

1989—Subsec. (d)(1). Pub. L. 101-239, §7622(a), substituted “serial payments” for “payments” in heading and amended text generally. Prior to amendment, text read as follows: “Amounts paid or incurred during the taxable year on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name which are contingent on the productivity, use, or disposition of the franchise, trademark, or trade name transferred shall be allowed as a deduction under section 162(a) (relating to trade or business expenses).”

Subsec. (d)(2). Pub. L. 101-239, §7622(b), designated existing provisions as subpar. (A), inserted subpar. heading, redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and former cls. (i) and (ii) of former subpar. (B) as subcls. (I) and (II), respectively, of cl. (ii), and added subpar. (B).

Subsec. (d)(3) to (5). Pub. L. 101-239, §7622(c), added pars. (3) to (5).

1976—Subsec. (d)(2)(C). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to property acquired after Oct. 22, 2004, see section 886(c)(1) of Pub. L. 108-357, set out as a note under section 197 of this title.

#### 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 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101-239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101-508, set out as a note under section 42 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to transfers after Oct. 2, 1989, but not applicable to any transfer pursuant to a written binding contract in effect on Oct. 2, 1989, and at all times thereafter before the transfer, see section 7622(c)[(e)] of Pub. L. 101-239, set out as a note under section 167 of this title.

#### EFFECTIVE DATE

Section applicable to transfers after Dec. 31, 1969, except that subsec. (d)(1) shall, at the election of the taxpayer (made at such time and in such manner as the Secretary or his delegate may by regulations prescribe), apply to transfers before Jan. 1, 1970, but only with respect to payments made in taxable years ending after Dec. 31, 1969, and beginning before Jan. 1, 1980, see section 516(d)(3) of Pub. L. 91-172, set out as a note under section 1001 of this title.

### § 1254. Gain from disposition of interest in oil, gas, geothermal, or other mineral properties

#### (a) General rule

##### (1) Ordinary income

If any section 1254 property is disposed of, the lesser of—

(A) the aggregate amount of—

(i) expenditures which have been deducted by the taxpayer or any person under section 263, 616, or 617 with respect to such property and which, but for such deduction, would have been included in the adjusted basis of such property, and

(ii) the deductions for depletion under section 611 which reduced the adjusted basis of such property, or

(B) the excess of—

(i) in the case of—

(I) a sale, exchange, or involuntary conversion, the amount realized, or

(II) in the case of any other disposition, the fair market value of such property, over

(ii) the adjusted basis of such property,

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

#### (2) Disposition of portion of property

For purposes of paragraph (1)—

(A) In the case of the disposition of a portion of section 1254 property (other than an undivided interest), the entire amount of the aggregate expenditures or deductions described in paragraph (1)(A) with respect to such property shall be treated as allocable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

(B) In the case of the disposition of an undivided interest in a section 1254 property (or a portion thereof), a proportionate part of the expenditures or deductions described in paragraph (1)(A) with respect to such property shall be treated as allocable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditures to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditures do not relate to the portion (or interest therein) disposed of.

#### (3) Section 1254 property

The term “section 1254 property” means any property (within the meaning of section 614) if—

(A) any expenditures described in paragraph (1)(A) are properly chargeable to such property, or

(B) the adjusted basis of such property includes adjustments for deductions for depletion under section 611.

#### (4) Adjustment for amounts included in gross income under section 617(b)(1)(A)

The amount of the expenditures referred to in paragraph (1)(A)(i) shall be properly adjusted for amounts included in gross income under section 617(b)(1)(A).

#### (b) Special rules under regulations

Under regulations prescribed by the Secretary—

(1) rules similar to the rule of subsection (g) of section 617 and to the rules of subsections (b) and (c) of section 1245 shall be applied for purposes of this section; and

(2) in the case of the sale or exchange of stock in an S corporation, rules similar to the rules of section 751 shall be applied to that portion of the excess of the amount realized over the adjusted basis of the stock which is attributable to expenditures referred to in subsection (a)(1)(A) of this section.

