

acting this section] shall apply to taxable years beginning after December 31, 1962.”

§ 1250. Gain from dispositions of certain depreciable realty

(a) General rule

Except as otherwise provided in this section—

(1) Additional depreciation after December 31, 1975

(A) In general

If section 1250 property is disposed of after December 31, 1975, then the applicable percentage of the lower of—

(i) that portion of the additional depreciation (as defined in subsection (b)(1) or (4)) attributable to periods after December 31, 1975, in respect of the property, or

(ii) the excess of the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such property (in the case of any other disposition), over 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.

(B) Applicable percentage

For purposes of subparagraph (A), the term “applicable percentage” means—

(i) in the case of section 1250 property with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of State or local laws and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(ii) in the case of dwelling units which, on the average, were held for occupancy by families or individuals eligible to receive subsidies under section 8 of the United States Housing Act of 1937, as amended, or under the provisions of State or local law authorizing similar levels of subsidy for lower-income families, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(iii) in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service;

(iv) in the case of section 1250 property with respect to which a loan is made or insured under title V of the Housing Act of 1949, 100 percent minus 1 percentage point for each full month the property was held

after the date the property was held 100 full months; and

(v) in the case of all other section 1250 property, 100 percent.

In the case of a building (or a portion of a building devoted to dwelling units), if, on the average, 85 percent or more of the dwelling units contained in such building (or portion thereof) are units described in clause (ii), such building (or portion thereof) shall be treated as property described in clause (ii). Clauses (i), (ii), and (iv) shall not apply with respect to the additional depreciation described in subsection (b)(4) which was allowed under section 167(k).

(2) Additional depreciation after December 31, 1969, and before January 1, 1976

(A) In general

If section 1250 property is disposed of after December 31, 1969, and the amount determined under paragraph (1)(A)(ii) exceeds the amount determined under paragraph (1)(A)(i), then the applicable percentage of the lower of—

(i) that portion of the additional depreciation attributable to periods after December 31, 1969, and before January 1, 1976, in respect of the property, or

(ii) the excess of the amount determined under paragraph (1)(A)(ii) over the amount determined under paragraph (1)(A)(i),

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

(B) Applicable percentage

For purposes of subparagraph (A), the term “applicable percentage” means—

(i) in the case of section 1250 property disposed of pursuant to a written contract which was, on July 24, 1969, and at all times thereafter, binding on the owner of the property, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(ii) in the case of section 1250 property with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of State or local laws, and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

(iii) in the case of residential rental property (as defined in section 167(j)(2)(B)) other than that covered by clauses (i) and (ii), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

(iv) in the case of section 1250 property with respect to which a depreciation de-

duction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service; and

(v) in the case of all other section 1250 property, 100 percent.

Clauses (i), (ii), and (iii) shall not apply with respect to the additional depreciation described in subsection (b)(4).

(3) Additional depreciation before January 1, 1970

(A) In general

If section 1250 property is disposed of after December 31, 1963, and the amount determined under paragraph (1)(A)(ii) exceeds the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i), then the applicable percentage of the lower of—

(i) that portion of the additional depreciation attributable to periods before January 1, 1970, in respect of the property, or

(ii) the excess of the amount determined under paragraph (1)(A)(ii) over the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i),

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

(B) Applicable percentage

For purposes of subparagraph (A), the term “applicable percentage” means 100 percent minus 1 percentage point for each full month the property was held after the date on which the property was held for 20 full months.

(4) Special rule

For purposes of this subsection, any reference to section 167(k) or 167(j)(2)(B) shall be treated as a reference to such section as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.

(5) Cross reference

For reduction in the case of corporations on capital gain treatment under this section, see section 291(a)(1).

(b) Additional depreciation defined

For purposes of this section—

(1) In general

The term “additional depreciation” means, in the case of any property, the depreciation adjustments in respect of such property; except that, in the case of property held more than one year, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined for each taxable year under the straight line method of adjustment.

(2) Property held by lessee

In the case of a lessee, in determining the depreciation adjustments which would have

resulted in respect of any building erected (or other improvement made) on the leased property, or in respect of any cost of acquiring the lease, the lease period shall be treated as including all renewal periods. For purposes of the preceding sentence—

(A) the term “renewal period” means any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, but

(B) the inclusion of renewal periods shall not extend the period taken into account by more than $\frac{2}{3}$ of the period on the basis of which the depreciation adjustments were allowed.

(3) Depreciation adjustments

The term “depreciation adjustments” means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.

