

[Pub. L. 100-647, enacting section 2056A of this title and amending this section and sections 2106 and 2523 of this title] 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. In the case of the estate of an individual dying before the date 3 years after the date of the enactment of this Act [Dec. 19, 1989], or a gift by an individual before the date 3 years after the date of the enactment of this Act, the requirement of the preceding sentence that the individual not be a citizen or resident of the United States shall not apply.”

DISCLAIMER OF INTEREST ARISING FROM ESTATES OF PERSONS DYING BEFORE OCT. 4, 1966, HAVING ESTATE TAX RETURN FILING DATE ON OR AFTER JAN. 1, 1965

Pub. L. 89-621, §1(c), Oct. 4, 1966, 80 Stat. 872, provided that in the case of a decedent dying before Oct. 4, 1966, for which the date prescribed for filing estate tax return was on or after Jan. 1, 1965, and as a result of a disclaimer, the surviving spouse became entitled to receive such interest, then such interest was to be considered as having passed from the decedent to the surviving spouse under certain conditions, with a limit on the amount of deductions allowed.

§ 2056A. Qualified domestic trust

(a) Qualified domestic trust defined

For purposes of this section and section 2056(d), the term “qualified domestic trust” means, with respect to any decedent, any trust if—

(1) the trust instrument—

(A) except as provided in regulations prescribed by the Secretary, requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation, and

(B) provides that no distribution (other than a distribution of income) may be made from the trust unless a trustee who is an individual citizen of the United States or a domestic corporation has the right to withhold from such distribution the tax imposed by this section on such distribution,

(2) such trust meets such requirements as the Secretary may by regulations prescribe to ensure the collection of any tax imposed by subsection (b), and

(3) an election under this section by the executor of the decedent applies to such trust.

(b) Tax treatment of trust

(1) Imposition of estate tax

There is hereby imposed an estate tax on—

(A) any distribution before the date of the death of the surviving spouse from a qualified domestic trust, and

(B) the value of the property remaining in a qualified domestic trust on the date of the death of the surviving spouse.

(2) Amount of tax

(A) In general

In the case of any taxable event, the amount of the estate tax imposed by paragraph (1) shall be the amount equal to—

(i) the tax which would have been imposed under section 2001 on the estate of the decedent if the taxable estate of the decedent had been increased by the sum of—

(I) the amount involved in such taxable event, plus

(II) the aggregate amount involved in previous taxable events with respect to qualified domestic trusts of such decedent, reduced by

(ii) the tax which would have been imposed under section 2001 on the estate of the decedent if the taxable estate of the decedent had been increased by the amount referred to in clause (i)(II).

(B) Tentative tax where tax of decedent not finally determined

(i) In general

If the tax imposed on the estate of the decedent under section 2001 is not finally determined before the taxable event, the amount of the tax imposed by paragraph (1) on such event shall be determined by using the highest rate of tax in effect under section 2001 as of the date of the decedent's death.

(ii) Refund of excess when tax finally determined

If—

(I) the amount of the tax determined under clause (i), exceeds

(II) the tax determined under subparagraph (A) on the basis of the final determination of the tax imposed by section 2001 on the estate of the decedent,

such excess shall be allowed as a credit or refund (with interest) if claim therefor is filed not later than 1 year after the date of such final determination.

(C) Special rule where decedent has more than 1 qualified domestic trust

If there is more than 1 qualified domestic trust with respect to any decedent, the amount of the tax imposed by paragraph (1) with respect to such trusts shall be determined by using the highest rate of tax in effect under section 2001 as of the date of the decedent's death (and the provisions of paragraph (3)(B) shall not apply) unless, pursuant to a designation made by the decedent's executor, there is 1 person—

(i) who is an individual citizen of the United States or a domestic corporation and is responsible for filing all returns of tax imposed under paragraph (1) with respect to such trusts and for paying all tax so imposed, and

(ii) who meets such requirements as the Secretary may by regulations prescribe.

(3) Certain lifetime distributions exempt from tax

(A) Income distributions

No tax shall be imposed by paragraph (1)(A) on any distribution of income to the surviving spouse.

(B) Hardship exemption

No tax shall be imposed by paragraph (1)(A) on any distribution to the surviving spouse on account of hardship.

(4) Tax where trust ceases to qualify

If any qualified domestic trust ceases to meet the requirements of paragraphs (1) and

(2) of subsection (a), the tax imposed by paragraph (1) shall apply as if the surviving spouse died on the date of such cessation.

