

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as an Effective Date note under section 2601 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1023(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [July 18, 1984]."

Section 1024(b) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to estates of decedents dying after the date of the enactment of this Act [July 18, 1984]."

"(2) TRANSITIONAL RULE.—In the case of an estate of a decedent dying before the date of the enactment of this Act [July 18, 1984] if—

"(A) a credit or refund of the tax imposed by chapter 11 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] is not prevented on the date of the enactment of this Act by the operation of any law or rule of law,

"(B) the election under section 2032 of the Internal Revenue Code of 1986 would have met the requirements of such section (as amended by this section and section 1023) had the decedent died after the date of enactment of this Act, and

"(C) a claim for credit or refund of such tax with respect to such estate is filed not later than the 90th day after the date of the enactment of this Act, then such election shall be treated as a valid election under such section 2032. The statutory period for the assessment of any deficiency which is attributable to an election under this paragraph shall not expire before the close of the 2-year period beginning on the date of the enactment of this Act."

EFFECTIVE DATE OF 1970 AMENDMENT

Section 101(j) of Pub. L. 91-614 provided that: "The amendments made by this section [enacting section 6905 of this title, amending this section and sections 1223, 2055, 2204, 6040, 6075, 6091, 6161, 6314, 6324, and 6504 of this title, and enacting provisions set out as notes under this section and sections 2204 and 6905 of this title] (other than subsection (f) [amending sections 2204 and 6905 of this title]) shall apply with respect to decedents dying after December 31, 1970."

§ 2032A. Valuation of certain farm, etc., real property

(a) Value based on use under which property qualifies

(1) General rule

If—

(A) the decedent was (at the time of his death) a citizen or resident of the United States, and

(B) the executor elects the application of this section and files the agreement referred to in subsection (d)(2),

then, for purposes of this chapter, the value of qualified real property shall be its value for the use under which it qualifies, under subsection (b), as qualified real property.

(2) Limitation on aggregate reduction in fair market value

The aggregate decrease in the value of qualified real property taken into account for pur-

poses of this chapter which results from the application of paragraph (1) with respect to any decedent shall not exceed \$750,000.

(3) Inflation adjustment

In the case of estates of decedents dying in a calendar year after 1998, the \$750,000 amount contained in paragraph (2) shall be increased by an amount equal to—

(A) \$750,000, 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 1992" in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the next lowest multiple of \$10,000.

(b) Qualified real property

(1) In general

For purposes of this section, the term "qualified real property" means real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if—

(A) 50 percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which—

(i) on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, and

(ii) was acquired from or passed from the decedent to a qualified heir of the decedent.

(B) 25 percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of subparagraphs (A)(ii) and (C).

(C) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

(i) such real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family, and

(ii) there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business, and

(D) such real property is designated in the agreement referred to in subsection (d)(2).

(2) Qualified use

For purposes of this section, the term "qualified use" means the devotion of the property to any of the following:

(A) use as a farm for farming purposes, or

(B) use in a trade or business other than the trade or business of farming.

(3) Adjusted value

For purposes of paragraph (1), the term "adjusted value" means—

(A) in the case of the gross estate, the value of the gross estate for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction under paragraph (4) of section 2053(a), or

(B) in the case of any real or personal property, the value of such property for purposes of this chapter (determined without regard to this section), reduced by any amounts allowable as a deduction in respect of such property under paragraph (4) of section 2053(a).

(4) Decedents who are retired or disabled

(A) In general

If, on the date of the decedent's death, the requirements of paragraph (1)(C)(ii) with respect to the decedent for any property are not met, and the decedent—

(i) was receiving old-age benefits under title II of the Social Security Act for a continuous period ending on such date, or

(ii) was disabled for a continuous period ending on such date,

then paragraph (1)(C)(ii) shall be applied with respect to such property by substituting “the date on which the longer of such continuous periods began” for “the date of the decedent's death” in paragraph (1)(C).

(B) Disabled defined

For purposes of subparagraph (A), an individual shall be disabled if such individual has a mental or physical impairment which renders him unable to materially participate in the operation of the farm or other business.

(C) Coordination with recapture

For purposes of subsection (c)(6)(B)(i), if the requirements of paragraph (1)(C)(ii) are met with respect to any decedent by reason of subparagraph (A), the period ending on the date on which the continuous period taken into account under subparagraph (A) began shall be treated as the period immediately before the decedent's death.

(5) Special rules for surviving spouses

(A) In general

If property is qualified real property with respect to a decedent (hereinafter in this paragraph referred to as the “first decedent”) and such property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, for purposes of applying this subsection and subsection (c) in the case of the estate of such surviving spouse, active management of the farm or other business by the surviving spouse shall be treated as material participation by such surviving spouse in the operation of such farm or business.

(B) Special rule

For the purposes of subparagraph (A), the determination of whether property is qualified real property with respect to the first decedent shall be made without regard to subparagraph (D) of paragraph (1) and without regard to whether an election under this section was made.

