

**(f) Willful failure to report**

Any person (within the meaning of section 6671(b)) required to report under this section who willfully fails to make such report shall, in addition to other penalties provided by law, be fined not more than \$25,000, imprisoned for not more than one year, or both.

(Added Pub. L. 94-455, title X, §1064(a), Oct. 4, 1976, 90 Stat. 1650; amended Pub. L. 95-600, title VII, §703(h)(2), (3), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98-369, div. A, title VIII, §802(c)(3), July 18, 1984, 98 Stat. 999; Pub. L. 99-514, title XVIII, §1876(p)(3), Oct. 22, 1986, 100 Stat. 2902; Pub. L. 106-519, §4(5), Nov. 15, 2000, 114 Stat. 2433; Pub. L. 108-357, title I, §101(b)(8), Oct. 22, 2004, 118 Stat. 1423.)

## AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108-357 struck out “941(a)(5),” after “sections 908(a),”.

2000—Subsec. (c)(1). Pub. L. 106-519 inserted “941(a)(5),” after “908(a),”.

1986—Subsec. (c)(1), (2). Pub. L. 99-514 repealed section 802(c)(3) of Pub. L. 98-369 thereby restoring former text. See 1984 Amendment note below.

1984—Subsec. (c)(1), (2). Pub. L. 98-369 which substituted “995(b)(1)(F)(i)” for “995(b)(1)(F)(ii)” wherever appearing was repealed. See 1986 Amendment note above.

1978—Subsec. (c)(1). Pub. L. 95-600, §703(h)(2), substituted “995(b)(1)(F)(ii)” for “995(b)(3)”.

Subsec. (c)(2). Pub. L. 95-600, §703(h)(3), substituted “995(b)(1)(F)(ii)” for “995(b)(1)(D)(ii)”.

## EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108-357, set out as a note under section 56 of this title.

## EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106-519, set out as a note under section 56 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, as amended, set out as a note under section 245 of this title.

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of this title.

## EFFECTIVE DATE

Section applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, with special provisions for existing contracts, see section 1066(a) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 908 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147

and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan 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.

## REPORTS BY THE SECRETARY

Pub. L. 94-455, title X, §1067, Oct. 4, 1976, 90 Stat. 1654, as amended by Pub. L. 98-369, div. A, title IV, §441(c), July 18, 1984, 98 Stat. 815, which required the Secretary to transmit a report every four years to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate relating to reports filed under section 999(a) of this title and describing the administration of provisions relating to international boycott activity, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 141 of House Document No. 103-7.

**[§ 1000. Reserved]****Subchapter O—Gain or Loss on Disposition of Property**

Part I.	Determination of amount of and recognition of gain or loss.
II.	Basis rules of general application.
III.	Common nontaxable exchanges.
IV.	Special rules.
V.	Repealed.]
VI.	Repealed.] <sup>1</sup>
VII.	Wash sales; straddles.

## AMENDMENTS

1995—Pub. L. 104-7, §2(c), Apr. 11, 1995, 109 Stat. 93, struck out item for part V “Changes to effectuate F.C.C. policy”.

1990—Pub. L. 101-508, title XI, §11801(b)(9), Nov. 5, 1990, 104 Stat. 1388-522, struck out item for part VIII “Distributions pursuant to Bank Holding Company Act”.

1981—Pub. L. 97-34, title V, §501(d)(3), Aug. 13, 1981, 95 Stat. 327, substituted “Wash sales; straddles” for “Wash sales of stock or securities” in item for part VII. 1976—Pub. L. 94-455, title XIX, §1901(b)(32)(I), Oct. 4, 1976, 90 Stat. 1800, struck out item for part IX “Distributions pursuant to orders enforcing the antitrust laws”.

Pub. L. 94-452, §2(c), Oct. 2, 1976, 90 Stat. 1512, struck out “of 1956” after “Bank Holding Company Act” in item for part VIII.

1962—Pub. L. 87-403, §1(b), Feb. 2, 1962, 76 Stat. 5, added item for part IX.

1956—Act May 9, 1956, ch. 240, §10(b), 70 Stat. 146, added item for part VIII.

**PART I—DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS**

Sec. 1001.	Determination of amount of and recognition of gain or loss.
[1002.]	Repealed.]

## AMENDMENTS

1976—Pub. L. 94-455, title XIX, §1901(b)(28)(B)(ii), Oct. 4, 1976, 90 Stat. 1799, struck out item 1002 “Recognition of gain or loss”.

**§ 1001. Determination of amount of and recognition of gain or loss****(a) Computation of gain or loss**

The gain from the sale or other disposition of property shall be the excess of the amount real-

<sup>1</sup>Part repealed by Pub. L. 109-135 without corresponding amendment of subchapter analysis.

ized therefrom over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

**(b) Amount realized**

The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. In determining the amount realized—

(1) there shall not be taken into account any amount received as reimbursement for real property taxes which are treated under section 164(d) as imposed on the purchaser, and

(2) there shall be taken into account amounts representing real property taxes which are treated under section 164(d) as imposed on the taxpayer if such taxes are to be paid by the purchaser.

**(c) Recognition of gain or loss**

Except as otherwise provided in this subtitle, the entire amount of the gain or loss, determined under this section, on the sale or exchange of property shall be recognized.

**(d) Installment sales**

Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received.

**(e) Certain term interests**

**(1) In general**

In determining gain or loss from the sale or other disposition of a term interest in property, that portion of the adjusted basis of such interest which is determined pursuant to section 1014, 1015, or 1041 (to the extent that such adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded.

**(2) Term interest in property defined**

For purposes of paragraph (1), the term “term interest in property” means—

- (A) a life interest in property,
- (B) an interest in property for a term of years, or
- (C) an income interest in a trust.

**(3) Exception**

Paragraph (1) shall not apply to a sale or other disposition which is a part of a transaction in which the entire interest in property is transferred to any person or persons.

(Aug. 16, 1954, ch. 736, 68A Stat. 295; Pub. L. 91-172, title II, §231(c)(2), title V, §516(a), Dec. 30, 1969, 83 Stat. 579, 646; Pub. L. 94-455, title XIX, §1901(a)(121), Oct. 4, 1976, 90 Stat. 1784; Pub. L. 95-600, title VII, §702(c)(9), Nov. 6, 1978, 92 Stat. 2928; Pub. L. 96-223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 98-369, div. A, title IV, §421(b)(4), July 18, 1984, 98 Stat. 794; Pub. L. 103-66, title XIII, §13213(a)(2)(E), Aug. 10, 1993, 107 Stat. 474.)

AMENDMENTS

1993—Subsec. (f). Pub. L. 103-66 struck out heading and text of subsec. (f). Text read as follows: “For treat-

ment of certain expenses incident to the sale of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e).”

1984—Subsec. (e)(1). Pub. L. 98-369 inserted reference to section 1041.

1980—Subsec. (e)(1). Pub. L. 96-223 repealed the amendment made by Pub. L. 95-600. See 1978 Amendment note below.

1978—Subsec. (e)(1). Pub. L. 95-600 inserted reference to section 1023. See Repeals note below.

1976—Subsec. (c). Pub. L. 94-455 substituted provision recognizing the entire amount of gain or loss, except as otherwise provided, for provision referring to section 1002 for the determination of the extent of gain or loss to be recognized.

1969—Subsec. (e). Pub. L. 91-172, §516(a), added subsec. (e).

Subsec. (f). Pub. L. 91-172, §231(c)(2), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103-66 set out as a note under section 62 of this title.

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 1980 AMENDMENT AND REVIVAL OF PRIOR LAW

Amendment by Pub. L. 96-223 (repealing section 702(c)(9) of Pub. L. 95-600 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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective as if included in the amendments and additions made by, and the appropriate provisions of Pub. L. 94-455, see section 702(c)(10) of Pub. L. 95-600, set out as a note under section 1014 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective for 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.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 231(c)(2) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 231(d) of Pub. L. 91-172, set out as a note under section 217 of this title.

Section 516(d) of Pub. L. 91-172, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) The amendment made by subsection (a) [amending this section] shall apply to sales or other dispositions after October 9, 1969.

“(2) The amendment made by subsection (b) [amending section 1231 of this title] shall apply to taxable years beginning after December 31, 1969.

“(3) The amendments made by subsection (c) [enacting section 1253 and amending sections 162 and 1016 of this title] shall apply to transfers after December 31, 1969, except that section 1253(d)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (c) shall, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe), apply to

transfers before January 1, 1970, but only with respect to payments made in taxable years ending after December 31, 1969, and beginning before January 1, 1980.”

#### REPEALS

Pub. L. 95-600, § 702(c)(9), 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 702(c)(9). See Effective Date of 1980 Amendment and Revival of Prior Law note set out above.

#### [§ 1002. Repealed. Pub. L. 94-455, title XIX, § 1901(b)(28)(B)(i), Oct. 4, 1976, 90 Stat. 1799]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 295, related to the recognition of the entire amount of gain or loss determined under section 1001 on the sale or exchange of property.

#### EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

#### PART II—BASIS RULES OF GENERAL APPLICATION

Sec.	
1011.	Adjusted basis for determining gain or loss.
1012.	Basis of property—cost.
1013.	Basis of property included in inventory.
1014.	Basis of property acquired from a decedent.
1015.	Basis of property acquired by gifts and transfers in trust.
1016.	Adjustments to basis.
1017.	Discharge of indebtedness.
[1018.]	Repealed.]
1019.	Property on which lessee has made improvements.
[1020.]	Repealed.]
1021.	Sale of annuities.
[1022.]	Repealed.]
1023.	Cross references.
[1024.]	Renumbered.]

#### AMENDMENT OF ANALYSIS

*For termination of amendment by section 304 of Pub. L. 111-312, see Effective and Termination Dates of 2010 Amendment note set out under section 121 of this title.*

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note set out under section 1 of this title.*

#### AMENDMENTS

2010—Pub. L. 111-312, title III, §§ 301(a), 304, Dec. 17, 2010, 124 Stat. 3300, 3304, temporarily amended analysis to read as if amendment by Pub. L. 107-16, § 542(e)(6), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107-16, title V, § 542(e)(6), title IX, § 901, June 7, 2001, 115 Stat. 86, 150, temporarily added item 1022.

1980—Pub. L. 96-589, § 6(h)(2), Dec. 24, 1980, 94 Stat. 3410, struck out item 1018 “Adjustments of capital structure before September 22, 1938”.

Pub. L. 96-223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299, repealed section 2005(e)(1) of Pub. L. 94-455 and the amendment made thereby. See 1986 Amendment note below.

1978—Pub. L. 95-600, title V, § 515(5), Nov. 6, 1978, 92 Stat. 2884, substituted “December 31, 1979” for “December 31, 1976” in item 1023.

1976—Pub. L. 94-455, title XX, § 2005(e)(1), Oct. 4, 1976, 90 Stat. 1878, which added item 1023 and redesignated

former item 1023 as 1024, was repealed by Pub. L. 96-223, § 401(a). See section 401(b), (e) of Pub. L. 96-223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

Pub. L. 94-455, title XIX, § 1901(b)(29)(B), (30)(C), Oct. 4, 1976, 90 Stat. 1799, struck out item 1020 “Election in respect of depreciation, etc., allowed before 1952”, and item 1022 “Increase in basis with respect to certain foreign personal holding company stock or securities”.

1964—Pub. L. 88-272, title II, § 225(j)(3), Feb. 26, 1964, 78 Stat. 93, added item 1022 and redesignated former item 1022 as 1023.

#### § 1011. Adjusted basis for determining gain or loss

##### (a) General rule

The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis (determined under section 1012 or other applicable sections of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses)), adjusted as provided in section 1016.

##### (b) Bargain sale to a charitable organization

If a deduction is allowable under section 170 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the property. (Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 91-172, title II, § 201(f), Dec. 30, 1969, 83 Stat. 564.)

#### AMENDMENTS

1969—Pub. L. 91-172 redesignated existing provisions as subsec. (a) and added subsec. (b).

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to sales made after Dec. 19, 1969, see section 201(g)(6) of Pub. L. 91-172, set out as a note under section 170 of this title.

#### § 1012. Basis of property—cost

##### (a) In general

The basis of property shall be the cost of such property, except as otherwise provided in this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses).

##### (b) Special rule for apportioned real estate taxes

The cost of real property shall not include any amount in respect of real property taxes which are treated under section 164(d) as imposed on the taxpayer.

##### (c) Determinations by account

###### (1) In general

In the case of the sale, exchange, or other disposition of a specified security on or after the applicable date, the conventions prescribed by regulations under this section shall be applied on an account by account basis.

###### (2) Application to certain funds

###### (A) In general

Except as provided in subparagraph (B), any stock for which an average basis method

is permissible under section 1012 which is acquired before January 1, 2012, shall be treated as a separate account from any such stock acquired on or after such date.

**(B) Election fund for treatment as single account**

If a fund described in subparagraph (A) elects to have this subparagraph apply with respect to one or more of its stockholders—

(i) subparagraph (A) shall not apply with respect to any stock in such fund held by such stockholders, and

(ii) all stock in such fund which is held by such stockholders shall be treated as covered securities described in section 6045(g)(3) without regard to the date of the acquisition of such stock.

A rule similar to the rule of the preceding sentence shall apply with respect to a broker holding such stock as a nominee.

**(3) Definitions**

For purposes of this section, the terms “specified security” and “applicable date” shall have the meaning given such terms in section 6045(g).

**(d) Average basis for stock acquired pursuant to a dividend reinvestment plan**

**(1) In general**

In the case of any stock acquired after December 31, 2010, in connection with a dividend reinvestment plan, the basis of such stock while held as part of such plan shall be determined using one of the methods which may be used for determining the basis of stock in an open-end fund.

**(2) Treatment after transfer**

In the case of the transfer to another account of stock to which paragraph (1) applies, such stock shall have a cost basis in such other account equal to its basis in the dividend reinvestment plan immediately before such transfer (properly adjusted for any fees or other charges taken into account in connection with such transfer).

**(3) Separate accounts; election for treatment as single account**

Rules similar to the rules of subsection (c)(2) shall apply for purposes of this subsection.

**(4) Dividend reinvestment plan**

For purposes of this subsection—

**(A) In general**

The term “dividend reinvestment plan” means any arrangement under which dividends on any stock are reinvested in stock identical to the stock with respect to which the dividends are paid.

**(B) Initial stock acquisition treated as acquired in connection with plan**

Stock shall be treated as acquired in connection with a dividend reinvestment plan if such stock is acquired pursuant to such plan or if the dividends paid on such stock are subject to such plan.

(Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 110-343, div. B, title IV, § 403(b), Oct. 3, 2008, 122 Stat. 3857.)

AMENDMENTS

2008—Pub. L. 110-343 designated first sentence as subsec. (a) and second sentence as subsec. (b), inserted headings, and added subsecs. (c) and (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. B, title IV, § 403(e), Oct. 3, 2008, 122 Stat. 3860, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting sections 6045A and 6045B of this title and amending this section and sections 6045 and 6724 of this title] shall take effect on January 1, 2011.

“(2) EXTENSION OF PERIOD FOR STATEMENTS SENT TO CUSTOMERS.—The amendments made by subsection (a)(3) [amending section 6045 of this title] shall apply to statements required to be furnished after December 31, 2008.”

**§ 1013. Basis of property included in inventory**

If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

(Aug. 16, 1954, ch. 736, 68A Stat. 296.)

**§ 1014. Basis of property acquired from a decedent**

**(a) In general**

Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent’s death by such person, be—

(1) the fair market value of the property at the date of the decedent’s death,

(2) in the case of an election under either section 2032 or section 811(j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections,

(3) in the case of an election under section 2032A, its value determined under such section, or

(4) to the extent of the applicability of the exclusion described in section 2031(c), the basis in the hands of the decedent.

**(b) Property acquired from the decedent**

For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

(1) Property acquired by bequest, devise, or inheritance, or by the decedent’s estate from the decedent;

(2) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(5) In the case of decedents dying after August 26, 1937, and before January 1, 2005, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;

(6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

(7) In the case of decedents dying after October 21, 1942, and on or before December 31, 1947, such part of any property, representing the surviving spouse's one-half share of property held by a decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, as was included in determining the value of the gross estate of the decedent, if a tax under chapter 3 of the Internal Revenue Code of 1939 was payable on the transfer of the net estate of the decedent. In such case, nothing in this paragraph shall reduce the basis below that which would exist if the Revenue Act of 1948 had not been enacted;

(8) In the case of decedents dying after December 31, 1950, and before January 1, 1954, property which represents the survivor's interest in a joint and survivor's annuity if the value of any part of such interest was required to be included in determining the value of decedent's gross estate under section 811 of the Internal Revenue Code of 1939;

(9) In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence,

amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to—

(A) annuities described in section 72;

(B) property to which paragraph (5) would apply if the property had been acquired by bequest; and

(C) property described in any other paragraph of this subsection.

(10) Property includible in the gross estate of the decedent under section 2044 (relating to certain property for which marital deduction was previously allowed). In any such case, the last 3 sentences of paragraph (9) shall apply as if such property were described in the first sentence of paragraph (9).

**(c) Property representing income in respect of a decedent**

This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691.

**(d) Special rule with respect to DISC stock**

If stock owned by a decedent in a DISC or former DISC (as defined in section 992(a)) acquires a new basis under subsection (a), such basis (determined before the application of this subsection) shall be reduced by the amount (if any) which would have been included in gross income under section 995(c) as a dividend if the decedent had lived and sold the stock at its fair market value on the estate tax valuation date. In computing the gain the decedent would have had if he had lived and sold the stock, his basis shall be determined without regard to the last sentence of section 996(e)(2) (relating to reductions of basis of DISC stock). For purposes of this subsection, the estate tax valuation date is the date of the decedent's death or, in the case of an election under section 2032, the applicable valuation date prescribed by that section.

**(e) Appreciated property acquired by decedent by gift within 1 year of death**

**(1) In general**

In the case of a decedent dying after December 31, 1981, if—

(A) appreciated property was acquired by the decedent by gift during the 1-year period ending on the date of the decedent's death, and

(B) such property is acquired from the decedent by (or passes from the decedent to) the donor of such property (or the spouse of such donor),

the basis of such property in the hands of such donor (or spouse) shall be the adjusted basis of such property in the hands of the decedent immediately before the death of the decedent.

**(2) Definitions**

For purposes of paragraph (1)—

**(A) Appreciated property**

The term "appreciated property" means any property if the fair market value of such property on the day it was transferred to the decedent by gift exceeds its adjusted basis.

**(B) Treatment of certain property sold by estate**

In the case of any appreciated property described in subparagraph (A) of paragraph (1) sold by the estate of the decedent or by a trust of which the decedent was the grantor, rules similar to the rules of paragraph (1) shall apply to the extent the donor of such property (or the spouse of such donor) is entitled to the proceeds from such sale.

(Aug. 16, 1954, ch. 736, 68A Stat. 296; Pub. L. 85-320, § 2, Feb. 11, 1958, 72 Stat. 5; Pub. L. 92-178, title V, § 502(f), Dec. 10, 1971, 85 Stat. 550; Pub. L. 94-455, title XIX, § 1901(c)(8), title XX, § 2005(a)(1), Oct. 4, 1976, 90 Stat. 1803, 1872; Pub. L. 95-600, title V, § 515(1), title VII, § 702(c)(1)(A), Nov. 6, 1978, 92 Stat. 2884, 2926; Pub. L. 96-222, title I, § 107(a)(2)(A), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96-223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97-34, title IV, § 425(a), Aug. 13, 1981, 95 Stat. 318; Pub. L. 97-448, title I, § 104(a)(1)(A), Jan. 12, 1983, 96 Stat. 2379; Pub. L. 105-34, title V, § 508(b), Aug. 5, 1997, 111 Stat. 860; Pub. L. 107-16, title V, § 541, June 7, 2001, 115 Stat. 76; Pub. L. 108-357, title IV, § 413(c)(18), Oct. 22, 2004, 118 Stat. 1508; Pub. L. 111-312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300.)

**AMENDMENT OF SECTION**

*For termination of amendment by section 304 of Pub. L. 111-312, see Effective and Termination Dates of 2010 Amendment note below.*

*For termination of amendment by section 901 of Pub. L. 107-16, see Termination Date of 2001 Amendment note below.*

**REFERENCES IN TEXT**

Section 811 of the Internal Revenue Code of 1939, referred to in subsecs. (a)(2) and (b)(6), (8), was classified to section 811 of 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. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Chapter 3 of the Internal Revenue Code of 1939, referred to in subsec. (b)(7), was comprised of sections 800 to 951 of 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. See also section 7851(a)(2)(A) of this title for applicability of chapter 3 of former title 26. See also section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Revenue Act of 1948, referred to in subsec. (b)(7), is act Apr. 2, 1948, ch. 168, 62 Stat. 110. For complete classification of this Act to the Code, see Tables.

The Internal Revenue Code of 1939, referred to in subsec. (b)(9), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. 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.

**AMENDMENTS**

2010—Subsec. (f). Pub. L. 111-312, §§ 301(a), 304, temporarily amended section to read as if amendment by Pub. L. 107-16, § 541, had never been enacted. See 2001 Amendment note and Effective and Termination Dates

of 2010 Amendment note below. Prior to amendment, text of subsec. (f) read as follows: “This section shall not apply with respect to decedents dying after December 31, 2009.”

2004—Subsec. (b)(5). Pub. L. 108-357 inserted “and before January 1, 2005,” after “August 26, 1937.”

2001—Subsec. (f). Pub. L. 107-16, §§ 541, 901, temporarily added subsec. (f). See Termination Date of 2001 Amendment note below.

1997—Subsec. (a). Pub. L. 105-34 struck out “or” at end of pars. (1) and (2), struck out the period at end of par. (3) and inserted “, or”, and added par. (4).

1983—Subsec. (b)(10). Pub. L. 97-448 added par. (10).

1981—Subsec. (e). Pub. L. 97-34 added subsec. (e).

1980—Subsec. (a)(3). Pub. L. 96-222 substituted “section 2032A” for “section 2032.1”.

Subsec. (d). Pub. L. 96-223 repealed the amendment made by Pub. L. 94-455, § 2005(a)(1). See 1976 Amendment note below.

1978—Subsec. (a). Pub. L. 95-600, § 702(c)(1)(A), designated existing provisions as pars. (1) and (2) and added par. (3).

Subsec. (d). Pub. L. 95-600, § 515(1), substituted “December 31, 1979” for “December 31, 1976” in heading and text.

1976—Subsec. (b)(6), (7). Pub. L. 94-455, § 1901(c)(8), struck out “Territory,” after “under the community property laws of any State.”

Subsec. (d). Pub. L. 94-455, § 2005(a)(1), substituted provision relating to the applicability of this section to decedents dying after 1976 for provision relating to a special rule with respect to DISC stock. See Repeals note below.

1971—Subsec. (d). Pub. L. 92-178 added subsec. (d).

1958—Subsec. (d). Pub. L. 85-320 repealed subsec. (d) which made section inapplicable to restricted stock options described in section 421 which the employee has not exercised at death.

**EFFECTIVE AND TERMINATION DATES 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 a note under section 121 of this title.

Section 901 of Pub. L. 107-16 applicable to amendments by section 301(a) of Pub. L. 111-312, see section 304 of Pub. L. 111-312, set out as a note under section 121 of this title.

**EFFECTIVE DATE OF 2004 AMENDMENT**

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

**TERMINATION DATE OF 2001 AMENDMENT**

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Section 508(e)(1) of Pub. L. 105-34 provided that: “The amendments made by subsections (a) and (b) [amending this section and section 2031 of this title] shall apply to estates of decedents dying after December 31, 1997.”

**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

Section 425(b) of Pub. L. 97-34 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

Section 702(c)(10) of Pub. L. 95-600 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 executor (within the meaning of section 2203 of the Inter-

nal 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.)

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, as amended. 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.

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).

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.

Section 2005(f) of Pub. L. 94-455, 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 taxes or other carrying charges described in section 266, or

(B) for 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;

(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<sup>1</sup> of subchapter L (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 respect to which the taxpayer has been relieved from liability;

(9) for amounts allowed as deductions as deferred expenses under section 616(b) (relating to certain expenditures in the development of mines) and resulting in a reduction of the taxpayer's taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;

[(10) Repealed. Pub. L. 94-455, title XIX, § 1901(b)(21)(G), Oct. 4, 1976, 90 Stat. 1798]

<sup>1</sup> See References in Text note below.

(11) for deductions to the extent disallowed under section 268 (relating to sale of land with unharvested crops), notwithstanding the provisions of any other paragraph of this subsection;

(12) to the extent provided in section 28(h) of the Internal Revenue Code of 1939 in the case of amounts specified in a shareholder's consent made under section 28 of such code;

[(13) Repealed. Pub. L. 108-357, title IV, § 413(c)(19), Oct. 22, 2004, 118 Stat. 1509]

(14) for amounts allowed as deductions as deferred expenses under section 174(b)(1) (relating to research and experimental expenditures) and resulting in a reduction of the taxpayers' taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;

(15) for deductions to the extent disallowed under section 272 (relating to disposal of coal or domestic iron ore), notwithstanding the provisions of any other paragraph of this subsection;

(16) in the case of any evidence of indebtedness referred to in section 811(b) (relating to amortization of premium and accrual of discount in the case of life insurance companies), to the extent of the adjustments required under section 811(b) (or the corresponding provisions of prior income tax laws) for the taxable year and all prior taxable years;

(17) to the extent provided in section 1367 in the case of stock of, and indebtedness owed to, shareholders of an S corporation;

(18) to the extent provided in section 961 in the case of stock in controlled foreign corporations (or foreign corporations which were controlled foreign corporations) and of property by reason of which a person is considered as owning such stock;

(19) to the extent provided in section 50(c), in the case of expenditures with respect to which a credit has been allowed under section 38;

(20) for amounts allowed as deductions under section 59(e) (relating to optional 10-year writeoff of certain tax preferences);

(21) to the extent provided in section 1059 (relating to reduction in basis for extraordinary dividends);

(22) in the case of qualified replacement property the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale or exchange of any property, to the extent provided in section 1042(d),<sup>2</sup>

(23) in the case of property the acquisition of which resulted under section 1043, 1044, 1045, or 1397B in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in section 1043(c), 1044(d), 1045(b)(3), or 1397B(b)(4), as the case may be,<sup>2</sup>

(24) to the extent provided in section 179A(e)(6)(A),<sup>2</sup>

(25) to the extent provided in section 30(e)(1),<sup>2</sup>

(26) to the extent provided in sections 36C(g) and 137(e),<sup>2</sup>

(27) in the case of a residence with respect to which a credit was allowed under section

1400C, to the extent provided in section 1400C(h),<sup>2</sup>

(28) in the case of a facility with respect to which a credit was allowed under section 45F, to the extent provided in section 45F(f)(1),<sup>2</sup>

(29) in the case of railroad track with respect to which a credit was allowed under section 45G, to the extent provided in section 45G(e)(3),<sup>2</sup>

(30) to the extent provided in section 179B(c),<sup>2</sup>

(31) to the extent provided in section 179D(e),<sup>2</sup>

(32) to the extent provided in section 45L(e), in the case of amounts with respect to which a credit has been allowed under section 45L,<sup>2</sup>

(33) to the extent provided in section 25C(f), in the case of amounts with respect to which a credit has been allowed under section 25C,<sup>2</sup>

(34) to the extent provided in section 25D(f), in the case of amounts with respect to which a credit has been allowed under section 25D,<sup>2</sup>

(35) to the extent provided in section 30B(h)(4),<sup>2</sup>

(36) to the extent provided in section 30C(e)(1),<sup>2</sup> and

(37) to the extent provided in section 30D(f)(1).

#### (b) Substituted basis

Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in subsection (a) shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

#### (c) Increase in basis of property on which additional estate tax is imposed

##### (1) Tax imposed with respect to entire interest

If an additional estate tax is imposed under section 2032A(c)(1) with respect to any interest in property and the qualified heir makes an election under this subsection with respect to the imposition of such tax, the adjusted basis of such interest shall be increased by an amount equal to the excess of—

(A) the fair market value of such interest on the date of the decedent's death (or the alternate valuation date under section 2032, if the executor of the decedent's estate elected the application of such section), over

(B) the value of such interest determined under section 2032A(a).

##### (2) Partial dispositions

###### (A) In general

In the case of any partial disposition for which an election under this subsection is made, the increase in basis under paragraph (1) shall be an amount—

(i) which bears the same ratio to the increase which would be determined under paragraph (1) (without regard to this paragraph) with respect to the entire interest, as

<sup>2</sup> So in original. The comma probably should be a semicolon.

(ii) the amount of the tax imposed under section 2032A(c)(1) with respect to such disposition bears to the adjusted tax difference attributable to the entire interest (as determined under section 2032A(c)(2)(B)).

**(B) Partial disposition**

For purposes of subparagraph (A), the term “partial disposition” means any disposition or cessation to which subsection (c)(2)(D), (h)(1)(B), or (i)(1)(B) of section 2032A applies.

**(3) Time adjustment made**

Any increase in basis under this subsection shall be deemed to have occurred immediately before the disposition or cessation resulting in the imposition of the tax under section 2032A(c)(1).

**(4) Special rule in the case of substituted property**

If the tax under section 2032A(c)(1) is imposed with respect to qualified replacement property (as defined in section 2032A(h)(3)(B)) or qualified exchange property (as defined in section 2032A(i)(3)), the increase in basis under paragraph (1) shall be made by reference to the property involuntarily converted or exchanged (as the case may be).

**(5) Election**

**(A) In general**

An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such an election, once made, shall be irrevocable.

**(B) Interest on recaptured amount**

If an election is made under this subsection with respect to any additional estate tax imposed under section 2032A(c)(1), for purposes of section 6601 (relating to interest on underpayments), the last date prescribed for payment of such tax shall be deemed to be the last date prescribed for payment of the tax imposed by section 2001 with respect to the estate of the decedent (as determined for purposes of section 6601).

**(d) Reduction in basis of automobile on which gas guzzler tax was imposed**

If—

(1) the taxpayer acquires any automobile with respect to which a tax was imposed by section 4064, and

(2) the use of such automobile by the taxpayer begins not more than 1 year after the date of the first sale for ultimate use of such automobile,

the basis of such automobile shall be reduced by the amount of the tax imposed by section 4064 with respect to such automobile. In the case of importation, if the date of entry or withdrawal from warehouse for consumption is later than the date of the first sale for ultimate use, such later date shall be substituted for the date of such first sale in the preceding sentence.

