

EFFECTIVE DATE; APPLICATION OF FORMER SECTION 453(b) TO CERTAIN DISPOSITIONS

Pub. L. 96-471, §6(a), Oct. 19, 1980, 94 Stat. 2256, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by sections 2 [enacting this section and sections 453A and 453B of this title and amending sections 311, 336, 337, 381, former section 453, and sections 453B, 481, 644, 691, and 1255 of this title] and 5 [amending section 1239 of this title] shall apply to dispositions made after the date of the enactment of this Act [Oct. 19, 1980] in taxable years ending after such date.

“(2) FOR SECTION 453(e).—Section 453(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by section 2) shall apply to first dispositions made after May 14, 1980.

“(3) FOR SECTION 453(h).—Paragraphs (1) and (2) of section 453(h) of such Code (as amended by section 2) shall apply in the case of distributions of installment obligations after March 31, 1980.

“(4) FOR SECTION 453a.—Section 453A of the Internal Revenue Code of 1986 (as amended by section 2) shall apply to taxable years ending after the date of enactment of this Act [Oct. 19, 1980].

“(5) FOR SECTION 453b(f).—Section 453B(f) of the Internal Revenue Code of 1986 (as amended by section 2) shall apply to installment obligations becoming unenforceable after the date of the enactment of this Act [Oct. 19, 1980].

“(6) FOR SECTION 2(c).—The amendments made by section 2(c) [amending sections 336, 337, 453B, and former section 453 of this title] shall take effect as if included in the amendments made by section 403(b) of the Crude Oil Windfall Profit Tax Act of 1980 [see section 403(b)(3) of Pub. L. 96-223, set out as an Effective Date of 1980 Amendments note under section 337 of this title].

“(7) SPECIAL RULE FOR APPLICATION OF FORMER SECTION 453 TO CERTAIN DISPOSITIONS.—In the case of any disposition made on or before the date of the enactment of this Act [Oct. 19, 1980] in any taxable year ending after such date, the provisions of section 453(b) of the Internal Revenue Code of 1986 [see subsec. (b) of former section 453 of this title, set out below] as in effect before such date, shall be applied with respect to such disposition without regard to—

“(A) paragraph (2) of such section 453(b), and

“(B) any requirement that more than 1 payment be received.”

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 453A. Special rules for nondealers

(a) General rule

In the case of an installment obligation to which this section applies—

(1) interest shall be paid on the deferred tax liability with respect to such obligation in the manner provided under subsection (c), and

(2) the pledging rules under subsection (d) shall apply.

(b) Installment obligations to which section applies

(1) In general

This section shall apply to any obligation which arises from the disposition of any prop-

erty under the installment method, but only if the sales price of such property exceeds \$150,000.

(2) Special rule for interest payments

For purposes of subsection (a)(1), this section shall apply to an obligation described in paragraph (1) arising during a taxable year only if—

(A) such obligation is outstanding as of the close of such taxable year, and

(B) the face amount of all such obligations held by the taxpayer which arose during, and are outstanding as of the close of, such taxable year exceeds \$5,000,000.

Except as provided in regulations, all persons treated as a single employer under subsection (a) or (b) of section 52 shall be treated as one person for purposes of this paragraph and subsection (c)(4).

(3) Exception for personal use and farm property

An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition—

(A) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

(B) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).

(4) Special rule for timeshares and residential lots

An installment obligation shall not be treated as described in paragraph (1) if it arises from a disposition described in section 453(l)(2)(B), but the provisions of section 453(l)(3) (relating to interest payments on timeshares and residential lots) shall apply to such obligation.

(5) Sales price

For purposes of paragraph (1), all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

(c) Interest on deferred tax liability

(1) In general

If an obligation to which this section applies is outstanding as of the close of any taxable year, the tax imposed by this chapter for such taxable year shall be increased by the amount of interest determined in the manner provided under paragraph (2).

(2) Computation of interest

For purposes of paragraph (1), the interest for any taxable year shall be an amount equal to the product of—

(A) the applicable percentage of the deferred tax liability with respect to such obligation, multiplied by

(B) the underpayment rate in effect under section 6621(a)(2) for the month with or within which the taxable year ends.

(3) Deferred tax liability

For purposes of this section, the term “deferred tax liability” means, with respect to any taxable year, the product of—

(A) the amount of gain with respect to an obligation which has not been recognized as of the close of such taxable year, multiplied by

(B) the maximum rate of tax in effect under section 1 or 11, whichever is appropriate, for such taxable year.

