

ing the amount of any customs duties or any other duties which may be imposed on the importation of any property.

**(2) Import**

Except as provided in regulations, the term “import” means the entering, or withdrawal from warehouse, for consumption.

(Added Pub. L. 99-514, title XII, §1248(a), Oct. 22, 1986, 100 Stat. 2584.)

**EFFECTIVE DATE**

Pub. L. 99-514, title XII, §1248(c), Oct. 22, 1986, 100 Stat. 2584, provided that: “The amendments made by this section [enacting this section] shall apply to transactions entered into after March 18, 1986.”

**§ 1060. Special allocation rules for certain asset acquisitions**

**(a) General rule**

In the case of any applicable asset acquisition, for purposes of determining both—

- (1) the transferee’s basis in such assets, and
- (2) the gain or loss of the transferor with respect to such acquisition,

the consideration received for such assets shall be allocated among such assets acquired in such acquisition in the same manner as amounts are allocated to assets under section 338(b)(5). If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.

**(b) Information required to be furnished to Secretary**

Under regulations, the transferor and transferee in an applicable asset acquisition shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary the following information:

- (1) The amount of the consideration received for the assets which is allocated to section 197 intangibles.
- (2) Any modification of the amount described in paragraph (1).
- (3) Any other information with respect to other assets transferred in such acquisition as the Secretary deems necessary to carry out the provisions of this section.

**(c) Applicable asset acquisition**

For purposes of this section, the term “applicable asset acquisition” means any transfer (whether directly or indirectly)—

- (1) of assets which constitute a trade or business, and
- (2) with respect to which the transferee’s basis in such assets is determined wholly by reference to the consideration paid for such assets.

A transfer shall not be treated as failing to be an applicable asset acquisition merely because section 1031 applies to a portion of the assets transferred.

**(d) Treatment of certain partnership transactions**

In the case of a distribution of partnership property or a transfer of an interest in a partnership—

(1) the rules of subsection (a) shall apply but only for purposes of determining the value of section 197 intangibles for purposes of applying section 755, and

(2) if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of subsection (b).

**(e) Information required in case of certain transfers of interests in entities**

**(1) In general**

If—

(A) a person who is a 10-percent owner with respect to any entity transfers an interest in such entity, and

(B) in connection with such transfer, such owner (or a related person) enters into an employment contract, covenant not to compete, royalty or lease agreement, or other agreement with the transferee,

such owner and the transferee shall, at such time and in such manner as the Secretary may prescribe, furnish such information as the Secretary may require.

**(2) 10-percent owner**

For purposes of this subsection—

**(A) In general**

The term “10-percent owner” means, with respect to any entity, any person who holds 10 percent or more (by value) of the interests in such entity immediately before the transfer.

**(B) Constructive ownership**

Section 318 shall apply in determining ownership of stock in a corporation. Similar principles shall apply in determining the ownership of interests in any other entity.

**(3) Related person**

For purposes of this subsection, the term “related person” means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the 10-percent owner.

**(f) Cross reference**

**For provisions relating to penalties for failure to file a return required by this section, see section 6721.**

(Added Pub. L. 99-514, title VI, §641(a), Oct. 22, 1986, 100 Stat. 2282; amended Pub. L. 100-647, title I, §1006(h)(1), (2), (3)(B), Nov. 10, 1988, 102 Stat. 3410; Pub. L. 101-508, title XI, §11323(a), (b)(1), Nov. 5, 1990, 104 Stat. 1388-464; Pub. L. 103-66, title XIII, §13261(e), Aug. 10, 1993, 107 Stat. 539.)

**PRIOR PROVISIONS**

A prior section 1060 was renumbered section 1061 of this title.

**AMENDMENTS**

1993—Subsec. (b)(1). Pub. L. 103-66, §13261(e)(1), substituted “section 197 intangibles” for “goodwill or going concern value”.

Subsec. (d)(1). Pub. L. 103-66, §13261(e)(2), substituted “section 197 intangibles” for “goodwill or going concern value (or similar items)”.

1990—Subsec. (a). Pub. L. 101-508, §11323(a), inserted at end “If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.”

Subsecs. (e), (f). Pub. L. 101-508, §11323(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (b)(3). Pub. L. 100-647, §1006(h)(1), substituted “deems” for “may find”.

Subsec. (d). Pub. L. 100-647, §1006(h)(2), added subsec. (d).

Subsec. (e). Pub. L. 100-647, §1006(h)(3)(B), added subsec. (e).

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103-66, set out as an Effective Date note under section 197 of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable to acquisitions after Oct. 9, 1990, but not applicable to any acquisition pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such acquisition, see section 11323(d) of Pub. L. 101-508, set out as a note under section 338 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

Pub. L. 99-514, title VI, §641(c), Oct. 22, 1986, 100 Stat. 2283, provided that: “The amendments made by this section [enacting this section and renumbering former section 1060 as 1061] shall apply to any acquisition of assets after May 6, 1986, unless such acquisition is pursuant to a binding contract which was in effect on May 6, 1986, and at all times thereafter.”

