

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—

(A) 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 in the succeeding taxable year, and

(B) 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 in the succeeding taxable year.

(2) Treatment of amounts allowed under section 1211(b)(1) or (2)

(A) In general

For purposes of determining the excess referred to in subparagraph (A) or (B) of paragraph (1), there shall be treated as a short-term capital gain in the taxable year an amount equal to the lesser of—

(i) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), or

(ii) the adjusted taxable income for such taxable year.

(B) Adjusted taxable income

For purposes of subparagraph (A), the term “adjusted taxable income” means taxable income increased by the sum of—

(i) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b), and

(ii) the deduction allowed for such year under section 151 or any deduction in lieu thereof.

For purposes of the preceding sentence, any excess of the deductions allowed for the taxable year over the gross income for such year shall be taken into account as negative taxable income.

(c) Carryback of losses from section 1256 contracts to offset prior gains from such contracts

(1) In general

If a taxpayer (other than a corporation) has a net section 1256 contracts loss for the taxable year and elects to have this subsection apply to such taxable year, the amount of such net section 1256 contracts loss—

(A) shall be a carryback to each of the 3 taxable years preceding the loss year, and

(B) to the extent that, after the application of paragraphs (2) and (3), such loss is allowed as a carryback to any such preceding taxable year—

(i) 40 percent of the amount so allowed shall be treated as a short-term capital loss from section 1256 contracts, and

(ii) 60 percent of the amount so allowed shall be treated as a long-term capital loss from section 1256 contracts.

(2) Amount carried to each taxable year

The entire amount of the net section 1256 contracts loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried back under paragraph (1). The portion of such loss which shall be carried to each of the 2 other taxable years to which such loss may be carried back shall be the excess (if any) of such loss over the portion of such loss which, after the appli-

cation of paragraph (3), was allowed as a carryback for any prior taxable year.

(3) Amount which may be used in any prior taxable year

An amount shall be allowed as a carryback under paragraph (1) to any prior taxable year only to the extent—

(A) such amount does not exceed the net section 1256 contract gain for such year, and

(B) the allowance of such carryback does not increase or produce a net operating loss (as defined in section 172(c)) for such year.

(4) Net section 1256 contracts loss

For purposes of paragraph (1), the term “net section 1256 contracts loss” means the lesser of—

(A) the net capital loss for the taxable year determined by taking into account only gains and losses from section 1256 contracts, or

(B) the sum of the amounts which, but for paragraph (6)(A), would be treated as capital losses in the succeeding taxable year under subparagraphs (A) and (B) of subsection (b)(1).

(5) Net section 1256 contract gain

For purposes of paragraph (1)—

(A) In general

The term “net section 1256 contract gain” means the lesser of—

(i) the capital gain net income for the taxable year determined by taking into account only gains and losses from section 1256 contracts, or

(ii) the capital gain net income for the taxable year.

(B) Special rule

The net section 1256 contract gain for any taxable year before the loss year shall be computed without regard to the net section 1256 contracts loss for the loss year or for any taxable year thereafter.

(6) Coordination with carryforward provisions of subsection (b)(1)

(A) Carryforward amount reduced by amount used as carryback

For purposes of applying subsection (b)(1), if any portion of the net section 1256 contracts loss for any taxable year is allowed as a carryback under paragraph (1) to any preceding taxable year—

(i) 40 percent of the amount allowed as a carryback shall be treated as a short-term capital gain for the loss year, and

(ii) 60 percent of the amount allowed as a carryback shall be treated as a long-term capital gain for the loss year.

(B) Carryover loss retains character as attributable to section 1256 contract

Any amount carried forward as a short-term or long-term capital loss to any taxable year under subsection (b)(1) (after the application of subparagraph (A)) shall, to the extent attributable to losses from section 1256 contracts, be treated as loss from section 1256 contracts for such taxable year.

(7) Other definitions and special rules

For purposes of this subsection—

(A) Section 1256 contract

The term “section 1256 contract” means any section 1256 contract (as defined in section 1256(b)) to which section 1256 applies.