For purposes of applying the preceding sentence with respect to so much of the gain which, when recognized, will be treated as long-term capital gain, the maximum rate on net capital gain under section 1(h) shall be taken into account.

(4) Applicable percentage

For purposes of this subsection, the term “applicable percentage” means, with respect to obligations arising in any taxable year, the percentage determined by dividing—

(A) the portion of the aggregate face amount of such obligations outstanding as of the close of such taxable year in excess of \$5,000,000, by

(B) the aggregate face amount of such obligations outstanding as of the close of such taxable year.

(5) Treatment as interest

Any amount payable under this subsection shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued during the taxable year.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection including regulations providing for the application of this subsection in the case of contingent payments, short taxable years, and pass-thru entities.

(d) Pledges, etc., of installment obligations

(1) In general

For purposes of section 453, if any indebtedness (hereinafter in this subsection referred to as “secured indebtedness”) is secured by an installment obligation to which this section applies, the net proceeds of the secured indebtedness shall be treated as a payment received on such installment obligation as of the later of—

- (A) the time the indebtedness becomes secured indebtedness, or
- (B) the time the proceeds of such indebtedness are received by the taxpayer.

(2) Limitation based on total contract price

The amount treated as received under paragraph (1) by reason of any secured indebtedness shall not exceed the excess (if any) of—

- (A) the total contract price, over
- (B) any portion of the total contract price received under the contract before the later of the times referred to in subparagraph (A) or (B) of paragraph (1) (including amounts previously treated as received under paragraph (1) but not including amounts not taken into account by reason of paragraph (3)).

(3) Later payments treated as receipt of tax paid amounts

If any amount is treated as received under paragraph (1) with respect to any installment

obligation, subsequent payments received on such obligation shall not be taken into account for purposes of section 453 to the extent that the aggregate of such subsequent payments does not exceed the aggregate amount treated as received under paragraph (1).

(4) Secured indebtedness

For purposes of this subsection indebtedness is secured by an installment obligation to the extent that payment of principal or interest on such indebtedness is directly secured (under the terms of the indebtedness or any underlying arrangements) by any interest in such installment obligation. A payment shall be treated as directly secured by an interest in an installment obligation to the extent an arrangement allows the taxpayer to satisfy all or a portion of the indebtedness with the installment obligation.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations—

- (1) disallowing the use of the installment method in whole or in part for transactions in which the rules of this section otherwise would be avoided through the use of related persons, pass-thru entities, or intermediaries, and
- (2) providing that the sale of an interest in a partnership or other pass-thru entity will be treated as a sale of the proportionate share of the assets of the partnership or other entity.

(Added Pub. L. 96-471, §2(a), Oct. 19, 1980, 94 Stat. 2251; amended Pub. L. 99-514, title VIII, §812(b), Oct. 22, 1986, 100 Stat. 2371; Pub. L. 100-203, title X, §10202(c)[(1)], Dec. 22, 1987, 101 Stat. 1330-390; Pub. L. 100-647, title I, §1008(g)(2), title II, §2004(d)(2), (7), (8), title V, §5076(a), (b)(1), Nov. 10, 1988, 102 Stat. 3442, 3599, 3600, 3682; Pub. L. 101-239, title VII, §§7812(c)(2), 7815(g), 7821(a)(1)-(3), (4)(B), Dec. 19, 1989, 103 Stat. 2412, 2420, 2423, 2424; Pub. L. 103-66, title XIII, §13201(b)(4), Aug. 10, 1993, 107 Stat. 459; Pub. L. 106-170, title V, §536(b), Dec. 17, 1999, 113 Stat. 1936; Pub. L. 115-97, title I, §13001(b)(2)(C), Dec. 22, 2017, 131 Stat. 2096.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 453 of this title.

AMENDMENTS

2017—Subsec. (c)(3). Pub. L. 115-97 struck out “or 1201 (whichever is appropriate)” after “1(h)” in concluding provisions.

1999—Subsec. (d)(4). Pub. L. 106-170 inserted at end “A payment shall be treated as directly secured by an interest in an installment obligation to the extent an arrangement allows the taxpayer to satisfy all or a portion of the indebtedness with the installment obligation.”

1993—Subsec. (c)(3). Pub. L. 103-66 inserted at end “For purposes of applying the preceding sentence with respect to so much of the gain which, when recognized, will be treated as long-term capital gain, the maximum rate on net capital gain under section 1(h) or 1201 (whichever is appropriate) shall be taken into account.”

