

secs. (b) and (c)(3), and inserted provisions set out in subsec. (c)(1), (2), (4).

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §105(b), July 18, 1984, 98 Stat. 629, provided that: "The amendment made by subsection (a) [amending this section] shall apply to options purchased or granted after October 31, 1983, in taxable years ending after such date."

Amendment by section 1001(b)(18) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94-455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94-455, title XXI, §2136(b), Oct. 4, 1976, 90 Stat. 1930, provided that: "The amendment made by subsection (a) [amending this section] shall apply to options granted after September 1, 1976."

#### EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-809, title II, §210(b), Nov. 13, 1966, 80 Stat. 1580, provided that: "The amendments made by subsection (a) [amending this section] shall apply to straddle transactions entered into after January 25, 1965, in taxable years ending after such date."

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

### § 1234A. Gains or losses from certain terminations

Gain or loss attributable to the cancellation, lapse, expiration, or other termination of—

(1) a right or obligation (other than a securities futures contract, as defined in section 1234B) with respect to property which is (or on acquisition would be) a capital asset in the hands of the taxpayer, or

(2) a section 1256 contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer,

shall be treated as gain or loss from the sale of a capital asset. The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement).

(Added Pub. L. 97-34, title V, §507(a), Aug. 13, 1981, 95 Stat. 333; amended Pub. L. 97-448, title I, §105(e), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98-369, div. A, title I, §102(e)(4), (9), July 18, 1984, 98 Stat. 624, 625; Pub. L. 105-34, title X, §1003(a)(1), Aug. 5, 1997, 111 Stat. 909; Pub. L. 106-554, §1(a)(7) [title IV, §401(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-648; Pub. L. 107-147, title IV, §412(d)(1)(A), Mar. 9, 2002, 116 Stat. 53.)

#### AMENDMENTS

2002—Pars. (1) to (3). Pub. L. 107-147 inserted "or" at end of par. (1), struck out "or" at end of par. (2), and struck out par. (3) which read as follows: "a securities futures contract (as so defined) which is a capital asset in the hands of the taxpayer."

2000—Par. (1). Pub. L. 106-554, §1(a)(7) [title IV, §401(b)(1)], inserted "(other than a securities futures contract, as defined in section 1234B)" after "right or obligation".

Par. (3). Pub. L. 106-554, §1(a)(7) [title IV, §401(b)(2)-(4)], added par. (3).

1997—Par. (1). Pub. L. 105-34 substituted "property" for "personal property (as defined in section 1092(d)(1))".

1984—Pub. L. 98-369, §102(e)(9), inserted at end "The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement)."

Par. (2). Pub. L. 98-369, §102(e)(4), substituted "a section 1256 contract" for "a regulated futures contract".

1983—Pub. L. 97-448 inserted reference to a regulated futures contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106-554], to which such amendment relates, see section 412(e) of Pub. L. 107-147, set out as a note under section 151 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, §1003(a)(2), Aug. 5, 1997, 111 Stat. 910, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to terminations more than 30 days after the date of the enactment of this Act [Aug. 5, 1997]."

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(e)(4) of Pub. L. 98-369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, and amendment by section 102(e)(9) of Pub. L. 98-369, applicable as if included in the amendment made by section 507(a) of Pub. L. 97-34, as amended by section 105(e) of Pub. L. 97-448, see section 102(f), (g) of Pub. L. 98-369, set out as a note under section 1256 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

Section applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97-34, set out as a note under section 1092 of this title.

### § 1234B. Gains or losses from securities futures contracts

#### (a) Treatment of gain or loss

##### (1) In general

Gain or loss attributable to the sale, exchange, or termination of a securities futures contract shall be considered gain or loss from the sale or exchange of property which has the

same character as the property to which the contract relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by the taxpayer).

**(2) Nonapplication of subsection**

This subsection shall not apply to—

(A) a contract which constitutes property described in paragraph (1) or (7) of section 1221(a), and

(B) any income derived in connection with a contract which, without regard to this subsection, is treated as other than gain from the sale or exchange of a capital asset.

