

§ 1.1249-1 Gain from certain sales or exchanges of patents, etc., to foreign corporations.

(a) *General rule.* Section 1249 provides that if gain is recognized from the sale or exchange after December 31, 1962, of a patent, an invention, model, or design (whether or not patented), a copyright, a secret formula or process, or any other similar property right (not including property such as goodwill, a trademark, or a trade brand) to any foreign corporation by any United States person (as defined in section 7701(a)(30)) which controls such foreign corporation, and if such gain would (but for the provisions of section 1249) be gain from the sale or exchange of a capital asset or of property described in section 1231, then such gain shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Section 1249 applies only to gain recognized in taxable years beginning after December 31, 1962.

(b) *Control.* For purposes of paragraph (a) of this section, the term *control* means, with respect to any foreign corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of the preceding sentence, the rules for determining ownership of stock provided by section 958 (a) and (b), and the principles for determining percentage of total combined voting power owned by United States shareholders provided by paragraphs (b) and (c) of § 1.957-1, shall apply.

[T.D. 6765, 29 FR 14879, Nov. 3, 1964]

§ 1.1250-1 Gain from dispositions of certain depreciable realty.

(a) *Dispositions after December 31, 1969—(1) Ordinary income.* (i) In general, section 1250(a)(1) provides that, upon a disposition of an item of section 1250 property after December 31, 1969, the applicable percentage of the lower of:

(a) The additional depreciation (as defined in § 1.1250-2) attributable to periods after December 31, 1969 in respect of the property, or

(b) The excess of the amount realized on a sale, exchange, or involuntary conversion (or the fair market value of

the property on any other disposition) over the adjusted basis of the property, shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 (that is, shall be recognized as ordinary income). The amount of such gain shall be determined separately for each item (see subparagraph (2)(ii) of this paragraph) of section 1250 property. If the amount determined under (b) of this subdivision exceeds the amount determined under (a) of this subdivision, then such excess shall be treated as provided in subdivision (ii) of this subparagraph. For relation of section 1250 to other provisions, see paragraph (c) of this section.

(ii) If the amount determined under subdivision (i)(b) of this subparagraph exceeds the amount determined under subdivision (i)(a) of this subparagraph, then the applicable percentage of the lower of:

(a) The additional depreciation attributable to periods before January 1, 1970, or

(b) Such excess, shall also be recognized as ordinary income.

(iii) If gain would be recognized upon a disposition of an item of section 1250 property under subdivisions (i) and (ii) of this subparagraph, and if section 1250(d) applies, then the gain recognized shall be considered as recognized first under subdivision (i) of this subparagraph. (See example (3)(i) of paragraph (c)(4) of § 1.1250-3.)

(2) *Meaning of terms.* (i) For purposes of section 1250, the term *disposition* shall have the same meaning as in paragraph (a)(3) of § 1.1245-1. *Section 1250 property* is, in general, depreciable real property other than section 1245 property. See paragraph (e) of this section. See paragraph (d)(1) of this section for meaning of the term *applicable percentage*. If, however, the property is considered to have two or more elements with separate periods (for example, because units thereof are placed in service on different dates, improvements are made to the property, or because of the application of paragraph (h) of § 1.1250-3), see the special rules of § 1.1250-5.