

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.

OWNERSHIP OF STOCK OPTIONS AS OWNERSHIP OF STOCK; EMPLOYEE OWNERSHIP OF STOCK AFTER SALE

Pub. L. 99-514, title XVIII, §1854(a)(2)(B), Oct. 22, 1986, 100 Stat. 2873, provided that:

“(i) The requirement that section 1042(b) of the Internal Revenue Code of 1954 [now 1986] shall be applied with regard to section 318(a)(4) of such Code shall apply to sales after May 6, 1986.

“(ii) In the case of sales after July 18, 1984, and before the date of the enactment of this Act [Oct. 22, 1986], paragraph (2) of section 1042(b) of such Code shall apply as if it read as follows:

“(2) EMPLOYEES MUST OWN 30 PERCENT OF STOCK AFTER SALE.—The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the employer securities or 30 percent of the value of employer securities (within the meaning of section 409(1)) outstanding at the time of sale.”

REPLACEMENT PERIOD FOR CERTAIN SECURITIES

Pub. L. 99-514, title XVIII, §1854(a)(5)(B), Oct. 22, 1986, 100 Stat. 2875, provided that: “If—

“(i) before January 1, 1987, the taxpayer acquired any security (as defined in section 165(g)(2) of the Internal Revenue Code of 1954 [now 1986]) issued by a domestic corporation or by any State or political subdivision thereof,

“(ii) the taxpayer treated such security as qualified replacement property for purposes of section 1042 of such Code, and

“(iii) such property does not meet the requirements of section 1042(c)(4) of such Code (as amended by subparagraph (A)),

then, with respect to so much of any gain which the taxpayer treated as not recognized under section 1042(a) by reason of the acquisition of such property, the replacement period for purposes of such section shall not expire before January 1, 1987.”

§ 1043. Sale of property to comply with conflict-of-interest requirements

(a) Nonrecognition of gain

If an eligible person sells any property pursuant to a certificate of divestiture, at the election of the taxpayer, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost (to the extent not previously taken into account under this subsection) of any permitted property purchased by the taxpayer during the 60-day period beginning on the date of such sale.

(b) Definitions

For purposes of this section—

(1) Eligible person

The term “eligible person” means—

(A) an officer or employee of the executive branch, or a judicial officer, of the Federal Government, but does not mean a special Government employee as defined in section 202 of title 18, United States Code, and

(B) any spouse or minor or dependent child whose ownership of any property is attributable under any statute, regulation, rule, judicial canon, or executive order referred to in paragraph (2) to a person referred to in subparagraph (A).

(2) Certificate of divestiture

The term “certificate of divestiture” means any written determination—

(A) that states that divestiture of specific property is reasonably necessary to comply with any Federal conflict of interest statute, regulation, rule, judicial canon, or executive order (including section 208 of title 18, United States Code), or requested by a congressional committee as a condition of confirmation,

(B) that has been issued by the President or the Director of the Office of Government Ethics, 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, and

(C) that identifies the specific property to be divested.

(3) Permitted property

The term “permitted property” means any obligation of the United States or any diversified investment fund approved by regulations issued by the Office of Government Ethics.

(4) Purchase

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

(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. Repealed. Pub. L. 115-97, title I, § 13313(a), Dec. 22, 2017, 131 Stat. 2133]

Section, 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, related to rollover of publicly traded securities gain into specialized small business investment companies.

EFFECTIVE DATE OF REPEAL

Repeal applicable to sales after Dec. 31, 2017, see section 13313(c) of Pub. L. 115-97, set out as an Effective Date of 2017 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 basis for determining gain or loss of any qualified small business stock which is purchased by the taxpayer during the 60-day period described in subsection (a).

(4) Holding period

For purposes of determining whether the nonrecognition of gain under subsection (a) applies to stock which is sold—

(A) the taxpayer’s holding period for such stock and the stock referred to in subsection (a)(1) shall be determined without regard to section 1223, and

(B) only the first 6 months of the taxpayer’s holding period for the stock referred to in subsection (a)(1) shall be taken into account for purposes of applying section 1202(c)(2).

(5) Certain rules to apply

Rules similar to the rules of subsections (f), (g), (h), (i), (j), and (k) of section 1202 shall apply.