

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2014 AMENDMENT**

Amendment by Pub. L. 113–295 not applicable to preferred stock issued before Oct. 1, 1942 (determined in the same manner as under section 247 of this title as in effect before its repeal by Pub. L. 113–295), see section 221(a)(41)(K) of Pub. L. 113–295, set out as a note under section 172 of this title.

Except as otherwise provided in section 221(a) of Pub. L. 113–295, amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98–369, div. A, title IV, § 481(b), July 18, 1984, 98 Stat. 847, provided that: “The amendment made by subsection (a) [amending this section] shall apply to stock issued after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.”

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–600, title III, § 345(e), Nov. 6, 1978, 92 Stat. 2845, as amended by Pub. L. 96–222, title I, § 103(a)(9), Apr. 1, 1980, 94 Stat. 212, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to stock issued after November 6, 1978.

“(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1978.

“(3) TRANSITIONAL RULE FOR SUBSECTION (b).—In the case of a taxable year which includes November 6, 1978, the amendments made by subsection (b) [amending this section] shall apply with respect to stock issued after such date.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(1)(W), (3)(G) of Pub. L. 94–455 effective for 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.

§ 1245. Gain from dispositions of certain depreciable property**(a) General rule****(1) Ordinary income**

Except as otherwise provided in this section, if section 1245 property is disposed of the amount by which the lower of—

(A) the recomputed basis of the property, or

(B)(i) in the case of a sale, exchange, or involuntary conversion, the amount realized, or

(ii) in the case of any other disposition, the fair market value of such property,

exceeds the adjusted basis of such property shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Recomputed basis

For purposes of this section—

(A) In general

The term “recomputed basis” means, with respect to any property, its adjusted basis recomputed by adding thereto all adjustments reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or al-

lowable to the taxpayer or to any other person for depreciation or amortization.

(B) Taxpayer may establish amount allowed

For purposes of subparagraph (A), if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation or amortization for any period was less than the amount allowable, the amount added for such period shall be the amount allowed.

(C) Certain deductions treated as amortization

Any deduction allowable under section 179, 179B, 179C, 179D, 179E, 181, 190, 193, or 194 shall be treated as if it were a deduction allowable for amortization.

(3) Section 1245 property

For purposes of this section, the term “section 1245 property” means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 and is either—

(A) personal property,

(B) other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (2) for a period in which such property (or other property)—

(i) was used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services,

(ii) constituted a research facility used in connection with any of the activities referred to in clause (i), or

(iii) constituted a facility used in connection with any of the activities referred to in clause (i) for the bulk storage of fungible commodities (including commodities in a liquid or gaseous state),

(C) so much of any real property (other than any property described in subparagraph (B)) which has an adjusted basis in which there are reflected adjustments for amortization under section 169, 179, 179B, 179C, 179D, 179E, 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, 193, or 194¹

(D) a single purpose agricultural or horticultural structure (as defined in section 168(i)(13)),

(E) a storage facility (not including a building or its structural components) used in connection with the distribution of petroleum or any primary product of petroleum, or

(F) any railroad grading or tunnel bore (as defined in section 168(e)(4)).

(b) Exceptions and limitations**(1) Gifts**

Subsection (a) shall not apply to a disposition by gift.

¹ So in original. Probably should be followed by a comma.

(2) Transfers at death

Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.

(3) Certain tax-free transactions

If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 721, or 731, then the amount of gain taken into account by the transferor under subsection (a)(1) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). Except as provided in paragraph (6), this paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.

(4) Like kind exchanges; involuntary conversions, etc.

If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (a)(1) shall not exceed the sum of—

(A) the amount of gain recognized on such disposition (determined without regard to this section), plus

(B) the fair market value of property acquired which is not section 1245 property and which is not taken into account under subparagraph (A).

(5) Property distributed by a partnership to a partner**(A) In general**

For purposes of this section, the basis of section 1245 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.

(B) Adjustments added back

In the case of any property described in subparagraph (A), for purposes of computing the recomputed basis of such property the amount of the adjustments added back for periods before the distribution by the partnership shall be—

(i) the amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time, reduced by

(ii) the amount of such gain to which section 751(b) applied.

(6) Transfers to tax-exempt organization where property will be used in unrelated business**(A) In general**

The second sentence of paragraph (3) shall not apply to a disposition of section 1245 property to an organization described in section 511(a)(2) or 511(b)(2) if, immediately after such disposition, such organization uses such property in an unrelated trade or business (as defined in section 513).

