

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94-455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94-455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to decedents dying after Dec. 31, 1970, see section 101(j) of Pub. L. 91-614, set out as a note under section 2032 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87-834, set out as a note under section 312 of this title.

REPEALS

Pub. L. 95-600, § 702(c)(5), cited as a credit to this section, and the amendments made thereby, were repealed by Pub. L. 96-223, title IV, § 401(a), 94 Stat. 299, resulting in the text of this section reading as it read prior to enactment of section 702(c)(5). See Effective Date of 1980 Amendment and Revival of Prior Law note set out above.

PART IV—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

- Sec. 1231. Property used in the trade or business and involuntary conversions.
- [1232 to 1232B. Repealed.]
- 1233. Gains and losses from short sales.
- 1234. Options to buy or sell.
- 1234A. Gains or losses from certain terminations.
- 1234B. Gains or losses from securities futures contracts.
- 1235. Sale or exchange of patents.
- 1236. Dealers in securities.
- 1237. Real property subdivided for sale.
- [1238. Repealed.]
- 1239. Gain from sale of certain property between spouses or between an individual and a controlled corporation.<sup>1</sup>
- [1240. Repealed.]
- 1241. Cancellation of lease or distributor's agreement.
- 1242. Losses on small business investment company stock.
- 1243. Loss of small business investment company.
- 1244. Losses on small business stock.
- 1245. Gain from dispositions of certain depreciable property.
- [1246, 1247. Repealed.]
- 1248. Gain from certain sales or exchanges of stock in certain foreign corporations.
- 1249. Gain from certain sales or exchanges of patents, etc., to foreign corporations.
- 1250. Gain from dispositions of certain depreciable realty.
- [1251. Repealed.]
- 1252. Gain from the disposition of farm land.<sup>1</sup>
- 1253. Transfers of franchises, trademarks, and trade names.
- 1254. Gain from disposition of interest in oil, gas, geothermal, or other mineral properties.
- 1255. Gain from disposition of section 126 property.
- 1256. Section 1256 contracts marked to market.
- 1257. Disposition of converted wetlands or highly erodible croplands.
- 1258. Recharacterization of gain from certain financial transactions.

<sup>1</sup> So in original. Does not conform to section catchline.

- 1259. Constructive sales treatment for appreciated financial positions.
- 1260. Gains from constructive ownership transactions.

AMENDMENTS

2004—Pub. L. 108-357, title IV, § 413(c)(32), Oct. 22, 2004, 118 Stat. 1510, struck out items 1246 "Gain on foreign investment company stock" and 1247 "Election by foreign investment companies to distribute income currently".

Pub. L. 108-311, title IV, § 408(a)(18), Oct. 4, 2004, 118 Stat. 1192, substituted "Gains or losses from securities futures contracts" for "Securities futures contracts" in item 1234B.

2000—Pub. L. 106-554, § 1(a)(7) [title IV, § 401(h)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-650, which directed the amendment of the table of sections of subpart IV of subchapter P of chapter 1 by adding item 1234B, was executed by adding item 1234B to the table of sections for this part which is part IV of subchapter P of chapter 1 to reflect the probable intent of Congress.

1999—Pub. L. 106-170, title V, § 534(b), Dec. 17, 1999, 113 Stat. 1934, added item 1260.

1997—Pub. L. 105-34, title X, § 1001(c), Aug. 5, 1997, 111 Stat. 907, added item 1259.

1993—Pub. L. 103-66, title XIII, § 13206(a)(2), Aug. 10, 1993, 107 Stat. 465, added item 1258.

1990—Pub. L. 101-508, title XI, § 11801(b)(10), Nov. 5, 1990, 104 Stat. 1388-522, struck out item 1238 "Amortization in excess of depreciation".

1988—Pub. L. 100-647, title I, § 1018(u)(24), Nov. 10, 1988, 102 Stat. 3591, substituted "geothermal, or other mineral properties" for "or geothermal property" in item 1254.

1986—Pub. L. 99-514, title IV, § 403(b), Oct. 22, 1986, 100 Stat. 2222, added item 1257.

1984—Pub. L. 98-369, div. A, title I, §§ 42(b)(2), 102(e)(6), title IV, § 492(c), July 18, 1984, 98 Stat. 557, 624, 854, struck out items 1232 "Bonds and other evidence of indebtedness", 1232A "Original issue discount", 1232B "Tax treatment of stripped bonds", 1251 "Gain from disposition of property used in farming where farm losses offset nonfarm income", and substituted "Section 1256 contracts" for "Regulated futures contracts" in item 1256.

1982—Pub. L. 97-248, title II, §§ 231(d), 232(c), Sept. 3, 1982, 96 Stat. 499, 501, added items 1232A and 1232B.