(C) Coordination with paragraph (4)

In any case in which to do so will enable the requirements of paragraph (1)(C)(ii) to be met with respect to the surviving spouse, this subsection and subsection (c) shall be applied by taking into account any application of paragraph (4).

(c) Tax treatment of dispositions and failures to use for qualified use

(1) Imposition of additional estate tax

If, within 10 years after the decedent's death and before the death of the qualified heir—

(A) the qualified heir disposes of any interest in qualified real property (other than by a disposition to a member of his family), or

(B) the qualified heir ceases to use for the qualified use the qualified real property which was acquired (or passed) from the decedent,

then, there is hereby imposed an additional estate tax.

(2) Amount of additional tax

(A) In general

The amount of the additional tax imposed by paragraph (1) with respect to any interest shall be the amount equal to the lesser of—

(i) the adjusted tax difference attributable to such interest, or

(ii) the excess of the amount realized with respect to the interest (or, in any case other than a sale or exchange at arm's length, the fair market value of the interest) over the value of the interest determined under subsection (a).

(B) Adjusted tax difference attributable to interest

For purposes of subparagraph (A), the adjusted tax difference attributable to an interest is the amount which bears the same ratio to the adjusted tax difference with respect to the estate (determined under subparagraph (C)) as—

(i) the excess of the value of such interest for purposes of this chapter (determined without regard to subsection (a)) over the value of such interest determined under subsection (a), bears to

(ii) a similar excess determined for all qualified real property.

(C) Adjusted tax difference with respect to the estate

For purposes of subparagraph (B), the term “adjusted tax difference with respect to the estate” means the excess of what would have been the estate tax liability but for subsection (a) over the estate tax liability. For purposes of this subparagraph, the term “estate tax liability” means the tax imposed by section 2001 reduced by the credits allowable against such tax.

(D) Partial dispositions

For purposes of this paragraph, where the qualified heir disposes of a portion of the interest acquired by (or passing to) such heir (or a predecessor qualified heir) or there is a cessation of use of such a portion—

(i) the value determined under subsection (a) taken into account under subparagraph (A)(ii) with respect to such portion shall be its pro rata share of such value of such interest, and

(ii) the adjusted tax difference attributable to the interest taken into account with respect to the transaction involving the second or any succeeding portion shall be reduced by the amount of the tax imposed by this subsection with respect to all prior transactions involving portions of such interest.

(E) Special rule for disposition of timber

In the case of qualified woodland to which an election under subsection (e)(13)(A) applies, if the qualified heir disposes of (or severs) any standing timber on such qualified woodland—

(i) such disposition (or severance) shall be treated as a disposition of a portion of the interest of the qualified heir in such property, and

(ii) the amount of the additional tax imposed by paragraph (1) with respect to such disposition shall be an amount equal to the lesser of—

(I) the amount realized on such disposition (or, in any case other than a sale or exchange at arm's length, the fair market value of the portion of the interest disposed or severed), or

(II) the amount of additional tax determined under this paragraph (without regard to this subparagraph) if the entire interest of the qualified heir in the qualified woodland had been disposed of, less the sum of the amount of the additional tax imposed with respect to all prior transactions involving such woodland to which this subparagraph applied.

For purposes of the preceding sentence, the disposition of a right to sever shall be treated as the disposition of the standing timber. The amount of additional tax imposed under paragraph (1) in any case in which a qualified heir disposes of his entire interest in the qualified woodland shall be reduced by any amount determined under this subparagraph with respect to such woodland.

(3) Only 1 additional tax imposed with respect to any 1 portion

In the case of an interest acquired from (or passing from) any decedent, if subparagraph (A) or (B) of paragraph (1) applies to any portion of an interest, subparagraph (B) or (A), as the case may be, of paragraph (1) shall not apply with respect to the same portion of such interest.

(4) Due date

The additional tax imposed by this subsection shall become due and payable on the day which is 6 months after the date of the disposition or cessation referred to in paragraph (1).

(5) Liability for tax; furnishing of bond

The qualified heir shall be personally liable for the additional tax imposed by this sub-

section with respect to his interest unless the heir has furnished bond which meets the requirements of subsection (e)(11).

(6) Cessation of qualified use

For purposes of paragraph (1)(B), real property shall cease to be used for the qualified use if—

(A) such property ceases to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the property qualified under subsection (b), or

(B) during any period of 8 years ending after the date of the decedent's death and before the date of the death of the qualified heir, there had been periods aggregating more than 3 years during which—

(i) in the case of periods during which the property was held by the decedent, there was no material participation by the decedent or any member of his family in the operation of the farm or other business, and

(ii) in the case of periods during which the property was held by any qualified heir, there was no material participation by such qualified heir or any member of his family in the operation of the farm or other business.

(7) Special rules

(A) No tax if use begins within 2 years

If the date on which the qualified heir begins to use the qualified real property (hereinafter in this subparagraph referred to as the commencement date) is before the date 2 years after the decedent's death—

(i) no tax shall be imposed under paragraph (1) by reason of the failure by the qualified heir to so use such property before the commencement date, and

(ii) the 10-year period under paragraph (1) shall be extended by the period after the decedent's death and before the commencement date.

