

Act of 2000 [H.R. 5662, as enacted by Pub. L. 106-554], to which such amendment relates, see section 412(e) of Pub. L. 107-147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1003(a)(2) of Pub. L. 105-34 provided that: “The amendment made by paragraph (1) [amending this section] shall apply to terminations more than 30 days after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(e)(4) of Pub. L. 98-369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, and amendment by section 102(e)(9) of Pub. L. 98-369, applicable as if included in the amendment made by section 507(a) of Pub. L. 97-34, as amended by section 105(e) of Pub. L. 97-448, see section 102(f), (g) of Pub. L. 98-369, set out as a note under section 1256 of this title.

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

Section 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 a note under section 1092 of this title.

§ 1234B. Gains or losses from securities futures contracts

(a) Treatment of gain or loss

(1) In general

Gain or loss attributable to the sale, exchange, or termination of a securities futures contract shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the contract relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by the taxpayer).

(2) Nonapplication of subsection

This subsection shall not apply to—

(A) a contract which constitutes property described in paragraph (1) or (7) of section 1221(a), and

(B) any income derived in connection with a contract which, without regard to this subsection, is treated as other than gain from the sale or exchange of a capital asset.

(b) Short-term gains and losses

Except as provided in the regulations under section 1092(b) or this section, or in section 1233, if gain or loss on the sale, exchange, or termination of a securities futures contract to sell property is considered as gain or loss from the sale or exchange of a capital asset, such gain or loss shall be treated as short-term capital gain or loss.

(c) Securities futures contract

For purposes of this section, the term “securities futures contract” means any security future

(as defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934, as in effect on the date of the enactment of this section).

(d) Contracts not treated as commodity futures contracts

For purposes of this title, a securities futures contract shall not be treated as a commodity futures contract.

(e) Regulations

The Secretary shall prescribe such regulations as may be appropriate to provide for the proper treatment of securities futures contracts under this title.

(f) Cross reference

For special rules relating to dealer securities futures contracts, see section 1256.

(Added Pub. L. 106-554, § 1(a)(7) [title IV, § 401(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-648; amended Pub. L. 107-147, title IV, § 412(d)(1)(B), (3)(B), Mar. 9, 2002, 116 Stat. 53, 54.)

REFERENCES IN TEXT

Section 3(a)(55)(A) of the Securities Exchange Act of 1934, referred to in subsec. (c), is classified to section 78c(a)(55)(A) of Title 15, Commerce and Trade.

The date of the enactment of this section, referred to in subsec. (c), is the date of enactment of Pub. L. 106-554, which was approved Dec. 21, 2000.

CODIFICATION

Pub. L. 106-554, § 1(a)(7) [title IV, § 401(a)], which directed amendment of subpart IV of subchapter P of chapter 1 by adding this section after section 1234A, was executed by adding this section after 1234A of this part which is part IV of subchapter P of chapter 1, to reflect the probable intent of Congress.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107-147, § 412(d)(1)(B)(i), substituted “sale, exchange, or termination of a securities futures contract” for “sale or exchange of a securities futures contract”.

Subsec. (b). Pub. L. 107-147, § 412(d)(1)(B)(i), (3)(B), inserted “or in section 1233,” after “or this section,” and substituted “sale, exchange, or termination of a securities futures contract” for “sale or exchange of a securities futures contract”.

Subsec. (f). Pub. L. 107-147, § 412(d)(1)(B)(ii), added subsec. (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106-554], to which such amendment relates, see section 412(e) of Pub. L. 107-147, set out as a note under section 151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1032, 1091, 1092, 1223, 1233, 1234A, 1275 of this title.

§ 1235. Sale or exchange of patents

(a) General

A transfer (other than by gift, inheritance, or devise) of property consisting of all substantial rights to a patent, or an undivided interest therein which includes a part of all such rights, by any holder shall be considered the sale or exchange of a capital asset held for more than 1 year, regardless of whether or not payments in consideration of such transfer are—

(1) payable periodically over a period generally coterminous with the transferee's use of the patent, or

(2) contingent on the productivity, use, or disposition of the property transferred.