(4) Additional depreciation attributable to rehabilitation expenditures

The term “additional depreciation” also means, in the case of section 1250 property with respect to which a depreciation or amortization deduction for rehabilitation expenditures was allowed under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) or 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981), the depreciation or amortization adjustments allowed under such section to the extent attributable to such property, except that, in the case of such property held for more than one year after the rehabilitation expenditures so allowed were incurred, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined under the straight line method of adjustment without regard to the useful life permitted under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) or 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981).

(5) Method of computing straight line adjustments

For purposes of paragraph (1), the depreciation adjustments which would have resulted for any taxable year under the straight line method shall be determined—

(A) in the case of property to which section 168 applies, by determining the adjustments which would have resulted for such year if the taxpayer had elected the straight line method for such year using the recovery period applicable to such property, and

(B) in the case any property to which section 168 does not apply, if a useful life (or salvage value) was used in determining the amount allowable as a deduction for any taxable year, by using such life (or value).

(c) Section 1250 property

For purposes of this section, the term “section 1250 property” means any real property (other than section 1245 property, as defined in section 1245(a)(3)) which is or has been property of a character subject to the allowance for depreciation provided in section 167.

(d) Exceptions and limitations

(1) Gifts

Subsection (a) shall not apply to a disposition by gift.

(2) Transfers at death

Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.

(3) Certain tax-free transactions

If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 721, or 731, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). Except as provided in paragraph (9), this paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) Like kind exchanges; involuntary conversions, etc.

(A) Recognition limit

If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the greater of the following:

(i) the amount of gain recognized on the disposition (determined without regard to this section), increased as provided in subparagraph (B), or

(ii) the amount determined under subparagraph (C).

(B) Increase for certain stock

With respect to any transaction, the increase provided by this subparagraph is the amount equal to the fair market value of any stock purchased in a corporation which (but for this paragraph) would result in non-recognition of gain under section 1033(a)(2)(A).

(C) Adjustment where insufficient section 1250 property is acquired

With respect to any transaction, the amount determined under this subparagraph shall be the excess of—

(i) the amount of gain which would (but for this paragraph) be taken into account under subsection (a), over

(ii) the fair market value (or cost in the case of a transaction described in section 1033(a)(2)) of the section 1250 property acquired in the transaction.

(D) Basis of property acquired

In the case of property purchased by the taxpayer in a transaction described in section 1033(a)(2), in applying section 1033(b)(2), such sentence shall be applied—

(i) first solely to section 1250 properties and to the amount of gain not taken into account under subsection (a) by reason of this paragraph, and

(ii) then to all purchased properties to which such sentence applies and to the remaining gain not recognized on the transaction as if the cost of the section 1250 properties were the basis of such properties computed under clause (i).

In the case of property acquired in any other transaction to which this paragraph applies, rules consistent with the preceding sentence shall be applied under regulations prescribed by the Secretary.

(E) Additional depreciation with respect to property disposed of

In the case of any transaction described in section 1031 or 1033, the additional depreciation in respect of the section 1250 property acquired which is attributable to the section 1250 property disposed of shall be an amount equal to the amount of the gain which was not taken into account under subsection (a) by reason of the application of this paragraph.

(5) Property distributed by a partnership to a partner

(A) In general

For purposes of this section, the basis of section 1250 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(B) Additional depreciation

In respect of any property described in subparagraph (A), the additional depreciation attributable to periods before the distribution by the partnership shall be—

(i) the amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time and the applicable percentage for the property had been 100 percent, reduced by

(ii) if section 751(b) applied to any part of such gain, the amount of such gain to which section 751(b) would have applied if the applicable percentage for the property had been 100 percent.

(6) Transfers to tax-exempt organization where property will be used in unrelated business

(A) In general

The second sentence of paragraph (3) shall not apply to a disposition of section 1250 property to an organization described in section 511(a)(2) or 511(b)(2) if, immediately after such disposition, such organization uses such property in an unrelated trade or business (as defined in section 513).

(B) Later change in use

If any property with respect to the disposition of which gain is not recognized by reason of subparagraph (A) ceases to be used in an unrelated trade or business of the organization acquiring such property, such organization shall be treated for purposes of this section as having disposed of such property on the date of such cessation.