(B) Active management by eligible qualified heir treated as material participation

For purposes of paragraph (6)(B)(ii), the active management of a farm or other business by—

(i) an eligible qualified heir, or

(ii) a fiduciary of an eligible qualified heir described in clause (ii) or (iii) of subparagraph (C),

shall be treated as material participation by such eligible qualified heir in the operation of such farm or business. In the case of an eligible qualified heir described in clause (ii), (iii), or (iv) of subparagraph (C), the preceding sentence shall apply only during periods during which such heir meets the requirements of such clause.

(C) Eligible qualified heir

For purposes of this paragraph, the term "eligible qualified heir" means a qualified heir who—

(i) is the surviving spouse of the decedent,

(ii) has not attained the age of 21,

(iii) is disabled (within the meaning of subsection (b)(4)(B)), or

(iv) is a student.

(D) Student

For purposes of subparagraph (C), an individual shall be treated as a student with respect to periods during any calendar year if (and only if) such individual is a student (within the meaning of section 152(f)(2)) for such calendar year.

(E) Certain rents treated as qualified use

For purposes of this subsection, a surviving spouse or lineal descendant of the decedent shall not be treated as failing to use qualified real property in a qualified use solely because such spouse or descendant rents such property to a member of the family of such spouse or descendant on a net cash basis. For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

(8) Qualified conservation contribution is not a disposition

A qualified conservation contribution (as defined in section 170(h)) by gift or otherwise shall not be deemed a disposition under subsection (c)(1)(A).

(d) Election; agreement

(1) Election

The election under this section shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(2) Agreement

The agreement referred to in this paragraph is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of subsection (c) with respect to such property.

(3) Modification of election and agreement to be permitted

The Secretary shall prescribe procedures which provide that in any case in which the executor makes an election under paragraph (1) (and submits the agreement referred to in paragraph (2)) within the time prescribed therefor, but—

(A) the notice of election, as filed, does not contain all required information, or

(B) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or signatures.

(e) Definitions; special rules

For purposes of this section—

(1) Qualified heir

The term “qualified heir” means, with respect to any property, a member of the dece-

dent’s family who acquired such property (or to whom such property passed) from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.

(2) Member of family

The term “member of the family” means, with respect to any individual, only—

(A) an ancestor of such individual,

(B) the spouse of such individual,

(C) a lineal descendant of such individual, of such individual’s spouse, or of a parent of such individual, or

(D) the spouse of any lineal descendant described in subparagraph (C).

For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.

(3) Certain real property included

In the case of real property which meets the requirements of subparagraph (C) of subsection (b)(1), residential buildings and related improvements on such real property occupied on a regular basis by the owner or lessee of such real property or by persons employed by such owner or lessee for the purpose of operating or maintaining such real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use.

(4) Farm

The term “farm” includes stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards and woodlands.

(5) Farming purposes

The term “farming purposes” means—

(A) cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training, and management of animals) on a farm;

(B) handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(C)(i) the planting, cultivating, caring for, or cutting of trees, or

(ii) the preparation (other than milling) of trees for market.

(6) Material participation

Material participation shall be determined in a manner similar to the manner used for purposes of paragraph (1) of section 1402(a) (relating to net earnings from self-employment).

(7) Method of valuing farms**(A) In general**

Except as provided in subparagraph (B), the value of a farm for farming purposes shall be determined by dividing—

(i) the excess of the average annual gross cash rental for comparable land used for farming purposes and located in the locality of such farm over the average annual State and local real estate taxes for such comparable land, by

(ii) the average annual effective interest rate for all new Federal Land Bank loans.

For purposes of the preceding sentence, each average annual computation shall be made on the basis of the 5 most recent calendar years ending before the date of the decedent's death.

(B) Value based on net share rental in certain cases**(i) In general**

If there is no comparable land from which the average annual gross cash rental may be determined but there is comparable land from which the average net share rental may be determined, subparagraph (A)(i) shall be applied by substituting "average annual net share rental" for "average annual gross cash rental".

(ii) Net share rental

For purposes of this paragraph, the term "net share rental" means the excess of—

(I) the value of the produce received by the lessor of the land on which such produce is grown, over

(II) the cash operating expenses of growing such produce which, under the lease, are paid by the lessor.

(C) Exception

The formula provided by subparagraph (A) shall not be used—

(i) where it is established that there is no comparable land from which the average annual gross cash rental may be determined, or

(ii) where the executor elects to have the value of the farm for farming purposes determined and that there is no comparable land from which the average net share rental may be determined under paragraph (8).

(8) Method of valuing closely held business interests, etc.

