§ 211(b)(16), July 18, 1984, 98 Stat. 756; Pub. L. 99–514, title III, § 311(a), title X, § 1024(c)(14), Oct. 22, 1986, 100 Stat. 2219, 2408; Pub. L. 100–647, title I, § 1003(c)(1), title II, § 2004(*l*), Nov. 10, 1988, 102 Stat. 3384, 3606; Pub. L. 103–66, title XIII, § 13221(c)(2), Aug. 10, 1993, 107 Stat. 477; Pub. L. 104–188, title I, § 1703(f), Aug. 20, 1996, 110 Stat. 1876; Pub. L. 105–34, title III, § 314(a), Aug. 5, 1997, 111 Stat. 842; Pub. L. 110–234, title XV, § 15311(a), May 22, 2008, 122 Stat. 1502; Pub. L. 110–246, § 4(a), title XV, § 15311(a), June 18, 2008, 122 Stat. 1664, 2264; Pub. L. 114–113, div. Q, title III, § 334(a), Dec. 18, 2015, 129 Stat. 3108, related to alternative tax for corporations.

SUBSECTION (b) OF THIS SECTION PRIOR TO REPEAL

Prior to repeal by section 13001(b)(2)(A) of Pub. L. 115–97, subsection (b) of this section read as follows:

(b) Special rate for qualified timber gains

(1) In general

If, for any taxable year beginning in 2016, a corporation has both a net capital gain and qualified timber gain—

(A) subsection (a) shall apply to such corporation for the taxable year without regard to whether the applicable tax rate exceeds 35 percent, and

(B) the tax computed under subsection (a)(2) shall be equal to the sum of—

(i) 23.8 percent of the least of—

(I) qualified timber gain,

(II) net capital gain, or

(III) taxable income, plus

(ii) 35 percent of the excess (if any) of taxable income over the sum of the amounts for which a tax was determined under subsection (a)(1) and clause (i).

(2) Qualified timber gain

For purposes of this section, the term ''qualified timber gain'' means, with respect to any taxpayer for any taxable year, the excess (if any) of—

(A) the sum of the taxpayer's gains described in subsections (a) and (b) of section 631 for such year, over

(B) the sum of the taxpayer's losses described in such subsections for such year.

For purposes of subparagraphs (A) and (B), only timber held more than 15 years shall be taken into account.

See Extension of Special Rule Relating to Qualified Timber Gain note set out below.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 11 of this title.

EXTENSION OF SPECIAL RULE RELATING TO QUALIFIED TIMBER GAIN

Pub. L. 115–123, div. D, title I, § 40310, Feb. 9, 2018, 132 Stat. 147, provided that: ''For purposes of applying section 1201(b) of the Internal Revenue Code of 1986 with respect to taxable years beginning during 2017, such section shall be applied by substituting '2016 or 2017' for '2016'.''

§ 1202. Partial exclusion for gain from certain small business stock

(a) Exclusion

(1) In general

In the case of a taxpayer other than a corporation, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years.

(2) Empowerment zone businesses

(A) In general

In the case of qualified small business stock acquired after the date of the enactment of this paragraph in a corporation which is a qualified business entity (as defined in section 1397C(b)) during substantially all of the taxpayer's holding period for such stock, paragraph (1) shall be applied by substituting ''60 percent'' for ''50 percent''.

(B) Certain rules to apply

Rules similar to the rules of paragraphs (5) and (7) of section 1400B(b) (as in effect before its repeal) shall apply for purposes of this paragraph.

(C) Gain after 2018 not qualified

Subparagraph (A) shall not apply to gain attributable to periods after December 31, 2018.

(D) Treatment of DC zone

The District of Columbia Enterprise Zone shall not be treated as an empowerment zone for purposes of this paragraph.

(3) Special rules for 2009 and certain periods in 2010

In the case of qualified small business stock acquired after the date of the enactment of this paragraph and on or before the date of the enactment of the Creating Small Business Jobs Act of 2010—

(A) paragraph (1) shall be applied by substituting ''75 percent'' for ''50 percent'', and

(B) paragraph (2) shall not apply.

In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223.