**(b) Short-term gains and losses**

Except as provided in the regulations under section 1092(b) or this section, or in section 1233, if gain or loss on the sale, exchange, or termination of a securities futures contract to sell property is considered as gain or loss from the sale or exchange of a capital asset, such gain or loss shall be treated as short-term capital gain or loss.

**(c) Securities futures contract**

For purposes of this section, the term “securities futures contract” means any security future (as defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934, as in effect on the date of the enactment of this section). The Secretary may prescribe regulations regarding the status of contracts the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as defined for purposes of section 1256(g)(6)).

**(d) Contracts not treated as commodity futures contracts**

For purposes of this title, a securities futures contract shall not be treated as a commodity futures contract.

**(e) Regulations**

The Secretary shall prescribe such regulations as may be appropriate to provide for the proper treatment of securities futures contracts under this title.

**(f) Cross reference**

**For special rules relating to dealer securities futures contracts, see section 1256.**

(Added Pub. L. 106-554, §1(a)(7) [title IV, §401(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-648; amended Pub. L. 107-147, title IV, §412(d)(1)(B), (3)(B), Mar. 9, 2002, 116 Stat. 53, 54; Pub. L. 108-311, title IV, §405(a)(1), Oct. 4, 2004, 118 Stat. 1188.)

REFERENCES IN TEXT

Section 3(a)(55)(A) of the Securities Exchange Act of 1934, referred to in subsec. (c), is classified to section 78c(a)(55)(A) of Title 15, Commerce and Trade.

The date of the enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 106-554, which was approved Dec. 21, 2000.

CODIFICATION

Pub. L. 106-554, §1(a)(7) [title IV, §401(a)], which directed amendment of subpart IV of subchapter P of chapter 1 by adding this section after section 1234A, was executed by adding this section after 1234A of this part which is part IV of subchapter P of chapter 1, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-311 inserted at end “The Secretary may prescribe regulations regarding the status of contracts the values of which are determined directly or indirectly by reference to any index which becomes (or ceases to be) a narrow-based security index (as defined for purposes of section 1256(g)(6)).”

2002—Subsec. (a)(1). Pub. L. 107-147, §412(d)(1)(B)(i), substituted “sale, exchange, or termination of a securities futures contract” for “sale or exchange of a securities futures contract”.

Subsec. (b). Pub. L. 107-147, §412(d)(1)(B)(i), (3)(B), inserted “or in section 1233,” after “or this section,” and substituted “sale, exchange, or termination of a securities futures contract” for “sale or exchange of a securities futures contract”.

Subsec. (f). Pub. L. 107-147, §412(d)(1)(B)(ii), added subsec. (f).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-311, title IV, §405(b), Oct. 4, 2004, 118 Stat. 1189, provided that: “The amendments made by subsection (a) [amending this section and section 1256 of this title] shall take effect as if included in section 401 of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by section 1(a)(7) of Pub. L. 106-554, Dec. 21, 2000, 114 Stat. 2763, 2763A-587].”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106-554], to which such amendment relates, see section 412(e) of Pub. L. 107-147, set out as a note under section 151 of this title.

**§ 1235. Sale or exchange of patents**

**(a) General**

A transfer (other than by gift, inheritance, or devise) of property consisting of all substantial rights to a patent, or an undivided interest therein which includes a part of all such rights, by any holder shall be considered the sale or exchange of a capital asset held for more than 1 year, regardless of whether or not payments in consideration of such transfer are—

- (1) payable periodically over a period generally coterminous with the transferee's use of the patent, or
- (2) contingent on the productivity, use, or disposition of the property transferred.

**(b) “Holder” defined**

For purposes of this section, the term “holder” means—

- (1) any individual whose efforts created such property, or
- (2) any other individual who has acquired his interest in such property in exchange for consideration in money or money's worth paid to such creator prior to actual reduction to practice of the invention covered by the patent, if such individual is neither—

(A) the employer of such creator, nor

(B) related to such creator (within the meaning of subsection (c)).

**(c) Related persons**

Subsection (a) shall not apply to any transfer, directly or indirectly, between persons specified within any one of the paragraphs of section 267(b) or persons described in section 707(b); except that, in applying section 267(b) and (c) and section 707(b) for purposes of this section—