Publication 550

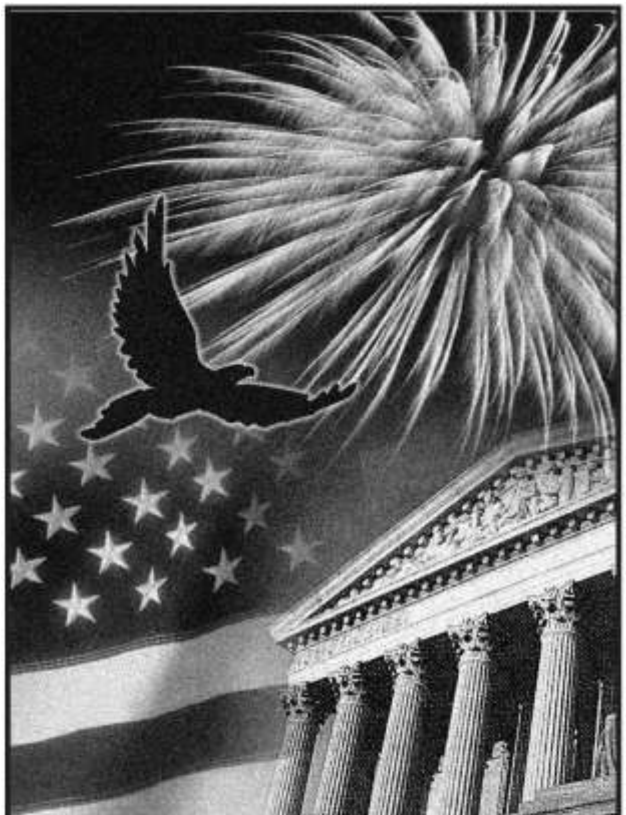
Investment Income and Expenses

(Including Capital Gains and Losses)

For use in preparing

2022 Returns

Volume 8 of 9



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How to make the election. You must make the election no later than the due date (including extensions) for filing your tax return for the year in which you sold the stock. If your original return was filed on time, you may make the election on an amended return filed no later than 6 months after the due date of your return (excluding extensions). Enter “Filed pursuant to section 301.9100-2” at the top of the amended return and file it at the same address you used for your original return.

How to report and postpone gain. Report the sale in Part II of Form 8949 as you would if you were not making the election. Then enter “R” in column (f). Enter the amount of the postponed gain as a negative number in column (g). Put it in parentheses to show it is negative. Complete all remaining columns. If the actual postponed gain is different from the amount you report, file an amended return.

Report your sales of stock to ESOPs or certain cooperatives on Form 8949 with the correct box checked for these transactions. See Form 8949 and the Instructions for Form 8949.

Also attach the following statements.

1. A “statement of election” that indicates you are making an election under section 1042(a) of the Internal Revenue Code and that includes the following information.
    a. A description of the securities sold, including the type and number of shares, the date of the sale, the amount realized on the sale, and the adjusted basis of the securities.
    b. The name of the ESOP or cooperative to which the qualified securities were sold.
    c. For a sale that was part of a single interrelated transaction

under a prearranged agreement between taxpayers involving other sales of qualified securities, the names and identifying numbers of the other taxpayers under the agreement and the number of shares sold by the other taxpayers.

2. A notarized “statement of purchase” describing the qualified replacement property, date of purchase, and the cost of the property and declaring the property to be qualified replacement property for the qualified stock you sold. The statement must have been notarized no later than 30 days after the purchase. If you have not yet purchased the qualified replacement property, you must attach the notarized “statement of purchase” to your income tax return for the year following the election year (or the election will not be valid).

3. A verified written statement of the domestic corporation whose employees are covered by the ESOP acquiring the securities,

or of any authorized officer of the cooperative, consenting to the taxes under sections 4978 and 4979A of the Internal Revenue Code on certain dispositions, and prohibited allocations of the stock purchased by the ESOP or cooperative.

More information. For details, see section 1042 of the Internal Revenue Code and Regulations section 1.1042-1T.

Gains on Qualified Small Business Stock

This section discusses two provisions of the law that may apply to gain from the sale or trade of qualified small business stock. You may qualify for a tax-free rollover of all or part of the gain. You may be able to exclude gain from your income.

Qualified small business stock. This is stock that meets all the following tests.

1. It must be stock in a C corporation.
2. It must have been originally issued after August 10, 1993.
3. The corporation must have total gross assets of $50 million or less at all times after August 9, 1993, and before it issued the stock. Its total gross assets immediately after it issued the stock must also be $50 million or less.

When figuring the corporation's total gross assets, you must also count the assets of any predecessor of the corporation. In addition, you must treat all corporations that are members of the same parent-subsidiary controlled group as one corporation.

1. You must have acquired the stock at its original issue, directly or through an underwriter, in exchange for money or other property (not including stock), or as pay for services provided to the

corporation (other than services performed as an underwriter of the stock). In certain cases, your stock may also meet this test if you acquired it from another person who met this test, or through a conversion or trade of qualified small business stock that you held.

2. The corporation must have met the active business test, defined next, and must have been a C corporation during substantially all the time you held the stock.
3. Within the period beginning 2 years before and ending 2 years after the stock was issued, the corporation cannot have bought more than a de minimis amount of its stock from you or a related party.
4. Within the period beginning 1 year before and ending 1 year after the stock was issued, the corporation cannot have bought more than a de

minimis amount of its stock from anyone, unless the total value of the stock it bought is 5% or less of the total value of all its stock.

For more information about tests 6 and 7, see the regulations under section 1202 of the Internal Revenue Code.

Active business test. A corporation meets this test for any period of time if, during that period, both the following are true.

- It was an eligible corporation, defined below.
- It used at least 80% (by value) of its assets in the active conduct of at least one qualified trade or business, defined below.

Exception for Specialized Small Business Investment Company (SSBIC). Any SSBIC is treated as meeting the active business test. An SSBIC is an eligible corporation licensed to operate under section 301(d) of the Small

Business Investment Act of 1958, as in effect on May 13, 1993.

Eligible corporation. This is any U.S. corporation other than:

- A Domestic International Sales Corporation (DISC) or a former DISC;
- A corporation that has made, or whose subsidiary has made, an election under section 936 of the Internal Revenue Code;
- A regulated investment company;
- A REIT;
- A REMIC;
- Certain financial asset securitization investment trusts (FASITs); or
- A cooperative.

Qualified trade or business. This is any trade or business other than:

- One involving services performed in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, or brokerage services;
- One whose principal asset is the reputation or skill of one or more employees;
- Any banking, insurance, financing, leasing, investing, or similar business;
- Any farming business (including the business of raising or harvesting trees);
- Any business involving the production or extraction of products for which percentage depletion can be claimed; or

- Any business of operating a hotel, motel, restaurant, or similar business.

Rollover of Gain

You may qualify for a tax-free rollover of capital gain from the sale of qualified small business stock held more than 6 months. This means that, if you buy certain replacement stock and make the choice described in this section, you postpone part or all of your gain.

You postpone the gain by adjusting the basis of the replacement stock as described in *Basis of replacement stock*, later. This postpones your gain until the year you dispose of the replacement stock.

You can make this choice if you meet all the following tests.

- You buy replacement stock during the 60-day period beginning on the date of the sale.

- The replacement stock is qualified small business stock.
- The replacement stock continues to meet the active business requirement for small business stock for at least the first 6 months after you buy it.

Amount of gain recognized. If you make the choice described in this section, you must recognize the capital gain only up to the following amount.

- The amount realized on the sale, minus
- The cost of any qualified small business stock you bought during the 60-day period beginning on the date of sale (and did not previously take into account on an earlier sale of qualified small business stock).

If this amount is less than the amount of your capital gain, you can postpone the rest of that gain. If this amount equals or is more than the amount of your capital gain, you must recognize the full amount of your gain.

Basis of replacement stock. You must subtract the amount of postponed gain from the basis of your replacement stock.

Holding period of replacement stock. Your holding period for the replacement stock includes your holding period for the stock sold, except for the purpose of applying the 6-month holding period requirement for choosing to roll over the gain on its sale.

Pass-through entity. A pass-through entity (a partnership, S corporation, or mutual fund or other regulated investment company) may also make the choice to postpone gain. The benefit of the postponed gain applies to your share of the entity's postponed gain if you held an interest in the entity for the entire period the entity held the stock.

If a pass-through entity sold qualified small business stock held for more than 6 months and you held an interest in the entity for the entire period the entity held the stock, you may also choose to postpone gain if you, rather than the pass-through entity, buy the replacement stock within the 60-day period.

How to report gain. Report the entire gain realized from the sale in Part I or Part II of Form 8949. To make the election to postpone gain, report the gain as you would if you were not making the election. Enter “R” in column (f). Enter the amount of the postponed gain as a negative number in column (g). Put it in parentheses to show it is negative. Complete all remaining columns.

CAUTION *Report these transactions on Form* **!** *8949 with the correct box checked. See Form 8949 and the Instructions for Form 8949.*

You must make the choice to postpone gain no later than the due date (including extensions) for filing your tax return for the year in which you sold the stock. If your original return was filed on time, you may make the choice on an amended return filed no later than 6 months after the due date of your return (excluding extensions). Enter “Filed pursuant to section 301.9100-2” at the top of the amended return and file it at the same address you used for your original return.

Section 1202 Exclusion

You can generally exclude from your income up to 50% of your gain from the sale or trade of qualified small business stock held by you for more than 5 years. The exclusion can be up to 75% for stock acquired after February 17, 2009, and no later than September 27, 2010, and up to 100% for stock acquired after September 27, 2010. The exclusion can be up to 60% for certain empowerment zone business stock for gain attributable to periods on or before December 31, 2018. The 60% exclusion doesn't apply to gain attributable to periods after December 31, 2018. See *Empowerment zone business stock*, later. The eligible gain minus your section 1202 exclusion is a 28% rate gain. See *Capital Gain Tax Rates*, later.

SSBIC stock. If the stock is SSBIC stock you bought as replacement property for publicly traded securities you sold at a gain before 2018, you must reduce the basis of the stock by the amount of any postponed gain on that earlier sale. But do not reduce your basis by that amount when figuring your section 1202 exclusion.

Limit on eligible gain. The amount of your gain from the stock of any one issuer that is eligible for the exclusion in 2022 is limited to the greater of:

- Ten times your basis in all qualified stock of the issuer you sold or exchanged during the year; or
- $10 million ($5 million for married individuals filing separately), minus the amount of gain from the stock of the same issuer you used to figure your exclusion in earlier years.

How to report gain. Report the sale or exchange on Form 8949, Part II, with the appropriate box checked, as you would if you were not taking the exclusion. Then enter "Q" in column (f) and enter the amount of the excluded gain as a negative number in column (g). Put it in parentheses to show it is negative. Complete all remaining columns. If you are completing line 18 of Schedule D (Form 1040), enter as a positive number the amount of the exclusion on line 2 of the 28% Rate Gain Worksheet in the Schedule D (Form 1040) instructions. But if you exclude 60% of the gain, enter $^2/3$ of the exclusion. If you exclude 75% of the gain, enter 1/3 of the exclusion. If you exclude 100% of the gain, do not enter an amount.

CAUTION *Report these transactions on Form 8949 with the correct box checked. See Form 8949 and the Instructions for Form 8949.*

More information. For information about additional requirements that may apply, see section 1202 of the Internal Revenue Code.

Empowerment zone business stock. You can exclude up to 60% of your gain if you meet all the following additional requirements.

1. You sell or trade stock in a corporation that qualifies as an empowerment zone business during substantially all of the time you held the stock.
2. You acquired the stock after December 21, 2000, and before February 18, 2009.

3. The gain from the sale or exchange of the stock is attributable to periods on or before December 31, 2018.

Condition 1 will still be met if the corporation ceased to qualify after the 5-year period that begins on the date you acquired the stock. However, the gain that qualifies for the 60% exclusion cannot be more than the gain you would have had if you had sold the stock on the date the corporation ceased to qualify.

Note. If either the 75% or 100% exclusion applies, then the 60% exclusion does not apply.

Exclusion of Gain From DC Zone Assets

If you sold or exchanged a District of Columbia Enterprise Zone (DC Zone) asset that you acquired after 1997 and before 2012 and held for more than 5 years, you may be able to exclude the amount of qualified capital gain that you would otherwise include in income. The exclusion applies to an interest in, or property of, certain businesses operating in the District of Columbia.

How to report. Report the sale or exchange on Form 8949, Part II, as you would if you were not taking the exclusion. Enter “X” in column (f) and enter the amount of the exclusion as a negative number in column (g). Put the amount in parentheses to show it is negative. See the instructions for Form 8949, columns (f), (g), and (h). Complete all remaining columns.

Rollover of Gain From Empowerment Zone Assets

The election to roll over gain from the sale of empowerment zone assets doesn’t apply to sales in tax years beginning after 2020. See section 1397B.

Reporting Capital Gains and Losses

Generally, report capital gains and losses on Form 8949. Complete Form 8949 before you complete line 1b, 2, 3, 8b, 9, or 10 of Schedule D (Form 1040). Use Form 8949 to report:

- The sale or exchange of a capital asset not reported on another form or schedule,
- Gains from involuntary conversions (other than from casualty or theft) of capital assets not held for business or profit,
- Nonbusiness bad debts, and
- Worthlessness of a security. Use Schedule D (Form 1040) to report:
- Overall gain or loss from transactions reported on Form 8949;

- Certain transactions you do not have to report on Form 8949;
- Gain from Form 2439 or 6252 or Part I of Form 4797;
- Gain or loss from Form 4684, 6781, or 8824;
- Gain or loss from a partnership, S corporation, estate, or trust;
- Capital gain distributions not reported directly on your Form 1040; and
- Capital loss carryover from the previous year to the current year.

On Form 8949, enter all sales and exchanges of capital assets, including stocks, bonds, etc., and real estate (if not reported on Form 4684, 4797, 6252, 6781, 8824, or line 1a or 8a of Schedule D (Form 1040). Include these transactions even if you did not receive a Form 1099-B or Form 1099-S, Proceeds From Real Estate Transactions, for the transaction.

Report short-term gains or losses in Part I. Report long-term gains or losses in Part II. Use as many Forms 8949 as you need.

Exceptions to filing Form 8949 and Schedule D (Form 1040). There are certain situations where you may not have to file Form 8949 and/or Schedule D (Form 1040).

Exception 1. You do not have to file Form 8949 or Schedule D (Form 1040) if you have no capital losses and your only capital gains are capital gain distributions from box 2a of Form(s) 1099-DIV. If any Form 1099-DIV you receive has an amount in box 2b (unrecaptured section 1250 gain), box 2c (section 1202 gain), or box 2d (collectibles (28%) gain), you do not qualify for this exception.

If you qualify for this exception, report your capital gain distributions directly on Form 1040, line 7, and check the box on that line. Also use the Qualified Dividends and Capital

Gain Tax Worksheet in the Instructions for Forms 1040 to figure your tax.

Exception 2. You must file Schedule D (Form 1040), but generally do not have to file Form 8949, if Exception 1 above does not apply and your only capital gains and losses are: • Capital gain distributions;

- A capital loss carryover;
- A gain from Form 2439 or 6252 or Part I of Form 4797;
- A gain or loss from Form 4684, 6781, or 8824;
- A gain or loss from a partnership, S corporation, estate, or trust; or
- Gains and losses from transactions for which you received a Form 1099-B that shows basis was reported to the IRS, for which the Ordinary box in box 2 is not checked, and for which you do not need to make any adjustments in

column (g) of Form 8949 or enter any codes in column (f) of Form 8949.

Installment sales. You cannot use the installment method to report a gain from the sale of stock or securities traded on an established securities market. You must report the entire gain in the year of sale (the year in which the trade date occurs).

At-risk rules. Special at-risk rules apply to most income-producing activities. These rules limit the amount of loss you can deduct to the amount you risk losing in the activity. The at-risk rules also apply to a loss from the sale or trade of an asset used in an activity to which the at-risk rules apply. For more information, see Pub. 925. Use Form 6198, At-Risk Limitations, to figure the amount of loss you can deduct.

Passive activity gains and losses. If you have gains or losses from a passive activity, you may also have to report them on Form 8582. In some cases, the loss may be limited under the passive activity rules. Refer to Form 8582 and its instructions for more information about reporting capital gains and losses from a passive activity.

Form 1099-B transactions. If you sold property, such as stocks, bonds, or certain commodities, through a broker, you should receive Form 1099-B from the broker. Use the Form 1099-B to complete Form 8949 and/or Schedule D (Form 1040).

If you received a Form 1099-B for a transaction, you usually report the transaction on Form 8949. Report the proceeds shown in box 1d of Form 1099-B in column (d) of either Part I or Part II of Form 8949, whichever applies.

Include in column (g) any selling expenses or option premiums not reflected in box 1d or box 1e of Form 1099-B. If you include a selling expense in column (g), enter “E” in column (f).

Enter the basis shown in box 1e in column (e). If the basis shown on Form 1099-B is not correct, see the table How To Complete Form 8949, Columns (f) and (g), in the Instructions for Form 8949 for the adjustment you must make. If no basis is shown on Form 1099-B, enter the correct basis of the property in column (e). See the instructions for Form 1099-B, Form 8949, and Schedule D (Form 1040) for more information.

Example 1. You sold 100 shares of Fund HIJ for $2,500. You paid a $75 commission to the broker for handling the sale. Your Form 1099-B shows that the net sales proceeds, $2,425 ($2,500 − $75), were reported to the IRS. Report $2,425 in column (d) of Form 8949. Complete columns (a), (b), (c), and (e).

Example 2. You sold 200 shares of Fund KLM for $10,000. You paid a $100 commission at the time of the sale. The broker reported the gross proceeds to the IRS on Form 1099-B, so on Form 8949, you enter

“E” in column (f), $10,000 in column (d), and $100 as a negative adjustment in column (g). Complete all remaining columns.

Section 1256 contracts and straddles. Use Form 6781 to report gains and losses from section 1256 contracts and straddles before entering these amounts on Schedule D (Form 1040). Include a copy of Form 6781 with your income tax return.

Market discount bonds. Report the sale or trade of a market discount bond on Part I or Part II of Form 8949, whichever is appropriate. See the table How To Complete Form 8949, Columns (f) and (g), in the Instructions for Form 8949 to help you figure the amounts to report for a sale or trade of a market discount bond. Use the Worksheet for Accrued Market Discount Adjustment in Column (g) in those instructions to figure the adjusted accrued market discount. Also report the amount of accrued market discount as interest income on Schedule B (Form 1040), line 1, and identify it as “Accrued Market Discount.” See the Instructions for Form 8949 for more information.

Form 1099-CAP transactions. If a corporation in which you own stock has had a change in control or a substantial change in capital structure, you should receive Form 1099-CAP, Changes in Corporate Control and Capital Structure, from the corporation. Use the Form 1099-CAP to fill in Form 8949. If your computations show that you would have a loss because of the change, do not enter any amounts on Form 8949 or Schedule D (Form 1040) as a result of this transaction.

Report the aggregate amount received shown in box 2 of Form 1099-CAP as the sales price in column (d) of either Part I or Part II of Form 8949, whichever applies.

Form 1099-S transactions. If you sold or traded reportable real estate, you should generally receive from the real estate reporting person a Form 1099-S showing the gross proceeds.

“Reportable real estate” is defined as any present or future ownership interest in any of the following.

- Improved or unimproved land, including air space.
- Inherently permanent structures, including any residential, commercial, or industrial building.
- A condominium unit and its accessory fixtures and common elements, including land.
- Stock in a cooperative housing corporation (as defined in section 216 of the Internal Revenue Code).
- Any noncontingent interest in standing timber.

A “real estate reporting person” could include the buyer's attorney, your attorney, the title or escrow company, a mortgage lender, your broker, the buyer's broker, or the person acquiring the biggest interest in the property.

Your Form 1099-S will show the gross proceeds from the sale or exchange in box 2. See the Instructions for Form 8949 and the Instructions for Schedule D (Form 1040) for how to report these transactions and include them in Part I or Part II of Form 8949, as appropriate. However, report like-kind exchanges on Form 8824 instead.

It is unlawful for any real estate reporting person to separately charge you for complying with the requirement to file Form 1099-S.

Nominees. If you receive gross proceeds as a nominee (that is, the gross proceeds are in your name but actually belong to someone else), see the Instructions for Form 8949 for how to report these amounts on Form 8949.

File Form 1099-B or Form 1099-S with the IRS. If you received gross proceeds as a nominee in 2022, you must file a Form 1099-B or Form 1099-S for those proceeds with the IRS. Send the Form 1099-B or Form 1099-S with a Form 1096 to your Internal Revenue Service Center by February 28, 2023 (March 31, 2023, if you file Form 1099-B or Form 1099-S electronically). Give the actual owner of the proceeds Copy B of the Form 1099-B or Form 1099-S by February 15, 2023. On Form 1099-B, you should be listed as the “Payer.” The actual owner should be listed as the “Recipient.” On Form 1099-S, you should be listed as the “Filer.” The actual owner should be listed as the “Transferor.” You do not have to file a Form 1099-B or Form 1099-S to show proceeds for your spouse. For more information about the reporting requirements and the penalties for failure to file (or furnish) certain information returns, see the General Instructions for Certain Information Returns.

Sale of property bought at various times. If you sell a block of stock or other property that you bought at various times, report the short-term gain or loss from the sale on one row in Part I of Form 8949 and the long-term gain or loss on one row in Part II of Form 8949. Enter “Various” in column (b) for the “Date acquired.”

Sale expenses. On Form 8949, include in column (g) any expense of sale, such as broker's fees, commissions, state and local transfer taxes, and option premiums, unless you reported the net sales price in column (d). If you include an expense of sale in column (g), enter “E” in column (f).

Short-term gains and losses. Capital gain or loss on the sale or trade of investment property held 1 year or less is a short-term capital gain or loss. You report it in Part I of Form 8949.

You combine your share of short-term capital gain or loss from partnerships, S corporations, and fiduciaries, and any short-term capital loss carryover, with your other short-term capital gains and losses to figure your net short-term capital gain or loss on line 7 of Schedule D (Form 1040).

Long-term gains and losses. A capital gain or loss on the sale or trade of investment property held more than 1 year is a long-term capital gain or loss. You report it in Part II of Form 8949.

You also report the following in Part II of Schedule D (Form 1040).

- Undistributed long-term capital gains from a mutual fund (or other regulated investment company) or REIT.
- Your share of long-term capital gains or losses from partnerships, S corporations, and fiduciaries.

- All capital gain distributions from mutual funds and REITs not reported directly on Form 1040, line 7.
- Long-term capital loss carryovers.

The result after combining these items with your other long-term capital gains and losses is your net long-term capital gain or loss (line 15 of Schedule D (Form 1040)).

Total net gain or loss. To figure your total net gain or loss, combine your net short-term capital gain or loss (Schedule D (Form 1040), line 7) with your net long-term capital gain or loss (Schedule D (Form 1040), line 15). Enter the result on Schedule D (Form 1040), Part III, line 16. If your losses are more than your gains, see *Capital Losses*, next. If both lines 15 and 16 of your Schedule D (Form 1040) are gains and your taxable income on your Form 1040 is greater than zero, see *Capital Gain Tax Rates*, later.

Worksheet 4-1. **Capital Loss Carryover Worksheet** *Keep for Your Records*

Use this worksheet to figure your capital loss carryovers from 2022 to 2023 if Schedule D (Form 1040), line 21, is a loss and (a) that loss is a smaller loss than the loss on Schedule D (Form 1040), line 16, or (b) if the amount on your 2022 Form 1040, line 15, would be less than zero if you could enter a negative amount on that line. Otherwise, you do not have any carryovers.

1.	Enter the amount from Form 1040, line 15. If the amount would have been a loss, if you could enter a negative number on that line, enclose the amount in parentheses		**1.** ______
2.	Enter the loss from Schedule D (Form 1040), line 21, as a positive amount		**2.** ______
3.	Combine lines 1 and 2. If zero or less, enter -0-		**3.** ______
4.	Enter the smaller of line 2 or line 3		**4.** ______
	If line 7 of Schedule D is a loss, go to line 5; otherwise, enter -0- on line 5 and go to line 9.		
5.	Enter the loss from Schedule D (Form 1040), line 7, as a positive amount		**5.** ______
6.	Enter any gain from Schedule D (Form 1040), line 15. If a loss, enter -0-	**6.** ______	
7.	Add lines 4 and 6		**7.** ______
8.	**Short-term capital loss carryover to 2023.** Subtract line 7 from line 5. If zero or less, enter -0-		**8.** ______
	If line 15 of Schedule D is a loss, go to line 9; otherwise, skip lines 9 through 13.		
9.	Enter the loss from Schedule D (Form 1040), line 15, as a positive amount		**9.** ______
10.	Enter any gain from Schedule D (Form 1040), line 7	**10.** ______	
11.	Subtract line 5 from line 4. If zero or less, enter -0-	**11.** ______	
12.	Add lines 10 and 11		**12.** ______
13.	**Long-term capital loss carryover to 2023.** Subtract line 12 from line 9. If zero or less, enter -0-		**13.** ______

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Capital Losses

If your capital losses are more than your capital gains, you can claim a capital loss deduction. Report the deduction on Form 1040, line 7, enclosed in parentheses.

Limit on deduction. Your allowable capital loss deduction, figured on Schedule D (Form 1040), is the lesser of:

- $3,000 ($1,500 if you are married and file a separate return), or
- Your total net loss as shown on line 16 of Schedule D (Form 1040).

You can use your total net loss to reduce your income dollar for dollar, up to the $3,000 limit.

Capital loss carryover. If you have a total net loss on line 16 of Schedule D (Form 1040) that is more than the yearly limit on capital loss deductions, you can carry over the unused part to the next year and treat it as if you had incurred it in that next year. If part of the loss is still unused, you can carry it over to later years until it is completely used up.

When you figure the amount of any capital loss carryover to the next year, you must take the current year's allowable deduction into account, whether or not you claimed it and whether or not you filed a return for the current year.

When you carry over a loss, it remains long term or short term. A long-term capital loss you carry over to the next tax year will reduce that year's long-term capital gains before it reduces that year's short-term capital gains.

Figuring your carryover. The amount of your capital loss carryover is the amount of your total net loss that is more than the lesser of:

1. Your allowable capital loss deduction for the year, or
2. Your taxable income increased by your allowable capital loss deduction for the year.

If your deductions are more than your gross income for the tax year, use your negative taxable income in figuring the amount in (2) above.

Complete Worksheet 4-1 to determine the part of your capital loss that you can carry over.

Example. Bob and Shelly sold securities in 2022. The sales resulted in a capital loss of $7,000. They had no other capital transactions. Their taxable income was $26,000. On their joint 2022 return, they can deduct $3,000. The unused part of the loss, $4,000 ($7,000 − $3,000), can be carried over to 2023.

If their capital loss had been $2,000, their capital loss deduction would have been $2,000. They would have no carryover.

Use short-term losses first. When you figure your capital loss carryover, use your short-term capital losses first, even if you incurred them after a long-term capital loss. If you have not reached the limit on the capital loss deduction after using the short-term capital losses, use the long-term capital losses until you reach the limit.

Decedent's capital loss. A capital loss sustained by a decedent during his or her last tax year (or carried over to that year from an earlier year) can be deducted only on the final income tax return filed for the decedent. The capital loss limits discussed earlier still apply in this situation. The decedent's estate cannot deduct any of the loss or carry it over to following years.

Joint and separate returns. If you and your spouse once filed separate returns and are now filing a joint return, combine your separate capital loss carryovers. However, if you and your spouse once filed a joint return and are now filing separate returns, any capital loss carryover from the joint return can be deducted only on the return of the spouse who actually had the loss.

Capital Gain Tax Rates

The tax rates that apply to a net capital gain are generally lower than the tax rates that apply to other income. These lower rates are called the maximum capital gain rates.

The term "net capital gain" means the amount by which your net long-term capital gain for the year is more than your net short-term capital loss.

For 2022, the maximum capital gain rates are 0%, 15%, 20%, 25%, and 28%. See Table 4-4 for details.

TIP *If you figure your tax using the maximum capital gain rate and the regular tax computation results in a lower tax, the regular tax computation applies.*

Example. All of your net capital gain is from selling collectibles, so the capital gain rate would be 28%. If you are otherwise subject to a rate lower than 28%, the 28% rate does not apply.

Investment interest deducted. If you claim a deduction for investment interest, you may have to reduce the amount of your net capital gain that is eligible for the capital gain tax rates. Reduce it by the amount of the net capital gain you choose to include in investment income when figuring the limit on your investment interest deduction. This is done on the Schedule D Tax Worksheet or the Qualified Dividends and Capital Gain Tax Worksheet. For more information about the limit on investment interest, see *Interest Expenses* in chapter 3.

28% rate gain. This gain includes gain or loss from the sale of collectibles and the eligible gain from the sale of qualified small business stock minus the section 1202 exclusion.

Collectibles gain or loss. This is gain or loss from the sale or trade of a work of art, rug, antique, metal (such as gold, silver, and platinum bullion), gem, stamp, coin, or alcoholic beverage held more than 1 year.

Collectibles gain includes gain from the sale of an interest in a partnership, S corporation, or trust due to unrealized appreciation of collectibles.

Gain on qualified small business stock. If you realized a gain from qualified small business stock that you held more than 5 years, you can generally exclude some or all of your gain under section 1202. The eligible gain minus your section 1202 exclusion is a 28% rate gain. See *Gains on Qualified Small Business Stock*, earlier in this chapter.

Unrecaptured section 1250 gain. Generally, this is any part of your capital gain from selling section 1250 property (real property) that is due to depreciation (but not more than your net section 1231 gain), reduced by any net loss in the 28% group. Use the Unrecaptured Section 1250 Gain Worksheet in the Schedule D (Form 1040) instructions to figure your unrecaptured section 1250 gain. For more information about section 1250 property and section 1231 gain, see chapter 3 of Pub. 544.

Tax computation using maximum capital gain rates. Use the Qualified Dividends and Capital Gain Tax Worksheet or the Schedule D Tax Worksheet (whichever applies) to figure your tax if you have qualified dividends or net capital gain. You have net capital gain if

Schedule D (Form 1040), lines 15 and 16, are both gains.

Schedule D Tax Worksheet. Use the Schedule D Tax Worksheet in the Schedule D (Form 1040) instructions to figure your tax if:

- You have to file Schedule D (Form 1040); and
- Schedule D (Form 1040), line 18 (28% rate gain) or line 19 (unrecaptured section 1250 gain), is more than zero.

Qualified Dividends and Capital Gain

Tax Worksheet. If you do not have to use the Schedule D Tax Worksheet (as explained above) and any of the following apply, use the Qualified Dividends and Capital Gain Tax Worksheet in the Instructions for Form 1040 to figure your tax.

- You received qualified dividends. (See *Qualified Dividends* in chapter 1.)

- You do not have to file Schedule D (Form 1040) and you received capital gain distributions. (See *Exceptions to filing Form* *8949 and Schedule D (Form 1040)*, earlier.)
- Schedule D (Form 1040), lines 15 and 16, are both more than zero.

Alternative minimum tax. These capital gain rates are also used in figuring alternative minimum tax.

Special Rules for Traders in Securities or Commodities

Special rules apply if you are a trader in securities or commodities in the business of buying and selling securities or commodities for your own account. To be engaged in business as a trader in securities or commodities, you must meet all the following conditions.

- You must seek to profit from daily market movements in the prices of securities or commodities and not from dividends, interest, or capital appreciation.
- Your activity must be substantial.
- You must carry on the activity with continuity and regularity.

The following facts and circumstances should be considered in determining if your activity is a securities or commodities trading business.

- Typical holding periods for securities or commodities bought and sold.
- The frequency and dollar amount of your trades during the year.
- The extent to which you pursue the activity to produce income for a livelihood.
- The amount of time you devote to the activity.

If your trading activities do not meet the above definition of a business, you are considered an investor, and not a trader. It does not matter whether you call yourself a trader or a “day trader.”

How To Report

Transactions from trading activities result in capital gains and losses (unless a section 475(f) election has been made) and must be reported on Form 8949 and Schedule D (Form 1040), as appropriate. Losses from these transactions are subject to the limit on capital losses explained earlier in this chapter.

Mark-to-market election made. If you made the section 475(f) mark-to-market election, you should report all gains and losses from trading as ordinary gains and losses in Part II of Form 4797, instead of as capital gains and losses on Form 8949 and Schedule D (Form 1040). In that case, securities or commodities (depending upon which election was made) held at the end of the year in your business as a trader are marked to market by treating them as if they were sold for fair market value on the last business day of the year and gain or loss is recognized. But do not mark to market any securities or commodities you held for investment. Report sales from those securities or commodities on Form 8949 and Schedule D (Form 1040), as appropriate, not Form 4797. See the Instructions for Form 8949 and the Instructions for Schedule D (Form 1040).

Note. You may be a trader in some securities or commodities and have some securities or commodities that are not held in connection with your activities as a trader, such as those held for investment. The special rules for marking to market discussed here do not apply to the securities or commodities held for investment. You must keep detailed records to distinguish those securities or commodities. The securities or commodities held for investment must be identified as such in your records on the day you acquired them (for example, by holding them in a separate brokerage account) specifically identified under section 475.

Expenses. Interest expense and other investment expenses that an investor would deduct on Schedule A (Form 1040) are deducted by a trader on Schedule C (Form 1040), Profit or Loss From Business, if the expenses are from the trading business. Commissions and other costs of acquiring or disposing of securities or commodities (depending upon which election was made) are not deductible but must be used to figure gain or loss. The limit on investment interest expense, which applies to investors, does not apply to interest paid or incurred in a trading business.

Self-employment tax. Gains and losses from selling securities or commodities as a trader are not subject to self-employment tax. This is true whether the election is made or not. For an exception that applies to section 1256 contracts, see *Self-Employment Income*, earlier.

How To Make the Mark-to-Market Election

To make the mark-to-market election for 2023, you must have filed an election statement no later than the due date for your 2022 return (without regard to extensions). The statement must be attached to that return or with a properly filed request for extension of time to file that 2022 return (Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return). The statement must have included the following information.

- That you are making an election under section 475(f)(1) or (f)(2) of the Internal
- Revenue Code.
- The first tax year for which the election is effective.
- The trade or business for which you are making the election.

If you are a new taxpayer and not required to file a 2022 income tax return, you make the election for 2022 by placing the above statement in your books and records no later than March 15, 2023. Attach a copy of the statement to your 2023 return.

If your method of accounting for 2022 is inconsistent with the mark-to-market election, you must change your method of accounting for

Table 4-4. **What Is Your Maximum Capital Gain Rate?**

IF your net capital gain is from...	**AND...**	**THEN your maximum capital gain rate is...**
collectibles gain		**28%**
eligible gain on qualified small business stock minus the section 1202 exclusion		**28%**
unrecaptured section 1250 gain		**25%**
other gain[1] and the regular tax rate that would apply is 37%	**your taxable income is...** $517,201 or more if married filing jointly or surviving spouse; $488,501 or more if head of household; $258,601 or more if married filing separately; $459,751 or more if single; or $13,701 or more if estate or trust…	**20%**
other gain[1] and the regular tax rate that would apply is 22%, 24%, 32%, or 35%	**your taxable income is...** $83,351 – $517,200 if married filing jointly or surviving spouse; $55,801 – $488,500 if head of household; $41,676 – $258,600 if married filing separately; $41,676 – $459,750 if single; or $2,801 – $13,700 if estate or trust…	**15%**
other gain[1] and the regular tax rate that would apply is 10% or 12%	**your taxable income is...** $0 – $83,350 if married filing jointly or surviving spouse; $0 – $55,800 if head of household; $0 – $41,675 if married filing separately; $0 – $41,675 if single; or $0 – $2,800 if estate or trust…	**0%**

[1] "Other gain" means any gain that is not collectibles gain, gain on small business stock, or unrecaptured section 1250 gain.

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securities under Revenue Procedure 2022-14 (or its successor), available at *IRS.gov/irb/2022-07_IRB#REV-PROC-2022-14*. Revenue Procedure 2022-14 requires you to file Form 3115, Application for Change in Accounting Method. Follow its instructions. Enter “64” on line 1a of the Form 3115.

Once you make the election, it will apply to 2023 and all later tax years, unless you get per-mission from the IRS to revoke it. The effect of making the election is described under *Mark-to-market election made*, earlier.

For more information on this election, see Revenue Procedure 99-17, on page 52 of Internal Revenue Bulletin 1999-7 at *IRS.gov/pub/irs-irbs/irb99-07.pdf*.

5.

How To Get Tax Help

If you have questions about a tax issue; need help preparing your tax return; or want to down-load free publications, forms, or instructions, go to *IRS.gov* to find resources that can help you right away.

Preparing and filing your tax return. After receiving all your wage and earnings statements (Forms W-2, W-2G, 1099-R, 1099-MISC, 1099-NEC, etc.); unemployment compensation statements (by mail or in a digital format) or other government payment statements (Form 1099-G); and interest, dividend, and retirement statements from banks and investment firms (Forms 1099), you have several options to choose from to prepare and file your tax return. You can prepare the tax return yourself, see if you qualify for free tax preparation, or hire a tax professional to prepare your return.

Free options for tax preparation. Go to *IRS.gov* to see your options for preparing and filing your return online or in your local community, if you qualify, which include the following.

- **Free File.** This program lets you prepare and file your federal individual income tax return for free using brand-name tax-preparation-and-filing software or Free File fillable forms. However, state tax preparation may not be available through Free File. Go to *IRS.gov/FreeFile* to see if you qualify for free online federal tax preparation, e-filing, and direct deposit or payment options.
- **VITA.** The Volunteer Income Tax Assistance (VITA) program offers free tax help to people with low-to-moderate incomes, persons with disabilities, and limited-English-speaking taxpayers who need help

preparing their own tax returns. Go to *IRS.gov/VITA*, download the free IRS2Go app, or call 800-906-9887 for information on free tax return preparation.

- **TCE.** The Tax Counseling for the Elderly (TCE) program offers free tax help for all taxpayers, particularly those who are 60 years of age and older. TCE volunteers specialize in answering questions about pensions and retirement-related issues unique to seniors. Go to *IRS.gov/TCE,* download the free IRS2Go app, or call 888-227-7669 for information on free tax return preparation.
- **MilTax.** Members of the U.S. Armed Forces and qualified veterans may use MilTax, a free tax service offered by the Department of Defense through Military OneSource. For more

information, go to *MilitaryOneSource* (*MilitaryOneSource.mil/ MilTax*).

Also, the IRS offers Free Fillable Forms, which can be completed online and then filed electronically regardless of income.

Using online tools to help prepare your return. Go to *IRS.gov/Tools* for the following.

- The *Earned Income Tax Credit Assistant* (*IRS.gov/EITCAssistant*) determines if you're eligible for the earned income credit (EIC).
- The *Online EIN Application* (*IRS.gov/EIN*) helps you get an employer identification number (EIN) at no cost.
- The *Tax Withholding Estimator* (*IRS.gov/ W4app*) makes it easier for you to estimate the federal income tax you want your employer to withhold from your paycheck. This is tax withholding. See how your withholding

affects your refund, take-home pay, or tax due.

- The *First-Time Homebuyer Credit Account Look-up* (*IRS.gov/HomeBuyer*) tool provides information on your repayments and account balance.
- The *Sales Tax Deduction Calculator* (*IRS.gov/SalesTax*) figures the amount you can claim if you itemize deductions on Schedule A (Form 1040).

Getting answers to your tax questions. On IRS.gov, you can get up-to-date information on current events and changes in tax law.

- *IRS.gov/Help*: A variety of tools to help you get answers to some of the most common tax questions.
- *IRS.gov/ITA*: The Interactive Tax Assistant, a tool that will ask you

questions and, based on your input, provide answers on a number of tax law topics.

- *IRS.gov/Forms*: Find forms, instructions, and publications. You will find details on the most recent tax changes and interactive links to help you find answers to your questions.
- You may also be able to access tax law information in your electronic filing software.

Need someone to prepare your tax return? There are various types of tax return preparers, including enrolled agents, certified public accountants (CPAs), accountants, and many others who don’t have professional credentials. If you choose to have someone prepare your tax return, choose that preparer wisely. A paid tax preparer is:

- Primarily responsible for the overall substantive accuracy of your return,

- Required to sign the return, and
- Required to include their preparer tax identification number (PTIN).

