

with respect to which section 1254 costs have been incurred, a taxpayer may treat costs as not relating to the transferred interest if the undivided interest is an undivided interest in a portion of the natural resource recapture property, and the portion would be eligible for the alternative allocation rule under paragraph (c)(3)(ii) of this section.

(iv) *Substantiation.* If a taxpayer treats section 1254 costs incurred with respect to a natural resource recapture property as not relating to a transferred interest in a portion of the property, the taxpayer must indicate on his or her tax return that the costs do not relate to the transferred portion and maintain the records and supporting evidence that substantiate this position.

(d) *Installment method.* Gain from a disposition to which section 1254(a)(1) applies is reported on the installment method if that method otherwise applies under section 453 or 453A of the Internal Revenue Code and the regulations thereunder. The portion of each installment payment as reported that represents income (other than interest) is treated as gain to which section 1254(a)(1) applies until all of the gain (to which section 1254(a)(1) applies) has been reported, and the remaining portion (if any) of the income is then treated as gain to which section 1254(a)(1) does not apply. For treatment of amounts as interest on certain deferred payments, see sections 483, 1274, and the regulations thereunder.

[T.D. 8586, 60 FR 2502, Jan. 10, 1995]

§ 1.1254-2 Exceptions and limitations.

(a) *Exception for gifts and section 1041 transfers—(1) General rule.* No gain is recognized under section 1254(a)(1) upon a disposition of natural resource recapture property by a gift or by a transfer in which no gain or loss is recognized pursuant to section 1041 (relating to transfers between spouses). For purposes of this paragraph (a), the term *gift* means, except to the extent that paragraph (a)(2) of this section applies, a transfer of natural resource recapture property that, in the hands of the transferee, has a basis determined under the provisions of sections 1015 (a) or (d) (relating to basis of property ac-

quired by gift). For rules concerning the potential reduction in the amount of the charitable contribution in the case of natural resource recapture property, see section 170(e) and § 1.170A-4. See § 1.1254-3(b)(1) for determination of potential recapture of section 1254 costs on property acquired by gift. See § 1.1254-1 (c)(1)(ii) and (c)(2)(ii) for apportionment of section 1254 costs on a gift of a portion of natural resource recapture property.

(2) *Part gift transactions.* If a disposition of natural resource recapture property is in part a sale or exchange and in part a gift, the gain that is treated as ordinary income pursuant to section 1254(a)(1) is the lower of the section 1254 costs with respect to the property or the excess of the amount realized upon the disposition of the property over the adjusted basis of the property. In the case of a transfer subject to section 1011(b) (relating to bargain sales to charitable organizations), the adjusted basis for purposes of the preceding sentence is the adjusted basis for determining gain or loss under section 1011(b).

(b) *Exception for transfers at death.* Except as provided in section 691 (relating to income in respect of a decedent), no gain is recognized under section 1254(a)(1) upon a transfer at death. For purposes of this paragraph, the term *transfer at death* means a transfer of natural resource recapture property that, in the hands of the transferee, has a basis determined under the provisions of section 1014(a) (relating to basis of property acquired from a decedent) because of the death of the transferor. See § 1.1254-3 (a)(4) and (c) for the determination of potential recapture of section 1254 costs on property acquired in a transfer at death.

(c) *Limitation for certain tax-free transactions—(1) General rule.* Upon a transfer of property described in paragraph (c)(3) of this section, the amount of gain treated as ordinary income by the transferor under section 1254(a)(1) may not exceed the amount of gain recognized to the transferor on the transfer (determined without regard to section 1254). In the case of a transfer of both natural resource recapture property

and property that is not natural resource recapture property in one transaction, the amount realized from the disposition of the natural resource recapture property is deemed to be equal to the amount that bears the same ratio to the total amount realized as the fair market value of the natural resource recapture property bears to the aggregate fair market value of all the property transferred. The preceding sentence is applied solely for purposes of computing the portion of the total gain (determined without regard to section 1254) that may be recognized as ordinary income under section 1254(a)(1).

(2) *Special rule for dispositions to certain tax-exempt organizations.* Paragraph (c)(1) of this section does not apply to a disposition of natural resource recapture property to an organization (other than a cooperative described in section 521) that is exempt from the tax imposed by chapter I of the Internal Revenue Code. The preceding sentence does not apply to a disposition of natural resource recapture property to an organization described in section 511 (a)(2) or (b)(2) (relating to imposition of tax on unrelated business income of charitable, etc., organizations) if, immediately after the disposition, the organization uses the property in an unrelated trade or business as defined in section 513. If any property with respect to which gain is not recognized by reason of the exception of this paragraph (c)(2) ceases to be used in an unrelated trade or business of the organization acquiring the property, that organization is, for purposes of section 1254, treated as having disposed of the property on the date of the cessation.

(3) *Transfers described.* The transfers referred to in paragraph (c)(1) of this section are transfers of natural resource recapture property in which the basis of the natural resource recapture property in the hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of any of the following provisions:

(i) Section 332 (relating to certain liquidations of subsidiaries). See paragraph (c)(4) of this section.

