

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

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

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

(Added Pub. L. 98-369, div. A, title IV, §421(a), July 18, 1984, 98 Stat. 793; amended Pub. L. 99-514, title XVIII, §1842(b), Oct. 22, 1986, 100 Stat. 2853; Pub. L. 100-647, title I, §1018(l)(3), Nov. 10, 1988, 102 Stat. 3584.)

### Editorial Notes

#### AMENDMENTS

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

1986—Subsec. (e). Pub. L. 99-514 added subsec. (e).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1018(l)(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

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

#### EFFECTIVE DATE

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 all transfers made by such spouses (or former spouses) after December 31, 1983.

“(3) EXCEPTION FOR TRANSFERS PURSUANT TO EXISTING DECREES.—Except in the case of an election under paragraph (2), the amendments made by this section shall not apply to transfers under any instrument in effect on or before the date of the enactment of this Act unless both spouses (or former spouses) elect to have such amendments apply to transfers under such instrument.

“(4) ELECTION.—Any election under paragraph (2) or (3) shall be made in such manner, at such time, and subject to such conditions, as the Secretary of the Treasury or his delegate may by regulations prescribe.”

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

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

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

#### (a) Nonrecognition of gain

If—

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

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

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

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

#### (b) Requirements to qualify for nonrecognition

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

##### (1) Sale to employee organizations

The qualified securities are sold to—

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

(B) an eligible worker-owned cooperative.

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

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

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

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

##### (3) Written statement required

###### (A) In general

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

###### (B) Statement

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

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

(ii) any authorized officer of the cooperative described in paragraph (1),<sup>1</sup>

consenting to the application of sections 4978 and 4979A with respect to such employer or cooperative.

##### (4) 3-year holding period

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

#### (c) Definitions; special rules

For purposes of this section—

<sup>1</sup> So in original. Probably should be “paragraph (1)”,.

**(1) Qualified securities**

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

(A) are issued by a domestic C corporation that has no stock outstanding that is readily tradable on an established securities market, and

(B) were not received by the taxpayer in—

(i) a distribution from a plan described in section 401(a), or

(ii) a transfer pursuant to an option or other right to acquire stock to which section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied).

**(2) Eligible worker-owned cooperative**

The term “eligible worker-owned cooperative” means any organization—

(A) to which part I of subchapter T applies,

(B) a majority of the membership of which is composed of employees of such organization,

(C) a majority of the voting stock of which is owned by members,

(D) a majority of the board of directors of which is elected by the members on the basis of 1 person 1 vote, and

(E) a majority of the allocated earnings and losses of which are allocated to members on the basis of—

(i) patronage,

(ii) capital contributions, or

(iii) some combination of clauses (i) and (ii).

**(3) Replacement period**

The term “replacement period” means the period which begins 3 months before the date on which the sale of qualified securities occurs and which ends 12 months after the date of such sale.

**(4) Qualified replacement property****(A) In general**

The term “qualified replacement property” means any security issued by a domestic operating corporation which—

(i) did not, for the taxable year preceding the taxable year in which such security was purchased, have passive investment income (as defined in section 1362(d)(3)(C)) in excess of 25 percent of the gross receipts of such corporation for such preceding taxable year, and

(ii) is not the corporation which issued the qualified securities which such security is replacing or a member of the same controlled group of corporations (within the meaning of section 1563(a)(1)) as such corporation.

For purposes of clause (i), income which is described in section 954(c)(3) (as in effect immediately before the Tax Reform Act of 1986) shall not be treated as passive investment income.

**(B) Operating corporation**

For purposes of this paragraph—

**(i) In general**

The term “operating corporation” means a corporation more than 50 percent of the assets of which were, at the time the security was purchased or before the close of the replacement period, used in the active conduct of the trade or business.

**(ii) Financial institutions and insurance companies**

The term “operating corporation” shall include—

(I) any financial institution described in section 581, and

(II) an insurance company subject to tax under subchapter L.

**(C) Controlling and controlled corporations treated as 1 corporation****(i) In general**

For purposes of applying this paragraph, if—

(I) the corporation issuing the security owns stock representing control of 1 or more other corporations,

(II) 1 or more other corporations own stock representing control of the corporation issuing the security, or

(III) both,

then all such corporations shall be treated as 1 corporation.

