

customers in the ordinary course of trade or business; and

“(2)(A) such lot or parcel is a part of real property (i) held for more than twenty-five years at the time of sale or exchange, and (ii) acquired before January 1, 1934, by the corporation as a result of the foreclosure of a lien (or liens) thereon which secured the payment of indebtedness held by one or more creditors who transferred one or more foreclosure bids to the corporation in exchange for all its stock (with or without other consideration), or

“(B)(i) such lot or parcel is a part of additional real property acquired before January 1, 1957, by the corporation in the near vicinity of any real property to which subparagraph (A) applies, or

“(ii) such lot or parcel is wholly or to some extent a part of any minor acquisition made after December 31, 1956, by the corporation to adjust boundaries, to fill gaps in previously acquired property, to facilitate the installation of streets, utilities, and other public facilities, or to facilitate the sale of adjacent property, or

“(iii) such lot or parcel is wholly or to some extent a part of a reacquisition by the corporation after December 31, 1956, of property previously owned by the corporation;

but only if at least 80 percent (as measured by area) of the real property sold or exchanged by the corporation within the taxable year is property described in subparagraph (A); and

“(3) there were no acquisitions of real property by the corporation after December 31, 1956, other than—

“(A) acquisitions described in paragraph (2)(B)(ii) and reacquisitions described in paragraph (2)(B)(iii), or

“(B) acquisitions of real property used in a trade or business of the corporation or held for investment by the corporation; and

“(4) the corporation did not after December 31, 1957, sell or exchange (except in condemnation or under threat of condemnation) any residential lot or parcel on which, at the time of the sale or exchange, there existed any substantial improvements (other than improvements in existence at the time the land was acquired by the corporation) except subdivision, clearing, grubbing, and grading, building or installation of water, sewer, and drainage facilities, construction of roads, streets, and sidewalks, and installation of utilities.”

In any case in which a corporation referred to in paragraphs (1), (2), (3), and (4) is a member of an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986, such affiliated group shall, for purposes of such paragraphs, be treated as a single corporation.

“(b)(1) Gain from any sale or exchange described in subsection (a) shall be deemed, for purposes of such Code, to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business to the extent of 5 percent of the selling price.

“(2) For the purpose of computing gain under paragraph (1), expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the portion of gain deemed under paragraph (1) to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

“(c) The provisions of subsections (a) and (b) shall apply to taxable years beginning after December 31, 1957, and before January 1, 1984.”

**[§ 1238. Repealed. Pub. L. 101-508, title XI, § 11801(a)(35), Nov. 5, 1990, 104 Stat. 1388-521]**

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 332; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§ 1901(b)(3)(K), 1951(c)(2)(A), 90 Stat. 1793, 1840, related to amortization in excess of depreciation.

#### SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

### **§ 1239. Gain from sale of depreciable property between certain related taxpayers**

#### **(a) Treatment of gain as ordinary income**

In the case of a sale or exchange of property, directly or indirectly, between related persons, any gain recognized to the transferor shall be treated as ordinary income if such property is, in the hands of the transferee, of a character which is subject to the allowance for depreciation provided in section 167.

#### **(b) Related persons**

For purposes of subsection (a), the term “related persons” means—

(1) a person and all entities which are controlled entities with respect to such person,

(2) a taxpayer and any trust in which such taxpayer (or his spouse) is a beneficiary, unless such beneficiary’s interest in the trust is a remote contingent interest (within the meaning of section 318(a)(3)(B)(i)), and

(3) except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

#### **(c) Controlled entity defined**

##### **(1) General rule**

For purposes of this section, the term “controlled entity” means, with respect to any person—

(A) a corporation more than 50 percent of the value of the outstanding stock of which is owned (directly or indirectly) by or for such person,

(B) a partnership more than 50 percent of the capital interest or profits interest in which is owned (directly or indirectly) by or for such person, and

(C) any entity which is a related person to such person under paragraph (3), (10), (11), or (12) of section 267(b).

##### **(2) Constructive ownership**

For purposes of this section, ownership shall be determined in accordance with rules similar to the rules under section 267(c) (other than paragraph (3) thereof).

#### **(d) Employer and related employee association**

For purposes of subsection (a), the term “related person” also includes—

(1) an employer and any person related to the employer (within the meaning of subsection (b)), and

(2) a welfare benefit fund (within the meaning of section 419(e)) which is controlled directly or indirectly by persons referred to in paragraph (1).

**(e) Patent applications treated as depreciable property**

For purposes of this section, a patent application shall be treated as property which, in the hands of the transferee, is of a character which is subject to the allowance for depreciation provided in section 167.

