

to such estate. If the estate of any decedent would not qualify under section 2032A of the Internal Revenue Code of 1986 but for the amendments described in subparagraph (A) and the time for making an election under section 2032A with respect to such estate would (but for this sentence) expire after July 28, 1980, the time for making such election shall not expire before the close of February 16, 1982.

“(C) REINSTATEMENT OF ELECTIONS.—If any election under section 2032A was revoked before the date of the enactment of this Act [Aug. 13, 1981], such election may be reinstated at any time before February 17, 1982.

“(D) STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Aug. 13, 1981] (or at any time before February 17, 1982) the making of a credit or refund of any overpayment of tax resulting from the amendments described in subparagraph (A) is barred by any law or rule of law, such credit or refund shall nevertheless be made if claim therefor is made before February 17, 1982.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, § 702(d)(6), Nov. 6, 1978, 92 Stat. 2929, provided that: “The amendments made by this subsection [amending this section and section 1040 of this title] shall apply to the estates of decedents dying after December 31, 1976.”

Amendment of section by Pub. L. 95-472 applicable with respect to involuntary conversions after Dec. 31, 1976, see section 4(d) of Pub. L. 95-472, set out as a note under section 1016 of this title.

#### EFFECTIVE DATE

Pub. L. 94-455, title XX, § 2003(e), Oct. 4, 1976, 90 Stat. 1862, provided that: “The amendments made by this section [enacting this section and section 6324B of this title and amending section 2013 of this title] shall apply to the estates of decedents dying after December 31, 1976.”

#### 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.

#### WAIVER OF STATUTE OF LIMITATION FOR TAXES ON CERTAIN FARM VALUATIONS

Pub. L. 107-16, title V, § 581, June 7, 2001, 115 Stat. 93, provided that: “If on the date of the enactment of this Act [June 7, 2001] (or at any time within 1 year after the date of the enactment) a refund or credit of any overpayment of tax resulting from the application of section 2032A(c)(7)(E) of the Internal Revenue Code of 1986 is barred by any law or rule of law, the refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act.”

#### INFORMATION NECESSARY FOR VALID SPECIAL USE VALUATION ELECTION

Pub. L. 99-514, title XIV, § 1421, Oct. 22, 1986, 100 Stat. 2716, as amended by Pub. L. 100-647, title I, § 1014(f), Nov. 10, 1988, 102 Stat. 3562, provided that:

“(a) IN GENERAL.—In the case of any decedent dying before January 1, 1986, if the executor—

“(1) made an election under section 2032A of the Internal Revenue Code of 1984 [now 1986] on the return of tax imposed by section 2001 of such Code, and

“(2) provided substantially all the information with respect to such election required on such return of tax, such election shall be a valid election for purposes of section 2032A of such Code.

“(b) EXECUTOR MUST PROVIDE INFORMATION.—An election described in subsection (a) shall not be valid if the Secretary of the Treasury or his delegate after the date of the enactment of this Act [Oct. 22, 1986] requests information from the executor with respect to such election and the executor does not provide such information within 90 days of receipt of such request.

“(c) EFFECTIVE DATE.—The provisions of this section shall not apply to the estate of any decedent if before the date of the enactment of this Act [Oct. 22, 1986] the statute of limitations has expired with respect to—

“(1) the return of tax imposed by section 2001 of the Internal Revenue Code of 1954 [now 1986], and

“(2) the period during which a claim for credit or refund may be timely filed.

“(d) SPECIAL RULE FOR CERTAIN ESTATE.—Notwithstanding subsection (a)(2), the provisions of this section shall apply to the estate of an individual who died on January 30, 1984, and with respect to which—

“(1) a Federal estate tax return was filed on October 30, 1984, electing current use valuation, and

“(2) the agreement required under section 2032A was filed on November 9, 1984.”

#### LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM

Land diverted from production of agricultural commodities under a 1983 payment-in-kind program to be treated, for purposes of this section, as used during the 1983 crop year by qualified taxpayers in the active conduct of the trade or business of farming, with qualified taxpayers who materially participate in the diversion and devotion to conservation uses under a 1983 payment-in-kind program to be treated as materially participating in the operation of such land during the 1983 crop year, see section 3 of Pub. L. 98-4, set out as a note under section 61 of this title.

#### § 2033. Property in which the decedent had an interest

The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87-834, § 18(a)(2)(A), Oct. 16, 1962, 76 Stat. 1052.)

#### Editorial Notes

##### AMENDMENTS

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

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1962 AMENDMENT

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

#### [\$ 2033A. Renumbered § 2057]

#### § 2034. Dower or courtesy interests

The value of the gross estate shall include the value of all property to the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower or courtesy, or by virtue of a statute creating an estate in lieu of dower or courtesy.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87-834, § 18(a)(2)(B), Oct. 16, 1962, 76 Stat. 1052.)