(5) Due date

(A) Tax on distributions

The estate tax imposed by paragraph (1)(A) shall be due and payable on the 15th day of the 4th month following the calendar year in which the taxable event occurs; except that the estate tax imposed by paragraph (1)(A) on distributions during the calendar year in which the surviving spouse dies shall be due and payable not later than the date on which the estate tax imposed by paragraph (1)(B) is due and payable.

(B) Tax at death of spouse

The estate tax imposed by paragraph (1)(B) shall be due and payable on the date 9 months after the date of such death.

(6) Liability for tax

Each trustee shall be personally liable for the amount of the tax imposed by paragraph (1). Rules similar to the rules of section 2204 shall apply for purposes of the preceding sentence.

(7) Treatment of tax

For purposes of section 2056(d), any tax paid under paragraph (1) shall be treated as a tax paid under section 2001 with respect to the estate of the decedent.

(8) Lien for tax

For purposes of section 6324, any tax imposed by paragraph (1) shall be treated as an estate tax imposed under this chapter with respect to a decedent dying on the date of the taxable event (and the property involved shall be treated as the gross estate of such decedent).

(9) Taxable event

The term “taxable event” means the event resulting in tax being imposed under paragraph (1).

(10) Certain benefits allowed

(A) In general

If any property remaining in the qualified domestic trust on the date of the death of the surviving spouse is includible in the gross estate of such spouse for purposes of this chapter (or would be includible if such spouse were a citizen or resident of the United States), any benefit which is allowable (or would be allowable if such spouse were a citizen or resident of the United States) with respect to such property to the estate of such spouse under section 2014, 2032, 2032A, 2055, 2056, 2058, or 6166 shall be allowed for purposes of the tax imposed by paragraph (1)(B).

(B) Section 303

If the estate of the surviving spouse meets the requirements of section 303 with respect to any property described in subparagraph (A), for purposes of section 303, the tax imposed by paragraph (1)(B) with respect to such property shall be treated as a Federal

estate tax payable with respect to the estate of the surviving spouse.

(C) Section 6161(a)(2)

The provisions of section 6161(a)(2) shall apply with respect to the tax imposed by paragraph (1)(B), and the reference in such section to the executor shall be treated as a reference to the trustees of the trust.

(11) Special rule where distribution tax paid out of trust

For purposes of this subsection, if any portion of the tax imposed by paragraph (1)(A) with respect to any distribution is paid out of the trust, an amount equal to the portion so paid shall be treated as a distribution described in paragraph (1)(A).

(12) Special rule where spouse becomes citizen

If the surviving spouse of the decedent becomes a citizen of the United States and if—

(A) such spouse was a resident of the United States at all times after the date of the death of the decedent and before such spouse becomes a citizen of the United States,

(B) no tax was imposed by paragraph (1)(A) with respect to any distribution before such spouse becomes such a citizen, or

(C) such spouse elects—

(i) to treat any distribution on which tax was imposed by paragraph (1)(A) as a taxable gift made by such spouse for purposes of—

(I) section 2001, and

(II) determining the amount of the tax imposed by section 2501 on actual taxable gifts made by such spouse during the year in which the spouse becomes a citizen or any subsequent year, and

(ii) to treat any reduction in the tax imposed by paragraph (1)(A) by reason of the credit allowable under section 2010 with respect to the decedent as a credit allowable to such surviving spouse under section 2505 for purposes of determining the amount of the credit allowable under section 2505 with respect to taxable gifts made by the surviving spouse during the year in which the spouse becomes a citizen or any subsequent year,

paragraph (1)(A) shall not apply to any distributions after such spouse becomes such a citizen (and paragraph (1)(B) shall not apply).

(13) Coordination with section 1015

For purposes of section 1015, any distribution on which tax is imposed by paragraph (1)(A) shall be treated as a transfer by gift, and any tax paid under paragraph (1)(A) shall be treated as a gift tax.

(14) Coordination with terminable interest rules

Any interest in a qualified domestic trust shall not be treated as failing to meet the requirements of paragraph (5) or (7) of section 2056(b) merely by reason of any provision of the trust instrument permitting the withholding from any distribution of an amount to

pay the tax imposed by paragraph (1) on such distribution.

(15) No tax on certain distributions

No tax shall be imposed by paragraph (1) on any distribution to the surviving spouse to the extent such distribution is to reimburse such surviving spouse for any tax imposed by subtitle A on any item of income of the trust to which such surviving spouse is not entitled under the terms of the trust.

(c) Definitions

For purposes of this section—

(1) Property includes interest therein

The term “property” includes an interest in property.

(2) Income

Except as provided in regulations, the term “income” has the meaning given to such term by section 643(b).

(3) Trust

To the extent provided in regulations prescribed by the Secretary, the term “trust” includes other arrangements which have substantially the same effect as a trust.

