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."

**Effective Date of 2014 Amendment**

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.


**§ 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.)


**Prior Provisions**


**Effective Date of Repeal**

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.

**§ 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.


**Prior Provisions**


**Amendments**


**Effective Date of 1980 Amendment 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.

Pub. L. 96–223, title IV, §401(b), Apr. 2, 1980, 94 Stat. 299, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2905, 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title], the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied and administered as if the provisions repealed by subsection (a), and the amendments made by those provisions [enacting this section and sections 6093A and 6096A of this title, redesignating former section 1023 as section 1024 of this title, and amending sections 306, 691, 1001, 1014, 1016, 1223, and 1226 of this title], had not been enacted.”

Pub. L. 96–223, title IV, §401(e), Apr. 2, 1980, 94 Stat. 301, provided that: “The amendments made by this section [amending sections 306, 691, 1001, 1014, 1016, 1040, 1223, 1226, and 2614 of this title, repealing former section 1023 and sections 6093A and 6096A 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 1001(a)(127) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1001(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

**Repeals**

Pub. L. 94–455, §1001(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 1024 of this title. See Effective Date of 1980 Amendments and Revival of Prior Law note set out above.

**§ 1024. Repealed**

**PART III—COMMON NONTAXABLE EXCHANGES**

Sec. 1031. Exchange of real 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.
**Sec. 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. Repealed.

1045. Rollover of gain from qualified small business stock to another qualified small business stock.

### AMENDMENTS

2017—Pub. L. 115–97, title I, §§13303(b)(6), 13313(a), Dec. 22, 2017, 131 Stat. 2124, 2133, substituted “Exchange of real property held for productive use or investment” for “Exchange of property held for productive use or investment” in item 1031 and struck out item 1044 “Rollover of publicly traded securities gain into specialized small business investment companies”.


1976—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.


### § 1031. Exchange of real 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 real property held for productive use in a trade or business or for investment if such real property is exchanged solely for real property of like kind which is to be held either for productive use in a trade or business or for investment.

(2) Exception for real property held for sale

This subsection shall not apply to any exchange of real property held primarily for sale.

(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, de-
increased 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 and increased in the amount of any money received by the taxpayer that was recognized on such exchange. For purposes of this section, section 1033(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 1033(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) Application to certain partnerships

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.

(f) Special rules for exchanges between related persons

(1) In general

If—

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

(B) there is no recognition 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 recognition 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, or

(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 property

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

(a)(1) In general

If—

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

(B) 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 recognition 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, or

(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 property

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

(a)(1) In general

If—

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

(B) 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 recognition 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, or

(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 property

Real property located in the United States and real property located outside the United States are not property of a like kind.
“(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, a mutual ditch, reservoir, or irrigation company if at the time of the exchange—

(a)(2)(B), the term ‘stocks’ shall not include subsec. (i). Text read as follows: ‘‘(A) stock 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 paras. (2) and (3).


1959—Subsecs. (b) to (d), Pub. L. 96–236 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 2017 Amendment**

Pub. L. 115–97, title I, §13303(c), Dec. 22, 2017, 131 Stat. 2124, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to exchanges completed after December 31, 2017.

“(2) TRANSITION RULE.—The amendments made by this section shall not apply to any exchange if—

“(A) the property disposed of by the taxpayer in the exchange is disposed of on or before December 31, 2017, or

“(B) the property received by the taxpayer in the exchange is received on or before December 31, 2017.”

**Effective Date of 2008 Amendment**


**Effective Date of 1999 Amendment**


**Effective Date of 1997 Amendment**


“(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**


paragraph (1) [amending this section] shall apply to transfers after July 18, 1984.''

**Effective Date of 1989 Amendment**


"(1) In General.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to transfers after July 18, 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 18, 1989, and at all times thereafter before the transfer.''

**Effective Date of 1986 Amendment**


**Effective Date of 1984 Amendment**


"(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.—The amendments made by this section shall not apply to any exchange pursuant to a binding contract in effect on July 18, 1989, and at all times thereafter before the exchange."

"(3) Requirement that Property Be Identified Within 45 Days and That Exchange Be Completed Within 90 Days.—Paragraph (3) 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.

"(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 Is 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**


**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 1087 of this title.

**Effective Date of 1958 Amendment**

Amendment by Pub. L. 85–666 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–666, 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 XYIII [§§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 respect 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.


**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(c)], 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**

Pub. L. 98–369, div. A, title I, §57(b), July 18, 1984, 98 Stat. 574, 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 converted property, the gain (if any) 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 tax-
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laws, such sale or disposition shall be treated as limitation provisions of Federal reclamation disposed of in order to conform to the acreage.