(b) "Holder" defined

For purposes of this section, the term "holder" means—

(1) any individual whose efforts created such property, or

(2) any other individual who has acquired his interest in such property in exchange for consideration in money or money's worth paid to such creator prior to actual reduction to practice of the invention covered by the patent, if such individual is neither—

(A) the employer of such creator, nor

(B) related to such creator (within the meaning of subsection (d)).

(c) Effective date

This section shall be applicable with regard to any amounts received, or payments made, pursuant to a transfer described in subsection (a) in any taxable year to which this subtitle applies, regardless of the taxable year in which such transfer occurred.

(d) Related persons

Subsection (a) shall not apply to any transfer, directly or indirectly, between persons specified within any one of the paragraphs of section 267(b) or persons described in section 707(b); except that, in applying section 267(b) and (c) and section 707(b) for purposes of this section—

(1) the phrase "25 percent or more" shall be substituted for the phrase "more than 50 percent" each place it appears in section 267(b) or 707(b), and

(2) paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants.

(e) Cross reference

For special rule relating to nonresident aliens, see section 871(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 329; Pub. L. 85-866, title I, §54(a), Sept. 2, 1958, 72 Stat. 1644; Pub. L. 94-455, title XIV, §1402(b)(1)(V), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 98-369, div. A, title I, §174(b)(5)(C), title X, §1001(b)(19), (e), July 18, 1984, 98 Stat. 707, 1012; Pub. L. 105-206, title V, §5001(a)(5), title VI, §6005(d)(4), July 22, 1998, 112 Stat. 788, 805.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-206, §6005(d)(4), substituted "18 months" for "1 year" in introductory provisions.

Pub. L. 105-206, §5001(a)(5), substituted "1 year" for "18 months" in introductory provisions.

1984—Subsec. (a). Pub. L. 98-369, §1001(b)(19), (e), substituted "6 months" for "1 year", applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (d). Pub. L. 98-369, §174(b)(5)(C), substituted "section 267(b) or persons described in section 707(b)" for "section 267(b)" and "section 267(b) and (c) and section 707(b)" for "section 267(b) and (c)" in introductory provisions, and substituted "section 267(b) or 707(b)" for "section 267(b)" in par. (1).

1976—Subsec. (a). Pub. L. 94-455, §1402(b)(2), provided that "9 months" would be changed to "1 year".

Pub. L. 94-455, §1402(b)(1)(V), provided that "6 months" would be changed to "9 months" for taxable years beginning in 1977.

1958—Subsec. (d). Pub. L. 85-866 substituted provisions set out as subsec. (d) for provisions reading "Subsection (a) shall not apply to any sale or exchange between an individual and any other related person (as defined in section 267(b)), except brothers and sisters, whether by the whole or half blood."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 5001 of Pub. L. 105-206 effective Jan. 1, 1998, see section 5001(b)(2) of Pub. L. 105-206, set out as a note under section 1 of this title.

Amendment by section 6000(d)(4) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(C) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98-369, set out as a note under section 267 of this title.

Amendment by section 1001(b)(19) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94-455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94-455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 54(b) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958], but only with respect to transfers after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 483, 871, 1274, 1441 of this title.

§ 1236. Dealers in securities

(a) Capital gains

Gain by a dealer in securities from the sale or exchange of any security shall in no event be considered as gain from the sale or exchange of a capital asset unless—

(1) the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a security held for investment; and

(2) the security was not, at any time after the close of such day (or such earlier time), held by such dealer primarily for sale to customers in the ordinary course of his trade or business.

(b) Ordinary losses

Loss by a dealer in securities from the sale or exchange of any security shall, except as otherwise provided in section 582(c), (relating to bond, etc., losses of banks), in no event be considered as ordinary loss if at any time after November