(d) Election

An election under this section with respect to any trust shall be made by the executor on the return of the tax imposed by section 2001. Such an election, once made, shall be irrevocable. No election may be made under this section on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations under which there may be treated as a qualified domestic trust any annuity or other payment which is includible in the decedent’s gross estate and is by its terms payable for life or a term of years.

(Added Pub. L. 100-647, title V, §5033(a)(2), Nov. 10, 1988, 102 Stat. 3670; amended Pub. L. 101-239, title VII, §7815(d)(7), (9)-(13), (15), Dec. 19, 1989, 103 Stat. 2415-2418; Pub. L. 101-508, title XI, §§11702(g)(2)(A), (B), (3)(A), (4), 11704(a)(15), Nov. 5, 1990, 104 Stat. 1388-515, 1388-516, 1388-518; Pub. L. 105-34, title XIII, §§1312(a), 1314(a), Aug. 5, 1997, 111 Stat. 1044, 1045; Pub. L. 107-16, title V, §532(c)(6), June 7, 2001, 115 Stat. 74.)

Editorial Notes

AMENDMENTS

2001—Subsec. (b)(10)(A). Pub. L. 107-16 struck out “2011,” before “2014,” and inserted “2058,” after “2056.”

1997—Subsec. (a)(1)(A). Pub. L. 105-34, §1314(a), inserted “except as provided in regulations prescribed by the Secretary,” before “requires”.

Subsec. (c)(3). Pub. L. 105-34, §1312(a), added par. (3).

1990—Subsec. (a)(1). Pub. L. 101-508, §11702(g)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation and that no distribution from the trust may be made without the approval of such a trustee.”

Subsec. (b)(2)(B)(ii). Pub. L. 101-508, §11704(a)(15), substituted “therefor” for “therefore” in concluding provisions.

Subsec. (b)(10)(A). Pub. L. 101-508, §11702(g)(4), substituted “section 2011, 2014, 2032” for “section 2032”.

Subsec. (b)(14), (15). Pub. L. 101-508, §11702(g)(2)(B), added pars. (14) and (15).

Subsec. (d). Pub. L. 101-508, §11702(g)(3)(A), inserted at end “No election may be made under this section on any return if such return is filed more than one year after the time prescribed by law (including extensions) for filing such return.”

1989—Subsec. (a)(1). Pub. L. 101-239, §7815(d)(7)(A)(i), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.”

Subsec. (a)(2) to (4). Pub. L. 101-239, §7815(d)(7)(A)(ii), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: “the surviving spouse of the decedent is entitled to all the income from the property in such trust, payable annually or at more frequent intervals.”

Subsec. (b)(1)(A). Pub. L. 101-239, §7815(d)(7)(C), struck out “other than a distribution of income required under subsection (a)(2)” after “qualified domestic trust”.

Subsec. (b)(2)(B)(ii). Pub. L. 101-239, §7815(d)(11), inserted “(with interest)” after “credit or refund”.

Subsec. (b)(2)(C). Pub. L. 101-239, §7815(d)(12), added subpar. (C).

Subsec. (b)(3). Pub. L. 101-239, §7815(d)(7)(B), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 101-239, §7815(d)(7)(D), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “If any person other than an individual citizen of the United States or a domestic corporation becomes a trustee of a qualified domestic trust (or such trust ceases to meet the requirements of subsection (a)(3)), the tax imposed by paragraph (1) shall apply as if the surviving spouse died on the date on which such person became such a trustee or the date of such cessation, as the case may be.”

Pub. L. 101-239, §7815(d)(7)(B), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 101-239, §7815(d)(15), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “The estate tax imposed by paragraph (1) shall be due and payable on the 15th day of the 4th month following the calendar year in which the taxable event occurs.”

Pub. L. 101-239, §7815(d)(7)(B), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (b)(6) to (9). Pub. L. 101-239, §7815(d)(7)(B), redesignated pars. (5) to (8) as (6) to (9), respectively.

Subsec. (b)(10) to (13). Pub. L. 101-239, §7815(d)(9), added pars. (10) to (13).

Subsec. (c)(2). Pub. L. 101-239, §7815(d)(10), substituted “Except as provided in regulations, the term” for “The term”.

Subsec. (e). Pub. L. 101-239, §7815(d)(13), added subsec. (e).

Statutory Notes and Related Subsidiaries

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

Pub. L. 105-34, title XIII, §1312(b), Aug. 5, 1997, 111 Stat. 1045, 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].”