In any case to which paragraph (7)(A) does not apply, the following factors shall apply in determining the value of any qualified real property:

(A) The capitalization of income which the property can be expected to yield for farming or closely held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the area, taking into account soil capacity, terrain configuration, and similar factors,

(B) The capitalization of the fair rental value of the land for farm land or closely held business purposes,

(C) Assessed land values in a State which provides a differential or use value assessment law for farmland or closely held business,

(D) Comparable sales of other farm or closely held business land in the same geographical area far enough removed from a metropolitan or resort area so that non-agricultural use is not a significant factor in the sales price, and

(E) Any other factor which fairly values the farm or closely held business value of the property.

(9) Property acquired from decedent

Property shall be considered to have been acquired from or to have passed from the decedent if—

(A) such property is so considered under section 1014(b) (relating to basis of property acquired from a decedent),

(B) such property is acquired by any person from the estate, or

(C) such property is acquired by any person from a trust (to the extent such property is includible in the gross estate of the decedent).

(10) Community property

If the decedent and his surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in such property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to such property which is consistent with the result which would have obtained under this section if such property had not been community property.

(11) Bond in lieu of personal liability

If the qualified heir makes written application to the Secretary for determination of the maximum amount of the additional tax which may be imposed by subsection (c) with respect to the qualified heir's interest, the Secretary (as soon as possible, and in any event within 1 year after the making of such application) shall notify the heir of such maximum amount. The qualified heir, on furnishing a bond in such amount and for such period as may be required, shall be discharged from personal liability for any additional tax imposed by subsection (c) and shall be entitled to a receipt or writing showing such discharge.

(12) Active management

The term "active management" means the making of the management decisions of a business (other than the daily operating decisions).

(13) Special rules for woodlands**(A) In general**

In the case of any qualified woodland with respect to which the executor elects to have this subparagraph apply, trees growing on such woodland shall not be treated as a crop.

(B) Qualified woodland

The term "qualified woodland" means any real property which—

(i) is used in timber operations, and

(ii) is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

(C) Timber operations

The term “timber operations” means—

- (i) the planting, cultivating, caring for, or cutting of trees, or
- (ii) the preparation (other than milling) of trees for market.

(D) Election

An election under subparagraph (A) shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

(14) Treatment of replacement property acquired in section 1031 or 1033 transactions

(A) In general

In the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of his family shall be treated as a period during which there was such ownership, use, or material participation (as the case may be) with respect to the qualified replacement property.

(B) Limitation

Subparagraph (A) shall not apply to the extent that the fair market value of the qualified replacement property (as of the date of its acquisition) exceeds the fair market value of the replaced property (as of the date of its disposition).

(C) Definitions

For purposes of this paragraph—

(i) Qualified replacement property

The term “qualified replacement property” means any real property which is—

- (I) acquired in an exchange which qualifies under section 1031, or
- (II) the acquisition of which results in the nonrecognition of gain under section 1033.

Such term shall only include property which is used for the same qualified use as the replaced property was being used before the exchange.

(ii) Replaced property

The term “replaced property” means—

- (I) the property transferred in the exchange which qualifies under section 1031, or
- (II) the property compulsorily or involuntarily converted (within the meaning of section 1033).

(f) Statute of limitations

If qualified real property is disposed of or ceases to be used for a qualified use, then—

- (1) the statutory period for the assessment of any additional tax under subsection (c) attributable to such disposition or cessation shall not expire before the expiration of 3 years

from the date the Secretary is notified (in such manner as the Secretary may by regulations prescribe) of such disposition or cessation (or if later in the case of an involuntary conversion or exchange to which subsection (h) or (i) applies, 3 years from the date the Secretary is notified of the replacement of the converted property or of an intention not to replace or of the exchange of property), and

(2) such additional tax may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(g) Application of this section and section 6324B to interests in partnerships, corporations, and trusts

The Secretary shall prescribe regulations setting forth the application of this section and section 6324B in the case of an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business (within the meaning of paragraph (1) of section 6166(b)). For purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs shall be treated as a present interest.

(h) Special rules for involuntary conversions of qualified real property

(1) Treatment of converted property

(A) In general

If there is an involuntary conversion of an interest in qualified real property—

- (i) no tax shall be imposed by subsection (c) on such conversion if the cost of the qualified replacement property equals or exceeds the amount realized on such conversion, or
- (ii) if clause (i) does not apply, the amount of the tax imposed by subsection (c) on such conversion shall be the amount determined under subparagraph (B).

(B) Amount of tax where there is not complete reinvestment

The amount determined under this subparagraph with respect to any involuntary conversion is the amount of the tax which (but for this subsection) would have been imposed on such conversion reduced by an amount which—

- (i) bears the same ratio to such tax, as
- (ii) the cost of the qualified replacement property bears to the amount realized on the conversion.

(2) Treatment of replacement property

For purposes of subsection (c)—

(A) any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was involuntarily converted; except that with respect to such qualified replacement property the 10-year period under paragraph (1) of subsection (c) shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i), during which the qualified heir was allowed to replace the qualified real property,

(B) any tax imposed by subsection (c) on the involuntary conversion shall be treated as a tax imposed on a partial disposition, and

(C) paragraph (6) of subsection (c) shall be applied—

(i) by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property, and

(ii) by treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

(3) Definitions and special rules

For purposes of this subsection—

(A) Involuntary conversion

The term “involuntary conversion” means a compulsory or involuntary conversion within the meaning of section 1033.

