

Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95-618, set out as a note under section 263 of this title.

EFFECTIVE DATE

Pub. L. 94-455, title II, §205(e), Oct. 4, 1976, 90 Stat. 1535, provided that: "The amendments made by this section [enacting this section and amending sections 163, 170, 301, 312, 341, 453, and 751 of this title] shall apply with respect to taxable years ending after December 31, 1975."

§ 1255. Gain from disposition of section 126 property

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if section 126 property is disposed of, the lower of—

(A) the applicable percentage of the aggregate payments, with respect to such property, excluded from gross income under section 126, or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such section 126 property (in the case of any other disposition), over

(ii) the adjusted basis of such property,

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

(2) Section 126 property

For purposes of this section, "section 126 property" means any property acquired, improved, or otherwise modified by the application of payments excluded from gross income under section 126.

(3) Applicable percentage

For purposes of this section, if section 126 property is disposed of less than 10 years after the date of receipt of payments excluded from gross income under section 126, the applicable percentage is 100 percent. If section 126 property is disposed of more than 10 years after such date, the applicable percentage is 100 percent reduced (but not below zero) by 10 percent for each year or part thereof in excess of 10 years such property was held after the date of receipt of the payments.

(b) Special rules

Under regulations prescribed by the Secretary—

(1) rules similar to the rules applicable under section 1245 shall be applied for purposes of this section, and

(2) for purposes of sections 170(e) and 751(c), amounts treated as ordinary income under this section shall be treated in the same man-

ner as amounts treated as ordinary income under section 1245.

(Added Pub. L. 95-600, title V, §543(c)(1), Nov. 6, 1978, 92 Stat. 2890; amended Pub. L. 96-222, title I, §105(a)(7)(B), (D), Apr. 1, 1980, 94 Stat. 221; Pub. L. 96-471, §2(b)(6), Oct. 19, 1980, 94 Stat. 2254; Pub. L. 99-514, title V, §511(d)(2)(A), title VI, §631(e)(14), Oct. 22, 1986, 100 Stat. 2248, 2275; Pub. L. 100-647, title I, §1005(c)(10), Nov. 10, 1988, 102 Stat. 3392; Pub. L. 108-27, title III, §302(e)(4)(B)(ii), May 28, 2003, 117 Stat. 764; Pub. L. 115-141, div. U, title IV, §401(a)(175), Mar. 23, 2018, 132 Stat. 1192.)

Editorial Notes

AMENDMENTS

2018—Subsec. (b)(2). Pub. L. 115-141 substituted "170(e)" for "170(e),".

2003—Subsec. (b)(2). Pub. L. 108-27 struck out "341(e)(12)," after "170(e)".

1988—Subsec. (b)(2). Pub. L. 100-647 amended Pub. L. 99-514, §511(d)(2)(A), see 1986 Amendment note below.

1986—Subsec. (b)(2). Pub. L. 99-514, §511(d)(2)(A), as amended by Pub. L. 100-647, struck out "163(d)," after "sections".

Pub. L. 99-514, §631(e)(14), struck out "453B(d)(2)" after "341(e)(12),".

1980—Subsec. (a)(1)(B). Pub. L. 96-222, §105(a)(7)(B), inserted following cl. (ii) provisions requiring that such gain be recognized notwithstanding any other provision of this subtitle, except that this section shall not apply to the extent such gain is recognized as ordinary income under any other provision of this part.

Subsec. (b)(2). Pub. L. 96-471 substituted "453B(d)(2)" for "453(d)(4)(B)".

Pub. L. 96-222, §105(a)(7)(D), inserted "for purposes of sections 163(d), 170(e), 341(e)(12), 453(d)(4)(B), and 751(c)" before "amounts treated as".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-27 applicable, except as otherwise provided, to taxable years beginning after Dec. 31, 2002, see section 302(f) of Pub. L. 108-27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 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 section 511(d)(2)(A) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 511(e) of Pub. L. 99-514, set out as a note under section 163 of this title.

Amendment by section 631(e)(14) of Pub. L. 99-514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99-514, set out as an Effective Date note under section 336 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

For effective date of amendment by Pub. L. 96-471, see section 6(a)(1) of Pub. L. 96-471, set out as an Effective Date note under section 453 of this title.

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section effective with respect to grants made under the programs after Sept. 30, 1979, see section 543(d) of Pub. L. 95-600, set out as a note under section 126 of this title.

§ 1256. Section 1256 contracts marked to market

(a) General rule

For purposes of this subtitle—

(1) each section 1256 contract held by the taxpayer at the close of the taxable year shall be treated as sold for its fair market value on the last business day of such taxable year (and any gain or loss shall be taken into account for the taxable year),

(2) proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account by reason of paragraph (1),

(3) any gain or loss with respect to a section 1256 contract shall be treated as—

(A) short-term capital gain or loss, to the extent of 40 percent of such gain or loss, and

(B) long-term capital gain or loss, to the extent of 60 percent of such gain or loss, and

(4) if all the offsetting positions making up any straddle consist of section 1256 contracts to which this section applies (and such straddle is not part of a larger straddle), sections 1092 and 263(g) shall not apply with respect to such straddle.

(b) Section 1256 contract defined

(1) In general

For purposes of this section, the term “section 1256 contract” means—

(A) any regulated futures contract,

(B) any foreign currency contract,

(C) any nonequity option,

(D) any dealer equity option, and

(E) any dealer securities futures contract.

(2) Exceptions

The term “section 1256 contract” shall not include—

(A) any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract, or

(B) any interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement.

(c) Terminations, etc.

(1) In general

The rules of paragraphs (1), (2), and (3) of subsection (a) shall also apply to the termination (or transfer) during the taxable year of the taxpayer's obligation (or rights) with respect to a section 1256 contract by offsetting, by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse, or otherwise.

(2) Special rule where taxpayer takes delivery on or exercises part of straddle

If—

(A) 2 or more section 1256 contracts are part of a straddle (as defined in section 1092(c)), and

(B) the taxpayer takes delivery under or exercises any of such contracts,

then, for purposes of this section, each of the other such contracts shall be treated as terminated on the day on which the taxpayer took delivery.

(3) Fair market value taken into account

For purposes of this subsection, fair market value at the time of the termination (or transfer) shall be taken into account.

(d) Elections with respect to mixed straddles

(1) Election

The taxpayer may elect to have this section not to apply to all section 1256 contracts which are part of a mixed straddle.

(2) Time and manner

An election under paragraph (1) shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(3) Election revocable only with consent

An election under paragraph (1) shall apply to the taxpayer's taxable year for which made and to all subsequent taxable years, unless the Secretary consents to a revocation of such election.

(4) Mixed straddle

For purposes of this subsection, the term “mixed straddle” means any straddle (as defined in section 1092(c))—

(A) at least 1 (but not all) of the positions of which are section 1256 contracts, and

(B) with respect to which each position forming part of such straddle is clearly identified, before the close of the day on which the first section 1256 contract forming part of the straddle is acquired (or such earlier time as the Secretary may prescribe by regulations), as being part of such straddle.

(e) Mark to market not to apply to hedging transactions

(1) Section not to apply

Subsection (a) shall not apply in the case of a hedging transaction.

(2) Definition of hedging transaction

For purposes of this subsection, the term “hedging transaction” means any hedging transaction (as defined in section 1221(b)(2)(A)) if, before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations), the taxpayer clearly identifies such transaction as being a hedging transaction.

(3) Special rule for syndicates

(A) In general

Notwithstanding paragraph (2), the term “hedging transaction” shall not include any transaction entered into by or for a syndicate.