

“(4) the corporation did not after December 31, 1957, sell or exchange (except in condemnation or under threat of condemnation) any residential lot or parcel on which, at the time of the sale or exchange, there existed any substantial improvements (other than improvements in existence at the time the land was acquired by the corporation) except subdivision, clearing, grubbing, and grading, building or installation of water, sewer, and drainage facilities, construction of roads, streets, and sidewalks, and installation of utilities.”

In any case in which a corporation referred to in paragraphs (1), (2), (3), and (4) is a member of an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986, such affiliated group shall, for purposes of such paragraphs, be treated as a single corporation.

“(b)(1) Gain from any sale or exchange described in subsection (a) shall be deemed, for purposes of such Code, to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business to the extent of 5 percent of the selling price.

“(2) For the purpose of computing gain under paragraph (1), 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) 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.

“(c) The provisions of subsections (a) and (b) shall apply to taxable years beginning after December 31, 1957, and before January 1, 1984.”

**[§ 1238. Repealed. Pub. L. 101-508, title XI, § 11801(a)(35), Nov. 5, 1990, 104 Stat. 1388-521]**

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 332; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§ 1901(b)(3)(K), 1951(c)(2)(A), 90 Stat. 1793, 1840, related to amortization in excess of depreciation.

**SAVINGS PROVISION**

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

**§ 1239. Gain from sale of depreciable property between certain related taxpayers**

**(a) Treatment of gain as ordinary income**

In the case of a sale or exchange of property, directly or indirectly, between related persons, any gain recognized to the transferor shall be treated as ordinary income if such property is, in the hands of the transferee, of a character which is subject to the allowance for depreciation provided in section 167.

**(b) Related persons**

For purposes of subsection (a), the term “related persons” means—

- (1) a person and all entities which are controlled entities with respect to such person,
- (2) a taxpayer and any trust in which such taxpayer (or his spouse) is a beneficiary, unless such beneficiary's interest in the trust is

a remote contingent interest (within the meaning of section 318(a)(3)(B)(i)), and

(3) except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

**(c) Controlled entity defined**

**(1) General rule**

For purposes of this section, the term “controlled entity” means, with respect to any person—

(A) a corporation more than 50 percent of the value of the outstanding stock of which is owned (directly or indirectly) by or for such person,

(B) a partnership more than 50 percent of the capital interest or profits interest in which is owned (directly or indirectly) by or for such person, and

(C) any entity which is a related person to such person under paragraph (3), (10), (11), or (12) of section 267(b).

**(2) Constructive ownership**

For purposes of this section, ownership shall be determined in accordance with rules similar to the rules under section 267(c) (other than paragraph (3) thereof).

**(d) Employer and related employee association**

For purposes of subsection (a), the term “related person” also includes—

(1) an employer and any person related to the employer (within the meaning of subsection (b)), and

(2) a welfare benefit fund (within the meaning of section 419(e)) which is controlled directly or indirectly by persons referred to in paragraph (1).

**(e) Patent applications treated as depreciable property**

For purposes of this section, a patent application shall be treated as property which, in the hands of the transferee, is of a character which is subject to the allowance for depreciation provided in section 167.

(Aug. 16, 1954, ch. 736, 68A Stat. 332; Pub. L. 85-866, title I, § 56, Sept. 2, 1958, 72 Stat. 1645; Pub. L. 94-455, title XXI, § 2129(a), Oct. 4, 1976, 90 Stat. 1922; Pub. L. 95-600, title VII, § 701(v)(1), Nov. 6, 1978, 92 Stat. 2920; Pub. L. 96-471, § 5, Oct. 19, 1980, 94 Stat. 2255; Pub. L. 97-448, title III, § 301, Jan. 12, 1983, 96 Stat. 2397; Pub. L. 98-369, div. A, title I, § 175(a), (b), title IV, § 421(b)(6)(A), title V, § 557(a), July 18, 1984, 98 Stat. 708, 794, 898; Pub. L. 99-514, title VI, § 642(a)(1)(A)-(C), Oct. 22, 1986, 100 Stat. 2283, 2284; Pub. L. 105-34, title XIII, § 1308(b), Aug. 5, 1997, 111 Stat. 1041.)

**AMENDMENTS**

1997—Subsec. (b)(3). Pub. L. 105-34 added par. (3).

1986—Subsec. (b)(1). Pub. L. 99-514, § 642(a)(1)(A), substituted “controlled entities” for “80-percent owned entities”.

Subsec. (c). Pub. L. 99-514, § 642(a)(1)(B), (C), in heading, substituted “Controlled entity” for “80-percent owned entity”, in par. (1), in introductory provisions, substituted “controlled entity” for “80-percent owned entity”, in subpar. (A), substituted “more than 50 percent of the value” for “80 percent or more in value”, in subpar. (B), substituted “more than 50 percent” for “80