

‘2011’ for ‘2010’. Such election shall be made at such time and in such form and manner as the Secretary of the Treasury (or the Secretary’s delegate) shall prescribe.”

## EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title IV, §413(c)(20)(B), Oct. 22, 2004, 118 Stat. 1509, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 2004.”

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 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

Amendment by section 301(b)(11) of 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 1984 AMENDMENT

Amendment by section 102(e)(3) of Pub. L. 98-369 applicable to positions established after July 18, 1984, in taxable years after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98-369, set out as a note under section 1256 of this title.

Pub. L. 98-369, div. A, title X, §1002(b), July 18, 1984, 98 Stat. 1012, provided that: “The repeal made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.”

## EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

## 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 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97-34, set out as an Effective Date note under section 1092 of this title.

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of this title.

## EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIV, §1403(b), Oct. 4, 1976, 90 Stat. 1733, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section] shall apply to loss years (within the meaning of section 1212(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) ending on or after January 1, 1970.”

Amendment by section 1901(b)(33)(O) of 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 OF 1969 AMENDMENT

Pub. L. 91-172, title V, §512(g), Dec. 30, 1969, 83 Stat. 642, provided that: “The amendments made by this section [amending this section and sections 246, 381, 481, 535, 1314, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply with respect to net capital losses sustained in taxable years beginning after December 31, 1969.”

Amendment by section 513(b) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 513(d) of Pub. L. 91-172, set out as a note under section 1211 of this title.

## EFFECTIVE DATE OF 1964 AMENDMENTS

Pub. L. 88-571, §7(b), Sept. 2, 1964, 78 Stat. 861, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to net capital losses (to the extent attributable to foreign expropriation capital losses, as defined in section 1212(a)(2)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) sustained in taxable years ending after December 31, 1958.”

Pub. L. 88-272, title II, §230(c), Feb. 26, 1964, 78 Stat. 100, provided that: “The amendments made by this section [amending this section and section 1222 of this title] shall apply to taxable years beginning after December 31, 1963.”

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [ §§1101-1147 and 1171-1177] or title XVIII [ §§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

ELECTION NOT TO CARRYBACK CERTAIN NET CAPITAL  
LOSSES

Pub. L. 91-688, §3, Jan. 12, 1971, 84 Stat. 2073, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(a) For purposes of applying section 1212(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 512 of the Tax Reform Act of 1969) in the case of a corporation which makes an election under subsection (b), any net capital loss sustained in a taxable year beginning after December 31, 1969, may not be carried back to any taxable year beginning before January 1, 1970, for which it was subject to taxation under section 802 of such Code [section 802 of this title], if the carryback of such loss would result in an increase in such corporation’s income tax liability for any such taxable year.

“(b) An election to have the provisions of subsection (a) apply shall be made by a corporation—

“(1) in such form and manner as the Secretary of the Treasury or his delegate may prescribe, and

“(2) not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for the first taxable year beginning after December 31, 1969, in which such corporation sustains a net capital loss.

“(c) The Secretary of the Treasury or his delegate shall prescribe such regulations as he determines necessary to carry out the purposes of this section.”

PART III—GENERAL RULES FOR DETER-  
MINING CAPITAL GAINS AND LOSSES

Sec.

1221. Capital asset defined.

- Sec.  
1222. Other terms relating to capital gains and losses.  
1223. Holding period of property.

AMENDMENTS

2018—Pub. L. 115-141, div. U, title IV, §401(a)(172), Mar. 23, 2018, 132 Stat. 1192, substituted “Other terms relating to capital gains and losses” for “Other items relating to capital gains and losses” in item 1222.

**§ 1221. Capital asset defined**

**(a) In general**

For purposes of this subtitle, the term “capital asset” means property held by the taxpayer (whether or not connected with his trade or business), but does not include—

- (1) stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;
- (2) property, used in his trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or real property used in his trade or business;
- (3) a patent, invention, model or design (whether or not patented), a secret formula or process, a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—
  - (A) a taxpayer whose personal efforts created such property,
  - (B) in the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or
  - (C) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);
- (4) accounts or notes receivable acquired in the ordinary course of trade or business for services rendered or from the sale of property described in paragraph (1);
- (5) a publication of the United States Government (including the Congressional Record) which is received from the United States Government or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by—
  - (A) a taxpayer who so received such publication, or
  - (B) a taxpayer in whose hands the basis of such publication is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference to the basis of such publication in the hands of a taxpayer described in subparagraph (A);
- (6) any commodities derivative financial instrument held by a commodities derivatives dealer, unless—
  - (A) it is established to the satisfaction of the Secretary that such instrument has no connection to the activities of such dealer as a dealer, and
  - (B) such instrument is clearly identified in such dealer’s records as being described in

subparagraph (A) before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe);

(7) any hedging transaction which is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe); or

(8) supplies of a type regularly used or consumed by the taxpayer in the ordinary course of a trade or business of the taxpayer.

**(b) Definitions and special rules**

**(1) Commodities derivative financial instruments**

For purposes of subsection (a)(6)—

**(A) Commodities derivatives dealer**

The term “commodities derivatives dealer” means a person which<sup>1</sup> regularly offers to enter into, assume, offset, assign, or terminate positions in commodities derivative financial instruments with customers in the ordinary course of a trade or business.

**(B) Commodities derivative financial instrument**

**(i) In general**

The term “commodities derivative financial instrument” means any contract or financial instrument with respect to commodities (other than a share of stock in a corporation, a beneficial interest in a partnership or trust, a note, bond, debenture, or other evidence of indebtedness, or a section 1256 contract (as defined in section 1256(b))), the value or settlement price of which is calculated by or determined by reference to a specified index.

**(ii) Specified index**

The term “specified index” means any one or more or any combination of—

- (I) a fixed rate, price, or amount, or
- (II) a variable rate, price, or amount,

which is based on any current, objectively determinable financial or economic information with respect to commodities which is not within the control of any of the parties to the contract or instrument and is not unique to any of the parties’ circumstances.

**(2) Hedging transaction**

**(A) In general**

For purposes of this section, the term “hedging transaction” means any transaction entered into by the taxpayer in the normal course of the taxpayer’s trade or business primarily—

- (i) to manage risk of price changes or currency fluctuations with respect to ordinary property which is held or to be held by the taxpayer,
- (ii) to manage risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, by the taxpayer, or

<sup>1</sup> So in original. Probably should be “who”.