(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 corporation 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).

(e) 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, 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 converted 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
(h) Special rules for property damaged by federal action shall be treated as property 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) Outdoor advertising display

For purposes of this paragraph, the term “outdoor advertising display” means a rigidly 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”.

(b) 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 unscheduled 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 is located in a disaster area and is 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 business 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 155(1)(5).

(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 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.

(k) 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.

Amendments

2018—Subsec. (h)(2). Pub. L. 115–141 inserted “is” before “located.”


2005—Subsec. (k). Pub. L. 109–248, § 221(a)(77), redesignated subsec. (k) as (l) and struck out former subsec. (j) which related to sales or exchanges to implement microwave relocation policy.

1998—Subsec. (h). Pub. L. 110–343, § 706(a)(2)(D)(i), amended heading generally. Prior to amendment, 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—”.

1993—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 “for property damaged by Presidentially declared disasters”.


1977—Subsec. (e). Pub. L. 95–30, § 312(d)(1), inserted “, flood, or other weather-related conditions” after “drought, flood, or other weather-related conditions,” and text of heading added “, or” after “because of” and “in the case of soil contamination or other environmental contamination” after “including real property.”

1976—Pub. L. 94–485, title XIX, § 2941; Pub. L. 94–455, title XIX, § 2931, inserted “flood, or other weather-related conditions” after “drought” in heading and “flood, or other weather-related conditions” before period at end of text.

1975—Subsec. (h)(4). Pub. L. 94–375, § 312(d)(1), substituted “section 121” for “section 121”.

1974—Subsec. (i). Pub. L. 93–416, § 4001, 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

REFERENCES IN TEXT


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

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. (c)(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 2127(a) 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 any 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 imminent 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)(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).


Pub. L. 104–7, § 3(a)(1), added subsec. (k).

Pub. L. 104–7, § 3(a)(1), added subsec. (k).

1993—Subsecs. (h), (i). Pub. L. 103–446 added subsec. (h) and redesignated former subsec. (h) as (i).

1992—Subsec. (g)(3). Pub. L. 101–508 struck out "with respect to which the investment credit determined under section 46(a) is or has been claimed or observed after to any property."

1984—Subsec. (g)(1)(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". For one-time exclusion for "conversion and 'age 65' for 'age 65'.

1976—Subsec. (a)(2). 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 1954" for "or (2)". Former subsec. (b), which related to application of subsection (a) in the case of property used by taxpayer as his principal residence, if the destruction, theft, etc., occurred after December 31, 1950, and before January 1, 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), 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)(3)(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).


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 2014 Amendment


Effective Date of 2008 Amendment


Effective Date of 2005 Amendment

Pub. L. 110–128, § 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]."
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.

Amendment by section 312(d)(1), (7) of Pub. L. 108–357 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 involuntary conversions occurring after June 8, 1997.

Amendment by Pub. L. 104–188, title I, §1119(d)(1), Aug. 10, 1996, 110 Stat. 1765, provided that: "The amendments made by this section [amending this section] shall apply to involuntary conversions occurring after Oct. 4, 1996, and to taxable years ending on or after such date."
§ 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;

(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 payments 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;

(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.

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.


Codification

Another section 1131(b) of Pub. L. 105–34 enacted section 684 of this title.

Amendments

2018—Subsec. (a)(1). Pub. L. 115–141 struck out “or” after semicolon at end.

2006—Subsec. (a)(1). Pub. L. 109–280, § 844(b)(3)(A), inserted 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), inserted 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)(3). Pub. L. 109–280, § 844(b)(3)(C), inserted “; or for a qualified long-term care insurance contract” after “annuity contract”.


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).


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 816’’ to reflect the probable intent of Congress and the earlier amendment by Pub. L. 98–369, § 221(b)(15), which substituted “as defined in section 816’’ for “as defined in 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
§ 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.

§ 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)1 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 obligation 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.

REFERENCES IN TEXT

Section 1271(c), referred to in subsec. (b)(1), was repealed and section 1271(d) was redesignated section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

1 See References in Text note below.
§ 1038. Certain reacquisitions of real property

(a) General rule

(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
change of residence of an individual who has attained age 65.”

Subsec. (e)(1)(B). Pub. L. 95–600, § 605(c)(3), which directed the amendment of section 1038(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 1038 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. 104–34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 104–34, 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

Pub. L. 96–471, § 6(c), Oct. 19, 1980, 94 Stat. 2256, provided: “The amendments 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.

