easement, reduced by the amount of any deduction under section 2055(f) with respect to such land, or
- (B) \$500,000.

(2) Applicable percentage

For purposes of paragraph (1), the term “applicable percentage” means 40 percent reduced (but not below zero) by 2 percentage points for each percentage point (or fraction thereof) by which the value of the qualified conservation easement is less than 30 percent of the value of the land (determined without regard to the value of such easement and reduced by the

value of any retained development right (as defined in paragraph (5))). The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B).

(3) Repealed. Pub. L. 113-295, div. A, title II, § 221(a)(96), Dec. 19, 2014, 128 Stat. 4051]

(4) Treatment of certain indebtedness

(A) In general

The exclusion provided in paragraph (1) shall not apply to the extent that the land is debt-financed property.

(B) Definitions

For purposes of this paragraph—

(i) Debt-financed property

The term “debt-financed property” means any property with respect to which there is an acquisition indebtedness (as defined in clause (ii)) on the date of the decedent’s death.

(ii) Acquisition indebtedness

The term “acquisition indebtedness” means, with respect to debt-financed property, the unpaid amount of—

- (I) the indebtedness incurred by the donor in acquiring such property,
- (II) the indebtedness incurred before the acquisition of such property if such indebtedness would not have been incurred but for such acquisition,
- (III) the indebtedness incurred after the acquisition of such property if such indebtedness would not have been incurred but for such acquisition and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition, and
- (IV) the extension, renewal, or refinancing of an acquisition indebtedness.

(5) Treatment of retained development right

(A) In general

Paragraph (1) shall not apply to the value of any development right retained by the donor in the conveyance of a qualified conservation easement.

(B) Termination of retained development right

If every person in being who has an interest (whether or not in possession) in the land executes an agreement to extinguish permanently some or all of any development rights (as defined in subparagraph (D)) retained by the donor on or before the date for filing the return of the tax imposed by section 2001, then any tax imposed by section 2001 shall be reduced accordingly. Such agreement shall be filed with the return of the tax imposed by section 2001. The agreement shall be in such form as the Secretary shall prescribe.

(C) Additional tax

Any failure to implement the agreement described in subparagraph (B) not later than the earlier of—

- (i) the date which is 2 years after the date of the decedent’s death, or

(ii) the date of the sale of such land subject to the qualified conservation easement,

shall result in the imposition of an additional tax in the amount of the tax which would have been due on the retained development rights subject to such agreement. Such additional tax shall be due and payable on the last day of the 6th month following such date.

(D) Development right defined

For purposes of this paragraph, the term “development right” means any right to use the land subject to the qualified conservation easement in which such right is retained for any commercial purpose which is not subordinate to and directly supportive of the use of such land as a farm for farming purposes (within the meaning of section 2032A(e)(5)).

(6) Election

The election under this subsection shall be made on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return. Such an election, once made, shall be irrevocable.

(7) Calculation of estate tax due

An executor making the election described in paragraph (6) shall, for purposes of calculating the amount of tax imposed by section 2001, include the value of any development right (as defined in paragraph (5)) retained by the donor in the conveyance of such qualified conservation easement. The computation of tax on any retained development right prescribed in this paragraph shall be done in such manner and on such forms as the Secretary shall prescribe.

(8) Definitions

For purposes of this subsection—

(A) Land subject to a qualified conservation easement

The term “land subject to a qualified conservation easement” means land—

(i) which is located in the United States or any possession of the United States,

(ii) which was owned by the decedent or a member of the decedent’s family at all times during the 3-year period ending on the date of the decedent’s death, and

(iii) with respect to which a qualified conservation easement has been made by an individual described in subparagraph (C), as of the date of the election described in paragraph (6).

(B) Qualified conservation easement

The term “qualified conservation easement” means a qualified conservation contribution (as defined in section 170(h)(1)) of a qualified real property interest (as defined in section 170(h)(2)(C)), except that clause (iv) of section 170(h)(4)(A) shall not apply, and the restriction on the use of such interest described in section 170(h)(2)(C) shall include a prohibition on more than a de minimis use for a commercial recreational activity.

(C) Individual described

An individual is described in this subparagraph if such individual is—

(i) the decedent,

(ii) a member of the decedent’s family,

(iii) the executor of the decedent’s estate, or

(iv) the trustee of a trust the corpus of which includes the land to be subject to the qualified conservation easement.

(D) Member of family

The term “member of the decedent’s family” means any member of the family (as defined in section 2032A(e)(2)) of the decedent.

(9) Treatment of easements granted after death

In any case in which the qualified conservation easement is granted after the date of the decedent’s death and on or before the due date (including extensions) for filing the return of tax imposed by section 2001, the deduction under section 2055(f) with respect to such easement shall be allowed to the estate but only if no charitable deduction is allowed under chapter 1 to any person with respect to the grant of such easement.

(10) Application of this section to interests in partnerships, corporations, and trusts

This section shall apply to an interest in a partnership, corporation, or trust if at least 30 percent of the entity is owned (directly or indirectly) by the decedent, as determined under the rules described in section 2057(e)(3) (as in effect before its repeal).

(d) Cross reference

For executor’s right to be furnished on request a statement regarding any valuation made by the Secretary within the gross estate, see section 7517.

