

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 Repealed.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