

this section [amending this section and section 1391 of this title] shall apply to periods after December 31, 2009.”

Pub. L. 111-312, title VII, §760(b), Dec. 17, 2010, 124 Stat. 3323, provided that: “The amendments made by this section [amending this section] shall apply to stock acquired after December 31, 2010.”

Pub. L. 111-240, title II, §2011(c), Sept. 27, 2010, 124 Stat. 2554, provided that: “The amendments made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Sept. 27, 2010].”

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, §1241(b), Feb. 17, 2009, 123 Stat. 342, provided that: “The amendment made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Feb. 17, 2009].”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108-357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-554 applicable to stock acquired after Dec. 21, 2000, see section 1(a)(7) [title I, §117(c)] of Pub. L. 106-554, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104-188, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103-66, set out as an Effective Date of 1993 Amendment note under section 53 of this title.

SPECIAL RULE FOR PASS-THROUGH ENTITIES

Pub. L. 96-222, title I, §104(a)(2)(C), Apr. 1, 1980, 94 Stat. 215, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(i) IN GENERAL.—In applying sections [former] 1201(c)(2)(A)(ii) and 1202(c)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to any pass-through entity, the determination of the period for which gain or loss is properly taken into account shall be made at the entity level.

“(ii) PASS-THROUGH ENTITY DEFINED.—For purposes of clause (i), the term ‘pass-through entity’ means—

- “(I) a regulated investment company,
- “(II) a real estate investment trust,
- “(III) an electing small business corporation,
- “(IV) a partnership,
- “(V) an estate or trust, and
- “(VI) a common trust fund.”

PART II—TREATMENT OF CAPITAL LOSSES

Sec.

- 1211. Limitation on capital losses.
- 1212. Capital loss carrybacks and carryovers.

AMENDMENTS

1969—Pub. L. 91-172, title V, §512(f)(2), Dec. 30, 1969, 83 Stat. 641, substituted “carrybacks and carryovers” for “carryover” in item 1212.

§ 1211. Limitation on capital losses

(a) Corporations

In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed

only to the extent of gains from such sales or exchanges.

(b) Other taxpayers

In the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) the lower of—

(1) \$3,000 (\$1,500 in the case of a married individual filing a separate return), or

(2) the excess of such losses over such gains.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 91-172, title V, §513(a), Dec. 30, 1969, 83 Stat. 642; Pub. L. 94-455, title V, §501(b)(6), title XIV, §1401(a), (b), Oct. 4, 1976, 90 Stat. 1559, 1731; Pub. L. 95-30, title I, §102(b)(14), May 23, 1977, 91 Stat. 138; Pub. L. 99-514, title III, §301(b)(10), Oct. 22, 1986, 100 Stat. 2217.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-514 amended subsec. (b) generally, substituting present provisions for provisions which had declared in: par. (1), general rule for limitation on capital losses for taxpayer other than corporation; in par. (2), meaning of term “applicable amount”; and in par. (3), rule relating to computation of taxable income.

1977—Subsec. (b)(1)(A). Pub. L. 95-30 inserted “reduced (but not below zero) by the zero bracket amount” after “taxable year”.

1976—Subsec. (b)(1)(B). Pub. L. 94-455, §1401(a), substituted “the applicable amount” for “\$1,000”.

Subsec. (b)(2). Pub. L. 94-455, §1401(b), substituted provision relating to “applicable amount” for prior provision limiting amount of capital losses for married individuals and reading “In the case of a husband or wife who files a separate return, the amount specified in paragraph (1)(B) shall be \$500 in lieu of \$1,000.”

Subsec. (b)(3). Pub. L. 94-455, §501(b)(6), struck out last sentence “If the taxpayer elects to pay the optional tax imposed by section 3, ‘taxable income’ as used in this subsection shall read as ‘adjusted gross income’.”

1969—Subsec. (b). Pub. L. 91-172 provided for only 50 percent of an individual’s long-term capital losses to be offset against his ordinary income up to the \$1,000 limit although short-term capital losses continue to be fully deductible within the \$1,000 limit and the deduction of capital losses against ordinary income for married persons filing separate returns to be limited to \$500 for each spouse rather than the \$1,000 formerly allowed.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99-514, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 501(b)(6) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as a note under section 3 of this title.