(ii) Section 351 (relating to transfer to a corporation controlled by transferor).

(iii) Section 361 (relating to exchanges pursuant to certain corporate reorganizations).

(iv) Section 721 (relating to transfers to a partnership in exchange for a partnership interest).

(v) Section 731 (relating to distributions by a partnership to a partner). For purposes of this paragraph, the basis of natural resource recapture property distributed by a partnership to a partner is deemed to be determined by reference to the adjusted basis of such property to the partnership.

(4) *Special rules for section 332 transfers.* In the case of a distribution in complete liquidation of a subsidiary to which section 332 applies, the limitation provided in this paragraph (c) is confined to instances in which the basis of the natural resource recapture property in the hands of the transferee is determined, under section 334(b)(1), by reference to its basis in the hands of the transferor. Thus, for example, the limitation may apply in respect of a liquidating distribution of natural resource recapture property by a subsidiary corporation to the parent corporation, but does not apply in respect of a liquidating distribution of natural resource recapture property to a minority shareholder. This paragraph (c) does not apply to a liquidating distribution of natural resource recapture property by a subsidiary to its parent if the parent's basis for the property is determined under section 334(b)(2) (as in effect before enactment of the Tax Reform Act of 1986), by reference to its basis for the stock of the subsidiary. This paragraph (c) does not apply to a liquidating distribution under section 332 of natural resource recapture property by a subsidiary to its parent if gain is recognized and there is a corresponding increase in the parent's basis in the property (e.g., certain distributions to a tax-exempt or foreign corporation).

(d) *Limitation for like kind exchanges and involuntary conversions—(1) General rule.* If natural resource recapture property is disposed of and gain (determined without regard to section 1254)

is not recognized in whole or in part under section 1031 (relating to like kind exchanges) or section 1033 (relating to involuntary conversions), the amount of gain taken into account by the transferor under section 1254(a)(1) may not exceed the sum of—

(i) The amount of gain recognized on the disposition (determined without regard to section 1254); plus

(ii) The fair market value of property acquired that is not natural resource recapture property (determined without regard to § 1.1254-1(b)(2)(vii)) and is not taken into account under paragraph (d)(1)(i) of this section (that is, qualifying property under section 1031 or 1033 that is not natural resource recapture property).

(2) *Disposition and acquisition of both natural resource recapture property and other property.* For purposes of this paragraph (d), if both natural resource recapture property and property that is not natural resource recapture property are acquired as the result of one disposition in which both natural resource recapture property and property that is not natural resource recapture property are disposed of—

(i) The total amount realized upon the disposition is allocated between the natural resource recapture property and the property that is not natural resource recapture property disposed of in proportion to their respective fair market values;

(ii) The amount realized upon the disposition of the natural resource recapture property is deemed to consist of so much of the fair market value of the natural resource recapture property acquired as is not in excess of the amount realized from the natural resource recapture property disposed of, and the remaining portion (if any) of the amount realized upon the disposition of such property is deemed to consist of so much of the fair market value of the property that is not natural resource recapture property acquired as is not in excess of the remaining portion; and

(iii) The amount realized upon the disposition of the property that is not natural resource recapture property is deemed to consist of so much of the fair market value of all the property acquired which was not taken into account under paragraph (d)(2)(ii) of this

section. Except as provided in section 1060 and the regulations thereunder, if a buyer and seller have adverse interests as to such allocation of the amount realized, any arm's-length agreement between the buyer and seller is used to establish the allocation. In the absence of such an agreement, the allocation is made by taking into account the appropriate facts and circumstances.

[T.D. 8586, 60 FR 2505, Jan. 10, 1995, as amended by T.D. 8684, 61 FR 53063, Oct. 10, 1996]

§ 1.1254-3 Section 1254 costs immediately after certain acquisitions.

(a) *Transactions in which basis is determined by reference to cost or fair market value of property transferred—*(1) *Basis determined under section 1012.* If, on the date a person acquires natural resource recapture property, the person's basis for the property is determined solely by reference to its cost (within the meaning of section 1012), the amount of section 1254 costs with respect to the natural resource recapture property in the person's hands is zero on the acquisition date.

(2) *Basis determined under section 301(d), 334(a), or 358(a)(2).* If, on the date a person acquires natural resource recapture property, the person's basis for the property is determined solely by reason of the application of section 301(d) (relating to basis of property received in a corporate distribution), section 334(a) (relating to basis of property received in a liquidation in which gain or loss is recognized), or section 358(a)(2) (relating to basis of other property received in certain exchanges), the amount of the section 1254 costs with respect to the natural resource recapture property in the person's hands is zero on the acquisition date.

(3) *Basis determined solely under former section 334(b)(2) or former section 334(c).* If, on the date a person acquires natural resource recapture property, the person's basis for the property is determined solely under the provisions of section 334(b)(2) (prior to amendment of that section by the Tax Equity and Fiscal Responsibility Act of 1982) or (c) (prior to repeal of that section by the Tax Reform Act of 1986) (relating to basis of property received in certain