



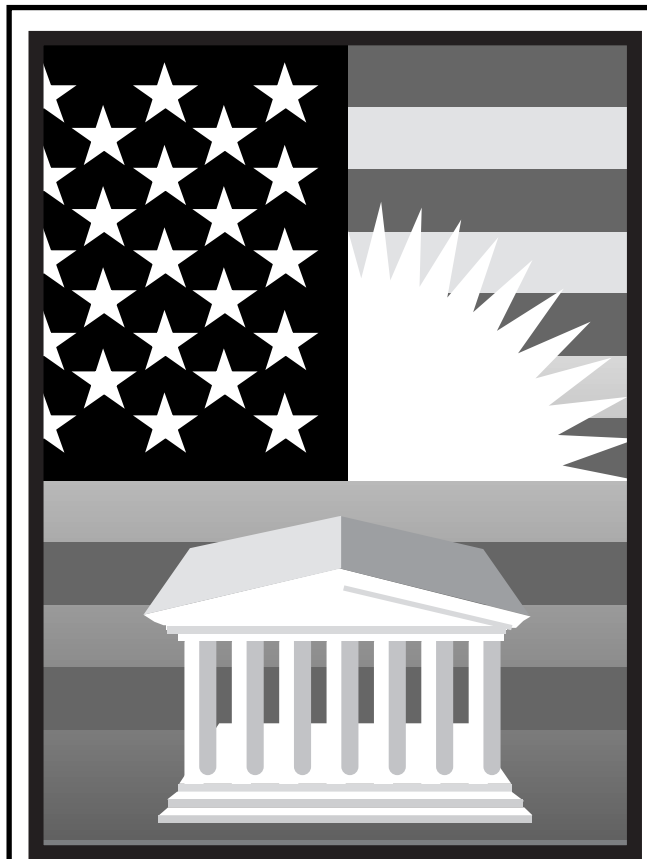
Department
of the
Treasury

Internal
Revenue
Service

Publication 544
Cat. No. 15074K

Sales and Other Dispositions of Assets

For use in preparing
1998 Returns



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Important Changes for 1998

Elimination of 18-month holding period for lowest capital gains rates. Beginning in 1998, you no longer have to hold property for more than 18 months to be eligible for the lowest capital gains rates. Now, in most cases, you only have to hold property more than 1 year to be eligible for the 10% or 20% tax rate. For more information, see *Maximum Tax Rates on Net Capital Gain* in chapter 4.

Exclusion for qualified small business stock. Beginning in 1998, you may be able to exclude one-half of your gain from the sale or exchange of qualified small business stock held more than 5 years. For information on qualifying stock, see *Sales of Small Business Stock* in chapter 1.

Important Reminders

Investing in DC Zone assets. Beginning in 2003, investments in District of Columbia Enterprise Zone (DC Zone) assets held more than 5 years will qualify for a special tax benefit. If you sell or exchange a DC Zone asset at a gain, you will not have to include any qualified capital gain in your gross income. This exclusion applies to an interest in, or property of, certain businesses operating

in the District of Columbia. For more information, see Publication 954, *Tax Incentives for Empowerment Zones and Other Distressed Communities*.

Dispositions of U.S. real property interests by foreign persons. If you are a foreign person or firm and you sell or otherwise dispose of a U.S. real property interest, the buyer (or other transferee) may have to withhold income tax on the amount you receive for the property (including cash, fair market value of other property, and any assumed liability). Corporations, partnerships, trusts, and estates may also have to withhold on certain U.S. real property interests they distribute to you. You must report these dispositions and distributions and any income tax withheld on your U.S. income tax return.

For more information on dispositions of U.S. real property interests, get Publication 519, *U.S. Tax Guide for Aliens*.

Foreign source income. If you are a U.S. citizen with income from dispositions of property outside the United States (foreign income), you must report all such income on your tax return unless it is exempt by U.S. law. This is true whether you reside inside or outside the United States and whether or not you receive a Form 1099 from the foreign payor.

Introduction

This publication explains the tax rules that apply when you dispose of property. It covers:

- How to figure a gain or loss,
- Whether your gain or loss is ordinary or capital,
- How to treat your gain or loss when you dispose of business property, and
- How to report a gain or loss.

This publication also explains whether your gain is taxable or your loss is deductible.

This publication does **not** discuss certain transactions covered in other IRS publications. These include:

- Most transactions involving stocks, bonds, options, forward and futures contracts, and similar investments, discussed in chapter 4 of Publication 550, *Investment Income and Expenses*,
- Sale of your main home, discussed in Publication 523, *Selling Your Home*,
- Installment sales, discussed in Publication 537, *Installment Sales*, and
- Transfers of property at death, discussed in Publication 559, *Survivors, Executors, and Administrators*.

Disposing of property. You dispose of property when:

- You sell property,
- You exchange property for other property,
- Your property is condemned, or disposed of under threat of condemnation,
- Your property is repossessed,
- You abandon property, or
- You give property away.

Forms to file. When you dispose of property, you will usually have to file one or more of the following forms:

- Schedule D (Form 1040), *Capital Gains and Losses*.
- Form 4797, *Sales of Business Property*.
- Form 8824, *Like-Kind Exchanges*.

Chapter 4 illustrates how to fill out Form 4797 and Form 8824.

1. Gain or Loss

Topics

This chapter discusses:

- Sales and exchanges
- Abandonments
- Foreclosures and repossessions
- Involuntary conversions
- Nontaxable exchanges
- Transfers between spouses
- Rollovers and exclusions for certain capital gains

Useful Items

You may want to see:

Publication

- 523** Selling Your Home
- 537** Installment Sales
- 547** Casualties, Disasters, and Thefts (Business and Nonbusiness)
- 550** Investment Income and Expenses
- 551** Basis of Assets
- 908** Bankruptcy Tax Guide

Form (and Instructions)

- Schedule D (Form 1040)** Capital Gains and Losses
- 4797** Sales of Business Property
- 8824** Like-Kind Exchanges

See chapter 5 for information about getting these publications and forms.

Sales and Exchanges

The following discussions describe the kinds of transactions that are treated as sales or exchanges and explain how to figure gain or loss. A **sale** is a transfer of property for money or a mortgage, note, or other promise to pay money. An **exchange** is a transfer of property for other property or services.

Sale or lease. Some agreements that seem to be leases may really be conditional sales contracts. The intention of the parties to the

agreement can help you distinguish between a sale or lease.

There is no test or group of tests to prove what the parties intended when they made the agreement. You should consider each agreement based on its own facts and circumstances. For more information on leases, see chapter 7 in Publication 535, *Business Expenses*.

Cancellation of a lease. Payments received by a tenant for the cancellation of a lease are treated as an amount realized from the sale of property. Payments received by a landlord (lessor) for the cancellation of a lease are essentially a substitute for rental payments and are taxed as ordinary income.

Copyrights. Payments you receive for granting the exclusive use or right to exploit a copyright throughout its life in a particular medium are treated as received from the sale of property. It does not matter if the payments are a fixed amount or a percentage of receipts from the sale, performance, exhibition, or publication of the copyrighted work, or an amount based on the number of copies sold, performances given, or exhibitions made. Nor does it matter if they are paid over the same period as that covering the grantee's use of the copyrighted work.

If the copyright was used in your trade or business and you held it for more than a year, the gain or loss is a section 1231 gain or loss. For more information, see *Section 1231 Gains and Losses* in chapter 3.

Easements. Granting or selling an easement is usually not a sale of property. Instead, the amount received for the easement is subtracted from the basis of the property. If only a part of the entire tract of property is permanently affected by the easement, only the basis of that part is reduced by the amount received. If it is impossible or impractical to separate the basis of the part of the property on which the easement is granted, the basis of the whole property is reduced by the amount received.

Any amount received that is more than the basis to be reduced is a taxable gain. The transaction is reported as a sale of property.

If you transfer a perpetual easement for consideration and do not keep any beneficial interest in the part of the property affected by the easement, the transaction will be treated as a sale of property. However, if you make a qualified conservation contribution of a restriction or easement granted in perpetuity, it is treated as a charitable contribution and not a sale or exchange even though you keep a beneficial interest in the property affected by the easement.

If you grant an easement on your property (for example, a right-of-way over it) under condemnation or threat of condemnation, you are considered to have made a forced sale, even though you keep the legal title. Although you figure gain or loss on the easement in the same way as a sale of property, the gain or loss is treated as a gain or loss from a condemnation. See *Gain or Loss From Condemnations*, later.

Transferred property to satisfy debt. A transfer of property to satisfy a debt is an exchange.

Extended note maturity date. The extension of a note's maturity date is not treated as an exchange of an outstanding note for a

new and different note. Nor is it a closed and completed transaction on which gain or loss is figured. This treatment will not apply when changes in the term of the note are so significant as to amount virtually to the issuance of a new security. Also, each case must be determined by its own facts.

Transfers on death. The transfer of property to an executor or administrator on the death of an individual is not a sale or exchange.

Bankruptcy. Generally, a transfer of property from a debtor to a bankruptcy estate is not treated as a sale or exchange. For more information, see *The Bankruptcy Estate* in Publication 908.

Gain or Loss From Sales and Exchanges

Gain or loss is usually realized when property is sold or exchanged. A **gain** is the excess of the amount you realize from a sale or exchange of property over its adjusted basis. A **loss** is the excess of the adjusted basis of the property over the amount you realize.

Table 1-1. How To Figure a Gain or Loss

If:	Then:
Adjusted basis is more than amount realized	You have a loss
Amount realized is more than adjusted basis	You have a gain

Basis. The cost or purchase price of property is usually its basis for figuring the gain or loss from its sale or other disposition. However, if you got the property by gift, inheritance, or in some way other than buying it, you must use a basis other than its cost. See *Other Basis* in Publication 551.

Adjusted basis. The adjusted basis of property is your original cost or other basis plus certain additions, and minus certain deductions such as depreciation and casualty losses. See *Adjusted Basis* in Publication 551. In determining gain or loss, the cost of transferring property to a new owner, such as selling expenses, is added to the adjusted basis of the property.

Amount realized. The amount you realize from a sale or exchange is the total of all money you receive plus the **fair market value** of all property or services you receive. The amount you realize also includes any of your liabilities that were assumed by the buyer and any liabilities to which the property you transferred is subject, such as real estate taxes or a mortgage.

If the liabilities relate to an exchange of multiple properties, see *Multiple Property Exchanges*, and its discussion *Treatment of Liabilities*, later.

Fair market value. Fair market value (FMV) is the price at which the property would change hands between a buyer and a seller when both have reasonable knowledge of all the necessary facts and neither has to buy or sell. If parties with adverse interests place a value on property in an arm's-length

transaction, that is strong evidence of FMV. If there is a stated price for services, this price is treated as the FMV, unless there is evidence to the contrary.

Example. In your business, you used a building that cost you \$70,000. You made certain permanent improvements at a cost of \$20,000 and deducted depreciation totaling \$10,000. You sold the building for \$100,000, plus property having a fair market value of \$20,000. The buyer assumed your real estate taxes of \$3,000 and a mortgage of \$17,000 on the building. The selling expenses were \$4,000. Your gain on the sale is figured as follows:

Amount realized:	
Cash	\$100,000
FMV of property received	20,000
Real estate taxes (assumed by buyer)	3,000
Mortgage (assumed by buyer)	17,000
Amount realized	\$140,000
Adjusted basis:	
Cost of building	\$70,000
Improvements	20,000
Total	\$90,000
Minus: Depreciation	10,000
Adjusted basis	\$80,000
Plus: Selling expenses	4,000
Gain on sale	\$84,000
	<u>\$56,000</u>

Amount recognized. Your gain or loss realized from a sale or exchange of property is usually a recognized gain or loss for tax purposes. Recognized gains must be included in gross income. Recognized losses are deductible from gross income. However, your gain or loss realized from certain exchanges of property is not recognized for tax purposes. See *Nontaxable Exchanges* later. Also, a loss from the disposition of property held for personal use is not deductible.

Life estates, etc. The amount you realize from the disposition of a life interest in property, an interest in property for a set number of years, or an income interest in a trust is a taxable gain if you got the interest as a gift, inheritance, or in a transfer from a spouse or former spouse if incident to a divorce. Your basis in the property is disregarded. This rule does not apply if all interests in the property are disposed of at the same time.

Example 1. Your father dies, and leaves his farm to you for life with a remainder interest to your younger brother. You decide to sell your life interest in the farm. The entire amount you receive is a taxable gain. Your basis in the farm is disregarded.

Example 2. The facts are the same as in Example 1, except that your brother joins you in selling the farm. Because the entire interest in the property is sold, your basis in the farm is not disregarded. Your gain or loss is the difference between your share of the sales price and your adjusted basis in the farm.

Canceling a sale of real property. If you sell real property under a sales contract that allows the buyer to return the property for a full refund and the buyer does so, you may not have to recognize gain or loss on the sale. If the buyer returns the property in the year of sale, no gain or loss is recognized. This cancellation of the sale in the same year it occurred places both you and the buyer in the same positions you were in before the sale. If the buyer returns the property in a later tax

year, however, you must recognize gain (or loss, if allowed) in the year of the sale. When the property is returned in a later year, you acquire a new basis in the property. That basis is equal to the amount you pay to the buyer.

Bargain Sales as Gifts

If you sell or exchange property for less than its fair market value with the intent of making a gift, the transaction is partly a sale or exchange and partly a gift. You have a gain if the amount realized is more than your adjusted basis in the property. However, you do not have a loss if the amount realized is less than the adjusted basis of the property.

Bargain sales to charity. A bargain sale of property to a charitable organization is partly a sale or exchange and partly a charitable contribution. If a deduction for the contribution is allowable, you must allocate your adjusted basis in the property between the part sold and the part contributed, based on the fair market value of each. The adjusted basis of the part sold is an amount equal to:

Adjusted basis of entire property	×	Amount realized (fair market value of part sold) / Fair market value of entire property
-----------------------------------	---	---

Because of this allocation rule, you will have a gain even if the amount realized is not more than your adjusted basis in the property. This allocation rule does not apply if a deduction for the contribution is not allowable.

See Publication 526, *Charitable Contributions*, for information on figuring the amount of your charitable contribution.

Example. You sold property with a fair market value of \$10,000 to a charitable organization for \$2,000 and are allowed a deduction for your contribution. Your adjusted basis in the property is \$4,000. Your gain on the sale is \$1,200, figured as follows:

Sales price	\$2,000
Minus: Adjusted basis of part sold (\$4,000 × (\$2,000 ÷ \$10,000))	800
Gain on the sale	\$1,200

Property Used Partly for Business or Rental

If you sell or exchange property that you used in part for business or rental purposes and in part for personal purposes, you must figure the gain or loss on the sale or exchange as though you had sold two separate pieces of property. You must divide the selling price, selling expenses, and the basis of the property between the business or rental part and the personal part. You must subtract depreciation you took or could have taken from the basis of the business or rental part.

Gain or loss on the business or rental part of the property may be a capital gain or loss or an ordinary gain or loss, as discussed in chapter 3 under *Section 1231 Gains and Losses*. Any gain on the personal part of the property is a capital gain. You cannot deduct a loss on the personal part.

Example. You sold a condominium in 1998 for \$57,000. You bought the property in 1989 for \$30,000. You used two-thirds of it as your home and rented out the other third. You claimed depreciation of \$3,272 for the rented part during the time you owned the property. You made no improvements to the

property. Your expenses of selling the condominium were \$3,600. You figure your gain or loss as follows:

	Rental	Personal
	(1/3)	(2/3)
1) Selling price	\$19,000	\$38,000
2) Less selling expenses	1,200	2,400
3) Amount realized (adjusted sales price)	\$17,800	\$35,600
4) Basis	\$10,000	\$20,000
5) Less depreciation	3,272	
6) Adjusted basis	\$6,728	\$20,000
7) Gain (line 3 minus line 6)	\$11,072	\$15,600

Loss Limit on Sale of Property Changed to Business or Rental Use

You cannot deduct a loss on the sale of property you acquired for use as your home and used as your home until the time of sale.

You can deduct a loss on the sale of property you acquired for use as your home but converted to business or rental property and used as business or rental property at the time of sale. However, if the adjusted basis of the property at the time of conversion was more than its fair market value, the amount of loss you can deduct is limited.

Determine the amount of loss you can deduct as follows:

- 1) Choose the smaller of the property's adjusted basis or fair market value at the time of conversion.
- 2) Add to (1) the cost of any improvements and other increases to basis since the time of conversion.
- 3) Subtract from (2) depreciation and any other decreases to basis since the time of conversion.
- 4) Subtract the amount you realized on the sale from the result in (3). If the amount you realized is more than the result in (3), treat this result as zero.

The result in (4) is the amount of loss you can deduct.

Example. Five years ago, you converted your main home to rental property. At the time of conversion, the adjusted basis of your home was \$75,000 and the fair market value was \$70,000. This year, you sold the property for \$55,000. You made no improvements to the property but you have depreciation expense of \$12,620 over the five prior years. Your loss on the sale is \$7,380 ((\$75,000 - \$12,620) - \$55,000). The amount you can deduct as a loss is limited to \$2,380, figured as follows:

Smaller of adjusted basis or fair market value at time of conversion	\$70,000
Plus: Cost of any improvements and any other additions to basis after the conversion	0
	\$70,000
Minus: Depreciation and any other decreases to basis after the conversion	12,620
	\$57,380
Minus: Amount you realized from the sale	55,000
Deductible loss	<u>\$2,380</u>

Abandonments

The abandonment of property is a disposition of property. Loss from abandonment of business or investment property is deductible

as an ordinary loss, even if the property is a capital asset. The loss is the amount of the property's adjusted basis when abandoned. This rule also applies to leasehold improvements the lessor made for the lessee that were abandoned. However, if the property is later foreclosed on or repossessed, gain or loss is figured as discussed later. The abandonment loss is taken in the tax year in which the loss is sustained.

You may not deduct any loss from abandonment of your home or other property held for personal use.

Example. Ann abandoned her home that she purchased for \$200,000. At the time she abandoned the house, her mortgage balance was \$185,000. She has a nondeductible loss of \$200,000 (the adjusted basis). If the bank later forecloses on the loan or repossesses the house, she will have to figure her gain or loss as discussed later under *Foreclosures and Repossessions*.

Cancellation of debt. If the abandoned property secures a debt for which you are personally liable and the debt is canceled, you will realize ordinary income equal to the amount of canceled debt. This income is separate from any loss realized from abandonment of the property. Report income from cancellation of a debt related to a business or rental activity as business or rental income. Report income from cancellation of a non-business debt as miscellaneous income on line 21, Form 1040.

However, income from cancellation of debt is not taxed if:

- The cancellation is intended as a gift,
- The debt is qualified farm indebtedness (see chapter 4 of Publication 225, *Farmers Tax Guide*),
- The debt is qualified real property indebtedness (see chapter 5 of Publication 334, *Tax Guide for Small Business*), or
- You are insolvent or bankrupt (see Publication 908, *Bankruptcy Tax Guide*).

Forms 1099-A and 1099-C. If your abandoned property secures a loan and the lender knows the property has been abandoned, the lender should send you Form 1099-A showing information you need to figure your loss from the abandonment. However, if your debt is canceled and the lender must file Form 1099-C, the lender may include the information about the abandonment on that form instead of on Form 1099-A. The lender must file Form 1099-C and send you a copy if the amount of debt canceled is \$600 or more and the lender is a financial institution, credit union, or federal government agency. For abandonments of property and debt cancellations occurring in 1998, these forms should be sent to you by February 1, 1999.

Foreclosures and Repossessions

If you do not make payments you owe on a loan secured by property, the lender (mortgagee or creditor) may foreclose on the mortgage or repossess the property. The foreclosure or repossession is treated as a sale or exchange from which you may realize

gain or loss. This is true even if the property is voluntarily returned to the lender. You may also realize ordinary income from cancellation of debt, if the loan balance is more than the property's fair market value.

Buyer's (borrower's) gain or loss. You figure and report gain or loss from a foreclosure or repossession in the same way as gain or loss from a sale or exchange. The gain or loss is the difference between your adjusted basis in the transferred property and the amount realized. See *Gain or Loss From Sales and Exchanges*, earlier.

TIP You can use Table 1-2 to figure your gain or loss from a foreclosure or repossession.

Amount realized on a nonrecourse debt. If you are not personally liable for repaying the debt (nonrecourse debt) secured by the transferred property, the amount realized by you includes the full amount of the debt canceled by the transfer. The full amount of the canceled debt is included even if the property's fair market value is less than the canceled debt.

