

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

(before the close of the following day in the case of an acquisition before January 1, 1982)” for “before the expiration of the 30th day after the date of its acquisition” in par. (1) and “close of such day” for “expiration of such 30th day” in par. (2).

Subsec. (d), Pub. L. 97-34, § 506(b), added subsec. (d).

1976—Subsec. (b), Pub. L. 94-455 substituted “ordinary loss” for “loss from the sale or exchange of property which is not a capital asset”.

#### 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 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to positions entered into after July 18, 1984, in taxable years ending after that date, see section 107(e) of Pub. L. 98-369, set out as a note under section 1092 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-448, title I, § 105(d)(2), Jan. 12, 1983, 96 Stat. 2387, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to securities acquired after September 22, 1982, in taxable years ending after such date.”

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to property acquired by the taxpayer after Aug. 13, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97-34, set out as an Effective Date note under section 1092 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

### § 1237. Real property subdivided for sale

#### (a) General

Any lot or parcel which is part of a tract of real property in the hands of a taxpayer other than a C corporation shall not be deemed to be held primarily for sale to customers in the ordinary course of trade or business at the time of sale solely because of the taxpayer having subdivided such tract for purposes of sale or because of any activity incident to such subdivision or sale, if—

(1) such tract, or any lot or parcel thereof, had not previously been held by such taxpayer primarily for sale to customers in the ordinary course of trade or business (unless such tract at such previous time would have been covered by this section) and, in the same taxable year in which the sale occurs, such taxpayer does not so hold any other real property; and

(2) no substantial improvement that substantially enhances the value of the lot or parcel sold is made by the taxpayer on such tract while held by the taxpayer or is made pursuant to a contract of sale entered into between the taxpayer and the buyer. For purposes of this paragraph, an improvement shall be deemed to be made by the taxpayer if such improvement was made by—

(A) the taxpayer or members of his family (as defined in section 267(c)(4)), by a corporation controlled by the taxpayer, an S cor-

poration which included the taxpayer as a shareholder, or by a partnership which included the taxpayer as a partner; or

(B) a lessee, but only if the improvement constitutes income to the taxpayer; or

(C) Federal, State, or local government, or political subdivision thereof, but only if the improvement constitutes an addition to basis for the taxpayer; and

(3) such lot or parcel, except in the case of real property acquired by inheritance or devise, is held by the taxpayer for a period of 5 years.

#### (b) Special rules for application of section

##### (1) Gains

If more than 5 lots or parcels contained in the same tract of real property are sold or exchanged, gain from any sale or exchange (which occurs in or after the taxable year in which the sixth lot or parcel is sold or exchanged) of any lot or parcel which comes within the provisions of paragraphs (1), (2) and (3) of subsection (a) of this section shall be deemed to be gain from the sale of property held primarily for sale to customers in the ordinary course of the trade or business to the extent of 5 percent of the selling price.

##### (2) Expenditures of sale

For the purpose of computing gain under paragraph (1) of this subsection, expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the portion of gain deemed under paragraph (1) of this subsection to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

##### (3) Necessary improvements

No improvement shall be deemed a substantial improvement for purposes of subsection (a) if the lot or parcel is held by the taxpayer for a period of 10 years and if—

(A) such improvement is the building or installation of water, sewer, or drainage facilities or roads (if such improvement would except for this paragraph constitute a substantial improvement);

(B) it is shown to the satisfaction of the Secretary that the lot or parcel, the value of which was substantially enhanced by such improvement, would not have been marketable at the prevailing local price for similar building sites without such improvement; and

(C) the taxpayer elects, in accordance with regulations prescribed by the Secretary, to make no adjustment to basis of the lot or parcel, or of any other property owned by the taxpayer, on account of the expenditures for such improvements. Such election shall not make any item deductible which would not otherwise be deductible.