

(5) Special rule for trusts

For purposes of this section, the trustee of a trust shall be treated as an eligible person with respect to property which is held in the trust if—

(A) any person referred to in paragraph (1)(A) has a beneficial interest in the principal or income of the trust, or

(B) any person referred to in paragraph (1)(B) has a beneficial interest in the principal or income of the trust and such interest is attributable under any statute, regulation, rule, judicial canon, or executive order referred to in paragraph (2) to a person referred to in paragraph (1)(A).

(6) Judicial officer

The term “judicial officer” means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

(c) Basis adjustments

If gain from the sale of any property is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any permitted property which is purchased by the taxpayer during the 60-day period described in subsection (a).

(Added Pub. L. 101–194, title V, §502(a), Nov. 30, 1989, 103 Stat. 1754; amended Pub. L. 101–280, §6(a)(1), May 4, 1990, 104 Stat. 160; Pub. L. 101–508, title XI, §11703(a)(1), Nov. 5, 1990, 104 Stat. 1388–516; Pub. L. 109–432, div. A, title IV, §418(a), (b), Dec. 20, 2006, 120 Stat. 2966.)

AMENDMENTS

2006—Subsec. (b)(1)(A). Pub. L. 109–432, §418(a)(1)(A), inserted “, or a judicial officer,” after “executive branch”.

Subsec. (b)(1)(B), (2)(A). Pub. L. 109–432, §418(a)(1)(B), (2)(A), inserted “judicial canon,” after “rule.”

Subsec. (b)(2)(B). Pub. L. 109–432, §418(a)(2)(B), inserted “in the case of executive branch officers or employees, or by the Judicial Conference of the United States (or its designee), in the case of judicial officers,” after “Ethics.”

Subsec. (b)(5)(B). Pub. L. 109–432, §418(a)(3), inserted “judicial canon,” after “rule.”

Subsec. (b)(6). Pub. L. 109–432, §418(b), added par. (6). 1990—Subsec. (a). Pub. L. 101–508 substituted “to the extent not previously taken into account under this subsection” for “reduced by any basis adjustment under subsection (c) attributable to a prior sale”.

Subsec. (b)(5). Pub. L. 101–280 added par. (5).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §418(c), Dec. 20, 2006, 120 Stat. 2967, provided that: “The amendments made by this section [amending this section] shall apply to sales after the date of enactment of this Act [Dec. 20, 2006].”

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11703(a)(2), Nov. 5, 1990, 104 Stat. 1388–517, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to sales after November 30, 1989.”

Pub. L. 101–280, §6(a)(3), May 4, 1990, 104 Stat. 160, provided that: “The amendment made by paragraph (1) [amending this section] and the provisions of paragraph (2) [set out below] shall apply to sales after November 30, 1989.”

EFFECTIVE DATE

Section applicable to sales after Nov. 30, 1989, see section 502(c) of Pub. L. 101–194, set out as an Effective Date of 1989 Amendment note under section 1016 of this title.

PROPERTY SOLD BEFORE JUNE 19, 1990

Pub. L. 101–280, §6(a)(2), May 4, 1990, 104 Stat. 160, provided that:

“(A) For purposes of section 1043 of such Code—

“(i) any property sold before June 19, 1990, shall be treated as sold pursuant to a certificate of divestiture (as defined in subsection (b)(2) thereof) if such a certificate is issued with respect to such sale before such date, and

“(ii) in any such case, the 60-day period referred to in subsection (a) thereof shall not expire before the end of the 60-day period beginning on the date on which the certificate of divestiture was issued.

“(B) Notwithstanding subparagraph (A), section 1043 of such Code shall not apply to any sale before April 19, 1990, unless—

“(i) the sale was made in order to comply with an ethics agreement or pursuant to specific direction from the appropriate agency or confirming committee, and

“(ii) the justification for the sale meets the criteria set forth in subsection (b)(2)(A) thereof as implemented by the interim regulations implementing such section 1043, published on April 18, 1990.”

§ 1044. Rollover of publicly traded securities gain into specialized small business investment companies**(a) Nonrecognition of gain**

In the case of the sale of any publicly traded securities with respect to which the taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

(1) the cost of any common stock or partnership interest in a specialized small business investment company purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this subtitle.

(b) Limitations**(1) Limitation on individuals**

In the case of an individual, the amount of gain which may be excluded under subsection (a) for any taxable year shall not exceed the lesser of—

(A) \$50,000, or

(B) \$500,000, reduced by the amount of gain excluded under subsection (a) for all preceding taxable years.

(2) Limitation on C corporations

In the case of a C corporation, the amount of gain which may be excluded under subsection

(a) for any taxable year shall not exceed the lesser of—

(A) \$250,000, or

(B) \$1,000,000, reduced by the amount of gain excluded under subsection (a) for all preceding taxable years.

(3) Special rules for married individuals

For purposes of this subsection—

(A) Separate returns

In the case of a separate return by a married individual, paragraph (1) shall be applied by substituting “\$25,000” for “\$50,000” and “\$250,000” for “\$500,000”.

(B) Allocation of gain

In the case of any joint return, the amount of gain excluded under subsection (a) for any taxable year shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

(C) Marital status

For purposes of this subsection, marital status shall be determined under section 7703.

(4) Special rules for C corporation

For purposes of this subsection—

(A) all corporations which are members of the same controlled group of corporations (within the meaning of section 52(a)) shall be treated as 1 taxpayer, and

(B) any gain excluded under subsection (a) by a predecessor of any C corporation shall be treated as having been excluded by such C corporation.

(c) Definitions and special rules

For purposes of this section—

(1) Publicly traded securities

The term “publicly traded securities” means securities which are traded on an established securities market.

(2) Purchase

The taxpayer shall be considered to have purchased any property if, but for subsection (d), the unadjusted basis of such property would be its cost within the meaning of section 1012.

(3) Specialized small business investment company

The term “specialized small business investment company” means any partnership or corporation which is licensed by the Small Business Administration under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

(4) Certain entities not eligible

This section shall not apply to any estate, trust, partnership, or S corporation.

(d) Basis adjustments

If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any common stock or partnership interest in any specialized small business investment company which is purchased by the taxpayer during the 60-day period

described in subsection (a). This subsection shall not apply for purposes of section 1202.

(Added Pub. L. 103-66, title XIII, §13114(a), Aug. 10, 1993, 107 Stat. 430; amended Pub. L. 104-188, title I, §1703(a), Aug. 20, 1996, 110 Stat. 1875.)

REFERENCES IN TEXT

Section 301(d) of the Small Business Investment Act of 1958, referred to in subsec. (c)(3), was classified to section 681(d) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 104-208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009-742.

AMENDMENTS

1996—Subsec. (c)(2). Pub. L. 104-188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘purchase’ has the meaning given such term by section 1043(b)(4).”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

EFFECTIVE DATE

Section applicable to sales on or after Aug. 10, 1993, in taxable years ending on or after such date, see section 13114(d) of Pub. L. 103-66, set out as an Effective Date of 1993 Amendment note under section 1016 of this title.

§ 1045. Rollover of gain from qualified small business stock to another qualified small business stock

(a) Nonrecognition of gain

In the case of any sale of qualified small business stock held by a taxpayer other than a corporation for more than 6 months and with respect to which such taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

(1) the cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by

(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this title.

(b) Definitions and special rules

For purposes of this section—

(1) Qualified small business stock

The term “qualified small business stock” has the meaning given such term by section 1202(c).

(2) Purchase

A taxpayer shall be treated as having purchased any property if, but for paragraph (3), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

(3) Basis adjustments

If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the