1989—Subsec. (b)(2)(B). Pub. L. 101-239, §7821(a)(1), substituted “such obligations held by the taxpayer” for “obligations of the taxpayer described in paragraph (1)”.

Subsec. (b)(3). Pub. L. 101-239, §7815(g), substituted “Exception for personal use and farm property” for “Exception for farm property” in heading and amended text generally. Prior to amendment, text read as follows: “An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).”

Pub. L. 101-239, §7812(c)(2), substituted “(5).” for “(5).”

Subsec. (c)(5), (6). Pub. L. 101-239, §7821(a)(4)(B), added par. (5) and redesignated former par. (5) as (6).

Subsec. (d)(1)(B). Pub. L. 101-239, §7821(a)(3), substituted “the time the proceeds” for “the proceeds”.

Subsec. (d)(2)(B). Pub. L. 101-239, §7821(a)(2), substituted “the later of the times referred to in subparagraph (A) or (B) of paragraph (1)” for “such secured indebtedness was incurred”.

1988—Pub. L. 100-647, §5076(b)(1), struck out “of real property” after “rules for nondealers” in section catchline.

Subsec. (b)(1). Pub. L. 100-647, §5076(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “This section shall apply to any obligation which arises from the disposition of real property under the installment method which is property used in the taxpayer’s trade or business or property held for the production of rental income, but only if the sales price of such property exceeds \$150,000.”

Subsec. (b)(2). Pub. L. 100-647, §2004(d)(7), inserted “and subsection (c)(4)” after “of this paragraph” in last sentence.

Subsec. (b)(3). Pub. L. 100-647, §2004(d)(8), substituted “farm property” for “personal use and farm property” in heading and amended text generally. Prior to amendment, text read as follows: “An installment obligation shall not be treated as described in paragraph (1) if it arises from the disposition—

“(A) by an individual of personal use property (within the meaning of section 1275(b)(3)), or

“(B) of any property used or produced in the trade or business of farming (within the meaning of section 2032A(e)(4) or (5)).”

Subsec. (c). Pub. L. 100-647, §1008(g)(2), substituted “453(k)” for “453(j)” in subsec. (c) as in effect on date before the date of enactment of Pub. L. 100-203 (Dec. 22, 1987).

Subsec. (e). Pub. L. 100-647, §2004(d)(2), added subsec. (e).

1987—Pub. L. 100-203 substituted “Special rules for nondealers of real property” for “Installment method for dealers in personal property” in section catchline and amended text generally, revising and restating as subsecs. (a) to (d) provisions of former subsecs. (a) to (c).

1986—Subsec. (a)(2). Pub. L. 99-514, §812(b)(1), struck out last sentence which read as follows: “This paragraph shall not apply with respect to sales of personal property under a revolving credit type plan.”

Subsec. (c). Pub. L. 99-514, §812(b)(2), added subsec. (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115-97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to sales or other dispositions occurring on or after Dec. 17, 1999, see section 536(c) of Pub. L. 106-170, set out as a note under section 453 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1992, see section 13201(c) of Pub. L. 103-66, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by sections 7812(c)(2) and 7815(g) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

Amendment by section 7821(a)(1)-(3), (4)(B) of Pub. L. 101-239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 7823 of Pub. L. 101-239, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1008(g)(2) of 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.

Amendment by section 2004(d)(2), (7), (8) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

Pub. L. 100-647, title V, §5076(c), Nov. 10, 1988, 102 Stat. 3683, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to sales after December 31, 1988.

“(2) BINDING CONTRACT, ETC.—The amendments made by this section shall not apply to any sale on or before December 31, 1990, if—

“(A) such sale is pursuant to a written binding contract in effect on October 21, 1988, and at all times thereafter before such sale,

“(B) such sale is pursuant to a letter of intent in effect on October 21, 1988, or

“(C) there is a board of directors or shareholder approval for such sale on or before October 21, 1988.”

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to dispositions in taxable years beginning after Dec. 31, 1987, with special rules for non-dealers and coordination with Tax Reform Act of 1986, see section 10202(e)(1), (3), (5) of Pub. L. 100-203, set out as a note under section 453 of this title.

EFFECTIVE DATE

For effective date, see section 6(a)(4) of Pub. L. 96-471, set out as a note under section 453 of this title.

