

Subsec. (e). Pub. L. 100-647, §1006(h)(3)(B), added subsec. (e).

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 applicable to acquisitions after Oct. 9, 1990, but not applicable to any acquisition pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such acquisition, see section 11323(d) of Pub. L. 101-508, set out as a note under section 338 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

Pub. L. 99-514, title VI, §641(c), Oct. 22, 1986, 100 Stat. 2283, provided that: "The amendments made by this section [enacting this section and renumbering former section 1060 as 1061] shall apply to any acquisition of assets after May 6, 1986, unless such acquisition is pursuant to a binding contract which was in effect on May 6, 1986, and at all times thereafter."

§ 1061. Partnership interests held in connection with performance of services

(a) In general

If one or more applicable partnership interests are held by a taxpayer at any time during the taxable year, the excess (if any) of—

- (1) the taxpayer's net long-term capital gain with respect to such interests for such taxable year, over
- (2) the taxpayer's net long-term capital gain with respect to such interests for such taxable year computed by applying paragraphs (3) and (4) of sections¹ 1222 by substituting "3 years" for "1 year",

shall be treated as short-term capital gain, notwithstanding section 83 or any election in effect under section 83(b).

(b) Special rule

To the extent provided by the Secretary, subsection (a) shall not apply to income or gain attributable to any asset not held for portfolio investment on behalf of third party investors.

(c) Applicable partnership interest

For purposes of this section—

(1) In general

Except as provided in this paragraph or paragraph (4), the term "applicable partnership interest" means any interest in a partnership which, directly or indirectly, is transferred to (or is held by) the taxpayer in connection with the performance of substantial services by the taxpayer, or any other related person, in any applicable trade or business. The previous sentence shall not apply to an interest held by a person who is employed by an-

other entity that is conducting a trade or business (other than an applicable trade or business) and only provides services to such other entity.

(2) Applicable trade or business

The term "applicable trade or business" means any activity conducted on a regular, continuous, and substantial basis which, regardless of whether the activity is conducted in one or more entities, consists, in whole or in part, of—

- (A) raising or returning capital, and
- (B) either—
 - (i) investing in (or disposing of) specified assets (or identifying specified assets for such investing or disposition), or
 - (ii) developing specified assets.

(3) Specified asset

The term "specified asset" means securities (as defined in section 475(c)(2) without regard to the last sentence thereof), commodities (as defined in section 475(e)(2)), real estate held for rental or investment, cash or cash equivalents, options or derivative contracts with respect to any of the foregoing, and an interest in a partnership to the extent of the partnership's proportionate interest in any of the foregoing.

(4) Exceptions

The term "applicable partnership interest" shall not include—

- (A) any interest in a partnership directly or indirectly held by a corporation, or
- (B) any capital interest in the partnership which provides the taxpayer with a right to share in partnership capital commensurate with—
 - (i) the amount of capital contributed (determined at the time of receipt of such partnership interest), or
 - (ii) the value of such interest subject to tax under section 83 upon the receipt or vesting of such interest.

(5) Third party investor

The term "third party investor" means a person who—

- (A) holds an interest in the partnership which does not constitute property held in connection with an applicable trade or business; and
- (B) is not (and has not been) actively engaged, and is (and was) not related to a person so engaged, in (directly or indirectly) providing substantial services described in paragraph (1) for such partnership or any applicable trade or business.

(d) Transfer of applicable partnership interest to related person

(1) In general

If a taxpayer transfers any applicable partnership interest, directly or indirectly, to a person related to the taxpayer, the taxpayer shall include in gross income (as short term capital gain) the excess (if any) of—

- (A) so much of the taxpayer's long-term capital gains with respect to such interest for such taxable year attributable to the sale

¹ So in original. Probably should be "section".

or exchange of any asset held for not more than 3 years as is allocable to such interest, over

(B) any amount treated as short term capital gain under subsection (a) with respect to the transfer of such interest.

(2) Related person

For purposes of this paragraph, a person is related to the taxpayer if—

(A) the person is a member of the taxpayer's family within the meaning of section 318(a)(1), or

(B) the person performed a service within the current calendar year or the preceding three calendar years in any applicable trade or business in which or for which the taxpayer performed a service.

(e) Reporting

The Secretary shall require such reporting (at the time and in the manner prescribed by the Secretary) as is necessary to carry out the purposes of this section.

(f) Regulations

The Secretary shall issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section²

(Added Pub. L. 115-97, title I, §13309(a)(2), Dec. 22, 2017, 131 Stat. 2130.)

PRIOR PROVISIONS

A prior section 1061 was renumbered section 1062 of this title.

EFFECTIVE DATE

Pub. L. 115-97, title I, §13309(c), Dec. 22, 2017, 131 Stat. 2131, provided that: "The amendments made by this section [enacting this section and renumbering former section 1061 as 1062] shall apply to taxable years beginning after December 31, 2017."

§ 1062. Cross references

(1) For nonrecognition of gain in connection with the transfer of obsolete vessels to the Maritime Administration under chapter 573 of title 46, United States Code, see section 57307 of title 46.