(B) Exclusion for estates and trusts

This subsection shall not apply to any estate or trust.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 88-272, title II, §230(a), Feb. 26, 1964, 78 Stat. 99; Pub. L. 88-571, §7(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 91-172, title V, §§512(a), (b), (f)(1), 513(b), Dec. 30, 1969, 83 Stat. 638, 639, 641, 642; Pub. L. 94-455, title XIV, §1403(a), title XIX, §1901(b)(33)(O), Oct. 4, 1976, 90 Stat. 1733, 1802; Pub. L. 95-600, title VII, §703(k), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 97-34, title V, §504, Aug. 13, 1981, 95 Stat. 330; Pub. L. 97-354, §5(a)(35), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 97-448, title I, §105(c)(7), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98-369, div. A, title I, §102(e)(3), title X, §1002(A), July 18, 1984, 98 Stat. 624, 1012; Pub. L. 99-514, title III, §301(b)(11), title XVIII, §1899A(67), Oct. 22, 1986, 100 Stat. 2218, 2962; Pub. L. 100-647, title I, §1003(a)(3), Nov. 10, 1988, 102 Stat. 3382; Pub. L. 108-357, title IV, §413(c)(20)(A), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 111-325, title I, §101(a), (b)(1), Dec. 22, 2010, 124 Stat. 3538.)

AMENDMENTS

2010—Subsec. (a)(1)(C). Pub. L. 111-325, §101(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “a capital loss carryover—

“(i) in the case of a regulated investment company (as defined in section 851) to each of the 8 taxable years succeeding the loss year, and

“(ii) to the extent such loss is attributable to a foreign expropriation capital loss, to each of the 10 taxable years succeeding the loss year.”

Subsec. (a)(3), (4). Pub. L. 111-325, §101(a), added par. (3) and redesignated former par. (3) as (4).

2004—Subsec. (a)(3). Pub. L. 108-357 reenacted heading without change and amended text of par. (3) generally. Prior to amendment, par. (3) provided that a net capital loss of a corporation would not be carried back under par. (1)(A) to a taxable year for which it was a foreign personal holding company (as defined in section 552), for which it was a regulated investment company (as defined in section 851), for which it was a real estate investment trust (as defined in section 856), or for which an election made by it under section 1247 was applicable (relating to election by foreign investment companies to distribute income currently).

1988—Subsec. (b)(2). Pub. L. 100-647 substituted “Treatment of amounts allowed under section 1211(b)(1) or (2)” for “Special rule” as heading and amended text generally. Prior to amendment, text read as follows: “For purposes of determining the excess referred to in subparagraph (A) or (B) of paragraph (1), an amount equal to the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) shall be treated as a short-term capital gain in such year.”

1986—Subsec. (b)(2). Pub. L. 99-514, §301(b)(11), amended par. (2) generally. Prior to amendment, par. (2), special rules, read as follows:

“(A) For purposes of determining the excess referred to in paragraph (1)(A), an amount equal to the amount allowed for the taxable year under section 1211(b)(1)(A), (B), or (C) shall be treated as a short-term capital gain in such year.

“(B) For purposes of determining the excess referred to in paragraph (1)(B), an amount equal to the sum of—

“(i) the amount allowed for the taxable year under section 1211(b)(1)(A), (B), or (C), and

“(ii) the excess of the amount described in clause (i) over the net short-term capital loss (determined without regard to this subsection) for such year, shall be treated as a short-term capital gain in such year.”

Subsec. (c)(6)(B), (7)(A). Pub. L. 99-514, §1899A(67), amended directory language of Pub. L. 98-369, §102(e)(3)(C), resulting in amendment of subsec. (c)(6)(B). See 1984 Amendment note below.

1984—Subsec. (b)(3). Pub. L. 98-369, §1002(a), struck out par. (3) which read as follows: “In the case of any amount which, under paragraph (1) and section 1211(b) (as in effect for taxable years beginning before January 1, 1970), is treated as a capital loss in the first taxable year beginning after December 31, 1969, paragraph (1) and section 1211(b) (as in effect for taxable years beginning before January 1, 1970) shall apply (and paragraph (1) and section 1211(b) as in effect for taxable years beginning after December 31, 1969, shall not apply) to the extent such amount exceeds the total of any net capital gains (determined without regard to this subsection) of taxable years beginning after December 31, 1969.”

Subsec. (c). Pub. L. 98-369, §102(e)(3)(A), (B), substituted “net section 1256 contracts loss” for “net commodity futures loss” and “section 1256 contracts” for “regulated futures contracts” wherever appearing.

Subsec. (c)(3)(A), (5). Pub. L. 98-369, §102(e)(3)(D), substituted “net section 1256 contract gain” for “net commodity futures gain” wherever appearing.

Subsec. (c)(6)(B), (7)(A). Pub. L. 98-369, §102(e)(3)(C), as amended by Pub. L. 99-514, §1899A(67), substituted “section 1256 contract” for “regulated futures contract” wherever appearing.