**(ii) Control**

For purposes of clause (i), the term “control” has the meaning given such term by section 304(c). In determining control, there shall be disregarded any qualified replacement property of the taxpayer with respect to the section 1042 sale being tested.

**(D) Security defined**

For purposes of this paragraph, the term “security” has the meaning given such term by section 165(g)(2), except that such term shall not include any security issued by a government or political subdivision thereof.

**(5) Securities sold by underwriter**

No sale of securities by an underwriter to an employee stock ownership plan or eligible worker-owned cooperative in the ordinary course of his trade or business as an underwriter, whether or not guaranteed, shall be treated as a sale for purposes of subsection (a).

**(6) Time for filing election**

An election under subsection (a) shall be filed not later than the last day prescribed by law (including extensions thereof) for filing the return of tax imposed by this chapter for the taxable year in which the sale occurs.

**(7) Section not to apply to gain of C corporation**

Subsection (a) shall not apply to any gain on the sale of any qualified securities which is includible in the gross income of any C corporation.

**(d) Basis of qualified replacement property**

The basis of the taxpayer in qualified replacement property purchased by the taxpayer during

the replacement period shall be reduced by the amount of gain not recognized by reason of such purchase and the application of subsection (a). If more than one item of qualified replacement property is purchased, the basis of each of such items shall be reduced by an amount determined by multiplying the total gain not recognized by reason of such purchase and the application of subsection (a) by a fraction—

- (1) the numerator of which is the cost of such item of property, and
- (2) the denominator of which is the total cost of all such items of property.

Any reduction in basis under this subsection shall not be taken into account for purposes of section 1278(a)(2)(A)(ii) (relating to definition of market discount).

**(e) Recapture of gain on disposition of qualified replacement property**

**(1) In general**

If a taxpayer disposes of any qualified replacement property, then, notwithstanding any other provision of this title, gain (if any) shall be recognized to the extent of the gain which was not recognized under subsection (a) by reason of the acquisition by such taxpayer of such qualified replacement property.

**(2) Special rule for corporations controlled by the taxpayer**

If—

(A) a corporation issuing qualified replacement property disposes of a substantial portion of its assets other than in the ordinary course of its trade or business, and

(B) any taxpayer owning stock representing control (within the meaning of section 304(c)) of such corporation at the time of such disposition holds any qualified replacement property of such corporation at such time,

then the taxpayer shall be treated as having disposed of such qualified replacement property at such time.

**(3) Recapture not to apply in certain cases**

Paragraph (1) shall not apply to any transfer of qualified replacement property—

(A) in any reorganization (within the meaning of section 368) unless the person making the election under subsection (a)(1) owns stock representing control in the acquiring or acquired corporation and such property is substituted basis property in the hands of the transferee,

(B) by reason of the death of the person making such election,

(C) by gift, or

(D) in any transaction to which section 1042(a) applies.

**(f) Statute of limitations**

If any gain is realized by the taxpayer on the sale or exchange of any qualified securities and there is in effect an election under subsection (a) with respect to such gain, then—

- (1) the statutory period for the assessment of any deficiency with respect to such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the

taxpayer (in such manner as the Secretary may by regulations prescribe) of—

(A) the taxpayer's cost of purchasing qualified replacement property which the taxpayer claims results in nonrecognition of any part of such gain,

(B) the taxpayer's intention not to purchase qualified replacement property within the replacement period, or

(C) a failure to make such purchase within the replacement period, and

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

**(g) Application of section to sales of stock in agricultural refiners and processors to eligible farm cooperatives**

**(1) In general**

This section shall apply to the sale of stock of a qualified refiner or processor to an eligible farmers' cooperative.

**(2) Qualified refiner or processor**

For purposes of this subsection, the term "qualified refiner or processor" means a domestic corporation—

(A) substantially all of the activities of which consist of the active conduct of the trade or business of refining or processing agricultural or horticultural products, and

(B) which, during the 1-year period ending on the date of the sale, purchases more than one-half of such products to be refined or processed from—

- (i) farmers who make up the eligible farmers' cooperative which is purchasing stock in the corporation in a transaction to which this subsection is to apply, or
- (ii) such cooperative.

**(3) Eligible farmers' cooperative**

For purposes of this section, the term "eligible farmers' cooperative" means an organization to which part I of subchapter T applies and which is engaged in the marketing of agricultural or horticultural products.

