

“(A) In the case of any decedent—

“(i) who dies before August 13, 1984, and

“(ii) who made a gift (before August 13, 1981, and during the 3-year period ending on the date of the decedent's death) on which tax imposed by chapter 12 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] has been paid before April 16, 1982, such decedent's executor may make an election to have subtitle B of such Code (relating to estate and gift taxes) applied with respect to such decedent without regard to any of the amendments made by title IV of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34, title IV].

“(B) An election under subparagraph (A) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe.

“(C) An election under subparagraph (A), once made, shall be irrevocable.”

## § 2502. Rate of tax

### (a) Computation of tax

The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

(1) a tentative tax, computed under section 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

(2) a tentative tax, computed under such section, on the aggregate sum of the taxable gifts for each of the preceding calendar periods.

### (b) Preceding calendar period

Whenever used in this title in connection with the gift tax imposed by this chapter, the term “preceding calendar period” means—

(1) calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970,

(2) the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the first calendar quarter of calendar year 1982, and

(3) all calendar years after 1981 and before the calendar year for which the tax is being computed.

For purposes of paragraph (1), the term “calendar year 1932” includes only that portion of such year after June 6, 1932.

### (c) Tax to be paid by donor

The tax imposed by section 2501 shall be paid by the donor.

(Aug. 16, 1954, ch. 736, 68A Stat. 403; Pub. L. 91-614, title I, §102(a)(2), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 94-455, title XX, §2001(b)(1), Oct. 4, 1976, 90 Stat. 1849; Pub. L. 97-34, title IV, §442(a)(2), Aug. 13, 1981, 95 Stat. 320; Pub. L. 100-203, title X, §10401(b)(2)(B), Dec. 22, 1987, 101 Stat. 1330-431; Pub. L. 107-16, title V, §511(d), June 7, 2001, 115 Stat. 70; Pub. L. 111-312, title III, §302(b)(2), Dec. 17, 2010, 124 Stat. 3301.)

## Editorial Notes

### AMENDMENTS

2010—Subsec. (a). Pub. L. 111-312 amended subsec. (a) to read as if amendment by Pub. L. 107-16, §511(d), had never been enacted. See 2001 Amendment note below.

2001—Subsec. (a). Pub. L. 107-16, §511(d), amended subsec. (a) generally. Prior to amendment, text read as follows: “The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

“(1) a tentative tax, computed under section 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over

“(2) a tentative tax, computed under such section, on the aggregate sum of the taxable gifts for each of the preceding calendar periods.”

1987—Subsec. (a)(1). Pub. L. 100-203, §10401(b)(2)(B)(i), substituted “under section 2001(c)” for “in accordance with the rate schedule set forth in section 2001(c)”.

Subsec. (a)(2). Pub. L. 100-203, §10401(b)(2)(B)(ii), substituted “under such section” for “in accordance with such rate schedule”.

1981—Subsec. (a). Pub. L. 97-34 substituted in introductory text and par. (1) “calendar year” for “calendar quarter” and in pars. (1) and (2) “calendar periods” for “calendar years and calendar quarters”.

Subsec. (b). Pub. L. 97-34 substituted definition of “preceding calendar period” for “calendar quarter”, the latter including only the first calendar quarter of the calendar year 1971 and succeeding calendar quarters (covered in par. (2)), the former incorporating former subsec. (c)(1) definition of “preceding calendar years” as meaning calendar years 1932 and 1970 and all calendar years intervening between calendar year 1932 and calendar year 1970 and “calendar year 1932” as including only the portion of such year after June 6, 1932, and former subsec. (c)(2) definition of “preceding calendar quarters” as meaning the first calendar quarter of calendar year 1971 and all calendar quarters intervening between such calendar quarter and the calendar quarter for which the tax is being computed.

Subsecs. (c), (d). Pub. L. 97-34 redesignated subsec. (d) as (c). Former subsec. (c), defining “preceding calendar years” and “preceding calendar quarters”, was incorporated in subsec. (b).

1976—Subsec. (a). Pub. L. 94-455 inserted “tentative” after “(1) a” and “(2) a” and substituted in par. (1) “section 2001(c)” for “this subsection” after “set forth in”.

1970—Subsec. (a). Pub. L. 91-614, §102(a)(2)(A), substituted a computation of tax formula based on the current calendar quarter, preceding calendar quarters, and preceding calendar years for a formula based entirely on the current and preceding calendar years.

Subsec. (b). Pub. L. 91-614, §102(a)(2)(B), substituted definition of “calendar quarter” for definition of “calendar year”.

