

Internal Revenue Code Section 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, unless such beneficiary's interest in the trust is a remote contingent interest (within the meaning of section 318(a)(3)(B)(i)), and
 - (3) except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.
- (c) Controlled entity defined.
 - (1) General rule. For purposes of this section, the term "controlled entity" means, with respect to any person—
 - (A) a corporation more than 50 percent of the value of the outstanding stock of which is owned (directly or indirectly) by or for such person,
 - (B) a partnership more than 50 percent of the capital interest or profits interest in which is owned (directly or indirectly) by or for such person, and
 - (C) any entity which is a related person to such person under paragraph (3), (10), (11), or (12) of section 267(b).
 - (2) Constructive ownership. For purposes of this section, ownership shall be determined in accordance with rules similar to the rules under section 267(c) (other than paragraph (3) thereof).
- (d) Employer and related employee association. For purposes of subsection (a), the term "related person" also includes—

- (1) an employer and any person related to the employer (within the meaning of subsection (b)), and
 - (2) a welfare benefit fund (within the meaning of section 419(e)) which is controlled directly or indirectly by persons referred to in paragraph (1).
- (e) Patent applications treated as depreciable property. For purposes of this section, a patent application shall be treated as property which, in the hands of the transferee, is of a character which is subject to the allowance for depreciation provided in section 167.