

(Aug. 16, 1954, ch. 736, 68A Stat. 397; Pub. L. 89-809, title I, § 108(d), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 98-369, div. A, title I, § 127(d), July 18, 1984, 98 Stat. 651; Pub. L. 100-647, title I, § 1012(g)(4), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 103-66, title XIII, § 13237(b), Aug. 10, 1993, 107 Stat. 508; Pub. L. 105-34, title XIII, § 1304(a), Aug. 5, 1997, 111 Stat. 1040; Pub. L. 108-357, title IV, § 411(b), Oct. 22, 2004, 118 Stat. 1504; Pub. L. 110-343, div. C, title II, § 207(a), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111-312, title VII, § 726(a), Dec. 17, 2010, 124 Stat. 3316.)

Editorial Notes

AMENDMENTS

2010—Subsec. (d)(3). Pub. L. 111-312 substituted “December 31, 2011” for “December 31, 2009”.

2008—Subsec. (d)(3). Pub. L. 110-343 substituted “December 31, 2009” for “December 31, 2007”.

2004—Subsec. (d). Pub. L. 108-357 added subsec. (d).

1997—Subsec. (b)(4). Pub. L. 105-34 added par. (4).

1993—Subsec. (b). Pub. L. 103-66 substituted “this subchapter, the following shall not be deemed property within the United States” for “this subchapter” in introductory provisions, added par. (3) and concluding provisions, and struck out former par. (3) and concluding provisions which read as follows:

“(3) debt obligations, if, without regard to whether a statement meeting the requirements of section 871(h)(4) has been received, any interest thereon would be eligible for the exemption from tax under section 871(h)(1) were such interest received by the decedent at the time of his death,

shall not be deemed property within the United States.”

1988—Subsec. (b)(1). Pub. L. 100-647 substituted “section 871(i)(3), if any interest thereon would not be subject to tax by reason of section 871(i)(1)” for “section 861(c), if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States”.

1984—Subsec. (b). Pub. L. 98-369, amended subsec. (b) generally, substituting “Bank deposits and certain other debt obligations” for “Certain bank deposits, etc.” in heading and “, if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States were such interest received by the decedent at the time of his death,” for “if any interest thereon, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States, and” in par. (1), inserting “and” after “business,” in par. (2), and adding par. (3).

1966—Subsec. (b). Pub. L. 89-809 substituted amounts described in section 861(c) if any interest thereon, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States, and deposits with a foreign branch of a domestic corporation or domestic partnership, if such branch is engaged in the commercial banking business for moneys deposited with any person carrying on the banking business by or for a nonresident not a citizen of the United States who was not engaged in business in the United States at the time of his death as the property not to be deemed property within the United States for purposes of this subchapter.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, § 726(b), Dec. 17, 2010, 124 Stat. 3317, provided that: “The amendment made by this section [amending this section] shall apply to estates of decedents dying after December 31, 2009.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title II, § 207(b), Oct. 3, 2008, 122 Stat. 3865, provided that: “The amendment made by

this section [amending this section] shall apply to decedents dying after December 31, 2007.”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to estates of decedents dying after Dec. 31, 2004, see section 411(d)(2) of Pub. L. 108-357, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XIII, § 1304(b), Aug. 5, 1997, 111 Stat. 1040, provided that: “The amendment made by this section [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to the estates of decedents dying after Dec. 31, 1993, see section 13237(d) of Pub. L. 103-66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after July 18, 1984, with respect to the estates of decedents dying after such date, see section 127(g)(2) of Pub. L. 98-369, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

§ 2106. Taxable estate

(a) Definition of taxable estate

For purposes of the tax imposed by section 2101, the value of the taxable estate of every decedent nonresident not a citizen of the United States shall be determined by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States—

(1) Expenses, losses, indebtedness, and taxes

That proportion of the deductions specified in sections 2053 and 2054 (other than the deductions described in the following sentence) which the value of such part bears to the value of his entire gross estate, wherever situated. Any deduction allowable under section 2053 in the case of a claim against the estate which was founded on a promise or agreement but was not contracted for an adequate and full consideration in money or money's worth shall be allowable under this paragraph to the extent that it would be allowable as a deduction under paragraph (2) if such promise or agreement constituted a bequest.

