

§ 2037. Transfers taking effect at death**(a) General rule**

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

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

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

(b) Special rules

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

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

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

but such term does not include a possibility that the income alone from such property may return to him or become subject to a power of disposition by him. The value of a reversionary interest immediately before the death of the decedent shall be determined (without regard to the fact of the decedent's death) by usual methods of valuation, including the use of tables of mortality and actuarial principles, under regulations prescribed by the Secretary. In determining the value of a possibility that property may be subject to a power of disposition by the decedent, such possibility shall be valued as if it were a possibility that such property may return to the decedent or his estate. Notwithstanding the foregoing, an interest so transferred shall not be included in the decedent's gross estate under this section if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a general power of appointment (as defined in section 2041) which in fact was exercisable immediately before the decedent's death.

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

Editorial Notes**AMENDMENTS**

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

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

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.

§ 2038. Revocable transfers**(a) In general**

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

(1) Transfers after June 22, 1936

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

(2) Transfers on or before June 22, 1936

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

(b) Date of existence of power

For purposes of this section, the power to alter, amend, revoke, or terminate shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the alteration, amendment, revocation, or termination takes effect only on the expiration of a stated period after the exercise of the power, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised. In such cases proper adjustment shall be made representing the interests which would have been excluded from the power if the decedent had lived, and for such purpose, if the notice has not been given or the power has not been exercised on or before the date of his death, such notice shall be considered to have been given, or the power exercised, on the date of his death.

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

Editorial Notes

AMENDMENTS

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

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

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1976 AMENDMENT

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

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

EFFECTIVE DATE OF 1962 AMENDMENT

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

EFFECTIVE DATE OF 1959 AMENDMENT

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

§ 2039. Annuities**(a) General**

The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than as insurance under policies on the life of the decedent), if, under such contract or agreement, an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another 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.

(b) Amount includible

Subsection (a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. For pur-

poses of this section, any contribution by the decedent’s employer or former employer to the purchase price of such contract or agreement (whether or not to an employee’s trust or fund forming part of a pension, annuity, retirement, bonus or profit sharing plan) shall be considered to be contributed by the decedent if made by reason of his employment.

(Aug. 16, 1954, ch. 736, 68A Stat. 384; Pub. L. 85-866, title I, §§23(e), 67(a), Sept. 2, 1958, 72 Stat. 1622, 1658; Pub. L. 87-792, §7(i), Oct. 10, 1962, 76 Stat. 830; Pub. L. 89-365, §2(a), Mar. 8, 1966, 80 Stat. 33; Pub. L. 91-172, title I, §101(j)(23), Dec. 30, 1969, 83 Stat. 528; Pub. L. 92-580, §2(a), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 93-406, title II, §2007(b)(4), Sept. 2, 1974, 88 Stat. 994; Pub. L. 94-455, title XX, §2009(c)(1)-(3), Oct. 4, 1976, 90 Stat. 1894, 1895; Pub. L. 95-600, title I, §§142(a), (b), 156(c)(4), title VII, §702(j)(1), Nov. 6, 1978, 92 Stat. 2796, 2803, 2931; Pub. L. 96-222, title I, §101(a)(8)(B), Apr. 1, 1980, 94 Stat. 201; Pub. L. 97-34, title III, §§311(d)(1), (h)(4), 313(b)(3), Aug. 13, 1981, 95 Stat. 280, 282, 286; Pub. L. 97-248, title II, §245(a), (b), Sept. 3, 1982, 96 Stat. 524; Pub. L. 97-448, title I, §103(c)(9), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98-369, div. A, title IV, §491(d)(34), title V, §525(a), July 18, 1984, 98 Stat. 851, 873; Pub. L. 99-514, title XVIII, §§1848(d), 1852(e)(1)(A), Oct. 22, 1986, 100 Stat. 2857, 2868.)

Editorial Notes

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-514, §1852(e)(1), struck out subsec. (c) which provided an exclusion from gross estate of certain annuity interests created by community property laws.

Subsec. (e). Pub. L. 99-514, §1848(d), struck out “or a bond described in paragraph (3)” after “an annuity described in paragraph (2)” in concluding provisions as such provisions were applicable to obligations issued after Dec. 31, 1983, and prior to repeal of subsec. (e) by Pub. L. 98-369, §525(a), see Effective Date of 1984 Amendment note below.

1984—Subsec. (c). Pub. L. 98-369, §525(a), substituted provisions relating to exception of certain annuity interests created by community property laws for provisions which related to exemption of annuities under certain trusts and plans.

Subsec. (d). Pub. L. 98-369, §525(a), struck out subsec. (d) which related to exemption of certain annuity interests created by community property laws. See subsec. (c) of this section.

Subsec. (e). Pub. L. 98-369, §525(a), struck out subsec. (e) which related to exclusion of individual retirement accounts.

Pub. L. 98-369, §491(d)(34), inserted “or” at end of par. (1), substituted a period for “, or” at end of par. (2), struck out par. (3) which excluded from the value of the gross estate the value of an annuity receivable by any beneficiary, other than the executor, under a retirement bond described in section 409(a), and substituted in provision following par. (2) “or 408(d)(3)” for “405(d)(3), 408(d)(3), or 409(b)(3)(C)”, and substituted “or annuity” for “, annuity, or bond” wherever appearing.

Subsecs. (f), (g). Pub. L. 98-369, §525(a), struck out subsec. (f) which related to lump sum distributions and an exception where the recipient elects not to take 10-year averaging, and subsec. (g) which related to a \$100,000 limitation on the exclusions under subsecs. (c) and (e).

1983—Subsec. (f)(1). Pub. L. 97-448, §103(c)(9)(A), designated existing provisions as subpar. (A), substituted “without regard to the third sentence of section 402(e)(4)(A))” for “without regard to the next to the