

which satisfies both (1) the specific description in the Code of an excepted exchange, and (2) the underlying purpose for which such exchange is excepted from the general rule. The exchange must be germane to, and a necessary incident of, the investment or enterprise in hand. The relationship of the exchange to the venture or enterprise is always material, and the surrounding facts and circumstances must be shown. As elsewhere, the taxpayer claiming the benefit of the exception must show himself within the exception.

(c) *Certain exceptions to general rule.* Exceptions to the general rule are made, for example, by sections 351(a), 354, 361(a), 371(a)(1), 371(b)(1), 721, 1031, 1035 and 1036. These sections describe certain specific exchanges of property in which at the time of the exchange particular differences exist between the property parted with and the property acquired, but such differences are more formal than substantial. As to these, the Code provides that such differences shall not be deemed controlling, and that gain or loss shall not be recognized at the time of the exchange. The underlying assumption of these exceptions is that the new property is substantially a continuation of the old investment still unliquidated; and, in the case of reorganizations, that the new enterprise, the new corporate structure, and the new property are substantially continuations of the old still unliquidated.

(d) *Exchange.* Ordinarily, to constitute an exchange, the transaction must be a reciprocal transfer of property, as distinguished from a transfer of property for a money consideration only.

BASIS RULES OF GENERAL APPLICATION

§ 1.1011-1 Adjusted basis.

The adjusted basis for determining the gain or loss from the sale or other disposition of property is the cost or other basis prescribed in section 1012 or other applicable provisions of subtitle A of the code, adjusted to the extent provided in sections 1016, 1017, and 1018 or as otherwise specifically provided for under applicable provisions of internal revenue laws.

§ 1.1011-2 Bargain sale to a charitable organization.

(a) *In general.* (1) If for the taxable year a charitable contributions deduction is allowable under section 170 by reason of a sale or exchange of property, the taxpayer's adjusted basis of such property for purposes of determining gain from such sale or exchange must be computed as provided in section 1011(b) and paragraph (b) of this section. If after applying the provisions of section 170 for the taxable year, including the percentage limitations of section 170(b), no deduction is allowable under that section by reason of the sale or exchange of the property, section 1011(b) does not apply and the adjusted basis of the property is not required to be apportioned pursuant to paragraph (b) of this section. In such case the entire adjusted basis of the property is to be taken into account in determining gain from the sale or exchange, as provided in § 1.1011-1(e). In ascertaining whether or not a charitable contributions deduction is allowable under section 170 for the taxable year for such purposes, that section is to be applied without regard to this section and the amount by which the contributed portion of the property must be reduced under section 170(e)(1) is the amount determined by taking into account the amount of gain which would have been ordinary income or long-term capital gain if the contributed portion of the property had been sold by the donor at its fair market value at the time of the sale or exchange.

(2) If in the taxable year there is a sale or exchange of property which gives rise to a charitable contribution which is carried over under section 170(b)(1)(D)(ii) or section 170(d) to a subsequent taxable year or is postponed under section 170(a)(3) to a subsequent taxable year, section 1011(b) and paragraph (b) of this section must be applied for purposes of apportioning the adjusted basis of the property for the year of the sale or exchange, whether or not such contribution is allowable as a deduction under section 170 in such subsequent year.

(3) If property is transferred subject to an indebtedness, the amount of the indebtedness must be treated as an

amount realized for purposes of determining whether there is a sale or exchange to which section 1011(b) and this section apply, even though the transferee does not agree to assume or pay the indebtedness.

(4)(i) Section 1011(b) and this section apply where property is sold or exchanged in return for an obligation to pay an annuity and a charitable contributions deduction is allowable under section 170 by reason of such sale or exchange.

(ii) If in such case the annuity received in exchange for the property is nonassignable, or is assignable but only to the charitable organization to which the property is sold or exchanged, and if the transferor is the only annuitant or the transferor and a designated survivor annuitant or annuitants are the only annuitants, any gain on such exchange is to be reported as provided in example (8) in paragraph (c) of this section. In determining the period over which gain may be reported as provided in such example, the life expectancy of the survivor annuitant may not be taken into account. The fact that the transferor may retain the right to revoke the survivor's annuity or relinquish his own right to the annuity will not be considered, for purposes of this subdivision, to make the annuity assignable to someone other than the charitable organization. Gain on an exchange of the type described in this subdivision pursuant to an agreement which is entered into after December 19, 1969, and before May 3, 1971, may be reported as provided in example (8) in paragraph (c) of this section, even though the annuity is assignable.

