What's New

Section 1045 rollovers. There are new reporting requirements for a section 1045 rollover of gains from the sale of qualified small business stock. See page 3 of these instructions and the instructions for line 11 of Schedule K in the Instructions for Form 1065 for more information.

General Instructions

Section references are to the Internal Revenue Code.

Purpose of Schedule

Use Schedule D (Form 1065) to report sales or exchanges of capital assets, capital gain distributions, and nonbusiness bad debts. Do not report on Schedule D capital gains (losses) specially allocated to any partners.

Enter capital gains (losses) specially allocated to the partnership as a partner in other partnerships and from estates and trusts on Schedule D, line 4 or 9, whichever applies. Enter capital gains (losses) of the partnership that are specially allocated to partners directly on line 8, 9a, or 11 of Schedule K. See *How Income Is Shared Among Partners* in the Instructions for Form 1065 for more information.

Note. *For more information, see Pub. 544, Sales and Other Dispositions of Assets.*

Other Forms The Partnership May Have To File

Use Form 4797, Sales of Business Property, to report:

c Sales or exchanges of property used in a trade or business.

c Sales or exchanges of depreciable or amortizable property.

c Sales or other dispositions of securities or commodities held in connection with a trading business, if the partnership made a mark-to-market election (see page 5 of the instructions for Form 1065).

c Involuntary conversions (other than from casualties or thefts).

c The disposition of noncapital assets (other than inventory or property held primarily for sale to customers in the ordinary course of a trade or business).

Use Form 4684, Casualties and Thefts, to report involuntary conversions of property due to casualty or theft.

Use Form 6781, Gains and Losses From Section 1256 Contracts and Straddles, to report gains and losses from section 1256 contracts and straddles. If there are limited partners, see section 1256(e)(4) for the limitation on losses from hedging transactions.

Use Form 8824, Like-Kind Exchanges, if the partnership made one or more like-kind exchanges. A "like-kind exchange" occurs when business or investment property is exchanged for property of a like kind.

What Are Capital Assets?

Each item of property the partnership held (whether or not connected with its trade or business) is a capital asset except:

c Stock in trade or other property included in inventory or held mainly for sale to customers.

c Accounts or notes receivable acquired in the ordinary course of the trade or business for services rendered or from the sale of stock in trade or other property held mainly for sale to customers.

c Depreciable or real property used in the trade or business, even if it is fully depreciated.

c Certain copyrights; literary, musical, or artistic compositions; letters or memoranda; or similar property. See section 1221(a)(3).

c U.S. Government publications, including the Congressional Record, that the partnership received from the Government, other than by purchase at the normal sales price, or that the partnership got from another taxpayer who had received it in a similar way, if the partnership's basis is determined by reference to the previous owner.

c Certain commodities derivative financial instruments held by a dealer. See section 1221(a)(6).

c Certain hedging transactions entered into in the normal course of the trade or business. See section 1221(a)(7).

c Supplies regularly used in the trade or business.

Items for Special Treatment

c Transactions by a securities dealer. See section 1236.

c Bonds and other debt instruments. See Pub. 550, Investment Income and Expenses.

c Certain real estate subdivided for sale that may be considered a capital asset. See section 1237.

c Gain on the sale of depreciable property to a more than 50%-owned entity, or to a trust in which the partnership is a beneficiary, is treated as ordinary gain.

c Liquidating distributions from a corporation. See Pub. 550 for details.

c Gain on the sale or exchange of stock in certain foreign corporations. See section 1248.

c Gain or loss on options to buy or sell, including closing transactions. See Pub. 550 for details.

c Gain or loss from a short sale of property. See Pub. 550 for details.

c Transfer of property to a political organization if the fair market value (FMV) of the property exceeds the partnership's adjusted basis in such property. See section 84.

c Any loss on the disposition of converted wetland or highly erodible cropland that is first used for farming after March 1, 1986, is reported as a long-term capital loss on Schedule D, but any gain on such a disposition is reported as ordinary income on Form 4797. See section 1257 for details.