Pub. L. 95–600, title IV, § 405(d), Nov. 6, 1978, 92 Stat. 2871, provided that: “The amendments made by this section [amending this section 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, 1967

Pub. L. 88–570, § 2(c), Sept. 2, 1964, 78 Stat. 856, provided that:

“(1) The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of the enactment of this Act [Sept. 2, 1964].”

“(2) If the taxpayer makes an election under this paragraph, the amendments made by this section [enacting this section] shall also apply to taxable years beginning after December 31, 1957, except that such amendments shall not apply with respect to any reacquisition of real property in a taxable year for which the assessment of a deficiency, or the credit or refund of an overpayment, is prevented on the date of the enactment of this Act [Sept. 2, 1964] by the operation of any law or rule of law. An election under this paragraph shall be made within one year after the date of the enactment of this Act and shall be made in such form and manner as the Secretary of the Treasury or his delegate shall prescribe by regulations.

“(3) If an election is made by the taxpayer under paragraph (2), and if the assessment of a deficiency, or the credit or refund of an overpayment, for any taxable year to which such election applies is not prevented on the date of the enactment of this Act [Sept. 2, 1964] by the operation of any law or rule of law—

“(A) the period within which a deficiency for such taxable year may be assessed (to the extent such deficiency is attributable to the application of the amendments made by this section) shall expire on 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."


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 

§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 on the transfer.

1983—Subsec. (a). Pub. L. 97–448, §104(b)(3)(A), substituted "on the date of such transfer" for "on the date of such exchange".

Subsec. (c). Pub. L. 97–448, §104(b)(3)(B), substituted references to "transfer", "a transfer", and "the transfer" for references to "exchange", "an exchange", and "the exchange", respectively, wherever appearing in heading and text.

1981—Pub. L. 97–34 substituted "Transfer of certain farm, etc., real property" for "Use of farm, etc., real property to satisfy pecuniary bequest" in section catchline.

Subsec. (a). Pub. L. 97–34 revised subsec. (a) generally, substituting "transfers to a qualified heir (within the meaning of section 2032A(e)(1)) any property" for "satisfies the right of a qualified heir (within the meaning of section 2032A(e)(1)) to receive a pecuniary bequest with property" and "such transfer" for "such exchange" before "shall be recognized".

Subsec. (b). Pub. L. 97–34 substituted "shall apply where the trustee of a trust (any portion of which is included in the gross estate of the decedent) transfers property with respect to which an election was made under section 2032A" for "shall apply where--"

"(1) by reason of the death of the decedent, a qualified heir has a right to receive from a trust a specific dollar amount which is the equivalent of a pecuniary bequest, and"

"(2) the trustee of the trust satisfies such right with property with respect to which an election was made under section 2032A."
§ 1041

Title 26—Internal Revenue Code

Pub. L. 111–312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

Effective Date of 2001 Amendment


Effective Date of 1983 Amendment

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

Effective Date of 1981 Amendment

Amendment by Pub. L. 97–34 applicable with respect to the estates of decedents dying after Dec. 31, 1976, upon compliance with certain conditions relating to timely election requirement, reinstatement of elections, and statute of limitations, see section 421(k)(5) of Pub. L. 97–34, set out as a note under section 2032A of this title.

Effective Date of 1980 Amendment


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)(4) of Pub. L. 95–600, set out as a note under section 2032A of this title.

Effective Date


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

(a) General rule

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

(1) a spouse, or

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

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

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

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

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

(c) Incident to divorce

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

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

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

(d) Special rule where spouse is nonresident alien

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

(e) Transfers in trust where liability exceeds basis

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

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

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

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


Amendments

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


Effective Date of 1988 Amendment

Pub. L. 100–647, title I, §1018(b)(3), Nov. 10, 1988, 102 Stat. 3584, provided that the amendment made by that section is effective with respect to transfers after June 21, 1988.

Effective Date of 1986 Amendment


Effective Date

Pub. L. 98–369, div. A, title IV, §421(d), July 18, 1984, 98 Stat. 795, 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 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.”
§ 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.

(c) Definitions; special rules

For purposes of this section—

(1) Qualified securities

The term "qualified securities" means employer securities (as defined in section 409(f)) 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 im-
§ 1042

(6) Time for filing election
treated as a sale for purposes of subsection (a). Whether or not guaranteed, shall be
in the course of his trade or business as an under -
worker-owned cooperative in the ordinary

(5) Securities sold by underwriter
No sale of securities by an underwriter to an
employee stock ownership plan or eligible
employee stock ownership plan or eligible

(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 “con-
trol” has the meaning given such term by
section 304(c). In determining control, there shall be disregarded any qualified re-
placement property of the taxpayer with respect to the section 1042 sale being test-
ed.

