

## 26 U.S. Code § 691. Recipients of income in respect of decedents

U.S. Code    Notes

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### **(a) INCLUSION IN GROSS INCOME**

**(1) GENERAL RULE** The amount of all items of gross income in respect of a decedent which are not properly includible in respect of the taxable period in which falls the date of his death or a prior period (including the amount of all items of gross income in respect of a prior decedent, if the right to receive such amount was acquired by reason of the death of the prior decedent or by bequest, devise, or inheritance from the prior decedent) shall be included in the gross income, for the taxable year when received, of:

**(A)** the estate of the decedent, if the right to receive the amount is acquired by the decedent's estate from the decedent;

**(B)** the person who, by reason of the death of the decedent, acquires the right to receive the amount, if the right to receive the amount is not acquired by the decedent's estate from the decedent;

decedent; or

**(C)** the person who acquires from the decedent the right to receive the amount by bequest, devise, or inheritance, if the amount is received after a distribution by the decedent's estate of such right.

**(2) INCOME IN CASE OF SALE, ETC.**

If a right, described in paragraph (1), to receive an amount is transferred by the estate of the decedent or a person who received such right by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent, there shall be included in the gross income of the estate or such person, as the case may be, for the taxable period in which the transfer occurs, the fair market value of such right at the time of such transfer plus the amount by which any consideration for the transfer exceeds such fair market value. For purposes of this paragraph, the term "transfer" includes sale, exchange, or other disposition, or the satisfaction of an installment obligation at other than face value, but does not include transmission at death to the estate of the decedent or a transfer to a person pursuant to the right of such person to receive such amount by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent.

**(3) CHARACTER OF INCOME DETERMINED BY REFERENCE TO DECEDENT**

The right, described in paragraph (1), to receive an amount shall be treated, in the hands of the estate of the decedent or any person who acquired such right by reason of the death of the decedent, or by bequest, devise, or inheritance from the decedent, as if it had been acquired by the estate or such person in the transaction in which the right to receive the income was originally derived and the amount includible in gross income under paragraph (1) or (2) shall be considered in the hands of the estate or such person to have the character which it would have had in the hands of the decedent if the decedent had lived and received such amount.

**(4) INSTALLMENT OBLIGATIONS ACQUIRED FROM DECEDENT** In the case of an installment obligation reportable by the decedent on the installment method under section 453, if such obligation is acquired by the decedent's estate from the decedent or by any person by reason of the death of the decedent or by bequest, devise, or inheritance from the decedent—

**(A)** an amount equal to the excess of the face amount of such obligation over the basis of the obligation in the hands of the decedent (determined under section 453B) shall, for the purpose of paragraph (1), be considered as an item of gross income in respect of the decedent; and

**(B)** such obligation shall, for purposes of paragraphs (2) and (3), be considered a right to receive an item of gross income in respect of the decedent, but the amount includible in gross income under paragraph (2) shall be reduced by an amount equal to the basis of the obligation in the hands of the decedent (determined under section 453B).

#### **(5) OTHER RULES RELATING TO INSTALLMENT OBLIGATIONS**

**(A) In general** In the case of an installment obligation reportable by the decedent on the installment method under section 453, for purposes of paragraph (2)—

**(i)** the second sentence of paragraph (2) shall be applied by inserting “(other than the obligor)” after “or a transfer to a person”,

**(ii)** any cancellation of such an obligation shall be treated as a transfer, and

**(iii)** any cancellation of such an obligation occurring at the death of the decedent shall be treated as a transfer by the estate of the decedent (or, if held by a person other than the decedent before the death of the decedent, by such person).

#### **(B) Face amount treated as fair market value in certain cases**

In any case to which the first sentence of paragraph (2) applies by reason of subparagraph (A), if the decedent and the obligor were related persons (within the meaning of section 453(f)(1)), the fair market value of the installment obligation shall be treated as not less than its face amount.