(7) Foreclosure dispositions

If any section 1250 property is disposed of by the taxpayer pursuant to a bid for such property at foreclosure or by operation of an agreement or of process of law after there was a default on indebtedness which such property secured, the applicable percentage referred to in paragraph (1)(B), (2)(B), or (3)(B) of subsection (a), as the case may be, shall be determined as if the taxpayer ceased to hold such property on the date of the beginning of the proceedings pursuant to which the disposition occurred, or, in the event there are no proceedings, such percentage shall be determined as if the taxpayer ceased to hold such property on the date, determined under regulations prescribed by the Secretary, on which such operation of an agreement or process of law, pursuant to which the disposition occurred, began.

(e) Holding period

For purposes of determining the applicable percentage under this section, the provisions of section 1223 shall not apply, and the holding period of section 1250 property shall be determined under the following rules:

(1) Beginning of holding period

The holding period of section 1250 property shall be deemed to begin—

(A) in the case of property acquired by the taxpayer, on the day after the date of acquisition, or

(B) in the case of property constructed, reconstructed, or erected by the taxpayer, on the first day of the month during which the property is placed in service.

(2) Property with transferred basis

If the basis of property acquired in a transaction described in paragraph (1), (2), or (3) of subsection (d) is determined by reference to its basis in the hands of the transferor, then the holding period of the property in the hands of the transferee shall include the holding period of the property in the hands of the transferor.

(f) Special rules for property which is substantially improved

(1) Amount treated as ordinary income

If, in the case of a disposition of section 1250 property, the property is treated as consisting

of more than one element by reason of paragraph (3), then the amount taken into account under subsection (a) in respect of such section 1250 property as ordinary income shall be the sum of the amounts determined under paragraph (2).

(2) Ordinary income attributable to an element

For purposes of paragraph (1), the amount taken into account for any element shall be the sum of a series of amounts determined for the periods set forth in subsection (a), with the amount for any such period being determined by multiplying—

(A) the amount which bears the same ratio to the lower of the amounts specified in clause (i) or (ii) of subsection (a)(1)(A), in clause (i) or (ii) of subsection (a)(2)(A), or in clause (i) or (ii) of subsection (a)(3)(A), as the case may be, for the section 1250 property as the additional depreciation for such element attributable to such period bears to the sum of the additional depreciation for all elements attributable to such period, by

(B) the applicable percentage for such element for such period.

For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.

(3) Property consisting of more than one element

In applying this subsection in the case of any section 1250 property, there shall be treated as a separate element—

(A) each separate improvement,

(B) if, before completion of section 1250 property, units thereof (as distinguished from improvements) were placed in service, each such unit of section 1250 property, and

(C) the remaining property which is not taken into account under subparagraphs (A) and (B).

(4) Property which is substantially improved

For purposes of this subsection—

(A) In general

The term “separate improvement” means each improvement added during the 36-month period ending on the last day of any taxable year to the capital account for the property, but only if the sum of the amounts added to such account during such period exceeds the greatest of—

(i) 25 percent of the adjusted basis of the property,

(ii) 10 percent of the adjusted basis of the property, determined without regard to the adjustments provided in paragraphs (2) and (3) of section 1016(a), or

(iii) \$5,000.

For purposes of clauses (i) and (ii), the adjusted basis of the property shall be determined as of the beginning of the first day of such 36-month period, or of the holding period of the property (within the meaning of subsection (e)), whichever is the later.

(B) Exception

Improvements in any taxable year shall be taken into account for purposes of subpara-

graph (A) only if the sum of the amounts added to the capital account for the property for such taxable year exceeds the greater of—

- (i) \$2,000, or
- (ii) one percent of the adjusted basis referred to in subparagraph (A)(ii), determined, however, as of the beginning of such taxable year.

For purposes of this section, if the amount added to the capital account for any separate improvement does not exceed the greater of clause (i) or (ii), such improvement shall be treated as placed in service on the first day, of a calendar month, which is closest to the middle of the taxable year.

(C) Improvement

The term “improvement” means, in the case of any section 1250 property, any addition to capital account for such property after the initial acquisition or after completion of the property.

(g) Adjustments to basis

The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).

(h) Application of section

This section shall apply notwithstanding any other provision of this subtitle.

