

TITLE 26 - INTERNAL REVENUE CODE
Subtitle B - Estate and Gift Taxes
CHAPTER 11 - ESTATE TAX
Subchapter A - Estates of Citizens or Residents
PART I - TAX IMPOSED

§ 2001. Imposition and rate of tax

(a) Imposition

A tax is hereby imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

(b) Computation of tax

The tax imposed by this section shall be the amount equal to the excess (if any) of—

- (1) a tentative tax computed under subsection (c) on the sum of—
 - (A) the amount of the taxable estate, and
 - (B) the amount of the adjusted taxable gifts, over
- (2) the aggregate amount of tax which would have been payable under chapter 12 with respect to gifts made by the decedent after December 31, 1976, if the provisions of subsection (c) (as in effect at the decedent's death) had been applicable at the time of such gifts.

For purposes of paragraph (1)(B), the term “adjusted taxable gifts” means the total amount of the taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts which are includible in the gross estate of the decedent.

(c) Rate schedule

(1) In general

If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Not over \$10,000	18 percent of such amount.
Over \$10,000 but not over \$20,000	\$1,800, plus 20 percent of the excess of such amount over \$10,000.
Over \$20,000 but not over \$40,000	\$3,800, plus 22 percent of the excess of such amount over \$20,000.
Over \$40,000 but not over \$60,000	\$8,200 plus 24 percent of the excess of such amount over \$40,000.
Over \$60,000 but not over \$80,000	\$13,000, plus 26 percent of the excess of such amount over \$60,000.
Over \$80,000 but not over \$100,000	\$18,200, plus 28 percent of the excess of such amount over \$80,000.
Over \$100,000 but not over \$150,000	\$23,800, plus 30 percent of the excess of such amount over \$100,000.
Over \$150,000 but not over \$250,000	\$38,800, plus 32 percent of the excess of such amount over \$150,000.
Over \$250,000 but not over \$500,000	\$70,800, plus 34 percent of the excess of such amount over \$250,000.
Over \$500,000 but not over \$750,000	\$155,800, plus 37 percent of the excess of such amount over \$500,000.
Over \$750,000 but not over \$1,000,000	\$248,300, plus 39 percent of the excess of such amount over \$750,000.
Over \$1,000,000 but not over \$1,250,000	\$345,800, plus 41 percent of the excess of such amount over \$1,000,000.

If the amount with respect to which the tentative tax to be computed is:	The tentative tax is:
Over \$1,250,000 but not over \$1,500,000	\$448,300, plus 43 percent of the excess of such amount over \$1,250,000.
Over \$1,500,000 but not over \$2,000,000	\$555,800, plus 45 percent of the excess of such amount over \$1,500,000.
Over \$2,000,000 but not over \$2,500,000	\$780,800, plus 49 percent of the excess of such amount over \$2,000,000.
Over \$2,500,000	\$1,025,800, plus 50% of the excess over \$2,500,000.

(2) Phasedown of maximum rate of tax

(A) In general

In the case of estates of decedents dying, and gifts made, in calendar years after 2002 and before 2010, the tentative tax under this subsection shall be determined by using a table prescribed by the Secretary (in lieu of using the table contained in paragraph (1)) which is the same as such table; except that—

- (i) the maximum rate of tax for any calendar year shall be determined in the table under subparagraph (B), and
- (ii) the brackets and the amounts setting forth the tax shall be adjusted to the extent necessary to reflect the adjustments under subparagraph (A).

(B) Maximum rate

The maximum

In calendar year: rate is:

- 2003 49 percent
- 2004 48 percent
- 2005 47 percent
- 2006 46 percent
- 2007, 2008, and 2009 45 percent.

(d) Adjustment for gift tax paid by spouse

For purposes of subsection (b)(2), if—

- (1) the decedent was the donor of any gift one-half of which was considered under section 2513 as made by the decedent’s spouse, and
- (2) the amount of such gift is includible in the gross estate of the decedent,

any tax payable by the spouse under chapter 12 on such gift (as determined under section 2012 (d)) shall be treated as a tax payable with respect to a gift made by the decedent.

(e) Coordination of sections 2513 and 2035

If—

- (1) the decedent’s spouse was the donor of any gift one-half of which was considered under section 2513 as made by the decedent, and
- (2) the amount of such gift is includible in the gross estate of the decedent’s spouse by reason of section 2035,

such gift shall not be included in the adjusted taxable gifts of the decedent for purposes of subsection (b)(1)(B), and the aggregate amount determined under subsection (b)(2) shall be reduced by the amount (if any) determined under subsection (d) which was treated as a tax payable by the decedent’s spouse with respect to such gift.