c Transfer of partnership assets and liabilities to a newly formed corporation in exchange for all of its stock. See Rev. Rul. 84-111, 1984-2 C.B. 88.

c Disposition of foreign investment in a U.S. real property interest. See section 897.

c Any loss from a sale or exchange of property between the partnership and certain related persons is not allowed, except for distributions in complete liquidation of a corporation. See sections 267 and 707(b) for details.

c Any loss from securities that are capital assets that become worthless during the year is treated as a loss from the sale or exchange of a capital asset on the last day of the tax year.

c Nonrecognition of gain on sale of stock to an employee stock ownership plan (ESOP) or an eligible cooperative. See section 1042 and Temporary Regulations section 1.1042-1T for rules under which the partnership may elect not to recognize gain from the sale of certain stock to an ESOP or an eligible cooperative.

c A nonbusiness bad debt must be treated as a short-term capital loss and can be deducted only in the year the debt becomes totally worthless. For each bad debt, enter the name of the debtor and "schedule attached" in column (a) of line 1 and the amount of the bad debt as a loss in column (f). Also attach a statement of facts to support each bad debt deduction.

c Any loss from a wash sale of stock or securities (including contracts or options to acquire or sell stock or securities) cannot be deducted unless the partnership is a dealer in stock or securities and the loss was sustained in a transaction made in the ordinary course of the partnership's trade or business. A wash sale occurs if the partnership acquires (by purchase or exchange), or has a contract or option to acquire, substantially identical stock or securities within 30 days before or after the date of the sale or exchange. See section 1091 for more information.

c Gain from installment sales. If the partnership sold property at a gain and it will receive a payment in a tax year after the year of sale, it generally must report the sale on the installment method unless it elects not to. However, the installment method may not be used to report sales of stock or securities traded on an established securities market. Use Form 6252, Installment Sale Income, to report the sale on the installment method. Also use Form 6252 to report any payment received during the tax year from a sale made in an earlier year that was reported on the installment method.

If the partnership wants to elect out of the installment method for installment gain that is not specially allocated among the partners, it must report the full amount of the gain on a timely filed return (including extensions).

If the partnership wants to elect out of the installment method for installment gain that is specially allocated among the partners, it must do the following on a timely filed return (including extensions):

1. For a short-term capital gain, report the full amount of the gain on Schedule K, line 8 or 11.

For a long-term capital gain, report the full amount of the gain on Schedule K, line 9a or 11. Report the collectibles (28%) gain on Schedule K, line 9b.

2. Enter each partner's share of the full amount of the gain on Schedule K-1, box 8 or 9a, or in box 11 using code F, whichever applies. Report the collectibles (28%) gain on Schedule K-1, box 9b.

If the partnership filed its original return on time without making the election, it may make the election on an amended return filed no later than 6 months after the due date of the return (excluding extensions). Write "Filed pursuant to section 301.9100-2" at the top of the amended return.

c A sale or other disposition of an interest in a partnership owning unrealized receivables or inventory items may result in ordinary gain or loss. See Pub. 541, Partnerships, for more details.

c Gain from certain constructive ownership transactions. Gain in excess of the gain that would have been recognized if the partnership had held a financial asset directly during the term of a derivative contract must be treated as ordinary income. See section 1260 for details.

c Gain from the sale of collectibles. Report any collectibles (28%) gain (loss) included on lines 6 through 10 on line 9b of Schedule K (and each partner's share in box 9b of Schedule K-1). A collectibles (28%) gain (loss) is any long-term gain or deductible long-term loss from the sale or exchange of a collectible that is a capital asset.

Collectibles include works of art, rugs, antiques, metals (such as gold, silver, and platinum bullion), gems, stamps, coins, alcoholic beverages, and certain other tangible property.