### § 1061. Cross references

(1) For nonrecognition of gain in connection with the transfer of obsolete vessels to the Maritime Administration under chapter 573 of title 46, United States Code, see section 57307 of title 46.

(2) For recognition of gain or loss in connection with the construction of new vessels, see chapter 533 of title 46, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 311, §1054; renumbered §1055, Pub. L. 86-779, §8(b), Sept. 14, 1960, 74 Stat. 1003; renumbered §1056, Pub. L. 88-9, §1(b), Apr. 10, 1963, 77 Stat. 7; renumbered §1057, Pub. L. 94-455, title II, §212(a)(1), Oct. 4, 1976, 90 Stat. 1545; renumbered §1058, Pub. L. 94-455, title X, §1015(c), Oct. 4, 1976, 90 Stat. 1618; renumbered §1059, Pub. L. 95-345, §2(d)(1), Aug. 15, 1978, 92 Stat. 482; renumbered §1060, Pub. L. 98-369, div. A, title I, §53(a), July 18, 1984, 98 Stat. 565; renumbered §1061 and amended, Pub. L. 99-514, title VI, §641(a), title XVIII, §1899A(27), Oct. 22, 1986, 100 Stat. 2282, 2960; Pub. L. 109-304, §17(e)(5), Oct. 6, 2006, 120 Stat. 1708.)

#### AMENDMENTS

2006—Par. (1). Pub. L. 109-304, §17(e)(5)(A), substituted “chapter 573 of title 46, United States Code, see section

57307 of title 46” for “section 510 of the Merchant Marine Act, 1936, see subsection (e) of that section, as amended August 4, 1939 (46 U.S.C. App. 1160)”.

Par. (2). Pub. L. 109-304, §17(e)(5)(B), substituted “chapter 533 of title 46, United States Code” for “section 511 of such Act, as amended (46 U.S.C. App. 1161)”.

Par. (3). Pub. L. 109-304, §17(e)(5)(C), struck out par. (3), which read as follows: “For nonrecognition of gain in connection with vessels exchanged with the Maritime Administration under section 8 of the Merchant Ship Sales Act of 1946, see subsection (a) of that section (50 U.S.C. App. 1741).”

1986—Pub. L. 99-514, §641(a), renumbered section 1060 of this title as this section.

Pars. (1), (2). Pub. L. 99-514, §1899A(27), which directed the amendment of pars. (1) and (2) of section 1060 by substituting “46 U.S.C. App.” for “46 U.S.C.” was executed to section 1061 to reflect the probable intent of Congress in view of the renumbering of section 1060 as 1061 by section 641(a) of Pub. L. 99-514.

#### [PART V—REPEALED]

### [§ 1071. Repealed. Pub. L. 104-7, §2(a), Apr. 11, 1995, 109 Stat. 93]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 311; Sept. 2, 1958, Pub. L. 85-866, title I, §48(a), 72 Stat. 1642; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§1901(b)(31)(E), 1906(b)(13)(A), 90 Stat. 1800, 1834, provided for nonrecognition on FCC certified sales and exchanges.

#### EFFECTIVE DATE OF REPEAL

Pub. L. 104-7, §2(d), Apr. 11, 1995, 109 Stat. 93, provided that:

“(1) IN GENERAL.—The amendments made by this section [repealing this section and amending sections 1245 and 1250 of this title] shall apply to—

“(A) sales and exchanges on or after January 17, 1995, and

“(B) sales and exchanges before such date if the FCC tax certificate with respect to such sale or exchange is issued on or after such date.

“(2) BINDING CONTRACTS.—

“(A) IN GENERAL.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written contract which was binding on January 16, 1995, and at all times thereafter before the sale or exchange, if the FCC tax certificate with respect to such sale or exchange was applied for, or issued, on or before such date.

“(B) SALES CONTINGENT ON ISSUANCE OF CERTIFICATE.—

“(i) IN GENERAL.—A contract shall be treated as not binding for purposes of subparagraph (A) if the sale or exchange pursuant to such contract, or the material terms of such contract, were contingent, at any time on January 16, 1995, on the issuance of an FCC tax certificate. The preceding sentence shall not apply if the FCC tax certificate for such sale or exchange is issued on or before January 16, 1995.

“(ii) MATERIAL TERMS.—For purposes of clause (i), the material terms of a contract shall not be treated as contingent on the issuance of an FCC tax certificate solely because such terms provide that the sales price would, if such certificate were not issued, be increased by an amount not greater than 10 percent of the sales price otherwise provided in the contract.

“(3) FCC TAX CERTIFICATE.—For purposes of this subsection, the term ‘FCC tax certificate’ means any certificate of the Federal Communications Commission for the effectuation of section 1071 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Apr. 11, 1995]).”