**(4) Special rules**

In applying this section to a sale to which paragraph (1) applies—

(A) the eligible farmers' cooperative shall be treated in the same manner as a cooperative described in subsection (b)(1)(B),

(B) subsection (b)(2) shall be applied by substituting "100 percent" for "30 percent" each place it appears,

(C) the determination as to whether any stock in the domestic corporation is a qualified security shall be made without regard to whether the stock is an employer security or to subsection (c)(1)(A), and

(D) paragraphs (2)(D) and (7) of subsection (c) shall not apply.

(Added Pub. L. 98-369, div. A, title V, §541(a), July 18, 1984, 98 Stat. 887; amended Pub. L. 99-514, title XVIII, §§1854(a)(1), (2)(A), (3)(B), (4), (5)(A), (6)(A), (7), (8)(A), (9)(B), (10), (11), (f)(3)(B), 1899A(26), Oct. 22, 1986, 100 Stat. 2872-2878, 2882,

2959; Pub. L. 100-647, title I, § 1018(t)(4)(D)-(F), Nov. 10, 1988, 102 Stat. 3588; Pub. L. 101-239, title VII, § 7303(a), Dec. 19, 1989, 103 Stat. 2352; Pub. L. 101-508, title XI, § 11801(c)(9)(H), Nov. 5, 1990, 104 Stat. 1388-526; Pub. L. 104-188, title I, §§ 1311(b)(3), 1316(d)(3), 1616(b)(13), 1704(t)(50), Aug. 20, 1996, 110 Stat. 1784, 1786, 1857, 1890; Pub. L. 105-34, title IX, § 968(a), Aug. 5, 1997, 111 Stat. 895; Pub. L. 117-328, div. T, title I, § 114(a), (b), Dec. 29, 2022, 136 Stat. 5296.)

#### AMENDMENT OF SECTION

*Pub. L. 117-328, div. T, title I, § 114, Dec. 29, 2022, 136 Stat. 5296, provided that, applicable to sales after Dec. 31, 2027, this section is amended:*

*(a) in subsection (c)(1)(A), by striking “domestic C corporation” and inserting “domestic corporation”; and*

*(b) by adding at the end the following new subsection:*

*(h) Application of section to sale of stock in S corporation*

*In the case of the sale of qualified securities of an S corporation, the election under subsection (a) may be made with respect to not more than 10 percent of the amount realized on such sale for purposes of determining the amount of gain not recognized and the extent to which (if at all) the amount realized on such sale exceeds the cost of qualified replacement property. The portion of adjusted basis that is properly allocable to the portion of the amount realized with respect to which the election is made under this subsection shall be taken into account for purposes of the preceding sentence.*

*See 2022 Amendment notes below.*

#### Editorial Notes

##### REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (c)(1)(B)(ii), is the date of enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

The Tax Reform Act of 1986, referred to in subsec. (c)(4)(A), is Pub. L. 99-514, which was approved Oct. 22, 1986.

##### AMENDMENTS

2022—Subsec. (c)(1)(A). Pub. L. 117-328, § 114(a), substituted “domestic corporation” for “domestic C corporation”.

Subsec. (h). Pub. L. 117-328, § 114(b), added subsec. (h).

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

1996—Subsec. (c)(1)(A). Pub. L. 104-188, § 1316(d)(3), substituted “domestic C corporation” for “domestic corporation”.

Subsec. (c)(1)(B)(ii). Pub. L. 104-188, § 1704(t)(50), provided that section 11801(c)(9)(H) of Pub. L. 101-508 shall be applied as if “section 1042(c)(1)(B)” appeared instead of “section 1042(c)(2)(B)”. See 1990 Amendment note below.

Subsec. (c)(4)(A)(i). Pub. L. 104-188, § 1311(b)(3), substituted “section 1362(d)(3)(C)” for “section 1362(d)(3)(D)”.

Subsec. (c)(4)(B)(i)(I). Pub. L. 104-188, § 1616(b)(13), struck out “or 593” after “section 581”.