(2) Transfers for public, charitable, and religious uses

(A) In general

The amount of all bequests, legacies, devises, or transfers (including the interest which falls into any such bequest, legacy,

devise, or transfer as a result of an irrevocable disclaimer of a bequest, legacy, devise, transfer, or power, if the disclaimer is made before the date prescribed for the filing of the estate tax return)—

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

(ii) to or for the use of any 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 stockholder 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; or

(iii) to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used within the United States by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and such trustee or trustees, or such fraternal society, order, or association, 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;

(B) Powers of appointment

Property includible in the decedent's gross estate under section 2041 (relating to powers of appointment) received by a donee described in this paragraph shall, for purposes of this paragraph, be considered a bequest of such decedent.

(C) Death taxes payable out of bequests

If the tax imposed by section 2101, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes.

(D) Limitation on deduction

The amount of the deduction under this paragraph for any transfer shall not exceed

the value of the transferred property required to be included in the gross estate.

(E) Disallowance of deductions in certain cases

The provisions of section 2055(e) shall be applied in the determination of the amount allowable as a deduction under this paragraph.

(F) Cross references

(i) **For option as to time for valuation for purposes of deduction under this section, see section 2032.**

(ii) **For exemption of certain bequests for the benefit of the United States and for rules of construction for certain bequests, see section 2055(g).**

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

(3) Marital deduction

The amount which would be deductible with respect to property situated in the United States at the time of the decedent's death under the principles of section 2056.

(4) State death taxes

The amount which bears the same ratio to the State death taxes as the value of the property, as determined for purposes of this chapter, upon which State death taxes were paid and which is included in the gross estate under section 2103 bears to the value of the total gross estate under section 2103. For purposes of this paragraph, the term "State death taxes" means the taxes described in section 2058(a).

(b) Condition of allowance of deductions

No deduction shall be allowed under paragraphs (1) and (2) of subsection (a) in the case of a nonresident not a citizen of the United States unless the executor includes in the return required to be filed under section 6018 the value at the time of his death of that part of the gross estate of such nonresident not situated in the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 398; Pub. L. 85-866, title I, §30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 86-779, §4(c), Sept. 14, 1960, 74 Stat. 1000; Pub. L. 89-809, title I, §108(e), Nov. 13, 1966, 80 Stat. 1572; Pub. L. 91-172, title II, §201(d)(2), (4)(B), Dec. 30, 1969, 83 Stat. 561; Pub. L. 94-455, title XIII, §1307(d)(1)(B)(iii), (C), title XIX, §1902(a)(5), (12)(A), title XX, § 2001(c)(1)(F), Oct. 4, 1976, 90 Stat. 1727, 1805, 1852; Pub. L. 97-473, title II, §202(b)(6), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 99-514, title XIV, §1422(c), Oct. 22, 1986, 100 Stat. 2717; Pub. L. 100-203, title X, §10711(a)(4), Dec. 22, 1987, 101 Stat. 1330-464; Pub. L. 100-647, title V, §5033(c), Nov. 10, 1988, 102 Stat. 3672; Pub. L. 101-239, title VII, §7815(d)(3), Dec. 19, 1989, 103 Stat. 2415; Pub. L. 107-16, title V, §532(c)(8), June 7, 2001, 115 Stat. 75; Pub. L. 113-295, div. A, title II, §221(a)(95)(A)(ii), Dec. 19, 2014, 128 Stat. 4051; Pub. L. 115-141, div. U, title IV, §401(a)(203), Mar. 23, 2018, 132 Stat. 1194.)

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(4). Pub. L. 115-141 inserted "section" before "2058(a)."

2014—Subsec. (a)(4). Pub. L. 113-295 substituted “2058(a)” for “section 2011(a)”.

