

sion 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

Pub. L. 97-34, title IV, §425(b), Aug. 13, 1981, 95 Stat. 318, provided that: "The amendment made by subsection (a) [amending this section] shall apply to property acquired after the date of the enactment of this Act [Aug. 13, 1981] by decedents dying after December 31, 1981."

EFFECTIVE DATE OF 1980 AMENDMENTS AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96-223 (repealing section 2005(a)(1) of Pub. L. 94-455 and the amendment made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96-223, set out as a note under section 1023 of this title.

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as an Effective Date of 1980 Amendment note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, §702(c)(10), Nov. 6, 1978, 92 Stat. 2928, provided that: "The amendments made by this subsection [amending this section and sections 1001, 1223, and 2614 of this title] shall take effect as if included in the amendments and additions made by, and the appropriate provisions of the Tax Reform Act of 1976 [Pub. L. 94-455, Oct. 4, 1976, 90 Stat 1525]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(c)(8) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

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

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1972, see section 507 of Pub. L. 92-178, set out as a note under section 991 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-320 applicable with respect to taxable years ending after Dec. 31, 1956, but only in the case of employees dying after such date, see section 3 of Pub. L. 85-320, set out as a note under section 421 of this title.

REPEALS

Pub. L. 94-455, §2005(a)(1), cited as a credit to this section, and the amendment made thereby, were repealed by Pub. L. 96-223, title IV, §401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 2005(a)(1). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

ELECTION OF CARRYOVER BASIS RULES BY CERTAIN ESTATES

Pub. L. 96-223, title IV, §401(d), Apr. 2, 1980, 94 Stat. 300, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Notwithstanding any other provision of law, in the case of a decedent dying after December 31, 1976, and before November 7, 1978, the ex-

ecutor (within the meaning of section 2203 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) of such decedent's estate may irrevocably elect, within 120 days following the date of enactment of this Act [Apr. 2, 1980] and in such manner as the Secretary of the Treasury or his delegate shall prescribe, to have the basis of all property acquired from or passing from the decedent (within the meaning of section 1014(b) of the Internal Revenue Code of 1986) determined for all purposes under such Code as though the provisions of section 2005 of the Tax Reform Act of 1976 [Pub. L. 94-455] (as amended by the provisions of section 702(c) of the Revenue Act of 1978 [Pub. L. 95-600] applied to such property acquired or passing from such decedent."

§ 1015. Basis of property acquired by gifts and transfers in trust

(a) Gifts after December 31, 1920

If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period before the date of the gift as provided in section 1016) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Secretary shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Secretary finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Secretary as of the date or approximate date at which, according to the best information that the Secretary is able to obtain, such property was acquired by such donor or last preceding owner.

(b) Transfer in trust after December 31, 1920

If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer under the law applicable to the year in which the transfer was made.

(c) Gift or transfer in trust before January 1, 1921

If the property was acquired by gift or transfer in trust on or before December 31, 1920, the basis shall be the fair market value of such property at the time of such acquisition.

(d) Increased basis for gift tax paid

(1) In general

If—

(A) the property is acquired by gift on or after September 2, 1958, the basis shall be the basis determined under subsection (a), increased (but not above the fair market value of the property at the time of the gift) by the amount of gift tax paid with respect to such gift, or

(B) the property was acquired by gift before September 2, 1958, and has not been sold,

exchanged, or otherwise disposed of before such date, the basis of the property shall be increased on such date by the amount of gift tax paid with respect to such gift, but such increase shall not exceed an amount equal to the amount by which the fair market value of the property at the time of the gift exceeded the basis of the property in the hands of the donor at the time of the gift.

(2) Amount of tax paid with respect to gift

For purposes of paragraph (1), the amount of gift tax paid with respect to any gift is an amount which bears the same ratio to the amount of gift tax paid under chapter 12 with respect to all gifts made by the donor for the calendar year (or preceding calendar period) in which such gift is made as the amount of such gift bears to the taxable gifts (as defined in section 2503(a) but computed without the deduction allowed by section 2521) made by the donor during such calendar year or period. For purposes of the preceding sentence, the amount of any gift shall be the amount included with respect to such gift in determining (for the purposes of section 2503(a)) the total amount of gifts made during the calendar year or period, reduced by the amount of any deduction allowed with respect to such gift under section 2522 (relating to charitable deduction) or under section 2523 (relating to marital deduction).

(3) Gifts treated as made one-half by each spouse

For purposes of paragraph (1), where the donor and his spouse elected, under section 2513 to have the gift considered as made one-half by each, the amount of gift tax paid with respect to such gift under chapter 12 shall be the sum of the amounts of tax paid with respect to each half of such gift (computed in the manner provided in paragraph (2)).

(4) Treatment as adjustment to basis

For purposes of section 1016(b), an increase in basis under paragraph (1) shall be treated as an adjustment under section 1016(a).

(5) Application to gifts before 1955

With respect to any property acquired by gift before 1955, references in this subsection to any provision of this title shall be deemed to refer to the corresponding provision of the Internal Revenue Code of 1939 or prior revenue laws which was effective for the year in which such gift was made.

(6) Special rule for gifts made after December 31, 1976

(A) In general

In the case of any gift made after December 31, 1976, the increase in basis provided by this subsection with respect to any gift for the gift tax paid under chapter 12 shall be an amount (not in excess of the amount of tax so paid) which bears the same ratio to the amount of tax so paid as—

- (i) the net appreciation in value of the gift, bears to
- (ii) the amount of the gift.

(B) Net appreciation

For purposes of paragraph (1), the net appreciation in value of any gift is the amount

by which the fair market value of the gift exceeds the donor's adjusted basis immediately before the gift.