#### **(C) Cancellation includes becoming unenforceable**

For purposes of subparagraph (A), an installment obligation which becomes unenforceable shall be treated as if it were canceled.

**(b) ALLOWANCE OF DEDUCTIONS AND CREDIT** The amount of any deduction specified in section 162, 163, 164, 212, or 611 (relating to deductions for expenses, interest, taxes, and depletion) or credit specified in section 27 (relating to foreign tax credit), in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed:

**(1) EXPENSES, INTEREST, AND TAXES** In the case of a deduction specified in section 162, 163, 164, or 212 and a credit specified in section 27, in the taxable year when paid—

**(A)** to the estate of the decedent; except that

**(B)** if the estate of the decedent is not liable to discharge the obligation to which the deduction or credit relates, to the person who, by reason of the death of the decedent or by bequest, devise, or inheritance acquires, subject to such obligation, from the decedent an interest in property of the decedent.

**(2) DEPLETION**

In the case of the deduction specified in section 611, to the person described in subsection (a)(1) (A), (B), or (C) who, in the manner described therein, receives the income to which the deduction relates, in the taxable year when such income is received.

**(c) DEDUCTION FOR ESTATE TAX**

**(1) ALLOWANCE OF DEDUCTION**

**(A) General rule**

A person who includes an amount in gross income under subsection (a) shall be allowed, for the same taxable year, as a deduction an amount which bears the same ratio to the estate tax attributable to the net value for estate tax purposes of all the items described in subsection (a) (1) as the value for estate tax purposes of the items of gross income or portions thereof in respect of which such person included the amount in gross income (or the amount included in

gross income, whichever is lower) bears to the value for estate tax purposes of all the items described in subsection (a)(1).

### **(B) Estates and trusts**

In the case of an estate or trust, the amount allowed as a deduction under subparagraph (A) shall be computed by excluding from the gross income of the estate or trust the portion (if any) of the items described in subsection (a)(1) which is properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

## **(2) METHOD OF COMPUTING DEDUCTION** For purposes of paragraph (1)—

**(A)** The term “estate tax” means the tax imposed on the estate of the decedent or any prior decedent under section 2001 or 2101, reduced by the credits against such tax.

**(B)** The net value for estate tax purposes of all the items described in subsection (a)(1) shall be the excess of the value for estate tax purposes of all the items described in subsection (a)(1) over the deductions from the gross estate in respect of claims which represent the deductions and credit described in subsection (b). Such net value shall be determined with respect to the provisions of section 421(c)(2), relating to the deduction for estate tax with respect to stock options to which part II of subchapter D applies.

**(C)** The estate tax attributable to such net value shall be an amount equal to the excess of the estate tax over the estate tax computed without including in the gross estate such net value.

## **(3) SPECIAL RULE FOR GENERATION-SKIPPING TRANSFERS**

In the case of any tax imposed by chapter 13 on a taxable termination or a direct skip occurring as a result of the death of the transferor, there shall be allowed a deduction (under principles similar to the principles of this subsection) for the portion of such tax attributable to items of gross income of the trust which were not properly includible in the gross income of the trust for periods before the date of such termination.

#### **(4) COORDINATION WITH CAPITAL GAIN PROVISIONS**

For purposes of sections 1(h), 1202, and 1211, the amount taken into account with respect to any item described in subsection (a)(1) shall be reduced (but not below zero) by the amount of the deduction allowable under paragraph (1) of this subsection with respect to such item.

#### **(d) AMOUNTS RECEIVED BY SURVIVING ANNUITANT UNDER JOINT AND SURVIVOR ANNUITY CONTRACT**

##### **(1) DEDUCTION FOR ESTATE TAX** For purposes of computing the deduction under subsection (c)(1)

(A), amounts received by a surviving annuitant—

**(A)** as an annuity under a joint and survivor annuity contract where the decedent annuitant died after the annuity starting date (as defined in section 72(c)(4)), and

**(B)** during the surviving annuitant's life expectancy period,

shall, to the extent included in gross income under section 72, be considered as amounts included in gross income under subsection (a).