(B) Qualified replacement property

The term “qualified replacement property” means—

(i) in the case of an involuntary conversion described in section 1033(a)(1), any real property into which the qualified real property is converted, or

(ii) in the case of an involuntary conversion described in section 1033(a)(2), any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(B) for purposes of replacing the qualified real property.

Such term only includes property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the qualified real property qualified under subsection (a).

(4) Certain rules made applicable

The rules of the last sentence of section 1033(a)(2)(A) shall apply for purposes of paragraph (3)(B)(ii).

(i) Exchanges of qualified real property

(1) Treatment of property exchanged

(A) Exchanges solely for qualified exchange property

If an interest in qualified real property is exchanged solely for an interest in qualified exchange property in a transaction which qualifies under section 1031, no tax shall be imposed by subsection (c) by reason of such exchange.

(B) Exchanges where other property received

If an interest in qualified real property is exchanged for an interest in qualified exchange property and other property in a transaction which qualifies under section 1031, the amount of the tax imposed by subsection (c) by reason of such exchange shall be the amount of tax which (but for this subparagraph) would have been imposed on such exchange under subsection (c)(1), reduced by an amount which—

(i) bears the same ratio to such tax, as

(ii) the fair market value of the qualified exchange property bears to the fair mar-

ket value of the qualified real property exchanged.

For purposes of clause (ii) of the preceding sentence, fair market value shall be determined as of the time of the exchange.

(2) Treatment of qualified exchange property

For purposes of subsection (c)—

(A) any interest in qualified exchange property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was exchanged,

(B) any tax imposed by subsection (c) by reason of the exchange shall be treated as a tax imposed on a partial disposition, and

(C) paragraph (6) of subsection (c) shall be applied by treating material participation with respect to the exchanged property as material participation with respect to the qualified exchange property.

(3) Qualified exchange property

For purposes of this subsection, the term “qualified exchange property” means real property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the real property exchanged therefor originally qualified under subsection (a).

(Added Pub. L. 94-455, title XX, §2003(a), Oct. 4, 1976, 90 Stat. 1856; amended Pub. L. 95-472, §4(a), (c), Oct. 17, 1978, 92 Stat. 1334, 1336; Pub. L. 95-600, title VII, §702(d)(1), (2), (4), (5), Nov. 6, 1978, 92 Stat. 2928, 2929; Pub. L. 97-34, title IV, §421(a)-(d)(2)(A), (e), (f), (h)-(j)(2)(A), (3), (4), Aug. 13, 1981, 95 Stat. 306-313; Pub. L. 97-448, title I, §104(b)(1), (2), Jan. 12, 1983, 96 Stat. 2381; Pub. L. 98-369, div. A, title X, §1025(a), July 18, 1984, 98 Stat. 1030; Pub. L. 99-514, title I, §104(b)(3), Oct. 22, 1986, 100 Stat. 2105; Pub. L. 100-647, title VI, §6151(a), Nov. 10, 1988, 102 Stat. 3724; Pub. L. 101-508, title XI, §11802(f)(5), Nov. 5, 1990, 104 Stat. 1388-530; Pub. L. 105-34, title V, §§501(b), 504(a), (b), 508(c), title XIII, §1313(a), Aug. 5, 1997, 111 Stat. 845, 853, 854, 860, 1045; Pub. L. 108-311, title II, §207(22), Oct. 4, 2004, 118 Stat. 1178.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(4)(A)(i), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (c)(7)(D). Pub. L. 108-311 substituted “section 152(f)(2)” for “section 151(c)(4)”.

1997—Subsec. (a)(3). Pub. L. 105-34, §501(b), added par. (3).

Subsec. (b)(5)(A). Pub. L. 105-34, §504(b), struck out at end “For purposes of subsection (c), such surviving spouse shall not be treated as failing to use such property in a qualified use solely because such spouse rents such property to a member of such spouse’s family on a net cash basis.”

Subsec. (c)(7)(E). Pub. L. 105-34, §504(a), added subpar. (E).

Subsec. (c)(8). Pub. L. 105-34, § 508(c), added par. (8).

Subsec. (d)(3). Pub. L. 105-34, § 1313(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: "The Secretary shall prescribe procedures which provide that in any case in which—

"(A) the executor makes an election under paragraph (1) within the time prescribed for filing such election, and

"(B) substantially complies with the regulations prescribed by the Secretary with respect to such election, but—

"(i) the notice of election, as filed, does not contain all required information, or

"(ii) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or agreements."

1990—Subsec. (a)(2). Pub. L. 101-508 amended par. (2) generally, substituting present provisions for provisions which established graduated increase in applicable limit on aggregate reduction in fair market value from \$600,000 in the case of decedents dying in 1981 to \$750,000 in the case of decedents dying in 1983 or thereafter.