(f) Valuation of gifts

(1) In general

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscp.html>).

If the time has expired under section 6501 within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on—

(A) the transfer of property by gift made during a preceding calendar period (as defined in section 2502 (b)); or

(B) an increase in taxable gifts required under section 2701 (d),

the value thereof shall, for purposes of computing the tax under this chapter, be the value as finally determined for purposes of chapter 12.

(2) Final determination

For purposes of paragraph (1), a value shall be treated as finally determined for purposes of chapter 12 if—

(A) the value is shown on a return under such chapter and such value is not contested by the Secretary before the expiration of the time referred to in paragraph (1) with respect to such return;

(B) in a case not described in subparagraph (A), the value is specified by the Secretary and such value is not timely contested by the taxpayer; or

(C) the value is determined by a court or pursuant to a settlement agreement with the Secretary.

For purposes of subparagraph (A), the value of an item shall be treated as shown on a return if the item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

(Aug. 16, 1954, ch. 736, 68A Stat. 373; Pub. L. 94-455, title XX, § 2001(a)(1), Oct. 4, 1976, 90 Stat. 1846; Pub. L. 95-600, title VII, § 702(h)(1), Nov. 6, 1978, 92 Stat. 2930; Pub. L. 97-34, title IV, § 402(a)-(c), Aug. 13, 1981, 95 Stat. 300; Pub. L. 98-369, div. A, title I, § 21(a), July 18, 1984, 98 Stat. 506; Pub. L. 100-203, title X, § 10401(a)-(b)(2)(A), Dec. 22, 1987, 101 Stat. 1330-430, 1330-431; Pub. L. 103-66, title XIII, § 13208(a)-(b)(2), Aug. 10, 1993, 107 Stat. 469; Pub. L. 105-34, title V, §§ 501(a)(1)(D), 506 (a), Aug. 5, 1997, 111 Stat. 845, 855; Pub. L. 105-206, title VI, § 6007(e)(2)(B), July 22, 1998, 112 Stat. 810; Pub. L. 105-277, div. J, title IV, § 4003(c), Oct. 21, 1998, 112 Stat. 2681-909; Pub. L. 107-16, title V, § 511(a)-(c), June 7, 2001, 115 Stat. 70.)

Amendment of Section

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

Amendments

2001—Subsec. (c)(1). Pub. L. 107-16, §§ 511(a), 901, temporarily substituted in table provisions that if the amount on which the tax is computed is over \$2,500,000, then the tentative tax is \$1,025,800, plus 50% of the excess over \$2,500,000 for provisions that if the amount on which the tax is computed is over \$2,500,000 but not over \$3,000,000, then the tentative tax is \$1,025,800, plus 53% of the excess over \$2,500,000, and if the amount on which the tax is computed is over \$3,000,000, then the tentative tax is \$1,290,800, plus 55% of the excess over \$3,000,000. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2). Pub. L. 107-16, §§ 511(c), 901, temporarily added par. (2). See Effective and Termination Dates of 2001 Amendment note below.

Pub. L. 107-16, §§ 511(b), 901, temporarily struck out heading and text of par. (2). Text read as follows: “The tentative tax determined under paragraph (1) shall be increased by an amount equal to 5 percent of so much of the amount (with respect to which the tentative tax is to be computed) as exceeds \$10,000,000 but does not exceed the amount at which the average tax rate under this section is 55 percent.” See Effective and Termination Dates of 2001 Amendment note below.

1998—Subsec. (f). Pub. L. 105-206, § 6007(e)(2)(B), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If—

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“(1) the time has expired within which a tax may be assessed under chapter 12 (or under corresponding provisions of prior laws) on the transfer of property by gift made during a preceding calendar period (as defined in section 2502 (b)), and

“(2) the value of such gift is shown on the return for such preceding calendar period or is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such gift,

the value of such gift shall, for purposes of computing the tax under this chapter, be the value of such gift as finally determined for purposes of chapter 12.”

Subsec. (f)(2). Pub. L. 105–277 inserted concluding provisions.

1997—Subsec. (c)(2). Pub. L. 105–34, § 501(a)(1)(D), substituted “the amount at which the average tax rate under this section is 55 percent” for “\$21,040,000”.

Subsec. (f). Pub. L. 105–34, § 506(a), added subsec. (f).