Also include gain (but not loss) from the sale or exchange of an interest in a partnership or trust held more than 1 year and attributable to unrealized appreciation of collectibles. For details, see Regulations section 1.1(h)-1. Also, attach the statement reguired under Regulations section 1.1(h)-1(e).

Special rules for traders in securities. Traders in securities are engaged in the business of buying and selling securities for their own account. To be engaged in business as a trader in securities:

c The partnership must seek to profit from daily market movements in the prices of securities and not from dividends, interest, or capital appreciation.

c The partnership's trading activity must be substantial.

c The partnership must carry on the activity with continuity and regularity.

The following facts and circumstances should be considered in determining if a partnership's activity is a business:

c Typical holding periods for securities bought and sold.

c The frequency and dollar amount of the partnership's trades during the year.

c The extent to which the partners pursue the activity to produce income for a livelihood.

c The amount of time devoted to the activity.

Like an investor, a trader must report each sale of securities (taking into account commissions and any other costs of acquiring or disposing of the securities) on Schedule D or on an attached statement containing all the same information for each sale in a similar format. However, if a trader made the mark-to-market election (see page 5 of the *Instructions for Form 1065*), each transaction is reported in Part II of Form 4797 instead of Schedule D. Regardless of whether a trader reports its gains and losses on Schedule D or Form 4797, the gain or loss from the disposition of securities is not taken into account when figuring net earnings from self-employment on Schedules K and K-1. See section 1402(i) for an exception that applies to section 1256 contracts.

The limitation on investment interest expense that applies to investors does not apply to interest paid or incurred in a trading business. A trader reports interest expense and other expenses (excluding commissions and other costs of acquiring or disposing of securities) from a trading business on page 1 of Form 1065.

A trader also may hold securities for investment. The rules for investors generally will apply to those securities. Allocate interest and other expenses between the partnership's trading business and its investment securities. Investment interest expense is reported on line 13b of Schedule K and in box 13 of Schedule K-1 using code G.

Constructive sale treatment for certain appreciated positions. Generally, the partnership must recognize gain (but not loss) on the date it enters into a constructive sale of any appreciated position in stock, a partnership interest, or certain debt instruments as if the position were disposed of at FMV on that date.

The partnership is treated as making a constructive sale of an appreciated position when it (or a related person, in some cases) does one of the following:

c Enters into a short sale of the same or substantially identical property (that is, a "short sale against the box").

c Enters into an offsetting notional principal contract relating to the same or substantially identical property.

c Enters into a futures or forward contract to deliver the same or substantially identical property.

c Acquires the same or substantially identical property (if the appreciated position is a short sale, offsetting notional principal contract, or a futures or forward contract).

Exception. Generally, constructive sale treatment does not apply if:

c The partnership closed the transaction before the end of the 30th day after the end of the year in which it was entered into,

c The partnership held the appreciated position to which the transaction relates throughout the 60-day period starting on the date the transaction was closed, and

c At no time during that 60-day period was the partnership's risk of loss reduced by holding certain other positions.

For details and other exceptions to these rules, see Pub. 550.

Rollover of gain from qualified stock. If the partnership sold qualified small business stock (defined below) it held for more than 6 months, it may postpone gain if it purchased other qualified small business stock during the 60-day period that began on the date of the sale. The partnership must recognize gain to the extent the sale proceeds exceed the cost of the replacement stock. Reduce the basis of the replacement stock by any postponed gain.

If the partnership chooses to postpone gain, report the entire gain realized on the sale on line 1 or 6. Directly below the line on which the partnership reported the gain, enter in column (a) "Section 1045 Rollover" and enter as a (loss) in column (f) the amount of the postponed gain.

Attach a statement for Form 1065 that (a) identifies the replacement qualified small business stock, (b) shows the computation of the adjustment to the partnership's basis in the replacement stock for the amount of any postponed gain under section 1045, and (c) shows the dates on which the replacement stock was acquired by the partnership.