1981—Pub. L. 97-34, title V, §§ 503(b), 507(b), Aug. 13, 1981, 95 Stat. 330, 333, added items 1234A and 1256.

1978—Pub. L. 95-618, title IV, § 402(c)(4), Nov. 9, 1978, 92 Stat. 3202, substituted "oil, gas, or geothermal" for "oil or gas" in item 1254.

Pub. L. 95-600, title V, § 543(c)(2), Nov. 6, 1978, 92 Stat. 2890, added item 1255.

1976—Pub. L. 94-455, title II, § 205(d), title XIX, § 1901(b)(34), Oct. 4, 1976, 90 Stat. 1535, 1802, added item 1254 and struck out item 1240 "Taxability to employee of termination payments".

1969—Pub. L. 91-172, title II, §§ 211(b)(7), 214(b), title V, § 516(c)(2)(C), Dec. 30, 1969, 83 Stat. 570, 573, 648, added items 1251 to 1253.

1964—Pub. L. 88-272, title II, § 231(b)(7), Feb. 26, 1964, 78 Stat. 105, added item 1250.

1962—Pub. L. 87-834, §§ 13(a)(2), 14(a)(2), 15(b), 16(b), Oct. 16, 1962, 76 Stat. 1033, 1040, 1044, 1045, added items 1245-1249.

1958—Pub. L. 85-866, title I, § 57(c)(3), title II, § 202(c), Sept. 2, 1958, 72 Stat. 1646, 1678, added items 1242-1244.

**§ 1231. Property used in the trade or business and involuntary conversions**

**(a) General rule**

**(1) Gains exceed losses**

If—

- (A) the section 1231 gains for any taxable year, exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall be treated as long-term capital gains or long-term capital losses, as the case may be.

**(2) Gains do not exceed losses**

If—

(A) the section 1231 gains for any taxable year, do not exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall not be treated as gains and losses from sales or exchanges of capital assets.

**(3) Section 1231 gains and losses**

For purposes of this subsection—

**(A) Section 1231 gain**

The term “section 1231 gain” means—

(i) any recognized gain on the sale or exchange of property used in the trade or business, and

(ii) any recognized gain from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) into other property or money of—

(I) property used in the trade or business, or

(II) any capital asset which is held for more than 1 year and is held in connection with a trade or business or a transaction entered into for profit.

**(B) Section 1231 loss**

The term “section 1231 loss” means any recognized loss from a sale or exchange or conversion described in subparagraph (A).

**(4) Special rules**

For purposes of this subsection—

(A) In determining under this subsection whether gains exceed losses—

(i) the section 1231 gains shall be included only if and to the extent taken into account in computing gross income, and

(ii) the section 1231 losses shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply.

(B) Losses (including losses not compensated for by insurance or otherwise) on the destruction, in whole or in part, theft or seizure, or requisition or condemnation of—

(i) property used in the trade or business, or

(ii) capital assets which are held for more than 1 year and are held in connection with a trade or business or a transaction entered into for profit,

shall be treated as losses from a compulsory or involuntary conversion.

(C) In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any—

(i) property used in the trade or business, or

(ii) any capital asset which is held for more than 1 year and is held in connection with a trade or business or a transaction entered into for profit,

this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.

**(b) Definition of property used in the trade or business**

For purposes of this section—

**(1) General rule**

The term “property used in the trade or business” means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 1 year, and real property used in the trade or business, held for more than 1 year, which is not—

(A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year,

(B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business,

(C) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by a taxpayer described in paragraph (3) of section 1221(a), or

(D) a publication of the United States Government (including the Congressional Record) which is received from the United States Government, or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by a taxpayer described in paragraph (5) of section 1221(a).

**(2) Timber, coal, or domestic iron ore**

Such term includes timber, coal, and iron ore with respect to which section 631 applies.

**(3) Livestock**

Such term includes—

(A) cattle and horses, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 24 months or more from the date of acquisition, and

(B) other livestock, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 12 months or more from the date of acquisition.

Such term does not include poultry.

**(4) Unharvested crop**

In the case of an unharvested crop on land used in the trade or business and held for more than 1 year, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted) at the same time and to the same person, the crop shall be considered as “property used in the trade or business.”

**(c) Recapture of net ordinary losses****(1) In general**

The net section 1231 gain for any taxable year shall be treated as ordinary income to the extent such gain does not exceed the non-recaptured net section 1231 losses.