(Added Pub. L. 88-272, title II, §231(a), Feb. 26, 1964, 78 Stat. 100; amended Pub. L. 91-172, title V, §521(b), (c), (e), title VII, §704(b)(5), title IX, §910(b), Dec. 30, 1969, 83 Stat. 652, 653, 670, 720; Pub. L. 92-178, title III, §303(c)(3), Dec. 10, 1971, 85 Stat. 522; Pub. L. 93-625, §5(c), Jan. 3, 1975, 88 Stat. 2112; Pub. L. 94-81, §2(b), Aug. 9, 1975, 89 Stat. 417; Pub. L. 94-455, title II, §202(a)-(c)(1), (2), title XIX, §§1901(b)(3)(K), (31)(A), (B), (E), 1906(b)(13)(A), 1951(c)(2)(C), title XXI, §§2122(b)(4), 2124(a)(3)(D), Oct. 4, 1976, 90 Stat. 1527, 1529, 1530, 1793, 1799, 1800, 1834, 1840, 1915, 1918; Pub. L. 95-600, title IV, §§404(c)(7), 405(c)(4), title VII, §701(f)(3)(C), (E), Nov. 6, 1978, 92 Stat. 2870, 2871, 2901; Pub. L. 96-222, title I, §107(a)(1)(D), Apr. 1, 1980, 94 Stat. 222; Pub. L. 96-223, title II, §251(a)(2)(D), Apr. 2, 1980, 94 Stat. 287; Pub. L. 97-34, title II, §§204(e), 212(d)(2)(F), Aug. 13, 1981, 95 Stat. 223, 239; Pub. L. 97-448, title I, §102(a)(7), Jan. 12, 1983, 96 Stat. 2368; Pub. L. 98-369, div. A, title VII, §712(a)(1)(B), July 18, 1984, 98 Stat. 946; Pub. L. 99-514, title II, §242(b)(2), Oct. 22, 1986, 100 Stat. 2181; Pub. L. 100-647, title I, §1002(a)(1), Nov. 10, 1988, 102 Stat. 3352; Pub. L. 101-239, title VII, §7831(b), Dec. 19, 1989, 103 Stat. 2426; Pub. L. 101-508, title XI, §§11801(c)(6)(F), (8)(I), (15), 11812(b)(11), (12), Nov. 5, 1990, 104 Stat. 1388-524, 1388-527, 1388-536; Pub. L. 104-7, §2(b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104-188, title I, §1702(h)(18), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105-34, title III, §312(d)(10), Aug. 5, 1997, 111 Stat. 840; Pub. L. 105-206, title VI, §6023(12), July 22, 1998, 112 Stat. 825; Pub. L. 109-58, title XIII, §1331(b)(3), Aug. 8, 2005, 119 Stat. 1024; Pub. L. 109-135, title IV, §402(a)(7), (h), Dec. 21, 2005, 119 Stat. 2610, 2611.)

REFERENCES IN TEXT

Sections 221 and 236 of the National Housing Act, referred to in subsec. (a)(1)(B)(i), (2)(B)(ii), are classified

to sections 1715l and 1715z-1, respectively, of Title 12, Banks and Banking.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsecs. (a)(1)(B)(i), (2)(B)(ii), (4) and (b)(4), is the date of enactment of Pub. L. 101-508, which was approved Nov. 5, 1990.

Section 8 of the United States Housing Act of 1937, referred to in subsec. (a)(1)(B)(ii), is classified to section 1437f of Title 42, The Public Health and Welfare.

The Housing Act of 1949, referred to in subsec. (a)(1)(B)(iv), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

The Tax Reform Act of 1976, referred to in subsec. (b)(3), is Pub. L. 94-455, Oct. 4, 1976, 90 Stat. 1520, as amended. Section 1951(a)(4)(A) of the Act repealed section 168 of this title. For complete classification of this Act to the Code, see Tables.

The Tax Reform Act of 1986, referred to in subsec. (b)(3), is Pub. L. 99-514, Oct. 22, 1986, 100 Stat. 2085. Section 242(a) of the Act repealed section 185 of this title. For complete classification of this Act to the Code, see Tables.

The Revenue Reconciliation Act of 1990, referred to in subsec. (b)(3), is title XI of Pub. L. 101-508, Nov. 5, 1990, 104 Stat. 1388-400. Section 11801(a)(13) of the Act repealed section 188 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

The Economic Recovery Tax Act of 1981, referred to in subsec. (b)(4), is Pub. L. 97-34, Aug. 13, 1981, 95 Stat. 172, as amended. Section 191 of this title was repealed by section 212(d)(1) of Pub. L. 97-34. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2005—Subsec. (b)(3). Pub. L. 109-135, §402(h), struck out “or by section 179D” after “190, or 193”.

Pub. L. 109-58, §1331(b)(3), inserted “or by section 179D” after “190, or 193”.