Example 1. In 1995, Chris purchased a new car for \$15,000. He paid \$2,000 down and borrowed the remaining \$13,000 from the dealer's credit company. Chris is not personally liable on the loan (nonrecourse), but pledges the new car as security. In 1998, the credit company repossessed the car because he stopped making loan payments. The balance due after taking into account the payments Chris made was \$10,000. The car's fair market value when repossessed was \$9,000. The amount Chris realized on the repossession is \$10,000. That amount is the debt canceled by the repossession, even though he is not personally liable for the loan and the car's fair market value is less than \$10,000. Chris figures his gain or loss on the repossession by comparing the amount realized (\$10,000) with his adjusted basis (\$15,000). He has a \$5,000 nondeductible loss.

Example 2. In 1993, Ann paid \$200,000 for her home. She paid \$15,000 down and borrowed the remaining \$185,000 from a bank. Ann is not personally liable on the loan (nonrecourse debt), but pledges the house as security. In 1998, the bank foreclosed on the loan because Ann stopped making payments. When the bank foreclosed on the loan, the balance due was \$180,000 and the fair market value of the house was \$170,000. The amount Ann realized on the foreclosure is \$180,000, the debt canceled by the foreclosure. She figures her gain or loss by comparing the amount realized (\$180,000) with her adjusted basis (\$200,000). She has a \$20,000 nondeductible loss.

Amount realized on a recourse debt. If you are personally liable for the debt (recourse debt), the amount realized on the foreclosure or repossession does not include the amount of the canceled debt that is your income from cancellation of debt. However, if the fair market value of the transferred property is less than the canceled debt, the amount realized includes the canceled debt up to the fair market value of the property. You are treated as receiving ordinary income from the canceled debt for that part of the debt not included in the amount realized. See *Cancellation of debt*.

Table 1-2. **Worksheet for Foreclosures and Repossessions**

(Keep for your records)



Part 1. Figure your income from cancellation of debt. (Note: <i>If you are not personally liable for the debt, you do not have income from cancellation of debt. Skip Part 1 and go to Part 2.</i>)	
1. Enter the amount of debt cancelled by the transfer of property	_____
2. Enter the fair market value of the transferred property	_____
3. Income from cancellation of debt.* Subtract line 2 from line 1. If less than zero, enter zero	_____
Part 2. Figure your gain or loss from foreclosure or repossession.	
4. Enter the smaller of line 1 or line 2. (If you are not personally liable for the debt, enter the amount of debt cancelled by the transfer of property.)	_____
5. Enter the adjusted basis of the transferred property	_____
6. Gain or loss from foreclosure or repossession. Subtract line 5 from line 4	_____

* The income may not be taxable. See *Cancellation of debt*.

Example 1. Assume the same facts as in the previous Example 1 except that Chris is personally liable for the car loan (recourse debt). In this case, the amount he realizes is \$9,000. This is the amount of the canceled debt (\$10,000) up to the car's fair market value (\$9,000). Chris figures his gain or loss on the repossession by comparing the amount realized (\$9,000) with his adjusted basis (\$15,000). He has a \$6,000 non-deductible loss. He is also treated as receiving ordinary income from cancellation of debt. That income is \$1,000 (\$10,000–\$9,000). This is the part of the canceled debt not included in the amount realized.

Example 2. Assume the same facts as in the previous Example 2 except that Ann is personally liable for the loan (recourse debt). In this case, the amount she realizes is \$170,000. This is the amount of the canceled debt (\$180,000) up to the house's fair market value (\$170,000). Ann figures her gain or loss on the foreclosure by comparing the amount realized (\$170,000) with her adjusted basis (\$200,000). She has a \$30,000 nondeductible loss. She is also treated as receiving ordinary income from cancellation of debt. That income is \$10,000 (\$180,000 – \$170,000). This is the part of the canceled debt not included in the amount realized.

Seller's (lender's) gain or loss on repossession. If you finance a buyer's purchase of property and later acquire an interest in it through foreclosure or repossession, you may have a gain or loss on the acquisition. For more information, see *Repossession* in Publication 537.

Cancellation of debt. If property that is repossessed or foreclosed upon secures a debt for which you are personally liable (recourse debt), you generally must report, as ordinary income, the amount by which the canceled debt exceeds the fair market value of the property. This income is separate from any gain or loss realized from the foreclosure or repossession. Report the income from cancellation of a debt related to a business or rental activity as business or rental income. Report the income from cancellation of a

nonbusiness debt as miscellaneous income on line 21, Form 1040.

TIP You can use Table 1–2 to figure your income from cancellation of debt.

However, income from cancellation of debt is not taxed if:

- The cancellation is intended as a gift,
- The debt is qualified farm indebtedness (see chapter 4 of Publication 225, *Farmers Tax Guide*),
- The debt is qualified real property indebtedness (see chapter 5 of Publication 334, *Tax Guide for Small Business*), or
- You are insolvent or bankrupt (see Publication 908, *Bankruptcy Tax Guide*).

Forms 1099–A and 1099–C. A lender who acquires an interest in your property in a foreclosure or repossession should send you Form 1099–A showing information you need to figure your gain or loss. However, if the lender also cancels part of your debt and must file Form 1099–C, the lender may include the information about the foreclosure or repossession on that form instead of on Form 1099–A. The lender must file Form 1099–C and send you a copy if the amount of debt canceled is \$600 or more and the lender is a financial institution, credit union, or federal government agency. For foreclosures or repossessions occurring in 1998, these forms should be sent to you by February 1, 1999.

Involuntary Conversions

An involuntary conversion occurs when your property is destroyed, stolen, condemned, or disposed of under the threat of condemnation, and you receive other property or money in payment, such as insurance or a condemnation award. Involuntary conversions are also called **involuntary exchanges**.

Gain or loss from an involuntary conversion of your property is usually recognized, for tax purposes. You report the gain or deduct the loss on your tax return for the year you realize it. (You cannot deduct a loss from an involuntary conversion of property you held for personal use, unless it resulted from a casualty or theft.)

However, depending on the type of property you receive, you may not have to report a gain on an involuntary conversion. You do not report the gain if you receive property that is similar or related in service or use to the converted property. Your basis for the new property is the same as your basis for the converted property. The gain on the involuntary conversion is deferred until a taxable sale or exchange occurs.

If you receive money or property that is not similar or related in service or use to the involuntarily converted property and you buy qualifying replacement property within a specified period of time, you can choose to postpone reporting the gain.

This publication explains the treatment of a gain or loss from a condemnation or disposition under the threat of condemnation. If you have a gain or loss from the destruction or theft of property, see Publication 547.

Condemnations

Condemnation is the process by which private property is legally taken for public use without the owner's consent. The property may be taken by the federal government, a state government, a political subdivision, or a private organization that has the power to legally take it. The owner receives a condemnation award (money or property) in exchange for the property taken. A condemnation is like a forced sale, the owner being the seller and the condemning authority being the buyer.

Example. A local government authorized to acquire land for public parks told you that it wished to acquire your property. After the local government took action to condemn your property, you went to court to keep it. But the court decided in favor of the local government, which took your property and paid you an amount fixed by the court. This is a condemnation of private property for public use.

Threat of condemnation. A threat of condemnation exists if a representative of a government body or a public official authorized to acquire property for public use tells you that the government body or official has decided to acquire your property. You must have reasonable grounds to believe that, if you do not sell voluntarily, your property will be condemned.

The sale of your property to someone other than the condemning authority qualifies as an involuntary conversion, provided you have reasonable grounds to believe that your property will be condemned. If the buyer of this property knows at the time of purchase that it will be condemned and sells it to the condemning authority, this sale also qualifies as an involuntary conversion.

Reports of condemnation. A threat of condemnation exists if you learn of a decision to acquire your property for public use through a report in a newspaper or other news medium, and this report is confirmed by a representative of the government body or public official involved. You must have reasonable grounds to believe that they will

take necessary steps to condemn your property if you do not sell voluntarily. If you relied on oral statements made by a government representative or public official, the Internal Revenue Service may ask you to get written confirmation of the statements.

Example. Your property lies along public utility lines. The utility company has the authority to condemn your property. They notify you that they intend to acquire your property by negotiation or condemnation. A threat of condemnation exists when you receive their notice.

Related property voluntarily sold. A voluntary sale of your property may be treated as a forced sale that qualifies as an involuntary conversion if the property had a **substantial economic relationship** to property of yours that was condemned. A substantial economic relationship exists if together the properties were one economic unit. You must also show that the condemned property could not reasonably or adequately be replaced. You can choose to postpone reporting the gain by buying replacement property. See *Postponement of Gain*, later.

Gain or Loss From Condemnations

If your property was condemned or disposed of under the threat of condemnation, figure your gain or loss by comparing the adjusted basis of your condemned property with your net condemnation award.

If your net condemnation award is more than the adjusted basis of the condemned property, you have a gain. You can postpone reporting gain from a condemnation if you buy replacement property. If only part of your property is condemned, you can treat the cost of restoring the remaining part to its former usefulness as the cost of replacement property. See *Postponement of Gain*, later.

If your net condemnation award is less than your adjusted basis, you have a loss. If your loss is from property you held for personal use, you cannot deduct it. You must report any deductible loss in the tax year it happened.

TIP You can use Part 2 of Table 1-3 to figure your gain or loss from a condemnation award.

Main home condemned. If you have a gain because your main home is condemned, you generally can exclude the gain from your income as if you had sold or exchanged your home. For information on this exclusion, get Publication 523, *Selling Your Home*. If your gain is more than the amount you can exclude, but you buy replacement property, you may be able to postpone the excess gain. See *Postponement of Gain*, later.

Condemnation award. A condemnation award is the money you are paid or the value of other property you receive for your condemned property. The award is also the amount you are paid for the sale of your property under threat of condemnation.

Payment of your debts. Amounts taken out of the award to pay your debts are considered paid to you. Amounts paid directly to the holder of a mortgage or other lien (claim) against your property are part of your award, even if the debt attaches to the property and is not your personal liability.

Example. The state condemned your property for public use. The award was set at \$200,000. The state paid you only \$148,000 because it paid \$50,000 to your mortgage holder and \$2,000 accrued real estate taxes. You are considered to have received the entire \$200,000 as a condemnation award.

Interest on award. If the condemning authority pays you interest for its delay in paying your award, it is not part of the condemnation award. You must report the interest separately as ordinary income.

Payments to relocate. Payments you receive to relocate and replace housing because you have been displaced from your home, business, or farm as a result of federal or federally assisted programs are not part of the condemnation award. Do not include them in your income. Replacement housing payments used to buy new property are included in the property's basis as part of your cost.

Net condemnation award. A net condemnation award is the total award you received, or are considered to have received, for the condemned property minus your expenses of obtaining the award. If only a part of your property was condemned, you must also reduce the award by any special assessment levied against the part of the property you retain. This is discussed later under *Special assessment taken out of award*.

Severance damages. Severance damages are not part of the award paid for the property condemned. They are paid to you if part of your property is condemned and the value of the part you keep is decreased because of the condemnation.

For example, you may receive severance damages if your property is subject to flooding because you sell flowage easement rights (the condemned property) under threat of condemnation. Severance damages may also be given to you if, because part of your property is condemned for a highway, you must replace fences, dig new wells or ditches, or plant trees to restore your remaining property to the same usefulness it had before the condemnation.

The contracting parties should agree on the amount of the severance damages and put that in writing. If this is not done, all proceeds from the condemning authority are considered awarded for your condemned property.

You may not make a completely new allocation of the total award after the transaction is completed. However, you may show how much of the award both parties intended for severance damages. The severance damages part of the award is determined from all the facts and circumstances.

Example. You sold part of your property to the state under threat of condemnation. The contract you and the condemning authority signed showed only the total purchase price. It did not specify a fixed sum for severance damages. However, at settlement, the condemning authority gave you closing papers showing clearly the part of the purchase price that was for severance damages. You may treat this part as severance damages.

Treatment of severance damages. Your net severance damages are treated as the amount realized from an involuntary conver-

sion of the remaining part of your property. Use them to reduce the basis of the remaining property. If the amount of severance damages is based on damage to a specific part of the property you kept, reduce the basis of only that part by the net severance damages.

If your net severance damages are more than the basis of your retained property, you have a gain. You may be able to postpone reporting the gain. See the later discussion, *Postponement of Gain*.

TIP You can use Part 1 of Table 1-3 to figure any gain from severance damages and to refigure the adjusted basis of the remaining part of your property.

Net severance damages. To figure your net severance damages, you must first reduce your severance damages by your expenses in obtaining the damages. You then reduce them by any special assessment (described later) levied against the remaining part of the property and taken out of the award by the condemning authority. The balance is your net severance damages.

Expenses of obtaining a condemnation award and severance damages. Subtract the expenses of obtaining a condemnation award, such as legal, engineering, and appraisal fees, from the amount of the total award. Also subtract the expenses of obtaining severance damages from the severance damages paid to you. If you cannot determine which part of your expenses is for each part of the condemnation proceeds, you must make a proportionate allocation.

Example. You receive a condemnation award and severance damages. One-fourth of the total was designated as severance damages in your agreement with the condemning authority. You had legal expenses for the entire condemnation proceeding. You cannot determine how much of your legal expenses is for each part of the condemnation proceeds. You must allocate one-fourth of your legal expenses to the severance damages and the other three-fourths to the condemnation award.

Special assessment taken out of award. When only part of your property is condemned, a special assessment levied against the remaining property may be taken out of your condemnation award. An assessment may be levied if the remaining part of your property benefited by the improvement resulting from the condemnation. Examples of improvements that may cause a special assessment are widening a street and installing a sewer.

To figure your net condemnation award, you generally reduce the award by the amount of the assessment taken out of the award. The award cannot be reduced by any assessment levied after the award is made, even if the assessment is levied in the same year the award is made.

Example. To widen the street in front of your home, the city condemned 25 feet of your land. You were awarded \$5,000 for this and spent \$300 to get the award. Before paying the award, the city levied a special assessment of \$700 for the street improvement against your remaining property. The city then paid you only \$4,300. Your net award is \$4,000 (\$5,000 total award minus \$300 expenses in obtaining the award and



Table 1-3. **Worksheet for Condemnations**

(Keep for your records)

Part 1. Gain from severance damages. (If you did not receive severance damages, skip Part 1 and go to Part 2.)	
1. Enter the amount of severance damages received	_____
2. Enter the amount of your expenses in getting severance damages	_____
3. Subtract line 2 from line 1. If less than zero, enter -0-	_____
4. Enter the amount of any special assessment on remaining property taken out of your award	_____
5. Net severance damages. Subtract line 4 from line 3. If less than zero, enter -0-	_____
6. Enter the adjusted basis of the remaining property	_____
7. Gain from severance damages. Subtract line 6 from line 5. If less than zero, enter -0-	_____
8. Refigured adjusted basis of the remaining property. Subtract line 5 from line 6. If less than zero, enter -0-	_____
Part 2. Gain or loss from condemnation award.	
9. Enter the amount of the condemnation award received	_____
10. Enter the amount of your expenses in getting the condemnation award	_____
11. If you completed Part 1 and line 4 is more than line 3, subtract line 3 from line 4. Otherwise, enter -0-	_____
12. Add lines 10 and 11	_____
13. Net condemnation award. Subtract line 12 from line 9	_____
14. Enter the adjusted basis of the condemned property	_____
15. Gain from condemnation award. If line 14 is more than line 13, enter -0-. Otherwise, subtract line 14 from line 13 and skip line 16	_____
16. Loss from condemnation award. Subtract line 13 from line 14	_____
<i>(Note: You cannot deduct the amount on line 16 if the condemned property was held for personal use.)</i>	
Part 3. Postponed gain from condemnation. (Complete only if line 7 or line 15 is more than zero and you bought qualifying replacement property or made expenditures to restore the usefulness of your remaining property.)	
17. If you completed Part 1 and line 7 is more than zero, enter the amount from line 5. Otherwise, enter -0-	_____
18. If line 15 is more than zero, enter the amount from line 13. Otherwise, enter -0-	_____
19. Add lines 17 and 18*	_____
20. Enter the total cost of replacement property and any expenditures to restore the usefulness of your remaining property	_____
21. Subtract line 20 from line 19. If less than zero, enter -0-	_____
22. If you completed Part 1, add lines 7 and 15. Otherwise, enter the amount from line 15	_____
23. Recognized gain. Enter the smaller of line 21 or line 22	_____
24. Postponed gain. Subtract line 23 from line 22. If less than zero, enter -0-	_____

*If the condemned property was your main home, subtract from this total the amount of any gain you excluded from your income, and enter the result.

minus \$700 for the special assessment taken out).

If the \$700 special assessment were not taken out of the award, and you were paid \$5,000, your net award would be \$4,700 (\$5,000 minus \$300). The net award would not change, even if you later paid the assessment from the amount you received.

Severance damages received. If severance damages are included in the condemnation proceeds, the special assessment taken out is first used to reduce the severance damages. Any balance of the special assessment is used to reduce the condemnation award.

Example. You were awarded \$4,000 for the condemnation of your property and \$1,000 for severance damages. You spent \$300 to obtain the severance damages. A special assessment of \$800 was taken out of the award. The \$1,000 severance damages

are reduced to zero by first subtracting the \$300 expenses and then \$700 of the special assessment. Your \$4,000 condemnation award is reduced by the \$100 balance of the special assessment, leaving a \$3,900 net condemnation award.

Part business or rental. If you used part of your condemned property as your home and part as business or rental property, treat each part as a separate property. Figure your gain or loss separately, because gain or loss may be treated differently.

Some examples of this type of property are a building in which you live and operate a grocery, and a building in which you live on the first floor and rent out the second floor.

Example. You sold your building for \$24,000 under threat of condemnation to a public utility company that had the authority to condemn. You rented half the building and lived in the other half. You paid \$25,000 for

the building and spent an additional \$1,000 for a new roof. You claimed allowable depreciation of \$4,600 on the rental half. You spent \$200 in legal expenses to obtain the condemnation award. Figure your gain or loss as follows:

	Residential Part	Business Part
Amount of award received	\$12,000	\$12,000
Minus: Legal expenses, \$200	100	100
Net condemnation award	<u>\$11,900</u>	<u>\$11,900</u>
Minus:		
Adjusted basis:		
1/2 of original cost, \$25,000	\$12,500	\$12,500
1/2 of cost of roof, \$1,000	500	500
Total	<u>\$13,000</u>	<u>\$13,000</u>
Minus: Depreciation		4,600
Adjusted basis, business part		<u>\$8,400</u>
Loss on residential property	<u>\$1,100</u>	
Gain on business property		<u>\$3,500</u>

The loss on the residential part of the property is not deductible.

Postponement of Gain

Do not report the gain on condemned property if you receive only property that is similar or related in service or use to it. Your basis for the new property is the same as your basis for the old.

You must ordinarily report the gain if you receive money or unlike property. You can choose to postpone reporting the gain if you purchase property that is similar or related in service or use to the condemned property within a specified replacement period, discussed later. You can also choose to postpone reporting the gain if you purchase controlling interest (at least 80%) in a corporation owning property that is similar or related in service or use to the property. See *Controlling interest in a corporation*, later.

To postpone all the gain, you must buy replacement property costing at least as much as the amount realized for the condemned property. If the cost of the replacement property is less than the amount realized, you must report the gain up to the amount of the unspent part of the amount realized.



TIP You can use Part 3 of Table 1-3 to figure the gain you must report and your postponed gain.

Reduce the basis of the replacement property by the amount of postponed gain. Also, if your replacement property for property condemned after August 20, 1996, is stock in a corporation that owns property that is similar or related in service or use, the corporation will generally reduce its basis in its assets by the amount by which you reduce your basis in the stock. See *Controlling interest in a corporation*, later.

Postponing gain on severance damages.

If you received severance damages for part of your property because another part was condemned and you buy replacement property, you can choose to postpone reporting gain. See *Treatment of severance damages*, earlier. You can postpone reporting all your gain if the replacement property costs at least as much as your net severance damages plus your net condemnation award (if resulting in gain).

You can also make this choice if you spend the severance damages, together with other money you received for the condemned property (if resulting in gain), to acquire nearby property that will allow you to continue your business. If suitable nearby property is not available and you are forced to sell the remaining property and relocate in order to continue your business, see *Postponing gain on the sale of related property*, next.

If you restore the remaining property to its former usefulness, you can treat the cost of restoring it as the cost of replacement property.

Postponing gain on the sale of related property.

If part of your property is condemned, and you sell the related part and buy replacement property, you can choose to postpone reporting gain on the sale. You must meet the requirements explained earlier under *Related property voluntarily sold*. You can postpone reporting all your gain if the replacement property costs at least as much as the amount realized from the sale, plus your net condemnation award (if resulting in

gain), plus your net severance damages, if any (if resulting in gain).

Buying replacement property from a related person. You cannot postpone reporting gain from a condemnation if you buy the replacement property from a related person. For information on related persons, see *Non-deductible Loss under Sales and Exchanges Between Related Persons* in chapter 2.