1990—Subsec. (c)(1)(B)(ii). Pub. L. 101-508, which directed the amendment of subsec. (c)(2)(B)(ii) by substituting “section 83, 422, or 423 applied (or to which section 422 or 424 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) applied)” for “section 83, 422, 422A, 423, or 424 applies”, was executed to subsec. (c)(1)(B)(ii). See 1996 Amendment note above.

1989—Subsec. (b)(4). Pub. L. 101-239 added par. (4).

1988—Subsec. (b)(3), (4). Pub. L. 100-647, § 1018(t)(4)(F), made technical correction to Pub. L. 99-514, § 1854(a)(3)(B), see 1986 Amendment notes below.

Subsec. (c)(4)(A). Pub. L. 100-647, § 1018(t)(4)(D), inserted “(as in effect immediately before the Tax Reform Act of 1986)” after “section 954(c)(3)” in last sentence.

Subsec. (c)(4)(B)(i). Pub. L. 100-647, § 1018(t)(4)(E), substituted “replacement period” for “placement period”.

1986—Pub. L. 99-514, § 1854(a)(11), which directed that “employee” be inserted before “stock” in section catchline was executed by making the insertion before “stock” the second time that term appears as the probable intent of Congress.

Subsec. (a). Pub. L. 99-514, § 1854(a)(1), substituted “the taxpayer or executor elects in such form as the Secretary may prescribe” for “the taxpayer elects” in par. (1) and inserted “which would be recognized as long-term capital gain” in concluding provisions.

Subsec. (b)(2). Pub. L. 99-514, § 1854(a)(2)(A), substituted “Plan must hold” for “Employees must own” in heading and amended text generally. Prior to amendment, par. (2) read as follows: “The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the total value of the employer securities (within the meaning of section 409(l)) outstanding as of such time.”

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

Subsec. (b)(3)(B). Pub. L. 99-514, § 1854(f)(3)(B), amended subpar. (B) similar to amendment by section 1854(a)(9)(B) of Pub. L. 99-514, inserting reference to section 4979A.

Pub. L. 99-514, § 1854(a)(9)(B), substituted “sections 4978 and 4979A” for “section 4978(a)”.

Subsec. (b)(4). Pub. L. 99-514, § 1854(a)(3)(B), as amended by Pub. L. 100-647, § 1018(t)(4)(F), redesignated par. (4) as (3).

Subsec. (c). Pub. L. 99-514, § 1899A(26), substituted “this section—” for “this section.—” in introductory provision.

Subsec. (c)(1). Pub. L. 99-514, § 1854(a)(4), substituted “stock outstanding that is” for “securities outstanding that are” in subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “at the time of the sale described in subsection (a)(1), have been held by the taxpayer for more than 1 year, and”.

Subsec. (c)(4). Pub. L. 99-514, § 1854(a)(5)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The term ‘qualified replacement property’ means any securities (as defined in section 165(g)(2)) issued by a domestic corporation which does not, for the taxable year in which such stock is issued, have passive investment income (as defined in section 1362(d)(3)(D)) that exceeds 25 percent of the gross receipts of such corporation for such taxable year.”

Subsec. (c)(5). Pub. L. 99-514, § 1854(a)(10), substituted “sold” for “acquired” in heading, and in text substituted “sale of securities” for “acquisition of securities” and inserted “to an employee stock ownership plan or eligible worker-owned cooperative”.

Subsec. (c)(7). Pub. L. 99-514, § 1854(a)(6)(A), added par. (7).

Subsec. (d). Pub. L. 99-514, § 1854(a)(7), inserted last sentence.

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

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117-328, div. T, title I, § 114(c), Dec. 29, 2022, 136 Stat. 5296, provided that: “The amendments made by this section [amending this section] shall apply to sales after December 31, 2027.”

## EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title IX, §968(b), Aug. 5, 1997, 111 Stat. 896, provided that: "The amendment made by this section [amending this section] shall apply to sales after December 31, 1997."

## EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1316(d)(3) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104-188, set out as a note under section 170 of this title.

Amendment by section 1311(b)(3) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104-188, set out as a note under section 641 of this title.

Amendment by section 1616(b)(13) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104-188, set out as a note under section 593 of this title.

## EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, §7303(b), Dec. 19, 1989, 103 Stat. 2352, provided that: "The amendment made by this section [amending this section] shall apply to sales after July 10, 1989."