Subsec. (c). Pub. L. 91-614, §102(a)(2)(B), substituted definition of “preceding calendar years and quarters” for definition of “preceding calendar years”.

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title III, §302(b)(2), Dec. 17, 2010, 124 Stat. 3301, provided that the amendment by section 302(b)(2) is effective on and after Jan. 1, 2011.

### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-16, title V, §511(f)(3), June 7, 2001, 115 Stat. 71, provided that: “The amendments made by subsections (d) and (e) [amending this section and section 2511 of this title] shall apply to gifts made after December 31, 2009.”

### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable in the case of decedents dying, and gifts made, after Dec. 31, 1987, see section 10401(c) of Pub. L. 100-203, set out as a note under section 2001 of this title.

### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XX, §2001(d)(2), Oct. 4, 1976, 90 Stat. 1854, provided that: “The amendments made by

subsections (b) and (c)(2) [enacting section 2505 of this title, amending this section and section 2504 of this title, and repealing section 2521 of this title] shall apply to gifts made after December 31, 1976.”

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

### § 2503. Taxable gifts

#### (a) General definition

The term “taxable gifts” means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (section 2522 and following).

#### (b) Exclusions from gifts

##### (1) In general

In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year, the first \$10,000 of such gifts to such person shall not, for purposes of subsection (a), be included in the total amount of gifts made during such year. Where there has been a transfer to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying this subsection, if no part of such interest will at any time pass to any other person.

##### (2) Inflation adjustment

In the case of gifts made in a calendar year after 1998, the \$10,000 amount contained in paragraph (1) shall be increased by an amount equal to—

(A) \$10,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting “calendar year 1997” for “calendar year 2016” in subparagraph (A)(ii) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$1,000, such amount shall be rounded to the next lowest multiple of \$1,000.

#### (c) Transfer for the benefit of minor

No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom—

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended—

(A) pass to the donee on his attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c).

[(d) **Repealed.** Pub. L. 97-34, title III, § 311(h)(5), Aug. 13, 1981, 95 Stat. 282]

#### (e) Exclusion for certain transfers for educational expenses or medical expenses

##### (1) In general

Any qualified transfer shall not be treated as a transfer of property by gift for purposes of this chapter.

##### (2) Qualified transfer

For purposes of this subsection, the term “qualified transfer” means any amount paid on behalf of an individual—

(A) as tuition to an educational organization described in section 170(b)(1)(A)(ii) for the education or training of such individual, or

(B) to any person who provides medical care (as defined in section 213(d)) with respect to such individual as payment for such medical care.

#### (f) Waiver of certain pension rights

If any individual waives, before the death of a participant, any survivor benefit, or right to such benefit, under section 401(a)(11) or 417, such waiver shall not be treated as a transfer of property by gift for purposes of this chapter.

#### (g) Treatment of certain loans of artworks

##### (1) In general

For purposes of this subtitle, any loan of a qualified work of art shall not be treated as a transfer (and the value of such qualified work of art shall be determined as if such loan had not been made) if—

(A) such loan is to an organization described in section 501(c)(3) and exempt from tax under section 501(c) (other than a private foundation), and

(B) the use of such work by such organization is related to the purpose or function constituting the basis for its exemption under section 501.

#### (2) Definitions

For purposes of this section—

##### (A) Qualified work of art

The term “qualified work of art” means any archaeological, historic, or creative tangible personal property.

##### (B) Private foundation

The term “private foundation” has the meaning given such term by section 509, except that such term shall not include any private operating foundation (as defined in section 4942(j)(3)).

(Aug. 16, 1954, ch. 736, 68A Stat. 404; Pub. L. 91-614, title I, § 102(a)(3), Dec. 31, 1970, 84 Stat. 1839; Pub. L. 95-600, title VII, § 702(j)(2), Nov. 6, 1978, 92 Stat. 2931; Pub. L. 97-34, title III, § 311(h)(5), title IV, §§ 441(a), (b), 442(a)(3), Aug. 13, 1981, 95 Stat. 282, 319, 320; Pub. L. 99-514, title XVIII, § 1898(h)(1)(B), Oct. 22, 1986, 100 Stat. 2957; Pub. L. 100-647, title I, § 1018(s)(2)(A), (u)(52), Nov. 10, 1988, 102 Stat. 3586, 3593; Pub. L. 101-239, title VII, § 7811(m)(1), Dec. 19, 1989, 103 Stat. 2412; Pub. L. 105-34, title V, § 501(c), Aug. 5, 1997, 111 Stat. 846; Pub. L. 115-97, title I, § 11002(d)(1)(EE), Dec. 22, 2017, 131 Stat. 2060.)