

IRC § 1022. Treatment of property acquired from a decedent dying after December 31, 2009

(a) In general.--Except as otherwise provided in this section--

(1) property acquired from a decedent dying after December 31, 2009, shall be treated for purposes of this subtitle as transferred by gift, and

(2) the basis of the person acquiring property from such a decedent shall be the lesser of--

(A) the adjusted basis of the decedent, or

(B) the fair market value of the property at the date of the decedent's death.

(b) Basis increase for certain property.--

(1) In general.--In the case of property to which this subsection applies, the basis of such property under subsection (a) shall be increased by its basis increase under this subsection.

(2) Basis increase.--For purposes of this subsection--

(A) In general.--The basis increase under this subsection for any property is the portion of the aggregate basis increase which is allocated to the property pursuant to this section.

(B) Aggregate basis increase.--In the case of any estate, the aggregate basis increase under this subsection is \$1,300,000.

(C) Limit increased by unused built-in losses and loss carryovers.--The limitation under subparagraph (B) shall be increased by--

(i) the sum of the amount of any capital loss carryover under [section 1212\(b\)](#), and the amount of any net operating loss carryover under [section 172](#), which would (but for the decedent's death) be carried from the decedent's last taxable year to a later taxable year of the decedent, plus

(ii) the sum of the amount of any losses that would have been allowable under [section 165](#) if the property acquired from the decedent had been sold at fair market value immediately before the decedent's death.

(3) Decedent nonresidents who are not citizens of the United States.--In the case of a decedent nonresident not a citizen of the United States--

(A) paragraph (2)(B) shall be applied by substituting “\$60,000” for “\$1,300,000”, and

(B) paragraph (2)(C) shall not apply.

(c) Additional basis increase for property acquired by surviving spouse.--

(1) In general.--In the case of property to which this subsection applies and which is qualified spousal property, the basis of such property under subsection (a) (as increased under subsection (b)) shall be increased by its spousal property basis increase.

(2) Spousal property basis increase.--For purposes of this subsection--

(A) In general.--The spousal property basis increase for property referred to in paragraph (1) is the portion of the aggregate spousal property basis increase which is allocated to the property pursuant to this section.

(B) Aggregate spousal property basis increase.--In the case of any estate, the aggregate spousal property basis increase is \$3,000,000.

(3) Qualified spousal property.--For purposes of this subsection, the term “qualified spousal property” means--

(A) outright transfer property, and

(B) qualified terminable interest property.

(4) Outright transfer property.--For purposes of this subsection--

(A) In general.--The term “outright transfer property” means any interest in property acquired from the decedent by the decedent's surviving spouse.

(B) Exception.--Subparagraph (A) shall not apply where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail--

(i)(I) if an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse), and

(II) if by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving

spouse, or

(ii) if such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For purposes of this subparagraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

(C) Interest of spouse conditional on survival for limited period.--For purposes of this paragraph, an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail on the death of such spouse if--

(i) such death will cause a termination or failure of such interest only if it occurs within a period not exceeding 6 months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event, and

(ii) such termination or failure does not in fact occur.

(5) Qualified terminable interest property.--For purposes of this subsection--

(A) In general.--The term "qualified terminable interest property" means property--

(i) which passes from the decedent, and

(ii) in which the surviving spouse has a qualifying income interest for life.

(B) Qualifying income interest for life.--The surviving spouse has a qualifying income interest for life if--

(i) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and

(ii) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Clause (ii) shall not apply to a power exercisable only at or after the death of the surviving spouse. To the extent provided in regulations, an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

(C) Property includes interest therein.--The term “property” includes an interest in property.

(D) Specific portion treated as separate property.--A specific portion of property shall be treated as separate property. For purposes of the preceding sentence, the term ‘specific portion’ only includes a portion determined on a fractional or percentage basis.

(d) Definitions and special rules for application of subsections (b) and (c)--

(1) Property to which subsections (b) and (c) apply--

(A) In general.--The basis of property acquired from a decedent may be increased under subsection (b) or (c) only if the property was owned by the decedent at the time of death.

(B) Rules relating to ownership.--

(i) Jointly held property.--In the case of property which was owned by the decedent and another person as joint tenants with right of survivorship or tenants by the entirety--

(I) if the only such other person is the surviving spouse, the decedent shall be treated as the owner of only 50 percent of the property,

(II) in any case (to which subclause (I) does not apply) in which the decedent furnished consideration for the acquisition of the property, the decedent shall be treated as the owner to the extent of the portion of the property which is proportionate to such consideration, and

(III) in any case (to which subclause (I) does not apply) in which the property has been acquired by gift, bequest, devise, or inheritance by the decedent and any other person as joint tenants with right of survivorship and their interests are not otherwise specified or fixed by law, the decedent shall be treated as the owner to the extent of the value of a fractional part to be determined by dividing the value of the property by the number of joint tenants with right of survivorship.

(ii) Revocable trusts.--The decedent shall be treated as owning property transferred by the decedent during life to a qualified revocable trust (as defined in [section 645\(b\)\(1\)](#)).

(iii) Powers of appointment.--The decedent shall not be treated as owning any property by reason of holding a power of appointment with respect to such property.

(iv) Community property.--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 shall be treated for purposes of this section as owned by, and acquired from, the decedent if at least one-half of the whole of the community interest in such property is treated as owned by, and acquired

from, the decedent without regard to this clause.