**(e) Cross reference**

**For treatment of separate mineral interests as one property, see section 614.**

(Aug. 16, 1954, ch. 736, 68A Stat. 299; June 29, 1956, ch. 464, §4(c), 70 Stat. 407; Pub. L. 85–866, title I, §§2(b), 64(d)(2), Sept. 2, 1958, 72 Stat. 1607, 1656; Pub. L. 86–69, §3(d), June 25, 1959, 73 Stat. 139; Pub. L. 87–834, §2(f), 8(g)(2), 12(b)(4), Oct. 16, 1962, 76 Stat. 972, 998, 1031; Pub. L. 88–272, title II, §§203(a)(3)(C), 225(j)(2), 227(b)(5), Feb. 26, 1964, 78 Stat. 34, 93, 98; Pub. L. 91–172, title II, §231(c)(3), title V, §§504(c)(4), 516(c)(2)(B), Dec. 30, 1969, 83 Stat. 580, 633, 648; Pub. L. 94–455, title XIX, §1901(a)(123), (b)(1)(F)(ii), (21)(G), (29)(A), (30)(A), title XX, §2005(a)(3), Oct. 4, 1976, 90 Stat. 1784, 1790, 1798, 1799, 1876; Pub. L. 95–472, §4(b), Oct. 17, 1978, 92 Stat. 1335; Pub. L. 95–600, title V, §515(2), title VI, §601(b)(3), title VII, §702(r)(3), Nov. 6, 1978, 92 Stat. 2884, 2896, 2938; Pub. L. 95–618, title I, §101(b)(3), title II, §201(b), Nov. 9, 1978, 92 Stat. 3179, 3183; Pub. L. 96–222, title I, §§106(a)(2), (3), 107(a)(2)(C), Apr. 1, 1980, 94 Stat. 221, 222; Pub. L. 96–223, title IV, §401(a), (c)(1), Apr. 2, 1980, 94 Stat. 299, 300; Pub. L. 97–34, title II, §212(d)(2)(G), title IV, §421(g), Aug. 13, 1981, 95 Stat. 239, 310; Pub. L. 97–248, title II, §§201(c)(2), 205(a)(5)(B), Sept. 3, 1982, 96 Stat. 418, 429; Pub. L. 97–354, §5(a)(33), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title I, §§43(a)(2), 53(d)(3), title II, §211(b)(14), title IV, §474(r)(23), title V, §541(b)(2), July 18, 1984, 98 Stat. 558, 568, 756, 844, 890; Pub. L. 99–514, title II, §241(b)(2), title VII, §701(e)(4)(D), title XIII, §1303(b)(3), title XVIII, §1899A(25), Oct. 22, 1986, 100 Stat. 2181, 2343, 2658, 2959; Pub. L. 100–647, title I, §§1006(j)(1)(B), 1018(u)(22), Nov. 10, 1988, 102 Stat. 3411, 3591; Pub. L. 101–194, title V, §502(b)(2), Nov. 30, 1989, 103 Stat. 1755; Pub. L. 101–508, title XI, §§11801(c)(1), 11812(b)(10), 11813(b)(19), Nov. 5, 1990, 104 Stat. 1388–522, 1388–535, 1388–555; Pub. L. 102–486, title XIX, §1913(a)(3)(A), (b)(2)(B), Oct. 24, 1992, 106 Stat. 3019, 3020; Pub. L. 103–66, title XIII, §§13114(b), 13213(a)(2)(F), 13261(f)(3), Aug. 10, 1993, 107 Stat. 431, 474, 539; Pub. L. 104–188, title I, §§1704(t)(56), 1807(c)(5), Aug. 20, 1996, 110 Stat. 1890, 1902; Pub. L. 105–34, title III, §§312(d)(6), 313(b)(1), title VII, §701(b)(2), Aug. 5, 1997, 111 Stat. 840, 842, 869; Pub. L. 106–554, §1(a)(7) [title I, §116(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–603; Pub. L. 107–16, title II, §205(b)(3), June 7, 2001, 115 Stat. 53; Pub. L. 108–357, title II, §245(c)(2), title III, §§338(b)(4), 339(d), title IV, §413(c)(19), Oct. 22, 2004, 118 Stat. 1448, 1481, 1484, 1509; Pub. L. 109–58, title XIII, §§1331(b)(1), 1332(c), 1333(b)(1), 1335(b)(4), 1341(b)(2), 1342(b)(2), Aug. 8, 2005, 119 Stat. 1023, 1026, 1029, 1036, 1049, 1051; Pub. L. 109–135, title IV, §412(nn), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110–172, §§7(a)(1)(C), 11(a)(21), (22), Dec. 29, 2007, 121 Stat. 2481, 2486; Pub. L. 110–343, div. B, title II, §205(d)(2), Oct. 3, 2008, 122 Stat. 3839; Pub. L. 111–5, div. B, title I, §§1141(b)(3), 1142(b)(6), Feb. 17, 2009, 123 Stat. 328, 331; Pub. L. 111–148, title X, §10909(b)(2)(L), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–312, title I, §101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

AMENDMENT OF SECTION

*For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.*

*For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.*

## REFERENCES IN TEXT

Section 1020, referred to in subsec. (a)(2), was repealed by Pub. L. 94-455, title XIX, §1901(a)(125), Oct. 4, 1976, 90 Stat. 1784.

The Tax Reform Act of 1976, referred to in subsec. (a)(2), is Pub. L. 94-455, Oct. 4, 1976, 90 Stat. 1520, as amended, which was enacted Oct. 4, 1976. For complete classification of this Act to the Code, see Tables.

Part II of subchapter L, referred to in subsec. (a)(3)(D), was repealed and part III of subchapter L was redesignated as part II by Pub. L. 99-514, title X, §1024(a)(1), (2), Oct. 22, 1986, 100 Stat. 2405.

The Revenue Act of 1918 (40 Stat. 1057), referred to in subsec. (a)(4), is act Feb. 24, 1919, ch. 18, 40 Stat. 1057. For complete classification of this Act to the Code, see Tables.

The Revenue Act of 1921 (42 Stat. 227), referred to in subsec. (a)(4), is act Nov. 23, 1921, ch. 136, 42 Stat. 227. For complete classification of this Act to the Code, see Tables.

Section 218 of the Revenue Act of 1918 or 1921, referred to in subsec. (a)(4), was not classified to the Code.

The date of the enactment of the Taxpayer Relief Act of 1997, referred to in subsec. (a)(7), is the date of enactment of Pub. L. 105-34, which was approved Aug. 5, 1997.

Section 28 of the Internal Revenue Code of 1939, referred to in subsec. (a)(12), was classified to section 28 of former Title 26, Internal Revenue Code. Section 28 was repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

## CODIFICATION

Section 10909(b)(2)(L) of Pub. L. 111-148, which directed the amendment of section 1016(a)(26) without specifying the act to be amended, was executed to this section, which is section 1016 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2010 Amendment note below.

## AMENDMENTS

2010—Subsec. (a)(26). Pub. L. 111-148, §10909(b)(2)(L), (c), as amended by Pub. L. 111-312, temporarily substituted “36C(g)” for “23(g)”. See Codification note above and Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (a)(25). Pub. L. 111-5, §1142(b)(6), substituted “section 30(e)(1)” for “section 30(d)(1)”.

Subsec. (a)(37). Pub. L. 111-5, §1141(b)(3), which directed amendment of subsec. (a)(25) by substituting “section 30D(f)(1)” for “section 30D(e)(4)”, was executed by making the substitution in subsec. (a)(37) to reflect the probable intent of Congress.

2008—Subsec. (a)(37). Pub. L. 110-343 added par. (37).

2007—Subsec. (a)(31), (32). Pub. L. 110-172, §7(a)(1)(C), redesignated pars. (32) and (33) as (31) and (32), respectively, and struck out former par. (31) which read as follows: “in the case of a facility with respect to which a credit was allowed under section 45H, to the extent provided in section 45H(d)”.

Subsec. (a)(33). Pub. L. 110-172, §11(a)(21), substituted “section 25C(f)” for “section 25C(e)”.

Pub. L. 110-172, §7(a)(1)(C), redesignated par. (34) as (33). Former par. (33) redesignated (32).

Subsec. (a)(34), (35). Pub. L. 110-172, §7(a)(1)(C), redesignated pars. (35) and (36) as (34) and (35), respectively. Former par. (34) redesignated (33).

Subsec. (a)(36). Pub. L. 110-172, §11(a)(22), substituted “section 30C(e)(1)” for “section 30C(f)”.

Pub. L. 110-172, §7(a)(1)(C), redesignated par. (37) as (36). Former par. (36) redesignated (35).

Subsec. (a)(37). Pub. L. 110-172, §7(a)(1)(C), redesignated par. (37) as (36).

2005—Subsec. (a)(23). Pub. L. 109-135 substituted “1045(b)(3)” for “1045(b)(4)”.

Subsec. (a)(32). Pub. L. 109-58, §1331(b)(1), added par. (32).

Subsec. (a)(33). Pub. L. 109-58, §1332(c), added par. (33).

Subsec. (a)(34). Pub. L. 109-58, §1333(b)(1), added par. (34).

Subsec. (a)(35). Pub. L. 109-58, §1335(b)(4), added par. (35).

Subsec. (a)(36). Pub. L. 109-58, §1341(b)(2), added par. (36).

Subsec. (a)(37). Pub. L. 109-58, §1342(b)(2), added par. (37).

2004—Subsec. (a)(13). Pub. L. 108-357, §413(c)(19), struck out par. (13) which read as follows: “to the extent provided in section 551(e) in the case of the stock of United States shareholders in a foreign personal holding company”.

Subsec. (a)(29). Pub. L. 108-357, §245(c)(2), added par. (29).

Subsec. (a)(30). Pub. L. 108-357, §338(b)(4), added par. (30).

Subsec. (a)(31). Pub. L. 108-357, §339(d), added par. (31). 2001—Subsec. (a)(28). Pub. L. 107-16, §§205(b)(3), 901, temporarily added par. (28). See Effective and Termination Dates of 2001 Amendment note below.

2000—Subsec. (a)(23). Pub. L. 106-554 substituted “1045, or 1397B” for “or 1045” and “1045(b)(4), or 1397B(b)(4)” for “or 1045(b)(4)”.

1997—Subsec. (a)(7). Pub. L. 105-34, §312(d)(6), inserted “(as in effect on the day before the date of the enactment of the Taxpayer Relief Act of 1997)” after “section 1034” and “(as so in effect)” after “section 1034(e)”.

Subsec. (a)(23). Pub. L. 105-34, §313(b)(1), substituted “1044, or 1045” for “or 1044” and “1044(d), or 1045(b)(4)” for “or 1044(d)”.

Subsec. (a)(27). Pub. L. 105-34, §701(b)(2), added par. (27).

1996—Subsec. (a)(20). Pub. L. 104-188, §1704(t)(56), provided that section 11813(b)(19) of Pub. L. 101-508 shall be applied as if “Paragraph (20) of section 1016(a), as redesignated by section 11801,” appeared instead of “paragraph (21) of section 1016(a)”. See 1990 Amendment note below.

Subsec. (a)(26). Pub. L. 104-188, §1807(c)(5), added par. (26).

1993—Subsec. (a)(19) to (23). Pub. L. 103-66, §13261(f)(3), redesignated pars. (20) to (24) as (19) to (23), respectively, and struck out former par. (19) which read as follows: “for amounts allowed as deductions for payments made on account of transfers of franchises, trademarks, or trade names under section 1253(d)(2)”.

Subsec. (a)(24). Pub. L. 103-66, §13261(f)(3), redesignated par. (25) as (24). Former par. (24) redesignated (23).

Pub. L. 103-66, §13114(b), substituted “section 1043 or 1044” for “section 1043” and “section 1043(c) or 1044(d), as the case may be” for “section 1043(c)”.

Subsec. (a)(25), (26). Pub. L. 103-66, §13261(f)(3), redesignated pars. (25) and (26) as (24) and (25), respectively.

Subsec. (e). Pub. L. 103-66, §13213(a)(2)(F), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

“(1) For treatment of certain expenses incident to the purchase of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e).

“(2) For treatment of separate mineral interests as one property, see section 614.”

1992—Subsec. (a)(25), (26). Pub. L. 102-486 added pars. (25) and (26).

1990—Subsec. (a)(2). Pub. L. 101-508, §11812(b)(10), substituted “under the straight line method” for “under section 167(b)(1)” in concluding provisions.

Subsec. (a)(20). Pub. L. 101-508, §11813(b)(19), which directed the amendment of subsec. (a)(21) by striking “section 48(q)” and inserting “section 50(c)”, was executed to subsec. (a)(20). See 1996 Amendment note above.

Pub. L. 101-508, §11801(c)(1), redesignated par. (21) as (20) and struck out former par. (20) which read as follows: “to the extent provided in section 23(e), in the

case of property with respect to which a credit has been allowed under section 23;”.

Subsec. (a)(21) to (25). Pub. L. 101-508, § 11801(c)(1), redesignated pars. (21) to (25) as (20) to (24), respectively.

1989—Subsec. (a)(25). Pub. L. 101-194 added par. (25).

1988—Subsec. (a)(5). Pub. L. 100-647, § 1006(j)(1)(B), inserted “(or the amount applied to reduce interest payments under section 171(e)(2))” after “allowable pursuant to section 171(a)(1)”.

Subsec. (a)(21) to (26). Pub. L. 100-647, § 1018(u)(22), added pars. (21) to (24) and struck out former pars. (23) to (26) which read as follows:

“(23) to the extent provided in section 48(q) in the case of expenditures with respect to which a credit has been allowed under section 38;

“(24) for amounts allowed as deductions under section 59(d) (relating to optional 10-year writeoff of certain tax preferences);

“(25) to the extent provided in section 1059 (relating to reduction in basis for extraordinary dividends); and

“(26) in the case of qualified replacement property, the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale or exchange of any property, to the extent provided in section 1042(c).”

Former pars. (21) and (22) had been struck out previously.

1986—Subsec. (a). Pub. L. 99-514, § 1899A(25), which directed the amendment of pars. (23) to (26) by substituting a semicolon for a comma at the end thereof was executed to pars. (24) to (26) in view of the prior repeal of par. (23).

Pub. L. 99-514, § 1303(b)(3), which directed the amendment of subsec. (a) by striking out par. (22) and redesignating pars. (23) to (27) as (22) to (26), respectively, was executed by striking out par. (21) to reflect the probable intent of Congress in view of the amendment by section 241(b)(2) of Pub. L. 99-514. Prior to the amendment, par. (21) read as follows: “to the extent provided in section 1395 in the case of stock of shareholders of a general stock ownership corporation (as defined in section 1391) which makes the election provided by section 1392;”.

Pub. L. 99-514, § 241(b)(2), redesignated pars. (17) to (27) as (16) to (26), respectively, and struck out former par. (16) which read as follows: “for amounts allowed as deductions for expenditures treated as deferred expenses under section 177 (relating to trademark and trade name expenditures) and resulting in a reduction of the taxpayer’s taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;”.

Subsec. (a)(24). Pub. L. 99-514, § 701(e)(4)(D), substituted “section 59(d)” for “section 58(i)”.

1984—Subsec. (a)(17). Pub. L. 98-369, § 211(b)(14), substituted “section 811(b)” for “section 818(b)” in two places.

Subsec. (a)(21). Pub. L. 98-369, § 474(r)(23), substituted “section 23(e)” for “section 44C(e)” and “section 23” for “section 44C”.

Subsec. (a)(26). Pub. L. 98-369, § 53(d)(3), added par. (26).

Subsec. (a)(27). Pub. L. 98-369, § 541(b)(2), added par. (27).

Subsec. (b). Pub. L. 98-369, § 43(a)(2), struck out “The term ‘substituted basis’ as used in this section means a basis determined under any provision of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses), or under any corresponding provision of a prior income tax law, providing that the basis shall be determined (1) by reference to the basis in the hands of a transferor, donor, or grantor, or (2) by reference to other property held at any time by the person for whom the basis is to be determined.” See section 7701(a)(42) of this title.

1982—Subsec. (a)(18). Pub. L. 97-354 substituted “section 1367” for “section 1376”, “indebtedness owed to” for “indebtedness owing”, and “an S corporation” for

“an electing small business corporation (as defined in section 1371(b))”.

Subsec. (a)(24). Pub. L. 97-248, § 205(a)(5)(B), substituted “to the extent provided in section 48(q)” for “to the extent provided in section 48(g)(5)”.

Subsec. (a)(25). Pub. L. 97-248, § 201(c)(2), added par. (25).

1981—Subsec. (a)(24). Pub. L. 97-34, § 212(d)(2)(G), added par. (24).

Subsec. (c). Pub. L. 97-34, § 421(g), substituted provisions respecting increase in basis of property on which additional estate tax is imposed for provisions for increase in basis in the case of certain involuntary conversions, if such compulsory or involuntary conversions are within the meaning of section 1033, and an additional estate tax is imposed under section 2032A, and provisions respecting time adjustment made.

1980—Subsec. (a)(22). Pub. L. 96-222, § 106(a)(2), redesignated par. (21), relating to the extent provided in section 1395 in the case of stock of shareholders of a general stock ownership corporation, as (22).

Subsec. (a)(23). Pub. L. 96-223, § 401(a), repealed the amendments made by Pub. L. 94-455, § 2005(a)(3), and Pub. L. 95-600, § 702(r)(3). See 1976 and 1978 Amendment notes below.

Subsec. (c). Pub. L. 96-223, § 401(c)(1), struck out provision relating to the net appreciation of in value of certain property and struck out references to section 1023 of this title.

1978—Subsec. (a)(21). Pub. L. 95-618, § 101(b)(3), added par. (21) relating to an adjustment to the extent provided in section 44C.

Pub. L. 95-600, § 601(b)(3), as amended by Pub. L. 96-222, § 106(a)(3), added par. (21) relating to an adjustment to the extent provided in section 1395.

Subsec. (a)(23). Pub. L. 95-600, § 702(r)(3), which redesignated par. (23) as (21), was repealed by Pub. L. 96-222, § 107(a)(2)(C), and Pub. L. 96-223, § 401(a). See Repeals note below.

Pub. L. 95-600, § 515(2), substituted “December 31, 1979” for “December 31, 1976”.

Subsec. (c). Pub. L. 95-472 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95-618, § 201(b), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 95-472 redesignated former subsec. (c) as (d). Subsec. (e). Pub. L. 95-618, § 201(b), redesignated former subsec. (d) as (e).

1976—Subsec. (a)(2). Pub. L. 94-455, § 1901(b)(29)(A), inserted “(as in effect before the date of the enactment of the Tax Reform Act of 1976)” after “under section 1020”.

Subsec. (a)(10). Pub. L. 94-455, § 1901(b)(21)(G), struck out par. (10) which related to adjustment for the amounts allowed as deductions as deferred expenses under section 615(b) of this title.

Subsec. (a)(13). Pub. L. 94-455, § 1901(b)(1)(F)(ii), substituted “section 551(e)” for “section 551(f)”.

Subsec. (a)(19). Pub. L. 94-455, § 1901(a)(123), (b)(30)(A), redesignated par. (20) as (19). Former par. (19), which related to adjustment of section 38 property to the extent provided in sections 48(g) and 203 of this title, was struck out.

Subsec. (a)(20). Pub. L. 94-455, § 1901(b)(30)(A), redesignated par. (22) as (20). Former par. (20) redesignated (19).

Subsec. (a)(21). Pub. L. 94-455, § 1901(b)(30)(A), struck out par. (21) which related to property adjustment to the extent provided in section 1022 of this title.

Subsec. (a)(22). Pub. L. 94-455, § 1901(b)(30)(A), redesignated par. (22) as (20).

Subsec. (a)(23). Pub. L. 94-455, § 2005(a)(3), added par. (23). See Repeals note below.

1969—Subsec. (a)(22). Pub. L. 91-172, § 516(c)(2)(B), added par. (22).

Subsec. (a)(10). Pub. L. 91-172, § 504(c)(4), limited exploration expenditures referred to in this par. to pre-1970 exploration expenditures.

Subsec. (c). Pub. L. 91-172, § 231(c)(3), redesignated existing provisions as par. (2) and added par. (1).

1964—Subsec. (a)(15). Pub. L. 88-272, §227(b)(5), inserted “or domestic iron ore”.

Subsec. (a)(19). Pub. L. 88-272, §203(a)(3)(C), inserted “and in section 203(a)(2) of the Revenue Act of 1964”.

Subsec. (a)(21). Pub. L. 88-272, §225(j)(2), added par. (21).

1962—Subsec. (a)(3)(D). Pub. L. 87-834, §8(g)(2), added subpar. (D).

Subsec. (a)(19). Pub. L. 87-834, §2(f), added par. (19).

Subsec. (a)(20). Pub. L. 87-834, §12(b)(4), added par. (20).

1959—Subsec. (a)(3)(C). Pub. L. 86-69, §3(d)(1), added subpar. (C).

Subsec. (a)(17). Pub. L. 86-69, §3(d)(2), added par. (17).

1958—Subsec. (a)(6). Pub. L. 85-866, §2(b), struck out “short-term” before “municipal bond”.

Subsec. (a)(18). Pub. L. 85-866, §64(d)(2), added par. (18).

1956—Subsec. (a)(16). Act June 29, 1956, added par. (16).

#### EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Amendment by Pub. L. 111-148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111-148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111-148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111-148, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1141(b)(3) of Pub. L. 111-5 applicable to vehicles acquired after Dec. 31, 2009, see section 1141(c) of Pub. L. 111-5, set out as a note under section 30B of this title.

Amendment by section 1142(b)(6) of Pub. L. 111-5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110-343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 7(a)(1)(C) of Pub. L. 110-172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 7(e) of Pub. L. 110-172, set out as a note under section 1092 of this title.

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 1331(b)(1) of Pub. L. 109-58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109-58, set out as an Effective Date note under section 179D of this title.

Amendment by section 1332(c) of Pub. L. 109-58 applicable to qualified new energy efficient homes acquired after Dec. 31, 2005, in taxable years ending after such date, see section 1332(f) of Pub. L. 109-58, set out as a note under section 38 of this title.

Amendment by section 1333(b)(1) of Pub. L. 109-58 applicable to property placed in service after Dec. 31, 2005, see section 1333(c) of Pub. L. 109-58, set out as an Effective Date note under section 25C of this title.

Amendment by section 1335(b)(4) of Pub. L. 109-58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1335(c) of Pub. L. 109-58, set out as a note under section 36C of this title.

Amendment by section 1341(b)(2) of Pub. L. 109-58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section

1341(c) of Pub. L. 109-58, set out as an Effective Date note under section 30B of this title.

Amendment by section 1342(b)(2) of Pub. L. 109-58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1342(c) of Pub. L. 109-58, set out as an Effective Date note under section 30C of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 245(c)(2) of Pub. L. 108-357 applicable to taxable years beginning after Dec. 31, 2004, see section 245(e) of Pub. L. 108-357, set out as a note under section 38 of this title.

Amendment by section 338(b)(4) of Pub. L. 108-357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108-357, set out as an Effective Date note under section 179B of this title.

Amendment by section 339(d) of Pub. L. 108-357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 339(f) of Pub. L. 108-357, set out as a note under section 38 of this title.

Amendment by section 413(c)(19) of Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

#### EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 205(c) of Pub. L. 107-16, set out as a note under section 38 of this title.

Amendment by Pub. L. 107-16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(7) [title I, §116(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-604, provided that: “The amendments made by this section [enacting subpart C of part III of subchapter U of this chapter, amending this section and sections 1223, 1394, 1400, and 1400B of this title, redesignating subpart C of part III of subchapter U of this chapter as subpart D of part III of subchapter U of this chapter, and renumbering sections 1397B and 1397C of this title as 1397C and 1397D, respectively, of this title] shall apply to qualified empowerment zone assets acquired after the date of the enactment of this Act [Dec. 21, 2000].”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(6) of Pub. L. 105-34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105-34, set out as a note under section 121 of this title.

Section 313(c) of Pub. L. 105-34 provided that: “The amendments made by this section [enacting section 1045 of this title and amending this section and section 1223 of this title] shall apply to sales after the date of enactment of this Act [Aug. 5, 1997].”

Amendment by section 701(b)(2) of Pub. L. 105-34 effective Aug. 5, 1997, see section 701(d) of Pub. L. 105-34, set out as a note under section 39 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1807(c)(5) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1807(e) of Pub. L. 104-188, set out as an Effective Date note under section 36C of this title.

## EFFECTIVE DATE OF 1993 AMENDMENT

Section 13114(d) of Pub. L. 103-66 provided that: “The amendments made by this section [enacting section 1044 of this title and amending this section] shall apply to sales on and after the date of the enactment of this Act [Aug. 10, 1993], in taxable years ending on and after such date.”

Amendment by section 13213(a)(2)(F) of Pub. L. 103-66 applicable to expenses incurred after Dec. 31, 1993, see section 13213(e) of Pub. L. 103-66 set out as a note under section 62 of this title.

Amendment by section 13261(f)(3) of Pub. L. 103-66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103-66, set out as an Effective Date note under section 197 of this title.

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-486 applicable to property placed in service after June 30, 1993, see section 1913(c) of Pub. L. 102-486, set out as an Effective Date note under section 30 of this title.

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(10) of Pub. L. 101-508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99-514, see section 11812(c) of Pub. L. 101-508, set out as a note under section 42 of this title.

Amendment by section 11813(b)(19) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

## EFFECTIVE DATE OF 1989 AMENDMENT

Section 502(c) of Pub. L. 101-194 provided that: “The amendments made by this section [enacting section 1043 of this title and amending this section and section 1223 of this title] shall apply to sales after the date of the enactment of this Act [Nov. 30, 1989].”

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1006(j)(1)(B) of Pub. L. 100-647 applicable in the case of obligations acquired after Dec. 31, 1987, with exception allowing taxpayer to elect to have amendment apply to obligations acquired after Oct. 22, 1986, see section 1006(j)(1)(C) of Pub. L. 100-647, set out as a note under section 171 of this title.

Amendment by section 1018(u)(22) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 241(b)(2) of Pub. L. 99-514 applicable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 241(c) of Pub. L. 99-514, set out as an Effective Date of Repeal note under former section 177 of this title.

Amendment by section 701(e)(4)(D) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1303(b)(3) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1311(f) of Pub. L. 99-514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 43(a)(2) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 53(d)(3) of Pub. L. 98-369 applicable to distribution after Mar. 1, 1984, in taxable years ending after such date, see section 53(e)(1) of Pub. L. 98-369, set out as an Effective Date note under section 1059 of this title.

Amendment by section 211(b)(14) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(23) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 541(b)(2) of Pub. L. 98-369 applicable to sales of securities in taxable years beginning after July 18, 1984, see section 541(c) of Pub. L. 98-369, set out as an Effective Date note under section 1042 of this title.

## EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

Amendment by section 201(c)(2) of Pub. L. 97-248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97-248, set out as a note under section 5 of this title.

Amendment by section 205(a)(5)(B) of Pub. L. 97-248 applicable to periods after Dec. 31, 1982, under rules similar to the rules of section 48(m) of this title, with certain qualifications, see section 205(c)(1) of Pub. L. 97-248, set out as an Effective Date note under section 196 of this title.

## EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 212(d)(2)(G) of Pub. L. 97-34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after that date, see section 212(e) of Pub. L. 97-34, set out as a note under section 46 of this title.

Amendment by section 421(g) of Pub. L. 97-34 applicable with respect to the estates of decedents dying after Dec. 31, 1981, see section 421(k) of Pub. L. 97-34, set out as a note under section 2032A of this title.

## EFFECTIVE DATE OF 1980 AMENDMENTS AND REVIVAL OF PRIOR LAW

Amendment by section 401(a) of Pub. L. 96-223 (repealing section 2005(a)(3) of Pub. L. 94-455 and section 702(r)(3) of Pub. L. 96-500 and the amendments 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 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 AMENDMENTS

Section 101(c) of Pub. L. 95-618 provided that: “The amendments made by this section [enacting section 23 of this title and amending this section and sections 56 and 6096 of this title] shall apply to taxable years ending on or after April 20, 1977.”

Amendment by section 201(b) of Pub. L. 95-618 applicable with respect to 1980 and later model year auto-

mobiles, see section 201(g) of Pub. L. 95-618, set out as an Effective Date note under section 4064 of this title.

Amendment by section 601(b)(3) of Pub. L. 95-600 effective with respect to corporations chartered after Dec. 31, 1978, and before Jan. 1, 1984, see section 601(d) of Pub. L. 95-600, set out as a note under section 172 of this title.

Amendment by section 702(r)(3) of Pub. L. 95-600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(r)(5) of Pub. L. 95-600, set out as a note under section 2051 of this title.

Section 4(d) of Pub. L. 95-472 provided that: "The amendments made by this section [amending this section and section 2032A of this title] shall apply to involuntary conversions after December 31, 1976."

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(123), (b)(1)(F)(ii), (21)(G), (29)(A) 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.

Section 1901(b)(30)(B) of Pub. L. 94-455 provided that: "The amendment made by subparagraph (A)(i) [amending this section] shall apply with respect to stock or securities acquired from a decedent dying after the date of the enactment of this Act [Oct. 4, 1976]."

Amendment by section 2005(a)(3) 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 1969 AMENDMENT

Amendment by section 231(c)(3) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 231(d) of Pub. L. 91-172, set out as a note under section 217 of this title.

Amendment by section 504(c)(4) of Pub. L. 91-172 applicable with respect to exploration expenditures paid or incurred after Dec. 31, 1969, see section 504(d)(1) of Pub. L. 91-172, set out as a note under section 243 of this title.

Amendment by section 516(c)(2)(B) of Pub. L. 91-172 applicable to transfers after Dec. 31, 1969, see section 516(d)(3) of Pub. L. 91-172, set out as an Effective Date note under section 1001 of this title.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 203(a)(3)(C) of Pub. L. 88-272 applicable in case of property placed in service after Dec. 31, 1963, with respect to taxable years ending after such date, and in case of property placed in service before Jan. 1, 1964, with respect to taxable years beginning after Dec. 31, 1963, see section 203(a)(4) of Pub. L. 88-272, set out as a note under section 48 of this title.

Amendment by section 225(j)(2) of Pub. L. 88-272 applicable in respect of decedents dying after Dec. 31, 1963, see section 225(l) of Pub. L. 88-272, set out as a note under section 316 of this title.

Amendment by section 227(b)(5) of Pub. L. 88-272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88-272, set out as a note under section 272 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 2(f) of Pub. L. 87-834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87-834, set out as an Effective Date note under section 46 of this title.

