19, 1951, the security was clearly identified in the dealer's records as a security held for investment.

**(c) Definition of security**

For purposes of this section, the term ''security'' means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.

**(d) Special rule for floor specialists**

**(1) In general**

In the case of a floor specialist (but only with respect to acquisitions, in connection with his duties on an exchange, of stock in which the specialist is registered with the exchange), subsection (a) shall be applied—

(A) by inserting ''the 7th business day following'' before ''the day'' the first place it appears in paragraph (1) and by inserting ''7th business'' before ''day'' in paragraph (2), and

(B) by striking the parenthetical phrase in paragraph (1).

**(2) Floor specialist**

The term ''floor specialist'' means a person who is—

(A) a member of a national securities exchange,

(B) is registered as a specialist with the exchange, and

(C) meets the requirements for specialists established by the Securities and Exchange Commission.

**(e) Special rule for options**

For purposes of subsection (a), any security acquired by a dealer pursuant to an option held by such dealer may be treated as held for investment only if the dealer, before the close of the day on which the option was acquired, clearly identified the option on his records as held for investment. For purposes of the preceding sentence, the term ''option'' includes the right to subscribe to or purchase any security.

(Aug. 16, 1954, ch. 736, 68A Stat. 330; Pub. L. 94–455, title XIX, §1901(b)(3)(E), Oct. 4, 1976, 90 Stat. 1793; Pub. L. 97–34, title V, §506, Aug. 13, 1981, 95 Stat. 332; Pub. L. 97–448, title I, §105(d)(1), Jan. 12, 1983, 96 Stat. 2387; Pub. L. 98–369, div. A, title I, §107(b), July 18, 1984, 98 Stat. 630.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369, §107(b)(1), substituted ''the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a security held for investment; and'' for ''the security was, before the close of the day on which it was acquired (before the close of the following day in the case of an acquisition before January 1, 1982), clearly identified in the dealer's records as a security held for investment or if acquired before October 20, 1951, was so identified before November 20, 1951; and''.

Subsec. (a)(2). Pub. L. 98–369, §107(b)(2), inserted ''(or such earlier time)'' after ''such day''.

1983—Subsec. (e). Pub. L. 97–448 added subsec. (e).

1981—Subsec. (a). Pub. L. 97–34, §506(a), substituted ''before the close of the day on which it was acquired (before the close of the following day in the case of an acquisition before January 1, 1982)'' for ''before the expiration of the 30th day after the date of its acquisition'' in par. (1) and ''close of such day'' for ''expiration of such 30th day'' in par. (2).

Subsec. (d). Pub. L. 97–34, §506(b), added subsec. (d).

1976—Subsec. (b). Pub. L. 94–455 substituted ''ordinary loss'' for ''loss from the sale or exchange of property which is not a capital asset''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to positions entered into after July 18, 1984, in taxable years ending after that date, see section 107(e) of Pub. L. 98–369, set out as a note under section 1092 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 105(d)(2) of Pub. L. 97–448 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to securities acquired after September 22, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property acquired by the taxpayer after Aug. 13, 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 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 475, 512, 1058, 1233 of this title.

## § 1237. Real property subdivided for sale

**(a) General**

Any lot or parcel which is part of a tract of real property in the hands of a taxpayer other than a C corporation shall not be deemed to be held primarily for sale to customers in the ordinary course of trade or business at the time of sale solely because of the taxpayer having subdivided such tract for purposes of sale or because of any activity incident to such subdivision or sale, if—

(1) such tract, or any lot or parcel thereof, had not previously been held by such taxpayer primarily for sale to customers in the ordinary course of trade or business (unless such tract at such previous time would have been covered by this section) and, in the same taxable year in which the sale occurs, such taxpayer does not so hold any other real property; and

(2) no substantial improvement that substantially enhances the value of the lot or parcel sold is made by the taxpayer on such tract while held by the taxpayer or is made pursuant to a contract of sale entered into between the taxpayer and the buyer. For purposes of this paragraph, an improvement shall be deemed to be made by the taxpayer if such improvement was made by—

(A) the taxpayer or members of his family (as defined in section 267(c)(4)), by a corporation controlled by the taxpayer, an S cor-

poration which included the taxpayer as a shareholder, or by a partnership which included the taxpayer as a partner; or

(B) a lessee, but only if the improvement constitutes income to the taxpayer; or

(C) Federal, State, or local government, or political subdivision thereof, but only if the improvement constitutes an addition to basis for the taxpayer; and

(3) such lot or parcel, except in the case of real property acquired by inheritance or devise, is held by the taxpayer for a period of 5 years.