(D) Security defined
For purposes of this paragraph, the term
“security” has the meaning given such term by
section 165(c)(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 under-
writer, whether or not guaranteed, shall be
considered 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 in-
cludible in the gross income of any C corpora-
tion.

(d) Basis of qualified replacement property
The basis of the taxpayer in qualified replace-
ment 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 replace-
ment 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 replace-
ment property disposes of a substantial por-
tion 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 replace-
ment property of such corporation at such
time,
then the taxpayer shall be treated as having
disposed of such qualified replacement prop-
erty 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 ac-
quiring 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 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.  


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.


AMENDMENTS
1997—Subsec. (g). Pub. L. 105-34 added subsec. (g).  


Subsec. (c)(4)(B)(1)(i). Pub. L. 104-188, § 1616(b)(13), struck out “or 593” after “section 591.”

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 to which section 422 or 423 (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.


Subsec. (c)(4)(B)(i). Pub. L. 100-647, § 1018(c)(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(j)) outstanding as of such time.”

Subsec. (b)(3). Pub. L. 99-514, § 1854(a)(3)(B), as amended by Pub. L. 100-647, § 1018(c)(4)(F), redesignated par. (4) as (3) and struck out former par. (3) which related to plans maintained for benefit of employees.
subsec. (e) and redesignated former subsec. (e) as (f).

plan or eligible worker-owned cooperative''.

stituted ''sale of securities'' for ''acquisition of securities''

sued by a domestic corporation which does not, for the

means any securities (as defined in section 165(g)(2)) is-

follows: ''The term 'qualified replacement property'

ties'' and inserted ''to an employee stock ownership

corporation for such taxable year.''

and struck out former subpar. (B) which read as fol-

Subsec. (c)(5). Pub. L. 99–514, §1854(a)(10), substituted

sold'' for ''acquired'' in healing, and in text sub-

stituted “sale of securities” for “acquisition of securities”

and inserted “to an employee stock ownership plan or eligible worker-owned cooperative”.


Subsecs. (e), (f). Pub. L. 99–514, §1854(a)(8)(A), added subsec. (e) and redesignated former subsec. (e) as (f).

EFFICIVE DATE OF 1997 AMENDMENT


EFFICIVE DATE OF 1996 AMENDMENT


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 611 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.

EFFICIVE DATE OF 1989 AMENDMENT


EFFICIVE 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.

EFFICIVE DATE OF 1986 AMENDMENT


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 496(n)(1) of this title (as added by 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.

Pub. L. 99–514, title XVIII, §1854(a)(6)(B)–(D), Oct. 22, 1986, 100 Stat. 2976, provided that: “(B) The amendment made by subparagraph (A) [amending this section] shall apply to sales after March 29, 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.”

Pub. L. 99–514, title XVIII, §1854(a)(8)(B), Oct. 22, 1986, 100 Stat. 2877, 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.”


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


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 AFTER SALE


“(2) Employers 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 employee securities (within the meaning of section 406(k)(1) outstanding at the time of sale.”

REPLACEMENT PERIOD FOR CERTAIN SECURITIES


“(i) before January 1, 1987, the taxpayer acquired any security (as defined in section 165(g)(2) of the Internal Revenue Code of 1986 [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(4)(A) of such Code (as amended by subparagraph (A)),

then, with respect to so much of any gain which the taxpayer treated under section 1042 of such Code as if it read as follows:

“(2) Employers 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 employee securities (within the meaning of section 406(k)(1) outstanding at the time of sale.”

§ 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).


Effective Date of Repeal
Repeal applicable to sales after Dec. 31, 2017, see section 13313(c) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 1015 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.

**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”.


**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 6924 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. Repealed.

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.


1055. Redeemable ground rents.

1056. Special allocation rules for certain asset acquisitions.

1057. Limitation on taxpayer’s basis or inventory cost in property imported from related persons.

1058. Partnership interests held in connection with performance of services.

1059. Cross references.

**AMENDMENTS**


**§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 (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 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)(A), (18), (19), or (22) 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.


**REFERENCES IN TEXT**

Revenue Act of 1932, referred to in section catchline and subsec. (a), is act June 6, 1932, ch. 309, 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 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. See, also, sections 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then