Subsec. (d)(5) to (8). Pub. L. 109-135, §402(a)(7)(A), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out heading and text of former par. (5). Text read as follows: “Under regulations prescribed by the Secretary, rules consistent with paragraphs (3) and (4) of this subsection and with subsections (e) and (f) shall apply in the case of transactions described in section 1081 (relating to exchanges in obedience to SEC orders).”

Subsec. (e)(2). Pub. L. 109-135, §402(a)(7)(B), substituted “or (3)” for “(3), or (5)”.

1998—Subsec. (d)(4)(D). Pub. L. 105-206 substituted “section 1033(b)(2)” for “the last sentence of section 1033(b)” in introductory provisions.

1997—Subsec. (d)(7) to (10). Pub. L. 105-34, §312(d)(10)(A), redesignated pars. (9) and (10) as (7) and (8), respectively, and struck out heading and text of former par. (7). Text read as follows: “Subsection (a) shall not apply to a disposition of—

“(A) property to the extent used by the taxpayer as his principal residence (within the meaning of section 1034, relating to rollover of gain on sale of principal residence), and

“(B) property in respect of which the taxpayer meets the age and ownership requirements of section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) but only to the extent that he meets the use requirements of such section in respect of such property.”

Subsec. (e)(3). Pub. L. 105-34, §312(d)(10)(B), struck out heading and text of par. (3). Text read as follows: “If the basis of property acquired in a transaction described in paragraph (7) of subsection (d) is determined by reference to the basis in the hands of the taxpayer of other property, then the holding period of the property acquired shall include the holding period of such other property.”

1996—Subsec. (e)(4). Pub. L. 104-188 struck out par. (4) which read as follows:

“(4) QUALIFIED LOW-INCOME HOUSING.—The holding period of any section 1250 property acquired which is described in subsection (d)(8)(E)(i) shall include the holding period of the corresponding element of section 1250 property disposed of.”

1995—Subsec. (d)(5). Pub. L. 104-7 struck out “1071 and” before “1081 transactions” in heading and “section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or” before “section 1081” in text.

1990—Subsec. (a)(1)(B)(i), (2)(B)(ii). Pub. L. 101-508, § 11801(c)(15)(A), which directed the insertion of “(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)” after “section 1039(b)(1)(B)” in pars. (1)(A)(i) and (2)(B)(ii) of subsec. (a), was executed to pars. (1)(B)(i) and (2)(B)(ii) to reflect the probable intent of Congress.

Subsec. (a)(4), (5). Pub. L. 101-508, § 11812(b)(11), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(3). Pub. L. 101-508, § 11801(c)(6)(F), substituted “188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990),” for “188.”

Subsec. (b)(4). Pub. L. 101-508, § 11812(b)(12), substituted “section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)” for “section 167(k)” in two places.

Subsec. (d)(3). Pub. L. 101-508, § 11801(c)(8)(I), struck out “371(a), 374(a),” after “332, 351, 361.”

Subsec. (d)(8). Pub. L. 101-508, § 11801(c)(15)(B), struck out par. (8) which related to the treatment of gain from the disposition of qualified low-income housing.

Subsecs. (g) to (i). Pub. L. 101-508, § 11801(c)(15)(C), redesignated subsecs. (h) and (i) as (g) and (h), respectively, and struck out former subsec. (g) which provided special rules for qualified low-income housing.

1989—Subsec. (b)(5)(A). Pub. L. 101-239, § 7831(b)(1), substituted “of property to which section 168 applies” for “of recovery property”.

Subsec. (b)(5)(B). Pub. L. 101-239, § 7831(b)(2), substituted “to which section 168 does not apply” for “which is not recovery property”.

1988—Subsec. (d)(11). Pub. L. 100-647 struck out par. (11) which related to section 1245 recovery property.

1986—Subsec. (b)(3). Pub. L. 99-514 inserted “(as in effect before its repeal by the Tax Reform Act of 1986)” after “185”.

1984—Subsec. (a)(4). Pub. L. 98-369 added par. (4).

1983—Subsec. (b)(1). Pub. L. 97-448, § 102(a)(7)(B), struck out last sentence providing that, for purposes of defining “additional depreciation”, if a useful life (or salvage value) was used in determining the amount allowed as a deduction for any taxable year, such life (or value) was to be used in determining the depreciation adjustments which would have resulted for such year under the straight line method.

Subsec. (b)(5). Pub. L. 97-448, § 102(a)(7)(A), added par. (5).

1981—Subsec. (b)(4). Pub. L. 97-34, § 212(d)(2)(F), inserted “(as in effect before its repeal by the Economic Recovery Tax Act of 1981)” after “section 167(k) or 191” in two places.