1993—Subsec. (c)(1). Pub. L. 103–66, § 13208(a), substituted in table provisions that if the amount on which the tax is computed is over \$2,500,000 but not over \$3,000,000, then the tentative tax is \$1,025,800, plus 53% of the excess over \$2,500,000 and if the amount on which the tax is computed is over \$3,000,000, then the tentative tax is \$1,290,800, plus 55% of the excess over \$3,000,000 for provisions that if the amount on which the tax is computed is over \$2,500,000, then the tentative tax is \$1,025,800, plus 50% of the excess over \$2,500,000.

Subsec. (c)(2), (3). Pub. L. 103–66, § 13208(b)(1), (2), redesignated par. (3) as (2), struck out “(\$18,340,000 in the case of decedents dying, and gifts made, after 1992)” after “exceed \$21,040,000”, and struck out former par. (2) which related to the rates of tax on estates under this section for the years 1982 to 1992.

1987—Subsec. (b)(1). Pub. L. 100–203, § 10401(b)(2)(A)(i), substituted “under subsection (c)” for “in accordance with the rate schedule set forth in subsection (c)”.

Subsec. (b)(2). Pub. L. 100–203, § 10401(b)(2)(A)(ii), substituted “the provisions of subsec. (c)” for “the rate schedule set forth in subsection (c)”.

Subsec. (c)(2)(A). Pub. L. 100–203, § 10401(a)(1), substituted “1993” for “1988”.

Subsec. (c)(2)(D). Pub. L. 100–203, § 10401(a)(2), (3), substituted in heading “After 1983 and before 1993” for “For 1984, 1985, 1986, or 1987”, and in text “after 1983 and before 1993” for “in 1984, 1985, 1986, or 1987”.

Subsec. (c)(3). Pub. L. 100–203, § 10401(b)(1), added par. (3).

1984—Subsec. (c)(2)(A), (D). Pub. L. 98–369 substituted “1988” for “1985” in subpar. (A) and substituted “1984, 1985, 1986, or 1987” for “1984” in heading and text of subpar. (D).

1981—Subsec. (b)(2). Pub. L. 97–34, § 402(c), inserted “which would have been” before “payable” and “, if the rate schedule set forth in subsection (c) (as in effect at the decedent’s death) had been applicable at the time of such gifts” after “December 31, 1976.”.

Subsec. (c). Pub. L. 97–34, § 402(a), (b)(1), designated existing provision as par. (1), inserted heading “In general” and substituted in table provision that if the amount computed is over \$2,500,000 then the tentative tax is \$1,025,800 plus 50% of the excess over \$2,500,000 for provisions that if the amount computed is over \$2,500,000 but not over \$3,000,000, then the tentative tax is \$1,025,800 plus 53% of the excess over \$2,500,000, over \$3,000,000 but not over \$3,500,000 then the tentative tax is \$1,290,800 plus 57% of the excess over \$3,000,000, over \$3,500,000 but not over \$4,000,000 then the tentative tax is \$1,575,800 plus 61% of the excess over \$3,500,000, over \$4,000,000 but not over \$4,500,000 then the tentative tax is \$1,880,800 plus 65% of the excess over \$4,000,000, over \$4,500,000 but not over \$5,000,000 then the tentative tax is \$2,205,800 plus 69% of the excess over \$4,500,000, over \$5,000,000 then the tentative tax is \$2,550,800 plus 70% of the excess over \$5,000,000, and added par. (2).

1978—Subsec. (e). Pub. L. 95–600 added subsec. (e).

1976—Pub. L. 94–455 substituted provisions setting a unified rate schedule for estate and gift taxes ranging from 18 percent for the first \$10,000 in taxable transfers to 70 percent of taxable transfers in excess of \$5,000,000, with provision for adjustments for gift taxes paid by spouses, for provisions setting an estate tax of 3 percent of the first \$5,000 of the taxable estate to 77 percent of the taxable estate in excess of \$10,000,000.

Effective and Termination Dates of 2001 Amendment

Pub. L. 107–16, title V, § 511(f)(1), (2), June 7, 2001, 115 Stat. 71, provided that:

“(1) Subsections (a) and (b).—The amendments made by subsections (a) and (b) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2001.

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“(2) Subsection (c).—The amendment made by subsection (c) [amending this section] shall apply to estates of decedents dying, and gifts made, after December 31, 2002.”

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

Effective Date of 1998 Amendments

Amendment by Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(l) of Pub. L. 105–277, set out as a note under section 86 of this title.

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Effective Date of 1997 Amendment

Section 501(f) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, § 6007(a)(2), July 22, 1998, 112 Stat. 807, provided that: “The amendments made by this section [amending this section and sections 2010, 2032A, 2102, 2503, 2505, 2631, 6018, and 6601 of this title] (other than the amendment made by subsection (d) [amending section 2631 of this title]) shall apply to the estates of decedents dying, and gifts made, after December 31, 1997.”