1983—Subsec. (c)(4)(A). Pub. L. 97-448 struck out “and positions to which section 1256 applies” after “losses from regulated futures contracts”.

1982—Subsec. (a)(3), (4). Pub. L. 97-354 struck out par. (3) relating to electing small business corporations, and redesignated par. (4) as (3).

1981—Subsec. (c). Pub. L. 97-34 added subsec. (c).

1978—Subsec. (a)(1)(C)(ii). Pub. L. 95-600 substituted “succeeding the loss year” for “exceeding the loss year”.

1976—Subsec. (a)(1). Pub. L. 94-455, §§1403(a), 1901(b)(33)(O), in subpar. (B) inserted introductory text “except as provided in subparagraph (C),” and struck out “(10) taxable years to the extent such loss is attributable to a foreign expropriation capital loss)” after “5 taxable years” and added subpar. (C), and substituted “capital gain net income” for “net capital gains”, “net capital gain” and “net capital gain” in last three sentences, respectively.

1969—Pub. L. 91-172, §512(f)(1), substituted “carrybacks and carryovers” for “carryover” in section catchline.

Subsec. (a)(1). Pub. L. 91-172, §512(a), provided for a 3-year capital loss carryback for corporations, not available for foreign expropriation capital losses for which a special 10-year carryforward is presently available, in addition to the 5-year capital loss carryforward presently allowed corporations, to the extent the carryback of such loss does not increase or produce a net operating loss for the taxable year to which it is being carried back.

Subsec. (a)(3), (4). Pub. L. 91-172, §512(b), added pars. (3) and (4).

Subsec. (b). Pub. L. 91-172, §513(b), struck out reference to Dec. 31, 1963, struck out determination of a short-term capital gain as an amount equal to the excess allowed for the taxable year under former section 1211(b) over the gains from sales or exchanges of capital assets, struck out par. (2) treating as a short-term capital loss in the first taxable year beginning after Dec. 31, 1963, any amount which is treated as a short-term capital loss in such year under this subchapter as in effect immediately before the enactment of the Revenue Act of 1964, added new par. (2) dealing with special rules for determining the excesses referred to in par. (1)(A) and par. (1)(B) and added par. (3).

1964—Subsec. (a). Pub. L. 88-571 provided that if any portion of a net capital loss is attributable to a foreign

expropriation capital loss, such portion shall be a short-term capital loss in each of the 10 succeeding taxable years, defined foreign expropriation capital loss, stated what portion of loss is attributable to foreign expropriation capital loss and the priority of application of the net capital loss, and struck out provisions that net capital losses for taxable years beginning before Oct. 20, 1951, were to be determined under the applicable law relating to the computation of capital gains and losses in effect before such date.

Pub. L. 88-272 designated existing provisions as subsec. (a), limited such subsection to corporations, and added subsec. (b).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-325, title I, §101(c), Dec. 22, 2010, 124 Stat. 3538, as amended by Pub. L. 113-295, div. A, title II, §205(a)(1), Dec. 19, 2014, 128 Stat. 4025, provided that:

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and section 1222 of this title] shall apply to net capital losses for taxable years beginning after the date of the enactment of this Act [Dec. 22, 2010].

“(2) COORDINATION RULES.—Subparagraph (B) of section 1212(a)(3) of the Internal Revenue Code of 1986, as added by this section, shall apply to taxable years beginning after the date of the enactment of this Act.

“(3) EXCISE TAX.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), for purposes of section 4982 of the Internal Revenue Code of 1986, paragraphs (1) and (2) shall apply by substituting ‘the 1-year periods taken into account under subsection (b)(1)(B) of such section with respect to calendar years beginning after December 31, 2010’ for ‘taxable years beginning after the date of the enactment of this Act’.

“(B) ELECTION.—A regulated investment company may elect to apply subparagraph (A) by substituting ‘2011’ for ‘2010’. Such election shall be made at such time and in such form and manner as the Secretary of the Treasury (or the Secretary’s delegate) shall prescribe.”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title IV, §413(c)(20)(B), Oct. 22, 2004, 118 Stat. 1509, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 2004.”

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments 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 section 301(b)(11) of 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 1984 AMENDMENT

Amendment by section 102(e)(3) of Pub. L. 98-369 applicable to positions established after July 18, 1984, in taxable years after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98-369, set out as a note under section 1256 of this title.

Pub. L. 98-369, div. A, title X, §1002(b), July 18, 1984, 98 Stat. 1012, provided that: “The repeal made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.”