This rule applies to condemnations occurring:

- 1) After February 5, 1995, for C corporations and partnerships in which more than 50% of the capital or profits interest is owned by C corporations, and
- 2) After June 8, 1997, for all others (including individuals, partnerships (other than those in (1) above), and S corporations) if the total realized gain for the tax year on all involuntarily converted properties on which there are realized gains is more than \$100,000.

For condemnations described in (2) above, gains cannot be offset with any losses when determining whether the total gain is more than \$100,000. If the property is owned by a partnership, the \$100,000 limit applies to the partnership and each partner. If the property is owned by an S corporation, the \$100,000 limit applies to the S corporation and each shareholder.

Exception. This rule does not apply if the related person acquired the property from an unrelated person within the period of time allowed for replacing the condemned property.

Advance payment. You have not purchased replacement property if you pay a contractor in advance to build your replacement property unless it is finished before the end of the replacement period.

Replacement property. To postpone gain, you must buy replacement property for the specific purpose of replacing your condemned property. You do not have to use the actual funds from the condemnation award to acquire the replacement property. Property you acquire by gift or inheritance does not qualify as replacement property.

Similar or related in service or use. Your replacement property must be similar or related in service or use to the property it replaces.

If the condemned property is real property you held for use in your trade or business or for investment (other than property held mainly for sale), but your replacement property is not similar or related in service or use, it will be treated as such if it is like-kind property. For a discussion of like-kind property, see *Like Property* under *Like-Kind Exchanges*, later.

Leasehold replaced with fee simple property. Fee simple property you will use in your trade or business or for investment can qualify as replacement property that is similar or related in service or use to a condemned leasehold if you use it in the same business and for the identical purpose as the condemned leasehold. If the condemned leasehold has 30 or more years to run, the fee simple property is like-kind property. It can qualify as replacement property regardless of how you use it.

A "fee simple" property interest generally is one in which the owner is entitled to the entire property, with unconditional power to

dispose of it during his or her lifetime. A leasehold is property held under a lease, usually for a term of years.

Outdoor advertising display replaced with real property. You can make an election to treat an outdoor advertising display as real property. If you make this election and you replace the display with real property in which you hold a different kind of interest, your replacement property can qualify as like-kind property. For example, real property purchased to replace a destroyed billboard and leased property on which the billboard was located qualifies as property of a like kind.

You can make this election only if you did not claim a section 179 deduction for the display. You cannot revoke this election unless you get the consent of the Internal Revenue Service.

An outdoor advertising display is a sign or device rigidly assembled and permanently attached to the ground, a building, or any other permanent structure used for commercial or other advertisement to the public.

Owner-user. If you are an owner-user, similar or related in service or use means that replacement property must function in the same way as the property it replaces.

Example. Your home was condemned, and you invested the proceeds from the condemnation in a grocery store. Your replacement property is not similar or related in service or use to the condemned property. To be similar or related in service or use, your replacement property must also be used by you as your home.

Owner-investor. If you are an owner-investor, similar or related in service or use means that any replacement property must have the same relationship of services or uses to you as the property it replaces. You decide this by determining:

- Whether the properties are of similar service to you,
- The nature of the business risks connected with the properties, and
- What the properties demand of you in the way of management, service, and relations to your tenants.

Example. You owned land and a building you rented to a manufacturing company. The building was condemned. During the replacement period, you had a new building constructed on other land you already owned. You rented out the new building for use as a wholesale grocery warehouse. Because the replacement property is also rental property, the two properties are considered similar or related in service or use if there is a similarity in:

- 1) Your management activities,
- 2) The amount and kind of services you provide to your tenants, and
- 3) The nature of your business risks connected with the properties.

Substituting replacement property.

Once you designate certain property as replacement property on your tax return, you may not substitute other qualified property. But if your previously designated replacement property does not qualify, you can substitute qualified property if you acquire it within the replacement period.

Controlling interest in a corporation. You can replace property by acquiring a controlling interest in a corporation that owns property similar or related in service or use to your condemned property. You have controlling interest if you own stock having at least 80% of the combined voting power of all classes of voting stock and at least 80% of the total number of shares of all other classes of stock.

Basis adjustment to corporation's property. For condemnations occurring after August 20, 1996, the basis of property held by the corporation at the time you acquired control must be reduced by the amount of your postponed gain, if any. You are not required to reduce the adjusted bases of the corporation's properties below your adjusted basis in the corporation's stock (determined after reduction by the amount of your postponed gain).

Allocate this reduction to the following classes of property in the order shown below.

- 1) Property that is similar or related in service or use to the condemned property.
- 2) Depreciable property not reduced in (1) above.
- 3) All other property.

If two or more properties fall in class (1), (2), or (3), you allocate the reduction to each property in proportion to the adjusted bases of all the properties in that class. The reduced basis of any single property cannot be less than zero.

Main home replaced. If your gain from a condemnation of your main home is more than the amount you can exclude from your income (see *Main home condemned under Gain or Loss From Condemnations*, earlier), you can postpone the excess gain by buying replacement property that is similar or related in service or use. To postpone all the gain, the replacement property must cost at least as much as the amount realized from the condemnation, less the excluded gain.

You must reduce the basis of your replacement property by the amount of postponed gain. Also, if you postpone any part of your gain under these rules, you are treated as having owned and used the replacement property as your main home for the period you owned and used the condemned property as your main home.

Replacement period. To postpone reporting your gain from a condemnation, you must buy replacement property within a specified period of time. This is the "replacement period."

The replacement period for a condemnation begins on the earlier of:

- 1) The date on which you disposed of the condemned property, or
- 2) The date on which the threat of condemnation began.

The replacement period **ends 2 years** after the close of the first tax year in which any part of the gain on the condemnation is realized.

If **real property held for use in a trade or business** or for investment (not including property held primarily for sale) is condemned, the replacement period **ends 3 years** after the close of the first tax year in which any part of the gain on the condemnation is realized. However, this 3-year replacement period cannot be used if you re-

place the condemned property by acquiring control of a corporation owning property that is similar or related in service or use.

Determining when gain is realized. The replacement period ends 2 (or 3) years after the close of the first tax year in which you realize any part of the gain. If you are a cash basis taxpayer, you realize gain when you receive payments that exceed your basis in the property. If the condemning authority makes deposits into the court, you realize gain when you withdraw (or have the right to withdraw) amounts that exceed your basis.

This applies even if the amounts received are only partial or advance payments and the full amount of the award has not yet been determined. A replacement will be too late if you wait for a final determination that does not take place in the applicable replacement period after you first realize gain.

For accrual basis taxpayers, gain (if any) accrues in the earliest year when:

- 1) All events have occurred that fix the right to the condemnation award and the amount can be determined with reasonable accuracy, or
- 2) All or part of the award is actually or constructively received.

For example, if you have an absolute right to a part of a condemnation award when it is deposited into court, the amount deposited accrues in the year the deposit is made even though the full amount of the award is still contested.

Replacement property purchased before the condemnation. If you purchase your replacement property after there is a threat of condemnation but before the actual condemnation, and you still hold the replacement property at the time of the condemnation, you have purchased your replacement property within the replacement period. Property you acquire before there is a threat of condemnation does not qualify as replacement property acquired within the replacement period.

Example. On April 3, 1997, city authorities notified you that your property would be condemned. On June 5, 1997, you acquired property to replace the property to be condemned. You still had the new property when the city took possession of your old property on September 4, 1998. You have made a replacement within the replacement period.

Extension. You may get an extension of the replacement period if you apply to the District Director of the Internal Revenue Service for your area. You should apply before the end of the replacement period. Your application should contain all details of your need for an extension. You may file an application within a reasonable time after the replacement period ends if you can show reasonable cause for the delay. An extension of the replacement period will be granted if you can show reasonable cause for not making the replacement within the regular period.

Ordinarily, requests for extensions are granted near the end of the replacement period or the extended replacement period. Extensions are usually limited to a period of 1 year or less. The high market value or scarcity of replacement property is not a sufficient reason for granting an extension. If your replacement property is being constructed and you clearly show that the replacement or restoration cannot be made within the re-

placement period, you will be granted an extension of the period.

Choosing to postpone gain. Report your election to postpone your gain, along with all necessary details, on a statement attached to your return for the tax year in which you realize the gain.

If a partnership or a corporation owns the condemned property, **only the partnership or corporation** can choose to postpone reporting the gain.

Replacement property acquired after return filed. If you buy the replacement property after you file your return reporting your election to postpone the gain, attach a statement to your return for the year in which you buy the property. The statement should contain detailed information on the replacement property.

Amended return. If you elect to postpone gain, you must file an amended return for the year of the gain (individuals file Form 1040X) in either of the following situations.

- 1) You do not buy replacement property within the specified replacement period. On your amended return, you must report the gain and pay any additional tax due.
- 2) The replacement property you buy costs less than the amount realized for the condemned property. On your amended return, you must report the part of the gain that cannot be postponed and pay any additional tax due.

Time for assessing a deficiency. Any deficiency for any tax year in which part of the gain is realized may be assessed at any time before the expiration of 3 years from the date you notify the IRS District Director for your area that you have replaced, or intend not to replace, the condemned property within the replacement period.

Changing your mind. You can change your mind about reporting or postponing the gain at any time before the end of the specified replacement period.

Example. Your property was condemned and you had a gain of \$5,000. You reported the gain on your return for the year in which you received it, and paid the tax due. You buy replacement property within the replacement period. You used all but \$1,000 of the amount realized from the condemnation to buy the replacement property. You now change your mind and want to postpone the \$4,000 of gain equal to the amount you spent for the replacement property. You should file a claim for refund on Form 1040X. Explain on Form 1040X that you previously reported the entire gain from the condemnation, but you now want to report only the part of the gain (\$1,000) equal to the amount of condemnation proceeds not spent for replacement property.

Reporting a Condemnation Gain or Loss

Generally, you report gain or loss from a condemnation on your return for the year that you realize the gain or loss.

Personal use property. Report gain from a condemnation of property you held for personal use (other than excluded gain from a condemnation of your main home or postponed gain) on Schedule D (Form 1040).

Do not report loss from a condemnation of personal use property. But if you received a Form 1099-S (for example, showing the proceeds of a sale of real estate under threat of condemnation), you must show the transaction on Schedule D even though the loss is not deductible. Complete columns (a) through (e), and enter -0- in column (f).

Business property. Report gain (other than postponed gain) or loss from a condemnation of property you held for business or profit on **Form 4797**. If you had a gain, you may have to report all or part of it as ordinary income. See *Like-Kind Exchanges and Involuntary Conversions* in chapter 3.

Nontaxable Exchanges

Certain exchanges of property are not taxable. This means that any gain from the exchange is not taxed, and any loss cannot be deducted. Your gain or loss will not be recognized until you sell or otherwise dispose of the property you receive.

Like-Kind Exchanges

The exchange of property for the same kind of property is the most common type of nontaxable exchange. To be a like-kind exchange, the property traded and the property received must be both:

- 1) Qualifying property, and
- 2) Like property.

These two requirements are discussed later. Additional requirements apply to exchanges in which the property received is not received immediately upon the transfer of the property given up. See *Deferred Exchanges*, later.

If the like-kind exchange includes the receipt of money or unlike property or the assumption of your liabilities, you may have a taxable gain. See *Partially Nontaxable Exchanges*, later.

Multiple-party transactions. The like-kind exchange rules also apply to exchanges that involve **three- and four-party transactions**. Any part of these multiple-party transactions can qualify as a like-kind exchange if it meets all of the requirements described in this section.

Receipt of title from third party. If you receive property in a like-kind exchange and the other party who transfers the property to you does not give you the title but a third party does, you may still treat this transaction as a like-kind exchange, if it meets all the requirements.

Basis of property received. If you acquire property in a like-kind exchange, the basis of that property is the same as the basis of the property you transferred.

For the basis of property received in an exchange that is only partially nontaxable, see *Partially Nontaxable Exchanges*, later.

Example. You exchanged real estate held for investment having an adjusted basis of \$25,000 for other real estate held for investment. The FMV of both properties is

\$50,000. The basis of your new property is the same as the basis of the old (\$25,000).

Money paid. If, in addition to giving up like property, you pay money in a like-kind exchange, you still have no taxable gain or deductible loss. The basis of the property received is the basis of the property given up, increased by the money paid.

Example. Bill Smith trades an old cab for a new one. The new cab costs \$10,800. He is allowed \$2,000 for the old cab, and pays \$8,800 cash. He has no taxable gain or deductible loss on the transaction, regardless of the adjusted basis of his old cab. If Bill sold the old cab to a third party for \$2,000 and bought a new one, he would have a recognized gain or loss on the sale of his old cab equal to the difference between the amount realized and the adjusted basis of the old cab.

Sale and purchase. If you sell property and buy similar property in two mutually dependent transactions, you may have to treat the sale and purchase as a single nontaxable exchange.

Example. You used your car in your business for 2 years. Its adjusted basis is \$3,500 and its trade-in value is \$4,500. You are interested in a new car that costs \$10,500. Ordinarily, you would trade your old car for the new one and pay the dealer \$6,000. Your basis for depreciation of the new car would then be \$9,500 (\$6,000 plus \$3,500 adjusted basis of the old car).

Because you want your new car to have a larger basis for depreciation, you arrange to sell your old car to the dealer for \$4,500. You then buy the new one for \$10,500 from the same dealer. However, you are treated as having exchanged your old car for the new one because the sale and purchase are reciprocal and mutually dependent. Your basis for depreciation for the new car is \$9,500, the same as if you traded the old car.

Reporting the exchange. Report the exchange of like-kind property on **Form 8824**. The instructions for the form explain how to report the details of the exchange. Report the exchange even though no gain or loss is recognized.

If you have any taxable gain because you received money or unlike property, report it on Schedule D (Form 1040) or Form 4797, whichever applies. See chapter 4. You may have to report the taxable gain as ordinary income because of depreciation. See *Like-Kind Exchanges and Involuntary Conversions* in chapter 3.

Exchange expenses. Exchange expenses are generally the closing costs that you pay. They include such items as brokerage commissions, attorney fees, and deed preparation fees. Subtract these expenses from the consideration received to figure the amount realized on the exchange. Also add them to the basis of the like-kind property received. If you receive cash or unlike property in addition to the like-kind property and realize a gain on the exchange, subtract the expenses from the cash or fair market value of the unlike property. Then use the net amount to figure the recognized gain. See *Partially Nontaxable Exchanges*, later.

Qualifying Property

In a like-kind exchange, both the property you give up and the property you receive must be held by you for investment or for productive use in your trade or business. Machinery, buildings, land, trucks, and rental houses are examples of property that may qualify.

The rules for like-kind exchanges do not apply to exchanges of the following property.

- Property you use for personal purposes, such as your home and your family car.
- Stock in trade or other property held primarily for sale, such as inventories, raw materials, and real estate held by dealers.
- Stocks, bonds, notes, or other securities or evidences of indebtedness, such as accounts receivable.
- Partnership interests.
- Certificates of trust or beneficial interest.
- Choses in action.

However, you might have a nontaxable exchange under other rules. See *Other Nontaxable Exchanges*, later.

An exchange of the assets of a business for the assets of a similar business cannot be treated as an exchange of one property for another property. Whether you engaged in a like-kind exchange depends on an analysis of each asset involved in the exchange. However, see *Multiple Property Exchanges*, later.

Like Property

There must be an exchange of like property. The exchange of real estate for real estate and the exchange of personal property for similar personal property are exchanges of like property. For example, the trade of land improved with an apartment house for land improved with a store building, or a panel truck for a pickup truck, is a like-kind exchange.

An exchange of personal property for real property does not qualify as a like-kind exchange. For example, an exchange of a piece of machinery for a store building does not qualify. Nor does the exchange of livestock of different sexes qualify.

Real property. An exchange of city property for farm property, or improved property for unimproved property is a like-kind exchange.

The exchange of real estate you own for a real estate lease that runs 30 years or more is a like-kind exchange. However, not all exchanges of interests in real property qualify. The exchange of a life estate expected to last less than 30 years for a remainder interest is not a like-kind exchange.

An exchange of a remainder interest in real estate for a remainder interest in other real estate is a like-kind exchange if the nature and character of the two property interests are the same.

Special rule for foreign real property exchanges. Real property located in the United States and real property located outside of the United States are not considered like-kind property under the like-kind exchange rules. If you exchange foreign real property for property located in the United States, your gain or loss on the exchange is recognized. Foreign real property is real property not located in a state or the District of Columbia.

This foreign real property exchange rule does not apply to the replacement of condemned real property. Foreign and U.S. real property can still be considered like-kind property under the rules for replacing condemned property to postpone gain on the condemnation. See *Postponement of Gain*, under *Involuntary Conversions*, earlier.

Personal property. Depreciable tangible personal property can be either "like kind" or "like class" to qualify for nonrecognition treatment. Like-class properties are depreciable tangible personal properties within the same General Asset Class or Product Class. Property classified in any General Asset Class may not be classified within a Product Class.

General Asset Classes. General Asset Classes describe the types of property frequently used in many businesses. They include:

- 1) Office furniture, fixtures, and equipment (asset class 00.11),
- 2) Information systems, such as computers and peripheral equipment (asset class 00.12),
- 3) Data handling equipment except computers (asset class 00.13),
- 4) Airplanes (airframes and engines), except planes used in commercial or contract carrying of passengers or freight, and all helicopters (airframes and engines) (asset class 00.21),
- 5) Automobiles and taxis (asset class 00.22),
- 6) Buses (asset class 00.23),
- 7) Light general purpose trucks (asset class 00.241),
- 8) Heavy general purpose trucks (asset class 00.242),
- 9) Railroad cars and locomotives except those owned by railroad transportation companies (asset class 00.25),
- 10) Tractor units for use over the road (asset class 00.26),
- 11) Trailers and trailer-mounted containers (asset class 00.27),
- 12) Vessels, barges, tugs, and similar water-transportation equipment, except those used in marine construction (asset class 00.28), and
- 13) Industrial steam and electric generation or distribution systems (asset class 00.4).

Product Classes. Product Classes include property listed in a 4-digit product class (except any ending in "9," a miscellaneous category) in Division D of the Standard Industrial Classification codes of the Executive Office of the President, Office of Management and Budget, Industrial Classification Manual (Manual). Copies of the Manual may be obtained from the National Technical Information Service, an agency of the U.S. Department of Commerce. To order the manual, call the National Technical Information Service at 1-800-553-6847.

Example 1. You transfer a personal computer used in your business for a printer to be used in your business. The properties exchanged are within the same General Asset Class and are therefore of a like class.

Example 2. Trena transfers a grader to Ron in exchange for a scraper. Both are used in a business. Neither property is within any of the General Asset Classes. Both properties, however, are within the same Product Class and are therefore of a like class.

Intangible personal property and non-depreciable personal property. If you exchange intangible personal property or non-depreciable personal property for like-kind property, no gain or loss is recognized on the exchange. (There are no like classes for these properties.) Whether intangible personal property, such as a patent or copyright, is of a like kind to other intangible personal property generally depends on the nature or character of the rights involved. It also depends on the nature or character of the underlying property to which those rights relate.

Example. The exchange of a copyright on a novel for a copyright on a different novel can qualify as a like-kind exchange. However, the exchange of a copyright on a novel for a copyright on a song is not a like-kind exchange.

Goodwill. The exchange of the goodwill or going concern value of a business for the goodwill or going concern value of another business is not a like-kind exchange.

Special rule for foreign personal property exchanges. Personal property used predominantly in the United States and personal property used predominantly outside the United States are not like-kind property under the like-kind exchange rules. If you exchange property used predominantly in the United States for property used predominantly outside the United States, your gain or loss on the exchange is recognized.



This rule does not apply to any transfer under a written binding contract in effect on June 8, 1997, and at all times thereafter before the disposition of property. A contract will not fail to be binding solely because it provides for a sale in lieu of an exchange or the property to be acquired as replacement property was not identified under that contract before June 9, 1997.

You determine the predominant use of property you gave up based on where that property was used during the 2-year period ending on the date you gave it up. You determine the predominant use of the property you acquired based on where that property was used during the 2-year period beginning on the date you acquired it.

But if you held either property less than 2 years, determine its predominant use based on where that property was used only during the period of time you (or a related person) held it. This does not apply if the exchange is part of a transaction (or series of transactions) structured to avoid having to treat property as unlike property under this rule.

However, you must treat property as used predominantly in the United States if it is used outside the United States but, under section 168(g)(4) of the Internal Revenue Code, is eligible for accelerated depreciation as though used in the United States.

Deferred Exchanges

A deferred exchange is one in which you transfer property you use in business or hold for investment and, at a later time, you receive like-kind property you will use in busi-

ness or hold for investment. (The property you receive is **replacement property**.) The transaction must be an exchange (that is, property for property), rather than a transfer of property for money that is used to purchase replacement property.

