

§ 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 exempted 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 curtesy 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 curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy.

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

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§ 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 in-

creased 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 insurance 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.

1962—Subsec. (a). 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 1997 AMENDMENT

Pub. L. 105-34, title XIII, §1310(c), Aug. 5, 1997, 111 Stat. 1044, provided that: “The amendments made by this section [amending this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

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 section 403(b)(3)(B) of Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 403(e) of Pub. L. 97-34, set out as a note under section 2056 of this title.

Pub. L. 97-34, title IV, §424(b), Aug. 13, 1981, 95 Stat. 317, provided that: “The amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after December 31, 1981.”

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, §702(f)(2), Nov. 6, 1978, 92 Stat. 2930, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to the estates of decedents dying after December 31, 1976, except that it shall not apply to transfers made before January 1, 1977.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, but not to transfers

made before Jan. 1, 1977, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

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

TRANSFERS MADE BY DECEDENT DURING 1977; ELECTION AVAILABLE TO EXECUTOR ON OR BEFORE DUE DATE FOR FILING ESTATE TAX RETURN

Pub. L. 96-222, title I, §107(a)(2)(F), Apr. 1, 1980, 94 Stat. 223, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(i) If the executor elects the benefits of this subparagraph with respect to any estate, section 2035(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to adjustments for gifts made within 3 years of decedent's death) shall be applied with respect to transfers made by the decedent during 1977 as if paragraph (2) of such section 2035(b) read as follows:

“(2) to any gift to a donee made during 1977 to the extent of the amount of such gift which was excludable in computing taxable gifts by reason of section 2503(b) (relating to \$3,000 annual exclusion for purposes of the gift tax) determined without regard to section 2513(a).”

“(ii) The election under clause (i) with respect to any estate shall be made on or before the later of—

“(I) the due date for filing the estate tax return,

or

“(II) the day which is 120 days after the date of the enactment of this Act [Apr. 1, 1980].”

§ 2036. Transfers with retained life estate

(a) General rule

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

(b) Voting rights

(1) In general

For purposes of subsection (a)(1), the retention of the right to vote (directly or indirectly) shares of stock of a controlled corporation shall be considered to be a retention of the enjoyment of transferred property.

(2) Controlled corporation

For purposes of paragraph (1), a corporation shall be treated as a controlled corporation if, at any time after the transfer of the property and during the 3-year period ending on the date of the decedent's death, the decedent owned (with the application of section 318), or had the right (either alone or in conjunction with any person) to vote, stock possessing at least 20 percent of the total combined voting power of all classes of stock.

(3) Coordination with section 2035

For purposes of applying section 2035 with respect to paragraph (1), the relinquishment or