## EFFECTIVE DATE OF 1988 AMENDMENT

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

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1854(a)(1), (2)(A), (4), (5)(A), (7), (10), (11) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Amendment by section 1854(a)(3)(B) of Pub. L. 99-514 applicable to sales of securities after Oct. 22, 1986, except that a taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment by section 1854(a)(3)(B) of Pub. L. 99-514) apply to sales before Oct. 22, 1986, as if section 1042(b)(3) included the last sentence of section 409(n)(1) of this title (as added by section 1854(a)(3)(A) of Pub. L. 99-514), see section 1854(a)(3)(C) of Pub. L. 99-514, as amended, set out as a note under section 409 of this title.

Pub. L. 99-514, title XVIII, §1854(a)(6)(B)-(D), Oct. 22, 1986, 100 Stat. 2876, provided that:

"(B) The amendment made by subparagraph (A) [amending this section] shall apply to sales after March 28, 1985, except that such amendment shall not apply to sales made before July 1, 1985, if made pursuant to a binding contract in effect on March 28, 1985, and at all times thereafter.

"(C) The amendment made by subparagraph (A) shall not apply to any sale occurring on December 20, 1985, with respect to which—

"(i) a commitment letter was issued by a bank on October 31, 1984, and

"(ii) a final purchase agreement was entered into on November 5, 1985.

"(D) In the case of a sale on September 27, 1985, with respect to which a preliminary commitment letter was issued by a bank on April 10, 1985, and with respect to which a commitment letter was issued by a bank on June 28, 1985, the amendment made by subparagraph (A) shall apply but such sale shall be treated as having occurred on September 27, 1986."

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."

Amendment by section 1854(a)(9)(B) of Pub. L. 99-514 applicable to sales of securities after Oct. 22, 1986, see section 1854(a)(9)(D) of Pub. L. 99-514, set out as an Effective Date note under section 4979A of this title.

Amendment by section 1854(f)(3)(B) of Pub. L. 99-514 effective Oct. 22, 1986, see section 1854(f)(4)(A) of Pub. L. 99-514, set out as a note under section 409 of this title.

## EFFECTIVE DATE

Pub. L. 98-369, div. A, title V, §541(c), July 18, 1984, 98 Stat. 890, provided that: "The amendments made by this section [enacting this section and amending sections 1016 and 1223 of this title] shall apply to sales of securities in taxable years beginning after the date of enactment of this Act [July 18, 1984]."

## SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

OWNERSHIP OF STOCK OPTIONS AS OWNERSHIP OF  
STOCK; EMPLOYEE OWNERSHIP OF STOCK AFTER SALE

Pub. L. 99-514, title XVIII, §1854(a)(2)(B), Oct. 22, 1986, 100 Stat. 2873, provided that:

"(i) The requirement that section 1042(b) of the Internal Revenue Code of 1954 [now 1986] shall be applied with regard to section 318(a)(4) of such Code shall apply to sales after May 6, 1986.

"(ii) In the case of sales after July 18, 1984, and before the date of the enactment of this Act [Oct. 22, 1986], paragraph (2) of section 1042(b) of such Code shall apply as if it read as follows:

"(2) EMPLOYEES MUST OWN 30 PERCENT OF STOCK AFTER SALE.—The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the employer securities or 30 percent of the value of employer securities (within the meaning of section 409(1)) outstanding at the time of sale."

## REPLACEMENT PERIOD FOR CERTAIN SECURITIES

Pub. L. 99-514, title XVIII, §1854(a)(5)(B), Oct. 22, 1986, 100 Stat. 2875, provided that: "If—

"(i) before January 1, 1987, the taxpayer acquired any security (as defined in section 165(g)(2) of the Internal Revenue Code of 1954 [now 1986]) issued by a domestic corporation or by any State or political subdivision thereof,

"(ii) the taxpayer treated such security as qualified replacement property for purposes of section 1042 of such Code, and

"(iii) such property does not meet the requirements of section 1042(c)(4) of such Code (as amended by subparagraph (A)),

then, with respect to so much of any gain which the taxpayer treated as not recognized under section 1042(a) by reason of the acquisition of such property, the replacement period for purposes of such section shall not expire before January 1, 1987."