(B) Later change in use

If any property with respect to the disposition of which gain is not recognized by rea-

son of subparagraph (A) ceases to be used in an unrelated trade or business of the organization acquiring such property, such organization shall be treated for purposes of this section as having disposed of such property on the date of such cessation.

(7) Timber property

In determining, under subsection (a)(2), the recomputed basis of property with respect to which a deduction under section 194 was allowed for any taxable year, the taxpayer shall not take into account adjustments under section 194 to the extent such adjustments are attributable to the amortizable basis of the taxpayer acquired before the 10th taxable year preceding the taxable year in which gain with respect to the property is recognized.

(8) Disposition of amortizable section 197 intangibles**(A) In general**

If a taxpayer disposes of more than 1 amortizable section 197 intangible (as defined in section 197(c)) in a transaction or a series of related transactions, all such amortizable 197 intangibles shall be treated as 1 section 1245 property for purposes of this section.

(B) Exception

Subparagraph (A) shall not apply to any amortizable section 197 intangible (as so defined) with respect to which the adjusted basis exceeds the fair market value.

(c) Adjustments to basis

The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).

(d) Application of section

This section shall apply notwithstanding any other provision of this subtitle.

(Added Pub. L. 87-834, §13(a)(1), Oct. 16, 1962, 76 Stat. 1032; amended Pub. L. 88-272, title II, §203(d), Feb. 26, 1964, 78 Stat. 35; Pub. L. 91-172, title II, §212(a)(1), (2), title VII, §704(b)(4), Dec. 30, 1969, 83 Stat. 571, 670; Pub. L. 92-178, title I, §104(a)(2), title III, §303(c)(1), (2), Dec. 10, 1971, 85 Stat. 501, 522; Pub. L. 94-81, §2(a), Aug. 9, 1975, 89 Stat. 417; Pub. L. 94-455, title II, §212(b)(1), title XIX, §§1901(a)(140), (b)(3)(K), (11)(D), 1906(b)(13)(A), 1951(c)(2)(C), title XXI, §§2122(b)(3), 2124(a)(2), Oct. 4, 1976, 90 Stat. 1546, 1787, 1793, 1795, 1834, 1840, 1915, 1917; Pub. L. 95-600, title VII, §701(f)(3)(A), (B), (w)(1), (2), Nov. 6, 1978, 92 Stat. 2901, 2920; Pub. L. 96-223, title II, §251(a)(2)(C), Apr. 2, 1980, 94 Stat. 287; Pub. L. 96-451, title III, §301(c)(1), Oct. 14, 1980, 94 Stat. 1990; Pub. L. 97-34, title II, §§201(b), 202(b), 204(a)-(d), 212(d)(2)(F), Aug. 13, 1981, 95 Stat. 218, 220, 222, 223, 239; Pub. L. 97-448, title I, §102(e)(2)(B), Jan. 12, 1983, 96 Stat. 2371; Pub. L. 98-369, div. A, title I, §111(e)(5), (10), July 18, 1984, 98 Stat. 633; Pub. L. 99-121, title I, §103(b)(1)(D), Oct. 11, 1985, 99 Stat. 509; Pub. L. 99-514, title II, §201(d)(11), Oct. 22, 1986, 100 Stat. 2141; Pub. L. 100-647, title I, §1002(i)(2)(I), Nov. 10, 1988, 102 Stat. 3371; Pub. L. 101-239, title VII, §7622(b)(2)[(d)(2)], Dec. 19, 1989, 103 Stat. 2378; Pub. L. 101-508, title XI, §§11704(a)(13),

11801(c)(6)(E), (8)(H), 11813(b)(21), Nov. 5, 1990, 104 Stat. 1388–518, 1388–524, 1388–555; Pub. L. 103–66, title XIII, § 13261(f)(4), (5), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104–7, § 2(b), Apr. 11, 1995, 109 Stat. 93; Pub. L. 104–188, title I, § 1703(n)(6), Aug. 20, 1996, 110 Stat. 1877; Pub. L. 105–34, title XVI, § 1604(a)(3), Aug. 5, 1997, 111 Stat. 1097; Pub. L. 108–357, title III, § 338(b)(5), title VIII, § 886(b)(2), Oct. 22, 2004, 118 Stat. 1481, 1641; Pub. L. 109–58, title XIII, §§ 1323(b)(1), 1331(b)(2), 1363(a), Aug. 8, 2005, 119 Stat. 1014, 1024, 1060; Pub. L. 109–135, title IV, §§ 402(a)(6), 403(e)(2), (i)(2), Dec. 21, 2005, 119 Stat. 2610, 2625; Pub. L. 109–432, div. A, title IV, § 404(b)(3), Dec. 20, 2006, 120 Stat. 2956; Pub. L. 113–295, div. A, title II, § 221(a)(34)(H), Dec. 19, 2014, 128 Stat. 4042; Pub. L. 115–141, div. U, title IV, § 401(b)(31), Mar. 23, 2018, 132 Stat. 1203.)