If, before you receive the replacement property, you actually or constructively receive money or unlike property in full payment for the property you transfer, the transaction will be treated as a sale rather than a deferred exchange. In that case, you must recognize gain or loss on the transaction, even if you later receive the replacement property. (It would be treated as if you purchased it.)

You **constructively receive** money or unlike property at the time the money or property is credited to your account or made available to you. You also constructively receive money or unlike property at the time any limits or restrictions on it expire or are waived.

The determination of whether you actually or constructively receive money or unlike property, however, is made without regard to certain arrangements you make to ensure that the other party carries out its obligation to transfer the replacement property to you. For example, if you have that obligation secured by a mortgage or by cash or its equivalent held in a qualified escrow account or qualified trust, that arrangement will be disregarded in determining whether you actually or constructively receive money or unlike property. For more information, see section 1.1031(k)-1(g) of the Income Tax Regulations. Also, see *Like-Kind Exchanges Using Qualified Intermediaries*, later.

Identification requirement. You must identify the property to be received within 45 days after the date you transfer the property given up in the exchange. Any property received during that time is considered to have been identified.

If you transfer more than one property (as part of the same transaction) and the properties are transferred on different dates, the identification period and the receipt period (discussed later) begin on the earliest date of the transfers.

Identifying replacement property. You must identify the replacement property in a signed written document and deliver it to the other person involved in the exchange. You must clearly describe the replacement property in the written document. For example, use the legal description or street address for real property and the make, model, and year for a car. In the same manner, you can revoke an identification of replacement property at any time before the end of the identification period.

Identifying alternative and multiple properties. You can identify more than one replacement property. Regardless of the number of properties you give up, the maximum number of replacement properties you can identify is the larger of:

- 1) Three, or
- 2) Any number of properties whose total fair market value (FMV) at the end of the identification period is not more than double the total FMV, on the date of transfer, of all properties you give up.

If, as of the end of the identification period, you have identified more properties than permitted under this maximum rule, the only property that will be considered identified is:

- Any replacement property you received before the end of the identification period, and
- Any replacement property identified before the end of the identification period and received before the end of the receipt period, but only if the FMV of the property is at least 95% of the total FMV of all identified replacement properties. (Do not include any you revoked.) FMV is determined on the earlier of the date you received the property or the last day of the receipt period.

Disregard incidental property. Do not treat property that is incidental to a larger item of property as separate from the larger item when you identify replacement property. Property is incidental to a larger item of property if:

- 1) It is typically transferred with the larger item, and
- 2) The total FMV of all the incidental property is not more than 15% of the total FMV of the larger item of property.

Replacement property to be produced. Gain or loss from a deferred exchange can qualify for nonrecognition even if the replacement property is not in existence or is being produced at the time you identify it as replacement property. If you need to know the FMV of the replacement property to identify it, estimate its FMV as of the date you expect to receive it.

To determine whether the replacement property you received qualifies as like-kind by being substantially the same as the property you identified, do not take into account any variations due to usual production changes. Substantial changes in the property to be produced, however, will disqualify it as like-kind property.

If your identified replacement property is personal property to be produced, it must be completed by the date you receive it to qualify as like-kind property.

If your identified replacement property is real property to be produced and it is not completed by the date you receive the property, it may still qualify as like-kind property. It will qualify as like-kind property only if, had it been completed on time, the property you received would have been considered to be substantially the same as the property you identified. It is considered to be substantially the same only to the extent the property received is considered real property under local law. However, any additional production on the replacement property after you receive it does not qualify as like-kind property. (To this extent, the transaction is treated as a taxable exchange of property for services.)

Receipt requirement. The property must be received by the earlier of:

- The 180th day after the date on which you transfer the property given up in the exchange, or
- The due date, including extensions, for your tax return for the tax year in which the transfer of the property given up occurs.

You must receive substantially the same property that met the identification requirement, discussed earlier.

Like-Kind Exchanges Using Qualified Intermediaries

If you transfer property through a qualified intermediary, the transfer of the property given up and receipt of like-kind replacement property is treated as an exchange. This rule applies even if you receive money or other property directly from a party to the transaction other than the qualified intermediary.

A **qualified intermediary** is a person who enters into a written exchange agreement with you to acquire and transfer the property you give up and to acquire the replacement property and transfer it to you. This agreement must expressly limit your rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by the qualified intermediary.

A qualified intermediary cannot be either of the following.

- 1) Your agent at the time of the transaction. This includes a person who has been your employee, attorney, accountant, investment banker or broker, or real estate agent or broker within the 2-year period before the transfer of property you give up.
- 2) A person who is related to you or your agent under the rules discussed in chapter 2 under *Nondeductible Loss*, substituting “10%” for “50%”.

An intermediary is treated as acquiring and transferring property if:

- 1) The intermediary acquires and transfers legal title to the property,
- 2) The intermediary enters into an agreement with a person other than you for the transfer to that person of the property you give up and that property is transferred to that person, and
- 3) The intermediary enters into an agreement with the owner of the replacement property for the transfer of that property and the replacement property is transferred to you.

An intermediary is treated as entering into an agreement if the rights of a party to the agreement are assigned to the intermediary and all parties to that agreement are notified in writing of the assignment by the date of the relevant transfer of property.

Partially Nontaxable Exchanges

If, in addition to like property, you receive money or unlike property in a like-kind exchange in which you realize a gain, you have a partially nontaxable exchange. You are taxed on the gain you realize, but only to the extent of the money and the fair market value of the unlike property you receive.



A loss is never deductible in a nontaxable exchange, even if you receive unlike property or cash.

To figure the amount of taxable gain, first determine the fair market value of any unlike property you receive and add it to the amount of any money you receive. The total is the maximum amount of gain that can be taxed. Next, figure the amount of gain on the whole exchange as discussed earlier under *Gain or Loss From Sales and Exchanges*. Your recognized (taxable) gain is the lesser of these two amounts.

Example. You exchange real estate held for investment that has an adjusted basis of \$8,000 for other real estate that you want to hold for investment. The real estate you receive has a fair market value of \$10,000. You also receive \$1,000 in cash. You paid \$500 in exchange expenses. Although the total gain realized on the transaction is \$2,500, only \$500 (\$1,000 cash received minus the \$500 exchange expenses) is recognized (included in your income).

Assumption of liabilities. If the other party to a nontaxable exchange assumes any of your liabilities, or if you transfer property subject to a liability, you will be treated as if you received cash in the amount of the liability.

Example. The facts are the same as in the previous example, except the property you give up is subject to a \$3,000 mortgage. Figure the gain realized as follows:

FMV of like property received	\$10,000
Cash	1,000
Mortgage assumed on property given up	<u>3,000</u>
Total received	\$14,000
Minus: Exchange expenses	<u>(500)</u>
Amount realized	\$13,500
Minus: Adjusted basis of property you transferred	<u>(8,000)</u>
Realized gain	\$5,500

The realized gain is taxed only up to \$3,500, the sum of the cash received (\$1,000 – \$500 exchange expenses) and the mortgage (\$3,000).

Unlike property given up. If, in addition to like property, you give up unlike property, you must recognize gain or loss on the unlike property you give up. The gain or loss is equal to the difference between the fair market value of the unlike property and its adjusted basis.

Example. You exchange stock and real estate that you held for investment for real estate that you also intend to hold for investment. The stock you transfer has a fair market value of \$1,000 and an adjusted basis of \$4,000. The real estate you exchange has a fair market value of \$19,000 and an adjusted basis of \$15,000. The real estate you receive has a fair market value of \$20,000. You do not have a taxable gain on the exchange of the real estate because it qualifies as a nontaxable exchange. However, you must recognize (report on your return) a \$3,000 loss on the stock because it is unlike property.

Basis of property received. The total basis for all properties (other than money) you receive in a partially nontaxable exchange is the total adjusted basis of the properties you give up, with the following adjustments.

- 1) Add—
 - a) Any additional costs you incur, and
 - b) Any gain you recognize on the exchange.
- 2) Subtract—
 - a) Any money you receive, and
 - b) Any loss you recognize on the exchange.

Allocate this basis first to the unlike property, other than money, up to its fair market value on the date of the exchange. The rest is the basis of the like property.

For more information, see Publication 551.

Multiple Property Exchanges

Under the like-kind exchange rules, you must generally make a property-by-property comparison to figure your recognized gain and the basis of the property you receive in the exchange. However, for exchanges of multiple properties, you do not make a property-by-property comparison if you:

- Transfer and receive properties in two or more exchange groups, or
- Transfer or receive more than one property within a single exchange group.

In this situation, you figure your recognized gain and the basis of the property you receive by comparing the properties within each exchange group.

Exchange groups. Each exchange group consists of properties transferred and received in the exchange that are of like kind or like classes. (See *Like Property*, earlier.) If property could be included in more than one exchange group, you can include it in any one of those groups. However, the following may not be included in an exchange group.

- Money.
- Stock in trade or other property held primarily for sale.
- Stocks, bonds, notes, or other securities or evidences of debt or interest.
- Interests in a partnership.
- Certificates of trust or beneficial interests.
- Choses in action.

Example. Ben exchanges computer A (asset class 00.12), automobile A (asset class 00.22), and truck A (asset class 00.241), for computer R (asset class 00.12), automobile R (asset class 00.22), truck R (asset class 00.241), and \$400. All properties transferred were used in Ben's business. Similarly, all properties received will be used in his business.

The first exchange group consists of computers A and R; the second exchange group consists of automobiles A and R; and the third exchange group consists of trucks A and R.

Treatment of liabilities. Offset all liabilities you assume as part of the exchange against all liabilities of which you are relieved. Offset these liabilities whether they are recourse or nonrecourse and regardless of whether they are secured by or otherwise relate to specific property transferred or received as part of the exchange.

If you assume more liabilities than you are relieved of, allocate the excess among the exchange groups in proportion to the total fair market value of the properties you received in the exchange groups. The excess liabilities allocated to each exchange group may not exceed the total fair market value of the properties you received in the exchange group.

The amount of excess liabilities assumed that is allocated to an exchange group reduces the total fair market value of the properties received in that exchange group. This reduction is made in determining whether the exchange group has a surplus or a deficiency. (See *Exchange group surplus and deficiency*,

later.) This reduction is also made in determining whether a residual group is created. (See *Residual group*, later.)

If you are relieved of more liabilities than you assume, treat the excess as cash, demand deposits and like accounts, and similar items for purposes of making allocations to the residual group, discussed later.

The treatment of liabilities and any excesses will be the same even if the like-kind exchange treatment applies to only a portion of a larger transaction. If so, determine the excess liabilities you assume or the excess liabilities of which you are relieved based on all liabilities you assume or are relieved of as part of the larger transaction.

Example. The facts are the same as in the preceding example. In addition, the fair market value of, and liabilities secured by, each property are as follows:

	Fair Market Value	Liability
Ben Transfers:		
Computer A	\$1,500	\$0
Automobile A	2,500	500
Truck A	2,000	0
Ben Receives:		
Computer R	\$1,600	\$0
Automobile R	3,100	750
Truck R	1,400	250
Cash	400	

All liabilities assumed by Ben (\$1,000) are offset by all liabilities of which he is relieved (\$500), resulting in excess liabilities assumed of \$500. The excess is allocated among Ben's exchange groups in proportion to the fair market value of the properties received in the exchange groups as follows.

- \$131 ($\$500 \times \$1,600 \div \$6,100$) is allocated to the first exchange group (computers A and R). The fair market value of computer R is reduced to \$1,469 ($\$1,600 - \131).
- \$254 ($\$500 \times \$3,100 \div \$6,100$) is allocated to the second exchange group (automobiles A and R). The fair market value of automobile R is reduced to \$2,846 ($\$3,100 - \254).
- \$115 ($\$500 \times \$1,400 \div \$6,100$) is allocated to the third exchange group (trucks A and R). The fair market value of truck R is reduced to \$1,285 ($\$1,400 - \115).

In each exchange group, Ben uses the reduced fair market value of the properties received to figure the exchange group's surplus or deficiency and to determine whether a residual group has been created.

Residual group. A residual group is created if the total fair market value of the properties transferred in all exchange groups differs from the total fair market value of the properties received in all exchange groups after taking into account the treatment of liabilities (discussed earlier). The residual group consists of money or other property that has a total fair market value equal to that difference. It consists of either money or other property transferred in the exchange or money or other property received in the exchange, but not both.

Other property includes the following items.

- Stock in trade or other property held primarily for sale.

- Stocks, bonds, notes, or other securities or evidences of debt or interest.
- Interests in a partnership.
- Certificates of trust or beneficial interests.
- Choses in action.

Other property also includes property transferred that is not of a like kind or like class with any property received, and property received that is not of a like kind or like class with any property transferred.

The money and properties allocated to the residual group are considered to come from the following assets in the following order.

- 1) Cash, demand deposits and like accounts, and similar items.
- 2) Certificates of deposit, U.S. Government securities, readily marketable stock or securities, and foreign currency.
- 3) All other assets except section 197 intangibles.
- 4) Section 197 intangibles (discussed in chapter 2).

Within each category, you may choose which properties to allocate to the residual group.

Example. Fran exchanges computer A (asset class 00.12) and automobile A (asset class 00.22) for printer B (asset class 00.12), automobile B (asset class 00.22), corporate stock, and \$500. Fran used computer A and automobile A in her business and will use printer B and automobile B in her business.

This transaction results in two exchange groups: (1) computer A and printer B; and (2) automobile A and automobile B.

The fair market values of the properties are as follows:

	Fair Market Value
Fran Transfers:	
Computer A	\$1,000
Automobile A	4,000
Fran Receives:	
Printer B	800
Automobile B	2,950
Corporate Stock	750
Cash	500

Because the total fair market value of the properties transferred in the exchange groups (\$5,000) exceeds the total fair market value of the properties received in the exchange groups (\$3,750) by \$1,250, there is a residual group in that amount. It consists of the \$500 cash and the \$750 worth of corporate stock.

Exchange group surplus and deficiency. For each exchange group, you must determine whether there is an "exchange group surplus" or "exchange group deficiency." An **exchange group surplus** is the excess of the total fair market value of the properties received in an exchange group (less any excess liabilities you assume that are allocated to that exchange group) over the total fair market value of the properties transferred in that exchange group. An **exchange group deficiency** is the excess of the total fair market value of the properties transferred in an exchange group over the total fair market value of the properties received in that exchange group (less any excess liabilities you assume that are allocated to that exchange group).

Example. Karen exchanges computer A (asset class 00.12) and automobile A (asset class 00.22), both of which she used in her business, for printer B (asset class 00.12) and automobile B (asset class 00.22), both of which she will use in her business. Karen's adjusted basis and the fair market value of the exchanged properties are as follows:

	Ad-justed Basis	Fair Market Value
Karen Transfers:		
Computer A	\$375	\$1,000
Automobile A	1,500	4,000
Karen Receives:		
Printer B		2,050
Automobile B		2,950

The first exchange group consists of computer A and printer B. It has an exchange group surplus of \$1,050 because the fair market value of printer B (\$2,050) exceeds the fair market value of computer A (\$1,000) by that amount.

The second exchange group consists of automobile A and automobile B. It has an exchange group deficiency of \$1,050 because the fair market value of automobile A (\$4,000) exceeds the fair market value of automobile B (\$2,950) by that amount.

Recognized gain. Gain or loss realized for each exchange group and the residual group is the difference between the total fair market value of the transferred properties in that exchange group or residual group and the total adjusted basis of the properties. For each exchange group, recognized gain is the lesser of the gain realized or the exchange group deficiency (if any). Losses are not recognized for an exchange group. The total gain recognized on the exchange of like-kind or like-class properties is the sum of all the gain recognized for each exchange group.

For a residual group, you must recognize the entire gain or loss realized.

For properties you transfer that are not within any exchange group or the residual group, figure realized and recognized gain or loss as explained under *Gain or Loss From Sales and Exchanges*, earlier.

Example. Based on the facts in the previous example, Karen recognizes gain on the exchange as follows:

For the first exchange group, the amount of gain realized is the excess of the fair market value of computer A (\$1,000) over its adjusted basis (\$375), or \$625. The amount of gain recognized is the lesser of the gain realized (\$625) or the exchange group deficiency (\$0), or \$0.

For the second exchange group, the amount of gain realized is the excess of the fair market value of automobile A (\$4,000) over its adjusted basis (\$1,500), or \$2,500. The amount of gain recognized is the lesser of the gain realized (\$2,500) or the exchange group deficiency (\$1,050), or \$1,050.

The total amount of gain recognized by Karen in the exchange is the sum of the gains recognized with respect to both exchange groups (\$0 + \$1,050), or \$1,050.

Basis of properties received. The total basis of properties received in each exchange group is the sum of:

- 1) The total adjusted basis of the transferred properties within that exchange group,

- 2) Your recognized gain on the exchange group,
- 3) The exchange group surplus (or minus the exchange group deficiency), and
- 4) The excess liabilities you assume that are allocated to the group.

You allocate the total basis of each exchange group proportionately to each property received in the exchange group according to the property's fair market value.

The basis of each property received within the residual group (other than money) is equal to its fair market value.

Example. Based on the facts in the two previous examples, the bases of the properties received by Karen in the exchange, printer B and automobile B, are determined in the following manner.

The basis of the property received in the first exchange group is \$1,425. This is the sum of:

- 1) The adjusted basis of the property transferred within that exchange group (\$375),
- 2) The amount of gain recognized for that exchange group (\$0),
- 3) The amount of the exchange group surplus (\$1,050), and
- 4) The amount of excess liabilities assumed allocated to that exchange group (\$0).

Because printer B is the only property received within the first exchange group, the entire basis of \$1,425 is allocated to printer B.

The basis of the property received in the second exchange group is \$1,500. This is—

- 1) The sum of:
 - a) The adjusted basis of the property transferred within that exchange group (\$1,500),
 - b) The amount of gain recognized for that exchange group (\$1,050), and
 - c) The amount of excess liabilities assumed allocated to that exchange group (\$0),
- 2) Minus the amount of the exchange group deficiency (\$1,050).

Because automobile B is the only property received within the second exchange group, the entire basis of \$1,500 is allocated to automobile B.

Like-Kind Exchanges Between Related Persons

Special rules apply to like-kind exchanges made between related persons. These rules affect both direct and indirect exchanges. Under these rules, if either person disposes of the property within 2 years after the exchange, then the exchange is disqualified from nonrecognition treatment. The gain or loss on the original exchange must be recognized as of the date of that later disposition.

Related persons. Under these rules, related persons include, for example, you and a member of your family (spouse, brother, sister, parent, child, etc.), you and a corporation in which you have more than 50% ownership, you and a partnership in which you directly

or indirectly own more than a 50% interest of the capital or profits, and two partnerships in which you directly or indirectly own more than 50% of the capital interests or profits.

For more information on related persons, see *Non-deductible Loss* under *Sales and Exchanges Between Related Persons* in chapter 2.

Example. You use a panel truck in your house painting business. Your sister used a station wagon in her landscaping business. In December 1997, you exchanged your truck, plus \$200, for your sister's station wagon. At that time, the fair market value (FMV) of your truck was \$7,000 and its adjusted basis was \$6,000. The FMV of your sister's station wagon was \$7,200 and its adjusted basis was \$1,000. You realized a gain of \$1,000 (the \$7,200 FMV of the station wagon minus the \$200 you paid, minus the \$6,000 adjusted basis of the truck). Your sister realized a gain of \$6,200 (the \$7,000 FMV of your truck plus the \$200 you paid, minus the \$1,000 adjusted basis of the station wagon).

However, because this was a like-kind exchange, you recognized no gain. Your basis in the station wagon was \$6,200 (the \$6,000 adjusted basis of the truck plus the \$200 you paid). Your sister recognized gain only to the extent of the money she received, \$200. Her basis in the truck was \$1,000 (the \$1,000 adjusted basis of the station wagon minus the \$200 received, plus the \$200 gain recognized).

In 1998, you sold the station wagon to a third party for \$7,200. Because you sold it within 2 years after the exchange, the exchange is disqualified from nonrecognition treatment. On your 1998 tax return you must report your \$1,000 gain on the 1997 exchange. You also report a loss on the sale of \$200 (the adjusted basis of the station wagon, \$7,200 (its \$6,200 basis plus the \$1,000 gain recognized), minus the \$7,000 amount realized from the sale).

In addition, your sister must report on her 1998 tax return the \$6,000 balance of her gain on the 1997 exchange. Her adjusted basis in the truck is increased to \$7,000 (its \$1,000 basis plus the \$6,000 gain recognized).

Special rule for 2-year holding period. The 2-year holding period begins on the date of the last transfer of property that was part of the like-kind exchange. If the holder's risk of loss on the property is substantially diminished during any period, however, that period is not counted toward the 2-year holding period. The holder's risk of loss on the property is substantially diminished by:

- The holding of a put on the property,
- The holding by another person of a right to acquire the property, or
- A short sale or other transaction.