Pub. L. 105-34, title XIII, §1314(b), Aug. 5, 1997, 111 Stat. 1045, 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 1990 AMENDMENT

Amendment by section 11702(g)(2), (4) of Pub. L. 101-508 effective 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 11702(j) of Pub. L. 101-508, set out as a note under section 59 of this title.

Pub. L. 101-508, title XI, §11702(g)(3)(B), Nov. 5, 1990, 104 Stat. 1388-516, provided that: “The amendment made by subparagraph (A) [amending this section] shall not apply to any election made before the date 6 months after the date of the enactment of this Act [Nov. 5, 1990].”

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

Section applicable to estates of decedents dying after Nov. 10, 1988, see section 5033(d)(1) of Pub. L. 100-647, set out as an Effective Date of 1988 Amendment note under section 2056 of this title.

TRANSITIONAL RULE

Pub. L. 105-34, title XIII, §1303, Aug. 5, 1997, 111 Stat. 1039, provided that:

“(a) GENERAL RULE.—In the case of any trust created under an instrument executed before the date of the enactment of the Revenue Reconciliation Act of 1990 [Nov. 5, 1990], such trust shall be treated as meeting the requirements of paragraph (1) of section 2056A(a) of the Internal Revenue Code of 1986 if the trust instrument requires that all trustees of the trust be individual citizens of the United States or domestic corporations.

“(b) EFFECTIVE DATE.—The provisions of subsection (a) shall take effect as if included in the provisions of section 11702(g) of the Revenue Reconciliation Act of 1990 [Pub. L. 101-508].”

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, this section shall not apply to the extent such section 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.

[§ 2057. Repealed. Pub. L. 113-295, div. A, title II, § 221(a)(97)(A), Dec. 19, 2014, 128 Stat. 4051]

Section, added Pub. L. 105-34, title V, § 502(a), Aug. 5, 1997, 111 Stat. 847, § 2033A; renumbered § 2057 and amended Pub. L. 105-206, title VI, § 6007(b)(1)(A)-(D), (2)-(7), July 22, 1998, 112 Stat. 807-809; Pub. L. 107-16, title V, § 521(d), June 7, 2001, 115 Stat. 72; Pub. L. 108-311, title II, § 207(23), Oct. 4, 2004, 118 Stat. 1178, related to deduction for qualified family-owned business interests of a decedent.

A prior section 2057, added Pub. L. 99-514, title XI, §1172(a), Oct. 22, 1986, 100 Stat. 2513; amended Pub. L. 100-203, title X, §§10411(a), 10412(a), Dec. 22, 1987, 101 Stat. 1330-432, 1330-433; Pub. L. 100-647, title I, §1011B(g)(3), Nov. 10, 1988, 102 Stat. 3490, related to sales of employer securities to employee stock ownership plans or worker-owned cooperatives, prior to repeal by Pub. L. 101-239, title VII, §7304(a)(1), (3), Dec. 19, 1989, 103 Stat. 2352, 2353, applicable to estates of decedents dying after Dec. 19, 1989.

Another prior section 2057, added Pub. L. 94-455, title XX, § 2007(a), Oct. 4, 1976, 90 Stat. 1890; amended Pub. L. 95-600, title VII, §702(l)(1), (2), Nov. 6, 1978, 92 Stat. 2934, 2935, related to bequests, etc., to certain minor children, prior to repeal by Pub. L. 97-34, title IV, §427(a), (c), Aug. 13, 1981, 95 Stat. 3181, applicable to estates of decedents dying after Dec. 31, 1981.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as an Effective Date of 2014 Amendment note under section 1 of this title.

§ 2058. State death taxes

(a) Allowance of deduction

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia, in respect of any property included in the gross estate (not including any such taxes paid with respect to the estate of a person other than the decedent).

(b) Period of limitations

The deduction allowed by this section shall include only such taxes as were actually paid and deduction therefor claimed before the later of—

- (1) 4 years after the filing of the return required by section 6018, or
- (2) if—

(A) a petition for redetermination of a deficiency has been filed with the Tax Court within the time prescribed in section 6213(a), the expiration of 60 days after the decision of the Tax Court becomes final,

(B) an extension of time has been granted under section 6161 or 6166 for payment of the tax shown on the return, or of a deficiency, the date of the expiration of the period of the extension, or

(C) a claim for refund or credit of an overpayment of tax imposed by this chapter has been filed within the time prescribed in section 6511, the latest of the expiration of—

- (i) 60 days from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of any part of such claim,
- (ii) 60 days after a decision by any court of competent jurisdiction becomes final with respect to a timely suit instituted upon such claim, or
- (iii) 2 years after a notice of the waiver of disallowance is filed under section 6532(a)(3).

Notwithstanding sections 6511 and 6512, refund based on the deduction may be made if the claim