Amendment by section 8(g)(2) of Pub. L. 87-834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 8(h) of Pub. L. 87-834, set out as a note under section 501 of this title.

Amendment by section 12(b)(1) of Pub. L. 87-834 applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with

which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87-834, set out as an Effective Date note under section 951 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86-69, set out as a note under section 381 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 2(b) of Pub. L. 85-866 applicable with respect to taxable years ending after December 31, 1957, but only with respect to obligations acquired after such date, see section 2(c) of Pub. L. 85-866, set out as a note under section 75 of this title.

Amendment by section 64(d)(2) of Pub. L. 85-866 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64(e) of Pub. L. 85-866, set out as a note under section 172 of this title.

#### REPEALS

Section 2005(a)(3) of Pub. L. 94-455 and section 702(r)(3) of Pub. L. 95-600, cited as credits to this section, and the amendments made by those sections, 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 sections 2005(a)(3) and 702(r)(3). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

#### SAVINGS PROVISION

For provisions that nothing in amendment 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.

#### APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(D) of Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan 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.

#### CHANGE FROM RETIREMENT TO STRAIGHT LINE METHOD OF COMPUTING DEPRECIATION IN CERTAIN CASES

Section 94 of Pub. L. 85-866, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) SHORT TITLE.—This section may be cited as the 'Retirement-Straight Line Adjustment Act of 1958'.

"(b) MAKING OF ELECTION.—Any taxpayer who held retirement-straight line property on his 1956 adjustment date may elect to have this section apply. Such an election shall be made at such time and in such manner as the Secretary shall prescribe. Any election under this section shall be irrevocable and shall apply to all retirement-straight line property as hereinafter provided



in this section (including such property for periods when held by predecessors of the taxpayer).

“(C) RETIREMENT-STRAIGHT LINE PROPERTY DEFINED.—For purposes of this section, the term ‘retirement-straight line property’ means any property of a kind or class with respect to which the taxpayer or a predecessor (under the terms and conditions prescribed for him by the Commissioner) for any taxable year beginning after December 31, 1940, and before January 1, 1956, changed from the retirement to the straight line method of computing the allowance of deductions for depreciation.

“(d) BASIS ADJUSTMENTS AS OF 1956 ADJUSTMENT DATE.—If the taxpayer has made an election under this section, then in determining the adjusted basis on his 1956 adjustment date of all retirement-straight line property held by the taxpayer, in lieu of the adjustments for depreciation provided in section 1016(a)(2) and (3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the following adjustments shall be made (effective as of his 1956 adjustment date) in respect of all periods before the 1956 adjustment date:

“(1) DEPRECIATION SUSTAINED BEFORE MARCH 1, 1913.—For depreciation sustained before March 1, 1913, on retirement-straight line property held by the taxpayer or a predecessor on such date for which cost was or is claimed as basis and which either—

“(A) RETIRED BEFORE CHANGEOVER.—Was retired by the taxpayer or a predecessor before the changeover date, but only if (i) a deduction was allowed in computing net income by reason of such retirement, and (ii) such deduction was computed on the basis of cost without adjustment for depreciation sustained before March 1, 1913. In the case of any such property retired during any taxable year beginning after December 31, 1929, the adjustment under this subparagraph shall not exceed that portion of the amount attributable to depreciation sustained before March 1, 1913, which resulted (by reason of the deduction so allowed) in a reduction in taxes under the Internal Revenue Code of 1986 or prior income, war-profits, or excess-profits tax laws.

“(B) HELD ON CHANGEOVER DATE.—Was held by the taxpayer or a predecessor on the changeover date. This subparagraph shall not apply to property to which paragraph (2) applies.

The adjustment determined under this paragraph shall be allocated (in the manner prescribed by the Secretary) among all retirement-straight line property held by the taxpayer on his 1956 adjustment date.

“(2) PROPERTY DISPOSED OF AFTER CHANGEOVER AND BEFORE 1956 ADJUSTMENT DATE.—For that portion of the reserve prescribed by the Commissioner in connection with the changeover which was applicable to property—

“(A) sold, or

“(B) with respect to which a deduction was allowed for Federal income tax purposes by reason of casualty or ‘abnormal’ retirement in the nature of special obsolescence,

if such sale occurred in, or such deduction was allowed for, a period on or after the changeover date and before the taxpayer’s 1956 adjustment date.

“(3) DEPRECIATION ALLOWABLE FROM CHANGEOVER TO 1956 ADJUSTMENT DATE.—For depreciation allowable, under the terms and conditions prescribed by the Commissioner in connection with the changeover, for all periods on and after the changeover date and before the taxpayer’s 1956 adjustment date.

This subsection shall apply only with respect to taxable years beginning after December 31, 1955.

“(e) EFFECT ON PERIOD FROM CHANGEOVER TO 1956 ADJUSTMENT DATE.—If the taxpayer has made an election under this section, then in determining the adjusted basis of any retirement-straight line property as of any time on or after the changeover date and before the taxpayer’s 1956 adjustment date, in lieu of the adjustments for depreciation provided in section 1016(a)(2)

and (3) of the Internal Revenue Code of 1986 and the corresponding provisions of prior revenue laws, the following adjustments shall be made:

“(1) FOR PRESCRIBED RESERVE.—For the amount of the reserve prescribed by the Commissioner in connection with the changeover.

“(2) FOR ALLOWABLE DEPRECIATION.—For the depreciation allowable under the terms and conditions prescribed by the Commissioner in connection with the changeover.

This subsection shall not apply in determining adjusted basis for purposes of section 437(c) of the Internal Revenue Code of 1939. This subsection shall apply only with respect to taxable years beginning on or after the changeover date and before the taxpayer’s 1956 adjustment date.

“(f) EQUITY INVESTED CAPITAL, ETC.—If an election is made under this section, then (notwithstanding the terms and conditions prescribed by the Commissioner in connection with the changeover)—

“(1) EQUITY INVESTED CAPITAL.—In determining equity invested capital under sections 458 and 718 of the Internal Revenue Code of 1939, accumulated earnings and profits as of the changeover date, and as of the beginning of each taxable year thereafter, shall be reduced by the depreciation sustained before March 1, 1913, as computed under subsection (d)(1)(B); and

“(2) DEFINITION OF EQUITY CAPITAL.—In determining the adjusted basis of assets for the purpose of section 437(c) of the Internal Revenue Code of 1939 (and in addition to any other adjustments required by such Code), the basis shall be reduced by depreciation sustained before March 1, 1913 (as computed under subsection (d)), together with any depreciation allowable under subsection (e)(2) for any period before the year for which the excess profits credit is being computed.

“(g) DEFINITIONS.—For purposes of this section—

“(1) DEPRECIATION.—The term ‘depreciation’ means exhaustion, wear and tear, and obsolescence.

“(2) CHANGEOVER.—The term ‘changeover’ means a change from the retirement to the straight line method of computing the allowance of deductions for depreciation.

“(3) CHANGEOVER DATE.—The term ‘changeover date’ means the first day of the first taxable year for which the changeover was effective.

“(4) 1956 ADJUSTMENT DATE.—The term ‘1956 adjustment date’ means, in the case of any taxpayer, the first day of his first taxable year beginning after December 31, 1955.

“(5) PREDECESSOR.—The term ‘predecessor’ means any person from whom property of a kind or class to which this section refers was acquired, if the basis of such property is determined by reference to its basis in the hands of such person. Where a series of transfers of property has occurred and where in each instance the basis of the property was determined by reference to its basis in the hands of the prior holder, the term includes each such prior holder.

“(6) The term ‘Secretary’ means the Secretary of the Treasury or his delegate.

“(7) The term ‘Commissioner’ means the Commissioner of Internal Revenue.”

## § 1017. Discharge of indebtedness

### (a) General rule

If—

(1) an amount is excluded from gross income under subsection (a) of section 108 (relating to discharge of indebtedness), and

(2) under subsection (b)(2)(E), (b)(5), or (c)(1) of section 108, any portion of such amount is to be applied to reduce basis,

then such portion shall be applied in reduction of the basis of any property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs.

**(b) Amount and properties determined under regulations****(1) In general**

The amount of reduction to be applied under subsection (a) (not in excess of the portion referred to in subsection (a)), and the particular properties the bases of which are to be reduced, shall be determined under regulations prescribed by the Secretary.

**(2) Limitation in title 11 case or insolvency**

In the case of a discharge to which subparagraph (A) or (B) of section 108(a)(1) applies, the reduction in basis under subsection (a) of this section shall not exceed the excess of—

(A) the aggregate of the bases of the property held by the taxpayer immediately after the discharge, over

(B) the aggregate of the liabilities of the taxpayer immediately after the discharge.

The preceding sentence shall not apply to any reduction in basis by reason of an election under section 108(b)(5).

**(3) Certain reductions may only be made in the basis of depreciable property****(A) In general**

Any amount which under subsection (b)(5) or (c)(1) of section 108 is to be applied to reduce basis shall be applied only to reduce the basis of depreciable property held by the taxpayer.

**(B) Depreciable property**

For purposes of this section, the term “depreciable property” means any property of a character subject to the allowance for depreciation, but only if a basis reduction under subsection (a) will reduce the amount of depreciation or amortization which otherwise would be allowable for the period immediately following such reduction.

**(C) Special rule for partnership interests**

For purposes of this section, any interest of a partner in a partnership shall be treated as depreciable property to the extent of such partner’s proportionate interest in the depreciable property held by such partnership. The preceding sentence shall apply only if there is a corresponding reduction in the partnership’s basis in depreciable property with respect to such partner.

**(D) Special rule in case of affiliated group**

For purposes of this section, if—

(i) a corporation holds stock in another corporation (hereinafter in this subparagraph referred to as the “subsidiary”), and

(ii) such corporations are members of the same affiliated group which file a consolidated return under section 1501 for the taxable year in which the discharge occurs,

then such stock shall be treated as depreciable property to the extent that such subsidiary consents to a corresponding reduction in the basis of its depreciable property.

**(E) Election to treat certain inventory as depreciable property****(i) In general**

At the election of the taxpayer, for purposes of this section, the term “depre-

ciable property” includes any real property which is described in section 1221(a)(1).

**(ii) Election**

An election under clause (i) shall be made on the taxpayer’s return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary. Such an election, once made, may be revoked only with the consent of the Secretary.

**(F) Special rules for qualified real property business indebtedness**

In the case of any amount which under section 108(c)(1) is to be applied to reduce basis—

(i) depreciable property shall only include depreciable real property for purposes of subparagraphs (A) and (C),

(ii) subparagraph (E) shall not apply, and

(iii) in the case of property taken into account under section 108(c)(2)(B), the reduction with respect to such property shall be made as of the time immediately before disposition if earlier than the time under subsection (a).

**(4) Special rules for qualified farm indebtedness****(A) In general**

Any amount which under subsection (b)(2)(E) of section 108 is to be applied to reduce basis and which is attributable to an amount excluded under subsection (a)(1)(C) of section 108—

(i) shall be applied only to reduce the basis of qualified property held by the taxpayer, and

(ii) shall be applied to reduce the basis of qualified property in the following order:

(I) First the basis of qualified property which is depreciable property.

(II) Second the basis of qualified property which is land used or held for use in the trade or business of farming.

(III) Then the basis of other qualified property.

**(B) Qualified property**

For purposes of this paragraph, the term “qualified property” has the meaning given to such term by section 108(g)(3)(C).

**(C) Certain rules made applicable**

Rules similar to the rules of subparagraphs (C), (D), and (E) of paragraph (3) shall apply for purposes of this paragraph and section 108(g).

**(c) Special rules****(1) Reduction not to be made in exempt property**

In the case of an amount excluded from gross income under section 108(a)(1)(A), no reduction in basis shall be made under this section in the basis of property which the debtor treats as exempt property under section 522 of title 11 of the United States Code.

**(2) Reductions in basis not treated as dispositions**

For purposes of this title, a reduction in basis under this section shall not be treated as a disposition.

**(d) Recapture of reductions****(1) In general**

For purposes of sections 1245 and 1250—

(A) any property the basis of which is reduced under this section and which is neither section 1245 property nor section 1250 property shall be treated as section 1245 property, and

(B) any reduction under this section shall be treated as a deduction allowed for depreciation.

**(2) Special rule for section 1250**

For purposes of section 1250(b), the determination of what would have been the depreciation adjustments under the straight line method shall be made as if there had been no reduction under this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 301; Pub. L. 94-455, title XIX, §§1906(b)(13)(A), 1951(c)(1), Oct. 4, 1976, 90 Stat. 1834, 1840; Pub. L. 96-589, §2(b), Dec. 24, 1980, 94 Stat. 3394; Pub. L. 99-514, title IV, §405(b), title VIII, §822(b)(4), (5), Oct. 22, 1986, 100 Stat. 2224, 2373; Pub. L. 100-647, title I, §1004(a)(5), Nov. 10, 1988, 102 Stat. 3386; Pub. L. 101-508, title XI, §11704(a)(12), Nov. 5, 1990, 104 Stat. 1388-518; Pub. L. 103-66, title XIII, §13150(c)(6)-(8), Aug. 10, 1993, 107 Stat. 448; Pub. L. 104-188, title I, §1703(n)(5), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105-206, title VI, §6023(11), July 22, 1998, 112 Stat. 825; Pub. L. 106-170, title V, §532(c)(2)(S), Dec. 17, 1999, 113 Stat. 1931.)

## AMENDMENTS

1999—Subsec. (b)(3)(E)(i). Pub. L. 106-170 substituted “1221(a)(1)” for “1221(1)”.

1998—Subsec. (a)(2). Pub. L. 105-206 substituted “(b)(2)(E)” for “(b)(2)(D)”.

1996—Subsec. (b)(4)(A). Pub. L. 104-188 substituted “subsection (b)(2)(E)” for “subsection (b)(2)(D)”.

1993—Subsec. (a)(2). Pub. L. 103-66, §13150(c)(6), substituted “, (b)(5), or (c)(1)” for “or (b)(5)”.

Subsec. (b)(3)(A). Pub. L. 103-66, §13150(c)(7), inserted “or (c)(1)” after “subsection (b)(5)”.

Subsec. (b)(3)(F). Pub. L. 103-66, §13150(c)(8), added subpar. (F).

1990—Subsec. (b)(4)(C). Pub. L. 101-508 substituted “subparagraphs” for “subparagraph”.

1988—Subsec. (b)(4). Pub. L. 100-647 substituted “Special rules for” for “Ordering rule in the case of” in heading, and amended text generally. Prior to amendment, text read as follows: “Any amount which is excluded from gross income under section 108(a) by reason of the discharge of qualified farm indebtedness (within the meaning of section 108(g)(2)) and which under subsection (b) of section 108 is to be applied to reduce basis shall be applied—

“(A) first to reduce the tax attributes described in section 108(b)(2) (other than subparagraph (D) thereof),

“(B) then to reduce basis of property other than property described in subparagraph (C), and

“(C) then to reduce the basis of land used or held for use in the trade or business of farming.”

1986—Subsec. (a)(2). Pub. L. 99-514, §822(b)(4), substituted “or (b)(5)” for “, (b)(5), or (c)(1)(A)”.

Subsec. (b)(3)(A). Pub. L. 99-514, §822(b)(5), struck out “or (c)(1)(A)” after “subsection (b)(5)”.

Subsec. (b)(4). Pub. L. 99-514, §405(b), added par. (4).

1980—Pub. L. 96-589 generally revised and expanded the section to specify the amount of reduction of basis of property under different subsections of section 108 of this title and the property to which such reduction is applicable, and provided for recapture of reductions for purposes of gains from depreciable property.

1976—Pub. L. 94-455, §§1906(b)(13)(A), 1951(c)(1), substituted “section 108” for “section 108(a)” in three places and struck out “or his delegate” after “Secretary”.

## EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

## EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to discharges after Dec. 31, 1992, in taxable years ending after such date, see section 13150(d) of Pub. L. 103-66, set out as a note under section 108 of this title.

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 405(b) of Pub. L. 99-514 applicable to discharges of indebtedness occurring after Apr. 9, 1986, in taxable years ending after such date, see section 405(c) of Pub. L. 99-514, set out as a note under section 108 of this title.

Amendment by section 822(b)(4), (5) of Pub. L. 99-514 applicable to discharges after Dec. 31, 1986, see section 822(c) of Pub. L. 99-514, set out as a note under section 108 of this title.

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-589 applicable to transactions which occur after Dec. 31, 1980, other than transactions which occur in a proceeding in a bankruptcy case or similar judicial proceeding or in a proceeding under Title 11 commencing on or after Dec. 31, 1980, with an exception permitting the debtor to make the amendment applicable to transactions occurring after Sept. 30, 1979 in a specified manner, see section 7(a) and (f) of Pub. L. 96-589, set out as a note under section 108 of this title.

**[§ 1018. Repealed. Pub. L. 96-589, §6(h)(1), Dec. 24, 1980, 94 Stat. 3410]**

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 301; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1901(a)(124), 90 Stat. 1784, provided for adjustment of capital structure before Sept. 22, 1938.

## EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, but not to apply to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

**§ 1019. Property on which lessee has made improvements**

Neither the basis nor the adjusted basis of any portion of real property shall, in the case of the lessor of such property, be increased or diminished on account of income derived by the lessor in respect of such property and excludable from gross income under section 109 (relating to improvements by lessee on lessor's property). If an amount representing any part of the value of real property attributable to buildings erected or other improvements made by a lessee in respect of such property was included in gross income of the lessor for any taxable year beginning before January 1, 1942, the basis of each portion of such property shall be properly adjusted for the amount so included in gross income.

(Aug. 16, 1954, ch. 736, 68A Stat. 301.)

**[§ 1020. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(125), Oct. 4, 1976, 90 Stat. 1784]**

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 302, related to election to have section 1016(a)(2)(B) of this title apply in respect of periods since Feb. 28, 1913, and before Jan. 1, 1952.

**§ 1021. Sale of annuities**

In case of the sale of an annuity contract, the adjusted basis shall in no case be less than zero.

(Aug. 16, 1954, ch. 736, 68A Stat. 302.)

**[§ 1022. Repealed. Pub. L. 111-312, title III, § 301(a), Dec. 17, 2010, 124 Stat. 3300]**

Section, added Pub. L. 107-16, title V, § 542(a), June 7, 2001, 115 Stat. 76, related to treatment of property acquired from a decedent dying after Dec. 31, 2009.

**TERMINATION OF REPEAL**

*For termination of repeal of section by section 304 of Pub. L. 111-312, see Effective and Termination Dates of Repeal note below.*

**TERMINATION OF SECTION**

*For termination of section by section 901 of Pub. L. 107-16, see Effective and Termination Dates note below.*

**PRIOR PROVISIONS**

A prior section 1022, added Pub. L. 88-272, title II, § 225(j)(1), Feb. 26, 1964, 78 Stat. 92, dealt with the increase in basis with respect to certain foreign personal holding company stock or securities, prior to repeal by Pub. L. 94-455, title XIX, § 1901(a)(126), Oct. 4, 1976, 90 Stat. 1784, applicable with respect to stock or securities acquired from a decedent dying after Oct. 4, 1976.

Another prior section 1022, act Aug. 16, 1954, ch. 736, 68A Stat. 302, relating to cross references, was renumbered section 1023.

**EFFECTIVE AND TERMINATION DATES**

Repeal of section 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.

Section 901 of Pub. L. 107-16 applicable to repeal by section 301(a) of Pub. L. 111-312, see section 304 of Pub. L. 111-312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

Section applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107-16, set

out as an Effective and Termination Dates of 2001 Amendment note under section 121 of this title.

Section inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if it had never been enacted, see section 901 of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

**§ 1023. Cross references**

**(1) For certain distributions by a corporation which are applied in reduction of basis of stock, see section 301(c)(2).**

**(2) For basis in case of construction of new vessels, see chapter 533 of title 46, United States Code.**

(Aug. 16, 1954, ch. 736, 68A Stat. 302, § 1022; renumbered § 1023, Pub. L. 88-272, title II, § 225(j)(1), Feb. 26, 1964, 78 Stat. 92; renumbered § 1024 and amended Pub. L. 94-455, title XIX, § 1901(a)(127), title XX, § 2005(a)(2), Oct. 4, 1976, 90 Stat. 1784, 1872; renumbered § 1023, Pub. L. 96-223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 96-589, § 6(i)(4), Dec. 24, 1980, 94 Stat. 3410; Pub. L. 109-304, § 17(e)(4), Oct. 6, 2006, 120 Stat. 1708.)

**PRIOR PROVISIONS**

A prior section 1023, added Pub. L. 94-455, title XX, § 2005(a)(2), Oct. 4, 1976, 90 Stat. 1872; amended Pub. L. 95-600, title V, § 515(3), (4), title VII, § 702(c)(2)-(4), (6)-(8), Nov. 6, 1978, 92 Stat. 2884, 2926-2928, related to carryover basis for certain property acquired from a decedent dying after Dec. 31, 1979, prior to repeal by Pub. L. 96-223, title IV, § 401(a), Apr. 2, 1980, 94 Stat. 299. The repeal was achieved by repealing section 2005(a)(2) of Pub. L. 94-455 and the amendment made thereby, which had enacted prior section 1023.

**AMENDMENTS**

2006—Par. (2). Pub. L. 109-304 substituted “chapter 533 of title 46, United States Code” for “section 511 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1161)”.

1980—Pub. L. 96-589 redesignated par. (3) as (2). Former par. (2), which provided reference to sections 670, 796, and 922 of Title 11, Bankruptcy, for basis of property in case of certain reorganizations and arrangements under the Bankruptcy Act, was struck out.

1976—Par. (4). Pub. L. 94-455, § 1901(a)(127), struck out par. (4) which referred to section 405 of the Defense Production Act of 1950 for rules applicable in case of payments in violation of that Act.

**EFFECTIVE DATE OF 1980 AMENDMENTS AND REVIVAL OF PRIOR LAW**

Amendment by Pub. L. 96-589 effective Oct. 1, 1979, but not to apply to proceedings under Title 11, Bankruptcy, commenced before Oct. 1, 1979, see section 7(e) of Pub. L. 96-589, set out as an Effective Date of 1980 Amendment note under section 108 of this title.

Section 401(b) of Pub. L. 96-223, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Except to the extent necessary to carry out subsection (d) [set out as a note under section 1014 of this title], the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if the provisions repealed by subsection (a), and the amendments made by those provisions [enacting this section and sections 6039A and 6698A of this title, redesignating former section 1023 as section 1024 of this title, and amending sections 306, 691, 1001, 1014, 1016, 1223, and 1246 of this title], had not been enacted.”

Section 401(e) of Pub. L. 96-223 provided that: “The amendments made by this section [amending sections 306, 691, 1001, 1014, 1016, 1040, 1223, 1246, and 2614 of this title, repealing former section 1023 and sections 6039A

and 6698A of this title, redesignating former section 1024 of this title as 1023, and enacting provisions set out as notes under this section and section 1014 of this title] shall apply in respect of decedents dying after December 31, 1976.”

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(127) 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.

#### REPEALS

Pub. L. 94-455, §1901(a)(127), cited as a credit to this section, which renumbered this section as section 1024 of this title, was repealed by Pub. L. 96-223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299, resulting in the redesignation of this section as section 1023 of this title. See Effective Date of 1980 Amendments and Revival of Prior Law note set out above.

### [§ 1024. Renumbered § 1023]

#### PART III—COMMON NONTAXABLE EXCHANGES

Sec.	
1031.	Exchange of property held for productive use or investment.
1032.	Exchange of stock for property.
1033.	Involuntary conversions.
[1034.	Repealed.]
1035.	Certain exchanges of insurance policies.
1036.	Stock for stock of same corporation.
1037.	Certain exchanges of United States obligations.
1038.	Certain reacquisitions of real property.
[1039.	Repealed.]
1040.	Transfer of certain farm, etc., real property.
1041.	Transfers of property between spouses or incident to divorce.
1042.	Sales of stock to employee stock ownership plans or certain cooperatives.
1043.	Sale of property to comply with conflict-of-interest requirements.
1044.	Rollover of publicly traded securities gain into specialized small business investment companies.
1045.	Rollover of gain from qualified small business stock to another qualified small business stock.

#### AMENDMENT OF ANALYSIS

*For termination of amendment by section 304 of Pub. L. 111-312, see Effective and Termination Dates of 2010 Amendment note set out under section 121 of this title.*

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note set out under section 1 of this title.*

#### AMENDMENTS

2010—Pub. L. 111-312, title III, §§301(a), 304, Dec. 17, 2010, 124 Stat. 3300, 3304, temporarily amended analysis to read as if amendment by Pub. L. 107-16, §542(d)(2), had never been enacted. See 2001 Amendment note below.

2001—Pub. L. 107-16, title V, §542(d)(2), title IX, §901, June 7, 2001, 115 Stat. 84, 150, temporarily substituted “Use of appreciated carryover basis property to satisfy pecuniary bequest” for “Transfer of certain farm, etc., real property” in item 1040.

1997—Pub. L. 105-34, title III, §§312(d)(15), 313(b)(3), Aug. 5, 1997, 111 Stat. 841, 842, struck out item 1034 “Rollover of gain on sale of principal residence” and added item 1045.

1993—Pub. L. 103-66, title XIII, §13114(c), Aug. 10, 1993, 107 Stat. 431, added item 1044.

1990—Pub. L. 101-508, title XI, §11801(b)(8), Nov. 5, 1990, 104 Stat. 1388-522, struck out item 1039 “Certain sales of low-income housing projects”.

1989—Pub. L. 101-194, title V, §502(b)(3), Nov. 30, 1989, 103 Stat. 1755, added item 1043.

1986—Pub. L. 99-514, title XVIII, §1854(a)(12), Oct. 22, 1986, 100 Stat. 2878, substituted “employee stock ownership plans or certain cooperatives” for “employees” in item 1042.

1984—Pub. L. 98-369, div. A, title IV, §421(c), title V, §541(b)(3), July 18, 1984, 98 Stat. 794, 890, added items 1041 and 1042.

1981—Pub. L. 97-34, title IV, §421(j)(2)(C), Aug. 13, 1981, 95 Stat. 312, substituted “Transfer of certain farm, etc., real property” for “Use of farm, etc., real property to satisfy pecuniary bequest” in item 1040.

1980—Pub. L. 96-223, title IV, §401(a), (c)(2)(B), Apr. 2, 1980, 94 Stat. 299, 300, amended item 1040 generally and repealed Pub. L. 94-455, §2005(e)(1), and the amendment made thereby. See 1976 Amendment note below.

1978—Pub. L. 95-600, title IV, §405(c)(2), Nov. 6, 1978, 92 Stat. 2871, substituted “Rollover of gain on sale of principal residence” for “Sale or exchange of residence” in item 1034.

1976—Pub. L. 94-455, title XX, §2005(e)(2), Oct. 4, 1976, 90 Stat. 1878, which added item 1040, was repealed by Pub. L. 96-223, §401(a). See section 401(b), (e) of Pub. L. 96-223, set out as an Effective Date of 1980 Amendments and Revival of Prior Law note under section 1023 of this title.

1969—Pub. L. 91-172, title IX, §910(c), Dec. 30, 1969, 83 Stat. 722, added item 1039.

1964—Pub. L. 88-570, §2(b), Sept. 2, 1964, 78 Stat. 856, added item 1038.

1959—Pub. L. 86-346, title II, §201(b), Sept. 22, 1959, 73 Stat. 623, added item 1037.

### § 1031. Exchange of property held for productive use or investment

#### (a) Nonrecognition of gain or loss from exchanges solely in kind

##### (1) In general

No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.

##### (2) Exception

This subsection shall not apply to any exchange of—

- (A) stock in trade or other property held primarily for sale,
- (B) stocks, bonds, or notes,
- (C) other securities or evidences of indebtedness or interest,
- (D) interests in a partnership,
- (E) certificates of trust or beneficial interests, or
- (F) choses in action.

For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.

##### (3) Requirement that property be identified and that exchange be completed not more than 180 days after transfer of exchanged property

For purposes of this subsection, any property received by the taxpayer shall be treated

as property which is not like-kind property if—

(A) such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(B) such property is received after the earlier of—

(i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(ii) the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

**(b) Gain from exchanges not solely in kind**

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

**(c) Loss from exchanges not solely in kind**

If an exchange would be within the provisions of subsection (a), of section 1035(a), of section 1036(a), or of section 1037(a), if it were not for the fact that the property received in exchange consists not only of property permitted by such provisions to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

**(d) Basis**

If property was acquired on an exchange described in this section, section 1035(a), section 1036(a), or section 1037(a), then the basis shall be the same as that of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized on such exchange. If the property so acquired consisted in part of the type of property permitted by this section, section 1035(a), section 1036(a), or section 1037(a), to be received without the recognition of gain or loss, and in part of other property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such other property an amount equivalent to its fair market value at the date of the exchange. For purposes of this section, section 1035(a), and section 1036(a), where as part of the consideration to the taxpayer another party to the exchange assumed (as determined under section 357(d)) a liability of the taxpayer, such assumption shall be considered as money received by the taxpayer on the exchange.

**(e) Exchanges of livestock of different sexes**

For purposes of this section, livestock of different sexes are not property of a like kind.

**(f) Special rules for exchanges between related persons**

**(1) In general**

If—

(A) a taxpayer exchanges property with a related person,

(B) there is nonrecognition of gain or loss to the taxpayer under this section with respect to the exchange of such property (determined without regard to this subsection), and

(C) before the date 2 years after the date of the last transfer which was part of such exchange—

(i) the related person disposes of such property, or

(ii) the taxpayer disposes of the property received in the exchange from the related person which was of like kind to the property transferred by the taxpayer,

there shall be no nonrecognition of gain or loss under this section to the taxpayer with respect to such exchange; except that any gain or loss recognized by the taxpayer by reason of this subsection shall be taken into account as of the date on which the disposition referred to in subparagraph (C) occurs.

**(2) Certain dispositions not taken into account**

For purposes of paragraph (1)(C), there shall not be taken into account any disposition—

(A) after the earlier of the death of the taxpayer or the death of the related person,

(B) in a compulsory or involuntary conversion (within the meaning of section 1033) if the exchange occurred before the threat or imminence of such conversion, or

(C) with respect to which it is established to the satisfaction of the Secretary that neither the exchange nor such disposition had as one of its principal purposes the avoidance of Federal income tax.

**(3) Related person**

For purposes of this subsection, the term "related person" means any person bearing a relationship to the taxpayer described in section 267(b) or 707(b)(1).

**(4) Treatment of certain transactions**

This section shall not apply to any exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection.