1988—Subsec. (b)(5)(A). Pub. L. 100-647 inserted at end "For purposes of subsection (c), such surviving spouse shall not be treated as failing to use such property in a qualified use solely because such spouse rents such property to a member of such spouse's family on a net cash basis."

1986—Subsec. (c)(7)(D). Pub. L. 99-514 substituted "section 151(c)(4)" for "section 151(e)(4)".

1984—Subsec. (d)(3). Pub. L. 98-369 added par. (3).

1983—Subsec. (b)(5)(C). Pub. L. 97-448, § 104(b)(1), added subpar. (C).

Subsec. (i)(1)(B)(ii). Pub. L. 97-448, § 104(b)(2)(A), substituted "the qualified exchange property" for "the other property".

Subsec. (i)(3). Pub. L. 97-448, § 104(b)(2)(B), substituted "subparagraph (A) or (B)" for "subparagraph (A), (B), or (C)".

1981—Subsec. (a)(2). Pub. L. 97-34, § 421(a), substituted "Limit on aggregate reduction in fair market value" for "Limitation" in heading "shall not exceed the applicable limit set forth in the following table:" for "shall not exceed \$500,000" in text, and inserted table.

Subsec. (b)(1). Pub. L. 97-34, § 421(b)(1), substituted "qualified use by the decedent or a member of the decedent's family" for "qualified use" in provision preceding subpar. (A), and in subpars. (A)(i) and (C)(i).

Subsec. (b)(4), (5). Pub. L. 97-34, § 421(b)(2), added pars. (4) and (5).

Subsec. (c)(1). Pub. L. 97-34, § 421(c)(1)(A), substituted "10 years" for "15 years".

Subsec. (c)(2)(E). Pub. L. 97-34, § 421(h)(2), added subpar. (E).

Subsec. (c)(3). Pub. L. 97-34, § 421(c)(1)(B)(i), redesignated par. (4) as (3) and struck out former par. (3), which provided for a phaseout of additional tax between the 10th and 15th years.

Subsec. (c)(4), (5). Pub. L. 97-34, § 421(c)(1)(B)(i), redesignated pars. (5) and (6) as (4) and (5), respectively. Former par. (4) redesignated (3).

Subsec. (c)(6). Pub. L. 97-34, § 421(c)(2)(B)(ii), in subpar. (B) substituted "more than 3 years" for "3 years or more".

Pub. L. 97-34, § 421(c)(1)(B)(i), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (c)(7). Pub. L. 97-34, § 421(c)(1)(B)(i), (2)(A), added par. (7). Former par. (7) redesignated (6).

Subsec. (d)(1). Pub. L. 97-34, § 421(j)(3), substituted "The election under this section shall be made on the return of the tax imposed by section 2001. Such election shall be made in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable." for "The election under this sec-

tion shall be made not later than the time prescribed by section 6075(a) for filing the return of tax imposed by section 2001 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe."

Subsec. (e)(2). Pub. L. 97-34, § 421(i), substituted provisions designated subpars. (A) through (D) for "such individual's ancestor or lineal descendant, a lineal descendant of a grandparent of such individual, the spouse of such individual, or the spouse of any such descendant".

Subsec. (e)(7). Pub. L. 97-34, § 421(f), added subpar. (B), redesignated former subpar. (B) as (C), and inserted "and that there is no comparable land from which the average net share rental may be determined" after "determined" in subpar. (C), without specifying whether the language was to be inserted in cl. (i) or (ii) of subpar. (C). In view of H. Rept. No. 97-201, 97th Cong., July 14, 1981, p. 492, the language was inserted in cl. (ii) as the probable intent of Congress.

Subsec. (e)(9). Pub. L. 97-34, § 421(j)(2)(A), struck out from subpar. (B) "in satisfaction of the right of such person to a pecuniary bequest" after "from the estate" and in subpar. (C) substituted "(to the extent such property is includible in the gross estate of the decedent)" for "in satisfaction of a right (which such person has by reason of the death of the decedent) to receive from the trust a specific dollar amount which is the equivalent of a pecuniary bequest".

Subsec. (e)(12). Pub. L. 97-34, § 421(c)(2)(B)(i), added par. (12).

Subsec. (e)(13), (14). Pub. L. 97-34, § 421(h)(1), (j)(4), added pars. (13) and (14).

Subsec. (f)(1). Pub. L. 97-34, § 421(e)(2), substituted "to which subsection (h)" for "to which an election under subsection (h)".

Pub. L. 97-34, § 421(d)(2)(A), substituted "conversion or exchange", "(h) or (i)", and "replace or of the exchange of property" for "conversion", "(h)", and "replace".

Subsec. (g). Pub. L. 97-34, § 421(j)(1), inserted provision that for purposes of the preceding sentence, an interest in a discretionary trust all the beneficiaries of which are qualified heirs shall be treated as a present interest.

Subsec. (h)(1)(A). Pub. L. 97-34, § 421(e)(1)(A), struck out "and the qualified heir makes an election under this subsection" after "qualified real property".

