

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 115-141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115-141, set out as a note under section 23 of this title.

§ 1253. Transfers of franchises, trademarks, and trade names

(a) General rule

A transfer of a franchise, trademark, or trade name shall not be treated as a sale or exchange of a capital asset if the transferor retains any significant power, right, or continuing interest with respect to the subject matter of the franchise, trademark, or trade name.

(b) Definitions

For purposes of this section—

(1) Franchise

The term “franchise” includes an agreement which gives one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities, within a specified area.

(2) Significant power, right, or continuing interest

The term “significant power, right, or continuing interest” includes, but is not limited to, the following rights with respect to the interest transferred:

(A) A right to disapprove any assignment of such interest, or any part thereof.

(B) A right to terminate at will.

(C) A right to prescribe the standards of quality of products used or sold, or of services furnished, and of the equipment and facilities used to promote such products or services.

(D) A right to require that the transferee sell or advertise only products or services of the transferor.

(E) A right to require that the transferee purchase substantially all of his supplies and equipment from the transferor.

(F) A right to payments contingent on the productivity, use, or disposition of the subject matter of the interest transferred, if such payments constitute a substantial element under the transfer agreement.

(3) Transfer

The term “transfer” includes the renewal of a franchise, trademark, or trade name.

(c) Treatment of contingent payments by transferor

Amounts received or accrued 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 treated as amounts received or accrued from the sale or other disposition of property which is not a capital asset.

(d) Treatment of payments by transferee

(1) Contingent serial payments

(A) In general

Any amount described in subparagraph (B) which is paid or incurred during the taxable year on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name shall be allowed as a deduction under section 162(a) (relating to trade or business expenses).

(B) Amounts to which paragraph applies

An amount is described in this subparagraph if it—

(i) is contingent on the productivity, use, or disposition of the franchise, trademark, or trade name, and

(ii) is paid as part of a series of payments—

(I) which are payable not less frequently than annually throughout the entire term of the transfer agreement, and

(II) which are substantially equal in amount (or payable under a fixed formula).

(2) Other payments

Any amount paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name to which paragraph (1) does not apply shall be treated as an amount chargeable to capital account.

(3) Renewals, etc.

For purposes of determining the term of a transfer agreement under this section, there shall be taken into account all renewal options (and any other period for which the parties reasonably expect the agreement to be renewed).

(Added Pub. L. 91-172, title V, §516(c)(1), Dec. 30, 1969, 83 Stat. 647; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101-239, title VII, §7622(a)-(c), Dec. 19, 1989, 103 Stat. 2377; Pub. L. 101-508, title XI, §11701(i), Nov. 5, 1990, 104 Stat. 1388-508; Pub. L. 103-66, title XIII, §13261(c), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104-188, title I, §1704(t)(47), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108-357, title VIII, §886(b)(3), Oct. 22, 2004, 118 Stat. 1641.)

AMENDMENTS

2004—Subsec. (e). Pub. L. 108-357 struck out heading and text of subsec. (e). Text read as follows: “This section shall not apply to the transfer of a franchise to engage in professional football, basketball, baseball, or other professional sport.”

1996—Subsec. (d)(4). Pub. L. 104-188 provided that section 11701(i) of Pub. L. 101-508 shall be applied as if “subsection” appeared instead of “section” in the material proposed to be stricken. See 1990 Amendment note below.

1993—Subsec. (d)(2) to (5). Pub. L. 103-66 added pars. (2) and (3) and struck out former pars. (2) relating to deduction of certain payments for transfer of a franchise, trademark, or trade name not treated as sale or exchange of capital asset, (3) relating to treatment of amounts paid or incurred on account of transfer, sale, or other disposition of a franchise, trademark, or trade name to which pars. (1) and (2) did not apply, (4) relating to renewals for purposes of determining term of transfer agreement under this section or period of am-

ortization under this subtitle, and (5) relating to rules applicable to this subsection.

1990—Subsec. (d)(4). Pub. L. 101-508, §11701(i), which directed the substitution of “under this section or any period of amortization under this subtitle for any payment described in this section” for “or any period of amortization under this section”, was executed by making the substitution for “or any period of amortization under this subsection”. See 1996 Amendment note above.

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