

(Added Pub. L. 106-554, §1(a)(7) [title IV, §401(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-648; amended Pub. L. 107-147, title IV, §412(d)(1)(B), (3)(B), Mar. 9, 2002, 116 Stat. 53, 54; Pub. L. 108-311, title IV, §405(a)(1), Oct. 4, 2004, 118 Stat. 1188.)

REFERENCES IN TEXT

Section 3(a)(55)(A) of the Securities Exchange Act of 1934, referred to in subsec. (c), is classified to section 78c(a)(55)(A) of Title 15, Commerce and Trade.

The date of the enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 106-554, which was approved Dec. 21, 2000.

CODIFICATION

Pub. L. 106-554, §1(a)(7) [title IV, §401(a)], which directed amendment of subpart IV of subchapter P of chapter 1 by adding this section after section 1234A, was executed by adding this section after 1234A of this part which is part IV of subchapter P of chapter 1, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-311 inserted at end “The Secretary may prescribe regulations regarding the status of contracts the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as defined for purposes of section 1256(g)(6)).”

2002—Subsec. (a)(1). Pub. L. 107-147, §412(d)(1)(B)(i), substituted “sale, exchange, or termination of a securities futures contract” for “sale or exchange of a securities futures contract”.

Subsec. (b). Pub. L. 107-147, §412(d)(1)(B)(i), (3)(B), inserted “or in section 1233,” after “or this section,” and substituted “sale, exchange, or termination of a securities futures contract” for “sale or exchange of a securities futures contract”.

Subsec. (f). Pub. L. 107-147, §412(d)(1)(B)(ii), added subsec. (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-311, title IV, §405(b), Oct. 4, 2004, 118 Stat. 1189, provided that: “The amendments made by subsection (a) [amending this section and section 1256 of this title] shall take effect as if included in section 401 of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106-554, Dec. 21, 2000, 114 Stat. 2763, 2763A-587].”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106-554], to which such amendment relates, see section 412(e) of Pub. L. 107-147, set out as a note under section 151 of this title.

§ 1235. Sale or exchange of patents**(a) General**

A transfer (other than by gift, inheritance, or devise) of property consisting of all substantial rights to a patent, or an undivided interest therein which includes a part of all such rights, by any holder shall be considered the sale or exchange of a capital asset held for more than 1 year, regardless of whether or not payments in consideration of such transfer are—

(1) payable periodically over a period generally coterminous with the transferee’s use of the patent, or

(2) contingent on the productivity, use, or disposition of the property transferred.

(b) “Holder” defined

For purposes of this section, the term “holder” means—

(1) any individual whose efforts created such property, or

(2) any other individual who has acquired his interest in such property in exchange for consideration in money or money’s worth paid to such creator prior to actual reduction to practice of the invention covered by the patent, if such individual is neither—

(A) the employer of such creator, nor

(B) related to such creator (within the meaning of subsection (c)).

(c) Related persons

Subsection (a) shall not apply to any transfer, directly or indirectly, between persons specified within any one of the paragraphs of section 267(b) or persons described in section 707(b); except that, in applying section 267(b) and (c) and section 707(b) for purposes of this section—

(1) the phrase “25 percent or more” shall be substituted for the phrase “more than 50 percent” each place it appears in section 267(b) or 707(b), and

(2) paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants.

(d) Cross reference

For special rule relating to nonresident aliens, see section 871(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 329; Pub. L. 85-866, title I, §54(a), Sept. 2, 1958, 72 Stat. 1644; Pub. L. 94-455, title XIV, §1402(b)(1)(V), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 98-369, div. A, title I, §174(b)(5)(C), title X, §1001(b)(19), (e), July 18, 1984, 98 Stat. 707, 1012; Pub. L. 105-206, title V, §5001(a)(5), title VI, §6005(d)(4), July 22, 1998, 112 Stat. 788, 805; Pub. L. 113-295, div. A, title II, §221(a)(82), Dec. 19, 2014, 128 Stat. 4049.)

AMENDMENTS

2014—Subsec. (b)(2)(B). Pub. L. 113-295, §221(a)(82)(B), substituted “subsection (c)” for “subsection (d)”.

Subsecs. (c) to (e). Pub. L. 113-295, §221(a)(82)(A), redesignated subsecs. (d) and (e) as (c) and (d), respectively, and struck out former subsec. (e). Prior to amendment, text of subsec. (c) read as follows: “This section shall be applicable with regard to any amounts received, or payments made, pursuant to a transfer described in subsection (a) in any taxable year to which this subtitle applies, regardless of the taxable year in which such transfer occurred.”