(Added Pub. L. 94-455, title II, §205(a), Oct. 4, 1976, 90 Stat. 1533; amended Pub. L. 95-618, title

IV, §402(c)(1)–(3), Nov. 9, 1978, 92 Stat. 3202; Pub. L. 97-354, §5(a)(37), Oct. 19, 1982, 96 Stat. 1696; Pub. L. 99-514, title IV, §413(a), Oct. 22, 1986, 100 Stat. 2227; Pub. L. 100-647, title I, §1004(c), Nov. 10, 1988, 102 Stat. 3387.)

#### AMENDMENTS

1988—Subsec. (a)(4). Pub. L. 100-647 added par. (4).

1986—Pub. L. 99-514 amended section generally, substituting “geothermal, or other mineral properties” for “or geothermal property” in section catchline, revising and restating subsec. (a), pars. (1) to (4) as pars. (1) to (3), and reenacting subsec. (b) without change except for substituting “rule of subsection (g)” for “rules of subsection (g)” in par. (1).

1982—Subsec. (b)(2). Pub. L. 97-354 substituted “an S corporation” for “an electing small business corporation (as defined in section 1371(b))”.

1978—Pub. L. 95-618, §402(c)(3), substituted “oil, gas, or geothermal” for “oil or gas” in section catchline.

Subsec. (a)(1), (2). Pub. L. 95-618, §402(c)(1), substituted “oil, gas, or geothermal property” for “oil or gas property” wherever appearing.

Subsec. (a)(3). Pub. L. 95-618, §402(c)(2), substituted “Oil, gas, or geothermal” for “Oil or gas” in heading and in text substituted “The term ‘oil, gas, or geothermal property’ means” for “The term ‘oil or gas property’ means”.

#### 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 IV, §413(c), Oct. 22, 1986, 100 Stat. 2229, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 617 of this title] shall apply to any disposition of property which is placed in service by the taxpayer after December 31, 1986.

“(2) EXCEPTION FOR BINDING CONTRACTS.—The amendments made by this section shall not apply to any disposition of property placed in service after December 31, 1986, if such property was acquired pursuant to a written contract which was entered into before September 26, 1985, and which was binding at all times thereafter.”

#### 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 1978 AMENDMENT

Amendment by Pub. L. 95-618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95-618, set out as a note under section 263 of this title.

#### EFFECTIVE DATE

Pub. L. 94-455, title II, §205(e), Oct. 4, 1976, 90 Stat. 1535, provided that: “The amendments made by this section [enacting this section and amending sections 163, 170, 301, 312, 341, 453, and 751 of this title] shall apply with respect to taxable years ending after December 31, 1975.”

## § 1255. Gain from disposition of section 126 property

### (a) General rule

#### (1) Ordinary income

Except as otherwise provided in this section, if section 126 property is disposed of, the lower of—

(A) the applicable percentage of the aggregate payments, with respect to such property, excluded from gross income under section 126, or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such section 126 property (in the case of any other disposition), over

(ii) the adjusted basis of such property,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

#### (2) Section 126 property

For purposes of this section, “section 126 property” means any property acquired, improved, or otherwise modified by the application of payments excluded from gross income under section 126.

#### (3) Applicable percentage

For purposes of this section, if section 126 property is disposed of less than 10 years after the date of receipt of payments excluded from gross income under section 126, the applicable percentage is 100 percent. If section 126 property is disposed of more than 10 years after such date, the applicable percentage is 100 percent reduced (but not below zero) by 10 percent for each year or part thereof in excess of 10 years such property was held after the date of receipt of the payments.

### (b) Special rules

Under regulations prescribed by the Secretary—

(1) rules similar to the rules applicable under section 1245 shall be applied for purposes of this section, and

(2) for purposes of sections 170(e),<sup>1</sup> and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245.

(Added Pub. L. 95-600, title V, §543(c)(1), Nov. 6, 1978, 92 Stat. 2890; amended Pub. L. 96-222, title I, §105(a)(7)(B), (D), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96-471, §2(b)(6), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 99-514, title V, §511(d)(2)(A), title VI, §631(e)(14), Oct. 22, 1986, 100 Stat. 2248, 2275; Pub. L. 100-647, title I, §1005(c)(10), Nov. 10, 1988, 102 Stat. 3392; Pub. L. 108-27, title III, §302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764.)

#### AMENDMENTS

2003—Subsec. (b)(2). Pub. L. 108-27 struck out “, 341(e)(12),” after “170(e)”.

<sup>1</sup> So in original. The comma probably should not appear.