Subsec. (h)(2)(A). Pub. L. 97-34, § 421(c)(1)(B)(ii), substituted "; except that" for "except that" and "the 10-year period" for "the 15-year period", deleted cl. (i) designation, and struck out cl. (ii), which provided the phaseout period under par. (3) of subsec. (c) be appropriately adjusted to take into account the extension referred to in cl. (i).

Subsec. (h)(2)(C). Pub. L. 97-34, § 421(c)(1)(B)(iii), substituted "(6)" for "(7)" in provisions preceding cl. (i).

Subsec. (h)(5). Pub. L. 97-34, § 421(e)(1)(B), struck out par. (5) which provided for making a subsec. (h) election at such time and in such manner as the Secretary may by regulations prescribe.

Subsec. (i). Pub. L. 97-34, § 421(d)(1), added subsec. (i).

1978—Subsec. (b)(1). Pub. L. 95-600, § 702(d)(1), inserted "which was acquired from or passed from the decedent to a qualified heir of the decedent and" after "located in the United States".

Subsec. (c)(6). Pub. L. 95-600, § 702(d)(5)(A), inserted "unless the heir has furnished bond which meets the requirements of subsection (e)(11)" after "respect to his interest".

Subsec. (e)(9). Pub. L. 95-600, § 702(d)(2), added par. (9).

Subsec. (e)(10). Pub. L. 95-600, § 702(d)(4), added par. (10).

Subsec. (e)(11). Pub. L. 95-600, § 702(d)(5)(B), added par. (11).

Subsec. (f)(1). Pub. L. 95-472, § 4(c), inserted provision relating to the expiration of the statutory period for the assessment of additional tax due under subsec. (c) in the case of an involuntary conversion to which an election under subsec. (h) is applicable.

Subsec. (h). Pub. L. 95-472, §4(a), added subsec. (h).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108-311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 501(b) of Pub. L. 105-34 applicable to estates of decedents dying, and gifts made, after Dec. 31, 1997, see section 501(f) of Pub. L. 105-34, set out as a note under section 2001 of this title.

Section 504(c) of Pub. L. 105-34 provided that: "The amendments made by this section [amending this section] shall apply with respect to leases entered into after December 31, 1976."

Amendment by section 508(c) of Pub. L. 105-34 applicable to easements granted after Dec. 31, 1997, see section 508(e)(2) of Pub. L. 105-34, set out as a note under section 170 of this title.

Section 1313(b) of Pub. L. 105-34 provided that: "The amendment made by subsection (a) [amending this section] shall apply to the estates of decedents dying after the date of the enactment of this Act [Aug. 5, 1997]."

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6151(b) of Pub. L. 100-647 provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply with respect to rentals occurring after December 31, 1976.

"(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Nov. 10, 1988] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of the amendment made by subsection (a) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1025(b) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to estates of decedents dying after December 31, 1976.

"(2) REFUND OR CREDIT OF OVERPAYMENT BARRED BY STATUTE OF LIMITATIONS.—Notwithstanding section 6511(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of the enactment of this Act [July 18, 1984]. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 421(k) of Pub. L. 97-34, as amended by Pub. L. 97-448, title I, §104(b)(4), Jan. 12, 1983, 96 Stat. 2382; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 1016, 1040, and 6324B of this title] shall apply with respect to the estates of decedents dying after December 31, 1981.

"(2) INCREASE IN LIMITATION.—The amendment made by subsection (a) [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1980.

"(3) SUBSECTION (d).—The amendments made by subsection (d) [amending this section and section 6324B of this title] shall apply with respect to exchanges after December 31, 1981.

"(4) SUBSECTION (e).—The amendments made by subsection (e) [amending this section] shall apply with respect to involuntary conversions after December 31, 1981.

"(5) CERTAIN AMENDMENTS MADE RETROACTIVE TO 1976.—

"(A) IN GENERAL.—The amendments made by subsections (b)(1), (j)(1), and (j)(2) [amending this section and section 1040 of this title] and the provisions of subparagraph (A) of section 2032A(c)(7) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (c)(2)) shall apply with respect to the estates of decedents dying after December 31, 1976.

"(B) TIMELY ELECTION REQUIRED.—Subparagraph (A) shall only apply in the case of an estate if a timely election under section 2032A was made with respect to such estate. If the estate of any decedent would not qualify under section 2032A of the Internal Revenue Code of 1986 but for the amendments described in subparagraph (A) and the time for making an election under section 2032A with respect to such estate would (but for this sentence) expire after July 28, 1980, the time for making such election shall not expire before the close of February 16, 1982.

"(C) REINSTATEMENT OF ELECTIONS.—If any election under section 2032A was revoked before the date of the enactment of this Act [Aug. 13, 1981], such election may be reinstated at any time before February 17, 1982.

