

Reg. Section 1.1041-1T(b)

Treatment of transfer of property between spouses or incident to divorce (temporary).

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(b) Transfer incident to the divorce.

Q-6 When is a transfer of property incident to the divorce?

A-6 A transfer of property is incident to the divorce in either of the following 2 circumstances –

- (1) The transfer occurs not more than one year after the date on which the marriage ceases,
or
- (2) The transfer is related to the cessation of the marriage.

Thus, a transfer of property occurring not more than one year after the date on which the marriage ceases need not be related to the cessation of the marriage to qualify for section 1041 treatment. (See A-7 for transfers occurring more than one year after the cessation of the marriage.)

Q-7 When is a transfer of property related to the cessation of the marriage?

A-7 A transfer of property is treated as related to the cessation of the marriage if the transfer is pursuant to a divorce or separation instrument, as defined in section 71(b)(2), and the transfer occurs not more than 6 years after the date on which the marriage ceases. A divorce or separation instrument includes a modification or amendment to such decree or instrument. Any transfer not pursuant to a divorce or separation instrument and any transfer occurring more than 6 years after the cessation of the marriage is presumed to be not related to the cessation of the marriage. This presumption may be rebutted only by showing that the transfer was made to effect the division of property owned by the former spouses at the time of the cessation of the marriage. For example, the presumption may be rebutted by showing that (a) the transfer was not made within the one- and six-year periods described above because of factors which hampered an earlier transfer of the property, such as legal or business impediments to transfer or disputes concerning the value of the property owned at the time of the cessation of the marriage, and (b) the transfer is effected promptly after the impediment to transfer is removed.

Q-8 Do annulments and the cessations of marriages that are void ab initio due to violations of state law constitute divorces for purposes of section 1041?

A-8 Yes.

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