Editorial Notes

REFERENCES IN TEXT

The Revenue Reconciliation Act of 1990, referred to in subsec. (a)(3)(C), is title XI of Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388–400. Section 11801(a)(13) of the Act repealed section 188 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1 of this title and Tables.

AMENDMENTS

2018—Subsec. (a)(3)(C). Pub. L. 115–141 struck out “, 185” after “179E”.

2014—Subsec. (a)(2)(C), (3)(C). Pub. L. 113–295 struck out “179A,” after “179,”.

2006—Subsec. (a)(2)(C), (3)(C). Pub. L. 109–432 inserted “179E,” after “179D,”.

2005—Subsec. (a)(2)(C). Pub. L. 109–135, § 403(e)(2), (i)(2), inserted “181,” after “179B,” and substituted “193, or 194” for “or 193”.

Pub. L. 109–58, § 1331(b)(2), inserted “179D,” after “179C,”.

Pub. L. 109–58, § 1323(b)(1), inserted “179C,” after “179B,”.

Subsec. (a)(3)(C). Pub. L. 109–58, § 1331(b)(2), inserted “179D,” after “179C,”.

Pub. L. 109–58, § 1323(b)(1), inserted “179C,” after “179B,”.

Subsec. (b)(3). Pub. L. 109–135, § 402(a)(6)(B), substituted “paragraph (6)” for “paragraph (7)”.

Subsec. (b)(5) to (8). Pub. L. 109–135, § 402(a)(6)(A), redesignated pars. (6) to (9) as (5) to (8), respectively, and struck out heading and text of former par. (5). Text read as follows: “Under regulations prescribed by the Secretary, rules consistent with paragraphs (3) and (4) of this subsection shall apply in the case of transactions described in section 1081 (relating to exchanges in obedience to SEC orders).”

Subsec. (b)(9). Pub. L. 109–135, § 402(a)(6)(A), redesignated par. (9) as (8).

Pub. L. 109–58, § 1363(a), added par. (9).

2004—Subsec. (a)(2)(C), (3)(C). Pub. L. 108–357, § 338(b)(5), inserted “179B,” after “179A,”.

Subsec. (a)(4). Pub. L. 108–357, § 886(b)(2), struck out par. (4) which related to special rule for player contracts if a franchise to conduct any sports enterprise is sold or exchanged.

1997—Subsec. (a)(2)(C), (3)(C). Pub. L. 105–34 inserted “179A,” after “179,”.

1996—Subsec. (a)(3). Pub. L. 104–188 reenacted heading without change and amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “For purposes of this section, the term ‘section 1245 property’ means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 (or subject to the allowance of amortization provided in) and is either—”.

1995—Subsec. (b)(5). Pub. L. 104–7 struck out “1071 and” before “1081 transactions” in heading and “section 1071 (relating to gain from sale or exchange to effectuate policies of FCC) or” before “section 1081” in text.

1993—Subsec. (a)(2)(C). Pub. L. 103–66, § 13261(f)(4), substituted “or 193” for “193, or 1253(d)(2) or (3)”.

Subsec. (a)(3). Pub. L. 103–66, § 13261(f)(5), struck out “section 185 or 1253(d)(2) or (3)” after “amortization provided in” in introductory provisions.

1990—Subsec. (a)(3). Pub. L. 101–508, § 11704(a)(13), substituted “or (3)” for “or (3)” in introductory provisions.

Subsec. (a)(3)(C). Pub. L. 101–508, § 11801(c)(6)(E), substituted “188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990),” for “188.”

Subsec. (a)(3)(D). Pub. L. 101–508, § 11813(b)(21), substituted “section 168(i)(13)” for “section 48(p)”.

Subsec. (b)(3). Pub. L. 101–508, § 11801(c)(8)(H), struck out “371(a), 374(a),” after “332, 351, 361.”