**(g) Special rule where substantial diminution of risk**

**(1) In general**

If paragraph (2) applies to any property for any period, the running of the period set forth in subsection (f)(1)(C) with respect to such property shall be suspended during such period.

**(2) Property to which subsection applies**

This paragraph shall apply to any property for any period during which the holder's risk of loss with respect to the property is substantially diminished by—

(A) the holding of a put with respect to such property,

(B) the holding by another person of a right to acquire such property, or

(C) a short sale or any other transaction.

**(h) Special rules for foreign real and personal property**

For purposes of this section—

**(1) Real property**

Real property located in the United States and real property located outside the United States are not property of a like kind.

**(2) Personal property**

**(A) In general**

Personal property used predominantly within the United States and personal property used predominantly outside the United States are not property of a like kind.

**(B) Predominant use**

Except as provided in subparagraphs (C) and (D), the predominant use of any property shall be determined based on—

(i) in the case of the property relinquished in the exchange, the 2-year period ending on the date of such relinquishment, and

(ii) in the case of the property acquired in the exchange, the 2-year period beginning on the date of such acquisition.

**(C) Property held for less than 2 years**

Except in the case of an exchange which is part of a transaction (or series of transactions) structured to avoid the purposes of this subsection—

(i) only the periods the property was held by the person relinquishing the property (or any related person) shall be taken into account under subparagraph (B)(i), and

(ii) only the periods the property was held by the person acquiring the property (or any related person) shall be taken into account under subparagraph (B)(ii).

**(D) Special rule for certain property**

Property described in any subparagraph of section 168(g)(4) shall be treated as used predominantly in the United States.

**(i) Special rules for mutual ditch, reservoir, or irrigation company stock**

For purposes of subsection (a)(2)(B), the term “stocks” shall not include shares in a mutual ditch, reservoir, or irrigation company if at the time of the exchange—

(1) the mutual ditch, reservoir, or irrigation company is an organization described in section 501(c)(12)(A) (determined without regard to the percentage of its income that is collected from its members for the purpose of meeting losses and expenses), and

(2) the shares in such company have been recognized by the highest court of the State in which such company was organized or by applicable State statute as constituting or representing real property or an interest in real property.

(Aug. 16, 1954, ch. 736, 68A Stat. 302; Pub. L. 85-866, title I, §44, Sept. 2, 1958, 72 Stat. 1641; Pub. L. 86-346, title II, §201(c)-(e), Sept. 22, 1959, 73 Stat. 624; Pub. L. 91-172, title II, §212(c)(1),

Dec. 30, 1969, 83 Stat. 571; Pub. L. 98-369, div. A, title I, §77(a), July 18, 1984, 98 Stat. 595; Pub. L. 99-514, title XVIII, §1805(d), Oct. 22, 1986, 100 Stat. 2810; Pub. L. 101-239, title VII, §7601(a), Dec. 19, 1989, 103 Stat. 2370; Pub. L. 101-508, title XI, §§11701(h), 11703(d)(1), Nov. 5, 1990, 104 Stat. 1388-508, 1388-517; Pub. L. 105-34, title X, §1052(a), Aug. 5, 1997, 111 Stat. 940; Pub. L. 106-36, title III, §3001(c)(2), June 25, 1999, 113 Stat. 183; Pub. L. 109-135, title IV, §412(pp), Dec. 21, 2005, 119 Stat. 2640; Pub. L. 110-234, title XV, §15342(a), May 22, 2008, 122 Stat. 1518; Pub. L. 110-246, §4(a), title XV, §15342(a), June 18, 2008, 122 Stat. 1664, 2280.)

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (i). Pub. L. 110-246 added subsec. (i).

2005—Subsec. (h)(2)(B). Pub. L. 109-135 substituted “subparagraphs” for “subparagraph” in introductory provisions.

1999—Subsec. (d). Pub. L. 106-36, in last sentence, substituted “assumed (as determined under section 357(d)) a liability of the taxpayer” for “assumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability” and struck out “or acquisition (in the amount of the liability)” after “such assumption”.

1997—Subsec. (h). Pub. L. 105-34 amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: “For purposes of this section, real property located in the United States and real property located outside the United States are not property of a like kind.”

1990—Subsec. (a)(2). Pub. L. 101-508, §11703(d)(1), inserted at end “For purposes of this section, an interest in a partnership which has in effect a valid election under section 761(a) to be excluded from the application of all of subchapter K shall be treated as an interest in each of the assets of such partnership and not as an interest in a partnership.”

Subsec. (f)(3). Pub. L. 101-508, §11701(h), substituted “section 267(b) or 707(b)(1)” for “section 267(b)”.

1989—Subsecs. (f) to (h). Pub. L. 101-239 added subsecs. (f) to (h).

1986—Subsec. (a)(3)(A). Pub. L. 99-514 substituted “on or before the day” for “before the day”.

1984—Subsec. (a). Pub. L. 98-369, §77(a), in amending subsec. generally, designated existing provisions as par. (1), substituted “No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment” for “No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment”, and added pars. (2) and (3).

1969—Subsec. (e). Pub. L. 91-172 added subsec. (e).

1959—Subsecs. (b) to (d). Pub. L. 86-346 inserted references to section 1037(a) in subsecs. (b) and (c) and in first two sentences of subsec. (d).

1958—Subsec. (d). Pub. L. 85-866 inserted in first sentence a comma between “exchanged” and “decreased” and “or decreased in the amount of loss”, and substituted in second sentence “subsection” for “paragraph”.

## EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Pub. L. 110-234, title XV, §15342(b), May 22, 2008, 122 Stat. 1518, and Pub. L. 110-246, §4(a), title XV, §15342(b), June 18, 2008, 122 Stat. 1664, 2280, provided that: “The amendment made by this section [amending this section] shall apply to exchanges completed after the date of the enactment of this Act [June 18, 2008].”

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.]

## EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-36 applicable to transfers after Oct. 18, 1998, see section 3001(e) of Pub. L. 106-36, set out as a note under section 351 of this title.

## EFFECTIVE DATE OF 1997 AMENDMENT

Section 1052(b) of Pub. L. 105-34 provided that:

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to transfers after June 8, 1997, in taxable years ending after such date.

“(2) BINDING CONTRACTS.—The amendment made by this section shall not apply to any transfer pursuant to a written binding contract in effect on June 8, 1997, and at all times thereafter before the disposition of property. A contract shall not fail to meet the requirements of the preceding sentence solely because—

“(A) it provides for a sale in lieu of an exchange, or

“(B) the property to be acquired as replacement property was not identified under such contract before June 9, 1997.”

## EFFECTIVE DATE OF 1990 AMENDMENT

Section 11701(h) of Pub. L. 101-508 provided that the amendment made by that section is effective with respect to transfers after Aug. 3, 1990.

Section 11703(d)(2) of Pub. L. 101-508 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to transfers after July 18, 1984.”

## EFFECTIVE DATE OF 1989 AMENDMENT

Section 7601(b) of Pub. L. 101-239 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to transfers after July 10, 1989, in taxable years ending after such date.

“(2) BINDING CONTRACT.—The amendments made by this section shall not apply to any transfer pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the transfer.”

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

## EFFECTIVE DATE OF 1984 AMENDMENT

Section 77(b) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to transfers made after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

“(2) BINDING CONTRACT EXCEPTION FOR TRANSFER OF PARTNERSHIP INTERESTS.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not

apply in the case of any exchange pursuant to a binding contract in effect on March 1, 1984, and at all times thereafter before the exchange.

“(3) REQUIREMENT THAT PROPERTY BE IDENTIFIED WITHIN 45 DAYS AND THAT EXCHANGE BE COMPLETED WITHIN 180 DAYS.—Paragraph (3) of section 1031(a) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall apply—

“(A) to transfers after the date of the enactment of this Act [July 18, 1984], and

“(B) to transfers on or before such date of enactment if the property to be received in the exchange is not received before January 1, 1987.

In the case of any transfer on or before the date of the enactment of this Act which the taxpayer treated as part of a like-kind exchange, the period for assessing any deficiency of tax attributable to the amendment made by subsection (a) [amending this section] shall not expire before January 1, 1988.

“(4) SPECIAL RULE WHERE PROPERTY IDENTIFIED IN BINDING CONTRACT.—If the property to be received in the exchange is identified in a binding contract in effect on June 13, 1984, and at all times thereafter before the transfer, paragraph (3) shall be applied—

“(A) by substituting ‘January 1, 1989’ for ‘January 1, 1987’, and

“(B) by substituting ‘January 1, 1990’ for ‘January 1, 1988’.

“(5) SPECIAL RULE FOR LIKE-KIND EXCHANGE OF PARTNERSHIP INTERESTS.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall not apply to any exchange of an interest as general partner pursuant to a plan of reorganization of ownership interest under a contract which took effect on March 29, 1984, and which was executed on or before March 31, 1984, but only if all the exchanges contemplated by the reorganization plan are completed on or before December 31, 1984.”

## EFFECTIVE DATE OF 1969 AMENDMENT

Section 212(c)(2) of Pub. L. 91-172, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to taxable years to which the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies.”

## EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86-346 effective for taxable years ending after Sept. 22, 1959, see section 203 of Pub. L. 86-346, set out as an Effective Date note under section 1037 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.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan 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.

**§ 1032. Exchange of stock for property****(a) Nonrecognition of gain or loss**

No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation. No gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option, or with re-



spect to a securities futures contract (as defined in section 1234B), to buy or sell its stock (including treasury stock).

**(b) Basis**

**For basis of property acquired by a corporation in certain exchanges for its stock, see section 362.**

(Aug. 16, 1954, ch. 736, 68A Stat. 303; Pub. L. 98-369, div. A, title I, § 57(a), July 18, 1984, 98 Stat. 574; Pub. L. 106-554, § 1(a)(7) [title IV, § 401(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-649.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554 inserted “, or with respect to a securities futures contract (as defined in section 1234B),” after “an option” in second sentence.

1984—Subsec. (a). Pub. L. 98-369 inserted provision that no gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option to buy or sell its stock (including treasury stock).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-554, § 1(a)(7) [title IV, § 401(j)], Dec. 21, 2000, 114 Stat. 2763, 2763A-651, provided that: “The amendments made by this section [enacting section 1234B of this title and amending this section and sections 1091, 1092, 1223, 1233, 1234A, 1256 and 7701 of this title] shall take effect on the date of the enactment of this Act [Dec. 21, 2000].”

EFFECTIVE DATE OF 1984 AMENDMENT

Section 57(b) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this section] shall apply to options acquired or lapsed after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.”

**§ 1033. Involuntary conversions**

**(a) General rule**

If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted—

**(1) Conversion into similar property**

Into property similar or related in service or use to the property so converted, no gain shall be recognized.

**(2) Conversion into money**

Into money or into property not similar or related in service or use to the converted property, the gain (if any) shall be recognized except to the extent hereinafter provided in this paragraph:

**(A) Nonrecognition of gain**

If the taxpayer during the period specified in subparagraph (B), for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the Secretary may by regulations prescribe. For purposes of this paragraph—

(i) no property or stock acquired before the disposition of the converted property shall be considered to have been acquired for the purpose of replacing such converted property unless held by the taxpayer on the date of such disposition; and

(ii) the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (b) of this section, the unadjusted basis of such property or stock would be its cost within the meaning of section 1012.

**(B) Period within which property must be replaced**

The period referred to in subparagraph (A) shall be the period beginning with the date of the disposition of the converted property, or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is the earlier, and ending—

(i) 2 years after the close of the first taxable year in which any part of the gain upon the conversion is realized, or

(ii) subject to such terms and conditions as may be specified by the Secretary, at the close of such later date as the Secretary may designate on application by the taxpayer. Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

**(C) Time for assessment of deficiency attributable to gain upon conversion**

If a taxpayer has made the election provided in subparagraph (A), then—

(i) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such conversion is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the replacement of the converted property or of an intention not to replace, and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

**(D) Time for assessment of other deficiencies attributable to election**

If the election provided in subparagraph (A) is made by the taxpayer and such other property or such stock was purchased before the beginning of the last taxable year in which any part of the gain upon such conversion is realized, any deficiency, to the extent resulting from such election, for any taxable year ending before such last taxable year may be assessed (notwithstanding the provisions of section 6212(c) or 6501 or the provisions of any other law or rule of law which would otherwise prevent such assessment) at any time before the expiration of the period within which a deficiency for such last taxable year may be assessed.

**(E) Definitions**

For purposes of this paragraph—

**(i) Control**

The term “control” means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

**(ii) Disposition of the converted property**

The term “disposition of the converted property” means the destruction, theft, seizure, requisition, or condemnation of the converted property, or the sale or exchange of such property under threat or imminence of requisition or condemnation.

**(b) Basis of property acquired through involuntary conversion****(1) Conversions described in subsection (a)(1)**

If the property was acquired as the result of a compulsory or involuntary conversion described in subsection (a)(1), the basis shall be the same as in the case of the property so converted—

(A) decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and

(B) increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made.

**(2) Conversions described in subsection (a)(2)**

In the case of property purchased by the taxpayer in a transaction described in subsection (a)(2) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than 1 piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.

**(3) Property held by corporation the stock of which is replacement property****(A) In general**

If the basis of stock in a corporation is decreased under paragraph (2), an amount equal to such decrease shall also be applied to reduce the basis of property held by the corporation at the time the taxpayer acquired control (as defined in subsection (a)(2)(E)) of such corporation.

**(B) Limitation**

Subparagraph (A) shall not apply to the extent that it would (but for this subparagraph) require a reduction in the aggregate adjusted bases of the property of the cor-

poration below the taxpayer’s adjusted basis of the stock in the corporation (determined immediately after such basis is decreased under paragraph (2)).

**(C) Allocation of basis reduction**

The decrease required under subparagraph (A) shall be allocated—

(i) first to property which is similar or related in service or use to the converted property,

(ii) second to depreciable property (as defined in section 1017(b)(3)(B)) not described in clause (i), and

(iii) then to other property.

**(D) Special rules****(i) Reduction not to exceed adjusted basis of property**

No reduction in the basis of any property under this paragraph shall exceed the adjusted basis of such property (determined without regard to such reduction).

**(ii) Allocation of reduction among properties**

If more than 1 property is described in a clause of subparagraph (C), the reduction under this paragraph shall be allocated among such property in proportion to the adjusted bases of such property (as so determined).

**(c) Property sold pursuant to reclamation laws**

For purposes of this subtitle, if property lying within an irrigation project is sold or otherwise disposed of in order to conform to the acreage limitation provisions of Federal reclamation laws, such sale or disposition shall be treated as an involuntary conversion to which this section applies.

**(d) Livestock destroyed by disease**

For purposes of this subtitle, if livestock are destroyed by or on account of disease, or are sold or exchanged because of disease, such destruction or such sale or exchange shall be treated as an involuntary conversion to which this section applies.

**(e) Livestock sold on account of drought, flood, or other weather-related conditions****(1) In general**

For purposes of this subtitle, the sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number the taxpayer would sell if he followed his usual business practices shall be treated as an involuntary conversion to which this section applies if such livestock are sold or exchanged by the taxpayer solely on account of drought, flood, or other weather-related conditions.

**(2) Extension of replacement period****(A) In general**

In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any con-

verted property by substituting “4 years” for “2 years”.

**(B) Further extension by Secretary**

The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.

**(f) Replacement of livestock with other farm property in certain cases**

For purposes of subsection (a), if, because of drought, flood, or other weather-related conditions, or soil contamination or other environmental contamination, it is not feasible for the taxpayer to reinvest the proceeds from compulsorily or involuntarily converted livestock in property similar or related in use to the livestock so converted, other property (including real property in the case of soil contamination or other environmental contamination) used for farming purposes shall be treated as property similar or related in service or use to the livestock so converted.

**(g) Condemnation of real property held for productive use in trade or business or for investment**

**(1) Special rule**

For purposes of subsection (a), if real property (not including stock in trade or other property held primarily for sale) held for productive use in trade or business or for investment is (as the result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, property of a like kind to be held either for productive use in trade or business or for investment shall be treated as property similar or related in service or use to the property so converted.

**(2) Limitations**

Paragraph (1) shall not apply to the purchase of stock in the acquisition of control of a corporation described in subsection (a)(2)(A).

**(3) Election to treat outdoor advertising displays as real property**

**(A) In general**

A taxpayer may elect, at such time and in such manner as the Secretary may prescribe, to treat property which constitutes an outdoor advertising display as real property for purposes of this chapter. The election provided by this subparagraph may not be made with respect to any property with respect to which an election under section 179(a) (relating to election to expense certain depreciable business assets) is in effect.

**(B) Election**

An election made under subparagraph (A) may not be revoked without the consent of the Secretary.

**(C) Outdoor advertising display**

For purposes of this paragraph, the term “outdoor advertising display” means a rig-

idly assembled sign, display, or device permanently affixed to the ground or permanently attached to a building or other inherently permanent structure constituting, or used for the display of, a commercial or other advertisement to the public.

**(D) Character of replacement property**

For purposes of this subsection, an interest in real property purchased as replacement property for a compulsorily or involuntarily converted outdoor advertising display defined in subparagraph (C) (and treated by the taxpayer as real property) shall be considered property of a like kind as the property converted without regard to whether the taxpayer's interest in the replacement property is the same kind of interest the taxpayer held in the converted property.

**(4) Special rule**

In the case of a compulsory or involuntary conversion described in paragraph (1), subsection (a)(2)(B)(i) shall be applied by substituting “3 years” for “2 years”.

**(h) Special rules for property damaged by federally declared disasters**

**(1) Principal residences**

If the taxpayer's principal residence or any of its contents is located in a disaster area and is compulsorily or involuntarily converted as a result of a federally declared disaster—

**(A) Treatment of insurance proceeds**

**(i) Exclusion for unsheduled personal property**

No gain shall be recognized by reason of the receipt of any insurance proceeds for personal property which was part of such contents and which was not scheduled property for purposes of such insurance.

**(ii) Other proceeds treated as common fund**

In the case of any insurance proceeds (not described in clause (i)) for such residence or contents—

(I) such proceeds shall be treated as received for the conversion of a single item of property, and

(II) any property which is similar or related in service or use to the residence so converted (or contents thereof) shall be treated for purposes of subsection (a)(2) as property similar or related in service or use to such single item of property.

**(B) Extension of replacement period**

Subsection (a)(2)(B) shall be applied with respect to any property so converted by substituting “4 years” for “2 years”.

**(2) Trade or business and investment property**

If a taxpayer's property held for productive use in a trade or business or for investment<sup>1</sup> located in a disaster area and compulsorily or involuntarily converted as a result of a federally declared disaster, tangible property of a type held for productive use in a trade or busi-

<sup>1</sup> So in original. Probably should be followed by “is”.

ness shall be treated for purposes of subsection (a) as property similar or related in service or use to the property so converted.

**(3) Federally declared disaster; disaster area**

The terms “federally declared disaster” and “disaster area” shall have the respective meaning given such terms by section 165(h)(3)(C).

**(4) Principal residence**

For purposes of this subsection, the term “principal residence” has the same meaning as when used in section 121, except that such term shall include a residence not treated as a principal residence solely because the taxpayer does not own the residence.

**(i) Replacement property must be acquired from unrelated person in certain cases**

**(1) In general**

If the property which is involuntarily converted is held by a taxpayer to which this subsection applies, subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period applicable under subsection (a)(2)(B).

**(2) Taxpayers to which subsection applies**

This subsection shall apply to—

- (A) a C corporation,
- (B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion, and
- (C) any other taxpayer if, with respect to property which is involuntarily converted during the taxable year, the aggregate of the amount of realized gain on such property on which there is realized gain exceeds \$100,000.

In the case of a partnership, subparagraph (C) shall apply with respect to the partnership and with respect to each partner. A similar rule shall apply in the case of an S corporation and its shareholders.

**(3) Related person**

For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1).

**(j) Sales or exchanges to implement microwave relocation policy**

**(1) In general**

For purposes of this subtitle, if a taxpayer elects the application of this subsection to a qualified sale or exchange, such sale or exchange shall be treated as an involuntary conversion to which this section applies.

**(2) Qualified sale or exchange**

For purposes of paragraph (1), the term “qualified sale or exchange” means a sale or exchange before January 1, 2000, which is certified by the Federal Communications Com-

mission as having been made by a taxpayer in connection with the relocation of the taxpayer from the 1850–1990MHz spectrum by reason of the Federal Communications Commission’s reallocation of that spectrum for use for personal communications services. The Commission shall transmit copies of certifications under this paragraph to the Secretary.

**(k) Sales or exchanges under certain hazard mitigation programs**

For purposes of this subtitle, if property is sold or otherwise transferred to the Federal Government, a State or local government, or an Indian tribal government to implement hazard mitigation under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date), such sale or transfer shall be treated as an involuntary conversion to which this section applies.

**(l) Cross references**

**(1) For determination of the period for which the taxpayer has held property involuntarily converted, see section 1223.**

**(2) For treatment of gains from involuntary conversions as capital gains in certain cases, see section 1231(a).**

**(3) For exclusion from gross income of gain from involuntary conversion of principal residence, see section 121.**

(Aug. 16, 1954, ch. 736, 68A Stat. 303; June 29, 1956, ch. 464, §5(a), 70 Stat. 407; Pub. L. 85–866, title I, §§45, 46(a), Sept. 2, 1958, 72 Stat. 1641; Pub. L. 88–272, title II, §206(b)(3), Feb. 26, 1964, 78 Stat. 40; Pub. L. 91–172, title IX, §915(a), Dec. 30, 1969, 83 Stat. 723; Pub. L. 94–455, title XIX, §§1901(a)(128), 1906(b)(13)(A), title XXI, §§2127(a), 2140(a), Oct. 4, 1976, 90 Stat. 1785, 1834, 1920, 1932; Pub. L. 95–600, title IV, §404(c)(4), title V, §542(a), title VII, §703(j)(5), Nov. 6, 1978, 92 Stat. 2870, 2888, 2941; Pub. L. 97–34, title II, §202(d)(2), Aug. 13, 1981, 95 Stat. 221; Pub. L. 98–369, div. A, title IV, §474(r)(24), July 18, 1984, 98 Stat. 844; Pub. L. 101–508, title XI, §11813(b)(20), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 103–66, title XIII, §13431(a), Aug. 10, 1993, 107 Stat. 567; Pub. L. 104–7, §3(a)(1), (b)(1), Apr. 11, 1995, 109 Stat. 94, 95; Pub. L. 104–188, title I, §§1119(a), (b), 1610(a), Aug. 20, 1996, 110 Stat. 1765, 1844; Pub. L. 105–34, title III, §312(d)(1), (7), title IX, §913(b), title X, §1087(a), Aug. 5, 1997, 111 Stat. 839, 840, 878, 959; Pub. L. 108–311, title IV, §408(a)(7)(C), Oct. 4, 2004, 118 Stat. 1191; Pub. L. 108–357, title III, §311(a), (b), Oct. 22, 2004, 118 Stat. 1466, 1467; Pub. L. 109–7, §1(b), Apr. 15, 2005, 119 Stat. 22; Pub. L. 110–343, div. C, title VII, §706(a)(2)(D)(i)–(iii), Oct. 3, 2008, 122 Stat. 3922.)

REFERENCES IN TEXT

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (k), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, which is classified principally to chapter 68 (§5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The date of the enactment of this subsection, referred to in subsec. (k), is the date of enactment of Pub. L. 109–7, which was approved Apr. 15, 2005.

The National Flood Insurance Act, referred to in subsec. (k), probably means the National Flood Insurance

Act of 1968, title XIII of Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 572, as amended, which is classified principally to chapter 50 (§4001 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4001 of Title 42 and Tables.

#### AMENDMENTS

2008—Subsec. (h). Pub. L. 110-343, §706(a)(2)(D)(i), amended heading generally. Prior to amendment, heading read as follows: “Special rules for property damaged by Presidentially declared disasters”.

Subsec. (h)(1). Pub. L. 110-343, §706(a)(2)(D)(i), reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “If the taxpayer’s principal residence or any of its contents is compulsorily or involuntarily converted as a result of a Presidentially declared disaster—”.

Subsec. (h)(2). Pub. L. 110-343, §706(a)(2)(D)(ii), substituted “investment located in a disaster area and compulsorily or involuntarily converted as a result of a federally declared disaster” for “investment is compulsorily or involuntarily converted as a result of a Presidentially declared disaster”.

Subsec. (h)(3). Pub. L. 110-343, §706(a)(2)(D)(iii), amended par. (3) generally. Prior to amendment, par. (3) defined “Presidentially declared disaster” for purposes of subsec. (h).

2005—Subsecs. (k), (l). Pub. L. 109-7 added subsec. (k) and redesignated former subsec. (k) as (l).

2004—Subsec. (e). Pub. L. 108-357, §311(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (f). Pub. L. 108-357, §311(a), in heading, substituted “in certain cases” for “where there has been environmental contamination” and, in text, inserted “drought, flood, or other weather-related conditions, or” after “because of” and “in the case of soil contamination or other environmental contamination” after “including real property”.

Subsec. (h)(3). Pub. L. 108-311 inserted “Robert T. Stafford” before “Disaster Relief and Emergency Assistance Act”.

1997—Subsec. (e). Pub. L. 105-34, §913(b), inserted “, flood, or other weather-related conditions” after “drought” in heading and “, flood, or other weather-related conditions” before period at end of text.

Subsec. (h)(4). Pub. L. 105-34, §312(d)(1), substituted “section 121” for “section 1034”.

Subsec. (i). Pub. L. 105-34, §1087(a), amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows:

“(1) IN GENERAL.—In the case of—

“(A) a C corporation, or

“(B) a partnership in which 1 or more C corporations own, directly or indirectly (determined in accordance with section 707(b)(3)), more than 50 percent of the capital interest, or profits interest, in such partnership at the time of the involuntary conversion,

subsection (a) shall not apply if the replacement property or stock is acquired from a related person. The preceding sentence shall not apply to the extent that the related person acquired the replacement property or stock from an unrelated person during the period described in subsection (a)(2)(B).

“(2) RELATED PERSON.—For purposes of this subsection, a person is related to another person if the person bears a relationship to the other person described in section 267(b) or 707(b)(1).”

Subsec. (k)(3). Pub. L. 105-34, §312(d)(7), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “For one-time exclusion from gross income of gain from involuntary conversion of principal residence by individual who has attained age 55, see section 121.”

1996—Subsec. (b). Pub. L. 104-188, §1610(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If the property was acquired, after February 28, 1913, as the result

of a compulsory or involuntary conversion described in subsection (a)(1) or section 112(f)(2) of the Internal Revenue Code of 1939, the basis shall be the same as in the case of the property so converted, decreased in the amount of any money received by the taxpayer which was not expended in accordance with the provisions of law (applicable to the year in which such conversion was made) determining the taxable status of the gain or loss upon such conversion, and increased in the amount of gain or decreased in the amount of loss to the taxpayer recognized upon such conversion under the law applicable to the year in which such conversion was made. This subsection shall not apply in respect of property acquired as a result of a compulsory or involuntary conversion of property used by the taxpayer as his principal residence if the destruction, theft, seizure, requisition, or condemnation of such residence, or the sale or exchange of such residence under threat or imminence thereof, occurred after December 31, 1950, and before January 1, 1954. In the case of property purchased by the taxpayer in a transaction described in subsection (a)(3) which resulted in the nonrecognition of any part of the gain realized as the result of a compulsory or involuntary conversion, the basis shall be the cost of such property decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs.”

Subsec. (h). Pub. L. 104-188, §1119(b)(2), substituted “property” for “principal residences” in heading.

Subsec. (h)(1). Pub. L. 104-188, §1119(b)(3), substituted “Principal residences” for “In general” in heading.

Subsec. (h)(2). Pub. L. 104-188, §1119(a), added par. (2). Former par. (2) redesignated (3).

Subsec. (h)(3). Pub. L. 104-188, §1119(a), (b)(1), redesignated par. (2) as (3) and substituted “property” for “residence” before “is located”. Former par. (3) redesignated (4).

Subsec. (h)(4). Pub. L. 104-188, §1119(a), redesignated par. (3) as (4).

1995—Subsec. (i). Pub. L. 104-7, §3(a)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 104-7, §3(b)(1), added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 104-7, §3(a)(1), redesignated subsec. (i) as (j).

Subsec. (k). Pub. L. 104-7, §3(b)(1), redesignated subsec. (j) as (k).

1993—Subsecs. (h), (i). Pub. L. 103-66 added subsec. (h) and redesignated former subsec. (h) as (i).

1990—Subsec. (g)(3)(A). Pub. L. 101-508 struck out “with respect to which the investment credit determined under section 46(a) is or has been claimed or” after “to any property”.

1984—Subsec. (g)(3)(A). Pub. L. 98-369 substituted “the investment credit determined under section 46(a)” for “the credit allowed by section 38 (relating to investment in certain depreciable property)”.

1981—Subsec. (g)(3)(A). Pub. L. 97-34 substituted “(relating to election to expense certain depreciable business assets)” for “(relating to additional first-year depreciation allowance for small business)”.

1978—Subsec. (a)(2)(A)(ii). Pub. L. 95-600, §703(j)(5), substituted “subsection (b)” for “subsection (c)”.

Subsecs. (f), (g). Pub. L. 95-600, §542(a), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

Subsec. (h). Pub. L. 95-600, §§404(c)(4), 542(a), redesignated subsec. (g) as (h) and substituted in par. (3) “one-time exclusion” for “exclusion” and “age 55” for “age 65”.

1976—Subsec. (a)(2), (3). Pub. L. 94-455, §§1901(a)(128)(A), (B), 1906(b)(13)(A), redesignated par. (3) as (2), struck out in heading “where disposition occurred after 1950” after “Conversion into money”, in provisions preceding subpar. (A) “and the disposition of the converted property (as defined in paragraph (2)) occurred after December 31, 1950,” after “use to the converted property,” and in subpar. (B)(ii) “or his dele-

gate” after “Secretary” wherever appearing, and added subpar. (E). Former par. (2), which related to involuntary conversions into money where dispositions occurred prior to 1951, was struck out.

Subsec. (b). Pub. L. 94-455, §1901(a)(128)(C), (D), redesignated subsec. (c) as (b) and substituted “or section 112(f)(2) of the Internal Revenue Code of 1939” for “or (2)”. Former subsec. (b), which related to application of subsec. (a) in the case of property used by taxpayer as his principal residence, if the destruction, theft, etc., occurred after 1950 and before 1954, was struck out.

Subsecs. (c) to (e). Pub. L. 94-455, §1901(a)(128)(C), redesignated subsecs. (d) to (f) as (c) to (e), respectively. Former subsec. (c) redesignated (b).