**(2) Non-recaptured net section 1231 losses**

For purposes of this subsection, the term “non-recaptured net section 1231 losses” means the excess of—

(A) the aggregate amount of the net section 1231 losses for the 5 most recent preceding taxable years beginning after December 31, 1981, over

(B) the portion of such losses taken into account under paragraph (1) for such preceding taxable years.

**(3) Net section 1231 gain**

For purposes of this subsection, the term “net section 1231 gain” means the excess of—

(A) the section 1231 gains, over

(B) the section 1231 losses.

**(4) Net section 1231 loss**

For purposes of this subsection, the term “net section 1231 loss” means the excess of—

(A) the section 1231 losses, over

(B) the section 1231 gains.

**(5) Special rules**

For purposes of determining the amount of the net section 1231 gain or loss for any taxable year, the rules of paragraph (4) of subsection (a) shall apply.

(Aug. 16, 1954, ch. 736, 68A Stat. 325; Pub. L. 85-866, title I, § 49(a), Sept. 2, 1958, 72 Stat. 1642; Pub. L. 88-272, title II, § 227(a)(2), Feb. 26, 1964, 78 Stat. 97; Pub. L. 91-172, title II, § 212(b)(1), title V, §§ 514(b)(2), 516(b), Dec. 30, 1969, 83 Stat. 571, 643, 646; Pub. L. 94-455, title XIV, § 1402(b)(1)(R), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 95-600, title VII, § 701(ee)(1), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 97-34, title V, § 505(c)(1), Aug. 13, 1981, 95 Stat. 332; Pub. L. 98-369, div. A, title I, § 176(a), title VII, § 711(c)(2)(A)(iii), title X, § 1001(b)(15), (e), July 18, 1984, 98 Stat. 709, 944, 1012; Pub. L. 106-170, title V, § 532(c)(1)(G), Dec. 17, 1999, 113 Stat. 1930.)

## AMENDMENTS

1999—Subsec. (b)(1)(C), (D). Pub. L. 106-170 substituted “section 1221(a)” for “section 1221”.

1984—Subsec. (a). Pub. L. 98-369, § 1001(b)(15), (e), substituted “6 months” for “1 year” wherever appearing, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Pub. L. 98-369, § 711(c)(2)(A)(iii), amended subsec. (a) generally, substituting pars. (1) to (4), for “If, during the taxable year, the recognized gains on sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and capital assets held for more than 1 year into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than 1 year. If such gains do not exceed such losses, such gains

and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For purposes of this subsection—

“(1) in determining under this subsection whether gains exceed losses, the gains described therein shall be included only if and to the extent taken into account in computing gross income and the losses described therein shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply; and

“(2) losses (including losses not compensated for by insurance or otherwise) upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of (A) property used in the trade or business or (B) capital assets held for more than 1 year shall be considered losses from a compulsory or involuntary conversion.

In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 1 year, this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.”

Subsec. (b)(1), (4). Pub. L. 98-369, § 1001(b)(15), (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, § 176(a), added subsec. (c). 1981—Subsec. (b)(1)(D). Pub. L. 97-34 substituted “paragraph (5)” for “paragraph (6)”.

1978—Subsec. (b)(1)(D). Pub. L. 95-600 added subpar. (D).

1976—Subsecs. (a), (b)(1), (4). Pub. L. 94-455, § 1402(b)(2), provided that “9 months” would be changed to “1 year” wherever appearing.

Pub. L. 94-455, § 1402(b)(1)(R), provided that in subsecs. (a), first and last sentences, (a)(2), and (b)(1), (4), “6 months” would be changed to “9 months” for taxable years beginning in 1977.

1969—Subsec. (a). Pub. L. 91-172, § 516(b), provided that casualty (or theft) losses with respect to depreciable property and real estate used in trade or business and capital assets held for the production of income as well as personal assets are to be consolidated with casualty (or theft) gains with respect to this type of property and if the casualty losses exceed the casualty gains, the net loss is treated as an ordinary loss without regard to whether there may be noncasualty gains under this section, but, if the casualty gains exceed the casualty losses, the net gain is treated as a gain under this section and must be consolidated with other gains and losses under this section.

Subsec. (b)(1)(C). Pub. L. 91-172, § 514(b)(2), inserted reference to a letter or memorandum.

Subsec. (b)(3). Pub. L. 91-172, § 212(b)(1), redesignated existing provisions as subpar. (B) and added subpar. (A).

1964—Subsec. (b)(2). Pub. L. 88-272 inserted reference to iron ore in text, and to domestic iron ore in heading.

1958—Subsec. (a). Pub. L. 85-866 inserted provision respecting casualty losses sustained upon certain uninsured property.

## 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

Section 176(b) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this section] shall apply to net section 1231 gains for taxable years beginning after December 31, 1984.”

