

§ 1254. Gain from disposition of interest in oil, gas, geothermal, or other mineral properties

(a) General rule

(1) Ordinary income

If any section 1254 property is disposed of, the lesser of—

(A) the aggregate amount of—

(i) expenditures which have been deducted by the taxpayer or any person under section 263, 616, or 617 with respect to such property and which, but for such deduction, would have been included in the adjusted basis of such property, and

(ii) the deductions for depletion under section 611 which reduced the adjusted basis of such property, or

(B) the excess of—

(i) in the case of—

(I) a sale, exchange, or involuntary conversion, the amount realized, or

(II) in the case of any other disposition, the fair market value of such property, over

(ii) the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Disposition of portion of property

For purposes of paragraph (1)—

(A) In the case of the disposition of a portion of section 1254 property (other than an undivided interest), the entire amount of the aggregate expenditures or deductions described in paragraph (1)(A) with respect to such property shall be treated as allocable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

(B) In the case of the disposition of an undivided interest in a section 1254 property (or a portion thereof), a proportionate part of the expenditures or deductions described in paragraph (1)(A) with respect to such property shall be treated as allocable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditures to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditures do not relate to the portion (or interest therein) disposed of.

(3) Section 1254 property

The term “section 1254 property” means any property (within the meaning of section 614) if—

(A) any expenditures described in paragraph (1)(A) are properly chargeable to such property, or

(B) the adjusted basis of such property includes adjustments for deductions for depletion under section 611.

(4) Adjustment for amounts included in gross income under section 617(b)(1)(A)

The amount of the expenditures referred to in paragraph (1)(A)(i) shall be properly adjusted for amounts included in gross income under section 617(b)(1)(A).

(b) Special rules under regulations

Under regulations prescribed by the Secretary—

(1) rules similar to the rule of subsection (g) of section 617 and to the rules of subsections (b) and (c) of section 1245 shall be applied for purposes of this section; and

(2) in the case of the sale or exchange of stock in an S corporation, rules similar to the rules of section 751 shall be applied to that portion of the excess of the amount realized over the adjusted basis of the stock which is attributable to expenditures referred to in subsection (a)(1)(A) of this section.

(Added Pub. L. 94-455, title II, §205(a), Oct. 4, 1976, 90 Stat. 1533; amended Pub. L. 95-618, title IV, §402(c)(1)–(3), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 97-354, §5(a)(37), Oct. 19, 1982, 96 Stat. 1696; Pub. L. 99-514, title IV, §413(a), Oct. 22, 1986, 100 Stat. 2227; Pub. L. 100-647, title I, §1004(c), Nov. 10, 1988, 102 Stat. 3387.)

AMENDMENTS

1988—Subsec. (a)(4). Pub. L. 100-647 added par. (4).

1986—Pub. L. 99-514 amended section generally, substituting “geothermal, or other mineral properties” for “or geothermal property” in section catchline, revising and restating subsec. (a), pars. (1) to (4) as pars. (1) to (3), and reenacting subsec. (b) without change except for substituting “rule of subsection (g)” for “rules of subsection (g)” in par. (1).

1982—Subsec. (b)(2). Pub. L. 97-354 substituted “an S corporation” for “an electing small business corporation (as defined in section 1371(b))”.

1978—Pub. L. 95-618, §402(c)(3), substituted “oil, gas, or geothermal” for “oil or gas” in section catchline.

Subsec. (a)(1), (2). Pub. L. 95-618, §402(c)(1), substituted “oil, gas, or geothermal property” for “oil or gas property” wherever appearing.

Subsec. (a)(3). Pub. L. 95-618, §402(c)(2), substituted “Oil, gas, or geothermal” for “Oil or gas” in heading and in text substituted “The term ‘oil, gas, or geothermal property’ means” for “The term ‘oil or gas property’ means”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title IV, §413(c), Oct. 22, 1986, 100 Stat. 2229, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 617 of this title] shall apply to any disposition of property which is placed in service by the taxpayer after December 31, 1986.

