

nal Revenue Code of 1986, as added by this Act, not later than July 1, 2001.”

**ELECTION FOR EXTENSION OF TIME FOR PAYMENT AND APPLICATION OF THIS SECTION FOR THE TAXABLE YEAR INCLUDING JUNE 23, 1981**

Pub. L. 97-34, title V, § 509, Aug. 13, 1981, 95 Stat. 333, as amended by Pub. L. 97-448, title I, § 105(c)(6), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

**“(a) ELECTION.—**

**“(1) IN GENERAL.—**In the case of any taxable year beginning before June 23, 1981, and ending after June 22, 1981, the taxpayer may elect, in lieu of any election under section 508(c) [set out as an Effective Date note under section 1092 of this title], to have this section apply to all regulated futures contracts held during such taxable year.

**“(2) APPLICATION OF SECTION 1256.—**If a taxpayer elects to have the provisions of this section apply to the taxable year described in paragraph (1).—

**“(A) the provisions of section 1256 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (other than section 1256(e)(2)(C)) shall apply to regulated futures contracts held by the taxpayer at any time during such taxable year, and**

**“(B) for purposes of determining the rate of tax applicable to gains and losses from regulated futures contracts held at any time during such year, such gains and losses shall be treated as gain or loss from a sale or exchange occurring in a taxable year beginning in 1982.**

**“(3) DETERMINATION OF DEFERRED TAX LIABILITY.—**If the taxpayer makes an election under this subsection.—

**“(A) the taxpayer may pay part or all of the tax for such year in two or more (but not exceeding five) equal installments;**

**“(B) the maximum amount of tax which may be paid in installments under this section shall be the excess of—**

**“(i) the tax for such year, determined by taking into account paragraph (2), over**

**“(ii) the tax for such year, determined by taking into account paragraph (2) and by treating all regulated futures contracts which were held by the taxpayer on the first day of the taxable year described in paragraph (1), and which were acquired before the first day of such taxable year, as having been acquired for a purchase price equal to their fair market value on the last business day of the preceding taxable year.**

**“(4) DATE FOR PAYMENT OF INSTALLMENT.—**

**“(A) If an election is made under this subsection, the first installment under subsection (a)(3)(A) shall be paid on or before the due date for filing the return for the taxable year described in paragraph (1), and each succeeding installment shall be paid on or before the date which is one year after the date prescribed for payment of the preceding installment.**

**“(B) If a bankruptcy case or insolvency proceeding involving the taxpayer is commenced before the final installment is paid, the total amount of any unpaid installments shall be treated as due and payable on the day preceding the day on which such case or proceeding is commenced.**

**“(5) INTEREST IMPOSED.—**For purposes of section 6601 of the Internal Revenue Code of 1986, the time for payment of any tax with respect to which an election is made under this subsection shall be determined without regard to this subsection.

**“(b) FORM OF ELECTION.—**An election under this section shall be made not later than the time for filing the return for the taxable year described in subsection (a)(1) and shall be made in the manner and form required by regulations prescribed by the Secretary. The election shall set forth—

**“(1) the amount determined under subsection (a)(3)(B) and the number of installments elected by the taxpayer,**

**“(2) each regulated futures contract held by the taxpayer on the first day of the taxable year described in subsection (a)(1), and the date such contract was acquired,**

**“(3) the fair market value on the last business day of the preceding taxable year for each regulated futures contract described in paragraph (2), and**

**“(4) such other information for purposes of carrying out the provisions of this section as may be required by such regulations.”**

**§ 1257. Disposition of converted wetlands or highly erodible croplands**

**(a) Gain treated as ordinary income**

Any gain on the disposition of converted wetland or highly erodible cropland shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

**(b) Loss treated as long-term capital loss**

Any loss recognized on the disposition of converted wetland or highly erodible cropland shall be treated as a long-term capital loss.

**(c) Definitions**

For purposes of this section—

**(1) Converted wetland**

The term “converted wetland” means any converted wetland (as defined in section 1201(4)<sup>1</sup> of the Food Security Act of 1985 (16 U.S.C. 3801(4))) held—

(A) by the person whose activities resulted in such land being converted wetland, or

(B) by any other person who at any time used such land for farming purposes.

**(2) Highly erodible cropland**

The term “highly erodible cropland” means any highly erodible cropland (as defined in section 1201(6)<sup>1</sup> of the Food Security Act of 1985 (16 U.S.C. 3801(6))), if at any time the taxpayer used such land for farming purposes (other than the grazing of animals).

**(3) Treatment of successors**

If any land is converted wetland or highly erodible cropland in the hands of any person, such land shall be treated as converted wetland or highly erodible cropland in the hands of any other person whose adjusted basis in such land is determined (in whole or in part) by reference to the adjusted basis of such land in the hands of such person.

