

Sec.	
1038.	Certain reacquisitions of real property.
[1039.]	Repealed.]
1040.	Transfer of certain farm, etc., real property.
1041.	Transfers of property between spouses or incident to divorce.
1042.	Sales of stock to employee stock ownership plans or certain cooperatives.
1043.	Sale of property to comply with conflict-of-interest requirements.
[1044.]	Repealed.]
1045.	Rollover of gain from qualified small business stock to another qualified small business stock.

AMENDMENTS

2017—Pub. L. 115-97, title I, §§13303(b)(6), 13313(a), Dec. 22, 2017, 131 Stat. 2124, 2133, substituted “Exchange of real property held for productive use or investment” for “Exchange of property held for productive use or investment” in item 1031 and struck out item 1044 “Rollover of publicly traded securities gain into specialized small business investment companies”.

2010—Pub. L. 111-312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, amended analysis to read as if amendment by Pub. L. 107-16, §542(d)(2), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107-16, title V, §542(d)(2), June 7, 2001, 115 Stat. 84, substituted “Use of appreciated carryover basis property to satisfy pecuniary bequest” for “Transfer of certain farm, etc., real property” in item 1040.

1997—Pub. L. 105-34, title III, §§312(d)(15), 313(b)(3), Aug. 5, 1997, 111 Stat. 841, 842, struck out item 1034 “Rollover of gain on sale of principal residence” and added item 1045.

1993—Pub. L. 103-66, title XIII, §13114(c), Aug. 10, 1993, 107 Stat. 431, added item 1044.

1990—Pub. L. 101-508, title XI, §11801(b)(8), Nov. 5, 1990, 104 Stat. 1388-522, struck out item 1039 “Certain sales of low-income housing projects”.

1989—Pub. L. 101-194, title V, §502(b)(3), Nov. 30, 1989, 103 Stat. 1755, added item 1043.

1986—Pub. L. 99-514, title XVIII, §1854(a)(12), Oct. 22, 1986, 100 Stat. 2878, substituted “employee stock ownership plans or certain cooperatives” for “employees” in item 1042.

1984—Pub. L. 98-369, div. A, title IV, §421(c), title V, §541(b)(3), July 18, 1984, 98 Stat. 794, 890, added items 1041 and 1042.

1981—Pub. L. 97-34, title IV, §421(j)(2)(C), Aug. 13, 1981, 95 Stat. 312, substituted “Transfer of certain farm, etc., real property” for “Use of farm, etc., real property to satisfy pecuniary bequest” in item 1040.

1980—Pub. L. 96-223, title IV, §401(a), (c)(2)(B), Apr. 2, 1980, 94 Stat. 299, 300, amended item 1040 generally and repealed Pub. L. 94-455, §2005(e)(1), and the amendment made thereby. See 1976 Amendment note below.

1978—Pub. L. 95-600, title IV, §405(c)(2), Nov. 6, 1978, 92 Stat. 2871, substituted “Rollover of gain on sale of principal residence” for “Sale or exchange of residence” in item 1034.

1976—Pub. L. 94-455, title XX, §2005(e)(2), Oct. 4, 1976, 90 Stat. 1878, which added item 1040, was repealed by Pub. L. 96-223, §401(a). See section 401(b), (e) of Pub. L. 96-223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

1969—Pub. L. 91-172, title IX, §910(c), Dec. 30, 1969, 83 Stat. 722, added item 1039.

1964—Pub. L. 88-570, §2(b), Sept. 2, 1964, 78 Stat. 856, added item 1038.

1959—Pub. L. 86-346, title II, §201(b), Sept. 22, 1959, 73 Stat. 623, added item 1037.

§ 1031. Exchange of real property held for productive use or investment

(a) Nonrecognition of gain or loss from exchanges solely in kind

(1) In general

No gain or loss shall be recognized on the exchange of real property held for productive use in a trade or business or for investment if such real property is exchanged solely for real property of like kind which is to be held either for productive use in a trade or business or for investment.

(2) Exception for real property held for sale

This subsection shall not apply to any exchange of real property held primarily for sale.

