

EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-866, title I, §49(b), Sept. 2, 1958, 72 Stat. 1642, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1957."

[[§ 1232 to 1232B. Repealed. Pub. L. 98-369, div. A, title I, § 42(a)(1), July 18, 1984, 98 Stat. 556]

Section 1232, acts Aug. 16, 1954, ch. 736, 68A Stat. 326; Sept. 2, 1958, Pub. L. 85-866, title I, §§50(a), 51, 72 Stat. 1642, 1643; June 25, 1959, Pub. L. 86-69, §3(e), 73 Stat. 140; Sept. 2, 1964, Pub. L. 88-563, §5, 78 Stat. 845; Dec. 30, 1969, Pub. L. 91-172, title IV, §413(a), (b), 83 Stat. 609, 611; Oct. 4, 1976, Pub. L. 94-455, title XIV, §1402(b)(1)(S), (2), title XIX, §§1901(b)(3)(I), (14)(D), 1904(b)(10)(C), 90 Stat. 1732, 1793, 1796, 1817; Aug. 13, 1981, Pub. L. 97-34, title V, §505(b), 95 Stat. 331; Sept. 3, 1982, Pub. L. 97-248, title II, §§231(c), 232(b), title III, §310(b)(6), 96 Stat. 499, 501, 599; Jan. 12, 1983, Pub. L. 97-448, title III, §306(a)(9)(B), (C)(i), (ii), 96 Stat. 2403, 2404; July 18, 1984, Pub. L. 98-369, div. A, title X, §1001(b)(16), (d), (e), 98 Stat. 1012, related to bonds and other evidences of indebtedness. See section 1271 et seq. of this title.

Section 1232A, added Pub. L. 97-248, title II, §231(a), Sept. 3, 1982, 96 Stat. 496; amended Pub. L. 98-369, div. A, title II, §211(b)(17), July 18, 1984, 98 Stat. 756, related to original issue discount. See section 1271 et seq. of this title.

Section 1232B, added Pub. L. 97-248, title II, §232(a), Sept. 3, 1982, 96 Stat. 499, related to stripped bonds. See section 1286 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

§ 1233. Gains and losses from short sales

(a) Capital assets

For purposes of this subtitle, gain or loss from the short sale of property shall be considered as gain or loss from the sale or exchange of a capital asset to the extent that the property, including a commodity future, used to close the short sale constitutes a capital asset in the hands of the taxpayer.

(b) Short-term gains and holding periods

If gain or loss from a short sale is considered as gain or loss from the sale or exchange of a capital asset under subsection (a) and if on the date of such short sale substantially identical property has been held by the taxpayer for not more than 1 year (determined without regard to the effect, under paragraph (2) of this subsection, of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof—

(1) any gain on the closing of such short sale shall be considered as a gain on the sale or exchange of a capital asset held for not more than 1 year (notwithstanding the period of time any property used to close such short sale has been held); and

(2) the holding period of such substantially identical property shall be considered to begin (notwithstanding section 1223, relating to the holding period of property) on the date of the closing of the short sale, or on the date of a sale, gift, or other disposition of such property, whichever date occurs first. This paragraph shall apply to such substantially iden-

tical property in the order of the dates of the acquisition of such property, but only to so much of such property as does not exceed the quantity sold short.

For purposes of this subsection, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

(c) Certain options to sell

Subsection (b) shall not include an option to sell property at a fixed price acquired on the same day on which the property identified as intended to be used in exercising such option is acquired and which, if exercised, is exercised through the sale of the property so identified. If the option is not exercised, the cost of the option shall be added to the basis of the property with which the option is identified. This subsection shall apply only to options acquired after August 16, 1954.

(d) Long-term losses

If on the date of such short sale substantially identical property has been held by the taxpayer for more than 1 year, any loss on the closing of such short sale shall be considered as a loss on the sale or exchange of a capital asset held for more than 1 year (notwithstanding the period of time any property used to close such short sale has been held, and notwithstanding section 1234).

(e) Rules for application of section

(1) Subsection (b)(1) or (d) shall not apply to the gain or loss, respectively, on any quantity of property used to close such short sale which is in excess of the quantity of the substantially identical property referred to in the applicable subsection.

(2) For purposes of subsections (b) and (d)—

(A) the term "property" includes only stocks and securities (including stocks and securities dealt with on a "when issued" basis), and commodity futures, which are capital assets in the hands of the taxpayer, but does not include any position to which section 1092(b) applies;

(B) in the case of futures transactions in any commodity on or subject to the rules of a board of trade or commodity exchange, a commodity future requiring delivery in 1 calendar month shall not be considered as property substantially identical to another commodity future requiring delivery in a different calendar month;

(C) in the case of a short sale of property by an individual, the term "taxpayer", in the application of this subsection and subsections (b) and (d), shall be read as "taxpayer or his spouse"; but an individual who is legally separated from the taxpayer under a decree of divorce or of separate maintenance shall not be considered as the spouse of the taxpayer;

(D) a securities futures contract (as defined in section 1234B) to acquire substantially identical property shall be treated as substantially identical property; and

(E) entering into a securities futures contract (as so defined) to sell shall be considered to be a short sale, and the settlement of such