“(2) EXCEPTION FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to any disposition of property placed in service after December 31, 1986, if such property was acquired pursuant to a written contract which was entered into before September 26, 1985, and which was binding at all times thereafter.”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable

years ending on or after such date, see section 402(e) of Pub. L. 95-618, set out as a note under section 263 of this title.

EFFECTIVE DATE

Pub. L. 94-455, title II, §205(e), Oct. 4, 1976, 90 Stat. 1535, provided that: "The amendments made by this section [enacting this section and amending sections 163, 170, 301, 312, 341, 453, and 751 of this title] shall apply with respect to taxable years ending after December 31, 1975."

§ 1255. Gain from disposition of section 126 property

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if section 126 property is disposed of, the lower of—

- (A) the applicable percentage of the aggregate payments, with respect to such property, excluded from gross income under section 126, or
(B) the excess of—

- (i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such section 126 property (in the case of any other disposition), over
(ii) the adjusted basis of such property,

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.

(2) Section 126 property

For purposes of this section, "section 126 property" means any property acquired, improved, or otherwise modified by the application of payments excluded from gross income under section 126.

(3) Applicable percentage

For purposes of this section, if section 126 property is disposed of less than 10 years after the date of receipt of payments excluded from gross income under section 126, the applicable percentage is 100 percent. If section 126 property is disposed of more than 10 years after such date, the applicable percentage is 100 percent reduced (but not below zero) by 10 percent for each year or part thereof in excess of 10 years such property was held after the date of receipt of the payments.

(b) Special rules

Under regulations prescribed by the Secretary—

- (1) rules similar to the rules applicable under section 1245 shall be applied for purposes of this section, and

- (2) for purposes of sections 170(e),¹ and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245.

(Added Pub. L. 95-600, title V, §543(c)(1), Nov. 6, 1978, 92 Stat. 2890; amended Pub. L. 96-222, title

I, §105(a)(7)(B), (D), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96-471, §2(b)(6), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 99-514, title V, §511(d)(2)(A), title VI, §631(e)(14), Oct. 22, 1986, 100 Stat. 2248, 2275; Pub. L. 100-647, title I, §1005(c)(10), Nov. 10, 1988, 102 Stat. 3392; Pub. L. 108-27, title III, §302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108-27 struck out "341(e)(12)," after "170(e)".

1988—Subsec. (b)(2). Pub. L. 100-647 amended Pub. L. 99-514, §511(d)(2)(A), see 1986 Amendment note below.

1986—Subsec. (b)(2). Pub. L. 99-514, §511(d)(2)(A), as amended by Pub. L. 100-647, struck out "163(d)," after "sections".

Pub. L. 99-514, §631(e)(14), struck out "453B(d)(2)" after "341(e)(12),".

1980—Subsec. (a)(1)(B). Pub. L. 96-222, §105(a)(7)(B), inserted following cl. (ii) provisions requiring that such gain 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.

Subsec. (b)(2). Pub. L. 96-471 substituted "453B(d)(2)" for "453(d)(4)(B)".

Pub. L. 96-222, §105(a)(7)(D), inserted "for purposes of sections 163(d), 170(e), 341(e)(12), 453(d)(4)(B), and 751(c)" before "amounts treated as".

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 OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 511(d)(2)(A) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99-514, set out as a note under section 163 of this title.

Amendment by section 631(e)(14) of Pub. L. 99-514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99-514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96-471, see section 6(a)(1) of Pub. L. 96-471, set out as an Effective Date note under section 453 of this title.

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section effective with respect to grants made under the programs after Sept. 30, 1979, see section 543(d) of Pub. L. 95-600, set out as a note under section 126 of this title.

§ 1256. Section 1256 contracts marked to market

(a) General rule

For purposes of this subtitle—

¹ So in original. The comma probably should not appear.