

[§ 1039. Repealed. Pub. L. 101-508, title XI, § 11801(a)(33), Nov. 5, 1990, 104 Stat. 1388-521]

Section, added Pub. L. 91-172, title IX, §910(a), Dec. 30, 1969, 83 Stat. 718; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to the recognition of gain on certain sales of low-income housing projects.

SAVINGS PROVISION

For provisions that nothing in repeal 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.

§ 1040. Transfer of certain farm, etc., real property

(a) General rule

If the executor of the estate of any decedent transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property with respect to which an election was made under section 2032A, then gain on such transfer shall be recognized to the estate only to the extent that, on the date of such transfer, the fair market value of such property exceeds the value of such property for purposes of chapter 11 (determined without regard to section 2032A).

(b) Similar rule for certain trusts

To the extent provided in regulations prescribed by the Secretary, a rule similar to the rule provided in subsection (a) shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A.

(c) Basis of property acquired in transfer described in subsection (a) or (b)

The basis of property acquired in a transfer with respect to which gain realized is not recognized by reason of subsection (a) or (b) shall be the basis of such property immediately before the transfer increased by the amount of the gain recognized to the estate or trust on the transfer.

(Added Pub. L. 94-455, title XX, §2005(b), Oct. 4, 1976, 90 Stat. 1877; amended Pub. L. 95-600, title VII, §702(d)(3), Nov. 6, 1978, 92 Stat. 2929; Pub. L. 96-222, title I, §105(a)(5)(A), Apr. 1, 1980, 94 Stat. 219; Pub. L. 96-223, title IV, §401(c)(2)(A), Apr. 2, 1980, 94 Stat. 300; Pub. L. 97-34, title IV, §421(j)(2)(B), Aug. 13, 1981, 95 Stat. 312; Pub. L. 97-448, title I, §104(b)(3)(A), (B), Jan. 12, 1983, 96 Stat. 2381; Pub. L. 107-16, title V, §542(d)(1), June 7, 2001, 115 Stat. 84; Pub. L. 111-312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

AMENDMENTS

2010—Pub. L. 111-312 amended section to read as if amendment by Pub. L. 107-16, §542(d)(1), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107-16, §542(d)(1), amended section generally. Prior to amendment, text read as follows:

“(a) GENERAL RULE.—If the executor of the estate of any decedent transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property with respect to which an election was made under section

2032A, then gain on such transfer shall be recognized to the estate only to the extent that, on the date of such transfer, the fair market value of such property exceeds the value of such property for purposes of chapter 11 (determined without regard to section 2032A).

“(b) SIMILAR RULE FOR CERTAIN TRUSTS.—To the extent provided in regulations prescribed by the Secretary, a rule similar to the rule provided in subsection (a) shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A.

“(c) BASIS OF PROPERTY ACQUIRED IN TRANSFER DESCRIBED IN SUBSECTION (a) OR (b).—The basis of property acquired in a transfer with respect to which gain realized is not recognized by reason of subsection (a) or (b) shall be the basis of such property immediately before the transfer increased by the amount of the gain recognized to the estate or trust on the transfer.”

1983—Subsec. (a). Pub. L. 97-448, §104(b)(3)(A), substituted “on the date of such transfer” for “on the date of such exchange”.

Subsec. (c). Pub. L. 97-448, §104(b)(3)(B), substituted references to “transfer”, “a transfer”, and “the transfer” for references to “exchange”, “an exchange”, and “the exchange”, respectively, wherever appearing in heading and text.

1981—Pub. L. 97-34 substituted “Transfer of certain farm, etc., real property” for “Use of farm, etc., real property to satisfy pecuniary bequest” in section catchline.

Subsec. (a). Pub. L. 97-34 revised subsec. (a) generally, substituting “transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property” for “satisfies the right of a qualified heir (within the meaning of section 2032A(e)(1)) to receive a pecuniary bequest with property” and “such transfer” for “such exchange” before “shall be recognized”.

Subsec. (b). Pub. L. 97-34 substituted “shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A” for “shall apply where—

“(1) by reason of the death of the decedent, a qualified heir has a right to receive from a trust a specific dollar amount which is the equivalent of a pecuniary bequest, and

“(2) the trustee of the trust satisfies such right with property with respect to which an election was made under section 2032A”.

1980—Pub. L. 96-223 substituted “Use of farm, etc., property to satisfy pecuniary bequest” for “Use of certain appreciated carryover basis property to satisfy pecuniary request” in section catchline, generally revised subsecs. (a) and (b) to reflect the repeal elsewhere in the Code of carryover basis provisions, and struck out subsec. (d) which had provided that, for purposes of this section, references to carryover basis property should be treated as including a reference to property the valuation of which is determined under section 2032A. Pub. L. 96-222 added subsec. (d).

