

“(B) a tender offer outstanding on May 3, 1995.

“(3) CERTAIN DIVIDENDS NOT PURSUANT TO CERTAIN REDEMPTIONS.—In determining whether the amendment made by subsection (a) applies to any extraordinary dividend other than a dividend treated as an extraordinary dividend under section 1059(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act), paragraphs (1) and (2) shall be applied by substituting ‘September 13, 1995’ for ‘May 3, 1995.’”

Amendment by section 1013(b) of Pub. L. 105-34 applicable to distributions and acquisitions after June 8, 1997, with certain exceptions, see section 1013(d) of Pub. L. 105-34, set out as a note under section 304 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, § 7206(b), Dec. 19, 1989, 103 Stat. 2337, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to stock issued after July 10, 1989, in taxable years ending after such date.

“(2) BINDING CONTRACT.—The amendment made by subsection (a) shall not apply to any stock issued pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before the stock is issued.”

#### 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, § 614(f), Oct. 22, 1986, 100 Stat. 2254, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to dividends declared after July 18, 1986, in taxable years ending after such date.

“(2) AGGREGATION.—For purposes of section 1059(c)(3) of the Internal Revenue Code of 1986, dividends declared after July 18, 1986, shall not be aggregated with dividends declared on or before July 18, 1986.

“(3) REDEMPTIONS.—Section 1059(e)(1) of the Internal Revenue Code of 1986 (as added by subsection (e)) shall apply to dividends declared after the date of the enactment of this Act [Oct. 22, 1986], in taxable years ending after such date.”

#### EFFECTIVE DATE

Pub. L. 98-369, div. A, title I, § 53(e), July 18, 1984, 98 Stat. 568, as amended by Pub. L. 99-514, § 2, title XVIII, § 1804(b)(2), Oct. 22, 1986, 100 Stat. 2095, 2798, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and amending sections 246, 1016, and 7701 of this title] shall apply to distributions after March 1, 1984, in taxable years ending after such date.

“(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 246 of this title] shall apply to stock acquired after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

“(3) RELATED PERSON PROVISIONS.—

“(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the amendment made by subsection (c) [amending section 7701 of this title] shall take effect on July 18, 1984.

“(B) SPECIAL RULE FOR PURPOSES OF SECTION 265(2).—The amendment made by subsection (c) insofar as it relates to section 265(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall apply to—

“(i) term loans made after July 18, 1984, and

“(ii) demand loans outstanding after July 18, 1984 (other than any loan outstanding on July 18, 1984, and repaid before September 18, 1984).

“(C) TREATMENT OF RENEGOTIATIONS, ETC.—For purposes of this paragraph, any loan renegotiated, extended, or revised after July 18, 1984, shall be treated as a loan made after such date.

“(D) DEFINITION OF TERM AND DEMAND LOANS.—For purposes of this paragraph, the terms ‘demand loan’ and ‘term loan’ have the respective meanings given such terms by paragraphs (5) and (6) of section 7872(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], except that the second sentence of such paragraph (5) shall not apply.”

### § 1059A. Limitation on taxpayer's basis or inventory cost in property imported from related persons

#### (a) In general

If any property is imported into the United States in a transaction (directly or indirectly) between related persons (within the meaning of section 482), the amount of any costs—

(1) which are taken into account in computing the basis or inventory cost of such property by the purchaser, and

(2) which are also taken into account in computing the customs value of such property,

shall not, for purposes of computing such basis or inventory cost for purposes of this chapter, be greater than the amount of such costs taken into account in computing such customs value.

#### (b) Customs value; import

For purposes of this section—

##### (1) Customs value

The term “customs value” means the value taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property.

##### (2) Import

Except as provided in regulations, the term “import” means the entering, or withdrawal from warehouse, for consumption.

(Added Pub. L. 99-514, title XII, § 1248(a), Oct. 22, 1986, 100 Stat. 2584.)

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE

Pub. L. 99-514, title XII, § 1248(c), Oct. 22, 1986, 100 Stat. 2584, provided that: “The amendments made by this section [enacting this section] shall apply to transactions entered into after March 18, 1986.”