(3) Requirement that property be identified and that exchange be completed not more than 180 days after transfer of exchanged property

For purposes of this subsection, any property received by the taxpayer shall be treated as property which is not like-kind property if—

(A) such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(B) such property is received after the earlier of—

(i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(ii) the due date (determined with regard to extension) for the transferor’s return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

(b) Gain from exchanges not solely in kind

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(c) Loss from exchanges not solely in kind

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(d) Basis

If property was acquired on an exchange described in this section, section 1035(a), section 1036(a), or section 1037(a), then the basis shall be the same as that of the property exchanged, de-

creased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange. If the property so acquired consisted in part of the type of property permitted by this section, section 1035(a), section 1036(a), or section 1037(a), to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. For purposes of this section, section 1035(a), and section 1036(a), where as part of the consideration to the taxpayer another party to the exchange assumed (as determined under section 357(d)) a liability of the taxpayer, such assumption shall be considered as money received by the taxpayer on the exchange.

(e) Application to certain partnerships

For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.

(f) Special rules for exchanges between related persons

(1) In general

If—

(A) a taxpayer exchanges property with a related person,

(B) there is nonrecognition of gain or loss to the taxpayer under this section with respect to the exchange of such property (determined without regard to this subsection), and

(C) before the date 2 years after the date of the last transfer which was part of such exchange—

(i) the related person disposes of such property, or

(ii) the taxpayer disposes of the property received in the exchange from the related person which was of like kind to the property transferred by the taxpayer,

there shall be no nonrecognition of gain or loss under this section to the taxpayer with respect to such exchange; except that any gain or loss recognized by the taxpayer by reason of this subsection shall be taken into account as of the date on which the disposition referred to in subparagraph (C) occurs.

(2) Certain dispositions not taken into account

For purposes of paragraph (1)(C), there shall not be taken into account any disposition—

(A) after the earlier of the death of the taxpayer or the death of the related person,

(B) in a compulsory or involuntary conversion (within the meaning of section 1033) if the exchange occurred before the threat or imminence of such conversion, or

(C) with respect to which it is established to the satisfaction of the Secretary that neither the exchange nor such disposition had

as one of its principal purposes the avoidance of Federal income tax.

(3) Related person

For purposes of this subsection, the term “related person” means any person bearing a relationship to the taxpayer described in section 267(b) or 707(b)(1).

(4) Treatment of certain transactions

This section shall not apply to any exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection.

(g) Special rule where substantial diminution of risk

(1) In general

If paragraph (2) applies to any property for any period, the running of the period set forth in subsection (f)(1)(C) with respect to such property shall be suspended during such period.

(2) Property to which subsection applies

This paragraph shall apply to any property for any period during which the holder’s risk of loss with respect to the property is substantially diminished by—

(A) the holding of a put with respect to such property,

(B) the holding by another person of a right to acquire such property, or

(C) a short sale or any other transaction.

(h) Special rules for foreign real property

Real property located in the United States and real property located outside the United States are not property of a like kind.

(Aug. 16, 1954, ch. 736, 68A Stat. 302; Pub. L. 85-866, title I, §44, Sept. 2, 1958, 72 Stat. 1641; Pub. L. 86-346, title II, §201(c)-(e), Sept. 22, 1959, 73 Stat. 624; Pub. L. 91-172, title II, §212(c)(1), Dec. 30, 1969, 83 Stat. 571; Pub. L. 98-369, div. A, title I, §77(a), July 18, 1984, 98 Stat. 595; Pub. L. 99-514, title XVIII, §1805(d), Oct. 22, 1986, 100 Stat. 2810; Pub. L. 101-239, title VII, §7601(a), Dec. 19, 1989, 103 Stat. 2370; Pub. L. 101-508, title XI, §§11701(h), 11703(d)(1), Nov. 5, 1990, 104 Stat. 1388-508, 1388-517; Pub. L. 105-34, title X, §1052(a), Aug. 5, 1997, 111 Stat. 940; Pub. L. 106-36, title III, §3001(c)(2), June 25, 1999, 113 Stat. 183; Pub. L. 109-135, title IV, §412(pp), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110-234, title XV, §15342(a), May 22, 2008, 122 Stat. 1518; Pub. L. 110-246, §4(a), title XV, §15342(a), June 18, 2008, 122 Stat. 1664, 2280; Pub. L. 115-97, title I, §13303(a)-(b)(5), Dec. 22, 2017, 131 Stat. 2123, 2124.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2017—Pub. L. 115-97, §13303(b)(5), substituted “real property” for “property” in section catchline.