(e) Gifts between spouses

In the case of any property acquired by gift in a transfer described in section 1041(a), the basis of such property in the hands of the transferee shall be determined under section 1041(b)(2) and not this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 298; Pub. L. 85-866, title I, §43(a), Sept. 2, 1958, 72 Stat. 1640; Pub. L. 91-614, title I, §102(d)(1), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94-455, title XIX, §§1901(a)(122), 1906(b) (13)(A), title XX, §2005(c), Oct. 4, 1976, 90 Stat. 1784, 1834, 1877; Pub. L. 97-34, title IV, §442(d)(1), Aug. 13, 1981, 95 Stat. 322; Pub. L. 98-369, div. A, title IV, §421(b)(5), July 18, 1984, 98 Stat. 794.)

Editorial Notes

REFERENCES IN TEXT

Section 2521, referred to in subsec. (d)(2), was repealed by Pub. L. 94-455, title XX, §2001(b)(3), Oct. 4, 1976, 90 Stat. 1849.

The Internal Revenue Code of 1939, referred to in subsec. (d)(5), is act Feb. 10, 1939, ch. 2, 53 Stat. 1. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

Editorial Notes

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-369 added subsec. (e).

1981—Subsec. (d)(2). Pub. L. 97-34 substituted “calendar year (or preceding calendar period)” for “calendar quarter (or calendar year if the gift was made before January 1, 1971)” and “calendar year or period” for “calendar quarter or year” in two places.

1976—Subsec. (a). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” in four places.

Subsec. (d)(1)(A), (B). Pub. L. 94-455, §1901(a)(122), substituted “September 2, 1958” for “the date of enactment of the Technical Amendments Act of 1958”.

Subsec. (d)(6). Pub. L. 94-455, §2005(c), added par. (6).

1970—Subsec. (d)(2). Pub. L. 91-614 substituted “calendar quarter (or calendar year if the gift was made before January 1, 1971)” for “calendar year” the first place it appears and “calendar quarter or year” for “calendar year” every other place it appears.

1958—Subsec. (d). Pub. L. 85-866 added subsec. (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98-369, set out as an Effective Date note under section 1041 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(122) of Pub. L. 94-455 applicable with respect to taxable years beginning after

Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Pub. L. 94-455, title XX, §2005(f), Oct. 4, 1976, 90 Stat. 1878, as amended by Pub. L. 95-600, title V, §515(6), Nov. 6, 1978, 92 Stat. 2884, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [enacting sections 1023, 1040, 6039A, and 6694 of this title, amending sections 691, 1016, and 1246 of this title, and renumbering former section 1023 as 1024] shall apply in respect of decedents dying after December 31, 1979.

“(2) The amendment made by subsection (c) [amending this section] shall apply to gifts made after December 31, 1976.”

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 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.

§ 1016. Adjustments to basis

(a) General rule

Proper adjustment in respect of the property shall in all cases be made—

(1) for expenditures, receipts, losses, or other items, properly chargeable to capital account, but no such adjustment shall be made—

(A) for—

(i) taxes or other carrying charges described in section 266; or

(ii) expenditures described in section 173 (relating to circulation expenditures),

for which deductions have been taken by the taxpayer in determining taxable income for the taxable year or prior taxable years; or

(B) for mortality, expense, or other reasonable charges incurred under an annuity or life insurance contract;

(2) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent of the amount—

(A) allowed as deductions in computing taxable income under this subtitle or prior income tax laws, and

(B) resulting (by reason of the deductions so allowed) in a reduction for any taxable year of the taxpayer's taxes under this subtitle (other than chapter 2, relating to tax on self-employment income), or prior income, war-profits, or excess-profits tax laws,

but not less than the amount allowable under this subtitle or prior income tax laws. Where no method has been adopted under section 167 (relating to depreciation deduction), the amount allowable shall be determined under the straight line method. Subparagraph (B) of this paragraph shall not apply in respect of any period since February 28, 1913, and before January 1, 1952, unless an election has been made under section 1020 (as in effect before the date of the enactment of the Tax Reform Act of 1976). Where for any taxable year before the taxable year 1932 the depletion allowance was

based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income;

(3) in respect of any period—

(A) before March 1, 1913,

(B) since February 28, 1913, during which such property was held by a person or an organization not subject to income taxation under this chapter or prior income tax laws,

(C) since February 28, 1913, and before January 1, 1958, during which such property was held by a person subject to tax under part I of subchapter L (or the corresponding provisions of prior income tax laws), to the extent that paragraph (2) does not apply, and

(D) since February 28, 1913, during which such property was held by a person subject to tax under part II of subchapter L as in effect prior to its repeal by the Tax Reform Act of 1986 (or the corresponding provisions of prior income tax laws), to the extent that paragraph (2) does not apply,

for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent sustained;

(4) in the case of stock (to the extent not provided for in the foregoing paragraphs) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax-free or were applicable in reduction of basis (not including distributions made by a corporation which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 (40 Stat. 1057), or the Revenue Act of 1921 (42 Stat. 227), out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 or 1921);

(5) in the case of any bond (as defined in section 171(d)) the interest on which is wholly exempt from the tax imposed by this subtitle, to the extent of the amortizable bond premium disallowable as a deduction pursuant to section 171(a)(2), and in the case of any other bond (as defined in section 171(d)) to the extent of the deductions allowable pursuant to section 171(a)(1) (or the amount applied to reduce interest payments under section 171(e)(2)) with respect thereto;

(6) in the case of any municipal bond (as defined in section 75(b)), to the extent provided in section 75(a)(2);

(7) in the case of a residence the acquisition of which resulted, under section 1034 (as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997), in the nonrecognition of any part of the gain realized on the sale, exchange, or involuntary conversion of another residence, to the extent provided in section 1034(e) (as so in effect);

(8) in the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to section 77, and to the extent of any deficiency on such loan with re-