Subsec. (f). Pub. L. 94-455, §§1901(a)(128)(C), (E), (F), 2127(a), 2140(a), redesignated subsec. (g) as (f), in par. (2) struck out provisions relating to conversion of real property before Jan. 1, 1958, and substituted reference to subsection (a)(2)(A) for reference to subsection (a)(3)(A), and added pars. (3) and (4). Former subsec. (f) redesignated (e).

Subsecs. (g), (h). Pub. L. 94-455, §1901(a)(128)(C), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

1969—Subsec. (a)(3)(B). Pub. L. 91-172 substituted “2 years” for “one year”.

1964—Subsec. (h)(3). Pub. L. 88-272 added par. (3).

1958—Subsec. (a)(2). Pub. L. 85-866, §45, inserted provision defining “control”.

Subsecs. (g), (h). Pub. L. 85-866, §46(a), added subsec. (g) and redesignated former subsec. (g) as (h).

1956—Subsecs. (f), (g). Act June 29, 1956, added subsec. (f) and redesignated former subsec. (f) as (g).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-343 applicable to disasters declared in taxable years beginning after Dec. 31, 2007, see section 706(d)(1) of Pub. L. 110-343, set out as a note under section 56 of this title.

#### EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-7, §1(c)(2), Apr. 15, 2005, 119 Stat. 22, provided that: “The amendments made by subsection (b) [amending this section] shall apply to sales or other dispositions before, on, or after the date of the enactment of this Act [Apr. 15, 2005].”

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to any taxable year with respect to which the due date (without regard to extensions) for the return is after Dec. 31, 2002, see section 311(d) of Pub. L. 108-357, set out as a note under section 451 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 312(d)(1), (7) of Pub. L. 105-34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105-34, set out as a note under section 121 of this title.

Amendment by section 913(b) of Pub. L. 105-34 applicable to sales and exchanges after Dec. 31, 1996, see section 913(c) of Pub. L. 105-34, set out as a note under section 451 of this title.

Section 1087(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to involuntary conversions occurring after June 8, 1997.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 1119(d)(1) of Pub. L. 104-188 provided that: “The amendments made by this section [amending this section] shall apply to disasters declared after December 31, 1994, in taxable years ending after such date.”

Section 1610(b) of Pub. L. 104-188 provided that: “The amendment made by this section [amending this section] shall apply to involuntary conversions occurring after the date of the enactment of this Act [Aug. 20, 1996].”

#### EFFECTIVE DATE OF 1995 AMENDMENT

Section 3(a)(2) of Pub. L. 104-7 provided that: “The amendment made by paragraph (1) [amending this sec-

tion] shall apply to involuntary conversions occurring on or after February 6, 1995.”

Section 3(b)(2) of Pub. L. 104-7 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to sales or exchanges after March 14, 1995.”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Section 13431(b) of Pub. L. 103-66 provided that: “The amendment made by subsection (a) [amending this section] shall apply to property compulsorily or involuntarily converted as a result of disasters for which the determination referred to in section 1033(h)(2) of the Internal Revenue Code of 1986 (as added by this section) is made on or after September 1, 1991, and to taxable years ending on or after such date.”

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 404(c)(4) of Pub. L. 95-600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95-600, set out as a note under section 121 of this title.

Section 542(b) of Pub. L. 95-600 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1974.”

Amendment by section 703(j)(5) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(128) of Pub. L. 94-455 effective for 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.

Section 2127(b) of Pub. L. 94-455 provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1970.”

Section 2140(b) of Pub. L. 94-455, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by this section [amending this section] shall apply with respect to any disposition of converted property (within the meaning of section 1033(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) after December 31, 1974, unless a condemnation proceeding with respect to such property began before the date of the enactment of this Act [Oct. 4, 1976].”

#### EFFECTIVE DATE OF 1969 AMENDMENT

Section 915(b) of Pub. L. 91-172, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“The amendment made by this section [amending this section] shall apply only if the disposition of the converted property (within the meaning of section 1033(a)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) occurs after the date of the enactment of this Act [Dec. 30, 1969].”

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 206(c) of Pub. L. 88-272, set out as an Effective Date note under section 121 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.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Section 5(b) of act June 29, 1956, provided that: “The amendment made by this section [amending this section] shall apply with respect to taxable years ending after December 31, 1955, but only in the case of sales and exchanges of livestock after December 31, 1955.”

#### SAVINGS PROVISION

For provisions that nothing in amendment 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.

### **[§ 1034. Repealed. Pub. L. 105-34, title III, § 312(b), Aug. 5, 1997, 111 Stat. 839]**

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 306; Sept. 2, 1958, Pub. L. 85-866, title I, § 46(b), 72 Stat. 1642; Feb. 26, 1964, Pub. L. 88-272, title II, § 206(b)(4), 78 Stat. 40; Jan. 2, 1975, Pub. L. 93-597, § 6(a), 88 Stat. 1953; Mar. 29, 1975, Pub. L. 94-12, title II, § 207, 89 Stat. 32; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§ 1901(a)(129), 1906(b)(13)(A), 90 Stat. 1785, 1834; May 23, 1977, Pub. L. 95-30, title I, § 102(b)(13), 91 Stat. 138; Nov. 6, 1978, Pub. L. 95-600, title IV, §§ 404(c)(5), 405(a)-(c)(1), 92 Stat. 2870, 2871; Nov. 8, 1978, Pub. L. 95-615, title II, § 206, 92 Stat. 3107; Aug. 13, 1981, Pub. L. 97-34, title I, §§ 112(b)(4), 122(a), (b), 95 Stat. 195, 197; July 18, 1984, Pub. L. 98-369, div. A, title X, § 1053(a), 98 Stat. 1045; Oct. 22, 1986, Pub. L. 99-514, title XVIII, § 1878(g), 100 Stat. 2904; Nov. 10, 1988, Pub. L. 100-647, title VI, § 6002(a), 102 Stat. 3684, related to roll-over of gain on sale of principal residence.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105-34, set out as an Effective Date of 1997 Amendment note under section 121 of this title.

### **§ 1035. Certain exchanges of insurance policies**

#### **(a) General rules**

No gain or loss shall be recognized on the exchange of—

(1) a contract of life insurance for another contract of life insurance or for an endowment or annuity contract or for a qualified long-term care insurance contract; or<sup>1</sup>

(2) a contract of endowment insurance (A) for another contract of endowment insurance which provides for regular payments beginning at a date not later than the date pay-

ments would have begun under the contract exchanged, or (B) for an annuity contract, or (C) for a qualified long-term care insurance contract;

(3) an annuity contract for an annuity contract or for a qualified long-term care insurance contract; or

(4) a qualified long-term care insurance contract for a qualified long-term care insurance contract.

#### **(b) Definitions**

For the purpose of this section—

##### **(1) Endowment contract**

A contract of endowment insurance is a contract with an insurance company which depends in part on the life expectancy of the insured, but which may be payable in full in a single payment during his life.

##### **(2) Annuity contract**

An annuity contract is a contract to which paragraph (1) applies but which may be payable during the life of the annuitant only in installments. For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.

##### **(3) Life insurance contract**

A contract of life insurance is a contract to which paragraph (1) applies but which is not ordinarily payable in full during the life of the insured. For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.

#### **(c) Exchanges involving foreign persons**

To the extent provided in regulations, subsection (a) shall not apply to any exchange having the effect of transferring property to any person other than a United States person.

#### **(d) Cross references**

**(1) For rules relating to recognition of gain or loss where an exchange is not solely in kind, see subsections (b) and (c) of section 1031.**

**(2) For rules relating to the basis of property acquired in an exchange described in subsection (a), see subsection (d) of section 1031.**

(Aug. 16, 1954, ch. 736, 68A Stat. 309; Pub. L. 98-369, div. A, title II, §§ 211(b)(15), 224(a), July 18, 1984, 98 Stat. 756, 776; Pub. L. 99-514, title XVIII, § 1828, Oct. 22, 1986, 100 Stat. 2851; Pub. L. 105-34, title XI, § 1131(b)(1), Aug. 5, 1997, 111 Stat. 979; Pub. L. 109-280, title VIII, § 844(b), Aug. 17, 2006, 120 Stat. 1010.)

#### CODIFICATION

Another section 1131(b) of Pub. L. 105-34 enacted section 684 of this title.

#### AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109-280, § 844(b)(3)(A), which directed amendment by inserting “or for a qualified long-term care insurance contract” before semicolon “at the end”, was executed by making the insertion before “; or” to reflect the probable intent of Congress.

Subsec. (a)(2). Pub. L. 109-280, § 844(b)(3)(B), which directed amendment by inserting “, or (C) for a qualified

<sup>1</sup> So in original. The word “or” probably should not appear.

long-term care insurance contract” before semicolon “at the end”, was executed by making the insertion before “; or” to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 109-280, §844(b)(3)(C), inserted “or for a qualified long-term care insurance contract” after “annuity contract”.

Subsec. (a)(4). Pub. L. 109-280, §844(b)(4), added par. (4).

Subsec. (b)(2). Pub. L. 109-280, §844(b)(1), inserted at end “For purposes of the preceding sentence, a contract shall not fail to be treated as an annuity contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.”

Subsec. (b)(3). Pub. L. 109-280, §844(b)(2), inserted at end “For purposes of the preceding sentence, a contract shall not fail to be treated as a life insurance contract solely because a qualified long-term care insurance contract is a part of or a rider on such contract.”

1997—Subsecs. (c), (d). Pub. L. 105-34 added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Subsec. (b)(1). Pub. L. 99-514 struck out “subject to tax under subchapter L” after “with an insurance company”.

1984—Subsec. (b)(1). Pub. L. 98-369, §224(a), which directed the substitution of “an insurance company subject to tax under subchapter L” for “a life insurance company as defined in section 801”, was executed by making such substitution for “a life insurance company as defined in section 816” to reflect the probable intent of Congress and the earlier amendment by Pub. L. 98-369, §211(b)(15), which substituted “as defined in section 816” for “as defined in section 801”.

Pub. L. 98-369, §211(b)(15), substituted “section 816” for “section 801”.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-280 applicable to contracts issued after Dec. 31, 1996, but only with respect to taxable years beginning after Dec. 31, 2009, and to exchanges occurring after Dec. 31, 2009, see section 844(g)(1), (2) of Pub. L. 109-280, set out as a note under section 72 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 211(b)(5) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Section 224(b) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this section] shall apply to all exchanges whether before, on, or after the date of the enactment of this Act [July 18, 1984].”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan 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.

### § 1036. Stock for stock of same corporation

#### (a) General rule

No gain or loss shall be recognized if common stock in a corporation is exchanged solely for common stock in the same corporation, or if

preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

#### (b) Nonqualified preferred stock not treated as stock

For purposes of this section, nonqualified preferred stock (as defined in section 351(g)(2)) shall be treated as property other than stock.

#### (c) Cross references

(1) For rules relating to recognition of gain or loss where an exchange is not solely in kind, see subsections (b) and (c) of section 1031.

(2) For rules relating to the basis of property acquired in an exchange described in subsection (a), see subsection (d) of section 1031.

(Aug. 16, 1954, ch. 736, 68A Stat. 309; Pub. L. 105-34, title X, §1014(e)(3), Aug. 5, 1997, 111 Stat. 921.)

#### AMENDMENTS

1997—Subsecs. (b), (c). Pub. L. 105-34 added subsec. (b) and redesignated former subsec. (b) as (c).

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable, with certain exceptions, to transactions after June 8, 1997, see section 1014(f) of Pub. L. 105-34, set out as a note under section 351 of this title.

### § 1037. Certain exchanges of United States obligations

#### (a) General rule

When so provided by regulations promulgated by the Secretary in connection with the issue of obligations of the United States, no gain or loss shall be recognized on the surrender to the United States of obligations of the United States issued under chapter 31 of title 31 in exchange solely for other obligations issued under such chapter.

#### (b) Application of original issue discount rules

##### (1) Exchanges involving obligations issued at a discount

In any case in which gain has been realized but not recognized because of the provisions of subsection (a) (or so much of section 1031(b) as relates to subsection (a) of this section), to the extent such gain is later recognized by reason of a disposition or redemption of an obligation received in an exchange subject to such provisions, the first sentence of section 1271(c)(2) shall apply to such gain as though the obligation disposed of or redeemed were the obligation surrendered to the Government in the exchange rather than the obligation actually disposed of or redeemed. For purposes of this paragraph and subpart A of part V of subchapter P, if the obligation surrendered in the exchange is a nontransferable obligation described in subsection (a) or (c) of section 454—

(A) the aggregate amount considered, with respect to the obligation surrendered, as ordinary income shall not exceed the difference between the issue price and the stated redemption price which applies at the time of the exchange, and

(B) the issue price of the obligation received in the exchange shall be considered to be the stated redemption price of the obliga-



tion surrendered in the exchange, increased by the amount of other consideration (if any) paid to the United States as a part of the exchange.

**(2) Exchanges of transferable obligations issued at not less than par**

In any case in which subsection (a) (or so much of section 1031(b) or (c) as relates to subsection (a) of this section) has applied to the exchange of a transferable obligation which was issued at not less than par for another transferable obligation, the issue price of the obligation received from the Government in the exchange shall be considered for purposes of applying subpart A of part V of subchapter P to be the same as the issue price of the obligation surrendered to the Government in the exchange, increased by the amount of other consideration (if any) paid to the United States as a part of the exchange.

**(c) Cross references**

**(1) For rules relating to the recognition of gain or loss in a case where subsection (a) would apply except for the fact that the exchange was not made solely for other obligations of the United States, see subsections (b) and (c) of section 1031.**

**(2) For rules relating to the basis of obligations of the United States acquired in an exchange for other obligations described in subsection (a), see subsection (d) of section 1031.**

(Added Pub. L. 86-346, title II, §201(a), Sept. 22, 1959, 73 Stat. 622; amended Pub. L. 94-455, title XIX, §1901(a)(130), (b)(3)(I), Oct. 4, 1976, 90 Stat. 1786, 1793; Pub. L. 97-452, §2(c)(3), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98-369, div. A, title I, §42(a)(11), July 18, 1984, 98 Stat. 557.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, §42(a)(11)(C), substituted “original issue discount rules” for “section 1232” in heading.

Subsec. (b)(1). Pub. L. 98-369, §42(a)(11)(A), (B), substituted “section 1271(c)(2)” for “section 1232(a)(2)(B)”, and “subpart A of part V of subchapter P” for “section 1232”.

Subsec. (b)(2). Pub. L. 98-369, §42(a)(11)(B), substituted “subpart A of part V of subchapter P” for “section 1232”.

1983—Subsec. (a). Pub. L. 97-452 substituted “chapter 31 of title 31” and “chapter” for “the Second Liberty Bond Act” and “Act”, respectively.

1976—Subsec. (b)(1). Pub. L. 94-455 substituted in introductory provisions “section 1232(a)(2)(B)” for “section 1232(a)(2)(A)” and in subpar. (A) “ordinary income” for “gain from the sale or exchange of property which is not a capital asset”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective for 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.

EFFECTIVE DATE

Section 203 of Pub. L. 86-346 provided that: “The amendments made by this title [enacting this section and amending section 1031 of this title and section 742a

of former Title 31, Money and Finance] shall be effective for taxable years ending after the date of enactment of this Act [Sept. 22, 1959].”

**§ 1038. Certain reacquisitions of real property**

**(a) General rule**

If—

(1) a sale of real property gives rise to indebtedness to the seller which is secured by the real property sold, and

(2) the seller of such property reacquires such property in partial or full satisfaction of such indebtedness,

then, except as provided in subsections (b) and (d), no gain or loss shall result to the seller from such reacquisition, and no debt shall become worthless or partially worthless as a result of such reacquisition.

**(b) Amount of gain resulting**

**(1) In general**

In the case of a reacquisition of real property to which subsection (a) applies, gain shall result from such reacquisition to the extent that—

(A) the amount of money and the fair market value of other property (other than obligations of the purchaser) received, prior to such reacquisition, with respect to the sale of such property, exceeds

(B) the amount of the gain on the sale of such property returned as income for periods prior to such reacquisition.

**(2) Limitation**

The amount of gain determined under paragraph (1) resulting from a reacquisition during any taxable year beginning after the date of the enactment of this section shall not exceed the amount by which the price at which the real property was sold exceeded its adjusted basis, reduced by the sum of—

(A) the amount of the gain on the sale of such property returned as income for periods prior to the reacquisition of such property, and

(B) the amount of money and the fair market value of other property (other than obligations of the purchaser received with respect to the sale of such property) paid or transferred by the seller in connection with the reacquisition of such property.

For purposes of this paragraph, the price at which real property is sold is the gross sales price reduced by the selling commissions, legal fees, and other expenses incident to the sale of such property which are properly taken into account in determining gain or loss on such sale.

**(3) Gain recognized**

Except as provided in this section, the gain determined under this subsection resulting from a reacquisition to which subsection (a) applies shall be recognized, notwithstanding any other provision of this subtitle.

**(c) Basis of reacquired real property**

If subsection (a) applies to the reacquisition of any real property, the basis of such property upon such reacquisition shall be the adjusted

basis of the indebtedness to the seller secured by such property (determined as of the date of reacquisition), increased by the sum of—

- (1) the amount of the gain determined under subsection (b) resulting from such reacquisition, and
- (2) the amount described in subsection (b)(2)(B).

If any indebtedness to the seller secured by such property is not discharged upon the reacquisition of such property, the basis of such indebtedness shall be zero.

**(d) Indebtedness treated as worthless prior to reacquisition**

If, prior to a reacquisition of real property to which subsection (a) applies, the seller has treated indebtedness secured by such property as having become worthless or partially worthless—

- (1) such seller shall be considered as receiving, upon the reacquisition of such property, an amount equal to the amount of such indebtedness treated by him as having become worthless, and
- (2) the adjusted basis of such indebtedness shall be increased (as of the date of reacquisition) by an amount equal to the amount so considered as received by such seller.

**(e) Principal residences**

If—

- (1) subsection (a) applies to a reacquisition of real property with respect to the sale of which gain was not recognized under section 121 (relating to gain on sale of principal residence); and
- (2) within 1 year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying section 121, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.

**[(f) Repealed. Pub. L. 104-188, title I, § 1616(b)(12), Aug. 20, 1996, 110 Stat. 1857]**

**(g) Acquisition by estate, etc., of seller**

Under regulations prescribed by the Secretary, if an installment obligation is indebtedness to the seller which is described in subsection (a), and if such obligation is, in the hands of the taxpayer, an obligation with respect to which section 691(a)(4)(B) applies, then—

- (1) for purposes of subsection (a), acquisition of real property by the taxpayer shall be treated as reacquisition by the seller, and
- (2) the basis of the real property acquired by the taxpayer shall be increased by an amount equal to the deduction under section 691(c) which would (but for this subsection) have been allowable to the taxpayer with respect to the gain on the exchange of the obligation for the real property.

(Added Pub. L. 88-570, §2(a), Sept. 2, 1964, 78 Stat. 854; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L.

95-600, title IV, §§404(c)(6), 405(c)(3), Nov. 6, 1978, 92 Stat. 2870, 2871; Pub. L. 96-471, §4, Oct. 19, 1980, 94 Stat. 2255; Pub. L. 104-188, title I, §1616(b)(12), Aug. 20, 1996, 110 Stat. 1857; Pub. L. 105-34, title III, §312(d)(8), Aug. 5, 1997, 111 Stat. 840.)

AMENDMENTS

1997—Subsec. (e). Pub. L. 105-34 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: “If—

“(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which—

“(A) an election under section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is in effect, or

“(B) gain was not recognized under section 1034 (relating to rollover of gain on sale of principal residence); and

“(2) within one year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying sections 121 and 1034, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.”

1996—Subsec. (f). Pub. L. 104-188 struck out subsec. (f) which read as follows:

“(f) REACQUISITIONS BY DOMESTIC BUILDING AND LOAN ASSOCIATIONS.—This section shall not apply to a reacquisition of real property by an organization described in section 593(a) (relating to domestic building and loan associations, etc.).”

1980—Subsec. (g). Pub. L. 96-471 added subsec. (g).

1978—Subsec. (e)(1)(A). Pub. L. 95-600, §404(c)(6), substituted “relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55” for “relating to gain from sale or exchange of residence of an individual who has attained age 65”.

Subsec. (e)(1)(B). Pub. L. 95-600, §405(c)(3), which directed the amendment of section 1083(e)(1)(B) of this title by substituting “(relating to rollover of gain on sale of principal residence)” for “(relating to sale or exchange of residence)”, was executed to this section to reflect the probable intent of Congress because section 1083 does not contain a subsec. (e)(1)(B).

1976—Subsec. (e). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105-34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104-188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 6(c) of Pub. L. 96-471 provided: “The amendment made by section 4 [amending this section] shall apply to acquisitions of real property by the taxpayer after the date of the enactment of this Act [Oct. 19, 1980].”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 404(c)(6) of Pub. L. 95-600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95-600, set out as a note under section 121 of this title.

Section 405(d) of Pub. L. 95-600 provided that: “The amendments made by this section [amending this sec-

tion and sections 1034, 1250, 6212, and 6504 of this title] shall apply to sales and exchanges 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**

Section 2(c) of Pub. L. 88-570 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.)

**AMENDMENT OF SECTION**

*For termination of amendment by section 304 of Pub. L. 111-312, see Effective and Termination Dates of 2010 Amendment note below.*

*For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.*

**AMENDMENTS**

2010—Pub. L. 111-312, §§ 301(a), 304, temporarily amended section to read as if amendment by Pub. L. 107-16, § 542(d)(1), had never been enacted. See 2001 Amendment note and Effective and Termination Dates of 2010 Amendment note below.

2001—Pub. L. 107-16, §§ 542(d)(1), 901, temporarily 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.”

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 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 AND TERMINATION DATES 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 a note under section 121 of this title.

Section 901 of Pub. L. 107-16 applicable to amendments by section 301(a) of Pub. L. 111-312, see section 304 of Pub. L. 111-312, set out as a note under section 121 of this title.

#### EFFECTIVE AND TERMINATION DATES 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.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 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 AMENDMENTS

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.

Section 105(a)(5)(B) of Pub. L. 96-222, 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”.

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

Amendment by Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE

Section 421(d) of Pub. L. 98-369 provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 47, 72, 101, 453, 453B, 1001, 1015, and 1239 of this title] shall apply to transfers after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

“(2) ELECTION TO HAVE AMENDMENTS APPLY TO TRANSFERS AFTER 1983.—If both spouses or former spouses make an election under this paragraph, the amendments made by this section shall apply to all transfers made by such spouses (or former spouses) after December 31, 1983.

“(3) EXCEPTION FOR TRANSFERS PURSUANT TO EXISTING DECREES.—Except in the case of an election under paragraph (2), the amendments made by this section shall not apply to transfers under any instrument in effect on or before the date of the enactment of this Act unless both spouses (or former spouses) elect to have such amendments apply to transfers under such instrument.

“(4) ELECTION.—Any election under paragraph (2) or (3) shall be made in such manner, at such time, and subject to such conditions, as the Secretary of the Treasury or his delegate may by regulations prescribe.”

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan 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.

### § 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

tradable on an established securities market, and

(B) were not received by the taxpayer in—

(i) a distribution from a plan described in section 401(a), or

(ii) a transfer pursuant to an option or other right to acquire stock to which section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied).

**(2) Eligible worker-owned cooperative**

The term “eligible worker-owned cooperative” means any organization—

(A) to which part I of subchapter T applies,

(B) a majority of the membership of which is composed of employees of such organization,

(C) a majority of the voting stock of which is owned by members,

(D) a majority of the board of directors of which is elected by the members on the basis of 1 person 1 vote, and

(E) a majority of the allocated earnings and losses of which are allocated to members on the basis of—

- (i) patronage,
- (ii) capital contributions, or
- (iii) some combination of clauses (i) and (ii).

**(3) Replacement period**

The term “replacement period” means the period which begins 3 months before the date on which the sale of qualified securities occurs and which ends 12 months after the date of such sale.

**(4) Qualified replacement property**

**(A) In general**

The term “qualified replacement property” means any security issued by a domestic operating corporation which—

(i) did not, for the taxable year preceding the taxable year in which such security was purchased, have passive investment income (as defined in section 1362(d)(3)(C)) in excess of 25 percent of the gross receipts of such corporation for such preceding taxable year, and

(ii) is not the corporation which issued the qualified securities which such security is replacing or a member of the same controlled group of corporations (within the meaning of section 1563(a)(1)) as such corporation.

For purposes of clause (i), income which is described in section 954(c)(3) (as in effect immediately before the Tax Reform Act of 1986) shall not be treated as passive investment income.

**(B) Operating corporation**

For purposes of this paragraph—

**(i) In general**

The term “operating corporation” means a corporation more than 50 percent of the assets of which were, at the time the security was purchased or before the close of the replacement period, used in the active conduct of the trade or business.

**(ii) Financial institutions and insurance companies**

The term “operating corporation” shall include—

(I) any financial institution described in section 581, and

(II) an insurance company subject to tax under subchapter L.

**(C) Controlling and controlled corporations treated as 1 corporation**

**(i) In general**

For purposes of applying this paragraph, if—

(I) the corporation issuing the security owns stock representing control of 1 or more other corporations,

(II) 1 or more other corporations own stock representing control of the corporation issuing the security, or

(III) both,

then all such corporations shall be treated as 1 corporation.

**(ii) Control**

For purposes of clause (i), the term “control” has the meaning given such term by section 304(c). In determining control, there shall be disregarded any qualified replacement property of the taxpayer with respect to the section 1042 sale being tested.

**(D) Security defined**

For purposes of this paragraph, the term “security” has the meaning given such term by section 165(g)(2), except that such term shall not include any security issued by a government or political subdivision thereof.

**(5) Securities sold by underwriter**

No sale of securities by an underwriter to an employee stock ownership plan or eligible worker-owned cooperative in the ordinary course of his trade or business as an underwriter, whether or not guaranteed, shall be treated as a sale for purposes of subsection (a).

**(6) Time for filing election**

An election under subsection (a) shall be filed not later than the last day prescribed by law (including extensions thereof) for filing the return of tax imposed by this chapter for the taxable year in which the sale occurs.

**(7) Section not to apply to gain of C corporation**

Subsection (a) shall not apply to any gain on the sale of any qualified securities which is includible in the gross income of any C corporation.

**(d) Basis of qualified replacement property**

The basis of the taxpayer in qualified replacement property purchased by the taxpayer during the replacement period shall be reduced by the amount of gain not recognized by reason of such purchase and the application of subsection (a). If more than one item of qualified replacement property is purchased, the basis of each of such items shall be reduced by an amount determined by multiplying the total gain not recognized by

reason of such purchase and the application of subsection (a) by a fraction—

- (1) the numerator of which is the cost of such item of property, and
- (2) the denominator of which is the total cost of all such items of property.

Any reduction in basis under this subsection shall not be taken into account for purposes of section 1278(a)(2)(A)(ii) (relating to definition of market discount).

**(e) Recapture of gain on disposition of qualified replacement property**

**(1) In general**

If a taxpayer disposes of any qualified replacement property, then, notwithstanding any other provision of this title, gain (if any) shall be recognized to the extent of the gain which was not recognized under subsection (a) by reason of the acquisition by such taxpayer of such qualified replacement property.

**(2) Special rule for corporations controlled by the taxpayer**

If—

(A) a corporation issuing qualified replacement property disposes of a substantial portion of its assets other than in the ordinary course of its trade or business, and

(B) any taxpayer owning stock representing control (within the meaning of section 304(c)) of such corporation at the time of such disposition holds any qualified replacement property of such corporation at such time,

then the taxpayer shall be treated as having disposed of such qualified replacement property at such time.

**(3) Recapture not to apply in certain cases**

Paragraph (1) shall not apply to any transfer of qualified replacement property—

(A) in any reorganization (within the meaning of section 368) unless the person making the election under subsection (a)(1) owns stock representing control in the acquiring or acquired corporation and such property is substituted basis property in the hands of the transferee,

(B) by reason of the death of the person making such election,

(C) by gift, or

(D) in any transaction to which section 1042(a) applies.

**(f) Statute of limitations**

If any gain is realized by the taxpayer on the sale or exchange of any qualified securities and there is in effect an election under subsection (a) with respect to such gain, then—

(1) the statutory period for the assessment of any deficiency with respect to such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

(A) the taxpayer's cost of purchasing qualified replacement property which the taxpayer claims results in nonrecognition of any part of such gain,

(B) the taxpayer's intention not to purchase qualified replacement property within the replacement period, or

(C) a failure to make such purchase within the replacement period, and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

**(g) Application of section to sales of stock in agricultural refiners and processors to eligible farm cooperatives**

**(1) In general**

This section shall apply to the sale of stock of a qualified refiner or processor to an eligible farmers' cooperative.

**(2) Qualified refiner or processor**

For purposes of this subsection, the term "qualified refiner or processor" means a domestic corporation—

(A) substantially all of the activities of which consist of the active conduct of the trade or business of refining or processing agricultural or horticultural products, and

(B) which, during the 1-year period ending on the date of the sale, purchases more than one-half of such products to be refined or processed from—

(i) farmers who make up the eligible farmers' cooperative which is purchasing stock in the corporation in a transaction to which this subsection is to apply, or

(ii) such cooperative.

**(3) Eligible farmers' cooperative**

For purposes of this section, the term "eligible farmers' cooperative" means an organization to which part I of subchapter T applies and which is engaged in the marketing of agricultural or horticultural products.

**(4) Special rules**

In applying this section to a sale to which paragraph (1) applies—

(A) the eligible farmers' cooperative shall be treated in the same manner as a cooperative described in subsection (b)(1)(B),

(B) subsection (b)(2) shall be applied by substituting "100 percent" for "30 percent" each place it appears,

(C) the determination as to whether any stock in the domestic corporation is a qualified security shall be made without regard to whether the stock is an employer security or to subsection (c)(1)(A), and

(D) paragraphs (2)(D) and (7) of subsection (c) shall not apply.