(iii) In the case of an annuity to which subdivision (ii) of this subparagraph applies, the gain unreported by the transferor with respect to annuity payments not yet due when the following events occur is not required to be included in gross income of any person where—

(a) The transferor dies before the entire amount of gain has been reported and there is no surviving annuitant, or

(b) The transferor relinquishes the annuity to the charitable organization. If the transferor dies before the entire amount of gain on a two-life annuity has been reported, the unreported gain

is required to be reported by the surviving annuitant or annuitants with respect to the annuity payments received by them.

(b) *Apportionment of adjusted basis.* For purposes of determining gain on a sale or exchange to which this paragraph applies, the adjusted basis of the property which is sold or exchanged shall be that portion of the adjusted basis of the entire property which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the entire property. The amount of such gain which shall be treated as ordinary income (or long-term capital gain) shall be that amount which bears the same ratio to the ordinary income (or long-term capital gain) which would have been recognized if the entire property had been sold by the donor at its fair market value at the time of the sale or exchange as the amount realized on the sale or exchange bears to the fair market value of the entire property at such time. The terms *ordinary income* and *long-term capital gain*, as used in this section, have the same meaning as they have in paragraph (a) of § 1.170A-4. For determining the portion of the adjusted basis, ordinary income, and long-term capital gain allocated to the contributed portion of the property for purposes of applying section 170(e)(1) and paragraph (a) of § 1.170A-4 to the contributed portion of the property, and for determining the donee's basis in such contributed portion, see paragraph (c) (2) and (4) of § 1.170A-4. For determining the holding period of such contributed portion, see section 1223(2) and the regulations thereunder.

(c) *Illustrations.* The application of this section may be illustrated by the following examples, which are supplemented by other examples in paragraph (d) of § 1.170A-4:

Example 1. In 1970, A, a calendar-year individual taxpayer, sells to a church for \$4,000 stock held for more than 6 months which has an adjusted basis of \$4,000 and a fair market value of \$10,000. A's contribution base for 1970, as defined in section 170(b)(1)(F), is \$100,000, and during that year he makes no other charitable contributions. Thus, A makes a charitable contribution to the church of \$6,000 (\$10,000 value - \$4,000 amount realized). Without regard to this section, A is allowed a deduction under section 170 of

\$6,000 for his charitable contribution to the church, since there is no reduction under section 170(e)(1) with respect to the long-term capital gain. Accordingly, under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is \$1,600 (\$4,000 adjusted basis × \$4,000 amount realized / \$10,000 value of property). A has recognized long-term capital gain of \$2,400 (\$4,000 amount realized - \$1,600 adjusted basis) on the bargain sale.

Example 2. The facts are the same as in example (1) except that A also makes a charitable contribution in 1970 of \$50,000 cash to the church. By reason of section 170(b)(1)(A), the deduction allowed under section 170 for 1970 is \$50,000 for the amount of cash contributed to the church; however, the \$6,000 contribution of property is carried over to 1971 under section 170(d). Under paragraphs (a)(2) and (b) of this section the adjusted basis for determining gain for 1970 on the bargain sale in that year is \$1,600 (\$4,000 × \$4,000 / \$10,000). A has a recognized long-term capital gain for 1970 of \$2,400 (\$4,000 - \$1,600) on the sale.

Example 3. In 1970, C, a calendar-year individual taxpayer, makes a charitable contribution of \$50,000 cash to a church. In addition, he sells for \$4,000 to a private foundation not described in section 170(b)(1)(E) stock held for more than 6 months which has an adjusted basis of \$4,000 and a fair market value of \$10,000. Thus, C makes a charitable contribution of \$6,000 of such property to the private foundation (\$10,000 value - \$4,000 amount realized). C's contribution base for 1970, as defined in section 170(b)(1)(F), is \$100,000, and during that year he makes no other charitable contributions. By reason of section 170(b)(1)(A), the deduction allowed under section 170 for 1970 is \$50,000 for the amount of cash contributed to the church. Under section 170(e)(1)(B)(ii) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A-4, the \$6,000 contribution of stock is reduced to \$4,800 (\$6,000 - [50% × (\$6,000 value of contributed portion of stock - \$3,600 adjusted basis)]). However, by reason of section 170(b)(1)(B)(ii), applied without regard to section 1011(b), no deduction is allowed under section 170 for 1970 or any other year for the reduced contribution of \$4,800 to the private foundation. Accordingly, paragraph (b) of this section does not apply for purposes of apportioning the adjusted basis of the stock sold to the private foundation, and under section 1.1011-1(e) the recognized gain on the bargain sale is \$0 (\$4,000 amount realized - \$4,000 adjusted basis).