(4) 100 percent exclusion for stock acquired during certain periods in 2010 and thereafter

In the case of qualified small business stock acquired after the date of the enactment of the Creating Small Business Jobs Act of 2010—

(A) paragraph (1) shall be applied by substituting ''100 percent'' for ''50 percent'',

(B) paragraph (2) shall not apply, and

(C) paragraph (7) of section 57(a) shall not apply.

In the case of any stock which would be described in the preceding sentence (but for this sentence), the acquisition date for purposes of this subsection shall be the first day on which such stock was held by the taxpayer determined after the application of section 1223.

(b) Per-issuer limitation on taxpayer's eligible gain

(1) In general

If the taxpayer has eligible gain for the taxable year from 1 or more dispositions of stock issued by any corporation, the aggregate

amount of such gain from dispositions of stock issued by such corporation which may be taken into account under subsection (a) for the taxable year shall not exceed the greater of—

(A) $10,000,000 reduced by the aggregate amount of eligible gain taken into account by the taxpayer under subsection (a) for prior taxable years and attributable to dispositions of stock issued by such corporation, or

(B) 10 times the aggregate adjusted bases of qualified small business stock issued by such corporation and disposed of by the taxpayer during the taxable year.

For purposes of subparagraph (B), the adjusted basis of any stock shall be determined without regard to any addition to basis after the date on which such stock was originally issued.

(2) Eligible gain

For purposes of this subsection, the term ''eligible gain'' means any gain from the sale or exchange of qualified small business stock held for more than 5 years.

(3) Treatment of married individuals

(A) Separate returns

In the case of a separate return by a married individual, paragraph (1)(A) shall be applied by substituting ''$5,000,000'' for ''$10,000,000''.

(B) Allocation of exclusion

In the case of any joint return, the amount of gain taken into account under subsection (a) shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

(C) Marital status

For purposes of this subsection, marital status shall be determined under section 7703.

(c) Qualified small business stock

For purposes of this section—

(1) In general

Except as otherwise provided in this section, the term ''qualified small business stock'' means any stock in a C corporation which is originally issued after the date of the enactment of the Revenue Reconciliation Act of 1993, if—

(A) as of the date of issuance, such corporation is a qualified small business, and

(B) except as provided in subsections (f) and (h), such stock is acquired by the taxpayer at its original issue (directly or through an underwriter)—

(i) in exchange for money or other property (not including stock), or

(ii) as compensation for services provided to such corporation (other than services performed as an underwriter of such stock).

(2) Active business requirement; etc.

(A) In general

Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for such stock, such corporation meets the active business requirements of subsection (e) and such corporation is a C corporation.

(B) Special rule for certain small business investment companies

(i) Waiver of active business requirement

Notwithstanding any provision of subsection (e), a corporation shall be treated as meeting the active business requirements of such subsection for any period during which such corporation qualifies as a specialized small business investment company.

(ii) Specialized small business investment company

For purposes of clause (i), the term ''specialized small business investment company'' means any eligible corporation (as defined in subsection (e)(4)) which is licensed to operate under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

(3) Certain purchases by corporation of its own stock

(A) Redemptions from taxpayer or related person

Stock acquired by the taxpayer shall not be treated as qualified small business stock if, at any time during the 4-year period beginning on the date 2 years before the issuance of such stock, the corporation issuing such stock purchased (directly or indirectly) any of its stock from the taxpayer or from a person related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(B) Significant redemptions

Stock issued by a corporation shall not be treated as qualified business stock if, during the 2-year period beginning on the date 1 year before the issuance of such stock, such corporation made 1 or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of such 2-year period.

(C) Treatment of certain transactions

If any transaction is treated under section 304(a) as a distribution in redemption of the stock of any corporation, for purposes of subparagraphs (A) and (B), such corporation shall be treated as purchasing an amount of its stock equal to the amount treated as such a distribution under section 304(a).