1998—Subsec. (a). Pub. L. 105-206, §6005(d)(4), substituted “18 months” for “1 year” in introductory provisions.

Pub. L. 105-206, §5001(a)(5), substituted “1 year” for “18 months” in introductory provisions.

1984—Subsec. (a). Pub. L. 98-369, §1001(b)(19), (e), substituted “6 months” for “1 year”, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (d). Pub. L. 98-369, §174(b)(5)(C), substituted “section 267(b) or persons described in section 707(b)” for “section 267(b)” and “section 267(b) and (c) and section 707(b)” for “section 267(b) and (c)” in introductory provisions, and substituted “section 267(b) or 707(b)” for “section 267(b)” in par. (1).

1976—Subsec. (a). Pub. L. 94-455, §1402(b)(2), provided that “9 months” would be changed to “1 year”.

Pub. L. 94-455, §1402(b)(1)(V), provided that “6 months” would be changed to “9 months” for taxable years beginning in 1977.

1958—Subsec. (d). Pub. L. 85-866 substituted provisions set out as subsec. (d) for provisions reading “Sub-

section (a) shall not apply to any sale or exchange between an individual and any other related person (as defined in section 267(b)), except brothers and sisters, whether by the whole or half blood."

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 5001 of Pub. L. 105-206 effective Jan. 1, 1998, see section 5001(b)(2) of Pub. L. 105-206, set out as a note under section 1 of this title.

Amendment by section 6000(d)(4) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(C) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98-369, set out as a note under section 267 of this title.

Amendment by section 1001(b)(19) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94-455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-866, title I, §54(b), Sept. 2, 1958, 72 Stat. 1644, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958], but only with respect to transfers after such date."

§ 1236. Dealers in securities

(a) Capital gains

Gain by a dealer in securities from the sale or exchange of any security shall in no event be considered as gain from the sale or exchange of a capital asset unless—

(1) the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a security held for investment; and

(2) the security was not, at any time after the close of such day (or such earlier time), held by such dealer primarily for sale to customers in the ordinary course of his trade or business.

(b) Ordinary losses

Loss by a dealer in securities from the sale or exchange of any security shall, except as otherwise provided in section 582(c), (relating to bond, etc., losses of banks), in no event be considered as ordinary loss if at any time the security was clearly identified in the dealer's records as a security held for investment.

(c) Definition of security

For purposes of this section, the term "security" means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.

(d) Special rule for floor specialists

(1) In general

In the case of a floor specialist (but only with respect to acquisitions, in connection with his duties on an exchange, of stock in which the specialist is registered with the exchange), subsection (a) shall be applied—

(A) by inserting "the 7th business day following" before "the day" the first place it appears in paragraph (1) and by inserting "7th business" before "day" in paragraph (2), and

(B) by striking the parenthetical phrase in paragraph (1).

(2) Floor specialist

The term "floor specialist" means a person who is—

(A) a member of a national securities exchange,

(B) is registered as a specialist with the exchange, and

(C) meets the requirements for specialists established by the Securities and Exchange Commission.

(e) Special rule for options

For purposes of subsection (a), any security acquired by a dealer pursuant to an option held by such dealer may be treated as held for investment only if the dealer, before the close of the day on which the option was acquired, clearly identified the option on his records as held for investment. For purposes of the preceding sentence, the term "option" includes the right to subscribe to or purchase any security.

(Aug. 16, 1954, ch. 736, 68A Stat. 330; Pub. L. 94-455, title XIX, §1901(b)(3)(E), Oct. 4, 1976, 90 Stat. 1793; Pub. L. 97-34, title V, §506, Aug. 13, 1981, 95 Stat. 332; Pub. L. 97-448, title I, §105(d)(1), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98-369, div. A, title I, §107(b), July 18, 1984, 98 Stat. 630; Pub. L. 113-295, div. A, title II, §221(a)(83), Dec. 19, 2014, 128 Stat. 4049.)

AMENDMENTS

2014—Subsec. (b). Pub. L. 113-295 struck out "after November 19, 1951," after "time".

1984—Subsec. (a)(1). Pub. L. 98-369, §107(b)(1), substituted "the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a security held for investment; and" for "the security was, before the close of the day on which it was acquired (before the close of the following day in the case of an acquisition before January 1, 1982), clearly identified in the dealer's records as a security held for investment or if acquired before October 20, 1951, was so identified before November 20, 1951; and".

Subsec. (a)(2). Pub. L. 98-369, §107(b)(2), inserted "(or such earlier time)" after "such day".

1983—Subsec. (e). Pub. L. 97-448 added subsec. (e).

1981—Subsec. (a). Pub. L. 97-34, §506(a), substituted "before the close of the day on which it was acquired