

TITLE 26--INTERNAL REVENUE CODE

Subtitle A--Income Taxes

CHAPTER 1--NORMAL TAXES AND SURTAXES

Subchapter O--Gain or Loss on Disposition of Property

PART III--COMMON NONTAXABLE EXCHANGES

Sec. 1031. Exchange of property held for productive use or investment

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

(1) In general

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

(2) Exception

This subsection shall not apply to any exchange of--

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

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

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

For purposes of this subsection, any property received by the taxpayer shall be treated as property which is not like-kind property if--

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

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

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

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

(b) Gain from exchanges not solely in kind

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

(c) Loss from exchanges not solely in kind

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

(d) Basis

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

(e) Exchanges of livestock of different sexes

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

(f) Special rules for exchanges between related persons

(1) In general

If--

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

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

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

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

(2) Certain dispositions not taken into account

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

(A) after the earlier of the death of the taxpayer or the death of the related person,  
(B) in a compulsory or involuntary conversion (within the meaning of section 1033) if the exchange occurred before the threat or imminence of such conversion, or  
(C) with respect to which it is established to the satisfaction of the Secretary that neither the exchange nor such disposition had as one of its principal purposes the avoidance of Federal income tax.

(3) Related person

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

(4) Treatment of certain transactions

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

(g) Special rule where substantial diminution of risk

(1) In general

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

(2) Property to which subsection applies

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

- (A) the holding of a put with respect to such property,
- (B) the holding by another person of a right to acquire such property, or
- (C) a short sale or any other transaction.

(h) Special rules for foreign real and personal property

For purposes of this section--

(1) Real property

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

(2) Personal property

(A) In general

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

(B) Predominant use

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

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

(C) Property held for less than 2 years

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

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

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

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

(Aug. 16, 1954, ch. 736, 68A Stat. 302; Pub. L. 85-866, title I, Sec. 44, Sept. 2, 1958, 72 Stat. 1641; Pub. L. 86-346, title II, Sec. 201(c)-(e), Sept. 22, 1959, 73 Stat. 624; Pub. L. 91-172, title II, Sec. 212(c)(1), Dec. 30, 1969, 83 Stat. 571; Pub. L. 98-369, div. A, title I, Sec. 77(a), July 18, 1984, 98 Stat. 595; Pub. L. 99-514, title XVIII, Sec. 1805(d), Oct. 22, 1986, 100 Stat. 2810; Pub. L. 101-239, title VII, Sec. 7601(a), Dec. 19, 1989, 103 Stat. 2370; Pub. L. 101-508, title XI, Secs. 11701(h), 11703(d)(1), Nov. 5, 1990, 104 Stat. 1388-508, 1388-517; Pub. L. 105-34, title X, Sec. 1052(a), Aug. 5, 1997, 111 Stat. 940; Pub. L. 106-36, title III, Sec. 3001(c)(2), June 25, 1999, 113 Stat. 183.)

#### Amendments

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

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

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

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

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

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

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

securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment", and added pars. (2) and (3).

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

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

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

#### Effective Date of 1999 Amendment

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

#### Effective Date of 1997 Amendment

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

``(1) In general.--The amendment made by this section [amending this section] shall apply to transfers after June 8, 1997, in taxable years ending after such date.

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

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

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

#### Effective Date of 1990 Amendment

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

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

#### Effective Date of 1989 Amendment

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

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

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

#### Effective Date of 1986 Amendment

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

#### Effective Date of 1984 Amendment

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

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

“(2) Binding contract exception for transfer of partnership interests.--Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by subsection (a)) shall not apply in the case of any exchange pursuant to a binding contract in effect on March 1, 1984, and at all times thereafter before the exchange.

“(3) Requirement that property be identified within 45 days and that exchange be completed within 180 days.--Paragraph (3) of section 1031(a) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall apply--

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

“(B) to transfers on or before such date of enactment if the property to be received in the exchange is not received before January 1, 1987. In the case of any transfer on or before the date of the enactment of this Act which the taxpayer treated as part of a like-kind exchange, the period for assessing any deficiency of tax attributable to the amendment made by subsection (a) [amending this section] shall not expire before January 1, 1988.

“(4) Special rule where property identified in binding contract.--If the property to be received in the exchange is identified in a binding contract in effect on June 13, 1984, and at all times thereafter before the transfer, paragraph (3) shall be applied--

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

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

“(5) Special rule for like-kind exchange of partnership interests.--Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall not apply to any exchange of an interest as general partner pursuant to a plan of

reorganization of ownership interest under a contract which took effect on March 29, 1984, and which was executed on or before March 31, 1984, but only if all the exchanges contemplated by the reorganization plan are completed on or before December 31, 1984."

#### Effective Date of 1969 Amendment

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

#### Effective Date of 1959 Amendment

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

#### Effective Date of 1958 Amendment

Amendment by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

#### Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [Secs. 1101-1147 and 1171-1177] or title XVIII [Secs. 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.

#### Section Referred to in Other Sections

This section is referred to in sections 83, 197, 424, 453, 454, 704, 857, 1035, 1036, 1037, 1060, 1245, 1250, 2032A, 2057 of this title.