(Aug. 16, 1954, ch. 736, 68A Stat. 332; Pub. L. 85-866, title I, § 56, Sept. 2, 1958, 72 Stat. 1645; Pub. L. 94-455, title XXI, § 2129(a), Oct. 4, 1976, 90 Stat. 1922; Pub. L. 95-600, title VII, § 701(v)(1), Nov. 6, 1978, 92 Stat. 2920; Pub. L. 96-471, § 5, Oct. 19, 1980, 94 Stat. 2255; Pub. L. 97-448, title III, § 301, Jan. 12, 1983, 96 Stat. 2397; Pub. L. 98-369, div. A, title I, § 175(a), (b), title IV, § 421(b)(6)(A), title V, § 557(a), July 18, 1984, 98 Stat. 708, 794, 898; Pub. L. 99-514, title VI, § 642(a)(1)(A)-(C), Oct. 22, 1986, 100 Stat. 2283, 2284; Pub. L. 105-34, title XIII, § 1308(b), Aug. 5, 1997, 111 Stat. 1041.)

AMENDMENTS

1997—Subsec. (b)(3). Pub. L. 105-34 added par. (3).

1986—Subsec. (b)(1). Pub. L. 99-514, § 642(a)(1)(A), substituted “controlled entities” for “80-percent owned entities”.

Subsec. (c). Pub. L. 99-514, § 642(a)(1)(B), (C), in heading, substituted “Controlled entity” for “80-percent owned entity”, in par. (1), in introductory provisions, substituted “controlled entity” for “80-percent owned entity”, in subpar. (A), substituted “more than 50 percent of the value” for “80 percent or more in value”, in subpar. (B), substituted “more than 50 percent” for “80 percent or more”, and added subpar. (C), and amended par. (2) generally. Prior to amendment, par. (2) read as follows: “For purposes of subparagraphs (A) and (B) of paragraph (1), the principles of section 318 shall apply, except that—

“(A) the members of an individual’s family shall consist only of such individual and such individual’s spouse,

“(B) paragraph (2)(C) of section 318(a) shall be applied without regard to the 50-percent limitation contained therein, and

“(C) paragraph (3) of section 318(a) shall not apply.”

1984—Subsec. (b). Pub. L. 98-369, § 421(b)(6), redesignated pars. (2) and (3) as (1) and (2), respectively. Former par. (1), defining a husband and wife as “related persons”, was struck out.

Pub. L. 98-369, § 175(b), amended subsec. (b) generally, adding par. (3).

Subsec. (d). Pub. L. 98-369, § 557(a), added subsec. (d).

Subsec. (e). Pub. L. 98-369, § 175(a), added subsec. (e).

1983—Subsec. (b). Pub. L. 97-448, § 301(a), substituted provisions that “related persons” means (1) a husband and wife, and (2) a person and all entities which are 80-percent owned entities with respect to such person, for provisions which provided that “related persons” meant (1) the taxpayer and the taxpayer’s spouse, (2) the taxpayer and an 80-percent owned entity, or (3) two 80-percent owned entities.

Subsec. (c)(1). Pub. L. 97-448, § 301(b), inserted “, with respect to any person” after “means” in introductory provisions and substituted “such person” for “the taxpayer” in subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 97-448, § 301(b), struck out “and” at end of subpar. (A), substituted “paragraph (2)(C)” for “paragraphs (2)(C) and (3)(C)” in subpar. (B), and added subpar. (C).

1980—Subsec. (b)(1). Pub. L. 96-471 substituted “the taxpayer and the taxpayer’s spouse” for “a husband and wife”.

Subsec. (b)(2). Pub. L. 96-471 substituted “the taxpayer and an 80-percent owned entity, or” for “an individual and a corporation 80 percent or more in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual, or”.

Subsec. (b)(3). Pub. L. 96-471 substituted “two 80-percent owned entities” for “two or more corporations 80 percent or more in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual”.

Subsec. (c). Pub. L. 96-471 substituted provisions defining an “80-percent owned entity” for provisions relating to constructive ownership of stock.

1978—Subsec. (a). Pub. L. 95-600 substituted “of a character which is subject to the allowance for depreciation provided in section 167” for “subject to the allowance for depreciation provided in section 167”.

1976—Pub. L. 94-455 substituted “sale of depreciable property between certain related taxpayers” for “sale of certain property between spouses or between an individual and a controlled corporation” in section catchline.

Subsec. (a). Pub. L. 94-455 substituted provisions for transactions between related persons for such transactions (1) between a husband and wife; or (2) between an individual and a corporation more than 80 percent in value of the outstanding stock of which is owned by such individual, his spouse, and his minor children and minor grandchildren and “any gain recognized to the transferee shall be treated as ordinary income if such property is, in the hands of the transferee, subject to the allowance for depreciation provided in section 167” for “any gain recognized to the transferor from the sale or exchange of such property shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231”.