Subsec. (a)(1). Pub. L. 115-97, §13303(a), substituted “real property” for “property” wherever appearing.

Subsec. (a)(2). Pub. L. 115-97, §13303(b)(1)(A), amended par. (2) generally. Prior to amendment, text read as follows: “This subsection shall not apply to any exchange of—

“(A) stock in trade or other property held primarily for sale,

“(B) stocks, bonds, or notes,

“(C) other securities or evidences of indebtedness or interest,

“(D) interests in a partnership,

“(E) certificates of trust or beneficial interests, or

“(F) choses in action.

For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.”

Subsec. (e). Pub. L. 115-97, §13303(b)(2), (3), added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: “For purposes of this section, livestock of different sexes are not property of a like kind.”

Subsec. (h). Pub. L. 115-97, §13303(b)(4), amended subsec. (h) generally. Prior to amendment, subsec. (h) related to special rules for foreign real and personal property.

Subsec. (i). Pub. L. 115-97, §13303(b)(1)(B), struck out subsec. (i). Text read as follows: “For purposes of subsection (a)(2)(B), the term ‘stocks’ shall not include shares in a mutual ditch, reservoir, or irrigation company if at the time of the exchange—

“(1) the mutual ditch, reservoir, or irrigation company is an organization described in section 501(c)(12)(A) (determined without regard to the percentage of its income that is collected from its members for the purpose of meeting losses and expenses), and

“(2) the shares in such company have been recognized by the highest court of the State in which such company was organized or by applicable State statute as constituting or representing real property or an interest in real property.”

2008—Subsec. (i). Pub. L. 110-246 added subsec. (i).

2005—Subsec. (h)(2)(B). Pub. L. 109-135 substituted “subparagraphs” for “subparagraph” in introductory provisions.

1999—Subsec. (d). Pub. L. 106-36, in last sentence, substituted “assumed (as determined under section 357(d)) a liability of the taxpayer” for “assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability” and struck out “or acquisition (in the amount of the liability)” after “such assumption”.

1997—Subsec. (h). Pub. L. 105-34 amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: “For purposes of this section, real property located in the United States and real property located outside the United States are not property of a like kind.”

1990—Subsec. (a)(2). Pub. L. 101-508, §11703(d)(1), inserted at end “For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.”

Subsec. (f)(3). Pub. L. 101-508, §11701(h), substituted “section 267(b) or 707(b)(1)” for “section 267(b)”.

1989—Subsecs. (f) to (h). Pub. L. 101-239 added subsecs. (f) to (h).

1986—Subsec. (a)(3)(A). Pub. L. 99-514 substituted “on or before the day” for “before the day”.

1984—Subsec. (a). Pub. L. 98-369, §77(a), in amending subsec. generally, designated existing provisions as par. (1), substituted “No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment” for “No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks,

bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment”, and added pars. (2) and (3).

1969—Subsec. (e). Pub. L. 91-172 added subsec. (e).

1959—Subsecs. (b) to (d). Pub. L. 86-346 inserted references to section 1037(a) in subsecs. (b) and (c) and in first two sentences of subsec. (d).

1958—Subsec. (d). Pub. L. 85-866 inserted in first sentence a comma between “exchanged” and “decreased” and “or decreased in the amount of loss”, and substituted in second sentence “subsection” for “paragraph”.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §13303(c), Dec. 22, 2017, 131 Stat. 2124, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to exchanges completed after December 31, 2017.

“(2) TRANSITION RULE.—The amendments made by this section shall not apply to any exchange if—

“(A) the property disposed of by the taxpayer in the exchange is disposed of on or before December 31, 2017, or

“(B) the property received by the taxpayer in the exchange is received on or before December 31, 2017.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110-234, title XV, §15342(b), May 22, 2008, 122 Stat. 1518, and Pub. L. 110-246, §4(a), title XV, §15342(b), June 18, 2008, 122 Stat. 1664, 2280, provided that: “The amendment made by this section [amending this section] shall apply to exchanges completed after the date of the enactment of this Act [June 18, 2008].”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106-36, set out as a note under section 351 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, §1052(b), Aug. 5, 1997, 111 Stat. 941, provided that:

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to transfers after June 8, 1997, in taxable years ending after such date.