(d) Qualified small business

For purposes of this section—

(1) In general

The term ''qualified small business'' means any domestic corporation which is a C corporation if—

(A) the aggregate gross assets of such corporation (or any predecessor thereof) at all times on or after the date of the enactment

of the Revenue Reconciliation Act of 1993 and before the issuance did not exceed $50,000,000,

(B) the aggregate gross assets of such corporation immediately after the issuance (determined by taking into account amounts received in the issuance) do not exceed $50,000,000, and

(C) such corporation agrees to submit such reports to the Secretary and to shareholders as the Secretary may require to carry out the purposes of this section.

(2) Aggregate gross assets

(A) In general

For purposes of paragraph (1), the term ''aggregate gross assets'' means the amount of cash and the aggregate adjusted bases of other property held by the corporation.

(B) Treatment of contributed property

For purposes of subparagraph (A), the adjusted basis of any property contributed to the corporation (or other property with a basis determined in whole or in part by reference to the adjusted basis of property so contributed) shall be determined as if the basis of the property contributed to the corporation (immediately after such contribution) were equal to its fair market value as of the time of such contribution.

(3) Aggregation rules

(A) In general

All corporations which are members of the same parent-subsidiary controlled group shall be treated as 1 corporation for purposes of this subsection.

(B) Parent-subsidiary controlled group

For purposes of subparagraph (A), the term ''parent-subsidiary controlled group'' means any controlled group of corporations as defined in section 1563(a)(1), except that—

(i) ''more than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in section 1563(a)(1), and

(ii) section 1563(a)(4) shall not apply.

(e) Active business requirement

(1) In general

For purposes of subsection (c)(2), the requirements of this subsection are met by a corporation for any period if during such period—

(A) at least 80 percent (by value) of the assets of such corporation are used by such corporation in the active conduct of 1 or more qualified trades or businesses, and

(B) such corporation is an eligible corporation.

(2) Special rule for certain activities

For purposes of paragraph (1), if, in connection with any future qualified trade or business, a corporation is engaged in—

(A) start-up activities described in section 195(c)(1)(A),

(B) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

(C) activities with respect to in-house research expenses described in section 41(b)(4),

assets used in such activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from such activities at the time of the determination.

(3) Qualified trade or business

For purposes of this subsection, the term ''qualified trade or business'' means any trade or business other than—

(A) any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees,

(B) any banking, insurance, financing, leasing, investing, or similar business,

(C) any farming business (including the business of raising or harvesting trees),

(D) any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A, and

(E) any business of operating a hotel, motel, restaurant, or similar business.

(4) Eligible corporation

For purposes of this subsection, the term ''eligible corporation'' means any domestic corporation; except that such term shall not include—

(A) a DISC or former DISC,

(B) a regulated investment company, real estate investment trust, or REMIC, and

(C) a cooperative.

(5) Stock in other corporations

(A) Look-thru in case of subsidiaries

For purposes of this subsection, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

(B) Portfolio stock or securities

A corporation shall be treated as failing to meet the requirements of paragraph (1) for any period during which more than 10 percent of the value of its assets (in excess of liabilities) consists of stock or securities in other corporations which are not subsidiaries of such corporation (other than assets described in paragraph (6)).

(C) Subsidiary

For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of such corporation.

(6) Working capital

For purposes of paragraph (1)(A), any assets which—

(A) are held as a part of the reasonably required working capital needs of a qualified trade or business of the corporation, or

(B) are held for investment and are reasonably expected to be used within 2 years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business,

shall be treated as used in the active conduct of a qualified trade or business. For periods after the corporation has been in existence for at least 2 years, in no event may more than 50 percent of the assets of the corporation qualify as used in the active conduct of a qualified trade or business by reason of this paragraph.

(7) Maximum real estate holdings

A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets consists of real property which is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a qualified trade or business.

(8) Computer software royalties

For purposes of paragraph (1), rights to computer software which produces active business computer software royalties (within the meaning of section 543(d)(1)) shall be treated as an asset used in the active conduct of a trade or business.

(f) Stock acquired on conversion of other stock

If any stock in a corporation is acquired solely through the conversion of other stock in such corporation which is qualified small business stock in the hands of the taxpayer—

(1) the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer, and

(2) the stock so acquired shall be treated as having been held during the period during which the converted stock was held.

