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 45K of this title.

PART III—SALES AND EXCHANGES

Sec.
631. Gain or loss in the case of timber, coal, or domestic iron ore.
[632. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(22)(A), Oct. 4, 1976, 90 Stat. 1798, struck out item 632 ''Sale of oil or gas properties''.

1964—Pub. L. 88–272, title II, § 227(b)(2), Feb. 26, 1964, 78 Stat. 98, inserted reference to domestic iron ore in item 631.

§ 631. Gain or loss in the case of timber, coal, or domestic iron ore

(a) Election to consider cutting as sale or exchange

If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than 1 year) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this subsection, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding on the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Secretary, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this subsection except with the consent of the Secretary. For purposes of this subsection and subsection (b), the term ''timber'' includes evergreen trees which are more than 6 years old at the time severed from the roots and are sold for ornamental purposes.

(b) Disposal of timber

In the case of the disposal of timber held for more than 1 year before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner either retains an economic interest in such timber or makes an outright sale of such timber, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be considered as though it were a gain or loss, as the case may be, on the sale of such timber. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. In the case of disposal of timber with a retained economic interest, the date of disposal of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term ''owner'' means any person who owns an interest in such timber, including a sublessor and a holder of a contract to cut timber.

(c) Disposal of coal or domestic iron ore with a retained economic interest

In the case of the disposal of coal (including lignite), or iron ore mined in the United States, held for more than 1 year before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal or iron ore, the difference between the amount realized from the disposal of such coal or iron ore and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal or iron ore. If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal or iron ore. This subsection shall not apply to income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal or iron ore, and the word ''owner'' means any person who owns an economic interest in coal or iron ore in place, including a sublessor. The date of disposal of such coal or iron ore shall be deemed to be the date such coal or iron ore is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on shareholders (including the determinations of the amount of the deductions under section 535(b)(6) or section 545(b)(5)). This subsection shall not apply to any disposal of iron ore or coal—

(1) to a person whose relationship to the person disposing of such iron ore or coal would result in the disallowance of losses under section 267 or 707(b), or

(2) to a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of such iron ore or coal.

(Aug. 16, 1954, ch. 736, 68A Stat. 213; Pub. L. 88–272, title II, § 227(a)(1), (b)(1), Feb. 26, 1964, 78

Stat. 97, 98; Pub. L. 94–455, title XIV, §1402(b)(1)(I), (2), (3), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1733, 1834; Pub. L. 98–369, div. A, title I, §178(a), title X, §1001(c), (e), July 18, 1984, 98 Stat. 712, 1012; Pub. L. 99–514, title III, §311(b)(3), Oct. 22, 1986, 100 Stat. 2219; Pub. L. 108–357, title III, §315(a), (b), Oct. 22, 2004, 118 Stat. 1469.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–357, in heading, struck out ''with a retained economic interest'' after ''timber'', in first sentence, substituted ''either retains an economic interest in such timber or makes an outright sale of such timber'' for ''retains an economic interest in such timber'', and, in third sentence, substituted ''In the case of disposal of timber with a retained economic interest, the date of disposal'' for ''The date of disposal''.

1986—Subsec. (c). Pub. L. 99–514 substituted ''If for the taxable year of such gain or loss the maximum rate of tax imposed by this chapter on any net capital gain is less than such maximum rate for ordinary income, such owner'' for ''Such owner''.

1984—Subsec. (a). Pub. L. 98–369, §1001(c)(1), (e), substituted ''on the first day of such year and for a period of more than 6 months before such cutting'' for ''for a period of more than 1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsecs. (b), (c). Pub. L. 98–369, §1001(c)(2), (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.

Pub. L. 98–369, §178(a), inserted ''or coal'' after ''iron ore'' wherever appearing in last sentence of subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§1402(b)(1)(I), (3), 1906(b)(13)(A), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977 and struck out ''before the beginning of such year'' before '') shall be considered as a sale'' effective for taxable years beginning after Dec. 31, 1976, and ''or his delegate'' after ''Secretary'' wherever appearing.

Subsec. (b). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(I), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (c). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(I), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1964—Pub. L. 88–272, §227(b)(1), inserted reference to domestic iron ore in heading.

Subsec. (c). Pub. L. 88–272, §227(a)(1), inserted ''or domestic iron ore'' in heading, ''or iron ore mined in the United States'' after ''coal (including lignite)'', ''or iron ore'' after ''coal'' wherever appearing, and provided that the subsection shall not apply to any disposal of iron ore to a person whose relationship to the person disposing of such ore would result in the disallowance of losses under section 267 of 717(b), or to a person owned or controlled by the same interests which own or control the person disposing of such iron ore.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title III, §315(c), Oct. 22, 2004, 118 Stat. 1469, provided that: ''The amendments made by this section [amending this section] shall apply to sales after December 31, 2004.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 311(c) of Pub. L. 99–514, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 178(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to dispositions after September 30, 1985.

''(2) SPECIAL RULE FOR FIXED CONTRACTS.—

''(A) IN GENERAL.—The amendment made by subsection (a) shall not apply to any disposition of an interest in coal by a person to a related person if such coal is subsequently sold before January 1, 1990, by either such person—

''(i) to a person who is not a related person with respect to either such person, and

''(ii) pursuant to a qualified fixed contract.

''(B) ALLOCATION WHERE MORE THAN 1 CONTRACT.—If, for any taxable year, there is a disposition described in subparagraph (A) which is not specifically allocable to a qualified fixed contract or to a contract which is not a qualified fixed contract, such disposition shall be treated as first allocable to the qualified fixed contract.