1989—Subsec. (a)(2)(C). Pub. L. 101–239, § 7622(b)(2)(A)[(d)(2)(A)], substituted “193, or 1253(d)(2) or (3)” for “or 193”.

Subsec. (a)(3). Pub. L. 101–239, § 7622(b)(2)(B)[(d)(2)(B)], substituted “section 185 or 1253(d)(2) or (3)” for “section 185” in introductory provisions.

1988—Subsec. (a)(3)(F). Pub. L. 100–647 added subpar. (F).

1986—Subsec. (a)(1). Pub. L. 99–514, § 201(d)(11)(A), struck out “during a taxable year beginning after December 31, 1962, or section 1245 recovery property is disposed of after December 31, 1980,” after “if section 1245 property is disposed of”.

Subsec. (a)(2). Pub. L. 99–514, § 201(d)(11)(B), amended par. (2) generally, restating former subpars. (A) to (E) and concluding provisions as subpars. (A) to (C).

Subsec. (a)(3). Pub. L. 99–514, § 201(d)(11)(C), redesignated subpars. (D), (E), and (F) as (C), (D), and (E), respectively, and struck out former subpar. (C) which read as follows: “an elevator or an escalator”.

Subsec. (a)(5), (6). Pub. L. 99–514, § 201(d)(11)(D), struck out par. (5) which defined “section 1245 recovery property” and par. (6) which provided special rule for qualified leased property.

1985—Subsec. (a)(5)(A) to (C). Pub. L. 99–121 substituted “19-year real property” for “18-year real property”.

1984—Subsec. (a)(5)(A) to (C). Pub. L. 98–369, § 111(e)(5), substituted “18-year real property and low-income housing” for “15-year real property”.

Subsec. (d)(5)(D). Pub. L. 98–369, § 111(e)(10), substituted “low-income housing (within the meaning of section 168(c)(2)(F))” for “15-year real property which is described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B)”.

1983—Subsec. (a)(3)(F). Pub. L. 97–448 inserted “(not including a building or its structural components)” after “a storage facility”.

1981—Subsec. (a)(1). Pub. L. 97–34, § 204(a), inserted reference to section 1245 recovery property disposed of after Dec. 31, 1980, in introductory provisions.

Subsec. (a)(2). Pub. L. 97–34, §§ 202(b)(1)–(3), 204(b), inserted reference to section 179 in subpar. (D), added subpar. (E), and, in provisions following subpar. (E), and inserted references to section 179 in three places. Pub. L. 97–34, § 212(d)(2)(F), in provisions following subpar. (E), substituted “191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981)” for “191” in two places.

Subsec. (a)(3)(D). Pub. L. 97–34, § 202(b)(3), inserted reference to section 179.

Subsec. (a)(3)(E), (F). Pub. L. 97–34, § 201(b), added subpars. (E) and (F).

Subsec. (a)(5). Pub. L. 97–34, § 204(c), added par. (5).

Subsec. (a)(6). Pub. L. 97–34, § 204(d), added par. (6).

1980—Subsec. (a)(2). Pub. L. 96–451, § 301(c)(1)(A), (B), inserted references to section 194 in subpar. (D) and text following subpar. (D).

Pub. L. 96–223, § 251(a)(2)(C)(i)–(iii), inserted references to section 193 in subpar. (D) and text following subpar. (D).

Subsec. (a)(3)(D). Pub. L. 96-451, § 301(c)(1)(B), inserted reference to section 194.

Pub. L. 96-223, § 251(a)(2)(C)(i), inserted reference to section 193.

Subsec. (b)(8). Pub. L. 96-451, § 301(c)(1)(C), added par. (8).

1978—Subsec. (a)(2). Pub. L. 95-600, § 701(f)(3)(A), struck out from the listed sections in subparagraph (D) reference to 191 and inserted “(in the case of property described in paragraph (3)(C))” before “191” in two places in next to last sentence.

Subsec. (a)(3)(D). Pub. L. 95-600, § 701(f)(3)(B), struck out reference to section 191.

Subsec. (a)(4)(B). Pub. L. 95-600, § 701(w)(2), inserted “attributable to periods after December 31, 1975,” after “for the depreciation”, “incurred after December 31, 1975,” after “allowable for losses”, and “described in clause (i)” after “of the amounts”.