(2) For recognition of gain or loss in connection with the construction of new vessels, see chapter 533 of title 46, United States Code.

(Aug. 16, 1954, ch. 736, 68A Stat. 311, §1054; renumbered §1055, Pub. L. 86-779, §8(b), Sept. 14, 1960, 74 Stat. 1003; renumbered §1056, Pub. L. 88-9, §1(b), Apr. 10, 1963, 77 Stat. 7; renumbered §1057, Pub. L. 94-455, title II, §212(a)(1), Oct. 4, 1976, 90 Stat. 1545; renumbered §1058, Pub. L. 94-455, title X, §1015(c), Oct. 4, 1976, 90 Stat. 1618; renumbered §1059, Pub. L. 95-345, §2(d)(1), Aug. 15, 1978, 92 Stat. 482; renumbered §1060, Pub. L. 98-369, div. A, title I, §53(a), July 18, 1984, 98 Stat. 565; renumbered §1061 and amended, Pub. L. 99-514, title VI, §641(a), title XVIII, §1899A(27), Oct. 22, 1986, 100 Stat. 2282, 2960; Pub. L. 109-304, §17(e)(5), Oct. 6, 2006, 120 Stat. 1708; renumbered §1062, Pub. L. 115-97, title I, §13309(a)(1), Dec. 22, 2017, 131 Stat. 2130.)

AMENDMENTS

2017—Pub. L. 115-97 renumbered section 1061 of this title as this section.

² So in original. Probably should be followed by a period.

2006—Par. (1). Pub. L. 109-304, §17(e)(5)(A), substituted "chapter 573 of title 46, United States Code, see section 57307 of title 46" for "section 510 of the Merchant Marine Act, 1936, see subsection (e) of that section, as amended August 4, 1939 (46 U.S.C. App. 1160)".

Par. (2). Pub. L. 109-304, §17(e)(5)(B), substituted "chapter 533 of title 46, United States Code" for "section 511 of such Act, as amended (46 U.S.C. App. 1161)".

Par. (3). Pub. L. 109-304, §17(e)(5)(C), struck out par. (3), which read as follows: "For nonrecognition of gain in connection with vessels exchanged with the Maritime Administration under section 8 of the Merchant Ship Sales Act of 1946, see subsection (a) of that section (50 U.S.C. App. 1741)."

1986—Pub. L. 99-514, §641(a), renumbered section 1060 of this title as this section.

Pars. (1), (2). Pub. L. 99-514, §1899A(27), which directed the amendment of pars. (1) and (2) of section 1060 by substituting "46 U.S.C. App." for "46 U.S.C." was executed to section 1061 to reflect the probable intent of Congress in view of the renumbering of section 1060 as 1061 by section 641(a) of Pub. L. 99-514.

[PART V—REPEALED]

[§ 1071. Repealed. Pub. L. 104-7, §2(a), Apr. 11, 1995, 109 Stat. 93]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 311; Sept. 2, 1958, Pub. L. 85-866, title I, §48(a), 72 Stat. 1642; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§1901(b)(31)(E), 1906(b)(13)(A), 90 Stat. 1800, 1834, provided for nonrecognition on FCC certified sales and exchanges.

EFFECTIVE DATE OF REPEAL

Pub. L. 104-7, §2(d), Apr. 11, 1995, 109 Stat. 93, provided that:

"(1) IN GENERAL.—The amendments made by this section [repealing this section and amending sections 1245 and 1250 of this title] shall apply to—

"(A) sales and exchanges on or after January 17, 1995, and

"(B) sales and exchanges before such date if the FCC tax certificate with respect to such sale or exchange is issued on or after such date.

"(2) BINDING CONTRACTS.—

"(A) IN GENERAL.—The amendments made by this section shall not apply to any sale or exchange pursuant to a written contract which was binding on January 16, 1995, and at all times thereafter before the sale or exchange, if the FCC tax certificate with respect to such sale or exchange was applied for, or issued, on or before such date.

"(B) SALES CONTINGENT ON ISSUANCE OF CERTIFICATE.—

"(i) IN GENERAL.—A contract shall be treated as not binding for purposes of subparagraph (A) if the sale or exchange pursuant to such contract, or the material terms of such contract, were contingent, at any time on January 16, 1995, on the issuance of an FCC tax certificate. The preceding sentence shall not apply if the FCC tax certificate for such sale or exchange is issued on or before January 16, 1995.

"(ii) MATERIAL TERMS.—For purposes of clause (i), the material terms of a contract shall not be treated as contingent on the issuance of an FCC tax certificate solely because such terms provide that the sales price would, if such certificate were not issued, be increased by an amount not greater than 10 percent of the sales price otherwise provided in the contract.

"(3) FCC TAX CERTIFICATE.—For purposes of this subsection, the term 'FCC tax certificate' means any certificate of the Federal Communications Commission for the effectuation of section 1071 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act [Apr. 11, 1995])."