Example 4. In 1970, B, a calendar-year individual taxpayer, sells to a church for \$2,000 stock held for not more than 6 months which has an adjusted basis of \$4,000 and a fair market value of \$10,000. B's contribution base for 1970, as defined in section 170(b)(1)(F), is \$20,000 and during such year B makes no other charitable contributions. Thus, he

makes a charitable contribution to the church of \$8,000 (\$10,000 value - \$2,000 amount realized). Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is \$800 (\$4,000 adjusted basis × \$2,000 amount realized / \$10,000 value of stock). Accordingly, B, has a recognized short-term capital gain of \$1,200 (\$2,000 amount realized - \$800 adjusted basis) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A-4, B is allowed a charitable contributions deduction for 1970 of \$3,200 (\$8,000 value of gift - [\$3,000 - (\$4,000 adjusted basis of property × \$8,000 value of gift / \$10,000 value of property)]).

Example 5. The facts are the same as in Example 4 except that B sells the property to the church for \$4,000. Thus, B makes a charitable contribution to the church of \$6,000 (\$10,000 value - \$4,000 amount realized). Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is \$1,600 (\$4,000 adjusted basis × \$4,000 amount realized / \$10,000 value of stock). Accordingly, B has a recognized short-term capital gain of \$2,400 (\$4,000 amount realized - \$1,600 adjusted basis) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A-4, B is allowed a charitable contributions deduction for 1970 of \$2,400 (\$6,000 value of gift - [\$6,000 - (\$4,000 adjusted basis of property × \$6,000 value of gifts / \$10,000 value of property)]).

Example 6. The facts are the same as in Example 4 except that B sells the property to the church for \$6,000. Thus, B makes a charitable contribution to the church of \$4,000 (\$10,000 value - \$6,000 amount realized). Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is \$2,400 (\$4,000 adjusted basis × \$6,000 amount realized / \$10,000 value of stock). Accordingly, B has a recognized short-term capital gain of \$3,600 (\$6,000 amount realized - \$2,400 adjusted basis) on the bargain sale. After applying section 1011(b) and paragraphs (a)(1) and (c)(2)(i) of § 1.170A-4, B is allowed a charitable contributions deduction for 1970 of \$1,600 (\$4,000 value of gift - [\$4,000 - (\$4,000 adjusted basis of property × \$4,000 value of gift / \$10,000 value of property)]).

Example 7. In 1970, C, a calendar-year individual taxpayer, sells to a church for \$4,000 tangible personal property used in his business for more than 6 months which has an adjusted basis of \$4,000 and a fair market value of \$10,000. Thus, C makes a charitable contribution to the church of \$6,000 (\$10,000 value - \$4,000 adjusted basis). C's contribution base for 1970, as defined in section 170(b)(1)(F) is \$100,000 and during such year he makes no other charitable contributions. If C had sold the property at its fair market

value at the time of its contribution, it is assumed that under section 1245 \$4,000 of the gain of \$6,000 (\$10,000 value - \$4,000 adjusted basis) would have been treated as ordinary income. Thus, there would have been long-term capital gain of \$2,000. It is also assumed that the church does not put the property to an unrelated use, as defined in paragraph (b)(3) of § 1.170A-4. Under paragraph (b) of this section the adjusted basis for determining gain on the bargain sale is \$1,600 (\$4,000 adjusted basis × \$4,000 amount realized / \$10,000 value of property). Accordingly, C has a recognized gain of \$2,400 (\$4,000 amount realized - \$1,600 adjusted basis) on the bargain sale, consisting of ordinary income of \$1,600 (\$4,000 ordinary income × \$4,000 amount realized / \$10,000 value of property) and of long-term capital gain of \$800 (\$2,000 long-term gain × \$4,000 amount realized / \$10,000 value of property). After applying section 1011(b) and paragraphs (a) and (c)(2)(i) of § 1.170A-4, C is allowed a charitable contributions deduction for 1970 of \$3,600 (\$6,000 gift - [\$4,000 ordinary income × \$6,000 value of gift / \$10,000 value of property]).