Amendment by section 711(c)(2)(A)(iii) of Pub. L. 98-369 applicable to taxable years beginning after Dec.

31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98-369, set out as a note under section 165 of this title.

Amendment by section 1001(b)(15) 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 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to property acquired and positions established by the taxpayer after June 23, 1981, in taxable years ending after such date, and applicable when so elected with respect to property held on June 23, 1981, see section 508 of Pub. L. 97-34, set out as an Effective Date note under section 1092 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(ee)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to sales, exchanges, and contributions made after October 4, 1976."

#### EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94-455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94-455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Section 212(b)(2) of Pub. L. 91-172 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to livestock acquired after December 31, 1969."

Amendment by section 514(b)(2) of Pub. L. 91-172 applicable to sales and other dispositions occurring after July 25, 1969, see section 514(c) of Pub. L. 91-172, set out as a note under section 1221 of this title.

Amendment by section 516(b) of Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 516(d)(2) of Pub. L. 91-172, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88-272, set out as a note under section 272 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Section 49(b) of Pub. L. 85-866 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1957."

### **[§§ 1232 to 1232B. Repealed. Pub. L. 98-369, div. A, title I, § 42(a)(1), July 18, 1984, 98 Stat. 556]**

Section 1232, acts Aug. 16, 1954, ch. 736, 68A Stat. 326; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 50(a), 51, 72 Stat. 1642, 1643; June 25, 1959, Pub. L. 86-69, § 3(e), 73 Stat. 140; Sept. 2, 1964, Pub. L. 88-563, § 5, 78 Stat. 845; Dec. 30, 1969, Pub. L. 91-172, title IV, § 413(a), (b), 83 Stat. 609, 611; Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(1)(S), (2), title XIX, §§ 1901(b)(3)(I), (14)(D), 1904(b)(10)(C), 90 Stat. 1732, 1793, 1796, 1817; Aug. 13, 1981, Pub. L. 97-34, title V, § 505(b), 95 Stat. 331; Sept. 3, 1982, Pub. L. 97-248, title II, §§ 231(c), 232(b), title III, § 310(b)(6), 96 Stat. 499, 501, 599; Jan. 12, 1983, Pub. L. 97-448, title III, § 306(a)(9)(B), (C)(i), (ii), 96 Stat. 2403, 2404; July 18, 1984, Pub. L. 98-369, div. A, title X, § 1001(b)(16), (d), (e), 98 Stat. 1012, related to bonds and other evidences of indebtedness. See section 1271 et seq. of this title.

Section 1232A, added Pub. L. 97-248, title II, § 231(a), Sept. 3, 1982, 96 Stat. 496; amended Pub. L. 98-369, div. A, title II, § 211(b)(17), July 18, 1984, 98 Stat. 756, related

to original issue discount. See section 1271 et seq. of this title.

Section 1232B, added Pub. L. 97-248, title II, § 232(a), Sept. 3, 1982, 96 Stat. 499, related to stripped bonds. See section 1286 of this title.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

### **§ 1233. Gains and losses from short sales**

#### **(a) Capital assets**

For purposes of this subtitle, gain or loss from the short sale of property shall be considered as gain or loss from the sale or exchange of a capital asset to the extent that the property, including a commodity future, used to close the short sale constitutes a capital asset in the hands of the taxpayer.

#### **(b) Short-term gains and holding periods**

If gain or loss from a short sale is considered as gain or loss from the sale or exchange of a capital asset under subsection (a) and if on the date of such short sale substantially identical property has been held by the taxpayer for not more than 1 year (determined without regard to the effect, under paragraph (2) of this subsection, of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof—

(1) any gain on the closing of such short sale shall be considered as a gain on the sale or exchange of a capital asset held for not more than 1 year (notwithstanding the period of time any property used to close such short sale has been held); and

(2) the holding period of such substantially identical property shall be considered to begin (notwithstanding section 1223, relating to the holding period of property) on the date of the closing of the short sale, or on the date of a sale, gift, or other disposition of such property, whichever date occurs first. This paragraph shall apply to such substantially identical property in the order of the dates of the acquisition of such property, but only to so much of such property as does not exceed the quantity sold short.

For purposes of this subsection, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

#### **(c) Certain options to sell**

Subsection (b) shall not include an option to sell property at a fixed price acquired on the same day on which the property identified as intended to be used in exercising such option is acquired and which, if exercised, is exercised through the sale of the property so identified. If the option is not exercised, the cost of the option shall be added to the basis of the property with which the option is identified. This subsection shall apply only to options acquired after August 16, 1954.

#### **(d) Long-term losses**

If on the date of such short sale substantially identical property has been held by the taxpayer