A **put** is an option that entitles the holder to sell property at a specified price at any time before a specified future date.

A **short sale** involves property you generally do not own. You borrow the property to deliver to a buyer and, at a later date, buy substantially identical property and deliver it to the lender.

Exceptions to the rules for related persons. The following kinds of property dispositions are excluded from these rules.

- 1) Dispositions due to the death of either related person.
- 2) Involuntary conversions.
- 3) Dispositions if it is established to the satisfaction of the IRS that neither the exchange nor the disposition had as a main purpose the avoidance of federal income tax.

Other Nontaxable Exchanges

The following discussions describe other exchanges that may not be taxable.

Partnership Interests

Exchanges of partnership interests do not qualify as nontaxable exchanges of like-kind property. This applies regardless of whether they are general or limited partnership interests or are interests in the same partnership or different partnerships. However, under some circumstances such an exchange may be treated as a tax-free contribution of property to a partnership. See *Contribution of Property* in Publication 541, *Partnerships*.

An interest in a partnership that has a valid election in effect under section 761(a) of the Internal Revenue Code to be excluded from all the rules of Subchapter K of the Code is treated as an interest in each of the partnership assets and not as a partnership interest. See *Exclusion From Partnership Rules* in Publication 541.

U.S. Treasury Notes or Bonds

Certain issues of U.S. Treasury obligations may be exchanged for certain other issues, designated by the Secretary of the Treasury, with no gain or loss recognized on the exchange. See *U.S. Treasury Bills, Notes, and Bonds under Interest Income* in Publication 550 for more information on the tax treatment of income from these investments.



For other information on these notes and bonds, call the Bureau of the Public Debt at (202) 874-4000, or write to:

Bureau of the Public Debt
Capital Area Servicing Center
1300 C Street, S.W.
Washington, DC 20239-0001



Or, on the Internet, visit:
www.publicdebt.treas.gov

Insurance Policies and Annuities

No gain or loss is recognized if you exchange:

- 1) A life insurance contract for another or for an endowment or annuity contract,
- 2) An endowment contract for an annuity contract or for another endowment contract providing for regular payments beginning at a date not later than the beginning date under the old contract, or
- 3) An annuity contract for another if the insured or annuitant remains the same.

If you realize a gain on the exchange of an endowment contract or annuity contract for a life insurance contract or an exchange of

an annuity contract for an endowment contract, you must recognize the gain.

For information on transfers and rollovers of employer-provided annuities, see Publication 575, *Pension and Annuity Income*, or Publication 571, *Tax-Sheltered Annuity Programs for Employees of Public Schools and Certain Tax-Exempt Organizations*.

Cash received. The nonrecognition and nontaxable transfer rules do not apply to a rollover in which you receive cash proceeds from the surrender of one policy and invest the cash in another policy. However, you can treat a cash distribution and reinvestment as meeting the nonrecognition or nontaxable transfer rules if all the following requirements are met.

- 1) At the time you receive the distribution, the insurance company that issued the policy or contract is subject to a rehabilitation, conservatorship, insolvency, or similar state proceeding.
- 2) You withdraw all amounts to which you are entitled or the maximum amount permitted under the state proceeding.
- 3) You reinvest the distribution, not later than 60 days after receipt, in a single policy or contract issued by another insurance company, or in a single custodial account.
- 4) You assign all rights to future distributions to the new issuer for investment in the new policy or contract if the distribution was restricted by the state proceeding.
- 5) You would have qualified under the nonrecognition or nontaxable transfer rules if you had exchanged the affected policy or contract for the new one.

If you do not reinvest all of the cash distribution, the rules for partially nontaxable exchanges, discussed earlier, apply.

In addition to meeting these five requirements, you must:

- 1) Give to the issuer of the new policy or contract a statement that includes —
 - a) The gross amount of cash distributed,
 - b) The amount reinvested, and
 - c) The amount of your investment in the affected policy or contract on the date of the initial cash distribution, and
- 2) Attach to your timely filed tax return for the year of the initial distribution —
 - a) A statement entitled "ELECTION UNDER REV. PROC. 92-44" that includes the name of the issuer and the policy number (or similar identifying number) of the new policy or contract, and
 - b) A copy of the statement given to the issuer of the new policy or contract.

Property Exchanged for Stock

If you transfer property to a corporation in exchange for stock in that corporation (other than nonqualified preferred stock, described later), and immediately afterwards you are in control of the corporation, the exchange is usually not taxable. This rule applies both to

individuals and to groups who transfer property to a corporation. It does not apply in the following situations.

- The corporation is an investment company.
- You transfer the property in a bankruptcy or similar proceeding in exchange for stock used to pay creditors.
- The stock is received in exchange for the corporation's debt (other than a security), or for interest on the corporation's debt (including a security) that accrued while you held the debt.

Control of a corporation. To be in control of a corporation, you or your group of transferors must own, immediately after the exchange, at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of the outstanding shares of each class of nonvoting stock.

Example 1. You and Bill Jones purchase property for \$100,000. You both organize a corporation when the property has a fair market value of \$300,000. You transfer the property to the corporation for all its authorized capital stock, which has a par value of \$300,000. No gain is included in income by you, Bill, or the corporation.

Example 2. You and Bill transfer the property having a basis of \$100,000 to a corporation in exchange for stock having a fair market value of \$300,000. This represents only 75% of each class of stock of the corporation. The other 25% was already issued to someone else. You and Bill recognize a taxable gain of \$200,000 on the transaction.

Services rendered. The term *property* does not include services rendered or to be rendered to the issuing corporation. The value of stock received for services is income to the recipient.

Example. You transfer property worth \$35,000 and render services valued at \$3,000 to a corporation in exchange for stock valued at \$38,000. Right after the exchange you own 85% of the outstanding stock. No gain is included in income on the exchange of property. However, you recognize ordinary income of \$3,000 as payment for services you rendered to the corporation.

Property of relatively small value. The term *property* does not include property of a relatively small value when it is compared to the value of stock and securities already owned or to be received for services by the transferor, if the main purpose of the transfer is to qualify for the nonrecognition of gain or loss by other transferors.

Property transferred will not be considered to be of relatively small value if its fair market value is at least 10% of the fair market value of the stock and securities already owned or to be received for services by the transferor.

Stock received in disproportion to property transferred. If a group of transferors exchange property for corporate stock, each transferor does not have to receive stock in proportion to his or her interest in the property transferred. If a disproportionate transfer takes place, it will be treated for tax purposes in accordance with its true nature. It may be treated as if the stock were first received in proportion and then some of it used to make

gifts, pay compensation for services, or satisfy the transferor's obligations.

Money or other property received. If, in an otherwise nontaxable exchange of property for corporate stock, you also receive money or property other than stock, you may have a taxable gain. You are taxed only up to the amount of money plus the fair market value of the other property you receive. The rules for figuring the taxable gain in this situation generally follow those for a partially nontaxable exchange discussed earlier under *Like-Kind Exchanges*. If the property you give up includes depreciable property, the taxable gain may have to be reported as ordinary income because of depreciation. See chapter 3. No loss is recognized.

Nonqualified preferred stock. Nonqualified preferred stock is treated as property other than stock. Generally, this applies to preferred stock with one or more of the following features.

- The holder has the right to require the issuer or a related person to redeem or purchase the stock.
- The issuer or a related person is required to redeem or purchase the stock.
- The issuer or a related person has the right to redeem the stock and, on the issue date it is more likely than not that the right will be exercised.
- The dividend rate on the stock varies with reference to interest rates, commodity prices, or similar indices.

For a detailed definition of nonqualified preferred stock, see section 351(g)(2) of the Internal Revenue Code.

Liabilities. If the corporation assumes your liabilities, or the property is taken subject to a liability, the exchange is not generally treated as if you received money or other property. There are two exceptions to this treatment.

- 1) If the liabilities the corporation assumes are more than your adjusted basis in the property you transfer, gain is recognized up to the amount of the excess. However, if the liabilities assumed give rise to a deduction when paid, such as a trade account payable or interest, no gain is recognized.
- 2) If there is no good business reason for the corporation to assume your liabilities, or if your main purpose in the exchange is to avoid federal income tax, the assumption is treated as if you received money in the amount of the liabilities.

Example. You transfer property to a corporation for stock. You also receive \$10,000 in the exchange. Your adjusted basis in the transferred property is \$20,000. The stock you receive has a fair market value (FMV) of \$16,000. The corporation also assumes a \$5,000 mortgage on the property. Gain is realized as follows:

FMV of stock received	\$16,000
Cash received	10,000
Liability assumed by corporation	<u>5,000</u>
Total received	\$31,000
Minus: Adjusted basis of property transferred	<u>20,000</u>
Realized gain	<u>\$11,000</u>

The liability assumed is not treated as money or other property. Therefore, the recognized gain is limited to \$10,000, the amount of cash received.

Transfers Between Spouses

No gain or loss is recognized on a transfer of property from an individual to (or in trust for the benefit of) a spouse, or a former spouse if incident to divorce. This rule does not apply if the recipient spouse or former spouse is a nonresident alien. Nor does it apply to a transfer in trust to the extent the adjusted basis of the property is less than the amount of the liabilities assumed and the liabilities on the property.

Any transfer of property to a spouse or former spouse on which gain or loss is not recognized is treated by the recipient as a gift and is not considered a sale or exchange. The recipient's basis in the property will be the same as the adjusted basis of the giver immediately before the transfer. This carry-over basis rule applies whether the adjusted basis of the transferred property is less than, equal to, or greater than either its fair market value at the time of transfer or any consideration paid by the recipient. This rule applies for purposes of determining loss as well as gain. Any gain recognized on a transfer in trust increases the basis.

For more information on transfers between spouses, see *Property Settlements* in Publication 504, *Divorced or Separated Individuals*.

Rollover of Gain From Publicly Traded Securities

You can choose to roll over a capital gain from the sale of publicly traded securities (securities traded on an established securities market) into a specialized small business investment company (SSBIC). If you make this choice, the gain from the sale is recognized only to the extent the amount realized is more than the cost of SSBIC common stock or partnership interest bought during the 60-day period beginning on the date of the sale. You must reduce your basis in the SSBIC stock or partnership interest by the gain not recognized.

The gain that can be rolled over during any tax year is limited. For individuals, the limit is the smaller of:

- 1) \$50,000 (\$25,000 for married individuals filing separately), or
- 2) \$500,000 (\$250,000 for married individuals filing separately) minus the gain rolled over in all earlier tax years.

For C corporations, the limit is the smaller of:

- 1) \$250,000, or
- 2) \$1 million minus the amount of gain rolled over in all earlier tax years.

For more information, see chapter 4 of Publication 550, *Investment Income and Expenses*.

Sales of Small Business Stock

If you sell qualified small business stock, you may be able to roll over your gain tax free or exclude part of the gain from your income. Qualified small business stock is stock issued by a qualified small business after August 10, 1993, that meets certain tests.

Rollover of gain. You can choose to roll over a capital gain from the sale of qualified small business stock held for more than 6 months into other qualified small business stock. This choice is not allowed to C corporations. If you make this choice, the gain from the sale is recognized only to the extent the amount realized is more than the cost of the other qualified small business stock bought during the 60-day period beginning on the date of sale. You must reduce your basis in the other qualified small business stock by the gain not recognized.

Exclusion of gain. Beginning in 1998, you may be able to exclude from your gross income one-half of your gain from the sale or exchange of qualified small business stock held by you for more than 5 years. This exclusion is not allowed to C corporations. Special rules apply when the stock is held by a partnership, S corporation, regulated investment company, or common trust fund.

Your excluded gain from the stock of any one issuer is limited to the greater of:

- 1) Ten times your basis in all qualified stock of the issuer that you sold or exchanged during the year, or
- 2) \$10 million (\$5 million for married individuals filing separately) minus the amount of your excluded gain from the stock of the same issuer in earlier years.

More information. For more information on sales of small business stock, see chapter 4 of Publication 550.

2.

Ordinary or Capital Gain or Loss

Introduction

You must classify your gains and losses as either ordinary or capital gains or losses (and your capital gains or losses as either short-term or long-term gains or losses). You must do this to figure your net capital gain or loss.

For individuals, a net capital gain may be taxed at a lower tax rate than ordinary income. See *Maximum Tax Rates on Net Capital Gain* in chapter 4. Your deduction for a net capital loss may be limited. See *Treatment of Capital Losses* in chapter 4.

Capital gain or loss. Generally, you will have a capital gain or loss if you sell or exchange a capital asset. You may also have a capital gain if your section 1231 transactions result in a net gain.

Section 1231 transactions. These are sales and exchanges of property held more than 1 year and either used in a trade or business or held for the production of rents or royalties. They also include certain involuntary conversions of business or investment property, including capital assets. See *Section 1231 Gains and Losses* in chapter 3 for more information.

Topics

This chapter discusses:

- Capital assets
- Noncapital assets
- Sales and exchanges between related persons
- Other dispositions

Useful Items

You may want to see:

Publication

- 550** Investment Income and Expenses

Form (and Instructions)

- Schedule D (Form 1040)** Capital Gains and Losses
- 4797** Sales of Business Property
- 8594** Asset Acquisition Statement Under Section 1060

See chapter 5 for information about getting these publications and forms.

Capital Assets

For the most part, everything you own and use for personal purposes or investment is a capital asset. For exceptions, see *Noncapital Assets*, later.

Some **examples of capital assets** are:

- Stocks and bonds,
- A home owned and occupied by you and your family,
- Timber grown on your home property or investment property, even if casual sales of the timber are made,
- Household furnishings,
- A car used for pleasure or commuting,
- Coin or stamp collections,
- Gems and jewelry, and
- Gold, silver, and other metals.

Personal use property. Property held for personal use is a capital asset. **Gain** from a sale or exchange of that property is a capital gain. **Loss** from the sale or exchange of that property is not deductible. You can deduct a loss relating to personal use property only if it results from a casualty or theft.

Investment property. Investment property (such as stocks and bonds) is a capital asset and a gain or loss from its sale or exchange

is a capital gain or loss. This treatment does not apply to property used to produce rental income. See *Business assets*, later, under *Noncapital Assets*.

Release of restriction on land. Amounts you get for the release of a restrictive covenant in a deed to land are treated as proceeds from the sale of a capital asset.

Noncapital Assets

This discussion lists and illustrates the six exceptions to capital assets. They are:

- 1) **Property held mainly for sale to customers** or property that will physically become part of merchandise for sale to customers,
- 2) **Accounts or notes receivable** acquired in the ordinary course of a trade or business, or for services rendered as an employee, or from the sale of any properties described in (1),
- 3) **Depreciable property** used in your trade or business (even if fully depreciated),
- 4) **Real property** used in your trade or business,
- 5) **A copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property** —
 - a) Created by your personal efforts,
 - b) Prepared or produced for you (in the case of a letter, memorandum, or similar property), or
 - c) Acquired from a person who created the property or for whom the property was prepared, under circumstances (for example, by gift) entitling you to the basis of the person who created the property, or for whom it was prepared or produced, and
- 6) **U.S. Government publications** that you got from the government for free or for less than the normal sales price, or that you acquired under circumstances entitling you to the basis of someone who got the publications for free or for less than normal sales price.

Property held mainly for sale to customers. Stock in trade, inventory, and other property you hold mainly for sale to customers in your trade or business are not capital assets. Their treatment is discussed in chapter 6 of Publication 334, *Tax Guide for Small Business (For Individuals Who Use Schedule C or C-EZ)*.

Business assets. Real property and depreciable property used in your trade or business or as rental property (including section 197 intangibles, defined later under *Dispositions of Intangible Property*) are not capital assets. Their treatment is discussed in chapter 3.

Letters and memorandums. Letters, memorandums, and similar property (such as drafts of speeches, recordings, transcripts, manuscripts, drawings, or photographs) are not treated as capital assets if your personal efforts created them or if they were prepared or produced for you. Nor is this property a

capital asset if your basis in it is determined by reference to the person who created it or the person for whom it was prepared. For this purpose, letters and memorandums addressed to you are considered prepared for you. If letters or memorandums are prepared by persons under your administrative control, they are considered prepared for you whether or not you review them.

Sales and Exchanges Between Related Persons

This section discusses the special rules that may apply to the sale or exchange of property between related persons. If these rules apply, gains may be treated as ordinary income and losses may not be deductible. See *Transfers Between Spouses* in chapter 1 for special rules that apply to spouses.

Gain Is Ordinary Income

If a gain is recognized on the sale or exchange of property to a related person, the gain may be ordinary income even if the property is a capital asset. It is ordinary income if the sale or exchange is one of the following transactions.

Depreciable property transactions. Gain on the sale or exchange of property, including a leasehold or a patent application, that is depreciable property in the hands of the person who receives it, is ordinary income if the transaction is either directly or indirectly between:

- 1) A person and the person's controlled entity or entities,
- 2) A taxpayer and any trust in which the taxpayer (or his or her spouse) is a beneficiary, unless the beneficiary's interest in the trust is a remote contingent interest, that is, the value of the interest computed actuarially is 5% or less of the value of the trust property,
- 3) An executor and a beneficiary of an estate, unless the sale or exchange is in satisfaction of a pecuniary bequest, or
- 4) An employer (or any person related to the employer under rules (1), (2), or (3)) and a welfare benefit fund (within the meaning of section 419(e) of the Internal Revenue Code) that is controlled directly or indirectly by the employer (or any person related to the employer).

A person's controlled entity is:

- 1) A corporation in which **more than 50%** of the value of all outstanding stock, or a partnership in which **more than 50%** of the capital interest or profits interest, is owned, directly or indirectly, by or for that person, or
- 2) An entity whose relationship with that person is one of the following.
 - a) A corporation and a partnership, if the same persons own more than 50% in value of the outstanding stock of the corporation and more than 50% of the capital interest or profits interest in the partnership.

- b) Two corporations that are members of the same controlled group as defined in section 1563(a) of the Internal Revenue Code, except that "more than 50%" is substituted for "at least 80%" in that definition.
- c) Two S corporations, if the same persons own more than 50% in value of the outstanding stock of each corporation.
- d) Two corporations, one of which is an S corporation, if the same persons own more than 50% in value of the outstanding stock of each corporation.

Controlled partnership transactions. A gain recognized in a controlled partnership transaction may be ordinary income. The gain is ordinary income if it results from the sale or exchange of property that, in the hands of the party who receives it, is a noncapital asset such as trade accounts receivable, inventory, stock in trade, or depreciable or real property used in a trade or business.

A controlled partnership transaction is a transaction directly or indirectly between:

- 1) A partnership and a partner who owns, directly or indirectly, more than 50% of the capital interest or profits interest in the partnership, or
- 2) Two partnerships, if the same persons own, directly or indirectly, more than 50% of the capital interests or profits interests in both partnerships.

Determining ownership. In the above transactions, use the following rules to determine the ownership of stock or a partnership interest.

- 1) Stock or a partnership interest owned, directly or indirectly, by or for a corporation, partnership, estate, or trust is considered owned proportionately by or for its shareholders, partners, or beneficiaries. (However, for a partnership interest owned by or for a C corporation, this applies only to shareholders who own, directly or indirectly, 5% or more in value of the stock of the corporation.)
- 2) An individual is considered as owning the stock or partnership interest owned, directly or indirectly, by or for his or her family. Family includes only brothers and sisters, half-brothers and half-sisters, spouse, ancestors, and lineal descendants.
- 3) For purposes of applying rule (1) or (2) above, stock or a partnership interest **constructively owned** by a person under rule (1), is treated as actually owned by that person. But stock or partnership interest constructively owned by an individual under rule (2) is not treated as owned by the individual for reapplying rule (2) to make another person the constructive owner of that stock or partnership interest.

Nondeductible Loss

A loss on the sale or exchange of property between related persons is not deductible. This applies to both direct and indirect transactions, but not to distributions of property from a corporation in a complete liquidation. The following are **related persons**.

- 1) Members of a family, including only brothers, sisters, half-brothers, half-sisters, spouse, ancestors (parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.).
- 2) An individual and a corporation when the individual owns, directly or indirectly, more than 50% in value of the outstanding stock of the corporation.
- 3) Two corporations that are members of the same controlled group as defined in section 267(f) of the Internal Revenue Code.
- 4) A trust fiduciary and a corporation when the trust or the grantor of the trust owns, directly or indirectly, more than 50% in value of the outstanding stock of the corporation.
- 5) A grantor and fiduciary, and the fiduciary and beneficiary, of any trust.
- 6) Fiduciaries of two different trusts, and the fiduciary and beneficiary of two different trusts, if the same person is the grantor of both trusts.
- 7) A tax-exempt educational or charitable organization and a person who, directly or indirectly, controls such an organization, or a member of that person's family.
- 8) A corporation and a partnership if the same persons own more than 50% in value of the outstanding stock of the corporation and more than 50% of the capital interest or profits interest in the partnership.
- 9) Two S corporations if the same persons own more than 50% in value of the outstanding stock of each corporation.
- 10) Two corporations, one of which is an S corporation, if the same persons own more than 50% in value of the outstanding stock of each corporation.
- 11) An executor and a beneficiary of an estate unless the sale or exchange is in satisfaction of a pecuniary bequest.
- 12) Two partnerships if the same persons own, directly or indirectly, more than 50% of the capital interests or profits interests in both partnerships.
- 13) A person and a partnership when the person owns, directly or indirectly, more than 50% of the capital interest or profits interest in the partnership.

