

(iv) Provides all information necessary to show that the executor is entitled to make the election.

(2) *Additional information required.* If later regulations issued under section 2032A(e)(13) require the executor to furnish information in addition to that required under paragraph (a)(1) of this section and an office of the Internal Revenue Service requests the executor to furnish the additional information, the executor shall furnish the additional information in a statement filed with that office of the Internal Revenue Service within 60 days after the request is made. The statement shall also contain the information required by paragraphs (a)(1) (i), (ii), and (iii) of this section. If the additional information is not provided within 60 days after the request is made, the election may, at the discretion of the Commissioner, be held invalid.

(b) *Election of special use valuation for qualified real property.* This paragraph applies to the election of special use valuation for qualified real property under section 2032A(d)(1) of the Code, as amended by section 421(j)(3) of the Economic Recovery Tax Act of 1981. This election shall be made in the manner prescribed in §20.2032A-8(a)(3), except that the election shall be valid even if the estate tax return is not timely filed.

(c) *Elections irrevocable.* Elections to which this section applies may not be revoked.

(d) *Effective date.* The elections described in this section are available with respect to the estates of decedents dying after 1981.

[T.D. 7793, 46 FR 54540, Nov. 3, 1981]

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

GIFT TAX

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- 25.7520-4 Transitional rules.

AUTHORITY: 26 U.S.C. 7805.

Section 25.2512-5 also issued under 26 U.S.C. 7520(c)(2).

Section 25.2512-5A also issued under 26 U.S.C. 7520(c)(2).

Section 25.2518-2 is also issued under 26 U.S.C. 2518(b).

Section 25.6081-1T also issued under the authority of 26 U.S.C. 6081(a).

Section 25.6302-1 also issued under 26 U.S.C. 6302(a) and (h).

Section 25.7520-1 also issued under 26 U.S.C. 7520(c)(2).

Section 25.7520-2 also issued under 26 U.S.C. 7520(c)(2).

Section 25.7520-3 also issued under 26 U.S.C. 7520(c)(2).

Section 25.7520-4 also issued under 26 U.S.C. 7520(c)(2).

SOURCE: T.D. 6334, 23 FR 8904, Nov. 15, 1958; 25 FR 14021, Dec. 31, 1960, unless otherwise noted.

GIFT TAX

§ 25.0-1 Introduction.

(a) *In general.* (1) The regulations in this part are designated "Gift Tax Regulations." These regulations pertain to (i) the gift tax imposed by Chapter 12 of Subtitle B of the Internal Revenue Code on the transfer of property by gift by individuals in the calendar year 1955, in subsequent calendar years beginning before the calendar year 1971, in calendar quarters beginning with the first calendar quarter of calendar year 1971 through the last calendar quarter of the calendar year 1981, and in calendar years beginning with the calendar year 1982, and (ii) certain related administrative provisions of Subtitle F of the Code. It should be noted

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that the application of some of the provisions of these regulations may be affected by the provisions of an applicable gift tax convention with a foreign country. Unless otherwise indicated, references in these regulations to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, and references to a section or other provision of law are references to a section or other provision of the Internal Revenue Code of 1954, as amended. The Gift Tax Regulations are applicable to the transfer of property by gift by individuals in calendar years 1955 through 1970, in calendar quarters beginning with the first calendar quarter of calendar year 1971 through the last calendar quarter of the calendar year 1981, and in calendar years beginning with the calendar year 1982, and supersede the regulations contained in part 86, subchapter B, Chapter 1, Title 26, Code of Federal Regulations (1939) (Regulations 108, Gift Tax (8 FR 10858)), as prescribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 FR 5167, Aug. 17, 1954).

(2) Section 2501(b) makes the provisions of Chapter 12 of the Code apply in the case of gifts made after September 2, 1958, by certain citizens of the United States who were residents of a possession thereof at the time the gifts were made. Section 2501(c) makes the provisions of Chapter 12 apply in the case of gifts made after September 14, 1960, by certain other citizens of the United States who were residents of a possession thereof at the time the gifts were made. See paragraphs (c) and (d) of § 25.2501-1. Except as otherwise provided in paragraphs (c) and (d) of § 25.2501-1, the provisions of these regulations do not apply to the making of gifts by such citizens.