Section 506(e)(1) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, § 6007(e)(1), July 22, 1998, 112 Stat. 809, provided that: “The amendments made by subsections (a), (c), and (d) [enacting section 7477 of this title and amending this section and section 2504 of this title] shall apply to gifts made after the date of the enactment of this Act [Aug. 5, 1997].”

Effective Date of 1993 Amendment

Section 13208(c) of Pub. L. 103–66 provided that: “The amendments made by this section [amending this section and section 2101 of this title] shall apply in the case of decedents dying and gifts made after December 31, 1992.”

Effective Date of 1987 Amendment

Section 10401(c) of Pub. L. 100–203 provided that: “The amendments made by this section [amending this section and section 2502 of this title] shall apply in the case of decedents dying, and gifts made, after December 31, 1987.”

Effective Date of 1984 Amendment

Section 21(b) of Pub. L. 98–369 provided that: “The amendments made by subsection (a) [amending this section] shall apply to the estates of decedents dying after, and gifts made after, December 31, 1983.”

Effective Date of 1981 Amendment

Section 402(d) of Pub. L. 97–34 provided that: “The amendments made by this section [amending this section] shall apply to estates of decedents dying after, and gifts made after, December 31, 1981.”

Effective Date of 1978 Amendment

Section 702(h)(3) of Pub. L. 95–600 provided that: “The amendments made by this subsection [amending this section and section 2602 of this title] shall apply with respect to the estates of decedents dying after December 31, 1976, except that such amendments shall not apply to transfers made before January 1, 1977.”

Effective Date of 1976 Amendment

Section 2001(d)(1) of Pub. L. 94–455 provided that: “The amendments made by subsections (a) [enacting section 2010, amending this section and sections 2012 and 2035, and repealing section 2052 of this title] and (c)(1) [amending sections 2011, 2012, 2013, 2014, 2038, 2044, 2101, 2102, 2104, 2106, 2107, 2206, 2207, and 6018 of this title] shall apply to the estates of decedents dying after December 31, 1976; except that the amendments made by subsection (a)(5) [amending section 2035 of this title] and subparagraphs (K) and (L) of subsection (c)(1) [amending sections 2038 and 2104 of this title] shall not apply to transfers made before January 1, 1977.”

Short Title

Pub. L. 91–614, § 1(a), Dec. 31, 1970, 84 Stat. 1836, provided that: “This Act [enacting section 6905 of this title, section 1232a of Title 15, Commerce and Trade, and section 1033 of former Title 31, Money and Finance, amending sections 56, 1015, 1223, 2012, 2032, 2055, 2204, 2501, 2502, 2503, 2504, 2512, 2513, 2515, 2521, 2522, 2523, 4061, 4063, 4216, 4251, 4491, 6019, 6040, 6075, 6091, 6161, 6212, 6214, 6324, 6412, 6416, 6501, 6504, and 6512 of this title, and enacting provisions set out as notes under sections 56, 2032, 2204, 2501, 4063, 4216, 4251, 4491, and 6905 of this title] may be cited as the ‘Excise, Estate, and Gift Tax Adjustment Act of 1970’.”

Clarification of Treatment of Certain Exemptions for Purposes of Federal Estate and Gift Taxes

Section 641 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) General Rule.—Nothing in any provision of law exempting any property (or interest therein) from taxation shall exempt the transfer of such property (or interest therein) from Federal estate, gift, and generation-skipping transfer taxes. In the case of any provision of law enacted after the date of the enactment of this Act [July 18, 1984], such provision shall not be treated as exempting the transfer of property from Federal estate, gift, and generation-skipping transfer taxes unless it refers to the appropriate provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

“(b) Effective Date.—

“(1) In general.—The provisions of subsection (a) shall apply to the estates of decedents dying, gifts made, and transfers made on or after June 19, 1984.

“(2) Treatment of certain transfers treated as taxable.—The provisions of subsection (a) shall also apply in the case of any transfer of property (or interest therein) if at any time there was filed an estate or gift tax return showing such transfer as subject to Federal estate or gift tax.

“(3) No inference.—No inference shall arise from paragraphs (1) and (2) that any transfer of property (or interest therein) before June 19, 1984, is exempt from Federal estate and gift taxes.”

Reports With Transfers of Public Housing Bonds

Section 642 of Pub. L. 98–369 provided that:

“(a) General Rule.—With respect to transfers of public housing bonds occurring after December 31, 1983, and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax.

“(b) Penalty for Failure to Report.—Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift, or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject.”