**(b) Special rules for application of section**

**(1) Gains**

If more than 5 lots or parcels contained in the same tract of real property are sold or exchanged, gain from any sale or exchange (which occurs in or after the taxable year in which the sixth lot or parcel is sold or exchanged) of any lot or parcel which comes within the provisions of paragraphs (1), (2) and (3) of subsection (a) of this section shall be deemed to be gain from the sale of property held primarily for sale to customers in the ordinary course of the trade or business to the extent of 5 percent of the selling price.

**(2) Expenditures of sale**

For the purpose of computing gain under paragraph (1) of this subsection, expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the portion of gain deemed under paragraph (1) of this subsection to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

**(3) Necessary improvements**

No improvement shall be deemed a substantial improvement for purposes of subsection (a) if the lot or parcel is held by the taxpayer for a period of 10 years and if—

(A) such improvement is the building or installation of water, sewer, or drainage facilities or roads (if such improvement would except for this paragraph constitute a substantial improvement);

(B) it is shown to the satisfaction of the Secretary that the lot or parcel, the value of which was substantially enhanced by such improvement, would not have been marketable at the prevailing local price for similar building sites without such improvement; and

(C) the taxpayer elects, in accordance with regulations prescribed by the Secretary, to make no adjustment to basis of the lot or parcel, or of any other property owned by the taxpayer, on account of the expenditures for such improvements. Such election shall not make any item deductible which would not otherwise be deductible.

**(c) Tract defined**

For purposes of this section, the term ''tract of real property'' means a single piece of real property, except that 2 or more pieces of real property shall be considered a tract if at any time they were contiguous in the hands of the taxpayer or if they would be contiguous except for the interposition of a road, street, railroad, stream, or similar property. If, following the sale or exchange of any lot or parcel from a tract of real property, no further sales or exchanges of any other lots or parcels from the remainder of such tract are made for a period of 5 years, such remainder shall be deemed a tract.

(Aug. 16, 1954, ch. 736, 68A Stat. 330; Apr. 27, 1956, ch. 214, §§1, 2, 70 Stat. 118; Pub. L. 85–866, title I, §55, Sept. 2, 1958, 72 Stat. 1645; Pub. L. 91–686, §2(a), Jan. 12, 1971, 84 Stat. 2071; Pub. L. 94–455, title XIX, §§1901(a)(138), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1787, 1834; Pub. L. 104–188, title I, §1314, Aug. 20, 1996, 110 Stat. 1785.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188, §1314(a), substituted ''other than a C corporation'' for ''other than a corporation'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 104–188, §1314(b), inserted ''an S corporation which included the taxpayer as a shareholder,'' after ''controlled by the taxpayer,''.

1976—Subsec. (b)(3)(B), (C). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, §1901(a)(138), struck out effective date provision making the section applicable only with respect to sales of property occurring after Dec. 31, 1953, except that for purposes of subsec. (c) defining tract of real property and for determining the number of sales under subsec. (b)(1) of this section, all sales of lots and parcels from any tract of real property during the period of 5 years before Dec. 31, 1953, shall be taken into account, except as provided in subsec. (c).

1971—Subsec. (a). Pub. L. 91–686, §2(a)(1), substituted ''other than a corporation'' for ''(including corporations only if no shareholder directly or indirectly holds real property for sale to customers in the ordinary course of trade or business and only in the case of property described in the last sentence of subsection (b)(3))''.

Subsec. (b). Pub. L. 91–686, §2(a)(2), struck out sentence which made subpars. (B) and (C) inapplicable in the case of property acquired through the foreclosure of a lien thereon which secured the payment of an indebtedness to the taxpayer or (in the case of a corporation) to a creditor who has transferred the foreclosure bid to the taxpayer in exchange for all of its stock and other consideration and in the case of property adjacent to such property if 80 percent of the real property owned by the taxpayer was property described in the first part of the sentence.

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

1956—Subsec. (a). Act Apr. 27, 1956, §1, substituted ''(including corporations only if no shareholder directly or indirectly holds real property for sale to customers in the ordinary course of trade or business and only in the case of property described in the last sentence of subsection (b)(3))'' for ''other than a corporation''.