### § 1060. Special allocation rules for certain asset acquisitions

#### (a) General rule

In the case of any applicable asset acquisition, for purposes of determining both—

(1) the transferee's basis in such assets, and

(2) the gain or loss of the transferor with respect to such acquisition,

the consideration received for such assets shall be allocated among such assets acquired in such acquisition in the same manner as amounts are allocated to assets under section 338(b)(5). If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to

the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.

**(b) Information required to be furnished to Secretary**

Under regulations, the transferor and transferee in an applicable asset acquisition shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary the following information:

(1) The amount of the consideration received for the assets which is allocated to section 197 intangibles.

(2) Any modification of the amount described in paragraph (1).

(3) Any other information with respect to other assets transferred in such acquisition as the Secretary deems necessary to carry out the provisions of this section.

**(c) Applicable asset acquisition**

For purposes of this section, the term “applicable asset acquisition” means any transfer (whether directly or indirectly)—

(1) of assets which constitute a trade or business, and

(2) with respect to which the transferee’s basis in such assets is determined wholly by reference to the consideration paid for such assets.

A transfer shall not be treated as failing to be an applicable asset acquisition merely because section 1031 applies to a portion of the assets transferred.

**(d) Treatment of certain partnership transactions**

In the case of a distribution of partnership property or a transfer of an interest in a partnership—

(1) the rules of subsection (a) shall apply but only for purposes of determining the value of section 197 intangibles for purposes of applying section 755, and

(2) if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of subsection (b).

**(e) Information required in case of certain transfers of interests in entities**

**(1) In general**

If—

(A) a person who is a 10-percent owner with respect to any entity transfers an interest in such entity, and

(B) in connection with such transfer, such owner (or a related person) enters into an employment contract, covenant not to compete, royalty or lease agreement, or other agreement with the transferee,

such owner and the transferee shall, at such time and in such manner as the Secretary may prescribe, furnish such information as the Secretary may require.

**(2) 10-percent owner**

For purposes of this subsection—

**(A) In general**

The term “10-percent owner” means, with respect to any entity, any person who holds 10 percent or more (by value) of the interests in such entity immediately before the transfer.

**(B) Constructive ownership**

Section 318 shall apply in determining ownership of stock in a corporation. Similar principles shall apply in determining the ownership of interests in any other entity.

**(3) Related person**

For purposes of this subsection, the term “related person” means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the 10-percent owner.

**(f) Cross reference**

**For provisions relating to penalties for failure to file a return required by this section, see section 6721.**

(Added Pub. L. 99-514, title VI, §641(a), Oct. 22, 1986, 100 Stat. 2282; amended Pub. L. 100-647, title I, §1006(h)(1), (2), (3)(B), Nov. 10, 1988, 102 Stat. 3410; Pub. L. 101-508, title XI, §11323(a), (b)(1), Nov. 5, 1990, 104 Stat. 1388-464; Pub. L. 103-66, title XIII, §13261(e), Aug. 10, 1993, 107 Stat. 539.)

**Editorial Notes**

**PRIOR PROVISIONS**

A prior section 1060 was renumbered section 1062 of this title.

**AMENDMENTS**

1993—Subsec. (b)(1). Pub. L. 103-66, §13261(e)(1), substituted “section 197 intangibles” for “goodwill or going concern value”.

Subsec. (d)(1). Pub. L. 103-66, §13261(e)(2), substituted “section 197 intangibles” for “goodwill or going concern value (or similar items)”.

1990—Subsec. (a). Pub. L. 101-508, §11323(a), inserted at end “If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.”

Subsecs. (e), (f). Pub. L. 101-508, §11323(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (b)(3). Pub. L. 100-647, §1006(h)(1), substituted “deems” for “may find”.

Subsec. (d). Pub. L. 100-647, §1006(h)(2), added subsec. (d).

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

**Statutory Notes and Related Subsidiaries**

**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 sections<sup>1</sup> 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 another 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 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.

<sup>1</sup> So in original. Probably should be "section".