Subsec. (a)(4)(C). Pub. L. 95-600, § 701(w)(1), struck out provisions relating to the aggregate of the amounts treated as ordinary income.

1976—Subsec. (a)(1). Pub. L. 94-455, § 1901(b)(3)(K), substituted “ordinary income” for “gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231”.

Subsec. (a)(2)(D). Pub. L. 94-455, §§ 2122(b)(3)(B), 2124(a)(2), inserted reference to sections 190 and 191.

Subsec. (a)(2) foll. (D). Pub. L. 94-455, §§ 1901(b)(11)(D), 1951(c)(2)(C), 2122(b)(3)(A), (C), 2124(a)(2), in text following subparagraph (D): struck out reference to section 187 in two places; inserted “(as in effect before its repeal by the Tax Reform Act of 1976)” after “section 168,” in two places; inserted provision for treatment for purposes of this section of any deduction allowable under section 190 as if it were a deduction allowable for amortization; and inserted reference to section 191 in two places, respectively.

Subsec. (a)(3)(D). Pub. L. 94-455, §§ 2122(b)(3)(A), 2124(a)(2), inserted reference to sections 190 and 191.

Subsec. (a)(4). Pub. L. 94-455, § 212(b)(1), added par. (4).

Subsec. (b)(5). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (b)(7)(B). Pub. L. 94-455, § 1901(a)(140), struck out “such organization acquiring such property,” before “such organization”.

Subsec. (c). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1975—Subsec. (b)(3), (7). Pub. L. 94-81, § 2(a)(1), (2), inserted reference to par. (7) in par. (3), and added par. (7).

1971—Subsec. (a)(2). Pub. L. 92-178, § 303(c)(1), inserted reference to section 188 in two places in text following subparagraph (D).

Subsec. (a)(3)(B)(ii), (iii). Pub. L. 92-178, § 104(a)(2), substituted “research facility” for “research or storage facility” in cl. (ii) and added cl. (iii).

Subsec. (a)(3)(D). Pub. L. 92-178, § 303(c)(2), inserted reference to section 188.

1969—Subsec. (a)(2). Pub. L. 91-172, §§ 212(a)(1), 704(b)(4)(A), (B), added subparagraph (C) and inserted references to sections 169, 185, and 187, and added subparagraph (D).

Subsec. (a)(3). Pub. L. 91-172, §§ 212(a)(2), 704(b)(4)(C)-(F), struck out “(other than livestock)”, after “means any property” and substituted “section 167 (or subject to the allowance of amortization provided in section 185)” for “section 167” and added subparagraph (D).

1964—Subsec. (a)(2), (3)(C). Pub. L. 88-272 redefined “recomputed basis” with respect to elevators or escalators in par. (2), and inserted subparagraph (C) in par. (3).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable to costs paid or incurred after Dec. 20, 2006, see section 404(c) of

Pub. L. 109-432, set out as an Effective Date note under section 179E of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 402(a)(6) of Pub. L. 109-135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before its repeal, see section 402(m) of Pub. L. 109-135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

Amendments by section 403(e)(2), (i)(2) of Pub. L. 109-135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which they relate, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

Amendment by section 1323(b)(1) of Pub. L. 109-58 applicable to properties placed in service after Aug. 8, 2005, see section 1323(c) of Pub. L. 109-58, set out as an Effective Date note under section 179C of this title.

Amendment by section 1331(b)(2) of Pub. L. 109-58 applicable to property placed in service after Dec. 31, 2005, see section 1331(d) of Pub. L. 109-58, set out as an Effective Date note under section 179D of this title.

Pub. L. 109-58, title XIII, § 1363(b), Aug. 8, 2005, 119 Stat. 1060, provided that: “The amendment made by this section [amending this section] shall apply to dispositions of property after the date of the enactment of this Act [Aug. 8, 2005].”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 338(b)(5) of Pub. L. 108-357 applicable to expenses paid or incurred after Dec. 31, 2002, in taxable years ending after such date, see section 338(c) of Pub. L. 108-357, set out as an Effective Date note under section 179B of this title.

Amendment by section 886(b)(2) of Pub. L. 108-357 applicable to franchises acquired after Oct. 22, 2004, see section 886(c)(2) of Pub. L. 108-357, set out as a note under section 197 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 effective as if included in the amendments made by section 1913 of the Energy Policy Act of 1992, Pub. L. 102-486, see section 1604(a)(4) of Pub. L. 105-34, set out as a note under section 263 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§ 13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-7 applicable to sales and exchanges on or after January 17, 1995, and to sales and exchanges before such date if FCC tax certificate with respect to such sale or exchange was issued on or after such date, but not applicable with respect to certain binding contracts, see section 2(d) of Pub. L. 104-7, set out as an Effective Date of Repeal note under section 1071 of this title.