**Editorial Notes**

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**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 1962 AMENDMENT

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

**§ 2035. Adjustments for certain gifts made within 3 years of decedent's death****(a) Inclusion of certain property in gross estate**

If—

(1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and

(2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

**(b) Inclusion of gift tax on gifts made during 3 years before decedent's death**

The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

**(c) Other rules relating to transfers within 3 years of death****(1) In general**

For purposes of—

(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

(B) section 2032A (relating to special valuation of certain farms, etc., real property), and

(C) subchapter C of chapter 64 (relating to lien for taxes),

the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, during the 3-year period ending on the date of the decedent's death.

**(2) Coordination with section 6166**

An estate shall be treated as meeting the 35 percent of adjusted gross estate requirement of section 6166(a)(1) only if the estate meets such requirement both with and without the application of subsection (a).

**(3) Marital and small transfers**

Paragraph (1) shall not apply to any transfer (other than a transfer with respect to a life in-

surance policy) made during a calendar year to any donee if the decedent was not required by section 6019 (other than by reason of section 6019(2)) to file any gift tax return for such year with respect to transfers to such donee.

**(d) Exception**

Subsection (a) and paragraph (1) of subsection (c) shall not apply to any bona fide sale for an adequate and full consideration in money or money's worth.

**(e) Treatment of certain transfers from revocable trusts**

For purposes of this section and section 2038, any transfer from any portion of a trust during any period that such portion was treated under section 676 as owned by the decedent by reason of a power in the grantor (determined without regard to section 672(e)) shall be treated as a transfer made directly by the decedent.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87-834, §18(a)(2)(C), Oct. 16, 1962, 76 Stat. 1052; Pub. L. 94-455, title XX, §2001(a)(5), Oct. 4, 1976, 90 Stat. 1848; Pub. L. 95-600, title VII, §702(f)(1), Nov. 6, 1978, 92 Stat. 2930; Pub. L. 97-34, title IV, §§403(b)(3)(B), 424(a), Aug. 13, 1981, 95 Stat. 301, 317; Pub. L. 97-448, title I, §104(a)(9), (d)(1)(A), (C), (2), Jan. 12, 1983, 96 Stat. 2381, 2383; Pub. L. 105-34, title XIII, §1310(a), Aug. 5, 1997, 111 Stat. 1043; Pub. L. 106-554, §1(a)(7) [title III, §319(14)], Dec. 21, 2000, 114 Stat. 2763, 2763A-646.)

**Editorial Notes**

## AMENDMENTS

2000—Subsec. (c)(2). Pub. L. 106-554, §1(a)(7) [title III, §319(14)(A)], substituted “subsection (a)” for “paragraph (1)”.

Subsec. (d). Pub. L. 106-554, §1(a)(7) [title III, §319(14)(B)], inserted “and paragraph (1) of subsection (c)” after “Subsection (a)”.

1997—Pub. L. 105-34 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to adjustments for gifts made within 3 years of decedent's death.

1983—Subsec. (b)(2). Pub. L. 97-448, §104(a)(9), substituted “section 6019(2)” for “section 6019(a)(2)”.

Subsec. (d)(2). Pub. L. 97-448, §104(d)(2), inserted “of this subsection and paragraph (2) of subsection (b)” after “Paragraph (1)”, and struck out “2041,” after “2038.”

Subsec. (d)(3)(C), (D). Pub. L. 97-448, §104(d)(1)(C), redesignated subpar. (D) as (C). Former subpar. (C), which referred to section 6166 (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business), was struck out.

Subsec. (d)(4). Pub. L. 97-448, §104(d)(1)(A), added par. (4).

1981—Subsec. (b)(2). Pub. L. 97-34, §403(b)(3)(B), inserted “(other than by reason of section 6019(a)(2))” after “section 6019”.

Subsec. (d). Pub. L. 97-34, §424(a), added subsec. (d).

1978—Subsec. (b). Pub. L. 95-600 substituted in par. (2) provisions relating to gifts for which donee was not required by section 6019 to file gift tax returns for provisions relating to gifts excludable in computing taxable gifts by reason of section 2503(b) and inserted provisions following par. (2) relating to inapplicability of par. (2) to transfers respecting life insurance policies.

1976—Pub. L. 94-455 substituted provisions covering adjustments for gifts made within 3 years of decedent's death for provisions under which transfers by the decedent within 3 years of the decedent's death were deemed to have been made in contemplation of death and included in the value of the gross estate.