Caution. *The partnership also must separately state the amount of the gain rolled over on qualified stock under section 1045 on Form 1065, Schedule K, line 11. Each partner must determine if he or she qualifies for the rollover at the partner level or if he or she wants to opt out of the 1045 election. Also, the partnership must separately state on that line (and not on Schedule D) any gain that would qualify for the section 1045 rollover at the partner level instead of the partnership level (because a partner was entitled to purchase replacement stock) and any gain on qualified stock that could qualify for the partial exclusion under section 1202.*

To be qualified small business stock, the stock must meet all of the following tests:

c It must be stock in a C corporation (that is, not S corporation stock).

c It must have been originally issued after August 10, 1993.

c As of the date the stock was issued, the corporation was a qualified small business. A qualified small business is a domestic C corporation with total gross assets of $50 million or less (a) at all times after August 9, 1993, and before the stock was issued and (b) immediately after the stock was issued. Gross assets include those of any predecessor of the corporation. All corporations that are members of the same parent-subsidiary controlled group are treated as one corporation.

c The partnership must have acquired the stock at its original issue (either directly or through an underwriter), either in exchange for money or other property or as pay for services (other than as an underwriter) to the corporation. In certain cases, the partnership may meet the test if it acquired the stock from another person who met this test (such as by gift or at death) or through a conversion or exchange of qualified business stock by the holder.

c During substantially all the time the partnership held the stock:

1. The corporation was a C corporation,

2. At least 80% of the value of the corporation's assets were used in the active conduct of one or more qualified businesses (defined below), and

3. The corporation was not a foreign corporation, domestic international sales corporation (DISC), former DISC, corporation that has made (or that has a subsidiary that has made) a section 936 election, regulated investment company (RIC), real estate investment trust (REIT), real estate mortgage investment conduit (REMIC), financial asset securitization investment trust (FASIT), or cooperative.

Note. *A specialized small business investment company (SSBIC) is treated as having met test 2 above.*

A qualified business is any business other than the following:

c One involving services performed in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, or brokerage services.

c One whose principal asset is the reputation or skill of one or more employees.

c Any banking, insurance, financing, leasing, investing, or similar business.

c Any farming business (including the raising or harvesting of trees).

c Any business involving the production of products for which percentage depletion can be claimed.

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

Rollover of gain from empowerment zone assets. If the partnership sold a qualified empowerment zone asset it held for more than 1 year, it may be able to elect to postpone part or all of the gain. For details, see Pub. 954, Tax Incentives for Distressed Communities, and section 1397B.

Exclusion of gain from qualified community assets. If the partnership sold or exchanged a qualified community asset held for more than 5 years, it can exclude any qualified capital gain. The exclusion applies to an interest in, or property of, certain qualified community assets.

Qualified community asset. A qualified community asset is any of the following.

c Qualified community stock.

c Qualified community partnership interest.

c Qualified community business property.

Qualified capital gain. Qualified capital gain is any gain recognized on the sale or exchange of a qualified community asset, but does not include any of the following.

c Gain treated as ordinary income under section 1245.

c Section 1250 gain figured as if section 1250 applied to all depreciation rather than the additional depreciation.

c Gain attributable to real property, or an intangible asset, that is not an integral part of a qualified community business.

c Gain from a related-party transaction. See *Sales and Exchanges Between Related Persons* in chapter 2 of Pub. 544.

c See Pub. 954 and section 1400F for more details on qualified community assets and special rules.

How to report. Report the entire gain realized from the sale or exchange as the partnership otherwise would without regard to the exclusion. On Schedule D, line 6, enter "Qualified Community Asset" in column (a) and enter as a loss in column (f) the amount of the allowable exclusion. If reporting the sale directly on Schedule D, line 6, use the line the partnership is using to report the gain from the sale to report the exclusion.

Exclusion of gain from DC Zone assets. If the partnership sold or exchanged a District of Columbia Enterprise Zone (DC Zone) asset that it held for more than 5 years, it may be able to exclude the qualified capital gain. The sale or exchange of DC Zone capital assets reported on Schedule D includes:

c Stock in a domestic corporation that was a DC Zone business.

c Interest in a partnership that was a DC Zone business.

