

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 L. 85-320 repealed subsec.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 ex-

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

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

#### (a) Gifts after December 31, 1920

If the property was acquired by gift after December 31, 1920, the basis shall be the same as it

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

**(b) Transfer in trust after December 31, 1920**

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

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

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

**(d) Increased basis for gift tax paid**

**(1) In general**

If—

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

(B) the property was acquired by gift before September 2, 1958, and has not been sold, exchanged, or otherwise disposed of before such date, the basis of the property shall be increased on such date by the amount of gift tax paid with respect to such gift, but such increase shall not exceed an amount equal to the amount by which the fair market value of the property at the time of the gift exceeded the basis of the property in the hands of the donor at the time of the gift.

**(2) Amount of tax paid with respect to gift**

For purposes of paragraph (1), the amount of gift tax paid with respect to any gift is an amount which bears the same ratio to the amount of gift tax paid under chapter 12 with respect to all gifts made by the donor for the calendar year (or preceding calendar period) in which such gift is made as the amount of such gift bears to the taxable gifts (as defined in

section 2503(a) but computed without the deduction allowed by section 2521) made by the donor during such calendar year or period. For purposes of the preceding sentence, the amount of any gift shall be the amount included with respect to such gift in determining (for the purposes of section 2503(a)) the total amount of gifts made during the calendar year or period, reduced by the amount of any deduction allowed with respect to such gift under section 2522 (relating to charitable deduction) or under section 2523 (relating to marital deduction).

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

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

**(4) Treatment as adjustment to basis**

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

**(5) Application to gifts before 1955**

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

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

**(A) In general**

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

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

**(B) Net appreciation**

For purposes of paragraph (1), the net appreciation in value of any gift is the amount by which the fair market value of the gift exceeds the donor's adjusted basis immediately before the gift.

**(e) Gifts between spouses**

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

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

title IV, § 442(d)(1), Aug. 13, 1981, 95 Stat. 322; Pub. L. 98-369, div. A, title IV, § 421(b)(5), July 18, 1984, 98 Stat. 794.)

#### 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,

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