

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]).”

[PART VI—REPEALED]

[§§ 1081 to 1083. Repealed. Pub. L. 109-135, title IV, § 402(a)(1), Dec. 21, 2005, 119 Stat. 2610]

Section 1081, acts Aug. 16, 1954, ch. 736, 68A Stat. 312; Pub. L. 94-455, title XIX, §§1901(a)(132), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1786, 1834, provided for nonrecognition of gain or loss on exchanges or distributions in obedience to orders of SEC.

Section 1082, acts Aug. 16, 1954, ch. 736, 68A Stat. 315; Pub. L. 91-172, title VII, §704(b)(3), Dec. 30, 1969, 83 Stat. 669; Pub. L. 92-178, title III, §303(c)(5), Dec. 10, 1971, 85 Stat. 522; Pub. L. 94-455, title XIX, §§1901(b)(11)(C), 1906(b)(13)(A), 1951(c)(2)(B), title XXI, §2124(a)(3)(C), Oct. 4, 1976, 90 Stat. 1795, 1834, 1840, 1917; Pub. L. 97-34, title II, §212(d)(2)(E), Aug. 13, 1981, 95 Stat. 239; Pub. L. 99-514, title II, §242(b)(1), Oct. 22, 1986, 100 Stat. 2181; Pub. L. 101-508, title XI, §11801(c)(6)(D), Nov. 5, 1990, 104 Stat. 1388-524, related to basis for determining gain or loss.

Section 1083, acts Aug. 16, 1954, ch. 736, 68A Stat. 317; Pub. L. 94-455, title XIX, §1901(a)(133), Oct. 4, 1976, 90 Stat. 1786, related to definitions for this part.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which it relates, but 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 that Act's 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.

PART VII—WASH SALES; STRADDLES

Sec.	
1091.	Loss from wash sales of stock or securities.
1092.	Straddles.

AMENDMENTS

1981—Pub. L. 97-34, title V, §501(d)(1), (2), Aug. 13, 1981, 95 Stat. 326, 327, substituted as part heading “WASH SALES; STRADDLES” for “WASH SALES OF STOCK OR SECURITIES” and added item 1092.

§ 1091. Loss from wash sales of stock or securities**(a) Disallowance of loss deduction**

In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange on which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business. For purposes of this section, the term “stock or securities” shall, except as provided in regulations, include contracts or options to acquire or sell stock or securities.

(b) Stock acquired less than stock sold

If the amount of stock or securities acquired (or covered by the contract or option to acquire) is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be determined under regulations prescribed by the Secretary.

(c) Stock acquired not less than stock sold

If the amount of stock or securities acquired (or covered by the contract or option to acquire) is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under regulations prescribed by the Secretary.

(d) Unadjusted basis in case of wash sale of stock

If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under this section or corresponding provisions of prior internal revenue laws) of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or securities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

(e) Certain short sales of stock or securities and securities futures contracts to sell

Rules similar to the rules of subsection (a) shall apply to any loss realized on the closing of a short sale of (or the sale, exchange, or termination of a securities futures contract to sell) stock or securities if, within a period beginning 30 days before the date of such closing and ending 30 days after such date—

(1) substantially identical stock or securities were sold, or

(2) another short sale of (or securities futures contracts to sell) substantially identical stock or securities was entered into.

For purposes of this subsection, the term “securities futures contract” has the meaning provided by section 1234B(c).

(f) Cash settlement

This section shall not fail to apply to a contract or option to acquire or sell stock or securities solely by reason of the fact that the contract or option settles in (or could be settled in) cash or property other than such stock or securities.

(Aug. 16, 1954, ch. 736, 68A Stat. 319; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, §106(a), (b), July 18, 1984, 98 Stat. 629; Pub. L. 100-647, title V, §5075(a), Nov. 10, 1988, 102 Stat. 3682; Pub. L. 106-554, §1(a)(7) [title IV, §401(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-649; Pub. L. 107-147, title IV, §412(d)(2), Mar. 9, 2002, 116 Stat. 53.)

AMENDMENTS

2002—Subsec. (e). Pub. L. 107-147 substituted “securities and securities futures contracts to sell” for “securities” in heading, inserted “(or the sale, exchange, or termination of a securities futures contract to sell)” after “closing of a short sale of” in introductory provisions and “(or securities futures contracts to sell)” after “short sale of” in par. (2), and inserted concluding provisions.

2000—Subsec. (f). Pub. L. 106-554 added subsec. (f).

1988—Subsec. (a). Pub. L. 100-647 inserted sentence at end defining “stock or securities”.