Pub. L. 94-455, title XIV, §1401(c), Oct. 4, 1976, 90 Stat. 1731, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1976.”

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title V, §513(d), Dec. 30, 1969, 83 Stat. 643, provided that: “The amendments made by this sec-

tion [amending this section and sections 1212 and 1222 of this title] shall apply to taxable years beginning after December 31, 1969.”

§ 1212. Capital loss carrybacks and carryovers

(a) Corporations

(1) In general

If a corporation has a net capital loss for any taxable year (hereinafter in this paragraph referred to as the “loss year”), the amount thereof shall be—

(A) a capital loss carryback to each of the 3 taxable years preceding the loss year, but only to the extent—

(i) such loss is not attributable to a foreign expropriation capital loss, and

(ii) the carryback of such loss does not increase or produce a net operating loss (as defined in section 172(c)) for the taxable year to which it is being carried back;

(B) except as provided in subparagraph (C), a capital loss carryover to each of the 5 taxable years succeeding the loss year; and

(C) a capital loss carryover to each of the 10 taxable years succeeding the loss year, but only to the extent such loss is attributable to a foreign expropriation loss,

and shall be treated as a short-term capital loss in each such taxable year. The entire amount of the net capital loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried, and the portion of such loss which shall be carried to each of the other taxable years to which such loss may be carried shall be the excess, if any, of such loss over the total of the capital gain net income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the capital gain net income for any such prior taxable year shall be computed without regard to the net capital loss for the loss year or for any taxable year thereafter. In the case of any net capital loss which cannot be carried back in full to a preceding taxable year by reason of clause (ii) of subparagraph (A), the capital gain net income for such prior taxable year shall in no case be treated as greater than the amount of such loss which can be carried back to such preceding taxable year upon the application of such clause (ii).

(2) Definitions and special rules

(A) Foreign expropriation capital loss defined

For purposes of this subsection, the term “foreign expropriation capital loss” means, for any taxable year, the sum of the losses taken into account in computing the net capital loss for such year which are—

(i) losses sustained directly by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing, or

(ii) losses (treated under section 165(g)(1) as losses from the sale or exchange of capital assets) from securities which become

worthless by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing.

(B) Portion of loss attributable to foreign expropriation capital loss

For purposes of paragraph (1), the portion of any net capital loss for any taxable year attributable to a foreign expropriation capital loss is the amount of the foreign expropriation capital loss for such year (but not in excess of the net capital loss for such year).

(C) Priority of application

For purposes of paragraph (1), if a portion of a net capital loss for any taxable year is attributable to a foreign expropriation capital loss, such portion shall be considered to be a separate net capital loss for such year to be applied after the other portion of such net capital loss.

(3) Regulated investment companies

(A) In general

If a regulated investment company has a net capital loss for any taxable year—

(i) paragraph (1) shall not apply to such loss,

(ii) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss arising on the first day of the next taxable year, and

(iii) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss arising on the first day of the next taxable year.

(B) Coordination with general rule

If a net capital loss to which paragraph (1) applies is carried over to a taxable year of a regulated investment company—

(i) Losses to which this paragraph applies

Clauses (ii) and (iii) of subparagraph (A) shall be applied without regard to any amount treated as a short-term capital loss under paragraph (1).

(ii) Losses to which general rule applies

Paragraph (1) shall be applied by substituting “net capital loss for the loss year or any taxable year thereafter (other than a net capital loss to which paragraph (3)(A) applies)” for “net capital loss for the loss year or any taxable year thereafter”.

(4) Special rules on carrybacks

A net capital loss of a corporation shall not be carried back under paragraph (1)(A) to a taxable year—

(A) for which it is a regulated investment company (as defined in section 851), or

(B) for which it is a real estate investment trust (as defined in section 856).

(b) Other taxpayers

(1) In general

If a taxpayer other than a corporation has a net capital loss for any taxable year—