

changes 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 Repealed.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.

Pub. L. 96-222, title I, §105(a)(5)(B), Apr. 1, 1980, 94 Stat. 219, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Notwithstanding section 515 of the Revenue Act of 1978 [section 515 of Pub. L. 95-600 which deferred carryover basis rules until Dec. 31, 1979], section 1040 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subparagraph

(A) [amending this section]) shall apply with respect to the estates of decedents dying after December 31, 1976.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(d)(6) of Pub. L. 95-600, set out as a note under section 2032A of this title.

#### EFFECTIVE DATE

Section applicable in respect of decedents dying after Dec. 31, 1976, see section 2005(f)(1) of Pub. L. 94-455, set out as a note under section 1015 of this title.

### § 1041. Transfers of property between spouses or incident to divorce

#### (a) General rule

No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of)—

(1) a spouse, or

(2) a former spouse, but only if the transfer is incident to the divorce.

#### (b) Transfer treated as gift; transferee has transferor's basis

In the case of any transfer of property described in subsection (a)—

(1) for purposes of this subtitle, the property shall be treated as acquired by the transferee by gift, and

(2) the basis of the transferee in the property shall be the adjusted basis of the transferor.

#### (c) Incident to divorce

For purposes of subsection (a)(2), a transfer of property is incident to the divorce if such transfer—

(1) occurs within 1 year after the date on which the marriage ceases, or

(2) is related to the cessation of the marriage.

#### (d) Special rule where spouse is nonresident alien

Subsection (a) shall not apply if the spouse (or former spouse) of the individual making the transfer is a nonresident alien.

#### (e) Transfers in trust where liability exceeds basis

Subsection (a) shall not apply to the transfer of property in trust to the extent that—

(1) the sum of the amount of the liabilities assumed, plus the amount of the liabilities to which the property is subject, exceeds

(2) the total of the adjusted basis of the property transferred.

Proper adjustment shall be made under subsection (b) in the basis of the transferee in such property to take into account gain recognized by reason of the preceding sentence.

(Added Pub. L. 98-369, div. A, title IV, §421(a), July 18, 1984, 98 Stat. 793; amended Pub. L. 99-514, title XVIII, §1842(b), Oct. 22, 1986, 100 Stat. 2853; Pub. L. 100-647, title I, §1018(l)(3), Nov. 10, 1988, 102 Stat. 3584.)

#### AMENDMENTS

1988—Subsec. (d). Pub. L. 100-647 substituted “Subsection (a)” for “Paragraph (1) of subsection (a)” and “the spouse (or former spouse)” for “the spouse”.