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 section 11813(b)(21) of Pub. L. 101-508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as

defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 applicable to transfers after Oct. 2, 1989, but not applicable to any transfer pursuant to a written binding contract in effect on Oct. 2, 1989, and at all times thereafter before the transfer, see section 7622(c)(e) of Pub. L. 101-239, set out as a note under section 167 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

Amendment by Pub. L. 99-514 applicable to property placed in service after Dec. 31, 1986, in taxable years ending after such date, with exceptions, see sections 203 and 204 of Pub. L. 99-514, set out as a note under section 168 of this title.

Amendment by Pub. L. 99-514 not applicable to any property placed in service before Jan. 1, 1994, if such property placed in service as part of specified rehabilitations, and not applicable to certain additional rehabilitations, see section 251(d)(2), (3) of Pub. L. 99-514, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99-121 applicable with respect to property placed in service by the taxpayer after May 8, 1985, with specified exceptions, see section 105(b) of Pub. L. 99-121, set out as a note under section 168 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98-369, set out as a note under section 168 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 OF 1981 AMENDMENT

Amendment by sections 201(b), 202(b), and 204(a)-(d) of Pub. L. 97-34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

Amendment by section 212(d)(2)(F) of Pub. L. 97-34 applicable to expenditures incurred after Dec. 31, 1981, in taxable years ending after such date, see section 212(e) of Pub. L. 97-34, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-451 applicable with respect to additions to capital account made after Dec. 31, 1979, see section 301(d) of Pub. L. 96-451, set out as an Effective Date note under section 194 of this title.

Amendment by Pub. L. 96-223 applicable to taxable years beginning after Dec. 31, 1979, see section 251(b) of Pub. L. 96-223, set out as an Effective Date note under section 193 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 701(f)(3)(A), (B) of Pub. L. 95-600 effective as if included within the amendment of subsec. (a)(2), (3)(D) by section 2124 of Pub. L. 94-455, see section 701(f)(8) of Pub. L. 95-600, set out as an Effective and Termination Dates of 1978 Amendments note under section 167 of this title.

Pub. L. 95-600, title VII, §701(w)(3), Nov. 6, 1978, 92 Stat. 2920, provided that: “The amendments made by this subsection [amending this section] shall apply to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975.”

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title II, §212(b)(2), Oct. 4, 1976, 90 Stat. 1547, provided that: “The amendment made by this subsection [amending this section] applies to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975.”

Amendment by section 1901(a)(140), (b)(3)(K), (11)(D) of Pub. L. 94-455 effective for 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.

Amendment by section 1951(c)(2)(C) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94-455, set out as a note under section 72 of this title.

Amendment by section 2122(b)(3) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 2122(c) of Pub. L. 94-455, as amended, set out as an Effective Date note under section 190 of this title.

Amendment by section 2124(a)(2) of Pub. L. 94-455 applicable with respect to additions to capital account made after June 14, 1976 and before June 15, 1981, see section 2124(a)(4) of Pub. L. 94-455, set out as an Effective Date note under section 642 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-81 applicable to dispositions after Dec. 31, 1969, in taxable years ending after such date, with special provision for an election in the case of dispositions occurring before Aug. 9, 1975, see section 2(c) of Pub. L. 94-81, set out as a note under section 1250 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by section 104(a)(2) of Pub. L. 92-178 applicable to property described in section 50 of this title relating to restoration of credit, see section 104(h) of Pub. L. 92-178, set out as a note under section 48 of this title.

Amendment by section 303(c)(1), (2) of Pub. L. 92-178 applicable to taxable years ending after Dec. 31, 1971, see section 303(d) of Pub. L. 92-178, set out as a note under section 642 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title II, §212(a)(3), Dec. 30, 1969, 83 Stat. 571, provided that: “The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to taxable years beginning after December 31, 1969.”

