

or indirectly holds real property for sale to customers in the ordinary course of trade or business and only in the case of property described in the last sentence of subsection (b)(3))” for “other than a corporation”.

Subsec. (b)(3). Act Apr. 27, 1956, §2, substituted “water, sewer, or drainage facilities” for “water or sewer facilities” in subpar. (A), and inserted provision at end that requirements of subpars. (B) and (C) do not apply to certain specified property.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104-188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(138) 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 1971 AMENDMENT

Pub. L. 91-686, §2(b), Jan. 12, 1971, 84 Stat. 2071, provided that: “The amendments made by subsection (a) [amending this section] shall be effective for taxable years beginning after the date of enactment of this Act [Jan. 12, 1971].”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85-866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Act Apr. 27, 1956, ch. 214, §3, 70 Stat. 119, provided that: “This Act [amending this section] shall apply to all taxable years beginning after Dec. 31, 1954.”

SALES OR EXCHANGES BY CORPORATIONS OF REAL PROPERTY HELD MORE THAN 25 YEARS

Pub. L. 91-686, §1, Jan. 12, 1971, 84 Stat. 2070, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided: “That (a) for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] any lot or parcel of real property sold or exchanged by a corporation which would, but for this Act, be treated as property held primarily for sale to customers in the ordinary course of trade or business shall not, except to the extent provided in (b), be so treated if—

“(1) no shareholder of the corporation directly or indirectly holds real property primarily for sale to customers in the ordinary course of trade or business; and

“(2)(A) such lot or parcel is a part of real property (i) held for more than twenty-five years at the time of sale or exchange, and (ii) acquired before January 1, 1934, by the corporation as a result of the foreclosure of a lien (or liens) thereon which secured the payment of indebtedness held by one or more creditors who transferred one or more foreclosure bids to the corporation in exchange for all its stock (with or without other consideration), or

“(B)(i) such lot or parcel is a part of additional real property acquired before January 1, 1957, by the corporation in the near vicinity of any real property to which subparagraph (A) applies, or

“(ii) such lot or parcel is wholly or to some extent a part of any minor acquisition made after December 31, 1956, by the corporation to adjust boundaries, to fill gaps in previously acquired property, to facilitate the installation of streets, utilities, and other public facilities, or to facilitate the sale of adjacent property, or

“(iii) such lot or parcel is wholly or to some extent a part of a reacquisition by the corporation after De-

ember 31, 1956, of property previously owned by the corporation;

but only if at least 80 percent (as measured by area) of the real property sold or exchanged by the corporation within the taxable year is property described in subparagraph (A); and

“(3) there were no acquisitions of real property by the corporation after December 31, 1956, other than—
“(A) acquisitions described in paragraph (2)(B)(ii) and reacquisitions described in paragraph (2)(B)(iii), or

“(B) acquisitions of real property used in a trade or business of the corporation or held for investment by the corporation; and

“(4) the corporation did not after December 31, 1957, sell or exchange (except in condemnation or under threat of condemnation) any residential lot or parcel on which, at the time of the sale or exchange, there existed any substantial improvements (other than improvements in existence at the time the land was acquired by the corporation) except subdivision, clearing, grubbing, and grading, building or installation of water, sewer, and drainage facilities, construction of roads, streets, and sidewalks, and installation of utilities.”

In any case in which a corporation referred to in paragraphs (1), (2), (3), and (4) is a member of an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986, such affiliated group shall, for purposes of such paragraphs, be treated as a single corporation.

“(b)(1) Gain from any sale or exchange described in subsection (a) shall be deemed, for purposes of such Code, to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business to the extent of 5 percent of the selling price.

“(2) For the purpose of computing gain under paragraph (1), expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the portion of gain deemed under paragraph (1) to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

“(c) The provisions of subsections (a) and (b) shall apply to taxable years beginning after December 31, 1957, and before January 1, 1984.”

[§ 1238. Repealed. Pub. L. 101-508, title XI, § 11801(a)(35), Nov. 5, 1990, 104 Stat. 1388-521]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 332; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§1901(b)(3)(K), 1951(c)(2)(A), 90 Stat. 1793, 1840, related to amortization in excess of depreciation.

Statutory Notes and Related Subsidiaries

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

§ 1239. Gain from sale of depreciable property between certain related taxpayers

(a) Treatment of gain as ordinary income

In the case of a sale or exchange of property, directly or indirectly, between related persons,