(g) Treatment of pass-thru entities

(1) In general

If any amount included in gross income by reason of holding an interest in a pass-thru entity meets the requirements of paragraph (2)—

(A) such amount shall be treated as gain described in subsection (a), and

(B) for purposes of applying subsection (b), such amount shall be treated as gain from a disposition of stock in the corporation issuing the stock disposed of by the pass-thru entity and the taxpayer's proportionate share of the adjusted basis of the pass-thru entity in such stock shall be taken into account.

(2) Requirements

An amount meets the requirements of this paragraph if—

(A) such amount is attributable to gain on the sale or exchange by the pass-thru entity of stock which is qualified small business stock in the hands of such entity (determined by treating such entity as an individual) and which was held by such entity for more than 5 years, and

(B) such amount is includible in the gross income of the taxpayer by reason of the holding of an interest in such entity which was held by the taxpayer on the date on which such pass-thru entity acquired such stock and at all times thereafter before the disposition of such stock by such pass-thru entity.

(3) Limitation based on interest originally held by taxpayer

Paragraph (1) shall not apply to any amount to the extent such amount exceeds the amount to which paragraph (1) would have applied if such amount were determined by reference to the interest the taxpayer held in the pass-thru entity on the date the qualified small business stock was acquired.

(4) Pass-thru entity

For purposes of this subsection, the term ''pass-thru entity'' means—

(A) any partnership,

(B) any S corporation,

(C) any regulated investment company, and

(D) any common trust fund.

(h) Certain tax-free and other transfers

For purposes of this section—

(1) In general

In the case of a transfer described in paragraph (2), the transferee shall be treated as—

(A) having acquired such stock in the same manner as the transferor, and

(B) having held such stock during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subsection) by the transferor.

(2) Description of transfers

A transfer is described in this subsection if such transfer is—

(A) by gift,

(B) at death, or

(C) from a partnership to a partner of stock with respect to which requirements similar to the requirements of subsection (g) are met at the time of the transfer (without regard to the 5-year holding period requirement).

(3) Certain rules made applicable

Rules similar to the rules of section 1244(d)(2) shall apply for purposes of this section.

(4) Incorporations and reorganizations involving nonqualified stock

(A) In general

In the case of a transaction described in section 351 or a reorganization described in section 368, if qualified small business stock is exchanged for other stock which would not qualify as qualified small business stock but for this subparagraph, such other stock shall be treated as qualified small business stock acquired on the date on which the exchanged stock was acquired.

(B) Limitation

This section shall apply to gain from the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain which would have been recognized at the time of the transfer described in subparagraph (A) if section 351 or 368 had not applied at such time. The preceding sentence shall not apply if the stock which is treated as qualified small business stock by reason of subparagraph (A) is issued by a corporation which (as of the time of the transfer described in subparagraph (A)) is a qualified small business.

(C) Successive application

For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which such limitation applied (determined after the application of the second sentence of subparagraph (B)).

(D) Control test

In the case of a transaction described in section 351, this paragraph shall apply only if, immediately after the transaction, the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of section 368(c)) of the corporation whose stock was exchanged.

(i) Basis rules

For purposes of this section—

(1) Stock exchanged for property

In the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in such corporation—

(A) such stock shall be treated as having been acquired by the taxpayer on the date of such exchange, and

(B) the basis of such stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

(2) Treatment of contributions to capital

If the adjusted basis of any qualified small business stock is adjusted by reason of any contribution to capital after the date on which such stock was originally issued, in determining the amount of the adjustment by reason of such contribution, the basis of the contributed property shall in no event be treated as less than its fair market value on the date of the contribution.

(j) Treatment of certain short positions

(1) In general

If the taxpayer has an offsetting short position with respect to any qualified small business stock, subsection (a) shall not apply to any gain from the sale or exchange of such stock unless—

(A) such stock was held by the taxpayer for more than 5 years as of the first day on which there was such a short position, and

(B) the taxpayer elects to recognize gain as if such stock were sold on such first day for its fair market value.

(2) Offsetting short position

For purposes of paragraph (1), the taxpayer shall be treated as having an offsetting short position with respect to any qualified small business stock if—

(A) the taxpayer has made a short sale of substantially identical property,

(B) the taxpayer has acquired an option to sell substantially identical property at a fixed price, or

(C) to the extent provided in regulations, the taxpayer has entered into any other transaction which substantially reduces the risk of loss from holding such qualified small business stock.