(Aug. 16, 1954, ch. 736, 68A Stat. 380; Pub. L. 87–834, §18(a)(1), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94–455, title XX, §2008(a)(2)(A), Oct. 4, 1976, 90 Stat. 1891; Pub. L. 105–34, title V, §508(a), Aug. 5, 1997, 111 Stat. 857; Pub. L. 105–206, title VI, §6007(g), July 22, 1998, 112 Stat. 810; Pub. L. 105–277, div. J, title IV, §4006(c)(3), Oct. 21, 1998, 112 Stat. 2681–913; Pub. L. 107–16, title V, §551(a), (b), June 7, 2001, 115 Stat. 86; Pub. L. 113–295, div. A, title II, §221(a)(96), (97)(B), Dec. 19, 2014, 128 Stat. 4051; Pub. L. 115–141, div. U, title IV, §401(a)(200), (201), Mar. 23, 2018, 132 Stat. 1193.)

Editorial Notes

REFERENCES IN TEXT

Section 2057, referred to in subsec. (c)(10), was repealed by Pub. L. 113–295, div. A, title II, §221(a)(97)(A), Dec. 19, 2014, 128 Stat. 4051, effective Dec. 19, 2014.

AMENDMENTS

2018—Subsec. (c)(1)(B). Pub. L. 115–141, §401(a)(200), substituted “(B) \$500,000.” for “(II) \$500,000.”

Subsec. (c)(2). Pub. L. 115–141, §401(a)(201), substituted “paragraph (5)).” for “paragraph (5).”

2014—Subsec. (c)(1). Pub. L. 113–295, §221(a)(96), substituted “(II) \$500,000.” for “(B) the exclusion limitation.”

Subsec. (c)(3). Pub. L. 113–295, §221(a)(96), struck out par. (3), which set out table of exclusion limitations.

Subsec. (c)(10). Pub. L. 113–295, §221(a)(97)(B), inserted “(as in effect before its repeal)” before period at end.

2001—Subsec. (c)(2). Pub. L. 107-16, §551(b), inserted at end “The values taken into account under the preceding sentence shall be such values as of the date of the contribution referred to in paragraph (8)(B).”

Subsec. (c)(8)(A)(i). Pub. L. 107-16, §551(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “which is located—

“(I) in or within 25 miles of an area which, on the date of the decedent’s death, is a metropolitan area (as defined by the Office of Management and Budget),

“(II) in or within 25 miles of an area which, on the date of the decedent’s death, is a national park or wilderness area designated as part of the National Wilderness Preservation System (unless it is determined by the Secretary that land in or within 25 miles of such a park or wilderness area is not under significant development pressure), or

“(III) in or within 10 miles of an area which, on the date of the decedent’s death, is an Urban National Forest (as designated by the Forest Service).”

1998—Subsec. (c)(6). Pub. L. 105-206, §6007(g)(2), substituted “on or before the due date (including extensions) for filing the return of tax imposed by section 2001 and shall be made on such return.” for “on the return of the tax imposed by section 2001.”

Subsec. (c)(9). Pub. L. 105-206, §6007(g)(1), added par. (9). Former par. (9) redesignated (10).

Subsec. (c)(10). Pub. L. 105-277, §4006(c)(3), substituted “section 2057(e)(3)” for “section 2033A(e)(3)”.

Pub. L. 105-206, §6007(g)(1), redesignated par. (9) as (10).

1997—Subsecs. (c), (d). Pub. L. 105-34 added subsec. (c) and redesignated former subsec. (c) as (d).

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-16, title V, §551(c), June 7, 2001, 115 Stat. 86, provided that: “The amendments made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2000.”

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 estates of decedents dying after Dec. 31, 1997, see section 508(e)(1) of Pub. L. 105-34, set out as a note under section 1014 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-834, §18(b), Oct. 16, 1962, 76 Stat. 1052, provided that:

“(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section and sections 2033, 2034, 2035, 2036, 2037, 2038, 2040, and 2041 of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Oct. 16, 1962].

“(2) In the case of a decedent dying after the date of the enactment of this Act [Oct. 16, 1962] and before July 1, 1964, the value of real property situated outside of the United States shall not be included in the gross estate (as defined in section 2031(a)) of the decedent—

“(A) under section 2033, 2034, 2035(a), 2036(a), 2037(a), or 2038(a) to the extent the real property, or the decedent’s interest in it, was acquired by the decedent before February 1, 1962;

“(B) under section 2040 to the extent such property or interest was acquired by the decedent before February 1, 1962, or was held by the decedent and the survivor in a joint tenancy or tenancy by the entirety before February 1, 1962; or

“(C) under section 2041(a) to the extent that before February 1, 1962, such property or interest was subject to a general power of appointment (as defined in section 2041) possessed by the decedent.

In the case of real property, or an interest therein, situated outside of the United States (including a general power of appointment in respect of such property or interest, and including property held by the decedent and the survivor in a joint tenancy or tenancy by the entirety) which was acquired by the decedent after January 31, 1962, by gift within the meaning of section 2511, or from a prior decedent by devise or inheritance, or by reason of death, form of ownership, or other conditions (including the exercise or nonexercise of a power of appointment), for purposes of this paragraph such property or interest therein shall be deemed to have been acquired by the decedent before February 1, 1962, if before that date the donor or prior decedent had acquired the property or his interest therein or had possessed a power of appointment in respect of the property or interest.”

§ 2032. Alternate valuation

(a) General

The value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

(1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent’s death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.

(2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent’s death such property shall be valued as of the date 6 months after the decedent’s death.

(3) Any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time.

(b) Special rules

No deduction under this chapter of any item shall be allowed if allowance for such items is in effect given by the alternate valuation provided by this section. Wherever in any other subsection or section of this chapter reference is made to the value of property at the time of the decedent’s death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this section, then—

(1) for purposes of the charitable deduction under section 2055 or 2106(a)(2), any bequest, legacy, devise, or transfer enumerated therein, and

(2) for the purpose of the marital deduction under section 2056, any interest in property passing to the surviving spouse,

shall be valued as of the date of the decedent’s death with adjustment for any difference in