

able years ending after such date, see section 404(d)(1) of Pub. L. 95-600, set out as a note under section 121 of this title.

Pub. L. 95-600, title IV, § 405(d), Nov. 6, 1978, 92 Stat. 2871, provided that: "The amendments made by this section [amending this section and sections 1034, 1250, 6212, and 6504 of this title] shall apply to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date."

EFFECTIVE DATE; ELECTION TO APPLY TO TAXABLE YEARS BEGINNING AFTER DEC. 31, 1957

Pub. L. 88-570, § 2(c), Sept. 2, 1964, 78 Stat. 856, provided that:

"(1) The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of the enactment of this Act [Sept. 2, 1964].

"(2) If the taxpayer makes an election under this paragraph, the amendments made by this section [enacting this section] shall also apply to taxable years beginning after December 31, 1957, except that such amendments shall not apply with respect to any reacquisition of real property in a taxable year for which the assessment of a deficiency, or the credit or refund of an overpayment, is prevented on the date of the enactment of this Act [Sept. 2, 1964] by the operation of any law or rule of law. An election under this paragraph shall be made within one year after the date of the enactment of this Act and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations.

"(3) If an election is made by the taxpayer under paragraph (2), and if the assessment of a deficiency, or the credit or refund of an overpayment, for any taxable year to which such election applies is not prevented on the date of the enactment of this Act [Sept. 2, 1964] by the operation of any law or rule of law—

"(A) the period within which a deficiency for such taxable year may be assessed (to the extent such deficiency is attributable to the application of the amendments made by this section) shall not expire prior to one year after the date of such election; and

"(B) the period within which a claim for credit or refund of an overpayment for such taxable year may be filed (to the extent such overpayment is attributable to the application of such amendments) shall not expire prior to one year after the date of such election.

No interest shall be payable with respect to any deficiency attributable to the application of such amendments, and no interest shall be allowed with respect to any credit or refund of any overpayment attributable to the application of such amendments, for any period prior to the date of the enactment of this Act. An election by a taxpayer under paragraph (2) shall be deemed a consent to the application of this paragraph."

**[§ 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".