(Added Pub. L. 98-369, div. A, title V, §541(a), July 18, 1984, 98 Stat. 887; amended Pub. L. 99-514, title XVIII, §§1854(a)(1), (2)(A), (3)(B), (4), (5)(A), (6)(A), (7), (8)(A), (9)(B), (10), (11), (f)(3)(B), 1899A(26), Oct. 22, 1986, 100 Stat. 2872-2878, 2882, 2959; Pub. L. 100-647, title I, §1018(t)(4)(D)-(F), Nov. 10, 1988, 102 Stat. 3588; Pub. L. 101-239, title VII, §7303(a), Dec. 19, 1989, 103 Stat. 2352; Pub. L. 101-508, title XI, §11801(c)(9)(H), Nov. 5, 1990, 104 Stat. 1388-526; Pub. L. 104-188, title I, §§1311(b)(3), 1316(d)(3), 1616(b)(13), 1704(t)(50), Aug. 20, 1996, 110 Stat. 1784, 1786, 1857, 1890; Pub. L. 105-34, title IX, §968(a), Aug. 5, 1997, 111 Stat. 895.)

## REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (c)(1)(B)(ii), is the date of enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

The Tax Reform Act of 1986, referred to in subsec. (c)(4)(A), is Pub. L. 99-514, which was approved Oct. 22, 1986.

## AMENDMENTS

1997—Subsec. (g). Pub. L. 105-34 added subsec. (g).

1996—Subsec. (c)(1)(A). Pub. L. 104-188, §1316(d)(3), substituted “domestic C corporation” for “domestic corporation”.

Subsec. (c)(1)(B)(ii). Pub. L. 104-188, §1704(t)(50), provided that section 11801(c)(9)(H) of Pub. L. 101-508 shall be applied as if “section 1042(c)(1)(B)” appeared instead of “section 1042(c)(2)(B)”. See 1990 Amendment note below.

Subsec. (c)(4)(A)(i). Pub. L. 104-188, §1311(b)(3), substituted “section 1362(d)(3)(C)” for “section 1362(d)(3)(D)”.

Subsec. (c)(4)(B)(ii)(I). Pub. L. 104-188, §1616(b)(13), struck out “or 593” after “section 581”.

1990—Subsec. (c)(1)(B)(ii). Pub. L. 101-508, which directed the amendment of subsec. (c)(2)(B)(ii) by substituting “section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied)” for “section 83, 422, 422A, 423, or 424 applies”, was executed to subsec. (c)(1)(B)(ii). See 1996 Amendment note above.

1989—Subsec. (b)(4). Pub. L. 101-239 added par. (4).

1988—Subsec. (b)(3), (4). Pub. L. 100-647, §1018(t)(4)(F), made technical correction to Pub. L. 99-514, §1854(a)(3)(B), see 1986 Amendment notes below.

Subsec. (c)(4)(A). Pub. L. 100-647, §1018(t)(4)(D), inserted “(as in effect immediately before the Tax Reform Act of 1986)” after “section 954(c)(3)” in last sentence.

Subsec. (c)(4)(B)(i). Pub. L. 100-647, §1018(t)(4)(E), substituted “replacement period” for “placement period”.

1986—Pub. L. 99-514, §1854(a)(11), which directed that “employee” be inserted before “stock” in section catchline was executed by making the insertion before “stock” the second time that term appears as the probable intent of Congress.

Subsec. (a). Pub. L. 99-514, §1854(a)(1), substituted “the taxpayer or executor elects in such form as the Secretary may prescribe” for “the taxpayer elects” in par. (1) and inserted “which would be recognized as long-term capital gain” in concluding provisions.

Subsec. (b)(2). Pub. L. 99-514, §1854(a)(2)(A), substituted “Plan must hold” for “Employees must own” in heading and amended text generally. Prior to amendment, par. (2) read as follows: “The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the total value of the employer securities (within the meaning of section 409(l)) outstanding as of such time.”

Subsec. (b)(3). Pub. L. 99-514, §1854(a)(3)(B), as amended by Pub. L. 100-647, §1018(t)(4)(F), redesignated par. (4) as (3) and struck out former par. (3) which related to plans maintained for benefit of employees.

Subsec. (b)(3)(B). Pub. L. 99-514, §1854(f)(3)(B), amended subpar. (B) similar to amendment by section 1854(a)(9)(B) of Pub. L. 99-514, inserting reference to section 4979A.

Pub. L. 99-514, §1854(a)(9)(B), substituted “sections 4978 and 4979A” for “section 4978(a)”.

Subsec. (b)(4). Pub. L. 99-514, §1854(a)(3)(B), as amended by Pub. L. 100-647, §1018(t)(4)(F), redesignated par. (4) as (3).

Subsec. (c). Pub. L. 99-514, §1899A(26), substituted “this section—” for “this section.—” in introductory provision.

Subsec. (c)(1). Pub. L. 99-514, §1854(a)(4), substituted “stock outstanding that is” for “securities outstanding that are” in subpar. (A), redesignated subpar. (C) as (B),

and struck out former subpar. (B) which read as follows: “at the time of the sale described in subsection (a)(1), have been held by the taxpayer for more than 1 year, and”.

Subsec. (c)(4). Pub. L. 99-514, §1854(a)(5)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The term ‘qualified replacement property’ means any securities (as defined in section 165(g)(2)) issued by a domestic corporation which does not, for the taxable year in which such stock is issued, have passive investment income (as defined in section 1362(d)(3)(D)) that exceeds 25 percent of the gross receipts of such corporation for such taxable year.”

Subsec. (c)(5). Pub. L. 99-514, §1854(a)(10), substituted “sold” for “acquired” in heading, and in text substituted “sale of securities” for “acquisition of securities” and inserted “to an employee stock ownership plan or eligible worker-owned cooperative”.

Subsec. (c)(7). Pub. L. 99-514, §1854(a)(6)(A), added par. (7).

Subsec. (d). Pub. L. 99-514, §1854(a)(7), inserted last sentence.

Subsecs. (e), (f). Pub. L. 99-514, §1854(a)(8)(A), added subsec. (e) and redesignated former subsec. (e) as (f).

## EFFECTIVE DATE OF 1997 AMENDMENT

Section 968(b) of Pub. L. 105-34 provided that: “The amendment made by this section [amending this section] shall apply to sales after December 31, 1997.”

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1316(d)(3) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104-188, set out as a note under section 170 of this title.

Amendment by section 1311(b)(3) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104-188, set out as a note under section 641 of this title.

Amendment by section 1616(b)(13) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104-188, set out as a note under section 593 of this title.

## EFFECTIVE DATE OF 1989 AMENDMENT

Section 7303(b) of Pub. L. 101-239 provided that: “The amendment made by this section [amending this section] shall apply to sales after July 10, 1989.”

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1854(a)(1), (2)(A), (4), (5)(A), (7), (10), (11) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Amendment by section 1854(a)(3)(B) of Pub. L. 99-514 applicable to sales of securities after Oct. 22, 1986, except that a taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment by section 1854(a)(3)(B) of Pub. L. 99-514) apply to sales before Oct. 22, 1986, as if section 1042(b)(3) included the last sentence of section 409(n)(1) of this title (as added by section 1854(a)(3)(A) of Pub. L. 99-514), see section 1854(a)(3)(C) of Pub. L. 99-514, as amended, set out as a note under section 409 of this title.

Section 1854(a)(6)(B)–(D) of Pub. L. 99-514 provided that:

“(B) The amendment made by subparagraph (A) [amending this section] shall apply to sales after March 28, 1985, except that such amendment shall not apply to



sales made before July 1, 1985, if made pursuant to a binding contract in effect on March 28, 1985, and at all times thereafter.

“(C) The amendment made by subparagraph (A) shall not apply to any sale occurring on December 20, 1985, with respect to which—

“(i) a commitment letter was issued by a bank on October 31, 1984, and

“(ii) a final purchase agreement was entered into on November 5, 1985.

“(D) In the case of a sale on September 27, 1985, with respect to which a preliminary commitment letter was issued by a bank on April 10, 1985, and with respect to which a commitment letter was issued by a bank on June 28, 1985, the amendment made by subparagraph (A) shall apply but such sale shall be treated as having occurred on September 27, 1986.”

Section 1854(a)(8)(B) of Pub. L. 99-514 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to dispositions after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.”

Amendment by section 1854(a)(9)(B) of Pub. L. 99-514 applicable to sales of securities after Oct. 22, 1986, see section 1854(a)(9)(D) of Pub. L. 99-514, set out as an Effective Date note under section 4979A of this title.

Amendment by section 1854(f)(3)(B) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1854(f)(4)(A) of Pub. L. 99-514, set out as a note under section 409 of this title.

#### EFFECTIVE DATE

Section 541(c) of Pub. L. 98-369 provided that: “The amendments made by this section [enacting this section and amending sections 1016 and 1223 of this title] shall apply to sales of securities in taxable years beginning after the date of enactment of this Act [July 18, 1984].”

#### SAVINGS PROVISION

For provisions that nothing in amendment 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.

#### LINE ITEM VETO

Section 968 of Pub. L. 105-34, amending this section and enacting provisions set out as a note above, was subject to line item veto by the President, Cancellation No. 97-2, signed Aug. 11, 1997, 62 F.R. 43267, Aug. 12, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan 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

Section 1854(a)(2)(B) of Pub. L. 99-514 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

Section 1854(a)(5)(B) of Pub. L. 99-514 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 AMENDMENTS

Section 11703(a)(2) of Pub. L. 101-508 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to sales after November 30, 1989.”

Section 6(a)(3) of Pub. L. 101-280 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

Section 6(a)(2) of Pub. L. 101-280 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. Rollover of publicly traded securities gain into specialized small business investment companies

#### (a) Nonrecognition of gain

In the case of the sale of any publicly traded securities with respect to which the 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 common stock or partnership interest in a specialized small business investment company 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 subtitle.

**(b) Limitations****(1) Limitation on individuals**

In the case of an individual, the amount of gain which may be excluded under subsection (a) for any taxable year shall not exceed the lesser of—

(A) \$50,000, or

(B) \$500,000, reduced by the amount of gain excluded under subsection (a) for all preceding taxable years.

**(2) Limitation on C corporations**

In the case of a C corporation, the amount of gain which may be excluded under subsection (a) for any taxable year shall not exceed the lesser of—

(A) \$250,000, or

(B) \$1,000,000, reduced by the amount of gain excluded under subsection (a) for all preceding taxable years.

**(3) Special rules for married individuals**

For purposes of this subsection—

**(A) Separate returns**

In the case of a separate return by a married individual, paragraph (1) shall be applied by substituting “\$25,000” for “\$50,000” and “\$250,000” for “\$500,000”.

**(B) Allocation of gain**

In the case of any joint return, the amount of gain excluded under subsection (a) for any taxable year shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

**(C) Marital status**

For purposes of this subsection, marital status shall be determined under section 7703.

**(4) Special rules for C corporation**

For purposes of this subsection—

(A) all corporations which are members of the same controlled group of corporations (within the meaning of section 52(a)) shall be treated as 1 taxpayer, and

(B) any gain excluded under subsection (a) by a predecessor of any C corporation shall be treated as having been excluded by such C corporation.

**(c) Definitions and special rules**

For purposes of this section—

**(1) Publicly traded securities**

The term “publicly traded securities” means securities which are traded on an established securities market.

**(2) Purchase**

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

**(3) Specialized small business investment company**

The term “specialized small business investment company” means any partnership or corporation which is licensed by the Small Business Administration under section 301(d) of

the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

**(4) Certain entities not eligible**

This section shall not apply to any estate, trust, partnership, or S corporation.

**(d) 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 common stock or partnership interest in any specialized small business investment company which is purchased by the taxpayer during the 60-day period described in subsection (a). This subsection shall not apply for purposes of section 1202.

(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.)

## REFERENCES IN TEXT

Section 301(d) of the Small Business Investment Act of 1958, referred to in subsec. (c)(3), was classified to section 681(d) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 104-208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009-742.

## AMENDMENTS

1996—Subsec. (c)(2). Pub. L. 104-188 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘purchase’ has the meaning given such term by section 1043(b)(4).”

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

## EFFECTIVE DATE

Section applicable to sales on or after Aug. 10, 1993, in taxable years ending on or after such date, see section 13114(d) of Pub. L. 103-66, set out as an Effective Date of 1993 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.

(Added Pub. L. 105-34, title III, §313(a), Aug. 5, 1997, 111 Stat. 841; amended Pub. L. 105-206, title VI, §6005(f), July 22, 1998, 112 Stat. 806.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-206, §6005(f)(1), in introductory provisions, substituted "a taxpayer other than a corporation" for "an individual" and "such taxpayer" for "such individual".

Subsec. (b)(5). Pub. L. 105-206, §6005(f)(2), added par. (5).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to sales after Aug. 5, 1997, see section 313(c) of Pub. L. 105-34, set out as an Effective Date of 1997 Amendment note under section 1016 of this title.

PART IV—SPECIAL RULES

- Sec. 1051. Property acquired during affiliation.
- 1052. Basis established by the Revenue Act of 1932 or 1934 or by the Internal Revenue Code of 1939.
- 1053. Property acquired before March 1, 1913.
- 1054. Certain stock of Federal National Mortgage Association.
- 1055. Redeemable ground rents.  
[1056, 1057. Repealed.]
- 1058. Transfers of securities under certain agreements.
- 1059. Corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends.

- Sec. 1059A. Limitation on taxpayer's basis or inventory cost in property imported from related persons.
- 1060. Special allocation rules for certain asset acquisitions.
- 1061. Cross references.

AMENDMENTS

2004—Pub. L. 108-357, title VIII, §886(b)(1)(B), Oct. 22, 2004, 118 Stat. 1641, struck out item 1056 "Basis limitation for player contracts transferred in connection with the sale of a franchise".

1997—Pub. L. 105-34, title XI, §1131(c)(5), Aug. 5, 1997, 111 Stat. 980, struck out item 1057 "Election to treat transfer to foreign trust, etc., as taxable exchange".

1986—Pub. L. 99-514, title VI, §641(b), title XII, §1248(b), Oct. 22, 1986, 100 Stat. 2283, 2584, added items 1059A and 1060 and renumbered former item 1060 as 1061.

1984—Pub. L. 98-369, div. A, title I, §53(d), July 18, 1984, 98 Stat. 568, added item 1059 and renumbered former item 1059 as 1060.

1978—Pub. L. 95-345, §2(d)(2), Aug. 15, 1978, 92 Stat. 483, added item 1058 and renumbered former item 1058 as 1059.

1976—Pub. L. 94-455, title II, §212(a)(2), title X, 1015(c), Oct. 4, 1976, 90 Stat. 1546, 1618, added items 1056 and 1057 and renumbered former item 1056 as 1058.

1963—Pub. L. 88-9, §1(d), Apr. 10, 1963, 77 Stat. 8, added item 1055 and renumbered former item 1055 as 1056.

1960—Pub. L. 86-779, §8(c), Sept. 14, 1960, 74 Stat. 1003, renumbered former item 1054 as 1055 and added new item 1054.

**§ 1051. Property acquired during affiliation**

In the case of property acquired by a corporation, during a period of affiliation, from a corporation with which it was affiliated, the basis of such property, after such period of affiliation, shall be determined, in accordance with regulations prescribed by the Secretary, without regard to inter-company transactions in respect of which gain or loss was not recognized. For purposes of this section, the term "period of affiliation" means the period during which such corporations were affiliated (determined in accordance with the law applicable thereto) but does not include any taxable year beginning on or after January 1, 1922, unless a consolidated return was made, nor any taxable year after the taxable year 1928.

(Aug. 16, 1954, ch. 736, 68A Stat. 310; Pub. L. 94-455, title XIX, §§1901(a)(131), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1786, 1834.)

AMENDMENTS

1976—Pub. L. 94-455, §1901(a)(131), struck out last two sentences relating to the basis and adjustment of the basis of corporate property where a consolidated return was filed.

Pub. L. 94-455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(131) of Pub. L. 94-455 effective for 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.

**§ 1052. Basis established by the Revenue Act of 1932 or 1934 or by the Internal Revenue Code of 1939**

**(a) Revenue Act of 1932**

If the property was acquired, after February 28, 1913, in any taxable year beginning before

January 1, 1934, and the basis thereof, for purposes of the Revenue Act of 1932 was prescribed by section 113(a)(6), (7), or (9) of such Act (47 Stat. 199), then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Revenue Act of 1932.

**(b) Revenue Act of 1934**

If the property was acquired, after February 28, 1913, in any taxable year beginning before January 1, 1936, and the basis thereof, for purposes of the Revenue Act of 1934, was prescribed by section 113(a)(6), (7), or (8) of such Act (48 Stat. 706), then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Revenue Act of 1934.

**(c) Internal Revenue Code of 1939**

If the property was acquired, after February 28, 1913, in a transaction to which the Internal Revenue Code of 1939 applied, and the basis thereof, for purposes of the Internal Revenue Code of 1939, was prescribed by section 113(a)(6), (7), (8), (13), (15), (18), (19), or (23) of such code, then for purposes of this subtitle the basis shall be the same as the basis therein prescribed in the Internal Revenue Code of 1939.

(Aug. 16, 1954, ch. 736, 68A Stat. 310.)

REFERENCES IN TEXT

Revenue Act of 1932, referred to in section catchline and subsec. (a), is act June 6, 1932, ch. 209, 47 Stat. 169. For complete classification of the Act to the Code, see Tables.

Revenue Act of 1934, referred to in section catchline and subsec. (b), is act May 10, 1934, ch. 277, 48 Stat. 680. For complete classification of this Act to the Code, see Tables.

The Internal Revenue Code of 1939, referred to in section catchline and subsec. (c), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. 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 comparisons of the 1939 Code to the 1986 Code, see table I preceding section 1 of this title.

Section 113 of the Internal Revenue Code of 1939, referred to in subsec. (c), was classified to section 113 of former Title 26, Internal Revenue Code. Section 113 was repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

**§ 1053. Property acquired before March 1, 1913**

In the case of property acquired before March 1, 1913, if the basis otherwise determined under this subtitle, adjusted (for the period before March 1, 1913) as provided in section 1016, is less than the fair market value of the property as of March 1, 1913, then the basis for determining gain shall be such fair market value. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

(Aug. 16, 1954, ch. 736, 68A Stat. 311; Pub. L. 85-866, title I, § 47, Sept. 2, 1958, 72 Stat. 1642.)

AMENDMENTS

1958—Pub. L. 85-866 substituted “subtitle” for “part”.

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.

**§ 1054. Certain stock of Federal National Mortgage Association**

In the case of a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718), the basis of such share in the hands of the initial holder shall be an amount equal to the capital contributions evidenced by such share reduced by the amount (if any) required by section 162(d) to be treated (with respect to such share) as ordinary and necessary expenses paid or incurred in carrying on a trade or business.

(Added Pub. L. 86-779, § 8(b), Sept. 14, 1960, 74 Stat. 1003.)

PRIOR PROVISIONS

A prior section 1054 was renumbered section 1061 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1959, see section 8(d) of Pub. L. 86-779, set out as an Effective Date of 1960 Amendment note under section 162 of this title.

**§ 1055. Redeemable ground rents**

**(a) Character**

For purposes of this subtitle—

(1) a redeemable ground rent shall be treated as being in the nature of a mortgage, and

(2) real property held subject to liabilities under a redeemable ground rent shall be treated as held subject to liabilities under a mortgage.

**(b) Application of subsection (a)**

**(1) In general**

Subsection (a) shall take effect on the day after the date of the enactment of this section and shall apply with respect to taxable years ending after such date of enactment.

**(2) Basis of holder**

In determining the basis of real property held subject to liabilities under a redeemable ground rent, subsection (a) shall apply whether such real property was acquired before or after the enactment of this section.

**(3) Basis of reserved redeemable ground rent**

In the case of a redeemable ground rent reserved or created on or before the date of the enactment of this section in connection with a transfer of the right to hold real property subject to liabilities under such ground rent, the basis of such ground rent after such date in the hands of the person who reserved or created the ground rent shall be the amount taken into account in respect of such ground rent for Federal income tax purposes as consideration for the disposition of such real property. If no such amount was taken into account, such basis shall be determined as if this section had not been enacted.

**(c) Redeemable ground rent defined**

For purposes of this subtitle, the term “redeemable ground rent” means only a ground rent with respect to which—

(1) there is a lease of land which is assignable by the lessee without the consent of the lessor and which (together with periods for which the lease may be renewed at the option of the lessee) is for a term in excess of 15 years,

(2) the leaseholder has a present or future right to terminate, and to acquire the entire interest of the lessor in the land, by payment of a determined or determinable amount, which right exists by virtue of State or local law and not because of any private agreement or privately created condition, and

(3) the lessor’s interest in the land is primarily a security interest to protect the rental payments to which the lessor is entitled under the lease.

**(d) Cross reference**

**For treatment of rentals under redeemable ground rents as interest, see section 163(c).**

(Added Pub. L. 88-9, §1(b), Apr. 10, 1963, 77 Stat. 7.)

## REFERENCES IN TEXT

Date of the enactment of this section, referred to in subsec. (b)(1), (3), means Apr. 10, 1963, the date of approval of Pub. L. 88-9.

## PRIOR PROVISIONS

A prior section 1055 was renumbered section 1061 of this title.

## EFFECTIVE DATE

Section 2 of Pub. L. 88-9 provided that: “The amendments made by subsection (a) of the first section of this Act [amending section 163 of this title] shall take effect as of January 1, 1962, and shall apply with respect to taxable years ending on or after such date. The amendments made by subsection (b) of the first section of this Act [enacting this section] shall take effect on the day after the date of the enactment of this Act [Apr. 10, 1963] and shall apply with respect to taxable years ending after such date of enactment.”

**[§ 1056. Repealed. Pub. L. 108-357, title VIII, § 886(b)(1)(A), Oct. 22, 2004, 118 Stat. 1641]**

Section, added Pub. L. 94-455, title II, §212(a)(1), Oct. 4, 1976, 90 Stat. 1545; amended Pub. L. 99-514, title VI, §631(e)(13), Oct. 22, 1986, 100 Stat. 2275, related to basis limitation for player contracts transferred in connection with the sale of a franchise.

A prior section 1056 was renumbered section 1061 of this title.

## EFFECTIVE DATE OF REPEAL

Repeal applicable to property acquired after Oct. 22, 2004, see section 886(c)(1) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendment note under section 197 of this title.

**[§ 1057. Repealed. Pub. L. 105-34, title XI, § 1131(c)(2), Aug. 5, 1997, 111 Stat. 980]**

Section, added Pub. L. 94-455, title X, §1015(c), Oct. 4, 1976, 90 Stat. 1618, related to election to treat transfer to foreign trust, etc., as taxable exchange.

A prior section 1057 was renumbered section 1061 of this title.

**§ 1058. Transfers of securities under certain agreements****(a) General rule**

In the case of a taxpayer who transfers securities (as defined in section 1236(c)) pursuant to an agreement which meets the requirements of subsection (b), no gain or loss shall be recognized on the exchange of such securities by the taxpayer for an obligation under such agreement, or on the exchange of rights under such agreement by that taxpayer for securities identical to the securities transferred by that taxpayer.

**(b) Agreement requirements**

In order to meet the requirements of this subsection, an agreement shall—

(1) provide for the return to the transferor of securities identical to the securities transferred;

(2) require that payments shall be made to the transferor of amounts equivalent to all interest, dividends, and other distributions which the owner of the securities is entitled to receive during the period beginning with the transfer of the securities by the transferor and ending with the transfer of identical securities back to the transferor;

(3) not reduce the risk of loss or opportunity for gain of the transferor of the securities in the securities transferred; and

(4) meet such other requirements as the Secretary may by regulation prescribe.

**(c) Basis**

Property acquired by a taxpayer described in subsection (a), in a transaction described in that subsection, shall have the same basis as the property transferred by that taxpayer.

(Added Pub. L. 95-345, §2(d)(1), Aug. 15, 1978, 92 Stat. 482.)

## PRIOR PROVISIONS

A prior section 1058 was renumbered section 1061 of this title.

## EFFECTIVE DATE

Section applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in this section, occurring after such date, see section 2(e) of Pub. L. 95-345, set out as an Effective Date of 1978 Amendment note under section 509 of this title.

**§ 1059. Corporate shareholder’s basis in stock reduced by nontaxed portion of extraordinary dividends****(a) General rule**

If any corporation receives any extraordinary dividend with respect to any share of stock and such corporation has not held such stock for more than 2 years before the dividend announcement date—

**(1) Reduction in basis**

The basis of such corporation in such stock shall be reduced (but not below zero) by the nontaxed portion of such dividends.

**(2) Amounts in excess of basis**

If the nontaxed portion of such dividends exceeds such basis, such excess shall be treated

as gain from the sale or exchange of such stock for the taxable year in which the extraordinary dividend is received.

**(b) Nontaxed portion**

For purposes of this section—

**(1) In general**

The nontaxed portion of any dividend is the excess (if any) of—

- (A) the amount of such dividend, over
- (B) the taxable portion of such dividend.

**(2) Taxable portion**

The taxable portion of any dividend is—

- (A) the portion of such dividend includible in gross income, reduced by
- (B) the amount of any deduction allowable with respect to such dividend under section 243, 244, or 245.

**(c) Extraordinary dividend defined**

For purposes of this section—

**(1) In general**

The term “extraordinary dividend” means any dividend with respect to a share of stock if the amount of such dividend equals or exceeds the threshold percentage of the taxpayer’s adjusted basis in such share of stock.

**(2) Threshold percentage**

The term “threshold percentage” means—

- (A) 5 percent in the case of stock which is preferred as to dividends, and
- (B) 10 percent in the case of any other stock.

**(3) Aggregation of dividends**

**(A) Aggregation within 85-day period**

All dividends—

- (i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and
- (ii) which have ex-dividend dates within the same period of 85 consecutive days,

shall be treated as 1 dividend.

**(B) Aggregation within 1 year where dividends exceed 20 percent of adjusted basis**

All dividends—

- (i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and
- (ii) which have ex-dividend dates during the same period of 365 consecutive days,

shall be treated as extraordinary dividends if the aggregate of such dividends exceeds 20 percent of the taxpayer’s adjusted basis in such stock (determined without regard to this section).

**(C) Substituted basis transactions**

In the case of any stock, a person is described in this subparagraph if—

- (i) the basis of such stock in the hands of such person is determined in whole or in part by reference to the basis of such stock in the hands of the taxpayer, or
- (ii) the basis of such stock in the hands of the taxpayer is determined in whole or in part by reference to the basis of such stock in the hands of such person.

**(4) Fair market value determination**

If the taxpayer establishes to the satisfaction of the Secretary the fair market value of any share of stock as of the day before the ex-dividend date, the taxpayer may elect to apply paragraphs (1) and (3) by substituting such value for the taxpayer’s adjusted basis.

**(d) Special rules**

For purposes of this section—

**(1) Time for reduction**

Any reduction in basis under subsection (a)(1) shall be treated as occurring at the beginning of the ex-dividend date of the extraordinary dividend to which the reduction relates.

**(2) Distributions in kind**

To the extent any dividend consists of property other than cash, the amount of such dividend shall be treated as the fair market value of such property (as of the date of the distribution) reduced as provided in section 301(b)(2).

**(3) Determination of holding period**

For purposes of determining the holding period of stock under subsection (a), rules similar to the rules of paragraphs (3) and (4) of section 246(c) shall apply; except that “2 years” shall be substituted for the number of days specified in subparagraph (B)<sup>1</sup> of section 246(c)(3).

**(4) Ex-dividend date**

The term “ex-dividend date” means the date on which the share of stock becomes ex-dividend.

**(5) Dividend announcement date**

The term “dividend announcement date” means, with respect to any dividend, the date on which the corporation declares, announces, or agrees to the amount or payment of such dividend, whichever is the earliest.

**(6) Exception where stock held during entire existence of corporation**

**(A) In general**

Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

- (i) such stock was held by the taxpayer during the entire period such corporation was in existence, and
- (ii) except as provided in regulations, no earnings and profits of such corporation were attributable to transfers of property from (or earnings and profits of) a corporation which is not a qualified corporation.

**(B) Qualified corporation**

For purposes of subparagraph (A), the term “qualified corporation” means any corporation (including a predecessor corporation)—

- (i) with respect to which the taxpayer holds directly or indirectly during the entire period of such corporation’s existence at least the same ownership interest as the taxpayer holds in the corporation distributing the extraordinary dividend, and

<sup>1</sup> See References in Text note below.

- (ii) which has no earnings and profits—
  - (I) which were earned by, or
  - (II) which are attributable to gain on property which accrued during a period the corporation holding the property was,

a corporation not described in clause (i).

**(C) Application of paragraph**

This paragraph shall not apply to any extraordinary dividend to the extent such application is inconsistent with the purposes of this section.

**(e) Special rules for certain distributions**

**(1) Treatment of partial liquidations and certain redemptions**

Except as otherwise provided in regulations—

**(A) Redemptions**

- In the case of any redemption of stock—
  - (i) which is part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation,
  - (ii) which is not pro rata as to all shareholders, or
  - (iii) which would not have been treated (in whole or in part) as a dividend if—
    - (I) any options had not been taken into account under section 318(a)(4), or
    - (II) section 304(a) had not applied,

any amount treated as a dividend with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock. In the case of a redemption described in clause (iii), only the basis in the stock redeemed shall be taken into account under subsection (a).

**(B) Reorganizations, etc.**

An exchange described in section 356 which is treated as a dividend shall be treated as a redemption of stock for purposes of applying subparagraph (A).

**(2) Qualifying dividends**

**(A) In general**

Except as provided in regulations, the term “extraordinary dividend” does not include any qualifying dividend (within the meaning of section 243).

**(B) Exception**

Subparagraph (A) shall not apply to any portion of a dividend which is attributable to earnings and profits which—

- (i) were earned by a corporation during a period it was not a member of the affiliated group, or
- (ii) are attributable to gain on property which accrued during a period the corporation holding the property was not a member of the affiliated group.

**(3) Qualified preferred dividends**

**(A) In general**

In the case of 1 or more qualified preferred dividends with respect to any share of stock—

(i) this section shall not apply to such dividends if the taxpayer holds such stock for more than 5 years, and

(ii) if the taxpayer disposes of such stock before it has been held for more than 5 years, the aggregate reduction under subsection (a)(1) with respect to such dividends shall not be greater than the excess (if any) of—

- (I) the qualified preferred dividends paid with respect to such stock during the period the taxpayer held such stock, over
- (II) the qualified preferred dividends which would have been paid during such period on the basis of the stated rate of return.

**(B) Rate of return**

For purposes of this paragraph—

**(i) Actual rate of return**

The actual rate of return shall be the rate of return for the period for which the taxpayer held the stock, determined—

- (I) by only taking into account dividends during such period, and
- (II) by using the lesser of the adjusted basis of the taxpayer in such stock or the liquidation preference of such stock.

**(ii) Stated rate of return**

The stated rate of return shall be the annual rate of the qualified preferred dividend payable with respect to any share of stock (expressed as a percentage of the amount described in clause (i)(II)).