**(d) Special rules**

Under regulations prescribed by the Secretary, rules similar to the rules applicable under section 1245 shall apply for purposes of subsection (a). For purposes of sections 170(e) and 751(c), amounts treated as ordinary income under subsection (a) shall be treated in the same manner as amounts treated as ordinary income under section 1245.

(Added Pub. L. 99-514, title IV, § 403(a), Oct. 22, 1986, 100 Stat. 2222; amended Pub. L. 108-27, title III, § 302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

<sup>1</sup> See References in Text note below.

## REFERENCES IN TEXT

Section 1201(4) of the Food Security Act of 1985 (16 U.S.C. 3801(4)) and section 1201(6) of the Food Security Act of 1985 (16 U.S.C. 3801(6)), referred to in subsec. (c)(1), (2), probably are references to section 1201(a)(4) and 1201(a)(6) of that Act (16 U.S.C. 3801(a)(4), (6)). Section 1201 of the Food Security Act of 1985 was subsequently amended, and subsecs. (a)(4) and (a)(6) of section 1201 no longer define the terms “converted wetland” and “highly erodible cropland”, respectively. However, such terms are defined elsewhere in that section.

## AMENDMENTS

2003—Subsec. (d). Pub. L. 108-27 struck out “, 341(e)(12),” after “170(e)”.

## EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108-27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

## EFFECTIVE DATE

Pub. L. 99-514, title IV, §403(c), Oct. 22, 1986, 100 Stat. 2222, provided that: “The amendments made by this section [enacting this section] shall apply to dispositions of converted wetland or highly erodible cropland (as defined in section 1257(c) of the Internal Revenue Code of 1986 as added by this section) first used for farming after March 1, 1986, in taxable years ending after that date.”

### § 1258. Recharacterization of gain from certain financial transactions

#### (a) General rule

In the case of any gain—

- (1) which (but for this section) would be treated as gain from the sale or exchange of a capital asset, and
- (2) which is recognized on the disposition or other termination of any position which was held as part of a conversion transaction,

such gain (to the extent such gain does not exceed the applicable imputed income amount) shall be treated as ordinary income.

#### (b) Applicable imputed income amount

For purposes of subsection (a), the term “applicable imputed income amount” means, with respect to any disposition or other termination referred to in subsection (a), an amount equal to—

- (1) the amount of interest which would have accrued on the taxpayer’s net investment in the conversion transaction for the period ending on the date of such disposition or other termination (or, if earlier, the date on which the requirements of subsection (c) ceased to be satisfied) at a rate equal to 120 percent of the applicable rate, reduced by
- (2) the amount treated as ordinary income under subsection (a) with respect to any prior disposition or other termination of a position which was held as a part of such transaction.

The Secretary shall by regulations provide for such reductions in the applicable imputed income amount as may be appropriate by reason of amounts capitalized under section 263(g), ordinary income received, or otherwise.

#### (c) Conversion transaction

For purposes of this section, the term “conversion transaction” means any transaction—

(1) substantially all of the taxpayer’s expected return from which is attributable to the time value of the taxpayer’s net investment in such transaction, and

(2) which is—

(A) the holding of any property (whether or not actively traded), and the entering into a contract to sell such property (or substantially identical property) at a price determined in accordance with such contract, but only if such property was acquired and such contract was entered into on a substantially contemporaneous basis,

(B) an applicable straddle,

(C) any other transaction which is marketed or sold as producing capital gains from a transaction described in paragraph (1), or

(D) any other transaction specified in regulations prescribed by the Secretary.

#### (d) Definitions and special rules

For purposes of this section—

##### (1) Applicable straddle

The term “applicable straddle” means any straddle (within the meaning of section 1092(c)).

##### (2) Applicable rate

The term “applicable rate” means—

(A) the applicable Federal rate determined under section 1274(d) (compounded semi-annually) as if the conversion transaction were a debt instrument, or

(B) if the term of the conversion transaction is indefinite, the Federal short-term rates in effect under section 6621(b) during the period of the conversion transaction (compounded daily).

##### (3) Treatment of built-in losses

###### (A) In general

If any position with a built-in loss becomes part of a conversion transaction—

(i) for purposes of applying this subtitle to such position for periods after such position becomes part of such transaction, such position shall be taken into account at its fair market value as of the time it became part of such transaction, except that

(ii) upon the disposition or other termination of such position in a transaction in which gain or loss is recognized, such built-in loss shall be recognized and shall have a character determined without regard to this section.

###### (B) Built-in loss

For purposes of subparagraph (A), the term “built-in loss” means the loss (if any) which would have been realized if the position had been disposed of or otherwise terminated at its fair market value as of the time such position became part of the conversion transaction.

##### (4) Position taken into account at fair market value

In determining the taxpayer’s net investment in any conversion transaction, there shall be included the fair market value of any