

holdings of the expatriate in the foreign corporation as its property having a U.S. situs bears to all property.

The ownership tests that must be met for this special provision to apply are:

(i) The decedent must have owned at the time of his death 10 percent or more of the voting power of all classes of stock of the foreign corporation. Ownership for this test includes direct ownership and indirect ownership through another foreign corporation or through a foreign partnership, trust, or estate.

(ii) The decedent must have owned, at the time of his death, more than 50 percent of the total voting power of all classes of stock of the foreign corporation. Ownership for purposes of this test is ownership as described in (i) above plus ownership attributed to the expatriate under certain attribution rules of existing law (sec. 318 of the code). In general, these rules attribute to an individual ownership of stock held by members of his family, as well as by partnerships, trusts, estates, or corporations in which the individual has certain interests.

In addition, in determining whether the ownership tests are met, and in determining the portion of the U.S. situs property owned by the foreign corporation that must be included in computing the value of his gross estate, the expatriate is treated as owning the stock of a foreign corporation (at the time of his death) which he transferred during his life but which under U.S. estate tax law generally is not effective in excluding property from a gross estate. There transfers are:

- (i) Transfers in contemplation of death (sec. 2035).
- (ii) Transfers with retained life estate (sec. 2036).
- (iii) Transfers taking effect at death (sec. 2037).
- (iv) Revocable transfers (see 2038).

In computing the estate tax under this new provision the expatriate's estate is allowed the credit for State death taxes, the credit for gift tax, and the credit for tax on prior transfers.

The new section excepts from its application certain expatriates whose loss of U.S. citizenship occurs under circumstances which would make the application of the special taxing provisions inappropriate. These are the same exceptions provided with respect to the income tax expatriation provision (see No. 3(c) above).

The new provision, like the comparable income tax provision, contains a special rule dealing with the burden of proving the existence or nonexistence of U.S. tax avoidance as one of the principal purposes of the expatriation. Under this provision, the Secretary of the Treasury or his delegate must establish that it is reasonable to believe that the expatriate's loss of U.S. citizenship would (but for the application of this new provision) result in a substantial reduction in the estate, inheritance, legacy, and succession taxes.

If this is established, then the administrator of the expatriate's estate must carry the burden of proving that the loss of citizenship did not have as one of its principal purposes the avoidance of U.S. income, estate, or gift taxes.

*Effective date.*—This new provision is effective with respect to estates of decedents dying after the date of enactment of this bill.