Report the sale or exchange of property used in the partnership's DC Zone business on Form 4797.

Gains not qualified for exclusion. The following gains do not qualify for the exclusion of gain from DC Zone assets.

c Gain on the sale of an interest in a partnership, which is a DC Zone business, attributable to unrecaptured section 1250 gain. See the instructions for line 9c of Schedule K for information on how to report unrecaptured section 1250 gain.

c Gain on the sale of an interest in a partnership or S corporation attributable to real property or an intangible asset which is not an integral part of the DC Zone business.

c Gain from a related-party transaction. See *Sales and Exchanges Between Related Persons* in chapter 2 of Pub. 544.

See Pub. 954 and section 1400B for more details on DC Zone assets and special rules.

How to report. Report the entire gain realized from the sale or exchange as the partnership otherwise would without regard to the exclusion. To report the exclusion, enter "DC Zone Asset Exclusion" on Schedule D, line 6, column (a) and enter as a (loss) in column (f) the amount of the exclusion.

Specific Instructions

Columns (b) and (c). Date Acquired and Date Sold

Use the trade dates for date acquired and date sold for stocks and bonds traded on an exchange or over-the-counter market. The acquisition date for an asset the partnership held on January 1, 2001, for which it made an election to recognize any gain on a deemed sale, is the date of the deemed sale and reacquisition.

Column (d). Sales Price

Enter in this column either the gross sales price or the net sales price from the sale. On sales of stocks and bonds, report the gross amount as reported to the partnership by the partnership's broker on Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, or similar statement. However, if the broker advised the partnership that gross proceeds (gross sales price) less commissions and option premiums were reported to the IRS, enter that net amount in column (d).

Column (e). Cost or Other Basis

In general, the cost or other basis is the cost of the property plus purchase commissions and improvements and minus depreciation, amortization, and depletion. If the partnership got the property in a tax-free exchange, involuntary conversion, or wash sale of stock, it may not be able to use the actual cash cost as the basis. If the partnership does not use cash cost, attach an explanation of the basis.

If the partnership sold stock, adjust the basis by subtracting all the stock-related nontaxable distributions received before the sale. This includes nontaxable distributions from utility company stock and mutual funds. Also adjust the basis for any stock splits or stock dividends.

If the partnership elected to recognize gain on an asset held on January 1, 2001, its basis in the asset is its closing market price or FMV, whichever applies, on the date of the deemed sale and reacquisition, whether the deemed sale resulted in a gain or an unallowed loss.

If a charitable contribution deduction is passed through to a partner because of a bargain sale of property to a charitable organization, the adjusted basis for determining gain from the sale is an amount that has the same ratio to the adjusted basis as the amount realized has to the FMV.

See section 852(f) for the treatment of certain load charges incurred in acquiring stock in a mutual fund with a reinvestment right.

If the gross sales price is reported in column (d), increase the cost or other basis by any expense of sale, such as broker's fees, commissions, or option premiums, before making an entry in column (e).

For more details, see Pub. 551, Basis of Assets.

Column (f). Gain or (Loss)

Make a separate entry in this column for each transaction reported on lines 1 and 6 and any other line(s) that applies to the partnership. For lines 1 and 6, subtract the amount in column (e) from the amount in column (d). Enter negative amounts in parentheses.

Lines 4 and 9. Capital Gains (Losses) From Other Partnerships, Estates, and Trusts

See the Schedule K-1 or other information supplied to you by the other partnership, estate, or trust.

Line 10. Capital Gain Distributions

On line 10, column (f), report the total amount of (a) capital gain distributions and (b) the partnership's share of undistributed capital gains from a RIC or REIT. Report the partnership's share of taxes paid on undistributed capital gains by a RIC or REIT on a statement attached to Form 1065 for Schedule K, line 15f (and each partner's share in box 15 of Schedule K-1 using code F).