"(D) STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Aug. 13, 1981] (or at any time before February 17, 1982) the making of a credit or refund of any overpayment of tax resulting from the amendments described in subparagraph (A) is barred by any law or rule of law, such credit or refund shall nevertheless be made if claim therefor is made before February 17, 1982."

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 702(d)(6) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending this section and section 1040 of this title] shall apply to the estates of decedents dying after December 31, 1976."

Amendment of section by Pub. L. 95-472 applicable with respect to involuntary conversions after Dec. 31, 1976, see section 4(d) of Pub. L. 95-472, set out as a note under section 1016 of this title.

EFFECTIVE DATE

Section 2003(e) of Pub. L. 94-455 provided that: "The amendments made by this section [enacting this section and section 6324B of this title and amending section 2013 of this title] shall apply to the estates of decedents dying after December 31, 1976."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

WAIVER OF STATUTE OF LIMITATION FOR TAXES ON CERTAIN FARM VALUATIONS

Pub. L. 107-16, title V, §581, June 7, 2001, 115 Stat. 93, provided that: "If on the date of the enactment of this Act [June 7, 2001] (or at any time within 1 year after the date of the enactment) a refund or credit of any overpayment of tax resulting from the application of section 2032A(c)(7)(E) of the Internal Revenue Code of 1986 is barred by any law or rule of law, the refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefor is filed before the date 1 year after the date of the enactment of this Act."

INFORMATION NECESSARY FOR VALID SPECIAL USE VALUATION ELECTION

Section 1421 of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, §1014(f), Nov. 10, 1988, 102 Stat. 3562, provided that:

"(a) IN GENERAL.—In the case of any decedent dying before January 1, 1986, if the executor—

"(1) made an election under section 2032A of the Internal Revenue Code of 1954 [now 1986] on the return of tax imposed by section 2001 of such Code, and

"(2) provided substantially all the information with respect to such election required on such return of tax,

such election shall be a valid election for purposes of section 2032A of such Code.

"(b) EXECUTOR MUST PROVIDE INFORMATION.—An election described in subsection (a) shall not be valid if the Secretary of the Treasury or his delegate after the date of the enactment of this Act [Oct. 22, 1986] requests information from the executor with respect to such election and the executor does not provide such information within 90 days of receipt of such request.

"(c) EFFECTIVE DATE.—The provisions of this section shall not apply to the estate of any decedent if before the date of the enactment of this Act [Oct. 22, 1986] the statute of limitations has expired with respect to—

"(1) the return of tax imposed by section 2001 of the Internal Revenue Code of 1954 [now 1986], and

"(2) the period during which a claim for credit or refund may be timely filed.

"(d) SPECIAL RULE FOR CERTAIN ESTATE.—Notwithstanding subsection (a)(2), the provisions of this section shall apply to the estate of an individual who died on January 30, 1984, and with respect to which—

"(1) a Federal estate tax return was filed on October 30, 1984, electing current use valuation, and

"(2) the agreement required under section 2032A was filed on November 9, 1984."

LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM

Land diverted from production of agricultural commodities under a 1983 payment-in-kind program to be treated, for purposes of this section, as used during the 1983 crop year by qualified taxpayers in the active conduct of the trade or business of farming, with qualified taxpayers who materially participate in the diversion and devotion to conservation uses under a 1983 payment-in-kind program to be treated as materially participating in the operation of such land during the 1983 crop year, see section 3 of Pub. L. 98-4, set out as a note under section 61 of this title.

§ 2033. Property in which the decedent had an interest

The value of the gross estate shall include the value of all property to the extent of the interest therein of the decedent at the time of his death.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87-834, §18(a)(2)(A), Oct. 16, 1962, 76 Stat. 1052.)

AMENDMENTS

1962—Pub. L. 87-834 struck out provisions which exempted real property situated outside of the United States.

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.

[§ 2033A. Renumbered § 2057]

§ 2034. Dower or curtesy interests

The value of the gross estate shall include the value of all property to the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower or curtesy, or by virtue of a statute creating an estate in lieu of dower or curtesy.

(Aug. 16, 1954, ch. 736, 68A Stat. 381; Pub. L. 87-834, §18(a)(2)(B), Oct. 16, 1962, 76 Stat. 1052.)

AMENDMENTS

1962—Pub. L. 87-834 struck out provisions which exempted real property situated outside of the United States.

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.

§ 2035. Adjustments for certain gifts made within 3 years of decedent's death

(a) Inclusion of certain property in gross estate

If—

(1) the decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent's death, and

(2) the value of such property (or an interest therein) would have been included in the decedent's gross estate under section 2036, 2037, 2038, or 2042 if such transferred interest or relinquished power had been retained by the decedent on the date of his death,

the value of the gross estate shall include the value of any property (or interest therein) which would have been so included.

(b) Inclusion of gift tax on gifts made during 3 years before decedent's death

The amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

(c) Other rules relating to transfers within 3 years of death

(1) In general

For purposes of—

(A) section 303(b) (relating to distributions in redemption of stock to pay death taxes),

(B) section 2032A (relating to special valuation of certain farms, etc., real property), and