(b) *Nature of tax.* The gift tax is not a property tax. It is a tax imposed upon the transfer of property by individuals. It is not applicable to transfers by corporations or persons other than individuals. However, see paragraph (h)(1) of § 25.2511-1 with respect to the extent to which a transfer by or to a corporation is considered a transfer by or to its shareholders.

(c) *Scope of regulations*—(1) *Determination of tax liability.* subchapter A of Chapter 12 of the Code pertains to the determination of tax liability. The regulations pursuant to subchapter A are set forth in §§ 25.2501-1 through 25.2504-2. Sections 25.2701-5 and 25.2702-6 contain rules that provide additional adjustments to mitigate double taxation where the amount of the transferor's property was previously determined under the special valuation provisions of sections 2701 and 2702.

(2) *Transfer.* Subchapter B of chapter 12 and chapter 14 of the Internal Revenue Code pertain to the transfers which constitute the making of gifts and the valuation of those transfers. The regulations pursuant to subchapter B are set forth in §§ 25.2511-1 through 25.2518-3. The regulations pursuant to chapter 14 are set forth in §§ 25.2701-1 through 25.2704-3.

(3) *Deductions.* Subchapter C of Chapter 12 of the Code pertains to the deductions which are allowed in determining the amount of taxable gifts. The regulations pursuant to Subchapter C are set forth in §§ 25.2521-1 through 25.2524-1.

(4) *Procedure and administration provisions.* Subtitle F of the Internal Revenue Code contains some sections which are applicable to the gift tax. The regulations pursuant to those sections are set forth in §§ 25.6001-1 through 25.7101-1. Such regulations do not purport to be all the regulations on procedure and administration which are pertinent to gift tax matters. For the remainder of the regulations on procedure and administration which are pertinent to gift tax matters, see part 301 of this chapter (Regulations on Procedure and Administration).

(d) *Arrangement and numbering.* Each section of the regulations in this part (other than this section) is designated by a number composed of the part number followed by a decimal point (25.); the section of the Internal Revenue Code which it interprets; a hyphen (-); and a number identifying this section. By use of these designations one can ascertain the sections of the regulations relating to a provision of the Code. For example, the regulations

pertaining to section 2521 of the Code are designated § 25.2521-1.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 6542, 26 FR 548, Jan. 20, 1961; 45 FR 6089, Jan. 25, 1980; T.D. 7910, 48 FR 40372, Sept. 7, 1983; T.D. 8395, 57 FR 4254, Feb. 4, 1992]

DETERMINATION OF TAX LIABILITY

§ 25.2207A-1 Right of recovery of gift taxes in the case of certain marital deduction property.

(a) *In general.* If an individual is treated as transferring an interest in property by reason of section 2519, the individual or the individual's estate is entitled to recover from the *person receiving the property* (as defined in paragraph (e) of this section) the amount of gift tax attributable to that property. The value of property to which this paragraph (a) applies is the value of all interests in the property other than the qualifying income interest. There is no right of recovery from any person for the property received by that person for which a deduction was allowed from the total amount of gifts, if no Federal gift tax is attributable to the property. The right of recovery arises at the time the Federal gift tax is actually paid by the transferor subject to section 2519.

(b) *Failure of a person to exercise the right of recovery.* (1) The failure of a person to exercise a right of recovery provided by section 2207A(b) upon a lifetime transfer subject to section 2519 is treated as a transfer for Federal gift tax purposes of the unrecovered amounts to the person(s) from whom the recovery could have been obtained. See § 25.2511-1. The transfer is considered to be made when the right to recovery is no longer enforceable under applicable law and is treated as a gift even if recovery is impossible. A delay in the exercise of the right of recovery without payment of sufficient interest is a below-market loan. Section 1.7872-5T of this chapter describes factors that are used to determine, based on the facts and circumstances of a particular case, whether a loan otherwise subject to imputation under section 7872 (relating to the treatment of below-market loans) is exempted from its provisions.