

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,

115 Stat. 75; Pub. L. 108-357, title VIII, §804(a)(3), Oct. 22, 2004, 118 Stat. 1570.)

### Editorial Notes

#### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-357 reenacted heading without change and amended text of subsec. (a) generally, substituting provisions relating to imposition of tax on the transfer of the taxable estate of every decedent nonresident 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), for provisions relating to imposition of tax on the transfer of the taxable estate of every decedent nonresident not a citizen of the United States if, within the 10-year period ending with the date of death, such decedent lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes, and provisions describing individuals to be treated as having a principal purpose to avoid taxes.

2001—Subsec. (c)(3). Pub. L. 107-16 substituted “2012 and 2013” for “2011 to 2013, inclusive.”

1997—Subsec. (c)(2)(B)(i). Pub. L. 105-34, §1602(g)(6)(A), substituted “such foreign country as the value of the property subjected to such taxes by such foreign country and” for “such foreign country in respect of property included in the gross estate as the value of the property”.

Subsec. (c)(2)(C). Pub. L. 105-34, §1602(g)(6)(B), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “For purposes of subparagraph (B), a property’s proportionate share is the percentage of the value of the property which is included in the gross estate solely by reason of subsection (b) bears to the total value of the gross estate.”

1996—Subsec. (a). Pub. L. 104-191, §511(e)(1)(A), substituted “Treatment of expatriates” for “Rate of tax” in heading and amended text generally. Prior to amendment, text read as follows: “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 nonresident not a citizen of the United States dying after November 13, 1966, if after March 8, 1965, and within the 10-year period ending with the date of death such decedent lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle A.”

Subsec. (b)(2). Pub. L. 104-191, §511(e)(1)(C), substituted “more than 50 percent of—” for “more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation,” and added subpars. (A) and (B).

Subsec. (c)(2), (3). Pub. L. 104-191, §511(e)(1)(B), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 104-191, §511(f)(2)(A), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows:

“(d) EXCEPTION FOR LOSS OF CITIZENSHIP FOR CERTAIN CAUSES.—Subsection (a) shall not apply to the transfer of the estate of a decedent whose loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487).”

Subsec. (e). Pub. L. 104-191, §511(f)(2)(A), added subsec. (e). Former subsec. (e) redesignated (d).

1976—Subsec. (a). Pub. L. 94-455, §1902(a)(6), substituted “November 13, 1966” for “the date of enactment of this section” after “dying after”.

Subsec. (c). Pub. L. 94-455, §2001(c)(1)(E)(ii), substituted provisions relating to unified credit for “The tax imposed by subsection (a) shall be credited with the amounts determined in accordance with section 2102.”

Subsec. (e). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to individuals who expatriate after June 3, 2004, see section 804(f) of Pub. L. 108-357, set out as a note under section 877 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 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, to which such amendment relates, see section 1602(i) of Pub. L. 105-34, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-191 applicable to individuals losing United States citizenship on or after Feb. 6, 1995, and to long-term residents of the United States with respect to whom an event described in section 877(e)(1)(A) or (B) of this title occurs on or after Feb. 6, 1995, with special rule for certain individuals who performed an act of expatriation specified in section 1481(a)(1)–(4) of Title 8, Aliens and Nationality, before Feb. 6, 1995, see section 511(g) of Pub. L. 104-191, set out as a note under section 877 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1902(a)(6) 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)(E)(ii) 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

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

### § 2108. Application of pre-1967 estate tax provisions

#### (a) Imposition of more burdensome tax by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, considering the tax system of such foreign country, a more burdensome tax is imposed by such foreign country on the transfer of estates of decedents who were citizens of the United States and not residents of such foreign country than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country,

(2) such foreign country, when requested by the United States to do so, has not acted to revise or reduce such tax so that it is no more burdensome than the tax imposed by this subchapter on the transfer of estates of decedents who were residents of such foreign country, and

(3) it is in the public interest to apply pre-1967 tax provisions in accordance with this section to the transfer of estates of decedents who were residents of such foreign country,