**(C) Definitions and special rules**

For purposes of this paragraph—

**(i) Qualified preferred dividend**

The term “qualified preferred dividend” means any fixed dividend payable with respect to any share of stock which—

- (I) provides for fixed preferred dividends payable not less frequently than annually, and
- (II) is not in arrears as to dividends at the time the taxpayer acquires the stock.

Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent.

**(ii) Holding period**

In determining the holding period for purposes of subparagraph (A)(ii), subsection (d)(3) shall be applied by substituting “5 years” for “2 years”.

**(f) Treatment of dividends on certain preferred stock**

**(1) In general**

Any dividend with respect to disqualified preferred stock shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held the stock.

**(2) Disqualified preferred stock**

For purposes of this subsection, the term “disqualified preferred stock” means any stock which is preferred as to dividends if—



(A) when issued, such stock has a dividend rate which declines (or can reasonably be expected to decline) in the future,

(B) the issue price of such stock exceeds its liquidation rights or its stated redemption price, or

(C) such stock is otherwise structured—

(i) to avoid the other provisions of this section, and

(ii) to enable corporate shareholders to reduce tax through a combination of dividend received deductions and loss on the disposition of the stock.

#### (g) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations—

(1) providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions, in the case of stock held by pass-thru entities, and in the case of consolidated groups, and

(2) providing that the rules of subsection (f) shall apply in the case of stock which is not preferred as to dividends in cases where stock is structured to avoid the purposes of this section.

(Added Pub. L. 98-369, div. A, title I, §53(a), July 18, 1984, 98 Stat. 565; amended Pub. L. 99-514, title VI, §614(a)–(e), Oct. 22, 1986, 100 Stat. 2251-2253; Pub. L. 100-647, title I, §1006(c), Nov. 10, 1988, 102 Stat. 3393; Pub. L. 101-239, title VII, §7206(a), Dec. 19, 1989, 103 Stat. 2336; Pub. L. 105-34, title X, §§1011(a)–(c), 1013(b), title XVI, §1604(d)(1), Aug. 5, 1997, 111 Stat. 912, 913, 918, 1098; Pub. L. 105-206, title VI, §6010(b), July 22, 1998, 112 Stat. 813.)

#### REFERENCES IN TEXT

Section 246(c)(3) of this title, referred to in subsec. (d)(3), was amended by Pub. L. 105-34, title X, §1015(b)(2), Aug. 5, 1997, 111 Stat. 922, by striking out subpar. (B) and redesignating subpar. (C) as (B).

#### PRIOR PROVISIONS

A prior section 1059 was renumbered section 1061 of this title.

#### AMENDMENTS

1998—Subsec. (g)(1). Pub. L. 105-206 substituted “, in the case of stock held by pass-thru entities, and in the case of consolidated groups” for “and in the case of stock held by pass-thru entities”.

1997—Subsec. (a)(2). Pub. L. 105-34, §1011(a), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “In addition to any gain recognized under this chapter, there shall be treated as gain from the sale or exchange of any stock for the taxable year in which the sale or disposition of such stock occurs an amount equal to the aggregate nontaxed portions of any extraordinary dividends with respect to such stock which did not reduce the basis of such stock by reason of the limitation on reducing basis below zero.”

Subsec. (d)(1). Pub. L. 105-34, §1011(c), amended heading and text of par. (1) generally. Prior to amendment, text read as follows:

“(A) IN GENERAL.—Except as provided in subparagraph (B), any reduction in basis under subsection (a)(1) shall occur immediately before any sale or disposition of the stock.

“(B) SPECIAL RULE FOR COMPUTING EXTRAORDINARY DIVIDEND.—In determining a taxpayer’s adjusted basis

for purposes of subsection (c)(1), any reduction in basis under subsection (a)(1) by reason of a prior distribution which was an extraordinary dividend shall be treated as occurring at the beginning of the ex-dividend date for such distribution.”

Subsec. (d)(3). Pub. L. 105-34, §1604(d)(1), substituted “subsection (a)” for “subsection (a)(2)”.

Subsec. (e)(1). Pub. L. 105-34, §1011(b), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “Except as otherwise provided in regulations, in the case of any redemption of stock which is—

“(A) part of a partial liquidation (within the meaning of section 302(e)) of the redeeming corporation, or

“(B) not pro rata as to all shareholders,

any amount treated as a dividend under section 301 with respect to such redemption shall be treated as an extraordinary dividend to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock.”

Subsec. (e)(1)(A)(iii). Pub. L. 105-34, §1013(b), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “which would not have been treated (in whole or in part) as a dividend if any options had not been taken into account under section 318(a)(4).”

1989—Subsecs. (f), (g). Pub. L. 101-239 added subsecs. (f) and (g) and struck out former subsec. (f) which read as follows: “REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions and in the case of stock held by pass-thru entities.”

1988—Subsec. (d)(5). Pub. L. 100-647, §1006(c)(2), inserted “amount or” after “agrees to the”.

Pub. L. 100-647, §1006(c)(1), redesignated par. (6) as (5) and struck out former par. (5) which related to extension to certain property distributions.

Subsec. (d)(6). Pub. L. 100-647, §1006(c)(3), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “Subsection (a) shall not apply to any extraordinary dividend with respect to any share of stock of a corporation if—

“(A) such stock was held by the taxpayer during the entire period such corporation (and any predecessor [sic] corporation) was in existence,

“(B) except as provided in regulations, the only earnings and profits of such corporation were earnings and profits accumulated by such corporation (or any predecessor corporation) during such period, and

“(C) the application of this paragraph to such dividend is not inconsistent with the purposes of this section.”

Pub. L. 100-647, §1006(c)(1), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (d)(7). Pub. L. 100-647, §1006(c)(1), redesignated par. (7) as (6).

Subsec. (e)(1). Pub. L. 100-647, §1006(c)(4), substituted “to which paragraphs (1) and (2) of subsection (a) apply without regard to the period the taxpayer held such stock” for “for purposes of this section (without regard to the holding period of the stock)”.

Subsec. (e)(2). Pub. L. 100-647, §1006(c)(5), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Except as provided in regulations, the term ‘extraordinary dividend’ shall not include any qualifying dividend (within the meaning of section 243(b)(1)).”

Subsec. (e)(3)(A). Pub. L. 100-647, §1006(c)(6), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “A qualified preferred dividend shall be treated as an extraordinary dividend—

“(i) only if the actual rate of return of the taxpayer on the stock with respect to which such dividend was paid exceeds 15 percent, or

“(ii) if clause (i) does not apply, and the taxpayer disposes of such stock before the taxpayer has held such stock for more than 5 years, only to the extent the actual rate of return exceeds the stated rate of return.”

Subsec. (e)(3)(B). Pub. L. 100-647, §1006(c)(8)(A), which directed the amendment of subpar. (B) "by striking out 'subparagraph (A)' and the material preceding clause (i) and inserting in lieu thereof 'this paragraph'", was executed by striking out "subparagraph (A)" in the material preceding clause (i) and inserting in lieu thereof "this paragraph", to reflect the probable intent of Congress.

Subsec. (e)(3)(B)(ii). Pub. L. 100-647, §1006(c)(8)(B), substituted "clause (i)(II)" for "subparagraph (B)(i)(II)".

Subsec. (e)(3)(C)(i). Pub. L. 100-647, §1006(c)(7), inserted "fixed" before "dividend payable" in introductory provisions and inserted at end "Such term shall not include any dividend payable with respect to any share of stock if the actual rate of return on such stock exceeds 15 percent."

Subsec. (f). Pub. L. 100-647, §1006(c)(9), inserted "and in the case of stock held by pass-thru entities" after "other similar transactions".

1986—Subsec. (a). Pub. L. 99-514, §614(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "If any corporation—

"(1) receives an extraordinary dividend with respect to any share of stock, and

"(2) sells or otherwise disposes of such stock before such stock has been held for more than 1 year, the basis of such corporation in such stock shall be reduced by the nontaxed portion of such dividend. If the nontaxed portion of such dividend exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock."

Subsec. (c)(1). Pub. L. 99-514, §614(c)(2), struck out "(determined without regard to this section)" after "such share of stock".

Subsec. (c)(4). Pub. L. 99-514, §614(b), added par. (4).

Subsec. (d)(1). Pub. L. 99-514, §614(c)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "Any reduction in basis under subsection (a) by reason of any distribution which is an extraordinary dividend shall occur at the beginning of the ex-dividend date for such distribution."

Subsec. (d)(3). Pub. L. 99-514, §614(a)(3), substituted "2 years" for "1 year".

Subsec. (d)(6). Pub. L. 99-514, §614(a)(2), added par. (6).

Subsec. (d)(7). Pub. L. 99-514, §614(d), added par. (7).

Subsecs. (e), (f). Pub. L. 99-514, §614(e), added subsec. (e) and redesignated former subsec. (e) as (f).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 1011(d) of Pub. L. 105-34 provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to distributions after May 3, 1995.

"(2) TRANSITION RULE.—The amendments made by this section shall not apply to any distribution made pursuant to the terms of—

"(A) a written binding contract in effect on May 3, 1995, and at all times thereafter before such distribution, or

"(B) a tender offer outstanding on May 3, 1995.

"(3) CERTAIN DIVIDENDS NOT PURSUANT TO CERTAIN REDEMPTIONS.—In determining whether the amendment made by subsection (a) applies to any extraordinary dividend other than a dividend treated as an extraordinary dividend under section 1059(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act), paragraphs (1) and (2) shall be applied by substituting 'September 13, 1995' for 'May 3, 1995'."

Amendment by section 1013(b) of Pub. L. 105-34 applicable to distributions and acquisitions after June 8, 1997, with certain exceptions, see section 1013(d) of Pub.

L. 105-34, set out as a note under section 304 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Section 7206(b) of Pub. L. 101-239 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to stock issued after July 10, 1989, in taxable years ending after such date.

"(2) BINDING CONTRACT.—The amendment made by subsection (a) shall not apply to any stock issued pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the stock is issued."

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Section 614(f) of Pub. L. 99-514 provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to dividends declared after July 18, 1986, in taxable years ending after such date.

"(2) AGGREGATION.—For purposes of section 1059(c)(3) of the Internal Revenue Code of 1986, dividends declared after July 18, 1986, shall not be aggregated with dividends declared on or before July 18, 1986.

"(3) REDEMPTIONS.—Section 1059(e)(1) of the Internal Revenue Code of 1986 (as added by subsection (e)) shall apply to dividends declared after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date."

#### EFFECTIVE DATE

Section 53(e) of Pub. L. 98-369, as amended by Pub. L. 99-514, §2, title XVIII, §1804(b)(2), Oct. 22, 1986, 100 Stat. 2095, 2798, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and amending sections 246, 1016, and 7701 of this title] shall apply to distributions after March 1, 1984, in taxable years ending after such date.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 246 of this title] shall apply to stock acquired after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(3) RELATED PERSON PROVISIONS.—

"(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the amendment made by subsection (c) [amending section 7701 of this title] shall take effect on July 18, 1984.

"(B) SPECIAL RULE FOR PURPOSES OF SECTION 265(2).—The amendment made by subsection (c) insofar as it relates to section 265(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to—

"(i) term loans made after July 18, 1984, and

"(ii) demand loans outstanding after July 18, 1984 (other than any loan outstanding on July 18, 1984, and repaid before September 18, 1984).

"(C) TREATMENT OF RENEGOTIATIONS, ETC.—For purposes of this paragraph, any loan renegotiated, extended, or revised after July 18, 1984, shall be treated as a loan made after such date.

"(D) DEFINITION OF TERM AND DEMAND LOANS.—For purposes of this paragraph, the terms 'demand loan' and 'term loan' have the respective meanings given such terms by paragraphs (5) and (6) of section 7872(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], except that the second sentence of such paragraph (5) shall not apply."

**§ 1059A. Limitation on taxpayer's basis or inventory cost in property imported from related persons**

**(a) In general**

If any property is imported into the United States in a transaction (directly or indirectly) between related persons (within the meaning of section 482), the amount of any costs—

- (1) which are taken into account in computing the basis or inventory cost of such property by the purchaser, and
- (2) which are also taken into account in computing the customs value of such property,

shall not, for purposes of computing such basis or inventory cost for purposes of this chapter, be greater than the amount of such costs taken into account in computing such customs value.

**(b) Customs value; import**

For purposes of this section—

**(1) Customs value**

The term “customs value” means the value taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property.

**(2) Import**

Except as provided in regulations, the term “import” means the entering, or withdrawal from warehouse, for consumption.

(Added Pub. L. 99-514, title XII, §1248(a), Oct. 22, 1986, 100 Stat. 2584.)

**EFFECTIVE DATE**

Section 1248(c) of Pub. L. 99-514 provided that: “The amendments made by this section [enacting this section] shall apply to transactions entered into after March 18, 1986.”

**§ 1060. Special allocation rules for certain asset acquisitions**

**(a) General rule**

In the case of any applicable asset acquisition, for purposes of determining both—

- (1) the transferee's basis in such assets, and
- (2) the gain or loss of the transferor with respect to such acquisition,

the consideration received for such assets shall be allocated among such assets acquired in such acquisition in the same manner as amounts are allocated to assets under section 338(b)(5). If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.

**(b) Information required to be furnished to Secretary**

Under regulations, the transferor and transferee in an applicable asset acquisition shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary the following information:

(1) The amount of the consideration received for the assets which is allocated to section 197 intangibles.

(2) Any modification of the amount described in paragraph (1).

(3) Any other information with respect to other assets transferred in such acquisition as the Secretary deems necessary to carry out the provisions of this section.

**(c) Applicable asset acquisition**

For purposes of this section, the term “applicable asset acquisition” means any transfer (whether directly or indirectly)—

- (1) of assets which constitute a trade or business, and
- (2) with respect to which the transferee's basis in such assets is determined wholly by reference to the consideration paid for such assets.

A transfer shall not be treated as failing to be an applicable asset acquisition merely because section 1031 applies to a portion of the assets transferred.

**(d) Treatment of certain partnership transactions**

In the case of a distribution of partnership property or a transfer of an interest in a partnership—

- (1) the rules of subsection (a) shall apply but only for purposes of determining the value of section 197 intangibles for purposes of applying section 755, and
- (2) if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of subsection (b).

**(e) Information required in case of certain transfers of interests in entities**

**(1) In general**

If—

- (A) a person who is a 10-percent owner with respect to any entity transfers an interest in such entity, and
- (B) in connection with such transfer, such owner (or a related person) enters into an employment contract, covenant not to compete, royalty or lease agreement, or other agreement with the transferee,

such owner and the transferee shall, at such time and in such manner as the Secretary may prescribe, furnish such information as the Secretary may require.

**(2) 10-percent owner**

For purposes of this subsection—

**(A) In general**

The term “10-percent owner” means, with respect to any entity, any person who holds 10 percent or more (by value) of the interests in such entity immediately before the transfer.

**(B) Constructive ownership**

Section 318 shall apply in determining ownership of stock in a corporation. Similar principles shall apply in determining the ownership of interests in any other entity.

**(3) Related person**

For purposes of this subsection, the term “related person” means any person who is re-

lated (within the meaning of section 267(b) or 707(b)(1)) to the 10-percent owner.

**(f) Cross reference**

**For provisions relating to penalties for failure to file a return required by this section, see section 6721.**

(Added Pub. L. 99-514, title VI, §641(a), Oct. 22, 1986, 100 Stat. 2282; amended Pub. L. 100-647, title I, §1006(h)(1), (2), (3)(B), Nov. 10, 1988, 102 Stat. 3410; Pub. L. 101-508, title XI, §11323(a), (b)(1), Nov. 5, 1990, 104 Stat. 1388-464; Pub. L. 103-66, title XIII, §13261(e), Aug. 10, 1993, 107 Stat. 539.)

PRIOR PROVISIONS

A prior section 1060 was renumbered section 1061 of this title.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103-66, §13261(e)(1), substituted “section 197 intangibles” for “goodwill or going concern value”.

Subsec. (d)(1). Pub. L. 103-66, §13261(e)(2), substituted “section 197 intangibles” for “goodwill or going concern value (or similar items)”.

1990—Subsec. (a). Pub. L. 101-508, §11323(a), inserted at end “If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.”

Subsecs. (e), (f). Pub. L. 101-508, §11323(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (b)(3). Pub. L. 100-647, §1006(h)(1), substituted “deems” for “may find”.

Subsec. (d). Pub. L. 100-647, §1006(h)(2), added subsec. (d).

Subsec. (e). Pub. L. 100-647, §1006(h)(3)(B), added subsec. (e).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103-66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to acquisitions after Oct. 9, 1990, but not applicable to any acquisition pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such acquisition, see section 11323(d) of Pub. L. 101-508, set out as a note under section 338 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 641(c) of Pub. L. 99-514 provided that: “The amendments made by this section [enacting this section and renumbering former section 1060 as 1061] shall apply to any acquisition of assets after May 6, 1986, unless such acquisition is pursuant to a binding contract which was in effect on May 6, 1986, and at all times thereafter.”

**§ 1061. Cross references**

**(1) For nonrecognition of gain in connection with the transfer of obsolete vessels to the Maritime Ad-**

**ministration under chapter 573 of title 46, United States Code, see section 57307 of title 46.**

**(2) For recognition of gain or loss in connection with the construction of new vessels, see chapter 533 of title 46, United States Code.**

(Aug. 16, 1954, ch. 736, 68A Stat. 311, §1054; renumbered §1055, Pub. L. 86-779, §8(b), Sept. 14, 1960, 74 Stat. 1003; renumbered §1056, Pub. L. 88-9, §1(b), Apr. 10, 1963, 77 Stat. 7; renumbered §1057, Pub. L. 94-455, title II, §212(a)(1), Oct. 4, 1976, 90 Stat. 1545; renumbered §1058, Pub. L. 94-455, title X, §1015(c), Oct. 4, 1976, 90 Stat. 1618; renumbered §1059, Pub. L. 95-345, §2(d)(1), Aug. 15, 1978, 92 Stat. 482; renumbered §1060, Pub. L. 98-369, div. A, title I, §53(a), July 18, 1984, 98 Stat. 565; renumbered §1061 and amended, Pub. L. 99-514, title VI, §641(a), title XVIII, §1899A(27), Oct. 22, 1986, 100 Stat. 2282, 2960; Pub. L. 109-304, §17(e)(5), Oct. 6, 2006, 120 Stat. 1708.)

AMENDMENTS

2006—Par. (1). Pub. L. 109-304, §17(e)(5)(A), substituted “chapter 573 of title 46, United States Code, see section 57307 of title 46” for “section 510 of the Merchant Marine Act, 1936, see subsection (e) of that section, as amended August 4, 1939 (46 U.S.C. App. 1160)”.

Par. (2). Pub. L. 109-304, §17(e)(5)(B), substituted “chapter 533 of title 46, United States Code” for “section 511 of such Act, as amended (46 U.S.C. App. 1161)”.

Par. (3). Pub. L. 109-304, §17(e)(5)(C), struck out par. (3), which read as follows: “For nonrecognition of gain in connection with vessels exchanged with the Maritime Administration under section 8 of the Merchant Ship Sales Act of 1946, see subsection (a) of that section (50 U.S.C. App. 1741).”

1986—Pub. L. 99-514, §641(a), renumbered section 1060 of this title as this section.

Pars. (1), (2). Pub. L. 99-514, §1899A(27), which directed the amendment of pars. (1) and (2) of section 1060 by substituting “46 U.S.C. App.” for “46 U.S.C.” was executed to section 1061 to reflect the probable intent of Congress in view of the renumbering of section 1060 as 1061 by section 641(a) of Pub. L. 99-514.

[PART V—REPEALED]

**[§ 1071. Repealed. Pub. L. 104-7, §2(a), Apr. 11, 1995, 109 Stat. 93]**

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 311; Sept. 2, 1958, Pub. L. 85-866, title I, §48(a), 72 Stat. 1642; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§1901(b)(31)(E), 1906(b)(13)(A), 90 Stat. 1800, 1834, provided for nonrecognition on FCC certified sales and exchanges.

EFFECTIVE DATE OF REPEAL

Section 2(d) of Pub. L. 104-7 provided that:

“(1) IN GENERAL.—The amendments made by this section [repealing this section and amending sections 1245 and 1250 of this title] shall apply to—

“(A) sales and exchanges on or after January 17, 1995, and

“(B) sales and exchanges before such date if the FCC tax certificate with respect to such sale or exchange is issued on or after such date.

“(2) BINDING CONTRACTS.—

“(A) IN GENERAL.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written contract which was binding on January 16, 1995, and at all times thereafter before the sale or exchange, if the FCC tax certificate with respect to such sale or exchange was applied for, or issued, on or before such date.

“(B) SALES CONTINGENT ON ISSUANCE OF CERTIFICATE.—

“(1) IN GENERAL.—A contract shall be treated as not binding for purposes of subparagraph (A) if the

sale or exchange pursuant to such contract, or the material terms of such contract, were contingent, at any time on January 16, 1995, on the issuance of an FCC tax certificate. The preceding sentence shall not apply if the FCC tax certificate for such sale or exchange is issued on or before January 16, 1995.

“(ii) MATERIAL TERMS.—For purposes of clause (i), the material terms of a contract shall not be treated as contingent on the issuance of an FCC tax certificate solely because such terms provide that the sales price would, if such certificate were not issued, be increased by an amount not greater than 10 percent of the sales price otherwise provided in the contract.

“(3) FCC TAX CERTIFICATE.—For purposes of this subsection, the term ‘FCC tax certificate’ means any certificate of the Federal Communications Commission for the effectuation of section 1071 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Apr. 11, 1995]).”

#### [PART VI—REPEALED]

### [§§ 1081 to 1083. Repealed. Pub. L. 109-135, title IV, § 402(a)(1), Dec. 21, 2005, 119 Stat. 2610]

Section 1081, acts Aug. 16, 1954, ch. 736, 68A Stat. 312; Pub. L. 94-455, title XIX, §§1901(a)(132), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1786, 1834, provided for nonrecognition of gain or loss on exchanges or distributions in obedience to orders of SEC.

Section 1082, acts Aug. 16, 1954, ch. 736, 68A Stat. 315; Pub. L. 91-172, title VII, §704(b)(3), Dec. 30, 1969, 83 Stat. 669; Pub. L. 92-178, title III, §303(c)(5), Dec. 10, 1971, 85 Stat. 522; Pub. L. 94-455, title XIX, §§1901(b)(11)(C), 1906(b)(13)(A), 1951(c)(2)(B), title XXI, §2124(a)(3)(C), Oct. 4, 1976, 90 Stat. 1795, 1834, 1840, 1917; Pub. L. 97-34, title II, §212(d)(2)(E), Aug. 13, 1981, 95 Stat. 239; Pub. L. 99-514, title II, §242(b)(1), Oct. 22, 1986, 100 Stat. 2181; Pub. L. 101-508, title XI, §11801(c)(6)(D), Nov. 5, 1990, 104 Stat. 1388-524, related to basis for determining gain or loss.

Section 1083, acts Aug. 16, 1954, ch. 736, 68A Stat. 317; Pub. L. 94-455, title XIX, §1901(a)(133), Oct. 4, 1976, 90 Stat. 1786, related to definitions for this part.

#### EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before that Act's repeal, see section 402(m) of Pub. L. 109-135, set out as an Effective and Termination Dates of 2005 Amendments note under section 36C of this title.

#### PART VII—WASH SALES; STRADDLES

Sec.	
1091.	Loss from wash sales of stock or securities.
1092.	Straddles.

#### AMENDMENTS

1981—Pub. L. 97-34, title V, §501(d)(1), (2), Aug. 13, 1981, 95 Stat. 326, 327, substituted as part heading “WASH SALES; STRADDLES” for “WASH SALES OF STOCK OR SECURITIES” and added item 1092.

### § 1091. Loss from wash sales of stock or securities

#### (a) Disallowance of loss deduction

In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange on which the en-

tire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business. For purposes of this section, the term “stock or securities” shall, except as provided in regulations, include contracts or options to acquire or sell stock or securities.

#### (b) Stock acquired less than stock sold

If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be determined under regulations prescribed by the Secretary.

#### (c) Stock acquired not less than stock sold

If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under regulations prescribed by the Secretary.

#### (d) Unadjusted basis in case of wash sale of stock

If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under this section or corresponding provisions of prior internal revenue laws) of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

#### (e) Certain short sales of stock or securities and securities futures contracts to sell

Rules similar to the rules of subsection (a) shall apply to any loss realized on the closing of a short sale of (or the sale, exchange, or termination of a securities futures contract to sell) stock or securities if, within a period beginning 30 days before the date of such closing and ending 30 days after such date—

(1) substantially identical stock or securities were sold, or

(2) another short sale of (or securities futures contracts to sell) substantially identical stock or securities was entered into.

For purposes of this subsection, the term “securities futures contract” has the meaning provided by section 1234B(c).

#### (f) Cash settlement

This section shall not fail to apply to a contract or option to acquire or sell stock or securities solely by reason of the fact that the contract or option settles in (or could be settled in)

cash or property other than such stock or securities.

(Aug. 16, 1954, ch. 736, 68A Stat. 319; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, § 106(a), (b), July 18, 1984, 98 Stat. 629; Pub. L. 100-647, title V, § 5075(a), Nov. 10, 1988, 102 Stat. 3682; Pub. L. 106-554, § 1(a)(7) [title IV, § 401(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-649; Pub. L. 107-147, title IV, § 412(d)(2), Mar. 9, 2002, 116 Stat. 53.)

#### AMENDMENTS

2002—Subsec. (e). Pub. L. 107-147 substituted “securities and securities futures contracts to sell” for “securities” in heading, inserted “(or the sale, exchange, or termination of a securities futures contract to sell)” after “closing of a short sale of” in introductory provisions and “(or securities futures contracts to sell)” after “short sale of” in par. (2), and inserted concluding provisions.

2000—Subsec. (f). Pub. L. 106-554 added subsec. (f).

1988—Subsec. (a). Pub. L. 100-647 inserted sentence at end defining “stock or securities”.

1984—Subsec. (a). Pub. L. 98-369, § 106(b), substituted “no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business” for “no deduction for the loss shall be allowed under section 165(c)(2); nor shall such deduction be allowed a corporation under section 165(a) unless it is a dealer in stocks or securities, and the loss is sustained in a transaction made in the ordinary course of business”.

Subsec. (e). Pub. L. 98-369, § 106(a), added subsec. (e).

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106-554], to which such amendment relates, see section 412(e) of Pub. L. 107-147, set out as a note under section 151 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 5075(b) of Pub. L. 100-647 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to any sale after the date of enactment of this Act [Nov. 10, 1988], in taxable years ending after such date.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 106(c) of Pub. L. 98-369 provided that:

“(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to short sales of stock or securities after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

“(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to sales after December 31, 1984, in taxable years ending after such date.”

### § 1092. Straddles

#### (a) Recognition of loss in case of straddles, etc.

##### (1) Limitation on recognition of loss

###### (A) In general

Any loss with respect to 1 or more positions shall be taken into account for any taxable year only to the extent that the amount of such loss exceeds the unrecognized gain (if any) with respect to 1 or more positions which were offsetting positions

with respect to 1 or more positions from which the loss arose.

#### (B) Carryover of loss

Any loss which may not be taken into account under subparagraph (A) for any taxable year shall, subject to the limitations under subparagraph (A), be treated as sustained in the succeeding taxable year.

### (2) Special rule for identified straddles

#### (A) In general

In the case of any straddle which is an identified straddle—

(i) paragraph (1) shall not apply with respect to positions comprising the identified straddle,

(ii) if there is any loss with respect to any position of the identified straddle, the basis of each of the offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions,

(iii) if the application of clause (ii) does not result in an increase in the basis of any offsetting position in the identified straddle, the basis of each of the offsetting positions in the identified straddle shall be increased in a manner which—

(I) is reasonable, consistent with the purposes of this paragraph, and consistently applied by the taxpayer, and

(II) results in an aggregate increase in the basis of such offsetting positions which is equal to the loss described in clause (ii), and

(iv) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.

#### (B) Identified straddle

The term “identified straddle” means any straddle—

(i) which is clearly identified on the taxpayer’s records as an identified straddle before the earlier of—

(I) the close of the day on which the straddle is acquired, or

(II) such time as the Secretary may prescribe by regulations.

(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and

(iii) which is not part of a larger straddle.

A straddle shall be treated as clearly identified for purposes of clause (i) only if such identification includes an identification of the positions in the straddle which are offsetting with respect<sup>1</sup> other positions in the straddle.

<sup>1</sup> So in original. Probably should be followed by “to”.

**(C) Application to liabilities and obligations**

Except as otherwise provided by the Secretary, rules similar to the rules of clauses (ii) and (iii) of subparagraph (A) shall apply for purposes of this paragraph with respect to any position which is, or has been, a liability or obligation.

**(D) Regulations**

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph. Such regulations or other guidance may specify the proper methods for clearly identifying a straddle as an identified straddle (and for identifying the positions comprising such straddle), the rules for the application of this section to a taxpayer which fails to comply with those identification requirements, the rules for the application of this section to a position which is or has been a liability or obligation, methods of loss allocation which satisfy the requirements of subparagraph (A)(iii), and the ordering rules in cases where a taxpayer disposes (or otherwise ceases to be the holder) of any part of any position which is part of an identified straddle.

**(3) Unrecognized gain**

For purposes of this subsection—

**(A) In general**

The term “unrecognized gain” means—

(i) in the case of any position held by the taxpayer as of the close of the taxable year, the amount of gain which would be taken into account with respect to such position if such position were sold on the last business day of such taxable year at its fair market value, and

(ii) in the case of any position with respect to which, as of the close of the taxable year, gain has been realized but not recognized, the amount of gain so realized.

**(B) Special rule for identified straddles**

For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.

**(C) Reporting of gain****(i) In general**

Each taxpayer shall disclose to the Secretary, at such time and in such manner and form as the Secretary may prescribe by regulations—

(I) each position (whether or not part of a straddle) with respect to which, as of the close of the taxable year, there is unrecognized gain, and

(II) the amount of such unrecognized gain.

**(ii) Reports not required in certain cases**

Clause (i) shall not apply—

(I) to any position which is part of an identified straddle,

(II) to any position which, with respect to the taxpayer, is property described in paragraph (1) or (2) of section 1221(a) or to any position which is part of a hedging transaction (as defined in section 1256(e)), or

(III) with respect to any taxable year if no loss on a position (including a regulated futures contract) has been sustained during such taxable year or if the only loss sustained on such position is a loss described in subclause (II).