Subsec. (b)(3). Act Apr. 27, 1956, §2, substituted ''water, sewer, or drainage facilities'' for ''water or sewer facilities'' in subpar. (A), and inserted provision at end that requirements of subpars. (B) and (C) do not apply to certain specified property.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of

Pub. L. 104–188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(138) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2(b) of Pub. L. 91–686 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective for taxable years beginning after the date of enactment of this Act [Jan. 12, 1971].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 3 of act Apr. 27, 1956, provided that: ''This Act [amending this section] shall apply to all taxable years beginning after Dec. 31, 1954.''

SALES OR EXCHANGES BY CORPORATIONS OF REAL PROPERTY HELD MORE THAN 25 YEARS

Section 1 of Pub. L. 91–686, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided: ''That (a) for purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] any lot or parcel of real property sold or exchanged by a corporation which would, but for this Act, be treated as property held primarily for sale to customers in the ordinary course of trade or business shall not, except to the extent provided in (b), be so treated if—

''(1) no shareholder of the corporation directly or indirectly holds real property primarily for sale to customers in the ordinary course of trade or business; and

''(2)(A) such lot or parcel is a part of real property (i) held for more than twenty-five years at the time of sale or exchange, and (ii) acquired before January 1, 1934, by the corporation as a result of the foreclosure of a lien (or liens) thereon which secured the payment of indebtedness held by one or more creditors who transferred one or more foreclosure bids to the corporation in exchange for all its stock (with or without other consideration), or

''(B)(i) such lot or parcel is a part of additional real property acquired before January 1, 1957, by the corporation in the near vicinity of any real property to which subparagraph (A) applies, or

''(ii) such lot or parcel is wholly or to some extent a part of any minor acquisition made after December 31, 1956, by the corporation to adjust boundaries, to fill gaps in previously acquired property, to facilitate the installation of streets, utilities, and other public facilities, or to facilitate the sale of adjacent property, or

''(iii) such lot or parcel is wholly or to some extent a part of a reacquisition by the corporation after December 31, 1956, of property previously owned by the corporation;

but only if at least 80 percent (as measured by area) of the real property sold or exchanged by the corporation within the taxable year is property described in subparagraph (A); and

''(3) there were no acquisitions of real property by the corporation after December 31, 1956, other than—

''(A) acquisitions described in paragraph (2)(B)(ii) and reacquisitions described in paragraph (2)(B)(iii), or

''(B) acquisitions of real property used in a trade or business of the corporation or held for investment by the corporation; and

''(4) the corporation did not after December 31, 1957, sell or exchange (except in condemnation or under threat of condemnation) any residential lot or parcel on which, at the time of the sale or exchange, there existed any substantial improvements (other than improvements in existence at the time the land was acquired by the corporation) except subdivision, clearing, grubbing, and grading, building or installation of water, sewer, and drainage facilities, construction of roads, streets, and sidewalks, and installation of utilities.''

In any case in which a corporation referred to in paragraphs (1), (2), (3), and (4) is a member of an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986, such affiliated group shall, for purposes of such paragraphs, be treated as a single corporation.

''(b)(1) Gain from any sale or exchange described in subsection (a) shall be deemed, for purposes of such Code, to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business to the extent of 5 percent of the selling price.

''(2) For the purpose of computing gain under paragraph (1), expenditures incurred in connection with the sale or exchange of any lot or parcel shall neither be allowed as a deduction in computing taxable income, nor treated as reducing the amount realized on such sale or exchange; but so much of such expenditures as does not exceed the portion of gain deemed under paragraph (1) to be gain from the sale of property held primarily for sale to customers in the ordinary course of trade or business shall be so allowed as a deduction, and the remainder, if any, shall be treated as reducing the amount realized on such sale or exchange.

''(c) The provisions of subsections (a) and (b) shall apply to taxable years beginning after December 31, 1957, and before January 1, 1984.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 162 of this title.

## [§ 1238. Repealed. Pub. L. 101–508, title XI, § 11801(a)(35), Nov. 5, 1990, 104 Stat. 1388–521]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 332; Oct. 4, 1976, Pub. L. 94–455, title XIX, §§1901(b)(3)(K), 1951(c)(2)(A), 90 Stat. 1793, 1840, related to amortization in excess of depreciation.

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 29 of this title.

## § 1239. Gain from sale of depreciable property between certain related taxpayers

### (a) Treatment of gain as ordinary income

In the case of a sale or exchange of property, directly or indirectly, between related persons, any gain recognized to the transferor shall be treated as ordinary income if such property is, in the hands of the transferee, of a character which is subject to the allowance for depreciation provided in section 167.

### (b) Related persons

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

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

(2) a taxpayer and any trust in which such taxpayer (or his spouse) is a beneficiary, un-