**Executive Documents**

## LINE ITEM VETO

Pub. L. 105-34, title IX, §968, Aug. 5, 1997, 111 Stat. 895, amending this section and enacting provisions set out as a note above, was subject to line item veto by the President, Cancellation No. 97-2, signed Aug. 11, 1997, 62 F.R. 43267, Aug. 12, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

**§ 1043. Sale of property to comply with conflict-of-interest requirements****(a) Nonrecognition of gain**

If an eligible person sells any property pursuant to a certificate of divestiture, at the election of the taxpayer, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost (to the extent not previously taken into account under this subsection) of any permitted property purchased by the taxpayer during the 60-day period beginning on the date of such sale.

**(b) Definitions**

For purposes of this section—

**(1) Eligible person**

The term “eligible person” means—

(A) an officer or employee of the executive branch, or a judicial officer, of the Federal Government, but does not mean a special Government employee as defined in section 202 of title 18, United States Code, and

(B) any spouse or minor or dependent child whose ownership of any property is attributable under any statute, regulation, rule, judicial canon, or executive order referred to in paragraph (2) to a person referred to in subparagraph (A).

**(2) Certificate of divestiture**

The term “certificate of divestiture” means any written determination—

(A) that states that divestiture of specific property is reasonably necessary to comply with any Federal conflict of interest statute, regulation, rule, judicial canon, or executive order (including section 208 of title 18, United States Code), or requested by a congressional committee as a condition of confirmation,

(B) that has been issued by the President or the Director of the Office of Government Ethics, in the case of executive branch officers or employees, or by the Judicial Conference of the United States (or its designee), in the case of judicial officers, and

(C) that identifies the specific property to be divested.

**(3) Permitted property**

The term “permitted property” means any obligation of the United States or any diversified investment fund approved by regulations issued by the Office of Government Ethics.

**(4) Purchase**

The taxpayer shall be considered to have purchased any permitted property if, but for subsection (c), the unadjusted basis of such property would be its cost within the meaning of section 1012.

**(5) Special rule for trusts**

For purposes of this section, the trustee of a trust shall be treated as an eligible person with respect to property which is held in the trust if—

(A) any person referred to in paragraph (1)(A) has a beneficial interest in the principal or income of the trust, or

(B) any person referred to in paragraph (1)(B) has a beneficial interest in the principal or income of the trust and such interest is attributable under any statute, regulation, rule, judicial canon, or executive order referred to in paragraph (2) to a person referred to in paragraph (1)(A).

**(6) Judicial officer**

The term “judicial officer” means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Court of Federal Claims, Court of Appeals for Veterans Claims, United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior.

**(c) Basis adjustments**

If gain from the sale of any property is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any permitted property which is purchased by the taxpayer during the 60-day period described in subsection (a).

(Added Pub. L. 101-194, title V, §502(a), Nov. 30, 1989, 103 Stat. 1754; amended Pub. L. 101-280, §6(a)(1), May 4, 1990, 104 Stat. 160; Pub. L. 101-508, title XI, §11703(a)(1), Nov. 5, 1990, 104 Stat. 1388-516; Pub. L. 109-432, div. A, title IV, §418(a), (b), Dec. 20, 2006, 120 Stat. 2966.)

**Editorial Notes**

## AMENDMENTS

2006—Subsec. (b)(1)(A). Pub. L. 109-432, §418(a)(1)(A), inserted “, or a judicial officer,” after “executive branch”.

Subsec. (b)(1)(B), (2)(A). Pub. L. 109-432, §418(a)(1)(B), (2)(A), inserted “judicial canon,” after “rule.”

Subsec. (b)(2)(B). Pub. L. 109-432, §418(a)(2)(B), inserted “in the case of executive branch officers or employees, or by the Judicial Conference of the United States (or its designee), in the case of judicial officers,” after “Ethics;”.

Subsec. (b)(5)(B). Pub. L. 109-432, §418(a)(3), inserted “judicial canon,” after “rule.”

Subsec. (b)(6). Pub. L. 109-432, §418(b), added par. (6). 1990—Subsec. (a). Pub. L. 101-508 substituted “to the extent not previously taken into account under this subsection” for “reduced by any basis adjustment under subsection (c) attributable to a prior sale”.

Subsec. (b)(5). Pub. L. 101-280 added par. (5).

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title IV, §418(c), Dec. 20, 2006, 120 Stat. 2967, provided that: “The amendments made