If a sale or exchange is between any of these related persons and involves the lump-sum sale of a number of blocks of stock or pieces of property, the gain or loss must be computed separately for each block of stock or piece of property. The gain on each item is taxable. The loss on any item is nondeductible. Gains from the sales of any of these items may not be reduced by losses on the sales of any of the other items.

Partnership interests. The nondeductible loss rule does not apply to a sale or exchange between the related persons described in (12) or (13) above of an interest in the partnership.

Special rules for controlled groups. Losses on transactions between members of the same controlled group described in (3) above are deferred rather than denied.

For more information, see section 267(f) of the Internal Revenue Code.

Ownership of stock or partnership interests. In determining whether an individual owns directly or **indirectly** any of the outstanding stock of a corporation or an interest in a partnership for purposes of a loss on a sale or exchange, the following rules apply.

Rule 1. Stock or a partnership interest owned, directly or indirectly, by or for a corporation, partnership, estate, or trust is considered owned proportionately by or for its shareholders, partners, or beneficiaries. (However, for a partnership interest owned by or for a C corporation, this applies only to shareholders who own, directly or indirectly, 5% or more in value of the stock of the corporation.)

Rule 2. An individual is considered as owning the stock or partnership interest owned, directly or indirectly, by or for his or her family. Family includes only brothers and sisters, half-brothers and half-sisters, spouse, ancestors, and lineal descendants.

Rule 3. An individual owning (other than by applying Rule 2) any stock in a corporation is considered to own the stock owned directly or indirectly by or for his or her partner.

Rule 4. For purposes of applying Rule 1, 2, or 3, stock or a partnership interest constructively owned by a person under Rule 1 is treated as actually owned by that person. But stock or a partnership interest constructively owned by an individual under Rule 2 or 3 is not treated as owned by the individual for reapplying either Rule 2 or 3 to make another person the constructive owner of that stock or partnership interest.

Indirect transactions. You may not deduct your loss on the sale of stock through your broker if under a prearranged plan a related person or entity buys the same stock that you had owned. This does not apply to a cross-trade between related parties through an exchange that is purely coincidental and is not prearranged.

Property received from a related person. If, in a purchase or exchange, you received property from a related person who had a loss that was not allowable and you later sell or exchange the property at a gain, you recognize the gain only to the extent that it is more than the loss previously disallowed to the related person. This rule applies only to the original transferee.

Example 1. Your brother sold stock to you for \$7,600. His cost basis was \$10,000. His loss of \$2,400 was not deductible. You later sell the same stock to an unrelated party for \$10,500, realizing a gain of \$2,900 (\$10,500 – \$7,600). Your recognized gain is only \$500, the excess gain over the \$2,400 loss not allowed to your brother.

Example 2. Assume the same facts as in Example 1, except that you sell the stock for \$6,900 instead of \$10,500. Your recognized loss is only \$700 (\$7,600 – \$6,900).

You cannot deduct the loss not allowed to your brother.

Other Dispositions

This section discusses some special rules for determining the treatment of gain or loss from various dispositions of property.

Sale of a Business

The sale of a business is not usually a sale of one asset. Instead, all of the assets of the business are sold. Generally, when this occurs, each asset is treated as being sold separately for determining the treatment of gain or loss.

A business usually has many assets. When sold, these assets must be classified as capital assets, depreciable property used in the business, real property used in the business, or property held for sale to customers, such as inventory or stock in trade. The gain or loss on each asset is figured separately. The sale of capital assets results in capital gain or loss. The sale of real property or depreciable property used in the business and held more than 1 year results in gain or loss from a section 1231 transaction (discussed in chapter 3). The sale of inventory results in ordinary income or loss.

Partnership interests. An interest in a partnership or joint venture is treated as a capital asset when sold. The part of any gain or loss from unrealized receivables or inventory items that have appreciated substantially in value will be treated as ordinary gain or loss. For more information, see *Disposition of Partner's Interest* in Publication 541.

Corporation interests. Your interest in a corporation is represented by stock certificates. When you sell these certificates, you usually realize capital gain or loss. For information on the sale of stock, see chapter 4 in Publication 550.

Corporate liquidations. Corporate liquidations of property are generally treated as a sale or exchange. Gain or loss is generally recognized by the corporation on a liquidating sale of its assets. Gain or loss is also generally recognized on a liquidating distribution of assets as if the corporation sold the assets to the distributee at fair market value.

In certain cases where the distributee is a corporation in control of the distributing corporation, the distribution may not be taxable. For more information, see Internal Revenue Code section 332 and its regulations.

Allocation of consideration paid for a business. The sale of a trade or business for a lump sum is considered a sale of each individual asset rather than a single asset. Except for assets exchanged under the like-kind exchange rules, both the buyer and seller of a business must use the residual method (explained later) to allocate the consideration to each business asset transferred. This method determines gain or loss from the transfer of each asset and how much of the consideration is for goodwill and certain other intangible property. It also determines the buyer's basis in the business assets.

The residual method must be used for any transfer of a group of assets that constitutes a trade or business and for which the buyer's

basis is determined only by the amount paid for the assets. This applies to both direct and indirect transfers, such as the sale of a business, or the sale of a partnership interest in which the basis of the buyer's share of the partnership assets is adjusted for the amount paid. A group of assets constitutes a trade or business if goodwill or going concern value could, under any circumstances, attach to them.

Consideration. The buyer's consideration is the cost of the assets acquired. The seller's consideration is the amount realized (money plus the fair market value of property received) from the sale of assets.

Residual method. The residual method provides for the consideration to be reduced first by the amount of cash, demand deposits, and similar accounts transferred by the seller. The amount of consideration remaining after this reduction must be allocated among the various business assets in a specified order.

The allocation must be made among the following assets in proportion to (but not in excess of) their fair market value on the purchase date in the following order.

- 1) Certificates of deposit, U.S. Government securities, readily marketable stock or securities, and foreign currency.
- 2) All other assets except section 197 intangibles.
- 3) Section 197 intangibles (other than goodwill and going concern value).
- 4) Section 197 intangibles in the nature of goodwill and going concern value.

Example. The total amount paid in the sale of Company SKB is \$21,000. No cash or demand deposits were sold. The company's U.S. Government securities had a fair market value of \$3,200. Other tangible business assets had a fair market value of \$15,000. Of the \$21,000 paid for Company SKB, \$3,200 is allocated to U.S. Government securities, \$15,000 to other tangible business assets, and the remaining \$2,800 to section 197 intangibles in the order shown in the previous list.

Agreement. The buyer and seller may enter into a written agreement as to the allocation of any consideration, or the fair market value of any of the assets. This agreement is binding on both parties unless the Internal Revenue Service determines that the amounts are not appropriate.

Reporting requirement. Both the buyer and seller involved in the sale of business assets must report to the IRS the allocation of the sales price among section 197 intangibles and the other business assets. Use **Form 8594, Asset Acquisition Statement Under Section 1060**, to provide this information. The buyer and seller should each attach Form 8594 to their federal income tax return for the year in which the sale occurred.

Dispositions of Intangible Property

Intangible property is any personal property that has value but cannot be seen or touched. It includes such items as patents, copyrights, and the goodwill value of a business.

Gain or loss on the sale or exchange of amortizable or depreciable intangible property held more than 1 year (other than an amount recaptured as ordinary income) is a section 1231 gain or loss. The treatment of section

1231 gain or loss and the recapture of amortization and depreciation as ordinary income are explained in chapter 3. See chapter 12 of Publication 535, *Business Expenses*, for information on amortizable intangible property, and chapter 1 of Publication 946, *How To Depreciate Property*, for information on depreciable intangible property. Gain or loss on dispositions of other intangible property is ordinary or capital gain or loss depending on whether the property is a capital asset or a noncapital asset.

The following discussions explain special rules that apply to certain dispositions of intangible property.

Section 197 Intangibles

Section 197 intangibles are certain intangibles acquired after August 10, 1993 (after July 25, 1991, if elected), and held in connection with the conduct of a trade or business or an activity entered into for profit, whose costs are amortized over 15 years. They include:

- 1) Goodwill,
- 2) Going concern value,
- 3) Workforce in place,
- 4) Business books and records, operating systems, and other information bases,
- 5) Patents, copyrights, formulas, processes, designs, patterns, knowhow, formats, and similar items,
- 6) Customer-based intangibles,
- 7) Supplier-based intangibles,
- 8) Licenses, permits, and other rights granted by a governmental unit,
- 9) Covenants not to compete entered into in connection with the acquisition of a business, and
- 10) Franchises, trademarks, and trade names.

For more information, see chapter 12 of Publication 535.

The following special rules apply to dispositions of section 197 intangibles.

Covenant not to compete. A covenant not to compete (or similar arrangement) that is a section 197 intangible cannot be treated as disposed of or worthless before you have disposed of your entire interest in the trade or business for which the covenant was entered into. Members of the same controlled group of corporations and commonly controlled businesses are treated as a single entity in determining whether a member has disposed of its entire interest in a trade or business.

Nondeductible loss. You cannot deduct a loss from the disposition or worthlessness of a section 197 intangible that you acquired in the same transaction (or series of related transactions) as another section 197 intangible you still hold. Instead, you must increase the adjusted basis of your retained section 197 intangible by the amount of nondeductible loss. If you retain more than one section 197 intangible, increase each intangible's adjusted basis. Figure the increase by multiplying the nondeductible loss amount by a fraction, the numerator of which is the retained intangible's adjusted basis on the date of the loss and the denominator of which is

the total adjusted basis of all retained intangibles on the date of the loss.

In applying this rule, members of the same controlled group of corporations and commonly controlled businesses are treated as a single entity. For example, a corporation cannot deduct a loss on the sale of a section 197 intangible if, after the sale, a member of the same controlled group retains other section 197 intangibles that were acquired in the same transaction as the intangible sold.

Patents

Under a special rule, the transfer of a patent by an individual is treated as a sale or exchange of a capital asset held more than 1 year. This applies even if the payments for the patent are made periodically during the transferee's use or are contingent on the productivity, use, or disposition of the patent. For information on the treatment of gain or loss on the transfer of capital assets, see chapter 4.

This treatment applies to your transfer of a patent if you meet all the following conditions.

- 1) You are the holder of the patent.
- 2) You transfer the patent other than by gift, inheritance, or devise.
- 3) You transfer all substantial rights to the patent or an undivided interest in all such rights.
- 4) You do not transfer the patent to a related person.

Holder. You are the holder of a patent if you are either:

- 1) The individual whose effort created the patent property and who qualifies as the original and first inventor, or
- 2) The individual who purchased an interest in the patent from the inventor before the invention was tested and operated successfully under operating conditions, and who is neither related to, nor the employer of, the inventor.

All substantial rights. All substantial rights to patent property are all rights that have value when they are transferred. A security interest (such as a lien), or a reservation calling for forfeiture for nonperformance, is not treated as a substantial right for these rules and may be kept by you as the holder of the patent.

In the following transfers of patent rights, all substantial rights are not transferred, and the holder is not entitled to the special tax treatment.

- 1) The rights are limited geographically within a country.
- 2) The rights are limited to a period less than the remaining life of the patent.
- 3) The rights are limited to fields of use within trades or industries and are less than all the rights that exist and have value at the time of the transfer.
- 4) The rights are less than all the claims or inventions covered by the patent that exist and have value at the time of the transfer.

Related persons. The special tax treatment does not apply if the transfer is either directly or indirectly between you and a related person, as defined earlier under *Sales and Exchanges Between Related Persons*, and its discussion *Non deductible Loss*, with the following changes.

- 1) Members of your family include your spouse, ancestors, and lineal descendants, but not your brothers, sisters, half-brothers, or half-sisters.
- 2) Substitute "25% or more" ownership for "more than 50%" in that listing.

If you fit within the definition of a related person independent of family status, the brother-sister exception in (1), above, does not apply. Thus, a transfer between a brother and a sister as beneficiary and fiduciary of the same trust is a transfer between related persons. The brother-sister exception does not apply because the trust relationship is independent of family status.

Franchise, Trademark, or Trade Name

If you transfer or renew a franchise, trademark, or trade name for a price that is contingent on its productivity, use, or disposition, the amount you receive is generally treated as an amount realized from the sale of a noncapital asset. A franchise includes an agreement that gives one of the parties the right to distribute, sell, or provide goods, services, or facilities within a specified area.

If you keep any significant power, right, or continuing interest in the subject matter of a franchise, trademark, or trade name that you transfer or renew, the amount you receive is ordinary royalty income, rather than an amount realized from a sale or exchange.

A **significant power**, right, or continuing interest in a franchise, trademark, or trade name includes, but is not limited to, the following rights in the transferred interest.

- 1) A right to disapprove any assignment of the interest, or any part of it.
- 2) A right to end the agreement at will.
- 3) A right to set standards of quality for products used or sold, or for services provided, and for the equipment and facilities used to promote such products or services.
- 4) A right to make the recipient sell or advertise only your products or services.
- 5) A right to make the recipient buy most supplies and equipment from you.
- 6) A right to get payments based on the productivity, use, or disposition of the transferred item of interest if those payments are a substantial part of the transfer agreement.

Subdivision of Land

If you own a tract of land and, to sell or exchange it, you subdivide it into individual lots or parcels, you may receive capital gain treatment on at least part of the proceeds provided you meet certain requirements. See section 1237 of the Internal Revenue Code.

Timber

Standing timber you held as investment property is a capital asset. Gain or loss from its sale is reported as a capital gain or loss on Schedule D (Form 1040). If you held the timber primarily for sale to customers, it is not a capital asset. Gain or loss on its sale is ordinary business income or loss. It is reported in the gross receipts or sales and cost of goods sold items of your return.

Farmers who cut timber on their land and sell it as logs, firewood, or pulpwood usually have no cost or other basis for that timber. These sales constitute a very minor part of their farm businesses. In these cases, amounts realized from such sales, and the expenses of cutting, hauling, etc., are ordinary farm income and expenses on Schedule F (Form 1040).

Special rules apply if you owned the timber more than 1 year and choose to either:

- 1) Treat timber cutting as a sale or exchange, or
- 2) Enter into a cutting contract.

Under these rules, discussed below, disposition of the timber is treated as a section 1231 transaction. Gain or loss is reported on Form 4797.

Christmas trees. Evergreen trees, such as Christmas trees, that are more than 6 years old when severed from their roots and sold for ornamental purposes, are included in the term "timber." They qualify for both special rules, discussed next.

Election to treat cutting as a sale or exchange. Under the general rule, the cutting of timber results in no gain or loss. It is not until a sale or exchange occurs that gain or loss is realized. But if you owned or had a contractual right to cut timber, you may choose to treat the cutting of timber as a section 1231 transaction in the year it is cut. Even though the cut timber is not actually sold or exchanged, you report your gain or loss on the cutting for the year the timber is cut. Any later sale results in ordinary business income or loss. See *Example*, later.

To choose this treatment, you must:

- 1) Own, or hold a contractual right to cut, the timber for a period of more than 1 year before it is cut, and
- 2) Cut the timber for sale or for use in your trade or business.

Making the election. You make your election on your return for the year the cutting takes place by including in income the gain or loss on the cutting, and including a computation of your gain or loss. You do not have to make the election in the first year you cut timber. You may choose to make it in any year to which the election would apply. If the timber is partnership property, the election is made on the partnership return. This election cannot be made on an amended return.

Once you have made the election, it remains in effect for all later years, unless you revoke it.

Revoking a post-1986 election. You can revoke an election you made for a tax year beginning after 1986 only if you can show undue hardship and get the consent of the Internal Revenue Service (IRS). Thereafter, you may not make any new election unless you have the consent of IRS.

Revoking a pre-1987 election. You can revoke an election you made for a tax year beginning before 1987 without the consent of IRS. You can revoke the election by attaching a statement to your tax return for the year the revocation is to be effective. If you make this special revocation, which can be made only once, you can make a new election without the consent of IRS. Any further revocation will require the consent of IRS.

The statement must provide:

- 1) Your name, address, and identification number,
- 2) The year the revocation is effective and the timber to which it applies,
- 3) That the revocation being made is of the election to treat the cutting of timber as a sale or exchange under section 631(a) of the Internal Revenue Code,
- 4) That the revocation is being made under section 311(d) of Public Law 99-514, and
- 5) That you are entitled to make the revocation under section 311(d) of Public Law 99-514 and temporary regulations section 301.9100-7T.

Gain or loss. Your gain or loss on the cutting of standing timber is the difference between its adjusted basis for depletion and its fair market value on the first day of your tax year in which it is cut. Your adjusted basis for depletion of cut timber is based on the number of units (feet board measure, log scale, or other units) of timber cut during the tax year and considered to be sold or exchanged. Your adjusted basis for depletion is also based on the depletion unit of timber in the account used for the cut timber, and should be figured in the same manner as shown in section 611 of the Internal Revenue Code and Income Tax Regulation section 1.611-3.

Depletion on timber is discussed in chapter 13 in Publication 535.

Example. In April 1998, you owned 4,000 MBF (1,000 board feet) of standing timber for more than 1 year. It had an adjusted basis for depletion of \$40 per MBF. You are a calendar year taxpayer. On January 1, 1998, the timber had a fair market value (FMV) of \$120 per MBF. It was cut in April for sale. On your 1998 tax return, you elect to treat the cutting of the timber as a sale or exchange. You report the difference between the FMV and your adjusted basis for depletion as a gain. This amount is reported on Form 4797 along with your other section 1231 gains and losses to figure whether it is treated as capital gain or as ordinary gain. You figure your gain as follows:

FMV of timber January 1, 1998	\$480,000
Minus: Adjusted basis for depletion	<u>160,000</u>
Section 1231 gain	<u>\$320,000</u>

The FMV becomes your basis in the cut timber, and a later sale of the cut timber, including any by-product or tree tops, will result in ordinary business income or loss.

Cutting contract. You must treat the disposal of standing timber under a cutting contract as a section 1231 transaction if:

- 1) You are the owner of the timber,
- 2) You held the timber for more than 1 year before its disposal, and
- 3) You retained an economic interest in the timber.

The difference between the amount realized from the disposal of the timber and its adjusted basis for depletion is treated as gain or loss on its sale. Include this amount on Form 4797 along with your other section 1231 gains or losses to figure whether it is treated as capital or ordinary gain or loss.

Date of disposal. The date of disposal is the date the timber is cut. However, if you receive payment under the contract before the timber is cut, you may elect to treat the date of payment as the date of disposal. This election is effective only to figure the holding period of the timber. It has no effect on the time for reporting gain or loss. To make this election, attach a statement to the tax return filed by the due date (including extensions) for the year payment is received. The statement must identify the advance payments subject to the election and the contract under which they were made.

Owner. The owner of timber is any person who owns an interest in it, including a sublessor and the holder of a contract to cut the timber. You own an interest in timber if you have the right to cut it for sale on your own account or for use in your business.

Economic interest. You have retained an economic interest in standing timber if, under the cutting contract, the expected return on your investment is conditioned on the cutting of the timber.

Tree stumps. Tree stumps are a capital asset if they are on land held by an investor who is not in the timber or stump business as a buyer, seller, or processor. Gain from the sale of stumps sold in one lot by such a holder is taxed as a capital gain. However, tree stumps held by timber operators after the saleable standing timber was cut and removed from the land are considered by-products. Gain from the sale of stumps in lots or tonnage by such operators is taxed as ordinary income.

Precious Metals and Stones, Stamps, and Coins

Gold, silver, gems, stamps, coins, etc., are capital assets except when they are held for sale by a dealer. Any gain or loss from their sale or exchange is generally a capital gain or loss. If you are a dealer, the amount received from the sale is ordinary business income.

Coal and Iron Ore

You must treat the disposal of coal (including lignite) or iron ore mined in the United States as a section 1231 transaction if:

- 1) You owned the coal or iron ore for more than 1 year before its disposal, and

- 2) You kept an economic interest in the coal or iron ore.

For this rule, the date the coal or iron ore is mined is considered the date of its disposal.

Your gain or loss is the difference between the amount realized from disposal of the coal or iron ore and the adjusted basis you use to figure cost depletion (increased by certain expenditures not allowed as deductions for the tax year). This amount is included on Form 4797 along with your other section 1231 gains and losses.

You are considered an **owner** if you own or sublet an economic interest in the coal or iron ore in place. If you own only an option to buy the coal in place, you do not qualify as an owner. In addition, this special gain or loss treatment does not apply to income realized by an owner who is a co-adventurer, partner, or principal in the mining of coal or iron ore.

The expenses of making and administering the contract under which the coal or iron ore was disposed of and the expenses of preserving the economic interest kept under the contract are not allowed as deductions in figuring taxable income. Rather, their total along with the adjusted basis is deducted from the amount received to determine gain. If the total of these expenses plus the adjusted depletion basis is more than the amount received, the result is a loss.

Special rule. The above treatment does not apply if you dispose of the iron ore or coal directly or indirectly to:

- 1) A related person whose relationship to you would result in the disallowance of a loss (see *Nondeductible Loss under Sales and Exchanges Between Related Persons*, earlier), or
- 2) An individual, trust, estate, partnership, association, company, or corporation owned or controlled directly or indirectly by the same interests that own or control your business.

Conversion Transactions

Recognized gain on the disposition or termination of any position held as part of certain conversion transactions is treated as ordinary income. This applies if substantially all your expected return is attributable to the time value of your net investment (like interest on a loan) and the transaction is:

- 1) An applicable straddle (generally, any set of offsetting positions with respect to personal property, including stock),
- 2) A transaction in which you acquire property and, at or about the same time, contract to sell the same or substantially identical property at a specified price, or
- 3) Any other transaction that is marketed and sold as producing capital gain from a transaction in which substantially all of your expected return is due to the time value of your net investment.

For more information, see chapter 4 of Publication 550, *Investment Income and Expenses*.

3.

Ordinary or Capital Gain or Loss for Business Property

Introduction

When you dispose of business property, your taxable gain or loss is usually a section 1231 gain or loss. Its treatment as ordinary or capital is determined under special rules for section 1231 transactions.

When you dispose of depreciable property (section 1245 property or section 1250 property) at a gain, you may have to recognize all or part of the gain as ordinary income under the depreciation recapture rules. Any remaining gain is a section 1231 gain.

Topics

This chapter discusses:

- Section 1231 gains and losses,
- Depreciation recapture on section 1245 property,
- Depreciation recapture on section 1250 property, and
- Depreciation recapture on installment sales, gifts, transfers at death, like-kind exchanges and involuntary conversions, and multiple property transactions.

Useful Items

You may want to see:

Publication

- 534** Depreciating Property Placed in Service Before 1987
- 537** Installment Sales
- 551** Basis of Assets
- 946** How To Depreciate Property

Form (and Instructions)

- 4797** Sales of Business Property

See chapter 5 for information about getting these publications and forms.

Section 1231 Gains and Losses

Section 1231 gains and losses are the taxable gains and losses from section 1231 transactions. Their treatment as ordinary or capital depends on whether you have a net gain or a net loss from all your section 1231 transactions.



CAUTION If you have a gain from a section 1231 transaction, first determine whether any of the gain is ordinary income under the depreciation recapture rules (explained later). Do not take that gain into account as section 1231 gain.

Section 1231 transactions. Transactions that result in gain or loss subject to section 1231 treatment are—

Sales or exchanges of real property or depreciable personal property. This property must be used in a trade or business and held for more than 1 year. Generally, property held for the production of rents or royalties is considered to be used in a trade or business. Depreciable personal property includes amortizable section 197 intangibles (described in chapter 2 under *Other Dispositions*).

Sales or exchanges of leaseholds. The leasehold must be used in a trade or business and held for more than 1 year.

Sales or exchanges of cattle and horses. The cattle and horses must be held for draft, breeding, dairy, or sporting purposes and held for 2 years or more.

Sales or exchanges of other livestock. This livestock does not include poultry. It must be held for draft, breeding, dairy, or sporting purposes and held for 1 year or more.

Sales or exchanges of unharvested crops. The crop and land must be sold, exchanged, or involuntarily converted at the same time and to the same person and the land must be held for more than 1 year.

Growing crops sold with a lease on the land, though sold to the same person in the same transaction, are not included. The taxpayer cannot keep any right or option to reacquire the land, directly or indirectly (other than a right customarily incident to a mortgage or other security transaction).

Cutting of timber or disposal of timber, coal, or iron ore. The cutting or disposal must be treated as a sale, as described in chapter 2 under *Timber and Coal and Iron Ore*.

Condemnations. The condemned property must have been held for more than 1 year. It must be business property or a capital asset held in connection with a trade or business or a transaction entered into for profit, such as investment property. It cannot be property held for personal use.

Casualties and thefts. These must have been a casualty to or theft of business property, property held for the production of rents and royalties, or investment property (such as notes and bonds). You must have held the property for more than 1 year. However, if your casualty or theft losses exceed your casualty or theft gains, neither the gains nor the losses are taken into account in the section 1231 computation.

For more information on casualties and thefts, see Publication 547.

Property for sale to customers. A sale, exchange, or involuntary conversion of property held mainly for sale to customers is not a section 1231 transaction. If you will get back all, or nearly all, of your investment in the property by selling it rather than by using it up in your business, it is property held mainly for sale to customers.

Example. You manufacture and sell steel cable, which you deliver on returnable reels that are depreciable property. Customers

make deposits on the reels, which you refund if the reels are returned within a year. If they are not returned, you keep each deposit as the agreed-upon sales price. Most reels are returned within the one-year period. You keep adequate records showing depreciation and other charges to the capitalized cost of the reels. Under these conditions, the reels are not property held for sale to customers in the ordinary course of your business. Any gain or loss resulting from their not being returned may be capital or ordinary, depending on your section 1231 transactions.

Treatment as ordinary or capital. To determine the treatment of section 1231 gains and losses, combine all your section 1231 gains and losses for the year.

- If you have a **net section 1231 loss**, it is ordinary loss.
- If you have a **net section 1231 gain**, it is ordinary income up to the amount of your **nonrecaptured section 1231 losses** from previous years. The rest, if any, is long-term capital gain.

Nonrecaptured section 1231 losses. Your nonrecaptured section 1231 losses are your net section 1231 losses for the previous 5 years that have not been previously applied against a net section 1231 gain by treating the gain as ordinary income. These losses are applied against your net section 1231 gain beginning with the earliest loss in the 5-year period.

Example. Ashley, Inc., a graphic arts company, is a calendar year corporation. In 1995, it had a net section 1231 loss of \$8,000. For tax years 1997 and 1998, the company has net section 1231 gains of \$5,250 and \$4,600, respectively. In figuring taxable income for 1997, Ashley treated its net section 1231 gain of \$5,250 as ordinary income by recapturing \$5,250 of its \$8,000 net section 1231 loss. In 1998 it applies its remaining net section 1231 loss, \$2,750 (\$8,000 minus \$5,250) against its net section 1231 gain, \$4,600. For 1998 the company reports \$2,750 as ordinary income and \$1,850 (\$4,600 minus \$2,750) as long-term capital gain.

Maximum tax rate on capital gain. The maximum tax rate on the net capital gain of an individual, estate, or trust is determined by treating any ordinary income from a net section 1231 gain as consisting of, first, any net section 1231 gain in the 28% group, then any net section 1231 gain in the 25% group, and finally any net section 1231 gain in the 20% group. Any long-term capital gain is treated as consisting of any remaining net section 1231 gain in each group. See *Maximum Tax Rates on Net Capital Gain* in chapter 4.

Example. The facts are the same as in the previous example, except that the company is operated by an individual as a sole proprietorship. The \$4,600 net section 1231 gain for 1998 is the total of a \$1,000 net section 1231 gain in the 28% group and a \$3,600 net section 1231 gain in the 20% group. The \$2,750 treated as ordinary income consists of the \$1,000 gain in the 28% group and \$1,750 of the gain in the 20% group. Therefore, the maximum tax rate on the individual's net capital gain for 1998 is

determined by including the \$1,850 long-term capital gain in the 20% group.

Depreciation Recapture

If you dispose of depreciable or amortizable property at a gain, you may have to treat all or part of the gain (even if otherwise nontaxable) as ordinary income.



To figure any gain that must be reported as ordinary income, you must keep permanent records of the facts necessary to figure the amount of depreciation or amortization allowed or allowable on your property. This includes the date and manner of acquisition, cost or other basis, depreciation or amortization, and all other adjustments that affect basis.

On property you got in a nontaxable exchange or as a gift, your records must also indicate:

- 1) Whether the adjusted basis was figured using depreciation or amortization you claimed on other property, and
- 2) Whether the adjusted basis was figured using depreciation or amortization another person claimed.

Corporate distributions. For information on depreciable property distributed by corporations, see *Distributions of Appreciated Property* in Publication 542.

General asset accounts. Special rules apply to dispositions of property you depreciated using a general asset account. For information on these rules, see Regulations section 1.168(i)-1(e).

Section 1245 Property

A gain on the disposition of section 1245 property is treated as ordinary income to the extent of depreciation allowed or allowable on the property. See *Gain Treated as Ordinary Income*, later.

Any gain recognized that is more than the part that is ordinary income because of depreciation is a section 1231 gain. See *Treatment as ordinary or capital* under *Section 1231 Gains and Losses*, earlier.

Section 1245 property. This includes any property that is or has been subject to an allowance for depreciation or amortization and that is:

- 1) Personal property (either tangible or intangible),
- 2) Other tangible property (except buildings and their structural components) used as:
 - a) An integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electricity, gas, water, or sewage disposal services,
 - b) A research facility in any of the activities in (a) above, or
 - c) A facility in any of the activities in (a) for the bulk storage of fungible commodities,

- 3) That part of real property (not included in (2)) having an adjusted basis that was reduced by certain amortization deductions (including those for certified pollution control facilities, and child-care facilities, removal of architectural barriers to persons with disabilities and the elderly, or reforestation expenditures) or a section 179 deduction,
- 4) Single purpose agricultural (livestock) or horticultural structures, or
- 5) Storage facilities (except buildings and their structural components) used in distributing petroleum or any primary product of petroleum.

Buildings and structural components.

Section 1245 property does not include buildings and structural components. Do **not** treat structures that are essentially items of machinery or equipment as buildings and structural components. Also, do not treat, as buildings, structures that house property used as an integral part of an activity, if the structures' use is so closely related to the property's use that the structures can be expected to be replaced when the property they initially house is replaced. The fact that the structures are specially designed to withstand the stress and other demands of the property and the fact that the structures cannot be used economically for other purposes indicate that they are closely related to the use of the property they house. Thus, structures such as oil and gas storage tanks, grain storage bins, silos, fractionating towers, blast furnaces, basic oxygen furnaces, coke ovens, brick kilns, and coal tipples are not treated as buildings.

Storage facility. This is a facility used mainly for the bulk storage of fungible commodities. Bulk storage means the storage of a commodity in a large mass before it is used. Thus, if a facility is used to store oranges that have been sorted and boxed, it is not used for bulk storage. To be fungible, a commodity must be such that one part may be used in place of another. Stored materials that vary in composition, size, and weight are not fungible. One part cannot be used in place of another part and the materials cannot be estimated and replaced by simple reference to weight, measure, and number. For example, the storage of different grades and forms of aluminum scrap is not storage of fungible commodities.

Gain Treated as Ordinary Income

The amount of gain treated as ordinary income on the sale, exchange, or involuntary conversion of section 1245 property, including a sale and leaseback transaction, is the **lower** of:

- 1) The depreciation and amortization allowed or allowable on the property, or
- 2) The gain realized on the disposition (the amount realized from the disposition minus the adjusted basis of the property).

A limit on this amount, for gains on like-kind exchanges and involuntary conversions, is explained later.

For any other disposition of section 1245 property, ordinary income is the lower of (1) above or the amount by which its fair market

value exceeds its adjusted basis. See *Gifts*, and *Transfers at Death*, later.

Use Part III of Form 4797 to figure the ordinary income part of the gain.

Depreciation on other property or taken by other taxpayers. Depreciation and amortization includes not only the amounts you claimed on the section 1245 property but also the following depreciation and amortization amounts.

- 1) Amounts you claimed on property you exchanged for, or converted to, your section 1245 property in a like-kind exchange or involuntary conversion.
- 2) Amounts a previous owner of the section 1245 property claimed, if your basis is determined with reference to that person's adjusted basis (for example, the donor's depreciation deductions on property you received as a gift).

Depreciation and amortization. Depreciation and amortization that must be recaptured as ordinary income include (but are not limited to) the following items.

- 1) Ordinary depreciation deductions.
- 2) Amortization deductions for—
 - a) The cost of acquiring a lease,
 - b) The cost of lessee improvements,
 - c) Pollution control facilities,
 - d) Reforestation expenses,
 - e) Section 197 intangibles,
 - f) Child care facility expenditures made before 1982, and
 - g) Franchises, trademarks, and trade names acquired before August 11, 1993.
- 3) The section 179 expense deduction.
- 4) Deductions for—
 - a) The cost of removing barriers to the disabled and the elderly,
 - b) Tertiary injectant expenses, and
 - c) Depreciable clean-fuel vehicles and refueling property (less the amount of any recaptured deduction).
- 5) The amount of any basis reduction for the investment credit (less the amount of any basis increase for credit recapture).
- 6) The amount of any basis reduction for the qualified electric vehicle credit (less the amount of any basis increase for credit recapture).

Example. You file your returns on a calendar year basis. In February 1996, you purchased and placed in service for 100% use in your business a light-duty truck (5-year property) for a cost of \$10,000. You used the half-year convention and figured your MACRS deductions for the truck were \$2,000 in 1996 and \$3,200 in 1997. You did not take the section 179 deduction on it. You sold the truck in May 1998 for \$7,000. The MACRS deduction in 1998, the year of sale, is \$960 (1/2 of \$1,920). Figure the gain treated as ordinary income as follows.

1) Amount realized	\$7,000
2) Cost (Feb. 1996)	\$10,000
3) Depreciation allowed or allowable (MACRS deductions: \$2,000 + \$3,200 + \$960)	6,160
4) Adjusted basis (subtract line 3 from line 2)	\$3,840
5) Gain realized (subtract line 4 from line 1)	3,160
6) Gain treated as ordinary income (lower of line 3 or line 5)	\$3,160

Depreciation on "other tangible property." You must take into account depreciation during periods when the property was not used as an integral part of an activity or did not constitute a research or storage facility, as described earlier under *Section 1245 property*.

For example, if depreciation deductions taken on certain storage facilities amounted to \$10,000, of which \$6,000 is from the periods before their use in a prescribed business activity, you must use the entire \$10,000 in determining ordinary income because of depreciation.

Depreciation allowed or allowable. The greater of the depreciation allowed or allowable is generally the amount to use in figuring the part of gain to report as ordinary income. If, in prior years, you have consistently taken proper deductions under one method, the amount allowed for your prior years will not be increased even though a greater amount would have been allowed under another proper method. If you did not take any deduction at all for depreciation, your adjustments to basis for depreciation allowable are figured by using the straight line method.

This treatment applies only when figuring what part of gain is treated as ordinary income under the rules for section 1245 depreciation recapture.

Multiple asset accounts. In figuring ordinary income because of depreciation, you may treat any number of units of section 1245 property in a single depreciation account as one item if the total ordinary income because of depreciation figured by using this method is not less than it would be if depreciation on each unit were figured separately.

Example. In one transaction you sold 50 machines, 25 trucks, and certain other property that is not section 1245 property. All of the depreciation was recorded in a single depreciation account. After dividing the total received among the various assets sold, you figured that each unit of section 1245 property was sold at a gain. You may figure the ordinary income because of depreciation as if the 50 machines and 25 trucks were one item.

However, if 5 of the trucks had been sold at a loss, only the 50 machines and 20 of the trucks could be treated as one item in determining the ordinary income because of depreciation.

Normal retirement. The normal retirement of section 1245 property in multiple asset accounts does not require recognition of gain as ordinary income because of depreciation if your method of accounting for asset retirements does not require recognition of that gain.

Section 1250 Property

A gain on the disposition of section 1250 property is treated as ordinary income to the extent of additional depreciation allowed or allowable on the property. To determine the additional depreciation on section 1250 property, see *Additional Depreciation*, later.

You will not have additional depreciation if:

- 1) You figured depreciation for the property using the straight line method or any other method that does not result in depreciation that is more than the amount figured by the straight line method, and you have held the property more than a year,
- 2) You dispose of residential low-income rental property that you held for 16 $\frac{2}{3}$ years or more (for low-income rental housing on which the special 60-month depreciation for rehabilitation expenditures was allowed, the 16 $\frac{2}{3}$ years starts when the rehabilitated property is placed in service),
- 3) You chose the alternate ACRS method for the types of 15-, 18-, or 19-year real property covered by the section 1250 rules, or
- 4) You dispose of residential rental property or nonresidential real property placed in service after 1986 (or after July 31, 1986, if the election to use MACRS was made). These properties are depreciated using the straight line method.

Section 1250 property. This includes all real property that is subject to an allowance for depreciation and that is not and never has been section 1245 property. It includes a leasehold of land or section 1250 property that is subject to an allowance for depreciation. A fee simple interest in land is not included because it is not depreciable.

If, because you change its use, your section 1250 property becomes section 1245 property, you may never again treat it as section 1250 property.

Gain Treated as Ordinary Income

To find what part of the gain from the disposition of section 1250 property is treated as ordinary income, follow these steps:

- 1) In a sale, exchange, or involuntary conversion of the property, figure the excess of the amount realized over the adjusted basis of the property. In any other disposition of the property, figure the excess of fair market value over the adjusted basis.
- 2) Figure the additional depreciation for the periods after 1975.
- 3) Multiply the smaller of (1) or (2) by the applicable percentage, discussed later. Stop here if this is residential rental property, or if (2) is equal to or more than (1). This is the gain that is treated as ordinary income because of additional depreciation.
- 4) Subtract (2) from (1).
- 5) Figure the additional depreciation for periods after 1969 but before 1976.
- 6) Add the smaller of (4) or (5) to the result in (3). This is the gain that is treated as

ordinary income because of additional depreciation.

A limit on the amount of gain treated as ordinary income, for gains on like-kind exchanges and involuntary conversions, is explained later.

Use Part III, Form 4797, to figure the ordinary income part of the gain.

Special rule for corporations. Corporations, other than S corporations, have an additional amount to recognize as ordinary income on the sale or other disposition of section 1250 property. The additional amount treated as ordinary income is 20% of the excess of the amount that would have been ordinary income if the property were section 1245 property over the amount treated as ordinary income under section 1250. Report this additional ordinary income on line 26(f) of Form 4797, Part III.

Additional Depreciation

If you hold section 1250 property longer than one year, the additional depreciation is the excess of actual depreciation adjustments over the depreciation figured using the straight line method. For a list of items treated as depreciation adjustments, see *Depreciation and amortization under Section 1245 Property*, earlier.

If you hold section 1250 property for 1 year or less, all of the depreciation is additional depreciation.

You will have additional depreciation if you use the regular ACRS method, the declining balance method, the sum-of-the-years-digits method, the units-of-production method, or any other method of rapid depreciation. You also have additional depreciation if you elect amortization, other than amortization on real property that qualifies as section 1245 property, discussed earlier.

Depreciation taken by other taxpayers or on other property. Additional depreciation includes all depreciation adjustments to the basis of section 1250 property whether allowed to you or another person (as for carry-over basis property).

Example. Larry Johnson gives his son section 1250 property on which he took \$2,000 in depreciation deductions, of which \$500 is additional depreciation. Immediately after the gift, the son's adjusted basis in the property is the same as his father's and reflects the \$500 additional depreciation. On January 1 of the next year, after taking depreciation deductions of \$1,000 on the property, of which \$200 is additional depreciation, the son sells the property. At the time of sale, the additional depreciation is \$700 (\$500 allowed the father plus \$200 allowed the son).

Depreciation allowed or allowable. The greater of depreciation allowed or allowable (to any person who held the property if the depreciation was used in figuring its adjusted basis in your hands) is generally the amount to use in figuring the part of the gain to be reported as ordinary income. If you can show that the deduction allowed for any tax year was less than the amount allowable, the smaller figure will be the depreciation adjustment for figuring additional depreciation.

Retired or demolished property. The adjustments reflected in adjusted basis generally do not include deductions for depreciation

on retired or demolished parts of section 1250 property, unless these deductions are reflected in the basis of replacement property that is section 1250 property.

Example. A wing of your building is totally destroyed by fire. The depreciation adjustments figured in the adjusted basis of the building after the wing is destroyed do not include any deductions for depreciation on the destroyed wing, unless it is replaced and the adjustments for depreciation on it are reflected in the basis of the replacement property.

Figuring straight line depreciation. The useful life and salvage value you use to figure the amount that would have been the depreciation if you had used the straight line method are the same as those used under the depreciation method you actually used. If you did not use a useful life under the depreciation method actually used (such as with the units-of-production method), or if you did not take salvage value into account (such as with the declining balance method), the useful life or salvage value for figuring what would have been the straight line depreciation is the useful life and salvage value you would have used under the straight line method.