Subsec. (d)(11). Pub. L. 97-34, § 204(e), added par. (11).

1980—Subsec. (a)(1)(B). Pub. L. 96-222 inserted “which was allowed under section 167(k)” at end of last sentence.

Subsec. (b)(3). Pub. L. 96-223 inserted reference to section 193.

1978—Subsec. (b)(3). Pub. L. 95-600, § 701(f)(3)(C), struck out reference to section 191.

Subsec. (b)(4). Pub. L. 95-600, § 701(f)(3)(E), inserted reference to amortization deduction, amortization adjustments, and to section 191 in two places.

Subsec. (d)(7)(A). Pub. L. 95-600, § 405(c)(4), substituted “relating to rollover of gain on sale of principal residence” for “relating to sale or exchange of residence”.

Subsec. (d)(7)(B). Pub. L. 95-600, § 404(c)(7), inserted provisions relating to a one-time exclusion and principal residence and substituted “55” for “65”.

1976—Subsec. (a). Pub. L. 94-455, § 202(a), in revising text generally, made the following changes:

(1) Added par. (1).

(2) Redesignated as pars. (2) and (3) existing pars. (1) and (2).

(3) Made the following changes in par. (2): inserted in heading “, and before January 1, 1976”; designated introductory text as subpar. “(A) In general”; inserted therein “and the amount determined under paragraph (1)(A)(ii) exceeds the amount determined under paragraph (1)(A)(i), then”; redesignated as cl. (i) existing subpar. (A); substituted therein “attributable to periods after December 31, 1969, and before January 1, 1976” for “(as defined in subsection (b)(1) or (4) attributable to periods after December 31, 1969)”; substituted cl. (ii) and concluding text for subpar. (B) and concluding text which read:

“(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 property (in the case of any other disposition), over

“(ii) the adjusted basis of such property, shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provision of this subtitle.”; redesignated as subpar. (B) existing subpar. (C); substituted therein introductory “subparagraph (A)” for “paragraph (1)”; and deleted from cl. (ii) “constructed, reconstructed, or acquired by the taxpayer before January 1, 1976,” after “section 1250 property” and “is” before “financed”, and substituted “1” for “one”.

(4) Made the following changes in par. (3): substituted in subpar. (A) “determined under paragraph (1)(A)(ii) exceeds the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i)” for “determined under paragraph (1)(B) exceeds the amount determined under paragraph (1)(A)”; and substituted subpar. (A)(ii) and concluding text for par. (2)(A)(ii), and concluding text which read:

“(i) the excess of the amount determined under paragraph (1)(B) over the amount determined under paragraph (1)(A),

shall also be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Such gain shall be recognized notwithstanding any other provisions of this subtitle.”

Subsec. (b)(3). Pub. L. 94-455, §§ 1951(c)(2)(C), 2122(b)(4), 2122(a)(3)(D), inserted “(as in effect before its repeal by the Tax Reform Act of 1976)” after “section 168” and reference to sections 190 and 191.

Subsec. (d)(4)(B). Pub. L. 94-455, § 1901(b)(31)(A), substituted reference to section “1033(a)(2)(A)” for “1033(a)(3)(A)”.

Subsec. (d)(4)(C). Pub. L. 94-455, § 1901(b)(31)(B), substituted reference to section “1033(a)(2)” for “1033(a)(3)”.

Subsec. (d)(4)(D). Pub. L. 94-455, § 1901(b)(31)(B), (E), substituted reference to sections “1033(a)(2)” and “1033(b)” for “1033(a)(3)” and “1033(c)” § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (d)(5), (8)(F)(ii). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (d)(10). Pub. L. 94-455, § 202(b), added par. (10).
Subsec. (f)(1). Pub. L. 94-455, § 1901(b)(3)(K), substituted “ordinary income” for “gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231”.

Subsec. (f)(2). Pub. L. 94-455, § 202(c)(1), substituted introductory text “the sum of a series of amounts determined for the periods set forth in subsection (a), with the amount for any such period being determined by multiplying” for “the sum of—(A) the amount (if any) determined by multiplying”; substituted subpar. (A) as combined text for prior subpars. (A)(i) and (B)(i) reading “(i) the amount which bears the same ratio to the lower of the amounts specified in subparagraph (A) or (B) of subsection (a)(1) for the section 1250 property as

the additional depreciation for such element attributable to periods after December 31, 1969, bears to the sum of the additional depreciation for all elements attributable to periods after December 31, 1969, by” and “(i) the amount which bears the same ratio to the lower of the amounts specified in subsection (a)(2)(A)(i) or (ii) for the section 1250 property as the additional depreciation for such element attributable to periods before January 1, 1970, bears to the sum of the additional depreciation for all elements attributable to periods before January 1, 1970, by”; and substituted subpar. (B) as combined text for prior subpars. (A)(ii) and (B)(ii), inserting therein “for such period” after “for such element”.