(C) Property acquired by decedent by gift within 3 years of death.--

(i) In general.--Subsections (b) and (c) shall not apply to property acquired by the decedent by gift or by inter vivos transfer for less than adequate and full consideration in money or money's worth during the 3-year period ending on the date of the decedent's death.

(ii) Exception for certain gifts from spouse.--Clause (i) shall not apply to property acquired by the decedent from the decedent's spouse unless, during such 3-year period, such spouse acquired the property in whole or in part by gift or by inter vivos transfer for less than adequate and full consideration in money or money's worth.

(D) Stock of certain entities.--Subsections (b) and (c) shall not apply to--

(i) stock or securities of a foreign personal holding company,

(ii) stock of a DISC or former DISC,

(iii) stock of a foreign investment company, or

(iv) stock of a passive foreign investment company unless such company is a qualified electing fund (as defined in [section 1295](#)) with respect to the decedent.

(2) Fair market value limitation.--The adjustments under subsections (b) and (c) shall not increase the basis of any interest in property acquired from the decedent above its fair market value in the hands of the decedent as of the date of the decedent's death.

(3) Allocation rules.--

(A) In general.--The executor shall allocate the adjustments under subsections (b) and (c) on the return required by [section 6018](#).

(B) Changes in allocation.--Any allocation made pursuant to subparagraph (A) may be changed only as provided by the Secretary.

(4) Inflation adjustment of basis adjustment amounts.--

(A) In general.--In the case of decedents dying in a calendar year after 2010, the \$1,300,000, \$60,000, and \$3,000,000 dollar amounts in subsections (b) and (c)(2)(B) shall each be increased

by an amount equal to the product of--

(i) such dollar amount, and

(ii) the cost-of-living adjustment determined under [section 1\(f\)\(3\)](#) for such calendar year, determined by substituting “2009” for “1992” in subparagraph (B) thereof.

(B) Rounding.--If any increase determined under subparagraph (A) is not a multiple of--

(i) \$100,000 in the case of the \$1,300,000 amount,

(ii) \$5,000 in the case of the \$60,000 amount, and

(iii) \$250,000 in the case of the \$3,000,000 amount,

such increase shall be rounded to the next lowest multiple thereof.

(e) Property acquired from the decedent.--For purposes of this section, the following property shall be considered to have been acquired 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--

(A) to a qualified revocable trust (as defined in [section 645\(b\)\(1\)](#)), or

(B) to any other trust with respect to which the decedent reserved the right to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust.

(3) Any other property passing from the decedent by reason of death to the extent that such property passed without consideration.

(f) Coordination with [section 691](#).--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](#).

(g) Certain liabilities disregarded.--

(1) **In general.**--In determining whether gain is recognized on the acquisition of property--

(A) from a decedent by a decedent's estate or any beneficiary other than a tax-exempt beneficiary, and

(B) from the decedent's estate by any beneficiary other than a tax-exempt beneficiary,

and in determining the adjusted basis of such property, liabilities in excess of basis shall be disregarded.

(2) Tax-exempt beneficiary.--For purposes of paragraph (1), the term “tax-exempt beneficiary” means--

(A) the United States, any State or political subdivision thereof, any possession of the United States, any Indian tribal government (within the meaning of [section 7871](#)), or any agency or instrumentality of any of the foregoing,

(B) an organization (other than a cooperative described in [section 521](#)) which is exempt from tax imposed by chapter 1,

(C) any foreign person or entity (within the meaning of [section 168\(h\)\(2\)](#)), and

(D) to the extent provided in regulations, any person to whom property is transferred for the principal purpose of tax avoidance.

(h) Regulations.--The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

CREDIT(S)

(Added [Pub.L. 107-16, Title V, § 542\(a\)](#), June 7, 2001, 115 Stat. 76.)

TERMINATION

<For provisions directing that all provisions of and amendments made by [Pub.L. 107-16](#), not apply to years after 2010, see Sunset Provisions set out under this section.>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2001 Acts. [House Conference Report No. 107-84](#), see 2001 U.S. Code Cong. and Adm. News, p. 46.

Effective and Applicability Provisions

2001 Acts. Amendment by section 542(a) of Pub.L. 107-16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub.L. 107-16, set out as a note under 26 U.S.C.A. § 121. See also Sunset Provisions note set out under this section.

Sunset Provisions

All provisions of, and amendments made by, the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub.L. 107-16, June 7, 2001, 115 Stat. 38, not applicable to taxable, plan, or limitation years beginning after December 31, 2010, or to estates of decedents dying, gifts made, or generation skipping transfers, after December 31, 2010, and the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to be applied and administered to those years, estates, gifts, and transfers as if the provisions and amendments of that Act had never been enacted, see section 901 of Pub.L. 107-16, set out as a note under [26 U.S.C.A. § 1](#).

Prior Provisions

A prior section 1022, added Pub.L. 88-272, Title II, § 225(j)(1), Feb. 26, 1964, 78 Stat. 92, which related to the increase in basis with respect to certain foreign personal holding company stock or securities, was repealed by Pub.L. 94-455, Title XIX, § 1901(a)(126)(A), Oct. 4, 1976, 90 Stat. 1784, applicable with respect to stock or securities acquired from a decedent dying after the date of the enactment of this Act [Oct. 4, 1976].

Another prior § 1022, Act Aug. 16, 1954, c. 736, 68A Stat. 302, relating to cross references, was renumbered § 1023.