**(2) NET VALUE FOR ESTATE TAX PURPOSES** In determining the net value for estate tax purposes under subsection (c)(2)(B) for purposes of this subsection, the value for estate tax purposes of the items described in paragraph (1) of this subsection shall be computed—

**(A)** by determining the excess of the value of the annuity at the date of the death of the deceased annuitant over the total amount excludable from the gross income of the surviving annuitant under section 72 during the surviving annuitant's life expectancy period, and

**(B)** by multiplying the figure so obtained by the ratio which the value of the annuity for estate tax purposes bears to the value of the annuity at the date of the death of the deceased.

**(3) DEFINITIONS** For purposes of this subsection—

**(A)** The term "life expectancy period" means the period beginning with the first day of the first period for which an amount is received by the surviving annuitant under the contract and ending with the close of the taxable year with or in which falls the termination of the life expectancy of the surviving annuitant. For purposes of this subparagraph, the life expectancy of

expectancy of the surviving annuitant. For purposes of this subparagraph, the life expectancy of the surviving annuitant shall be determined, as of the date of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary.

**(B)** The surviving annuitant's expected return under the contract shall be computed, as of the death of the deceased annuitant, with reference to actuarial tables prescribed by the Secretary.

**(e) CROSS REFERENCE**

For application of this section to income in respect of a deceased partner, see section 753.

(Aug. 16, 1954, ch. 736, 68A Stat. 235; Pub. L. 88-272, title II, § 221(c)(2), Feb. 26, 1964, 78 Stat. 75; Pub. L. 88-570, § 1, Sept. 2, 1964, 78 Stat. 854; Pub. L. 94-455, title XIX, §§ 1901(a)(91), 1906(b)(13) (A), 1951(b)(10)(A), title XX, §§ 2005(a)(4), 2006(b)(3), Oct. 4, 1976, 90 Stat. 1779, 1834, 1839, 1876, 1889; Pub. L. 95-600, title VII, § 702(b)(1), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 96-222, title I, § 101(a)(8)(A), Apr. 1, 1980, 94 Stat. 201; Pub. L. 96-223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 96-471, §§ 2(b)(5), 3, Oct. 19, 1980, 94 Stat. 2254; Pub. L. 97-34, title IV, § 403(a)(2)(C), Aug. 13, 1981, 95 Stat. 301; Pub. L. 98-369, div. A, title IV, § 474(r)(18), July 18, 1984, 98 Stat. 843; Pub. L. 99-514, title III, § 301(b)(8), title XIV, § 1432(a)(3), Oct. 22, 1986, 100 Stat. 2217, 2729; Pub. L. 100-203, title X, § 10202(c)(3), Dec. 22, 1987, 101 Stat. 1330-392; Pub. L. 100-647, title I, § 1011A(g)(10), Nov. 10, 1988, 102 Stat. 3482; Pub. L. 101-239, title VII, § 7841(d)(3), Dec. 19, 1989, 103 Stat. 2428; Pub. L. 101-508, title XI, § 11101(d)(4), Nov. 5, 1990, 104 Stat. 1388-405; Pub. L. 102-318, title V, § 521(b)(27), July 3, 1992, 106 Stat. 312; Pub. L. 103-66, title XIII, § 13113(d)(4), Aug. 10, 1993, 107 Stat. 430; Pub. L. 104-188, title I, §§ 1401(b)(9), 1704(t)(73), Aug. 20, 1996, 110 Stat. 1789, 1891; Pub. L. 105-34, title X, § 1073(b)(1), Aug. 5, 1997, 111 Stat. 948; Pub. L. 108-311, title IV, § 402(a)(4), Oct. 4, 2004, 118 Stat. 1184; Pub. L. 113-295, div. A, title II, § 221(a)(66), Dec. 19, 2014, 128 Stat. 4048; Pub. L. 115-97, title I, § 13001(b)(2)(F), Dec. 22, 2017, 131 Stat. 2096.)

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