2001—Subsec. (a)(4). Pub. L. 107-16 added par. (4).

1989—Subsec. (a)(3). Pub. L. 101-239 struck out “allowed where spouse is citizen” after “deduction” in heading.

1988—Subsec. (a)(3). Pub. L. 100-647 added par. (3).

1987—Subsec. (a)(2)(A)(ii), (iii). Pub. L. 100-203 inserted “(or in opposition to)” after “on behalf of”.

1986—Subsec. (a)(2)(F)(ii). Pub. L. 99-514 substituted “section 2055(g)” for “section 2055(f)”.

1983—Subsec. (a)(2)(F). Pub. L. 97-473 substituted “(i)” and “(ii)” for “(1)” and “(2)”, respectively, and added cl. (iii).

1976—Subsec. (a)(2)(A)(i). Pub. L. 94-455, § 1902(a)(12)(A), struck out “Territory” after “any State”.

Subsec. (a)(2)(A)(ii). Pub. L. 94-455, § 1307(d)(1)(B)(iii), 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 “stockholder or individual”.

Subsec. (a)(2)(A)(iii). Pub. L. 94-455, § 1307(d)(1)(C), substituted “such trust, fraternal society, order, or association would not be disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation” for “no substantial part of the activities of such trustee or trustees, or of such fraternal society, order, or association, is carrying on propaganda, or otherwise attempting, to influence legislation” after “children or animals”.

Subsec. (a)(2)(F). Pub. L. 94-455, § 1902(a)(5)(A), substituted “Cross references” for “Other cross references” after “(F)”, in cl. (1) “purposes of deduction under this section” for “purpose of deduction under this paragraph” after “valuation for”, in cl. (2) provision for exemption of certain bequests for benefit of United States and for rules of construction for certain bequests, for provisions of cls. (2) to (11) relating to bequests to; Library of Congress, Post Office Department, Office of Naval Records and Library, National Park Service, Department of State, Department of Justice, payment of tax on bequests of United States obligations, Naval Academy, Naval Academy Museum, and National Archives Trust Fund Board, respectively.

Subsec. (a)(3). Pub. L. 94-455, § 2001(c)(1)(F), struck out par. (3) relating to specific exemption in case of decedents nonresidents not citizens.

Subsec. (c). Pub. L. 94-455, § 1902(a)(5)(B), struck out subsec. (c) relating to treatment of United States bonds in determining gross estate of a decedent who was not engaged in business in the United States at the time of his death.

1969—Subsec. (a)(2)(A)(ii), (iii). Pub. L. 91-172, § 201(d)(4)(B), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (a)(2)(E). Pub. L. 91-172, § 201(d)(2), substituted substantive provisions for simple reference to sections 503 and 681 of this title in which such substantive provisions were formerly set out.

1966—Subsec. (a)(3). Pub. L. 89-809 substituted “\$30,000” for “\$2,000” as size of exemption in subpar. (A) and “\$30,000” for “\$2,000” as item (i) in formula set out in subpar. (B).

1960—Subsec. (a)(3). Pub. L. 86-779 designated existing provisions as subpar. (A) and added subpar. (B).

1958—Subsec. (a)(2)(E). Pub. L. 85-866 substituted “503” for “504”.

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

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers,

after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2012 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

Amendment by Pub. L. 100-647 applicable to estates of decedents dying after Nov. 10, 1988, see section 5033(d)(1) of Pub. L. 100-647, set out as a note under section 2056 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 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(3) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(5), (12)(A) of Pub. L. 94-455 applicable in the case of 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)(F) of Pub. L. 94-455 applicable to estates of decedents dying after Dec. 31, 1976, see section 2001(d)(1) of Pub. L. 94-455, set out as a note under section 2001 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(d)(2) of Pub. L. 91-172 applicable in the case of decedents dying after Dec. 31, 1969, with specified exceptions, see section 201(g)(4) of Pub. L. 91-172, set out as a note under section 170 of this title.