1978—Subsec. (a). Pub. L. 95-600 substituted “chapter 11 (determined without regard to section 2032A)” for “chapter 11”.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111-312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107-16, set out as a note under section 121 of this title.

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

Amendment by Pub. L. 97-34 applicable with respect to the estates of decedents dying after Dec. 31, 1976, upon compliance with certain conditions relating to timely election requirement, reinstatement of elections, and statute of limitations, see section 421(k)(5) of Pub. L. 97-34, set out as a note under section 2032A of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-223 applicable in respect of decedents dying after Dec. 31, 1976, see section 401(e) of Pub. L. 96-223, set out as a note under section 1023 of this title.

Pub. L. 96-222, title I, §105(a)(5)(B), Apr. 1, 1980, 94 Stat. 219, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding section 515 of the Revenue Act of 1978 [section 515 of Pub. L. 95-600 which deferred carryover basis rules until Dec. 31, 1979], section 1040 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subparagraph (A) [amending this section]) shall apply with respect to the estates of decedents dying after December 31, 1976."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(d)(6) of Pub. L. 95-600, set out as a note under section 2032A of this title.

EFFECTIVE DATE

Section applicable in respect of decedents dying after Dec. 31, 1976, see section 2005(f)(1) of Pub. L. 94-455, set out as a note under section 1015 of this title.

§ 1041. Transfers of property between spouses or incident to divorce

(a) General rule

No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of)—

- (1) a spouse, or
- (2) a former spouse, but only if the transfer is incident to the divorce.

(b) Transfer treated as gift; transferee has transferor's basis

In the case of any transfer of property described in subsection (a)—

- (1) for purposes of this subtitle, the property shall be treated as acquired by the transferee by gift, and
- (2) the basis of the transferee in the property shall be the adjusted basis of the transferor.

(c) Incident to divorce

For purposes of subsection (a)(2), a transfer of property is incident to the divorce if such transfer—

- (1) occurs within 1 year after the date on which the marriage ceases, or
- (2) is related to the cessation of the marriage.

(d) Special rule where spouse is nonresident alien

Subsection (a) shall not apply if the spouse (or former spouse) of the individual making the transfer is a nonresident alien.

(e) Transfers in trust where liability exceeds basis

Subsection (a) shall not apply to the transfer of property in trust to the extent that—

- (1) the sum of the amount of the liabilities assumed, plus the amount of the liabilities to which the property is subject, exceeds
- (2) the total of the adjusted basis of the property transferred.

Proper adjustment shall be made under subsection (b) in the basis of the transferee in such property to take into account gain recognized by reason of the preceding sentence.

(Added Pub. L. 98-369, div. A, title IV, §421(a), July 18, 1984, 98 Stat. 793; amended Pub. L. 99-514, title XVIII, §1842(b), Oct. 22, 1986, 100 Stat. 2853; Pub. L. 100-647, title I, §1018(l)(3), Nov. 10, 1988, 102 Stat. 3584.)

AMENDMENTS

1988—Subsec. (d). Pub. L. 100-647 substituted "Subsection (a)" for "Paragraph (1) of subsection (a)" and "the spouse (or former spouse)" for "the spouse".

1986—Subsec. (e). Pub. L. 99-514 added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1018(l)(3), Nov. 10, 1988, 102 Stat. 3584, provided that the amendment made by that section is effective with respect to transfers after June 21, 1988.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 98-369, div. A, title IV, §421(d), July 18, 1984, 98 Stat. 795, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 47, 72, 101, 453, 453B, 1001, 1015, and 1239 of this title] shall apply to transfers after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) ELECTION TO HAVE AMENDMENTS APPLY TO TRANSFERS AFTER 1983.—If both spouses or former spouses make an election under this paragraph, the amendments made by this section shall apply to all transfers made by such spouses (or former spouses) after December 31, 1983.

"(3) EXCEPTION FOR TRANSFERS PURSUANT TO EXISTING DECREES.—Except in the case of an election under paragraph (2), the amendments made by this section shall not apply to transfers under any instrument in effect on or before the date of the enactment of this Act unless both spouses (or former spouses) elect to have such amendments apply to transfers under such instrument.

"(4) ELECTION.—Any election under paragraph (2) or (3) shall be made in such manner, at such time, and subject to such conditions, as the Secretary of the Treasury or his delegate may by regulations prescribe."

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.