CERTAIN REPLEDGES PERMITTED

Pub. L. 100-647, title VI, §6031, Nov. 10, 1988, 102 Stat. 3695, provided that:

“(a) GENERAL RULE.—Section 453A(d) of the 1986 Code (relating to pledges, etc., of installment obligations) shall not apply to any pledge after December 17, 1987, of an installment obligation to secure any indebtedness if such indebtedness is incurred to refinance indebtedness which was outstanding on December 17, 1987, and which was secured on such date and all times thereafter before such refinancing by a pledge of such installment obligation.

“(b) LIMITATION.—Subsection (a) shall not apply to the extent that the principal amount of the indebtedness resulting from the refinancing exceeds the principal amount of the refinanced indebtedness immediately before the refinancing.

“(c) CERTAIN REFINANCINGS PERMITTED.—For purposes of subsection (a), if—

“(1) a refinancing is attributable to the calling of indebtedness by the creditor, and

“(2) such refinancing is not with the creditor under the refinanced indebtedness or a person related to such creditor.

such refinancing shall, to the extent the refinanced indebtedness qualifies under subsections (a) and (b), be treated as a continuation of such refinanced indebtedness.”

AMENDMENT BY PUB. L. 99-514 TREATED AS CHANGE IN METHOD OF ACCOUNTING

For provisions requiring change in accounting method in the case of any taxpayer who made sales under revolving credit plan and was on installment method under this section for such taxpayer's last taxable year beginning before Jan. 1, 1987, see section 812(c)(2) of Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note under section 453 of this title.

§ 453B. Gain or loss on disposition of installment obligations

(a) General rule

If an installment obligation is satisfied at other than its face value or distributed, transmitted, sold, or otherwise disposed of, gain or loss shall result to the extent of the difference between the basis of the obligation and—

(1) the amount realized, in the case of satisfaction at other than face value or a sale or exchange, or

(2) the fair market value of the obligation at the time of distribution, transmission, or disposition, in the case of the distribution, transmission, or disposition otherwise than by sale or exchange.

any gain or loss so resulting shall be considered as resulting from the sale or exchange of the property in respect of which the installment obligation was received.

(b) Basis of obligation

The basis of an installment obligation shall be the excess of the face value of the obligation over an amount equal to the income which would be returnable were the obligation satisfied in full.

(c) Special rule for transmission at death

Except as provided in section 691 (relating to recipients of income in respect of decedents), this section shall not apply to the transmission of installment obligations at death.

(d) Exception for distributions to which section 337(a) applies

Subsection (a) shall not apply to any distribution to which section 337(a) applies.

(e) Life insurance companies

(1) In general

In the case of a disposition of an installment obligation by any person other than a life insurance company (as defined in section 816(a)) to such an insurance company or to a partnership of which such an insurance company is a partner, no provision of this subtitle providing for the nonrecognition of gain shall apply with respect to any gain resulting under subsection (a). If a corporation which is a life insurance company for the taxable year was (for the preceding taxable year) a corporation which was not a life insurance company, such corpora-

tion shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year, all installment obligations which it held on such last day. A partnership of which a life insurance company becomes a partner shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year of such partnership, all installment obligations which it holds at the time such insurance company becomes a partner.

(2) Special rule where life insurance company elects to treat income as not related to insurance business

Paragraph (1) shall not apply to any transfer or deemed transfer of an installment obligation if the life insurance company elects (at such time and in such manner as the Secretary may by regulations prescribe) to determine its life insurance company taxable income—

(A) by returning the income on such installment obligation under the installment method prescribed in section 453, and

(B) as if such income were an item attributable to a noninsurance business.

(3) Noninsurance business

(A) In general

For purposes of this subsection, the term “noninsurance business” means any activity which is not an insurance business.

(B) Certain activities treated as insurance businesses

For purposes of subparagraph (A), any activity which is not an insurance business shall be treated as an insurance business if—

(i) it is of a type traditionally carried on by life insurance companies for investment purposes, but only if the carrying on of such activity (other than in the case of real estate) does not constitute the active conduct of a trade or business, or

(ii) it involves the performance of administrative services in connection with plans providing life insurance, pension, or accident and health benefits.

(f) Obligation becomes unenforceable

For purposes of this section, if any installment obligation is canceled or otherwise becomes unenforceable—

(1) the obligation shall be treated as if it were disposed of in a transaction other than a sale or exchange, and

(2) if the obligor and obligee are related persons (within the meaning of section 453(f)(1)), the fair market value of the obligation shall be treated as not less than its face amount.

(g) Transfers between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041 (other than a transfer in trust)—

(1) subsection (a) of this section shall not apply, and

(2) the same tax treatment with respect to the transferred installment obligation shall