

## **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 II - BASIS RULES OF GENERAL APPLICATION**

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

#### **(a) In general**

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

- (1) the fair market value of the property at the date of the decedent's death,
- (2) in the case of an election under either section 2032 or section 811(j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections,
- (3) in the case of an election under section 2032A, its value determined under such section, or
- (4) to the extent of the applicability of the exclusion described in section 2031 (c), the basis in the hands of the decedent.

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

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

- (1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;
- (2) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;
- (3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;
- (4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;
- (5) In the case of decedents dying after August 26, 1937, and before January 1, 2005, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;
- (6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;
- (7) In the case of decedents dying after October 21, 1942, and on or before December 31, 1947, such part of any property, representing the surviving spouse's one-half share of property held by a

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decedent and the surviving spouse under the community property laws of any State, or possession of the United States or any foreign country, as was included in determining the value of the gross estate of the decedent, if a tax under chapter 3 of the Internal Revenue Code of 1939 was payable on the transfer of the net estate of the decedent. In such case, nothing in this paragraph shall reduce the basis below that which would exist if the Revenue Act of 1948 had not been enacted;

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

**(9)** In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to—

**(A)** annuities described in section 72;

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

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

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

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

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

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

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

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

**(1) In general**

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

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

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

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

**(2) Definitions**

For purposes of paragraph (1)—

**(A) Appreciated property**

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

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

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

**(f) Termination**

This section shall not apply with respect to decedents dying after December 31, 2009.

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

**Amendment of Section**

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

**References in Text**

Section 811 of the Internal Revenue Code of 1939, referred to in subsecs. (a)(2) and (b)(6), (8), was classified to section 811 of former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851 (e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

Chapter 3 of the Internal Revenue Code of 1939, referred to in subsec. (b)(7), was comprised of sections 800 to 951 of former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See also section 7851 (a)(2)(A) of this title for applicability of chapter 3 of former title 26. See also section 7851 (e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

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

The Internal Revenue Code of 1939, referred to in subsec. (b)(9), is act Feb. 10, 1939, ch. 2, 53 Stat. 1, as amended. Prior to the enactment of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the 1939 Code was classified to former Title 26, Internal Revenue Code. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title.

**Amendments**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Effective Date of 2004 Amendment**

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

### **Termination Date of 2001 Amendment**

Amendment by Pub. L. 107–16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 1 of this title.

### **Effective Date of 1997 Amendment**

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

### **Effective Date of 1983 Amendment**

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

### **Effective Date of 1981 Amendment**

Section 425(b) of Pub. L. 97–34 provided that: “The amendment made by subsection (a) [amending this section] shall apply to property acquired after the date of the enactment of this Act [Aug. 13, 1981] by decedents dying after December 31, 1981.”

### **Effective Date of 1980 Amendments and Revival of Prior Law**

Amendment by Pub. L. 96–223 (repealing section 2005(a)(1) of Pub. L. 94–455 and the amendment made thereby, which had amended this section) applicable in respect of decedents dying after Dec. 31, 1976, and except for certain elections, this title to be applied and administered as if those repealed provisions had not been enacted, see section 401(b), (e) of Pub. L. 96–223, set out as a note under section 1023 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as an Effective Date of 1980 Amendment note under section 32 of this title.

### **Effective Date of 1978 Amendment**

Section 702(c)(10) of Pub. L. 95–600 provided that: “The amendments made by this subsection [amending this section and sections 1001, 1223, and 2614 of this title] shall take effect as if included in the amendments and additions made by, and the appropriate provisions of the Tax Reform Act of 1976 [Pub. L. 94–455, Oct. 4, 1976, 90 Stat 1525].”

### **Effective Date of 1976 Amendment**

Amendment by section 1901(c)(8) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 2005(a)(1) of Pub. L. 94–455 applicable in respect of decedents dying after Dec. 31, 1976, see section 2005(f) of Pub. L. 94–455, set out as an Effective Date note under section 1015 of this title.

### **Effective Date of 1971 Amendment**

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1972, see section 507 of Pub. L. 92–178, set out as a note under section 991 of this title.

### **Effective Date of 1958 Amendment**

Amendment by Pub. L. 85–320 applicable with respect to taxable years ending after Dec. 31, 1956, but only in the case of employees dying after such date, see section 3 of Pub. L. 85–320, set out as a note under section 421 of this title.

### **Repeals**

Pub. L. 94–455, § 2005(a)(1), cited as a credit to this section, and the amendment made thereby, were repealed by Pub. L. 96–223, title IV, § 401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 2005 (a)(1). See Effective Date of 1980 Amendments and Revival of Prior Law note above.

### **Election of Carryover Basis Rules by Certain Estates**

Pub. L. 96–223, title IV, § 401(d), Apr. 2, 1980, 94 Stat. 300, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Notwithstanding any other provision of law, in the case of a decedent dying after December 31, 1976, and before November 7, 1978, the executor (within the meaning of section 2203 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) of such decedent’s estate may irrevocably elect, within 120 days following the date of enactment of this Act [Apr. 2, 1980] and in such manner as the Secretary of the Treasury or his delegate shall prescribe, to have the basis of all property acquired from or passing from the decedent (within the meaning of section 1014(b) of the Internal Revenue Code of 1986) determined for all purposes under such Code as though the provisions of section 2005 of the Tax Reform Act of 1976 [Pub. L. 94–455] (as amended by the provisions of section 702(c) of the Revenue Act of 1978 [Pub. L. 95–600] applied to such property acquired or passing from such decedent.”