Amendment by section 704(b)(4) of Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91-172, set out as a note under section 169 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable with respect to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 203(f)(3) of Pub. L. 88-272, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 87-834, §13(g), Oct. 16, 1962, 76 Stat. 1035, provided that: “The amendments made by this section [enacting this section and amending sections 167, 170, 301,

312, 341, 453, 613, and 751 of this title] (other than the amendments made by subsection (c) [amending sections 167, 179, and 642 of this title]) shall apply to taxable years beginning after December 31, 1962. The amendments made by subsection (c) shall apply to taxable years beginning after December 31, 1961, and ending after the date of the enactment of this Act [Oct. 16, 1962].”

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 115-141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115-141, set out as a note under section 23 of this title.

For provisions that nothing in amendment by sections 11801 and 11813 of 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.

[§§ 1246, 1247. Repealed. Pub. L. 108-357, title IV, § 413(a)(2), (3), Oct. 22, 2004, 118 Stat. 1506]

Section 1246, added Pub. L. 87-834, §14(a)(1), Oct. 16, 1962, 76 Stat. 1036; amended Pub. L. 94-455, title XIV, §1402(b)(1)(W), (2), title XIX, §§1901(a)(141), (b)(3)(I), (32)(B)(ii), 1906(b)(13)(A), title XX, §2005(a)(5), Oct. 4, 1976, 90 Stat. 1732, 1787, 1793, 1800, 1834, 1877; Pub. L. 96-223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97-34, title VIII, §832(a), Aug. 13, 1981, 95 Stat. 355; Pub. L. 98-369, div. A, title I, §134(a), title X, §1001(b)(20), (e), July 18, 1984, 98 Stat. 668, 1012; Pub. L. 99-514, title XII, §1235(b), Oct. 22, 1986, 100 Stat. 2574; Pub. L. 100-647, title I, §§1012(p)(21), 1018(o)(2), Nov. 10, 1988, 102 Stat. 3519, 3585; Pub. L. 107-16, title V, §542(e)(5)(A), June 7, 2001, 115 Stat. 85; Pub. L. 111-312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, related to treatment of gain on foreign investment company stock.

Section 1247, added Pub. L. 87-834, §14(a)(1), Oct. 16, 1962, 76 Stat. 1037; amended Pub. L. 94-455, title XIV, §1402(b)(1)(X), (2), title XIX, §§1901(b)(33)(P), (R), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1802, 1834; Pub. L. 98-369, div. A, title X, §1001(b)(21), (e), July 18, 1984, 98 Stat. 1012, related to election by foreign investment companies to distribute income currently.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

§ 1248. Gain from certain sales or exchanges of stock in certain foreign corporations

(a) General rule

If—

- (1) a United States person sells or exchanges stock in a foreign corporation, and
- (2) such person owns, within the meaning of section 958(a), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation at any time during the 5-year period ending on the

date of the sale or exchange when such foreign corporation was a controlled foreign corporation (as defined in section 957),

then the gain recognized on the sale or exchange of such stock shall be included in the gross income of such person as a dividend, to the extent of the earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary) to such stock which were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period or periods the stock sold or exchanged was held by such person while such foreign corporation was a controlled foreign corporation. For purposes of this section, a United States person shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such person is treated as realizing gain from the sale or exchange of such stock.

(b) Limitation on tax applicable to individuals

In the case of an individual, if the stock sold or exchanged is a capital asset (within the meaning of section 1221) and has been held for more than 1 year, the tax attributable to an amount included in gross income as a dividend under subsection (a) shall not be greater than a tax equal to the sum of—

- (1) a pro rata share of the excess of—

(A) the taxes that would have been paid by the foreign corporation with respect to its income had it been taxed under this chapter as a domestic corporation (but without allowance for deduction of, or credit for, taxes described in subparagraph (B)), for the period or periods the stock sold or exchanged was held by the United States person in taxable years beginning after December 31, 1962, while the foreign corporation was a controlled foreign corporation, adjusted for distributions and amounts previously included in gross income of a United States shareholder under section 951, over

(B) the income, war profits, or excess profits taxes paid by the foreign corporation with respect to such income; and

(2) an amount equal to the tax that would result by including in gross income, as gain from the sale or exchange of a capital asset held for more than 1 year, an amount equal to the excess of (A) the amount included in gross income as a dividend under subsection (a), over (B) the amount determined under paragraph (1).

(c) Determination of earnings and profits

(1) In general

Except as provided in section 312(k)(4), for purposes of this section, the earnings and profits of any foreign corporation for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary.

(2) Earnings and profits of subsidiaries of foreign corporations

If—

- (A) subsection (a) or (f) applies to a sale, exchange, or distribution by a United States