**(b) Regulations****(1) In general**

The Secretary shall prescribe such regulations with respect to gain or loss on positions which are a part of a straddle as may be appropriate to carry out the purposes of this section and section 263(g). To the extent consistent with such purposes, such regulations shall include rules applying the principles of subsections (a) and (d) of section 1091 and of subsections (b) and (d) of section 1233.

**(2) Regulations relating to mixed straddles****(A) Elective provisions in lieu of section 1233(d) principles**

The regulations prescribed under paragraph (1) shall provide that—

(i) the taxpayer may offset gains and losses from positions which are part of mixed straddles—

(I) by straddle-by-straddle identification, or

(II) by the establishment (with respect to any class of activities) of a mixed straddle account for which gains and losses would be recognized (and offset) on a periodic basis,

(ii) such offsetting will occur before the application of section 1256, and section 1256(a)(3) will only apply to net gain or net loss attributable to section 1256 contracts, and

(iii) the principles of section 1233(d) shall not apply with respect to any straddle identified under clause (i)(I) or part of an account established under clause (i)(II).

**(B) Limitation on net gain or net loss from mixed straddle account**

In the case of any mixed straddle account referred to in subparagraph (A)(i)(II)—

**(i) Not more than 50 percent of net gain may be treated as long-term capital gain**

In no event shall more than 50 percent of the net gain from such account for any taxable year be treated as long-term capital gain.

**(ii) Not more than 40 percent of net loss may be treated as short-term capital loss**

In no event shall more than 40 percent of the net loss from such account for any taxable year be treated as short-term capital loss.

**(C) Authority to treat certain positions as mixed straddles**

The regulations prescribed under paragraph (1) may treat as a mixed straddle positions not described in section 1256(d)(4).

**(D) Timing and character authority**

The regulations prescribed under paragraph (1) shall include regulations relating to the timing and character of gains and losses in case of straddles where at least 1 position is ordinary and at least 1 position is capital.

**(c) Straddle defined**

For purposes of this section—

**(1) In general**

The term “straddle” means offsetting positions with respect to personal property.

**(2) Offsetting positions****(A) In general**

A taxpayer holds offsetting positions with respect to personal property if there is a substantial diminution of the taxpayer’s risk of loss from holding any position with respect to personal property by reason of his holding 1 or more other positions with respect to personal property (whether or not of the same kind).

**(B) Special rule for identified straddles**

In the case of any position which is not part of an identified straddle (within the meaning of subsection (a)(2)(B)), such position shall not be treated as offsetting with respect to any position which is part of an identified straddle.

**(3) Presumption****(A) In general**

For purposes of paragraph (2), 2 or more positions shall be presumed to be offsetting if—

(i) the positions are in the same personal property (whether established in such property or a contract for such property),

(ii) the positions are in the same personal property, even though such property may be in a substantially altered form,

(iii) the positions are in debt instruments of a similar maturity or other debt instruments described in regulations prescribed by the Secretary,

(iv) the positions are sold or marketed as offsetting positions (whether or not such positions are called a straddle, spread, butterfly, or any similar name),

(v) the aggregate margin requirement for such positions is lower than the sum of the margin requirements for each such position (if held separately), or

(vi) there are such other factors (or satisfaction of subjective or objective tests) as the Secretary may by regulations prescribe as indicating that such positions are offsetting.

For purposes of the preceding sentence, 2 or more positions shall be treated as described in clause (i), (ii), (iii), or (vi) only if the value of 1 or more of such positions ordi-

narily varies inversely with the value of 1 or more other such positions.

**(B) Presumption may be rebutted**

Any presumption established pursuant to subparagraph (A) may be rebutted.

**(4) Exception for certain straddles consisting of qualified covered call options and the optioned stock****(A) In general**

If—

(i) all the offsetting positions making up any straddle consist of 1 or more qualified covered call options and the stock to be purchased from the taxpayer under such options, and

(ii) such straddle is not part of a larger straddle,

such straddle shall not be treated as a straddle for purposes of this section and section 263(g).

**(B) Qualified covered call option defined**

For purposes of subparagraph (A), the term “qualified covered call option” means any option granted by the taxpayer to purchase stock held by the taxpayer (or stock acquired by the taxpayer in connection with the granting of the option) but only if—

(i) such option is traded on a national securities exchange which is registered with the Securities and Exchange Commission or other market which the Secretary determines has rules adequate to carry out the purposes of this paragraph,

(ii) such option is granted more than 30 days before the day on which the option expires,

(iii) such option is not a deep-in-the-money option,

(iv) such option is not granted by an options dealer (within the meaning of section 1256(g)(8)) in connection with his activity of dealing in options, and

(v) gain or loss with respect to such option is not ordinary income or loss.

**(C) Deep-in-the-money option**

For purposes of subparagraph (B), the term “deep-in-the-money option” means an option having a strike price lower than the lowest qualified bench mark.

**(D) Lowest qualified bench mark****(i) In general**

Except as otherwise provided in this subparagraph, for purposes of subparagraph (C), the term “lowest qualified bench mark” means the highest available strike price which is less than the applicable stock price.

**(ii) Special rule where option is for period more than 90 days and strike price exceeds \$50**

In the case of an option—

(I) which is granted more than 90 days before the date on which such option expires, and

(II) with respect to which the strike price is more than \$50,



the lowest qualified bench mark is the second highest available strike price which is less than the applicable stock price.

**(iii) 85 percent rule where applicable stock price \$25 or less**

If—

(I) the applicable stock price is \$25 or less, and

(II) but for this clause, the lowest qualified bench mark would be less than 85 percent of the applicable stock price,

the lowest qualified bench mark shall be treated as equal to 85 percent of the applicable stock price.

**(iv) Limitation where applicable stock price \$150 or less**

If—

(I) the applicable stock price is \$150 or less, and

(II) but for this clause, the lowest qualified bench mark would be less than the applicable stock price reduced by \$10,

the lowest qualified bench mark shall be treated as equal to the applicable stock price reduced by \$10.

**(E) Special year-end rule**

Subparagraph (A) shall not apply to any straddle for purposes of section 1092(a) if—

(i) the qualified covered call options referred to in such subparagraph are closed or the stock is disposed of at a loss during any taxable year,

(ii) gain on disposition of the stock to be purchased from the taxpayer under such options or gains on such options are includible in gross income for a later taxable year, and

(iii) such stock or option was not held by the taxpayer for 30 days or more after the closing of such options or the disposition of such stock.

For purposes of the preceding sentence, the rules of paragraphs (3) (other than subparagraph (B))<sup>2</sup> thereof and (4) of section 246(c) shall apply in determining the period for which the taxpayer holds the stock.

**(F) Strike price**

For purposes of this paragraph, the term “strike price” means the price at which the option is exercisable.

**(G) Applicable stock price**

For purposes of subparagraph (D), the term “applicable stock price” means, with respect to any stock for which an option has been granted—

(i) the closing price of such stock on the most recent day on which such stock was traded before the date on which such option was granted, or

(ii) the opening price of such stock on the day on which such option was granted, but only if such price is greater than 110 percent of the price determined under clause (i).

**(H) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Such regulations may include modifications to the provisions of this paragraph which are appropriate to take account of changes in the practices of option exchanges or to prevent the use of options for tax avoidance purposes.

**(d) Definitions and special rules**

For purposes of this section—

**(1) Personal property**

The term “personal property” means any personal property of a type which is actively traded.

**(2) Position**

The term “position” means an interest (including a futures or forward contract or option) in personal property.

**(3) Special rules for stock**

For purposes of paragraph (1)—

**(A) In general**

In the case of stock, the term “personal property” includes stock only if—

(i) such stock is of a type which is actively traded and at least 1 of the positions offsetting such stock is a position with respect to such stock or substantially similar or related property, or

(ii) such stock is of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

**(B) Rule for application**

For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.

**(4) Positions held by related persons, etc.**

**(A) In general**

In determining whether 2 or more positions are offsetting, the taxpayer shall be treated as holding any position held by a related person.

**(B) Related person**

For purposes of subparagraph (A), a person is a related person to the taxpayer if with respect to any period during which a position is held by such person, such person—

(i) is the spouse of the taxpayer, or

(ii) files a consolidated return (within the meaning of section 1501) with the taxpayer for any taxable year which includes a portion of such period.

**(C) Certain flowthrough entities**

If part or all of the gain or loss with respect to a position held by a partnership, trust, or other entity would properly be taken into account for purposes of this chapter by a taxpayer, then, except to the extent otherwise provided in regulations, such position shall be treated as held by the taxpayer.

<sup>2</sup> See References in Text note below.

**(5) Special rule for section 1256 contracts****(A) General rule**

In the case of a straddle at least 1 (but not all) of the positions of which are section 1256 contracts, the provisions of this section shall apply to any section 1256 contract and any other position making up such straddle.

**(B) Special rule for identified straddles**

For purposes of subsection (a)(2) (relating to identified straddles), subparagraph (A) and section 1256(a)(4) shall not apply to a straddle all of the offsetting positions of which consist of section 1256 contracts.

**(6) Section 1256 contract**

The term “section 1256 contract” has the meaning given such term by section 1256(b).

**(7) Special rules for foreign currency****(A) Position to include interest in certain debt**

For purposes of paragraph (2), an obligor’s interest in a nonfunctional currency denominated debt obligation is treated as a position in the nonfunctional currency.

**(B) Actively traded requirement**

For purposes of paragraph (1), foreign currency for which there is an active interbank market is presumed to be actively traded.

**(8) Special rules for physically settled positions**

For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

(A) terminated the position for its fair market value immediately before the settlement, and

(B) sold the property so delivered by the taxpayer at its fair market value.

**(e) Exception for hedging transactions**

This section shall not apply in the case of any hedging transaction (as defined in section 1256(e)).

**(f) Treatment of gain or loss and suspension of holding period where taxpayer grantor of qualified covered call option**

If a taxpayer holds any stock and grants a qualified covered call option to purchase such stock with a strike price less than the applicable stock price—

**(1) Treatment of loss**

Any loss with respect to such option shall be treated as long-term capital loss if, at the time such loss is realized, gain on the sale or exchange of such stock would be treated as long-term capital gain.

**(2) Suspension of holding period**

The holding period of such stock shall not include any period during which the taxpayer is the grantor of such option.

**(g) Cross reference**

**For provision requiring capitalization of certain interest and carrying charges where there is a straddle, see section 263(g).**

(Added Pub. L. 97–34, title V, §501(a), Aug. 13, 1981, 95 Stat. 323; amended Pub. L. 97–448, title I, §105(a)(1)(A)–(C), (2)–(4), Jan. 12, 1983, 96 Stat. 2384, 2385; Pub. L. 98–369, div. A, title I, §8101(a)–(d), 102(e)(2), 103(a), 107(a), July 18, 1984, 98 Stat. 616–619, 624, 627, 629; Pub. L. 99–514, title III, §331(a), title XII, §1261(b), title XVIII, §§1808(c), 1899A(66), Oct. 22, 1986, 100 Stat. 2220, 2591, 2817, 2962; Pub. L. 100–647, title VI, §6130(c), Nov. 10, 1988, 102 Stat. 3719; Pub. L. 105–34, title XII, §1271(b)(9), Aug. 5, 1997, 111 Stat. 1037; Pub. L. 106–170, title V, §532(c)(1)(F), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, §1(a)(7) [title IV, §401(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–649; Pub. L. 108–357, title VIII, §888(a)–(c)(1), Oct. 22, 2004, 118 Stat. 1642, 1643; Pub. L. 109–135, title IV, §403(ii), Dec. 21, 2005, 119 Stat. 2632; Pub. L. 110–172, §7(d), Dec. 29, 2007, 121 Stat. 2482.)

## REFERENCES IN TEXT

Section 246(c)(3) of this title, referred to in subsec. (c)(4)(E), was amended by Pub. L. 105–34, title X, §1015(b)(2), Aug. 5, 1997, 111 Stat. 922, by striking out subpar. (B) and redesignating subpar. (C) as (B).

## AMENDMENTS

2007—Subsec. (a)(2)(A)(i). Pub. L. 110–172, §7(d)(2)(B)(i), substituted “positions” for “identified positions”.

Subsec. (a)(2)(A)(ii). Pub. L. 110–172, §7(d)(2)(B)(ii), (iii), substituted “any position” for “any identified position” and “the offsetting positions” for “the identified offsetting positions”.

Pub. L. 110–172, §7(d)(1), struck out “and” at end.

Subsec. (a)(2)(A)(iii), (iv). Pub. L. 110–172, §7(d)(1), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (a)(2)(B). Pub. L. 110–172, §7(d)(2)(A), inserted concluding provisions.

Subsec. (a)(2)(C), (D). Pub. L. 110–172, §7(d)(3), (4), added subpar. (C), redesignated former subpar. (C) as (D), and inserted “the rules for the application of this section to a position which is or has been a liability or obligation, methods of loss allocation which satisfy the requirements of subparagraph (A)(iii),” before “and the ordering rules” in subpar. (D).

Subsec. (a)(3)(B). Pub. L. 110–172, §7(d)(2)(C), substituted “offsetting position” for “identified offsetting position”.

2005—Subsec. (a)(2). Pub. L. 109–135 added subpar. (C) and struck out concluding provisions of subpar. (B) which read as follows: “The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.”

2004—Subsec. (a)(2)(A). Pub. L. 108–357, §888(a)(1), re-enacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: “In the case of any straddle which is an identified straddle as of the close of any taxable year—

“(i) paragraph (1) shall not apply for such taxable year, and

“(ii) any loss with respect to such straddle shall be treated as sustained not earlier than the day on which all of the positions making up the straddle are disposed of.”

Subsec. (a)(2)(B). Pub. L. 108–357, §888(a)(2)(B), inserted concluding provisions.

Subsec. (a)(2)(B)(ii). Pub. L. 108–357, §888(a)(2)(A), added cl. (ii) and struck out former cl. (ii) which read as follows: “all of the original positions of which (as identified by the taxpayer) are acquired on the same day and with respect to which—

“(I) all of such positions are disposed of on the same day during the taxable year, or

“(II) none of such positions has been disposed of as of the close of the taxable year, and”.

Subsec. (a)(3)(B), (C). Pub. L. 108-357, § 888(a)(3), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (c)(2)(B), (C). Pub. L. 108-357, § 888(a)(4), redesignated subpar. (C) as (B) and struck out heading and text of former subpar. (B). Text read as follows: “If 1 or more positions offset only a portion of 1 or more other positions, the Secretary shall by regulations prescribe the method for determining the portion of such other positions which is to be taken into account for purposes of this section.”

Subsec. (d)(3). Pub. L. 108-357, § 888(c)(1), reenacted heading without change and amended text of par. (3) generally, substituting provisions directing that the term “personal property” includes stock only if it is of a certain type or of a certain type of corporation and setting forth rule for application of subsec. (e), for provisions directing that the term “personal property” includes any stock which is part of a straddle at least 1 of the offsetting positions of which is an option, a securities futures contract, or a position with respect to substantially similar or related property (other than stock), and of a certain type of corporation, and setting forth special rules relating to application of subssecs. (c), (d)(4), and (e).

Subsec. (d)(8). Pub. L. 108-357, § 888(b), added par. (8). 2000—Subsec. (d)(3)(B)(i)(II), (III). Pub. L. 106-554 added subcl. (II) and redesignated former subcl. (II) as (III).

1999—Subsec. (a)(3)(B)(ii)(II). Pub. L. 106-170 substituted “1221(a)” for “1221”.

1997—Subsec. (f)(2). Pub. L. 105-34 substituted “The” for “Except for purposes of section 851(b)(3), the”.

1988—Subsec. (b)(2)(D). Pub. L. 100-647 added subpar. (D).

1986—Subsec. (c)(4)(E). Pub. L. 99-514, § 331(a), in cl. (i), inserted “or the stock is disposed of at a loss”, in cl. (ii), substituted “or gains on such options are” for “is”, and in cl. (iii), inserted “or option” and “or the disposition of such stock”.

Subsec. (d)(3)(A). Pub. L. 99-514, § 1808(c), inserted at end “The preceding sentence shall not apply to any interest in stock.”

Subsec. (d)(5), (6). Pub. L. 99-514, § 1899A(66), amended directory language of section 101(b)(2) of Pub. L. 98-369 to clarify general amendment by sections 101(d) and 102(e) of Pub. L. 98-369. See 1984 Amendment notes below.

Subsec. (d)(7). Pub. L. 99-514, § 1261(b), added par. (7). 1984—Subsec. (a)(2)(B)(i). Pub. L. 98-369, § 107(a), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (b). Pub. L. 98-369, § 103(a), amended subsec. (b) generally, substituting provisions dealing with regulations for provisions dealing with character of gain or loss and wash sales.

Subsec. (c)(4). Pub. L. 98-369, § 101(a)(2), added par. (4).

Subsec. (d)(1). Pub. L. 98-369, § 101(b)(1), struck out “(other than stock)” before “of a type”.

Subsec. (d)(2). Pub. L. 98-369, § 101(a)(1), redesignated former subpar. (A) as entire par. (2), and struck out former subpar. (B) which provided that “position” includes any stock option which is a part of a straddle and which is an option to buy or sell stock which is actively traded, but does not include a stock option which (i) is traded on a domestic exchange or on a similar foreign exchange designated by the Secretary, and (ii) is of a type with respect to which the maximum period during which such option may be exercised is less than the minimum period for which a capital asset must be held for gain to be treated as long-term capital gain under section 1222(3).

Subsec. (d)(3), (4). Pub. L. 98-369, § 101(b)(2), as amended by Pub. L. 99-514, § 1899A(66), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (d)(5). Pub. L. 98-369, § 101(d), amended par. (4) generally, substituting provisions relating to special

rules for section 1256 contracts for provisions relating to special rules for regulated futures contracts.

Pub. L. 98-369, § 101(b)(2), as amended by Pub. L. 99-514, § 1899A(66), redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (d)(6). Pub. L. 98-369, § 102(e)(2), amended par. (5) generally, substituting references to section 1256 contracts for references to regulated futures contracts wherever appearing in heading and text.

Pub. L. 98-369, § 101(b)(2), as amended by Pub. L. 99-514, § 1899A(66), redesignated former par. (5) as (6).

Subsecs. (f), (g). Pub. L. 98-369, § 101(c), added subsec. (f) and redesignated former subsec. (f) as (g).

1983—Subsec. (a)(1)(A). Pub. L. 97-448, § 105(a)(1)(A), (2), substituted “unrecognized gain” for “unrealized gain” and “which were offsetting positions with respect to 1 or more positions from which the loss arose” for “which— (i) were acquired by the taxpayer before the disposition giving rise to such loss, (ii) were offsetting positions with respect to the 1 or more positions from which the loss arose, and (iii) were not part of an identified straddle as of the close of the taxable year”.

Subsec. (a)(3). Pub. L. 97-448, § 105(a)(1)(B), substituted “Unrecognized gain” for “Unrealized gain” in heading.

Subsec. (a)(3)(A). Pub. L. 97-448, § 105(a)(1)(B), substituted “unrecognized gain” for “unrealized gain” as term defined, designated existing definition as cl. (i), and added cl. (ii).

Subsec. (a)(3)(B)(i)(I). Pub. L. 97-448, § 105(a)(1)(C), substituted “with respect to which, as of the close of the taxable year, there is unrecognized gain, and” for “which is held by such taxpayer as of the close of the taxable year and with respect to which there is unrealized gain, and”.

Subsec. (a)(3)(B)(i)(II). Pub. L. 97-448, § 105(a)(1)(C), substituted “unrecognized gain” for “unrealized gain”.

Subsec. (c)(2)(C). Pub. L. 97-448, § 105(a)(4), substituted “subsection (a)(2)(B)” for “subsection (a)(3)(B)”.

Subsec. (d)(4). Pub. L. 97-448, § 105(a)(3), substituted “a straddle at least 1 (but not all) of the positions of which are regulated futures contracts, the provisions of this section shall apply” for “a straddle— (A) at least 1 (but not all) of the positions of which are regulated futures contracts, and (B) with respect to which the taxpayer has elected not to have the provisions of section 1256 apply, the provisions of this section shall apply”.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-172, § 7(e), Dec. 29, 2007, 121 Stat. 2483, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 45, 45H, 179B, 280C, 470, 1016, and 6501 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108-357] to which they relate.

“(2) IDENTIFICATION REQUIREMENT OF AMENDMENT RELATED TO SECTION 888 OF THE AMERICAN JOBS CREATION ACT OF 2004.—The amendment made by subsection (d)(2)(A) [amending this section] shall apply to straddles acquired after the date of the enactment of this Act [Dec. 29, 2007].”

#### EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to positions established on or after Oct. 22, 2004, see section 888(e) of Pub. L. 108-357, set out as a note under section 246 of this title.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any trans-

action entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-34 applicable to taxable years beginning after Aug. 5, 1997, see section 1271(c) of Pub. L. 105-34, set out as a note under section 817 of this title.

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 applicable with respect to forward contracts, future contracts, options, and similar instruments entered into or acquired after Oct. 21, 1988, see section 6130(d)(1) of Pub. L. 100-647, set out as a note under section 988 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Section 331(b) of Pub. L. 99-514 provided that: "The amendments made by this section [amending this section] shall apply to positions established on or after January 1, 1987."

Amendment by section 1261(b) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99-514, set out as an Effective Date note under section 985 of this title.

Amendment by section 1808(c) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Section 101(e) of Pub. L. 98-369 provided that: "(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to positions established after December 31, 1983, in taxable years ending after such date.

"(2) SPECIAL RULE FOR OFFSETTING POSITION STOCK.—In the case of any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder, the amendments made by this section shall apply to positions established on or after May 23, 1983, in taxable years ending on or after such date.

"(3) SUBSECTION (c).—The amendment made by subsection (c) [amending this section] shall apply to positions established after June 30, 1984, in taxable years ending after such date.

"(4) SUBSECTION (d).—The amendment made by subsection (d) [amending this section] shall apply to positions established after the date of the enactment of this Act in taxable years ending after such date."

Amendment by section 102(e)(2) of Pub. L. 98-369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98-369, set out as a note under section 1256 of this title.

Section 103(b), (c) of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(b) REQUIREMENT THAT REGULATIONS BE ISSUED WITHIN 6 MONTHS AFTER THE DATE OF ENACTMENT.—The Secretary of the Treasury or his delegate shall prescribe initial regulations under section 1092(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (including regulations relating to mixed straddles) not later than the date 6 months after the date of the enactment of this Act [July 18, 1984].

"(c) EFFECTIVE DATE OF REGULATIONS WITH RESPECT TO MIXED STRADDLES.—The regulations described in subsection (b) with respect to the application of section 1233 of the Internal Revenue Code of 1986 to mixed straddles shall not apply to mixed straddles all of the positions of which were established before January 1, 1984."

Section 107(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section and sections 1236 and 1256 of this title] shall apply to positions entered into after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date."

**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**

Section 508 of title V of Pub. L. 97-34, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this title [enacting this section and sections 1234A and 1256 of this title, amending sections 263, 341, 1212, 1221, 1231, 1232, 1233, 1236, and 6653 of this title, and enacting provisions set out as a note under section 1256 of this title] shall apply to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date.

"(b) IDENTIFICATION REQUIREMENTS.—

"(1) UNDER SECTION 1236 OF CODE.—The amendments made by section 506 [amending section 1236 of this title] shall apply to property acquired by the taxpayer after the date of the enactment of this Act [Aug. 13, 1981] in taxable years ending after such date.

"(2) UNDER SECTION 1256(e)(2)(C) OF CODE.—Section 1256(e)(2)(C) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this title) shall apply to property acquired and positions established by the taxpayer after December 31, 1981, in taxable years ending after such date.

"(c) ELECTION WITH RESPECT TO PROPERTY HELD ON JUNE 23, 1981.—If the taxpayer so elects (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) with respect to all regulated futures contracts or positions held by the taxpayer on June 23, 1981, the amendments made by this title shall apply to all such contracts and positions, effective for periods after such date in taxable years ending after such date. For purposes of the preceding sentence, the term 'regulated futures contract' has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1986, and the term 'position' has the meaning given to such term by section 1092(d)(2) of such Code."

**PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989**

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan 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.

**TREATMENT OF CERTAIN LOSSES ON STRADDLES ENTERED INTO BEFORE EFFECTIVE DATE OF ECONOMIC RECOVERY TAX ACT OF 1981**

Section 108 of Pub. L. 98-369, as amended by Pub. L. 99-514, § 2, title XVIII, § 1808(d), Oct. 22, 1986, 100 Stat. 2095, 2817, provided that:

"(a) GENERAL RULE.—For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the case of any disposition of 1 or more positions—

"(1) which were entered into before 1982 and form part of a straddle, and

"(2) to which the amendments made by title V of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34, see Effective Date note above] do not apply,

any loss from such disposition shall be allowed for the taxable year of the disposition if such loss is incurred in a trade or business, or if such loss is incurred in a transaction entered into for profit though not connected with a trade or business.

“(b) LOSS INCURRED IN A TRADE OR BUSINESS.—For purposes of subsection (a), any loss incurred by a commodities dealer in the trading of commodities shall be treated as a loss incurred in a trade or business.

“(c) NET LOSS ALLOWED.—If any loss with respect to a position described in paragraphs (1) and (2) of subsection (a) is not allowable as a deduction (after applying subsections (a) and (b)), such loss shall be allowed in determining the gain or loss from dispositions of other positions in the straddle to the extent required to accurately reflect the taxpayer’s net gain or loss from all positions in such straddle.

“(d) OTHER RULES.—Except as otherwise provided in subsections (a) and (c) and in sections 1233 and 1234 of such Code, the determination of whether there is recognized gain or loss with respect to a position, and the amount and timing of such gain or loss, and the treatment of such gain or loss as long-term or short-term shall be made without regard to whether such position constitutes part of a straddle.

“(e) STRADDLE.—For purposes of this section, the term ‘straddle’ has the meaning given to such term by section 1092(c) of the Internal Revenue Code of 1986 as in effect on the day after the date of the enactment of the Economic Recovery Tax Act of 1981 [Aug. 13, 1981], and shall include a straddle all the positions of which are regulated futures contracts.

“(f) COMMODITIES DEALER.—For purposes of this section, the term ‘commodities dealer’ means any taxpayer who—

“(1) at any time before January 1, 1982, was an individual described in section 1402(i)(2)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this subtitle), or

“(2) was a member of the family (within the meaning of section 704(e)(3) of such Code) of an individual described in paragraph (1) to the extent such member engaged in commodities trading through an organization the members of which consisted solely of—

“(A) 1 or more individuals described in paragraph (1), and

“(B) 1 or more members of the families (as so defined) of such individuals.

“(g) REGULATED FUTURES CONTRACTS.—For purposes of this section, the term ‘regulated futures contracts’ has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1986 (as in effect before the date of enactment of this Act [July 18, 1984]).

“(h) SYNDICATES.—For purposes of this section, any loss incurred by a person (other than a commodities dealer) with respect to an interest in a syndicate (within the meaning of section 1256(e)(3)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) shall not be considered to be a loss incurred in a trade or business.”

#### [PART VIII—REPEALED]

### [§§ 1101 to 1103. Repealed. Pub. L. 101-508, title XI, §11801(a)(34), Nov. 5, 1990, 104 Stat. 1388-521]

Section 1101, added May 9, 1956, ch. 240, §10(a), 70 Stat. 139; amended Oct. 2, 1976, Pub. L. 94-452, §2(a), 90 Stat. 1503; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b)(13)(A), 90 Stat. 1834; Oct. 19, 1982, Pub. L. 97-354, §5(a)(34), 96 Stat. 1695, related to distributions of property pursuant to Bank Holding Company Act.

Section 1102, added May 9, 1956, ch. 240, §10(a), 70 Stat. 143; amended Dec. 27, 1967, Pub. L. 90-225, §1, 81 Stat. 730; Oct. 2, 1976, Pub. L. 94-452, §2(a), 90 Stat. 1508; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, related to basis of property acquired in distributions, periods of limitation, allocation of earnings and profits, and itemization of property.

Section 1103, added May 9, 1956, ch. 240, §10(a), 70 Stat. 144; amended Oct. 2, 1976, Pub. L. 94-452, §2(a), 90 Stat.

1509; Oct. 4, 1976, Pub. L. 94-455, title XIX, §1906(b)(13)(A), 90 Stat. 1834, related to definitions for this part.

#### 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.

#### [PART IX—REPEALED]

### [§ 1111. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(134), Oct. 4, 1976, 90 Stat. 1786]

Section, added Pub. L. 87-403, §1(a), Feb. 2, 1962, 76 Stat. 4, related to distribution of stock pursuant to order enforcing antitrust laws.

#### Subchapter P—Capital Gains and Losses

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|------|--|
| Part |  |
| I.   | Treatment of capital gains.                                |
| II.  | Treatment of capital losses.                               |
| III. | General rules for determining capital gains and losses.    |
| IV.  | Special rules for determining capital gains and losses.    |
| V.   | Special rules for bonds and other debt instruments.        |
| VI.  | Treatment of certain passive foreign investment companies. |

#### AMENDMENTS

1986—Pub. L. 99-514, title XII, §1235(g), Oct. 22, 1986, 100 Stat. 2576, added item for part VI.

1984—Pub. L. 98-369, div. A, title I, §42(b)(1), July 18, 1984, 98 Stat. 557, added item for part V.

#### PART I—TREATMENT OF CAPITAL GAINS

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|-------|---|
| Sec.  |   |
| 1201. | Alternative tax for corporations.                             |
| 1202. | Partial exclusion for gain from certain small business stock. |

#### AMENDMENTS

2000—Pub. L. 106-554, §1(a)(7) [title I, §117(b)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-604, substituted “Partial” for “50-percent” in item 1202.

1993—Pub. L. 103-66, title XIII, §13113(d)(6), Aug. 10, 1993, 107 Stat. 430, added item 1202.

1986—Pub. L. 99-514, title III, §301(b)(13), Oct. 22, 1986, 100 Stat. 2218, struck out item 1202 “Deduction for capital gains”.

1978—Pub. L. 95-600, title IV, §401(b)(6), Nov. 6, 1978, 92 Stat. 2867, substituted “Alternative tax for corporations” for “Alternative tax” in item 1201.

### § 1201. Alternative tax for corporations

#### (a) General rule

If for any taxable year a corporation has a net capital gain and any rate of tax imposed by section 11, 511, or 831(a) or (b) (whichever is applicable) exceeds 35 percent (determined without regard to the last 2 sentences of section 11(b)(1)), then, in lieu of any such tax, there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

- (1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus