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Internal Revenue Code Section 1235

Sale or exchange of patents

(a) General.

A transfer (other than by gift, inheritance, or devise) of property consisting of all substantial rights to a patent, or an undivided interest therein which includes a part of all such rights, by any holder shall be considered the sale or exchange of a capital asset held for more than 1 year, regardless of whether or not payments in consideration of such transfer are-

- (1) payable periodically over a period generally coterminous with the transferee's use of the patent, or
- (2) contingent on the productivity, use, or disposition of the property transferred.

(b) "Holder" defined.

For purposes of this section , the term "holder" means-

- (1) any individual whose efforts created such property, or
- (2) any other individual who has acquired his interest in such property in exchange for consideration in money or money's worth paid to such creator prior to actual reduction to practice of the invention covered by the patent, if such individual is neither-
 - (A) the employer of such creator, nor
 - (B) related to such creator (within the meaning of subsection (c)).

(c) Related persons.

Subsection (a) shall not apply to any transfer, directly or indirectly, between persons specified within any one of the paragraphs of section 267(b) or persons described in section 707(b) ; except that, in applying section 267(b) and (c) and section 707(b) for purposes of this section -

- (1) the phrase "25 percent or more" shall be substituted for the phrase "more than 50 percent" each place it appears in section 267(b) or 707(b) , and
- (2) paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants.

(d) Cross reference.

For special rule relating to nonresident aliens, see section 871(a).