For purposes of the preceding sentence, any reference to the taxpayer shall be treated as including a reference to any person who is related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(k) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through split-ups, shell corporations, partnerships, or otherwise.

(Added Pub. L. 103–66, title XIII, § 13113(a), Aug. 10, 1993, 107 Stat. 422; amended Pub. L. 104–188, title I, § 1621(b)(7), Aug. 20, 1996, 110 Stat. 1867; Pub. L. 106–554, § 1(a)(7) [title I, § 117(a), (b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–604; Pub. L. 108–357, title VIII, § 835(b)(9), Oct. 22, 2004, 118 Stat. 1594; Pub. L. 111–5, div. B, title I, § 1241(a), Feb. 17, 2009, 123 Stat. 342; Pub. L. 111–240, title II, § 2011(a), (b), Sept. 27, 2010, 124 Stat. 2554; Pub. L. 111–312, title VII, §§ 753(b), 760(a), Dec. 17, 2010, 124 Stat. 3321, 3323; Pub. L. 112–240, title III, §§ 324(a), (b), 327(b), Jan. 2, 2013, 126 Stat. 2333, 2334; Pub. L. 113–295, div. A, title I, § 136(a), Dec. 19, 2014, 128 Stat. 4019; Pub. L. 114–113, div. Q, title I, § 126(a), Dec. 18, 2015, 129 Stat. 3054; Pub. L. 115–141, div. U, title IV, § 401(d)(1)(D)(xv), (4)(B)(v), Mar. 23, 2018, 132 Stat. 1208, 1209.)

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (a)(2)(A), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

Section 1400B(b), referred to in subsec. (a)(2)(B), was repealed by Pub. L. 115–141, div. U, title IV, § 401(d)(4)(A), Mar. 23, 2018, 132 Stat. 1209.

The date of the enactment of this paragraph, referred to in subsec. (a)(3), is the date of enactment of Pub. L. 111–5, which was approved Feb. 17, 2009.

The date of the enactment of the Creating Small Business Jobs Act of 2010, referred to in subsec. (a)(3), (4), is the date of enactment of Pub. L. 111–240, which was approved Sept. 27, 2010.

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsecs. (c)(1) and (d)(1)(A), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

Section 301(d) of the Small Business Investment Act of 1958, referred to in subsec. (c)(2)(B)(ii), was classified to section 681(d) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 104–208, div. D, title II, § 208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

PRIOR PROVISIONS

A prior section 1202, acts Aug. 16, 1954, ch. 736, 68A Stat. 320; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1901(b)(33)(M), 90 Stat. 1802; Nov. 6, 1978, Pub. L. 95–600, title IV, § 402(a), 92 Stat. 2867; Apr. 1, 1980, Pub. L. 96–222, title I, § 104(a)(2)(A), 94 Stat. 214, authorized deduction for capital gains, prior to repeal by Pub. L. 99–514, title III, § 301(a), (c), Oct. 22, 1986, 100 Stat. 2216, 2218, applicable to taxable years beginning after Dec. 31, 1986.

AMENDMENTS

2018—Subsec. (a)(2)(B). Pub. L. 115–141, § 401(d)(4)(B)(v), inserted ''(as in effect before its repeal)'' after ''1400B(b)''.

Subsec. (e)(4)(B) to (D). Pub. L. 115–141, § 401(d)(1)(D)(xv), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: ''a corporation with respect to which an election under section 936 is in effect or which has a direct or indirect subsidiary with respect to which such an election is in effect,''.

2015—Subsec. (a)(4). Pub. L. 114–113 substituted ''and thereafter'' for '', 2011, 2012, 2013, and 2014'' in heading and struck out ''and before January 1, 2015'' after ''of the Creating Small Business Jobs Act of 2010'' in introductory provisions.

2014—Subsec. (a)(4). Pub. L. 113–295 substituted ''2013, and 2014'' for ''and 2013'' in heading and ''January 1, 2015'' for ''January 1, 2014'' in introductory provisions.