Subsec. (b). Pub. L. 94-455 substituted definition of “related persons” for prior provision making section applicable only to sales or exchanges of depreciable property.

Subsec. (c). Pub. L. 94-455 substituted provision respecting constructive ownership of stock for prior provision making section inapplicable with respect to sales or exchanges made on or before May 3, 1951.

1958—Subsec. (c). Pub. L. 85-866 added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years beginning after Aug. 5, 1997, see section 1308(c) of Pub. L. 105-34, set out as a note under section 267 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title VI, § 642(c), Oct. 22, 1986, 100 Stat. 2284, as amended by Pub. L. 100-647, title I, § 1006(i)(3), Nov. 10, 1988, 102 Stat. 3411, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 453 and 707 of this title] shall apply to sales after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.

“(2) TRANSITIONAL RULE FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to sales made after August 14, 1986, which are made pursuant to a binding contract in effect on August 14, 1986, and at all times thereafter.”

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, § 175(c), July 18, 1984, 98 Stat. 708, provided that: “The amendments made by this section [amending this section] shall apply to sales or exchanges after March 1, 1984, in taxable years ending after such date.”

Amendment by section 421(b)(6) of Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub.

L. 98-369, set out as an Effective Date note under section 1041 of this title.

Pub. L. 98-369, div. A, title V, §557(b), July 18, 1984, 98 Stat. 899, provided that: "The amendment made by subsection (a) [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 applicable to dispositions made after Oct. 19, 1980, in taxable years ending after such date, see section 311(a) of Pub. L. 97-448, set out as a note under section 453 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, §701(v)(2), Nov. 6, 1978, 92 Stat. 2920, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by paragraph (1) [amending this section] shall apply as if included in the amendment made to section 1239 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by section 2129(a) of the Tax Reform Act of 1976 [section 2129(a) of Pub. L. 94-455]."

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XXI, §2129(b), Oct. 4, 1976, 90 Stat. 1922, provided that: "The amendment made by this section [amending this section] shall apply to sales or exchanges after the date of the enactment of this Act [Oct. 4, 1976]. For purposes of the preceding sentence, a sale or exchange is considered to have occurred on or before such date of enactment if such sale or exchange is made pursuant to a binding contract entered into on or before that date."

### § 1240. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(139), Oct. 4, 1976, 90 Stat. 1787]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 332, related to taxability to employee of termination payments.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

### § 1241. Cancellation of lease or distributor's agreement

Amounts received by a lessee for the cancellation of a lease, or by a distributor of goods for the cancellation of a distributor's agreement (if the distributor has a substantial capital investment in the distributorship), shall be considered as amounts received in exchange for such lease or agreement.

(Aug. 16, 1954, ch. 736, 68A Stat. 333.)

### § 1242. Losses on small business investment company stock

If—

(1) a loss is on stock in a small business investment company operating under the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as an ordinary loss. For purposes of section 172 (relating to the net operating loss deduction) any amount of loss treated by reason of this section as an ordinary loss shall be treated as attributable to a trade or business of the taxpayer.

(Added Pub. L. 85-866, title I, §57(a), Sept. 2, 1958, 72 Stat. 1645; amended Pub. L. 94-455, title XIX, §1901(b)(3)(F), Oct. 4, 1976, 90 Stat. 1793.)

#### REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in cl. (1), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

#### AMENDMENTS

1976—Pub. L. 94-455 substituted "an ordinary loss" for "a loss from the sale or exchange of property which is not a capital asset", each time appearing.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by 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

Section applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85-866, set out as an Effective Date of 1958 Amendment note under section 243 of this title.

### § 1243. Loss of small business investment company

In the case of a small business investment company operating under the Small Business Investment Act of 1958, if—

(1) a loss is on stock received pursuant to the conversion privilege of convertible debentures acquired pursuant to section 304 of the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as an ordinary loss.

(Added Pub. L. 85-866, title I, §57(a), Sept. 2, 1958, 72 Stat. 1645; amended Pub. L. 91-172, title IV, §433(b), Dec. 30, 1969, 83 Stat. 624; Pub. L. 94-455, title XIX, §1901(b)(3)(F), Oct. 4, 1976, 90 Stat. 1793.)

#### REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in text, is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. Section 304 of the Small Business Investment Act of 1958, is classified to section 684 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

#### AMENDMENTS

1976—Pub. L. 94-455 substituted "an ordinary loss" for "a loss from the sale or exchange of property which is not a capital asset".

1969—Par. (1). Pub. L. 91-172 substituted "stock received pursuant to the conversion privilege of convertible debentures" for "convertible debentures (including stock received pursuant to the conversion privilege)".

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by 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.