Subsec. (g)(1). Pub. L. 94-455, §1901(b)(3)(K), substituted “ordinary income” for “gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231”.

Subsec. (g)(2). Pub. L. 94-455, §202(c)(2), substituted “shall be determined in a manner similar to that provided by subsection (f)(2).” for “shall be the amount determined by multiplying—

“(A) the amount which bears the same ratio to the lower of the additional depreciation or the gain recognized for the section 1250 property disposed of as the additional depreciation for such element bears to the sum of the additional depreciation for all elements disposed of, by

“(B) the applicable percentage for such element.

For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.”

Subsec. (h). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1975—Subsec. (a)(1)(C)(ii). Pub. L. 93-625 substituted “January 1, 1976” for “January 1, 1975”.

Subsec. (d)(3), (9). Pub. L. 94-81, §2(b), inserted reference to par. (9) in par. (3), and added par. (9).

1971—Subsec. (b)(3). Pub. L. 92-178 inserted reference to section 188.

1969—Subsec. (a). Pub. L. 91-172, §521(b), modified the recapture rules pertaining to residential housing by allowing a 1 percent per month reduction in the amount to be recaptured as ordinary income after the property has been held for 100 full months, with other real property remaining subject to full recapture, applied the existing recapture rules where the sale of property was subject to a binding contract in existence prior to July 25, 1969, provided that changes in the recapture rules are not to apply in federally assisted projects (such as programs under section 221(d)(3) or 236 of the National Housing Act) or to other publicly assisted housing programs under which the return to the investor is limited on a comparable basis, thereby rendering these projects subject to a recapture of the depreciation in full if the sale occurs in the first 12 months and for a phaseout of the recapture of the excess of accelerated over straight-line depreciation after 20 months, the recapture being reduced at the rate of 1 percent per month until 120 months after which no recapture applies, with such recapture to continue to apply only with respect to such property constructed, reconstructed, or acquired before Jan. 1, 1975, and applied new recapture rules to depreciation attributable to periods after Dec. 31, 1969.

Subsec. (b)(4). Pub. L. 91-172, §512(c), added par. (4).

Subsec. (b)(3). Pub. L. 91-172, §704(b)(5), inserted reference to sections 169 and 185.

Subsec. (d). Pub. L. 91-172, §§521(e)(1), 910(b)(1), substituted “subsection (a)” for “subsection (a)(1)” wherever it appears and added par. (8).

Subsec. (e)(4). Pub. L. 91-172, §910(b)(2), added par. (4).

Subsec. (f)(1). Pub. L. 91-172, §521(e)(2)(A), substituted “subsection (a)” for “subsection (a)(1)”.

Subsec. (f)(2). Pub. L. 91-172, §521(e)(2)(B), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A) and, in cls. (i) and (ii) as so redesignated, inserted reference to depreciation attributable to periods after Dec. 31, 1969, and added subpar. (B).

Subsecs. (g) to (i). Pub. L. 91-172, §910(b)(3), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109-135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which they relate, but amendment by section 402(a)(7) of Pub. L. 109-135 not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109-135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendment by Pub. L. 109-58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109-58, set out as an Effective Date note under section 179D of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105-34, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-7 applicable to sales and exchanges on or after January 17, 1995, and to sales and exchanges before such date if FCC tax certificate with respect to such sale or exchange was issued on or after such date, but not applicable with respect to certain binding contracts, see section 2(d) of Pub. L. 104-7, set out as an Effective Date of Repeal note under section 1071 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11812(b)(11), (12) of Pub. L. 101-508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99-514, see section 11812(c) of Pub. L. 101-508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7831(g) of Pub. L. 101-239, set out as a 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 Pub. L. 99-514 applicable to that portion of the basis of any property which is attributable to expenditures paid or incurred after Dec. 31, 1986, except as otherwise provided, see section 242(c) of Pub. L. 99-514, set out as an Effective Date of Repeal note under former section 185 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 204(e) of Pub. L. 97-34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

Amendment by section 212(d)(2)(F) of Pub. L. 97-34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97-34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-223 applicable to taxable years beginning after Dec. 31, 1979, see section 251(b) of Pub. L. 96-223, set out as an Effective Date note under section 193 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 OF 1978 AMENDMENT

Amendment by section 404(c)(7) of Pub. L. 95-600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95-600, set out as a note under section 121 of this title.

