

1492. Nontaxable transfers.
 1493. Definition of foreign trust.¹
 1494. Payment and collection.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 991, 6013, 7851 of this title.

§ 1491. Imposition of tax

There is hereby imposed on the transfer of property by a citizen or resident of the United States, or by a domestic corporation or partnership, or by an estate or trust which is not a foreign estate or trust, to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign estate or trust, or to a foreign partnership, an excise tax equal to 35 percent of the excess of—

- (1) the fair market value of the property so transferred, over
- (2) the sum of—
 - (A) the adjusted basis (for determining gain) of such property in the hands of the transferor, plus
 - (B) the amount of the gain recognized to the transferor at the time of the transfer.

(Aug. 16, 1954, ch. 736, 68A Stat. 365; Oct. 4, 1976, Pub. L. 94-455, title X, §1015(a), 90 Stat. 1617; Nov. 6, 1978, Pub. L. 95-600, title VII, §701(u)(14)(A), 92 Stat. 2919.)

AMENDMENTS

1978—Pub. L. 95-600 substituted “estate or trust” for “trust” wherever appearing.

1976—Pub. L. 94-455 substituted in provisions preceding par. (1) “property” for “stocks and securities” and “35 percent” for “27½ percent” and in par. (1) “fair market value” for “value” and “property” for “stocks and securities” and in par. (2) designated existing provisions as subpar. (A) and added subpar. (B).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(14)(C) of Pub. L. 95-600 provided that: “The amendments made by this paragraph [amending this section and section 1492 of this title] shall apply to transfers after October 2, 1975.”

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1015(d) of Pub. L. 94-455 provided that: “The amendments made by this section [enacting section 1057 of this title, amending this section and section 1492 of this title, and renumbering former section 1057 as 1058 of this title] shall apply to transfers of property after October 2, 1975.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 814, 1492, 1494 of this title.

§ 1492. Nontaxable transfers

The tax imposed by section 1491 shall not apply—

- (1) If the transferee is an organization exempt from income tax under part I of subchapter F of chapter 1 (other than an organization described in section 401(a)); or
- (2) To a transfer—
 - (A) described in section 367, or
 - (B) not described in section 367 but with respect to which the taxpayer elects (before the transfer) the application of principles

¹Section repealed by Pub. L. 89-809 without corresponding amendment of chapter analysis.

the transfer) the application of principles similar to the principles of section 367, or

- (3) To a transfer for which an election has been made under section 1057.

(Aug. 16, 1954, ch. 736, 68A Stat. 365; Jan. 12, 1971, Pub. L. 91-681, §1(b), 84 Stat. 2066; Oct. 4, 1976, Pub. L. 94-455, title X, §1015(b), title XIX, §1906(b)(13)(A), 90 Stat. 1618, 1834; Nov. 6, 1978, Pub. L. 95-600, title VII, §701(u)(14)(B), 92 Stat. 2919; July 18, 1984, Pub. L. 98-369, div. A, title I, §131(f)(1), 98 Stat. 665.)

AMENDMENTS

1984—Pars. (2) to (4). Pub. L. 98-369 substituted provision that the tax imposed by section 1491 not apply to a transfer described in 367 or if not described in section 367 but with respect to which the taxpayer elects, before the transfer, the application of principles similar to the principles of section 367 for provision that such tax not apply if before the transfer it has been established to the satisfaction of the Secretary that such transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax in par. (2), struck out par. (3), which provided that the tax imposed by section 1491 not apply to a transfer described in section 367, and redesignated par. (4) as (3).

1978—Par. (3). Pub. L. 95-600 substituted “To a transfer described in section 367; or” for “To a transfer to which section 367 applies; or”.

1976—Par. (2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Par. (3). Pub. L. 94-455, §1015(b)(1), substituted “section 367 applies; or” for “section 367(d) applies.”

Par. (4). Pub. L. 94-455, §1015(b)(2), added par. (4).

1971—Par. (3). Pub. L. 91-681 added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as a note under section 367 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to transfers after Oct. 2, 1975, see section 701(u)(14)(C) of Pub. L. 95-600, set out as a note under section 1491 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1015(b) of Pub. L. 94-455 applicable to transfers of property after Oct. 2, 1975, see section 1015(d) of Pub. L. 94-455, set out as a note under section 1491 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91-681 applicable with respect to transfers made after Dec. 31, 1970, see section 1(c) of Pub. L. 91-681, set out as a note under section 367 of this title.

[§ 1493. Repealed. Pub. L. 89-809, title I, § 103(l)(2), Nov. 13, 1966, 80 Stat. 1554]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 365, defined foreign trust.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89-809, set out as an Effective Date of 1966 Amendment note under section 871 of this title.

§ 1494. Payment and collection**(a) Time for payment**

The tax imposed by section 1491 shall, without assessment or notice and demand, be due and