

a lien thereon which secured the payment of an indebtedness to the taxpayer or (in the case of a corporation) to a creditor who has transferred the foreclosure bid to the taxpayer in exchange for all of its stock and other consideration and in the case of property adjacent to such property if 80 percent of the real property owned by the taxpayer was property described in the first part of the sentence.

1958—Subsec. (a)(1). Pub. L. 85-866 substituted “and, in the same taxable year” for “or, in the same taxable year”.

1956—Subsec. (a). Act Apr. 27, 1956, §1, substituted “(including corporations only if no shareholder directly 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 December 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, any gain recognized to the transferor shall be treated as ordinary income if such property is, in the hands of the transferee, of a character which is subject to the allowance for depreciation provided in section 167.

(b) Related persons

For purposes of subsection (a), the term “related persons” means—

(1) a person and all entities which are controlled entities with respect to such person,

(2) a taxpayer and any trust in which such taxpayer (or his spouse) is a beneficiary, unless such beneficiary’s interest in the trust is a remote contingent interest (within the meaning of section 318(a)(3)(B)(i)), and

(3) except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

(c) Controlled entity defined

(1) General rule

For purposes of this section, the term “controlled entity” means, with respect to any person—

(A) a corporation more than 50 percent of the value of the outstanding stock of which is owned (directly or indirectly) by or for such person,

(B) a partnership more than 50 percent of the capital interest or profits interest in which is owned (directly or indirectly) by or for such person, and

(C) any entity which is a related person to such person under paragraph (3), (10), (11), or (12) of section 267(b).

(2) Constructive ownership

For purposes of this section, ownership shall be determined in accordance with rules similar to the rules under section 267(c) (other than paragraph (3) thereof).

(d) Employer and related employee association

For purposes of subsection (a), the term “related person” also includes—

(1) an employer and any person related to the employer (within the meaning of subsection (b)), and

(2) a welfare benefit fund (within the meaning of section 419(e)) which is controlled directly or indirectly by persons referred to in paragraph (1).

(e) Patent applications treated as depreciable property

For purposes of this section, a patent application shall be treated as property which, in the hands of the transferee, is of a character which

is subject to the allowance for depreciation provided in section 167.

(Aug. 16, 1954, ch. 736, 68A Stat. 332; Pub. L. 85-866, title I, §56, Sept. 2, 1958, 72 Stat. 1645; Pub. L. 94-455, title XXI, §2129(a), Oct. 4, 1976, 90 Stat. 1922; Pub. L. 95-600, title VII, §701(v)(1), Nov. 6, 1978, 92 Stat. 2920; Pub. L. 96-471, §5, Oct. 19, 1980, 94 Stat. 2255; Pub. L. 97-448, title III, §301, Jan. 12, 1983, 96 Stat. 2397; Pub. L. 98-369, div. A, title I, §175(a), (b), title IV, §421(b)(6)(A), title V, §557(a), July 18, 1984, 98 Stat. 708, 794, 898; Pub. L. 99-514, title VI, §642(a)(1)(A)-(C), Oct. 22, 1986, 100 Stat. 2283, 2284; Pub. L. 105-34, title XIII, §1308(b), Aug. 5, 1997, 111 Stat. 1041.)

Editorial Notes

AMENDMENTS

1997—Subsec. (b)(3). Pub. L. 105-34 added par. (3).

1986—Subsec. (b)(1). Pub. L. 99-514, §642(a)(1)(A), substituted “controlled entities” for “80-percent owned entities”.

Subsec. (c). Pub. L. 99-514, §642(a)(1)(B), (C), in heading, substituted “Controlled entity” for “80-percent owned entity”, in par. (1), in introductory provisions, substituted “controlled entity” for “80-percent owned entity”, in subpar. (A), substituted “more than 50 percent of the value” for “80 percent or more in value”, in subpar. (B), substituted “more than 50 percent” for “80 percent or more”, and added subpar. (C), and amended par. (2) generally. Prior to amendment, par. (2) read as follows: “For purposes of subparagraphs (A) and (B) of paragraph (1), the principles of section 318 shall apply, except that—

“(A) the members of an individual’s family shall consist only of such individual and such individual’s spouse,

“(B) paragraph (2)(C) of section 318(a) shall be applied without regard to the 50-percent limitation contained therein, and

“(C) paragraph (3) of section 318(a) shall not apply.”

1984—Subsec. (b). Pub. L. 98-369, §421(b)(6), redesignated pars. (2) and (3) as (1) and (2), respectively. Former par. (1), defining a husband and wife as “related persons”, was struck out.

Pub. L. 98-369, §175(b), amended subsec. (b) generally, adding par. (3).

Subsec. (d). Pub. L. 98-369, §557(a), added subsec. (d).

Subsec. (e). Pub. L. 98-369, §175(a), added subsec. (e). 1983—Subsec. (b). Pub. L. 97-448, §301(a), substituted provisions that “related persons” means (1) a husband and wife, and (2) a person and all entities which are 80-percent owned entities with respect to such person, for provisions which provided that “related persons” meant (1) the taxpayer and the taxpayer’s spouse, (2) the taxpayer and an 80-percent owned entity, or (3) two 80-percent owned entities.

Subsec. (c)(1). Pub. L. 97-448, §301(b), inserted “, with respect to any person” after “means” in introductory provisions and substituted “such person” for “the taxpayer” in subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 97-448, §301(b), struck out “and” at end of subpar. (A), substituted “paragraph (2)(C)” for “paragraphs (2)(C) and (3)(C)” in subpar. (B), and added subpar. (C).

1980—Subsec. (b)(1). Pub. L. 96-471 substituted “the taxpayer and the taxpayer’s spouse” for “a husband and wife”.

Subsec. (b)(2). Pub. L. 96-471 substituted “the taxpayer and an 80-percent owned entity, or” for “an individual and a corporation 80 percent or more in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual, or”.

Subsec. (b)(3). Pub. L. 96-471 substituted “two 80-percent owned entities” for “two or more corporations 80 percent or more in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual”.