

been allowable to the taxpayer with respect to the gain on the exchange of the obligation for the real property.

(Added Pub. L. 88-570, §2(a), Sept. 2, 1964, 78 Stat. 854; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title IV, §§404(c)(6), 405(c)(3), Nov. 6, 1978, 92 Stat. 2870, 2871; Pub. L. 96-471, §4, Oct. 19, 1980, 94 Stat. 2255; Pub. L. 104-188, title I, §1616(b)(12), Aug. 20, 1996, 110 Stat. 1857; Pub. L. 105-34, title III, §312(d)(8), Aug. 5, 1997, 111 Stat. 840.)

AMENDMENTS

1997—Subsec. (e). Pub. L. 105-34 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “If—

“(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which—

“(A) an election under section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is in effect, or

“(B) gain was not recognized under section 1034 (relating to rollover of gain on sale of principal residence); and

“(2) within one year after the date of the reacquisition of such property by the seller, such property is resold by him, then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying sections 121 and 1034, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.”

1996—Subsec. (f). Pub. L. 104-188 struck out subsec. (f) which read as follows:

“(f) REACQUISITIONS BY DOMESTIC BUILDING AND LOAN ASSOCIATIONS.—This section shall not apply to a reacquisition of real property by an organization described in section 593(a) (relating to domestic building and loan associations, etc.).”

1980—Subsec. (g). Pub. L. 96-471 added subsec. (g).

1978—Subsec. (e)(1)(A). Pub. L. 95-600, §404(c)(6), substituted “relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55” for “relating to gain from sale or exchange of residence of an individual who has attained age 65”.

Subsec. (e)(1)(B). Pub. L. 95-600, §405(c)(3), which directed the amendment of section 1083(e)(1)(B) of this title by substituting “(relating to rollover of gain on sale of principal residence)” for “(relating to sale or exchange of residence)”, was executed to this section to reflect the probable intent of Congress because section 1083 does not contain a subsec. (e)(1)(B).

1976—Subsec. (e). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105-34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104-188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-471, §6(c), Oct. 19, 1980, 94 Stat. 2256, provided: “The amendment made by section 4 [amending this section] shall apply to acquisitions of real property by the taxpayer after the date of the enactment of this Act [Oct. 19, 1980].”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 404(c)(6) of Pub. L. 95-600 applicable to sales or exchanges after July 26, 1978, in tax-

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”.

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.