See Effective and Termination Dates of 2001 Amendment note below.

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” 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” for “transfers to a qualified heir (within the meaning of section 2032A(e)(1)) to receive a pecuniary bequest is satisfied the right of a qualified heir” with property” and “such transfer” for “such exchange”, respectively, wherever appearing in subsec. (a). Pub. L. 97–34 added subsec. (d).


§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.


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”. 1986—Subsec. (e), Pub. L. 99–514 added subsec. (e).

EFFECTIVE DATE OF 1988 AMENDMENT
Section 1018(l)(3) of Pub. L. 100–647 provided that the amendment made by that section is effective with respect to transfers after June 21, 1988.

EFFECTIVE DATE OF 1986 AMENDMENT

§1042. Sales of stock to employee stock ownership plans or certain cooperatives

(a) Nonrecognition of gain

If—

(1) the taxpayer or executor elects in such form as the Secretary may prescribe the application of this section with respect to any sale of qualified securities,

(2) the taxpayer purchases qualified replacement property within the replacement period, and

(3) the requirements of subsection (b) are met with respect to such sale,

then the gain (if any) on such sale which would be recognized as long-term capital gain shall be recognized only to the extent that the amount realized on such sale exceeds the cost to the taxpayer of such qualified replacement property.

(b) Requirements to qualify for nonrecognition

A sale of qualified securities meets the requirements of this subsection if—

(1) Sale to employee organizations

The qualified securities are sold to—

(A) an employee stock ownership plan (as defined in section 4975(e)(7)), or

(B) an eligible worker-owned cooperative.

(2) Plan must hold 30 percent of stock after sale

The plan or cooperative referred to in paragraph (1) owns (after application of section 318(a)(4)), immediately after the sale, at least 30 percent of—

(A) each class of outstanding stock of the corporation (other than stock described in section 1504(a)(4) which issued the qualified securities, or

(B) the total value of all outstanding stock of the corporation (other than stock described in section 1504(a)(4)).

(3) Written statement required

(A) In general

The taxpayer files with the Secretary the written statement described in subparagraph (B).

(B) Statement

A statement is described in this subparagraph if it is a verified written statement of—

(i) the employer whose employees are covered by the plan described in paragraph (1), or

(ii) any authorized officer of the cooperative described in paragraph (1), consenting to the application of sections 4978 and 4979A with respect to such employer or cooperative.

(4) 3-year holding period

The taxpayer’s holding period with respect to the qualified securities is at least 3 years (determined as of the time of the sale).

(c) Definitions; special rules

For purposes of this section—

(1) Qualified securities

The term “qualified securities” means employer securities (as defined in section 409(l)) which—

(A) are issued by a domestic C corporation that has no stock outstanding that is readily