2013—Subsec. (a)(2)(C). Pub. L. 112–240, § 327(b), substituted ''2018'' for ''2016'' in heading and ''December 31, 2018'' for ''December 31, 2016'' in text.

Subsec. (a)(3). Pub. L. 112–240, § 324(b)(1), inserted concluding provisions.

Subsec. (a)(4). Pub. L. 112–240, § 324(b)(2), inserted concluding provisions.

Pub. L. 112–240, § 324(a), substituted '', 2011, 2012, and 2013'' for ''and 2011'' in heading and ''January 1, 2014'' for ''January 1, 2012'' in introductory provisions.

2010—Subsec. (a)(2)(C). Pub. L. 111–312, § 753(b), substituted ''2016'' for ''2014'' in heading and ''December 31, 2016'' for ''December 31, 2014'' in text.

Subsec. (a)(3). Pub. L. 111–240, § 2011(b), inserted ''certain periods in'' before ''2010'' in heading and substituted ''on or before the date of the enactment of the Creating Small Business Jobs Act of 2010'' for ''before January 1, 2011'' in text.

Subsec. (a)(4). Pub. L. 111–312, § 760(a), inserted ''and 2011'' after ''2010'' in heading and substituted ''January 1, 2012'' for ''January 1, 2011'' in introductory provisions.

Pub. L. 111–240, § 2011(a), added par. (4).

2009—Subsec. (a)(3). Pub. L. 111–5 added par. (3).

2004—Subsec. (e)(4)(C). Pub. L. 108–357 substituted ''or REMIC'' for ''REMIC, or FASIT''.

2000—Pub. L. 106–554, § 1(a)(7) [title I, § 117(b)(2)], substituted ''Partial'' for ''50-percent'' in section catchline.

Subsec. (a). Pub. L. 106–554, § 1(a)(7) [title I, § 117(a)], amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''In the case of a taxpayer other than a corporation, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years.''

1996—Subsec. (e)(4)(C). Pub. L. 104–188 substituted ''REMIC, or FASIT'' for ''or REMIC''.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. Q, title I, § 126(b), Dec. 18, 2015, 129 Stat. 3054, provided that: ''The amendments made by this section [amending this section] shall apply to stock acquired after December 31, 2014.''

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113–295, div. A, title I, § 136(b), Dec. 19, 2014, 128 Stat. 4019, provided that: ''The amendments made by this section [amending this section] shall apply to stock acquired after December 31, 2013.''

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title III, § 324(c), Jan. 2, 2013, 126 Stat. 2333, provided that:

''(1) IN GENERAL.—The amendments made by subsection (a) [amending this section] shall apply to stock acquired after December 31, 2011.

''(2) SUBSECTION (B)(1).—The amendment made by subsection (b)(1) [amending this section] shall take effect as if included in section 1241(a) of division B of the American Recovery and Reinvestment Act of 2009 [Pub. L. 111–5].

''(3) SUBSECTION (B)(2).—The amendment made by subsection (b)(2) [amending this section] shall take effect as if included in section 2011(a) of the Creating Small Business Jobs Act of 2010 [title II of Pub. L. 111–240].''

Pub. L. 112–240, title III, § 327(d), Jan. 2, 2013, 126 Stat. 2334, provided that: ''The amendments made by this section [amending this section and section 1391 of this title] shall apply to periods after December 31, 2011.''

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, § 753(d), Dec. 17, 2010, 124 Stat. 3321, provided that: ''The amendments made by this section [amending this section and section 1391 of this title] shall apply to periods after December 31, 2009.''

Pub. L. 111–312, title VII, § 760(b), Dec. 17, 2010, 124 Stat. 3323, provided that: ''The amendments made by this section [amending this section] shall apply to stock acquired after December 31, 2010.''