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 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 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 an Effective Date note under section 1092 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIV, §1403(b), Oct. 4, 1976, 90 Stat. 1733, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section] shall apply to loss years (within the meaning of section 1212(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) ending on or after January 1, 1970.”

Amendment by section 1901(b)(33)(O) of Pub. L. 94-455 applicable with respect to 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.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title V, §512(g), Dec. 30, 1969, 83 Stat. 642, provided that: “The amendments made by this section [amending this section and sections 246, 381, 481, 535, 1314, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply with respect to net capital losses sustained in taxable years beginning after December 31, 1969.”

Amendment by section 513(b) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 513(d) of Pub. L. 91-172, set out as a note under section 1211 of this title.

EFFECTIVE DATE OF 1964 AMENDMENTS

Pub. L. 88-571, §7(b), Sept. 2, 1964, 78 Stat. 861, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to net capital losses (to the extent attributable to foreign expropriation capital losses, as defined in section 1212(a)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) sustained in taxable years ending after December 31, 1958.”

Pub. L. 88-272, title II, §230(c), Feb. 26, 1964, 78 Stat. 100, provided that: “The amendments made by this section [amending this section and section 1222 of this title] shall apply to taxable years beginning after December 31, 1963.”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

ELECTION NOT TO CARRYBACK CERTAIN NET CAPITAL
LOSSES

Pub. L. 91-688, §3, Jan. 12, 1971, 84 Stat. 2073, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) For purposes of applying section 1212(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 512 of the Tax Reform Act of 1969) in the case of a corporation which makes an election under subsection (b), any net capital loss sustained in a taxable year beginning after December 31, 1969, may not be carried back to any taxable year beginning before January 1, 1970, for which it was subject to taxation under section 802 of such Code [section 802 of this title], if the carryback of such loss would result in an increase in such corporation’s income tax liability for any such taxable year.

“(b) An election to have the provisions of subsection (a) apply shall be made by a corporation—

“(1) in such form and manner as the Secretary of the Treasury or his delegate may prescribe, and

“(2) not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for the first taxable year beginning after December 31, 1969, in which such corporation sustains a net capital loss.

“(c) The Secretary of the Treasury or his delegate shall prescribe such regulations as he determines necessary to carry out the purposes of this section.”

PART III—GENERAL RULES FOR DETER-
MINING CAPITAL GAINS AND LOSSES

Sec.

1221. Capital asset defined.
1222. Other items relating to capital gains and losses.¹
1223. Holding period of property.

§ 1221. Capital asset defined

(a) In general

For purposes of this subtitle, the term “capital asset” means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

(1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;

(2) property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in his trade or business;

(3) a patent, invention, model or design (whether or not patented), a secret formula or process, a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

(A) a taxpayer whose personal efforts created such property,

(B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or

(C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);

(4) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (1);

(5) a publication of the United States Government (including the Congressional Record) which is received from the United States Government or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by—

(A) a taxpayer who so received such publication, or

(B) a taxpayer in whose hands the basis of such publication is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference to the basis of such publication in the hands of a taxpayer described in subparagraph (A);

(6) any commodities derivative financial instrument held by a commodities derivatives dealer, unless—

(A) it is established to the satisfaction of the Secretary that such instrument has no connection to the activities of such dealer as a dealer, and

(B) such instrument is clearly identified in such dealer’s records as being described in subparagraph (A) before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe);

(7) any hedging transaction which is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe); or

(8) supplies of a type regularly used or consumed by the taxpayer in the ordinary course of a trade or business of the taxpayer.

(b) Definitions and special rules

(1) Commodities derivative financial instruments

For purposes of subsection (a)(6)—

(A) Commodities derivatives dealer

The term “commodities derivatives dealer” means a person which¹ regularly offers to enter into, assume, offset, assign, or terminate positions in commodities derivative financial instruments with customers in the ordinary course of a trade or business.

(B) Commodities derivative financial instrument

(i) In general

The term “commodities derivative financial instrument” means any contract or financial instrument with respect to commodities (other than a share of stock in a corporation, a beneficial interest in a partnership or trust, a note, bond, debenture, or other evidence of indebtedness, or a section 1256 contract (as defined in section 1256(b))), the value or settlement price of which is calculated by or determined by reference to a specified index.

(ii) Specified index

The term “specified index” means any one or more or any combination of—

¹ So in original. Does not conform to section catchline.

¹ So in original. Probably should be “who”.