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

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to estates of decedents dying after Nov. 13, 1966, see section 108(i) of Pub. L. 89-809, set out as a note under section 2101 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-779, § 4(e)(2), Sept. 14, 1960, 74 Stat. 1000, provided that: “The amendments made by subsections (b) and (c) [enacting section 2209 of this title and amending this section] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [Sept. 14, 1960].”

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.

§ 2107. Expatriation to avoid tax

(a) Treatment of expatriates

A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent non-resident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b).

(b) Gross estate

For purposes of the tax imposed by subsection (a), the value of the gross estate of every decedent to whom subsection (a) applies shall be determined as provided in section 2103, except that—

(1) if such decedent owned (within the meaning of section 958(a)) at the time of his death 10 percent or more of the total combined voting power of all classes of stock entitled to vote of a foreign corporation, and

(2) if such decedent 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 his death, more than 50 percent of—

(A) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(B) the total value of the stock of such corporation,

then that proportion of the fair market value of the stock of such foreign corporation owned (within the meaning of section 958(a)) by such decedent at the time of his death, which the fair market value of any assets owned by such foreign corporation and situated in the United States, at the time of his death, bears to the total fair market value of all assets owned by such foreign corporation at the time of his death, shall be included in the gross estate of such decedent. For purposes of the preceding sentence, a decedent shall be treated as owning stock of a foreign corporation at the time of his death if, at the time of a transfer, by trust or otherwise, within the meaning of sections 2035 to 2038, inclusive, he owned such stock.

(c) Credits

(1) Unified credit

(A) In general

A credit of \$13,000 shall be allowed against the tax imposed by subsection (a).

(B) Limitation based on amount of tax

The credit allowed under this paragraph shall not exceed the amount of the tax imposed by subsection (a).

(2) Credit for foreign death taxes

(A) In general

The tax imposed by subsection (a) shall be credited with the amount of any estate, inheritance, legacy, or succession taxes actually paid to any foreign country in respect of any property which is included in the gross estate solely by reason of subsection (b).

(B) Limitation on credit

The credit allowed by subparagraph (A) for such taxes paid to a foreign country shall not exceed the lesser of—

(i) the amount which bears the same ratio to the amount of such taxes actually paid to such foreign country as the value of the property subjected to such taxes by such foreign country and included in the gross estate solely by reason of subsection (b) bears to the value of all property subjected to such taxes by such foreign country, or

(ii) such property's proportionate share of the excess of—

(I) the tax imposed by subsection (a), over

(II) the tax which would be imposed by section 2101 but for this section.

(C) Proportionate share

In the case of property which is included in the gross estate solely by reason of subsection (b), such property's proportionate share is the percentage which the value of such property bears to the total value of all property included in the gross estate solely by reason of subsection (b).

(3) Other credits

The tax imposed by subsection (a) shall be credited with the amounts determined in accordance with subsections (a) and (b) of section 2102. For purposes of subsection (a) of section 2102, sections 2012 and 2013 shall be applied as if the credit allowed under paragraph (1) were allowed under section 2010.

(d) Burden of proof

If the Secretary establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for this section, result in a substantial reduction in the estate, inheritance, legacy, and succession taxes in respect of the transfer of his estate, the burden of proving that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A shall be on the executor of such individual's estate.

(e) Cross reference

For comparable treatment of long-term lawful permanent residents who ceased to be taxed as residents, see section 877(e).

(Added Pub. L. 89-809, title I, §108(f), Nov. 13, 1966, 80 Stat. 1573; amended Pub. L. 94-455, title XIX, §§1902(a)(6), 1906(b)(13)(A), title XX, §2001(c)(1)(E)(ii), Oct. 4, 1976, 90 Stat. 1805, 1834, 1851; Pub. L. 104-191, title V, §511(e)(1), (f)(2)(A), Aug. 21, 1996, 110 Stat. 2097, 2099; Pub. L. 105-34, title XVI, §1602(g)(6), Aug. 5, 1997, 111 Stat. 1095; Pub. L. 107-16, title V, §532(c)(7)(C), June 7, 2001,