

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

position which becomes part of such transaction (determined as of the time such position became part of such transaction).

(5) Special rule for options dealers and commodities traders

(A) In general

Subsection (a) shall not apply to transactions—

- (i) of an options dealer in the normal course of the dealer's trade or business of dealing in options, or
- (ii) of a commodities trader in the normal course of the trader's trade or business of trading section 1256 contracts.

(B) Definitions

For purposes of this paragraph—

(i) Options dealer

The term "options dealer" has the meaning given such term by section 1256(g)(8).

(ii) Commodities trader

The term "commodities trader" means any person who is a member (or, except as otherwise provided in regulations, is entitled to trade as a member) of a domestic board of trade which is designated as a contract market by the Commodity Futures Trading Commission.

(C) Limited partners and limited entrepreneurs

In the case of any gain from a transaction recognized by an entity which is allocable to a limited partner or limited entrepreneur (within the meaning of section 464(e)(2)), subparagraph (A) shall not apply if—

- (i) substantially all of the limited partner's (or limited entrepreneur's) expected return from the entity is attributable to the time value of the partner's (or entrepreneur's) net investment in such entity,
- (ii) the transaction (or the interest in the entity) was marketed or sold as producing capital gains treatment from a transaction described in subsection (c)(1), or
- (iii) the transaction (or the interest in the entity) is a transaction (or interest) specified in regulations prescribed by the Secretary.

(Added Pub. L. 103-66, title XIII, §13206(a)(1), Aug. 10, 1993, 107 Stat. 462; amended Pub. L. 108-357, title VIII, §888(c)(2), Oct. 22, 2004, 118 Stat. 1643.)

AMENDMENTS

2004—Subsec. (d)(1). Pub. L. 108-357 struck out “; except that the term ‘personal property’ shall include stock” before period at end.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to positions established on or after Oct. 22, 2004, see section 888(e) of Pub. L. 108-357, set out as a note under section 246 of this title.

EFFECTIVE DATE

Pub. L. 103-66, title XIII, §13206(a)(3), Aug. 10, 1993, 107 Stat. 465, as amended by Pub. L. 104-188, title I, §1703(n)(11), Aug. 20, 1996, 110 Stat. 1877, provided that:

“The amendments made by this subsection [enacting this section] shall apply to conversion transactions entered into after April 30, 1993.”

§ 1259. Constructive sales treatment for appreciated financial positions

(a) In general

If there is a constructive sale of an appreciated financial position—

(1) the taxpayer shall recognize gain as if such position were sold, assigned, or otherwise terminated at its fair market value on the date of such constructive sale (and any gain shall be taken into account for the taxable year which includes such date), and

(2) for purposes of applying this title for periods after the constructive sale—

(A) proper adjustment shall be made in the amount of any gain or loss subsequently realized with respect to such position for any gain taken into account by reason of paragraph (1), and

(B) the holding period of such position shall be determined as if such position were originally acquired on the date of such constructive sale.

(b) Appreciated financial position

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term “appreciated financial position” means any position with respect to any stock, debt instrument, or partnership interest if there would be gain were such position sold, assigned, or otherwise terminated at its fair market value.

(2) Exceptions

The term “appreciated financial position” shall not include—

(A) any position with respect to debt if—

(i) the position unconditionally entitles the holder to receive a specified principal amount,

(ii) the interest payments (or other similar amounts) with respect to such position meet the requirements of clause (i) of section 860G(a)(1)(B), and

(iii) such position is not convertible (directly or indirectly) into stock of the issuer or any related person,

(B) any hedge with respect to a position described in subparagraph (A), and

(C) any position which is marked to market under any provision of this title or the regulations thereunder.

(3) Position

The term “position” means an interest, including a futures or forward contract, short sale, or option.

(c) Constructive sale

For purposes of this section—

(1) In general

A taxpayer shall be treated as having made a constructive sale of an appreciated financial position if the taxpayer (or a related person)—

(A) enters into a short sale of the same or substantially identical property,