

Pub. L. 85-866, title I, §52(c), Sept. 2, 1958, 72 Stat. 1644, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to short sales made after December 31, 1957."

EFFECTIVE DATE OF 1955 AMENDMENT

Act Aug. 12, 1955, ch. 871, §2, 69 Stat. 718, provided that: "The amendment made by the first section of this Act [amending this section] shall apply only with respect to taxable years ending after the date of the enactment of this Act [Aug. 12, 1955] and only in the case of a short sale of property made by the taxpayer after such date."

§ 1234. Options to buy or sell

(a) Treatment of gain or loss in the case of the purchaser

(1) General rule

Gain or loss attributable to the sale or exchange of, or loss attributable to failure to exercise, an option to buy or sell property shall be considered gain or loss from the sale or exchange of property which has the same character as the property to which the option relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by him).

(2) Special rule for loss attributable to failure to exercise option

For purposes of paragraph (1), if loss is attributable to failure to exercise an option, the option shall be deemed to have been sold or exchanged on the day it expired.

(3) Nonapplication of subsection

This subsection shall not apply to—

(A) an option which constitutes property described in paragraph (1) of section 1221(a);

(B) in the case of gain attributable to the sale or exchange of an option, any income derived in connection with such option which, without regard to this subsection, is treated as other than gain from the sale or exchange of a capital asset; and

(C) a loss attributable to failure to exercise an option described in section 1233(c).

(b) Treatment of grantor of option in the case of stock, securities, or commodities

(1) General rule

In the case of the grantor of the option, gain or loss from any closing transaction with respect to, and gain on lapse of, an option in property shall be treated as a gain or loss from the sale or exchange of a capital asset held not more than 1 year.

(2) Definitions

For purposes of this subsection—

(A) Closing transaction

The term "closing transaction" means any termination of the taxpayer's obligation under an option in property other than through the exercise or lapse of the option.

(B) Property

The term "property" means stocks and securities (including stocks and securities dealt with on a "when issued" basis), commodities, and commodity futures.

(3) Nonapplication of subsection

This subsection shall not apply to any option granted in the ordinary course of the taxpayer's trade or business of granting options.

(c) Treatment of options on section 1256 contracts and cash settlement options

(1) Section 1256 contracts

Gain or loss shall be recognized on the exercise of an option on a section 1256 contract (within the meaning of section 1256(b)).

(2) Treatment of cash settlement options

(A) In general

For purposes of subsections (a) and (b), a cash settlement option shall be treated as an option to buy or sell property.

(B) Cash settlement option

For purposes of subparagraph (A), the term "cash settlement option" means any option which on exercise settles in (or could be settled in) cash or property other than the underlying property.

(Aug. 16, 1954, ch. 376, 68A Stat. 329; Pub. L. 85-866, title I, §53, Sept. 2, 1958, 72 Stat. 1644; Pub. L. 89-809, title II, §210(a), Nov. 13, 1966, 80 Stat. 1580; Pub. L. 94-455, title XIV, §1402(b)(1)(U), (2), title XXI, §2136(a), Oct. 4, 1976, 90 Stat. 1732, 1929; Pub. L. 98-369, div. A, title I, §105(a), title X, §1001(b)(18), (e), July 18, 1984, 98 Stat. 629, 1012; Pub. L. 106-170, title V, §532(c)(1)(H), Dec. 17, 1999, 113 Stat. 1930.)

Editorial Notes

AMENDMENTS

1999—Subsec. (a)(3)(A). Pub. L. 106-170 substituted "section 1221(a)" for "section 1221".

1984—Subsec. (b)(1). Pub. L. 98-369, §1001(b)(18), (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. (c). Pub. L. 98-369, §105(a), added subsec. (c). 1976—Subsec. (a). Pub. L. 94-455, §2136(a), inserted in heading "in the case of the purchaser"; designated existing provisions as par. "(1) General rule" and substituted "an option" and "the option" for "a privilege or option" and "the option or privilege"; redesignated existing subsec. (b) as par. (2) and substituted "an option" and "the option" for "a privilege or option" and "the privilege or option"; and redesignated existing subsec. (d)(1) to (3) as par. (3)(A) to (C) and substituted in heading and introductory text "Nonapplication" and "subsection" for "Non-application" and "section", in par. (3)(A) "an option" for "a privilege or option", in par. (3)(B) "an option", "such option" and "subsection" for "a privilege or option", "such privilege or option" and "section" and in par. (3)(C) substituted a period for "; or".