Example 8. (a) On January 1, 1970, A, a male of age 65, transfers capital assets consisting of securities held for more than 6 months to a church in exchange for a promise by the church to pay A a nonassignable annuity of \$5,000 per year for life. The annuity is payable monthly with the first payment to be made on February 1, 1970. A's contribution base for 1970, as defined in section 170(b)(1)(F), is \$200,000, and during that year he makes no other charitable contributions. On the date of transfer the securities have a fair market value of \$100,000 and an adjusted basis to A of \$20,000.

(b) The present value of the right of a male age 65 to receive a life annuity of \$5,000 per annum, payable in equal installments at the end of each monthly period, is \$59,755 (\$5,000 × [11.469 + 0.482]), determined in accordance with section 101(b) of the Code, paragraph (e)(1)(iii)(b)(2) of § 1.101-2, and section 3 of Rev. Rul. 62-216, C.B. 1962-2, 30. Thus, A makes a charitable contribution to the church of \$40,245 (\$100,000 - \$59,755). See Rev. Rul. 84-162, 1984-2 C.B. 200, for transfers for which the valuation date falls after November 23, 1984. (See § 601.601(d)(2)(ii)(b) of this chapter). For the applicable valuation tables in connection therewith, see § 20.2031-7(d)(6) of this chapter. See, however, § 1.7520-3(b) (relating to exceptions to the use of standard actuarial factors in certain circumstances).

(c) Under paragraph (b) of this section, the adjusted basis for determining gain on the bargain sale is \$11,951 (\$20,000 × \$59,755 / \$100,000). Accordingly, A has a recognized long-term capital gain of \$47,804 (\$59,755 - \$11,951) on the bargain sale. Such gain is to be reported by A ratably over the period of years measured by the expected return multiple under the contract, but only from that

portion of the annual payments which is a return of his investment in the contract under section 72 of the Code. For such purposes, the investment in the contract is \$59,755, that is, the present value of the annuity.

(d) The computation and application of the exclusion ratio, the gain, and the ordinary annuity income are as follows, determined by using the expected return multiple of 15.0 applicable under table I of § 1.72-9:

A's expected return (annual payments of \$5,000 × 15)	\$75,000.00
Exclusion ratio (\$59,755 investment in contract divided by expected return of \$75,000)	79.7%
Annual exclusion (annual payments of \$5,000 × 79.7%)	\$3,985.00
Ordinary annuity income (\$5,000 - \$3,985)	\$1,015.00
Long-term capital gain per year (\$47,804/15) with respect to the annual exclusion	\$3,186.93

(e) The exclusion ratio of 79.7 percent applies throughout the life of the contract. During the first 15 years of the annuity, A is required to report ordinary income of \$1,015 and long-term capital gain of \$3,186.93 with respect to the annuity payments he receives. After the total long-term capital gain of \$47,804 has been reported by A, he is required to report only ordinary income of \$1,015.00 per annum with respect to the annuity payments he receives.

(d) *Effective date.* This section applies only to sales and exchanges made after December 19, 1969.

(e) *Cross reference.* For rules relating to the treatment of liabilities on the sale or other disposition or encumbered property, see § 1.1001-2.

[T.D. 7207, 37 FR 20798, Oct. 5, 1972, as amended by T.D. 7741, 45 FR 81745, Dec. 12, 1980; T.D. 8176, 53 FR 5570, Feb. 25, 1988; 53 FR 11002, Apr. 4, 1988; T.D. 8540, 59 FR 30148, June 10, 1994]

§ 1.1012-1 Basis of property.

(a) *General rule.* In general, the basis of property is the cost thereof. The cost is the amount paid for such property in cash or other property. This general rule is subject to exceptions stated in subchapter O (relating to gain or loss on the disposition of property), subchapter C (relating to corporate distributions and adjustments), subchapter K (relating to partners and partnerships), and subchapter P (relating to capital gains and losses), chapter 1 of the code.

(b) *Real estate taxes as part of cost.* In computing the cost of real property, the purchaser shall not take into account any amount paid to the seller as reimbursement for real property taxes