Amendment by section 405(c)(4) of Pub. L. 95-600 applicable to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date, see section 405(d) of Pub. L. 95-600, set out as a note under section 1038 of this title.

Amendment by section 701(f)(3)(C), (E) of Pub. L. 95-600 effective as if included within the amendment of subsec. (b)(3) and (4) by section 2124 of Pub. L. 94-455, see section 701(f)(8) of Pub. L. 95-600, set out as an Effective and Termination Dates of 1978 Amendments note under section 167 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title II, §202(d), Oct. 4, 1976, 90 Stat. 1530, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section (other than subsection (b)) [amending this section and section 167 of this title] shall apply for taxable years ending after December 31, 1975. The amendment made by subsection (b) [amending this section] shall apply with respect to proceedings (and to operations of law) referred to in section 1250(d)(10) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which begin after December 31, 1975."

Amendment by section 1901(b)(3)(K), (31)(A), (B), (E) of Pub. L. 94-455 effective for 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.

Amendment by section 1951(c)(2)(C) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94-455, set out as a note under section 72 of this title.

Amendment by section 2122(b)(4) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, and before Jan. 1, 1983, see section 2122(c) of Pub. L. 94-455, as amended by Pub. L. 96-167, 9(c), Dec. 29, 1979, 93 Stat. 1278, set out as a note under section 190 of this title.

Amendment by section 2124(a)(3)(D) of Pub. L. 94-455 applicable with respect to additions to capital accounts made after June 14, 1976 and before June 15, 1981, see

section 2124(a)(4) of Pub. L. 94-455, set out as an Effective Date note under section 642 of this title.

EFFECTIVE DATE OF 1975 AMENDMENTS

Pub. L. 94-81, §2(c), Aug. 9, 1975, 89 Stat. 418, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2) the amendments made by this section [amending this section and section 1245 of this title] shall apply to dispositions after December 31, 1969, in taxable years ending after such date.

"(2) ELECTION FOR PAST TRANSACTIONS.—In the case of any disposition occurring before the date of the enactment of this Act [Aug. 9, 1975], the amendments made by this section shall apply only if the organization acquiring the property elects (in the manner provided by regulations prescribed by the Secretary of the Treasury or his delegate) within 1 year after the date of the enactment of this Act to have such amendments apply with respect to such property."

Amendment by Pub. L. 93-625 applicable with respect to property placed in service after Dec. 31, 1973, see section 5(d) of Pub. L. 93-625, set out as a note under section 167 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable to taxable years ending after Dec. 31, 1971, see section 303(d) of Pub. L. 92-178, set out as a note under section 642 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 521(b), (c), (e) of Pub. L. 91-172 applicable with respect to taxable years ending after July 24, 1969, see section 521(g) of Pub. L. 91-172, set out as a note under section 167 of this title.

Amendment by section 704(b)(5) of Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91-172, set out as an Effective Date note under section 169 of this title.

Pub. L. 91-172, title IX, §910(d), Dec. 30, 1969, 83 Stat. 722, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting section 1039 of this title and amending this section] shall apply to approved dispositions of qualified housing projects (within the meaning of section 1039 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by subsection (a)) after October 9, 1969."

EFFECTIVE DATE

Pub. L. 88-272, title II, §231(c), Feb. 26, 1964, 78 Stat. 105, provided that: "The amendments made by this section [enacting this section and amending sections 170, 301, 312, 341, 453, 751, and the analysis preceding section 1231 of this title] shall apply to dispositions after December 31, 1963, in taxable years ending after such date."

SAVINGS PROVISION

For provisions that nothing in amendment 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.

[§ 1251. Repealed. Pub. L. 98-369, div. A, title IV, § 492(a), July 18, 1984, 98 Stat. 853]

Section, added Pub. L. 91-172, title II, §211(a), Dec. 30, 1969, 83 Stat. 566; amended Pub. L. 92-178, title III, §305(a), Dec. 10, 1971, 85 Stat. 524; Pub. L. 94-455, title II, §206(a), (b)(1), (2), title XIV, §1402(b)(1)(Z), (2), title XIX, §§1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1732, 1793, 1834; Pub. L. 97-354, §5(a)(36), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98-369, div. A, title X, §1001(b)(23),