Subsec. (b). Pub. L. 94-455, §2136(a), added subsec. (b), incorporating provisions of a prior subsec. (c) providing for a special rule for grantors of straddles, par. (1) relating to "gain on lapse" and reading "In the case of gain on lapse of an option granted by the taxpayer as part of a straddle, the gain shall be deemed to be gain from the sale or exchange of a capital asset held for not more than 6 months on the day that the option expired."; par. (2) relating to "exception" and reading "This subsection shall not apply to any person who holds securities for sale to customers in the ordinary course of his trade or business.", now covered in subsec. (b)(3); and par. (3) relating to definitions of "straddle" and "security".

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

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

Subsec. (c). Pub. L. 94-455, §2136(a), struck out provision respecting special rule for grantors of straddles, the paragraphs relating to: (1) gain on lapse; (2) exception, now covered in subsec. (b)(3); and (3) definitions of “straddle” and “security”, such provision now covered generally by subsec. (b) of this section.

Subsec. (d). Pub. L. 94-455, §2136(a), struck out provision respecting non-application of section, pars. (1) to (3) now covered in subsec. (a)(3)(A) to (C) of this section, and par. (4) providing for such non-application to gain attributable to the sale or exchange of a privilege or option acquired by the taxpayer before Mar. 1, 1954, if in the hands of the taxpayer such privilege or option was a capital asset.

1966—Subsecs. (c), (d). Pub. L. 89-809 added subsec. (c) and redesignated former subsec. (c) as (d).

1958—Pub. L. 85-866 amended section generally and among other changes provided in subsec. (a) that gain or loss resulting from option to buy or sell property is to be considered gain or loss arising from property which has the same character as the property underlying the option, incorporated existing provisions in subsecs. (b) and (c)(3), and inserted provisions set out in subsec. (c)(1), (2), (4).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §105(b), July 18, 1984, 98 Stat. 629, provided that: “The amendment made by subsection (a) [amending this section] shall apply to options purchased or granted after October 31, 1983, in taxable years ending after such date.”

Amendment by section 1001(b)(18) 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

Pub. L. 94-455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94-455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94-455, title XXI, §2136(b), Oct. 4, 1976, 90 Stat. 1930, provided that: “The amendment made by subsection (a) [amending this section] shall apply to options granted after September 1, 1976.”

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-809, title II, §210(b), Nov. 13, 1966, 80 Stat. 1580, provided that: “The amendments made by subsection (a) [amending this section] shall apply to straddle transactions entered into after January 25, 1965, in taxable years ending after such date.”

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.

§ 1234A. Gains or losses from certain terminations

Gain or loss attributable to the cancellation, lapse, expiration, or other termination of—

(1) a right or obligation (other than a securities futures contract, as defined in section 1234B) with respect to property which is (or on acquisition would be) a capital asset in the hands of the taxpayer, or

(2) a section 1256 contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer,

shall be treated as gain or loss from the sale of a capital asset. The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement).

(Added Pub. L. 97-34, title V, §507(a), Aug. 13, 1981, 95 Stat. 333; amended Pub. L. 97-448, title I, §105(e), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98-369, div. A, title I, §102(e)(4), (9), July 18, 1984, 98 Stat. 624, 625; Pub. L. 105-34, title X, §1003(a)(1), Aug. 5, 1997, 111 Stat. 909; Pub. L. 106-554, §1(a)(7) [title IV, §401(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-648; Pub. L. 107-147, title IV, §412(d)(1)(A), Mar. 9, 2002, 116 Stat. 53.)

Editorial Notes

AMENDMENTS

2002—Pars. (1) to (3). Pub. L. 107-147 inserted “or” at end of par. (1), struck out “or” at end of par. (2), and struck out par. (3) which read as follows: “a securities futures contract (as so defined) which is a capital asset in the hands of the taxpayer.”

2000—Par. (1). Pub. L. 106-554, §1(a)(7) [title IV, §401(b)(1)], inserted “(other than a securities futures contract, as defined in section 1234B)” after “right or obligation”.

Par. (3). Pub. L. 106-554, §1(a)(7) [title IV, §401(b)(2)-(4)], added par. (3).

1997—Par. (1). Pub. L. 105-34 substituted “property” for “personal property (as defined in section 1092(d)(1))”.

1984—Pub. L. 98-369, §102(e)(9), inserted at end “The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement).”

Par. (2). Pub. L. 98-369, §102(e)(4), substituted “a section 1256 contract” for “a regulated futures contract”.

1983—Pub. L. 97-448 inserted reference to a regulated futures contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer.

Statutory Notes and Related Subsidiaries

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.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, §1003(a)(2), Aug. 5, 1997, 111 Stat. 910, 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 amend-