“(2) BINDING CONTRACTS.—The amendment made by this section shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before the disposition of property. A contract shall not fail to meet the requirements of the preceding sentence solely because—

“(A) it provides for a sale in lieu of an exchange, or

“(B) the property to be acquired as replacement property was not identified under such contract before June 9, 1997.”

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11701(h), Nov. 5, 1990, 104 Stat. 1388-508, provided that the amendment made by that section is effective with respect to transfers after Aug. 3, 1990.

Pub. L. 101-508, title XI, §11703(d)(2), Nov. 5, 1990, 104 Stat. 1388-517, provided that: “The amendment made by

paragraph (1) [amending this section] shall apply to transfers after July 18, 1984.”

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, §7601(b), Dec. 19, 1989, 103 Stat. 2371, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to transfers after July 10, 1989, in taxable years ending after such date.

“(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the transfer.”

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 OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §77(b), July 18, 1984, 98 Stat. 596, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to transfers made after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

“(2) BINDING CONTRACT EXCEPTION FOR TRANSFER OF PARTNERSHIP INTERESTS.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not apply in the case of any exchange pursuant to a binding contract in effect on March 1, 1984, and at all times thereafter before the exchange.

“(3) REQUIREMENT THAT PROPERTY BE IDENTIFIED WITHIN 45 DAYS AND THAT EXCHANGE BE COMPLETED WITHIN 180 DAYS.—Paragraph (3) of section 1031(a) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall apply—

“(A) to transfers after the date of the enactment of this Act [July 18, 1984], and

“(B) to transfers on or before such date of enactment if the property to be received in the exchange is not received before January 1, 1987.

In the case of any transfer on or before the date of the enactment of this Act which the taxpayer treated as part of a like-kind exchange, the period for assessing any deficiency of tax attributable to the amendment made by subsection (a) [amending this section] shall not expire before January 1, 1988.

“(4) SPECIAL RULE WHERE PROPERTY IDENTIFIED IN BINDING CONTRACT.—If the property to be received in the exchange is identified in a binding contract in effect on June 13, 1984, and at all times thereafter before the transfer, paragraph (3) shall be applied—

“(A) by substituting ‘January 1, 1989’ for ‘January 1, 1987’, and

“(B) by substituting ‘January 1, 1990’ for ‘January 1, 1988’.

“(5) SPECIAL RULE FOR LIKE-KIND EXCHANGE OF PARTNERSHIP INTERESTS.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall not apply to any exchange of an interest as general partner pursuant to a plan of reorganization of ownership interest under a contract which took effect on March 29, 1984, and which was executed on or before March 31, 1984, but only if all the exchanges contemplated by the reorganization plan are completed on or before December 31, 1984.”

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title II, §212(c)(2), Dec. 30, 1969, 83 Stat. 571, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to

taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies.”

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-346 effective for taxable years ending after Sept. 22, 1959, see section 203 of Pub. L. 86-346, set out as an Effective Date note under section 1037 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

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.

§ 1032. Exchange of stock for property

(a) Nonrecognition of gain or loss

No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation. No gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option, or with respect to a securities futures contract (as defined in section 1234B), to buy or sell its stock (including treasury stock).

(b) Basis

For basis of property acquired by a corporation in certain exchanges for its stock, see section 362.

(Aug. 16, 1954, ch. 736, 68A Stat. 303; Pub. L. 98-369, div. A, title I, §57(a), July 18, 1984, 98 Stat. 574; Pub. L. 106-554, §1(a)(7) [title IV, §401(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-649.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554 inserted “, or with respect to a securities futures contract (as defined in section 1234B),” after “an option” in second sentence.

1984—Subsec. (a). Pub. L. 98-369 inserted provision that no gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option to buy or sell its stock (including treasury stock).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(7) [title IV, §401(j)], Dec. 21, 2000, 114 Stat. 2763, 2763A-651, provided that: “The amendments made by this section [enacting section 1234B of this title and amending this section and sections 1091, 1092, 1223, 1233, 1234A, 1256 and 7701 of this title] shall take effect on the date of the enactment of this Act [Dec. 21, 2000].”

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §57(b), July 18, 1984, 98 Stat. 574, provided that: “The amendment made by subsection (a) [amending this section] shall apply to options acquired or lapsed after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.”

§ 1033. Involuntary conversions

(a) General rule

If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or