Although the tax preparer always signs the return, you're ultimately responsible for providing all the information required for the preparer to accurately prepare your return. Anyone paid to prepare tax returns for others should have a thorough understanding of tax matters. For more information on how to choose a tax preparer, go to *Tips for Choosing a Tax Preparer* on IRS.gov.

Coronavirus. Go to *IRS.gov/Coronavirus* for links to information on the impact of the coronavirus, as well as tax relief available for individuals and families, small and large businesses, and tax-exempt organizations.

Employers can register to use Business Services Online. The Social Security Administration (SSA) offers online service at *SSA.gov/ employer* for fast, free, and secure online W-2 filing options to CPAs, accountants, enrolled agents, and individuals who process Form W-2, Wage and Tax Statement, and Form W-2c, Corrected Wage and Tax Statement.

IRS social media. Go to *IRS.gov/SocialMedia* to see the various social media tools the IRS uses to share the latest information on tax changes, scam alerts, initiatives, products, and services. At the IRS, privacy and security are our highest priority. We use these tools to share public information with you. **Don’t** post your social security number (SSN) or other confidential information on social media sites. Always protect your identity when using any social networking site.

The following IRS YouTube channels provide short, informative videos on various tax-related topics in English, Spanish, and ASL.

- *Youtube.com/irsvideos*.
- *Youtube.com/irsvideosmultilingua*.
- *Youtube.com/irsvideosASL*.

Watching IRS videos. The IRS Video portal (*IRSVideos.gov*) contains video and audio presentations for individuals, small businesses, and tax professionals.

Online tax information in other languages. You can find information on *IRS.gov/ MyLanguage* if English isn't your native language.

Free Over-the-Phone Interpreter (OPI) Service. The IRS is committed to serving our multilingual customers by offering OPI services. The OPI Service is a federally funded program and is available at Taxpayer Assistance Centers (TACs), other IRS offices, and every VITA/TCE return site. The OPI Service is accessible in more than 350 languages.

Accessibility Helpline available for taxpayers with disabilities. Taxpayers who need information about accessibility services can call 833-690-0598. The Accessibility Helpline can answer questions related to current and future accessibility products and services available in alternative media formats (for example, braille, large print, audio, etc.). The Accessibility Helpline does not have access to your IRS account. For help with tax law, refunds, or account-related issues, go to *IRS.gov/LetUsHelp*.

Note. Form 9000, Alternative Media Preference, or Form 9000(SP) allows you to elect to receive certain types of written correspondence in the following formats.

- Standard Print.
- Large Print.
- Braille.
- Audio (MP3).

- Plain Text File (TXT).
- Braille Ready File (BRF).

Disasters. Go to *Disaster Assistance and Emergency Relief for Individuals and Businesses* to review the available disaster tax relief.

Getting tax forms and publications. Go to *IRS.gov/Forms* to view, download, or print all the forms, instructions, and publications you may need. Or, you can go to *IRS.gov/OrderForms* to place an order.

Getting tax publications and instructions in eBook format. You can also download and view popular tax publications and instructions (including the Instructions for Form 1040) on mobile devices as eBooks at *IRS.gov/eBooks*.

Note. IRS eBooks have been tested using Apple's iBooks for iPad. Our eBooks haven’t been tested on other dedicated eBook readers, and eBook functionality may not operate as intended.

Access your online account (individual taxpayers only). Go to *IRS.gov/Account* to securely access information about your federal tax account.

- View the amount you owe and a breakdown by tax year.
- See payment plan details or apply for a new payment plan.
- Make a payment or view 5 years of payment history and any pending or scheduled payments.
- Access your tax records, including key data from your most recent tax return, and transcripts.
- View digital copies of select notices from the IRS.
- Approve or reject authorization requests from tax professionals.
- View your address on file or manage your communication preferences.

Tax Pro Account. This tool lets your tax professional submit an authorization request to access your individual taxpayer *IRS online account*. For more information, go to *IRS.gov/TaxProAccount*.

Using direct deposit. The fastest way to receive a tax refund is to file electronically and choose direct deposit, which securely and electronically transfers your refund directly into your financial account. Direct deposit also avoids the possibility that your check could be lost, stolen, destroyed, or returned undeliverable to the IRS. Eight in 10 taxpayers use direct deposit to receive their refunds. If you don't have a bank account, go to *IRS.gov/DirectDeposit* for more information on where to find a bank or credit union that can open an account online.

Getting a transcript of your return. The quickest way to get a copy of your tax transcript is to go to *IRS.gov/Transcripts*. Click on either "Get Transcript Online" or "Get

Transcript by Mail” to order a free copy of your transcript. If you prefer, you can order your transcript by calling 800-908-9946.

Reporting and resolving your tax-related identity theft issues.

- Tax-related identity theft happens when someone steals your personal information to commit tax fraud. Your taxes can be affected if your SSN is used to file a fraudulent return or to claim a refund or credit.
- The IRS doesn’t initiate contact with taxpayers by email, text messages (including shortened links), telephone calls, or social media channels to request or verify personal or financial information. This includes requests for personal identification numbers (PINs), passwords, or similar information for credit cards, banks, or other financial accounts.

- Go to *IRS.gov/IdentityTheft,* the IRS Identity Theft Central webpage, for information on identity theft and data security protection for taxpayers, tax professionals, and businesses. If your SSN has been lost or stolen or you suspect you're a victim of tax-related identity theft, you can learn what steps you should take.
- Get an Identity Protection PIN (IP PIN). IP PINs are six-digit numbers assigned to taxpayers to help prevent the misuse of their SSNs on fraudulent federal income tax returns. When you have an IP PIN, it prevents someone else from filing a tax return with your SSN. To learn more, go to *IRS.gov/IPPIN.*