''(C) QUALIFIED FIXED CONTRACT DEFINED.—The term 'qualified fixed contract' means any contract for the sale of coal which—

''(i) was entered into before June 12, 1984,

''(ii) is binding at all times thereafter, and

''(iii) cannot be adjusted to reflect to any extent the increase in liabilities of the person disposing of the coal for tax under chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by reason of the amendment made by subsection (a).

''(D) RELATED PERSON.—For purposes of this paragraph, the term 'related person' means a person who bears a relationship to another person described in the last sentence of section 631(c). ''

Amendment by section 1001(c) 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 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.

Section 1402(b)(3) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1976.

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.

REVOCATION OF ELECTIONS UNDER SECTION 631(a)

Pub. L. 108–357, title I, §102(c), Oct. 22, 2004, 118 Stat. 1428, provided that: ''Any election under section 631(a) of the Internal Revenue Code of 1986 made for a taxable year ending on or before the date of the enactment of this Act [Oct. 22, 2004] may be revoked by the taxpayer for any taxable year ending after such date. For purposes of determining whether such taxpayer may make a further election under such section, such election (and any revocation under this section) shall not be taken into account.''

Section 311(d)(2) of Pub. L. 99–514 provided that: ''Any election under section 631(a) of the Internal Revenue Code of 1954 made (whether by a corporation or a person other than a corporation) for a taxable year beginning before January 1, 1987, may be revoked by the taxpayer for any taxable year ending after December 31, 1986. For purposes of determining whether the taxpayer may make a further election under such section, such

election (and any revocation under this paragraph) shall not be taken into account.''

[§ 632. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(90), Oct. 4, 1976, 90 Stat. 1779]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 214; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 803(d)(4), 83 Stat. 684, related to tax in case of sale of oil and gas properties.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

PART IV—MINERAL PRODUCTION PAYMENTS

Sec.
636. Income tax treatment of mineral production payments.

AMENDMENTS

1969—Pub. L. 91–172, title V, § 503(a), Dec. 30, 1969, 83 Stat. 630, added part heading and section analysis.

§ 636. Income tax treatment of mineral production payments

(a) Carved-out production payments

A production payment carved out of mineral property shall be treated, for purposes of this subtitle, as if it were a mortgage loan on the property, and shall not qualify as an economic interest in the mineral property. In the case of a production payment carved out for exploration or development of a mineral property, the preceding sentence shall apply only if and to the extent gross income from the property (for purposes of section 613) would be realized, in the absence of the application of such sentence, by the person creating the production payment.

(b) Retained production payment on sale of mineral property

A production payment retained on the sale of a mineral property shall be treated, for purposes of this subtitle, as if it were a purchase money mortgage loan and shall not qualify as an economic interest in the mineral property.

(c) Retained production payment on lease of mineral property

A production payment retained in a mineral property by the lessor in a leasing transaction shall be treated, for purposes of this subtitle, insofar as the lessee (or his successors in interest) is concerned, as if it were a bonus granted by the lessee to the lessor payable in installments. The treatment of the production payment in the hands of the lessor shall be determined without regard to the provisions of this subsection.

(d) Definition

As used in this section, the term ''mineral property'' has the meaning assigned to the term ''property'' in section 614(a).

(e) Regulations

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

(Added Pub. L. 91–172, title V, § 503(a), Dec. 30, 1969, 83 Stat. 630; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE

Section 503(c) of Pub. L. 91–172, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) GENERAL RULE.—The amendments made by this section [enacting this section] shall apply with respect to mineral production payments created on or after August 7, 1969, other than mineral production payments created before January 1, 1971, pursuant to a binding contract entered into before August 7, 1969.

''(2) ELECTION.—At the election of the taxpayer (made at such time and in such manner as the Secretary of the Treasury or his delegate prescribes by regulations), the amendments made by this section shall apply with respect to all mineral production payments which the taxpayer carved out of mineral properties after the beginning of his last taxable year ending before August 7, 1969. No interest shall be allowed on any refund or credit of any overpayment resulting from such election for any taxable year ending before August 7, 1969.

''(3) SPECIAL RULE.—With respect to a taxpayer who does not elect the treatment provided in paragraph (2) and who carves out one or more mineral production payments on or after August 7, 1969, during the taxable year which includes such date, the amendments made by this section shall apply to such production payments only to the extent the aggregate amount of such production payments exceeds the lesser of—

''(A) the excess of

''(i) the aggregate amount of production payments carved out and sold by the taxpayer during the 12-month period immediately preceding his taxable year which includes August 7, 1969, over

''(ii) the aggregate amount of production payments carved out before August 7, 1969, by the taxpayer during his taxable year which includes such date, or

''(B) the amount necessary to increase the amount of the taxpayer's gross income, within the meaning of chapter 1 of subtitle A of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [this title], for the taxable year which includes August 7, 1969, to an amount equal to the amount of deductions (other than any deduction under section 172 of such Code) allowable for such year under such chapter.

The preceding sentence shall not apply for purposes of determining the amount of any deduction allowable under section 611 or the amount of foreign tax credit allowable under section 904 of such Code.''

PART V—CONTINENTAL SHELF AREAS

Sec.
638. Continental shelf areas.

AMENDMENTS

1969—Pub. L. 91–172, title V, § 505(a), Dec. 30, 1969, 83 Stat. 634, added part heading and section analysis.

§ 638. Continental shelf areas

For purposes of applying the provisions of this chapter (including sections 861(a)(3) and 862(a)(3) in the case of the performance of personal services) with respect to mines, oil and gas wells, and other natural deposits—

(1) the term ''United States'' when used in a geographical sense includes the seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the United States and over which the United States has exclusive rights, in accordance with international law, with respect to the exploration and exploitation of natural resources; and

(2) the terms ''foreign country'' and ''possession of the United States'' when used in a geo-