Pub. L. 111–240, title II, § 2011(c), Sept. 27, 2010, 124 Stat. 2554, provided that: ''The amendments made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Sept. 27, 2010].''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–5, div. B, title I, § 1241(b), Feb. 17, 2009, 123 Stat. 342, provided that: ''The amendment made by this section [amending this section] shall apply to stock acquired after the date of the enactment of this Act [Feb. 17, 2009].''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 applicable to stock acquired after Dec. 21, 2000, see section 1(a)(7) [title I, § 117(c)] of Pub. L. 106–554, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Sept. 1, 1997, see section 1621(d) of Pub. L. 104–188, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 53 of this title.

SAVINGS PROVISION

Amendment by section 401(d)(4)(B)(v) of Pub. L. 115–141 not applicable to certain obligations issued, DC Zone assets acquired, or principal residences acquired before Jan. 1, 2012, see section 401(d)(4)(C) of Pub. L. 115–141, set out as a note under former section 1400 of this title.

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.

SPECIAL RULE FOR PASS-THROUGH ENTITIES

Pub. L. 96–222, title I, §104(a)(2)(C), Apr. 1, 1980, 94 Stat. 215, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(i) IN GENERAL.—In applying sections [former] 1201(c)(2)(A)(ii) and 1202(c)(1)(B) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to any pass-through entity, the determination of the period for which gain or loss is properly taken into account shall be made at the entity level.

''(ii) PASS-THROUGH ENTITY DEFINED.—For purposes of clause (i), the term 'pass-through entity' means—

''(I) a regulated investment company,

''(II) a real estate investment trust,

''(III) an electing small business corporation,

''(IV) a partnership,

''(V) an estate or trust, and

''(VI) a common trust fund.''

PART II—TREATMENT OF CAPITAL LOSSES

AMENDMENTS

1969—Pub. L. 91–172, title V, §512(f)(2), Dec. 30, 1969, 83 Stat. 641, substituted ''carrybacks and carryovers'' for ''carryover'' in item 1212.

§ 1211. Limitation on capital losses

(a) Corporations

In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges.

(b) Other taxpayers

In the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) the lower of—

(1) $3,000 ($1,500 in the case of a married individual filing a separate return), or

(2) the excess of such losses over such gains.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 91–172, title V, §513(a), Dec. 30, 1969, 83 Stat. 642; Pub. L. 94–455, title V, §501(b)(6), title XIV, §1401(a), (b), Oct. 4, 1976, 90 Stat. 1559, 1731; Pub. L. 95–30, title I, §102(b)(14), May 23, 1977, 91 Stat. 138; Pub. L. 99–514, title III, §301(b)(10), Oct. 22, 1986, 100 Stat. 2217.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–514 amended subsec. (b) generally, substituting present provisions for provisions which had declared in: par. (1), general rule for limitation on capital losses for taxpayer other than corporation; in par. (2), meaning of term ''applicable amount''; and in par. (3), rule relating to computation of taxable income.

1977—Subsec. (b)(1)(A). Pub. L. 95–30 inserted ''reduced (but not below zero) by the zero bracket amount'' after ''taxable year''.

1976—Subsec. (b)(1)(B). Pub. L. 94–455, §1401(a), substituted ''the applicable amount'' for ''$1,000''.

Subsec. (b)(2). Pub. L. 94–455, §1401(b), substituted provision relating to ''applicable amount'' for prior provision limiting amount of capital losses for married individuals and reading ''In the case of a husband or wife who files a separate return, the amount specified in paragraph (1)(B) shall be $500 in lieu of $1,000.''

Subsec. (b)(3). Pub. L. 94–455, §501(b)(6), struck out last sentence ''If the taxpayer elects to pay the optional tax imposed by section 3, 'taxable income' as used in this subsection shall read as 'adjusted gross income'.''

1969—Subsec. (b). Pub. L. 91–172 provided for only 50 percent of an individual's long-term capital losses to be offset against his ordinary income up to the $1,000 limit although short-term capital losses continue to be fully deductible within the $1,000 limit and the deduction of capital losses against ordinary income for married persons filing separate returns to be limited to $500 for each spouse rather than the $1,000 formerly allowed.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 501(b)(6) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Pub. L. 94–455, title XIV, §1401(c), Oct. 4, 1976, 90 Stat. 1731, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1976.''

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91–172, title V, §513(d), Dec. 30, 1969, 83 Stat. 643, provided that: ''The amendments made by this section [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