Salvage value and useful life are not used for the ACRS method of depreciation. Figure straight line depreciation for ACRS real property by using its 15-, 18-, or 19-year recovery period as the property's useful life.

The straight line method is applied without any basis reduction for the investment credit.

Property held by lessee. If a lessee makes a leasehold improvement, the lease period for figuring what would have been the straight line depreciation adjustments includes all renewal periods. This extension cannot extend the period taken into account to a period that exceeds the remaining useful life of the improvement. The same rule applies to the cost of acquiring a lease.

The term "renewal period" means any period for which the lease may be renewed, extended, or continued under an option exercisable by the lessee. However, the inclusion of renewal periods cannot extend the lease by more than two-thirds of the period that was the basis on which the actual depreciation adjustments were allowed.

Rehabilitation expenditures. A part of the special 60-month depreciation adjustment allowed for rehabilitation expenditures incurred before 1987 in connection with low-income rental housing is additional depreciation. The additional depreciation is the excess of the special depreciation adjustments over the adjustments that would have resulted if the straight line method, normal useful life, and salvage value had been used.

Example. On January 6, 1998, Fred Plums, a calendar year taxpayer, sold real property, in which the entire basis was from rehabilitation expenses of \$50,000 incurred in 1984. The property was placed in service on January 3, 1985. Under the special depreciation provisions for rehabilitation expenses, the property was depreciated under the straight line method using a useful life of 60 months (5 years) and no salvage value. If Fred had used the regular straight line method, he would have used a salvage value of \$5,000 and a useful life of 15 years, and would have had a depreciable basis of \$45,000. Depreciation under the straight line

method would have been \$3,000 each year ($1/15 \times \$45,000$). On January 1, 1998, the additional depreciation for the property was \$11,000, figured as follows:

	Depreciation Claimed	Straight Line Depreciation	Additional Depreciation
1985	\$10,000	\$3,000	\$7,000
1986	10,000	3,000	7,000
1987	10,000	3,000	7,000
1988	10,000	3,000	7,000
1989	10,000	3,000	7,000
1990		3,000	(3,000)
1991		3,000	(3,000)
1992		3,000	(3,000)
1993		3,000	(3,000)
1994		3,000	(3,000)
1995		3,000	(3,000)
1996		3,000	(3,000)
1997		3,000	(3,000)
Total	\$50,000	\$39,000	\$11,000

Applicable Percentage

The applicable percentage used to figure the ordinary income because of additional depreciation depends on whether the real property you disposed of is nonresidential real property, residential rental property, or low-income housing. The applicable percentages for these types of real property are as follows.

Nonresidential real property. For real property that is not residential rental property, the applicable percentage for periods after 1969 is 100%. For periods before 1970, the applicable percentage is zero and no ordinary income will result on its disposition because of additional depreciation before 1970.

Residential rental property. For residential rental property (80% or more of the gross income is from dwelling units) other than low-income housing, the applicable percentage for periods after 1975 is 100%. The applicable percentage for periods before 1976 is zero. Therefore, no ordinary income will result from a disposition of residential rental property because of additional depreciation before 1976.

Low-income housing. Low-income housing includes the following types of residential rental property.

- 1) Federally assisted housing projects where the mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of state or local laws.
- 2) Low-income rental housing for which a depreciation deduction for rehabilitation expenditures was allowed.
- 3) Low-income rental housing held for occupancy by families or individuals eligible to receive subsidies under section 8 of the United States Housing Act of 1937, as amended, or under provisions of state or local laws that authorize similar subsidies for low-income families.
- 4) Housing financed or assisted by direct loan or insured under Title V of the Housing Act of 1949.

The applicable percentage for low-income housing is 100% minus 1% for each full month the property was held over 100 full months. If you have held low-income housing at least 16 years and 8 months, the applicable

percentage is zero and no ordinary income will result from its disposition.

Foreclosure. If low-income housing is disposed of because of foreclosure or similar proceedings, the monthly applicable percentage reduction is figured as if you disposed of the property on the starting date of the proceedings.

Example. On June 1, 1986, you acquired low-income housing property. On April 3, 1997 (130 months after the property was acquired), foreclosure proceedings were started on the property and on December 2, 1998 (150 months after the property was acquired), the property was disposed of as a result of the foreclosure proceedings. The property qualifies for a reduced applicable percentage because it was held more than 100 full months. The applicable percentage reduction is 30% (130 months less 100 months) rather than 50% (150 months less 100 months) because it does not apply after April 3, 1997, the starting date of the foreclosure proceedings. Therefore, 70% of the additional depreciation is treated as ordinary income.

Holding period. The holding period used to figure the applicable percentage for low-income housing generally starts on the day after you acquired it. Thus, if you bought low-income housing on January 1, 1982, the holding period starts on January 2, 1982. If you sold it on January 2, 1998, the holding period is exactly 192 full months. The applicable percentage for additional depreciation is 8%, or 100% minus one percent for each full month the property was held over 100 full months.

Constructed, reconstructed, or erected property. The holding period used to figure the applicable percentage for low-income housing you constructed, reconstructed, or erected starts on the first day of the month it is placed in service in a trade or business, in an activity for the production of income, or in a personal activity.

Property acquired by gift or received in a tax-free transfer. For low-income housing you acquired by gift or in a tax-free transfer whose basis is figured by reference to the basis in the hands of the transferor, the holding period, for the purpose of the applicable percentage, includes the holding period of the transferor.

If the adjusted basis of the property in your hands just after acquiring it is more than its adjusted basis to the transferor just before transferring it, the holding period of the excess is figured as if it were a **separate improvement**. See *Low-Income Housing With Two or More Elements*, next.

Low-Income Housing With Two or More Elements

If you dispose of low-income housing property that has more than one separate element, the applicable percentage used to figure ordinary income because of additional depreciation may be different for each element. The gain to be reported as ordinary income is the sum of the ordinary income figured for each element.

The three types of separate elements are:

- 1) A separate improvement (defined later),
- 2) The basic section 1250 property plus improvements not qualifying as separate improvements, and

- 3) The units placed in service at different times before all the section 1250 property is finished. For example, this happens when a taxpayer builds an apartment building of 100 units, and places 30 units in service (available for renting) on January 4, 1997, 50 on July 18, 1997, and the remaining 20 on January 18, 1998. As a result, the apartment house consists of three separate elements.

36-month test for separate improvements.

A separate improvement is each improvement (qualifying under *1-year test*, below) added to the capital account of the property, if the total of the improvements during the 36-month period ending on the last day of any tax year is more than the greater of:

- 1) One-fourth of the adjusted basis of the property at the start of the first day of the 36-month period, or the first day of the holding period of the property, whichever is later,
- 2) One-tenth of the unadjusted basis (adjusted basis plus depreciation and amortization adjustments) of the property at the start of the period determined in (1), or
- 3) \$5,000.

1-year test. An addition to the capital account for any tax year (including a short tax year) is treated as an improvement only if the sum of all additions for the year is more than the larger of \$2,000, or 1% of the unadjusted basis of the property. The unadjusted basis is figured as of the start of that tax year or the holding period of the property, whichever is later. In applying the 36-month test, improvements in any one of the 3 years are omitted entirely if the total improvements in that year do not qualify under the 1-year test.

Example. The unadjusted basis of a calendar year taxpayer's property was \$300,000 on January 1, 1985. During that year, the taxpayer made improvements A, B, and C, which cost \$1,000, \$600, and \$700, respectively. Since the sum of the improvements, \$2,300, is less than 1% of the unadjusted basis (\$3,000), the improvements in 1985 do not satisfy the 1-year test and are not treated as improvements for the 36-month test. However, if improvement C had cost \$1,500, the sum of the 1985 improvements would have been \$3,100. It would then be necessary to apply the 36-month test to figure if the improvements must be treated as separate improvements.

Addition to the capital account. Any addition to the capital account made after the initial acquisition or completion of the property by you or any person who held the property during a period included in your holding period is to be considered when figuring the total amount of separate improvements.

The addition to the capital account of depreciable real property is the **gross addition** not reduced by amounts attributable to replaced property. Thus, if a roof with an adjusted basis of \$20,000 is replaced by a new roof costing \$50,000, the improvement is the gross addition to the account, \$50,000, and not the net addition of \$30,000. The \$20,000 adjusted basis of the old roof is no longer reflected in the basis of the property. The status of an addition to the capital account is not affected by whether it is treated as a separate

property for determining depreciation deductions.

Whether an expenditure is treated as an addition to the capital account may depend on the final disposition of the entire property. If the expenditure item property and the basic property are sold in two separate transactions, the entire section 1250 property is treated as consisting of two distinct properties.

Unadjusted basis. In figuring the unadjusted basis as of a certain date, include the actual cost of all previous additions to the capital account plus those that did not qualify as separate improvements. However, the cost of components retired before that date is not included in the unadjusted basis.

Holding period. The following guidelines are used for figuring the applicable percentage for property with two or more elements.

- 1) The holding period of a separate element placed in service before the entire section 1250 property is finished starts on the first day of the month that the separate element is placed in service.
- 2) The holding period for each separate improvement qualifying as a separate element starts on the day after the improvement is acquired or, for improvements constructed, reconstructed, or erected, the first day of the month that the improvement is placed in service.
- 3) The holding period for each improvement **not** qualifying as a separate element takes the holding period of the basic property.

If an improvement by itself does not meet the 1-year test (greater of \$2,000 or 1% of the unadjusted basis), but it does qualify as a separate improvement that is a separate element (when grouped with other improvements made during the tax year), determine the start of its holding period as follows. Use the first day of a calendar month that is the closest first day to the middle of the tax year. If there are two first days of a month that are equally close to the middle of the year, use the earlier date.

Figuring ordinary income attributable to each separate element. Figure ordinary income attributable to each separate element as follows:

Step 1. Divide the element's additional depreciation after 1975 by the sum of all the elements' additional depreciation after 1975 to determine a percentage.

Step 2. Multiply the percentage figured in Step 1 by the lesser of the additional depreciation after 1975 for the entire property or the gain from disposition of the entire property (the difference between the fair market value, or amount realized, and the adjusted basis).

Step 3. Multiply the result in Step 2 by the applicable percentage for the element.

Example. You sold low-income housing property at a gain of \$25,000 that is subject to the ordinary income rules of section 1250. The property consisted of four elements (W, X, Y, and Z). The additional depreciation for each element is: W—\$12,000; X—None; Y—\$6,000; and Z—\$6,000. The sum of the additional depreciation for all the elements (Step 1) is \$24,000. The depreciation deducted on element X was \$4,000 less than it would have been under the straight line

method. Additional depreciation on the property as a whole is \$20,000 (\$24,000 minus \$4,000). Because \$20,000 is lower than the \$25,000 gain on the sale, \$20,000 is used in Step 2. The applicable percentages to be used in Step 3 for the elements are: W—68%; X—85%; Y—92%; and Z—100%.

From these facts, the sum of the ordinary income for each element is computed as follows:

	Step 1	Step 2	Step 3	Ordinary Income
W	\$12,000+	\$24,000	68%	\$6,800
X	\$0+	\$0	85%	\$0
Y	\$6,000+	\$6,000	92%	\$4,600
Z	\$6,000+	\$6,000	100%	\$5,000

Sum of the ordinary income of the separate elements \$16,400

Installment Sales

If you report the sale of property under the installment method, any depreciation recapture under section 1245 or 1250 is taxable as ordinary income in the year of sale. This applies even if no payments are received in that year. If the gain is more than the depreciation recapture income, report the rest of the gain using the rules of the installment method. For this purpose, add the recapture income to the property's adjusted basis.

If you dispose of **more than one asset** in a single transaction, you must separately figure the gain on each asset so that it may be properly reported. To do this, allocate the selling price and the payments you receive in the year of sale to each asset. Report any depreciation recapture income in the year of sale before using the installment method for any remaining gain.

For a detailed discussion of installment sales, get Publication 537.

Gifts

If you make a **gift** of depreciable personal property or real property, you do not have to report income on the transaction. However, if the person who receives it (donee) sells or otherwise disposes of the property in a disposition that is subject to recapture, the donee must take into account the depreciation you deducted in figuring the gain to be reported as ordinary income.

For low-income housing, the donee must take into account the donor's holding period to figure the applicable percentage. See *Applicable Percentage* and its discussion *Holding period* under *Section 1250 Property*, earlier.

Disposition part gift and part sale or exchange.

If you transfer depreciable personal property or real property for less than its fair market value in a transaction considered to be partly a gift and partly a sale or exchange, and you have a gain because the amount realized is more than your adjusted basis, you must report ordinary income (up to the amount of gain) to recapture depreciation. If the depreciation (additional depreciation, if section 1250 property) is more than the gain, the balance is carried over to the transferee to be taken into account on any later disposition of the property. However, see *Bargain sales to charity*, later.

Example. You transferred depreciable personal property to your son for \$20,000. When transferred, the property had an adjusted basis to you of \$10,000 and a fair market value of \$40,000. You took depreciation of \$30,000. You are considered to have made a gift of \$20,000, the difference between the \$40,000 fair market value and the \$20,000 sale price to your son. You have a taxable gain on the transfer of \$10,000 (\$20,000 sale price less \$10,000 adjusted basis) that must be reported as ordinary income from depreciation. Because you report \$10,000 of your \$30,000 depreciation as ordinary income on the transfer of the property, only the remaining \$20,000 depreciation is carried over to your son for him to take into account on any later disposition of the property.

Gift to charitable organization. If you give property to a charitable organization, you figure your deduction for your charitable contribution by reducing the fair market value of the property by the ordinary income and short-term capital gain that would have resulted had you sold the property at its fair market value at the time of the contribution. Thus, your deduction for depreciable real or personal property given to a charitable organization does not include the potential ordinary gain from depreciation.

You also may have to reduce the fair market value of the contributed property by the long-term capital gain (including any section 1231 gain) that would have resulted had the property been sold. For more information, see *Giving Property That Has Increased in Value* in Publication 526, *Charitable Contributions*.

Bargain sales to charity. If you transfer section 1245 or section 1250 property to a charitable organization for less than its fair market value and a deduction for the contribution part of the transfer is allowable, your ordinary income from depreciation is figured under special rules. First, figure the ordinary income as if you had sold the property at its fair market value. Then, allocate that amount between the sale and the contribution parts of the transfer in the same proportion that you allocated your adjusted basis in the property to figure your gain. (See *Bargain Sales as Gifts* under *Gain or Loss From Sales and Exchanges* in chapter 1.) Report as ordinary income the lesser of the ordinary income allocated to the sale or your gain from the sale.

Example. You sold section 1245 property in a bargain sale to a charitable organization and are allowed a deduction for your contribution. Your gain on the sale was \$1,200, figured by allocating 20% of your adjusted basis in the property to the part sold. If you had sold the property at its fair market value, your ordinary income would have been \$5,000. Your ordinary income is \$1,000 (\$5,000 × 20%) and your section 1231 gain is \$200 (\$1,200 – \$1,000).

Transfers at Death

When a taxpayer dies, no gain is reported on depreciable personal property or real property that is transferred to his or her estate or beneficiary. For information on the tax liability of a decedent, get Publication 559, *Survivors, Executors, and Administrators*.

However, if the decedent disposed of the property while alive and, because of his or

her method of accounting or for any other reason, the gain from the disposition is reportable by the estate or beneficiary, it must be reported in the same way the decedent would have had to report it if he or she were still alive.

Ordinary income due to depreciation must be reported on a transfer from an executor, administrator, or trustee to an heir, beneficiary, or other individual if the transfer is a sale or exchange on which gain is realized.

Example 1. Janet Smith owned depreciable property that, upon her death, was inherited by her son. No ordinary income because of depreciation is reportable on the transfer, even though the value used for estate tax purposes is more than the adjusted basis of the property to Janet when she died. However, if she sold the property before her death and realized a gain and if, because of her method of accounting, the proceeds from the sale are income in respect of a decedent reportable by her son, he must report ordinary income because of depreciation.

Example 2. The trustee of a trust created by a will transfers depreciable property to a beneficiary in satisfaction of a specific bequest of \$10,000. If the property had a value of \$9,000 at the date used for estate tax evaluation purposes, the \$1,000 increase in value to the date of distribution is a gain realized by the trust. Ordinary income because of depreciation must be reported by the trust on the transfer.

Like-Kind Exchanges and Involuntary Conversions

A like-kind exchange of your depreciable property, or an involuntary conversion of the property into similar or related property, will not result in your having to report ordinary income because of depreciation unless money or property other than like-kind, similar, or related property is also received in the transaction. For information on like-kind exchanges and involuntary conversions, see chapter 1.

Depreciable personal property. If you have a gain from either a like-kind exchange or an involuntary conversion of your depreciable personal property, the amount to be reported as ordinary income because of depreciation is the amount figured under the rules explained earlier (see *Section 1245 Property*), limited to the **sum** of:

- 1) The gain that must be included in income under the rules for like-kind exchanges or involuntary conversions, **plus**
- 2) The fair market value of the like-kind, similar, or related property other than depreciable personal property acquired in the transaction.

Example 1. You bought a new machine for \$4,300 cash plus your old machine for which you were allowed a \$1,360 trade-in. The old machine cost you \$5,000 2 years ago. You took depreciation deductions of \$3,950. Even though you deducted depreciation of \$3,950, the \$310 gain (\$1,360 trade-in allowance less \$1,050 adjusted basis) is not reported because it is postponed under the rules for like-kind exchanges and

you received only depreciable personal property in the exchange.

Example 2. You bought office machinery for \$1,500 2 years ago and deducted \$780 depreciation. This year a fire destroyed the machinery, and you received \$1,200 from your fire insurance, realizing a gain of \$480 (\$1,200 minus \$720 adjusted basis). You choose to postpone gain, but replacement machinery cost you only \$1,000. Your taxable gain under the rules for involuntary conversions is limited to the remaining \$200 insurance payment. Because all of your replacement property is depreciable personal property, your ordinary income because of depreciation is limited to \$200.

Example 3. A fire destroyed office machinery you purchased for \$116,000. The depreciation deductions were \$91,640, and the machinery had an adjusted basis of \$24,360. You got a \$117,000 insurance payment, realizing a gain of \$92,640.

You immediately spent \$105,000 of the insurance payment for replacement machinery and \$9,000 for stock that qualifies as replacement property, and you choose to postpone the gain. Because \$114,000 of the \$117,000 insurance payment was used to buy replacement property, the gain that must be included in income under the rules for involuntary conversions is the unexpended part, or \$3,000. The part of the insurance payment (\$9,000) used to buy the nondepreciable property (the stock) must also be included in figuring the gain because of depreciation.

The amount you must report as ordinary income on the transaction is \$12,000, figured as follows.

1) Gain realized on the transaction (\$92,640) limited to depreciation (\$91,640)	<u>\$91,640</u>
2) Gain includible in income (amount unexpended)	\$3,000
Plus: FMV of property other than depreciable personal property (the stock)	<u>9,000</u>
Amount reportable as ordinary income (lesser of (1) or (2))	<u>\$12,000</u>

If, instead of buying \$9,000 in stock, you bought \$9,000 worth of depreciable personal property that was similar or related in use to the destroyed property, you would only report \$3,000 as ordinary income.

Depreciable real property. If you have a gain from either a like-kind exchange or involuntary conversion of your depreciable real property, the amount to be reported as ordinary income because of additional depreciation is the amount figured under the rules explained earlier (see *Section 1250 Property*), limited to the **larger** of:

- 1) The gain that must be reported under the rules for like-kind exchanges or involuntary conversions, **plus** the fair market value of stock bought as replacement property in acquiring control of a corporation, or
- 2) The gain you would have had to report as ordinary income because of additional depreciation had the transaction been a cash sale, **less** the cost (or fair market value in an exchange) of the depreciable real property acquired.

The ordinary income not reported for the year of the disposition is carried over to the depreciable real property acquired in the like-kind exchange or involuntary conversion as additional depreciation from the property disposed of. Further, to figure the applicable percentage of additional depreciation on low-income housing to be treated as ordinary income, the holding period starts over for the new property.

Example. The state paid you \$116,000 when it condemned your depreciable real property for public use. You bought other real property similar in use to the property condemned for \$110,000 (\$15,000 for depreciable real property and \$95,000 for land). You also bought stock for \$5,000 to get control of a corporation owning property similar in use to the property condemned. You choose to postpone the gain. If the transaction had been a sale for cash only, under the rules described earlier, \$20,000 would have been reportable as ordinary income because of additional depreciation.

The ordinary income to be reported is \$6,000, which is the larger of:

- 1) The gain that must be reported under the rules for involuntary conversions, \$1,000 (\$116,000 – \$115,000), **plus** the fair market value of stock bought as qualified replacement property, \$5,000, for a total of \$6,000, or
- 2) The gain you would have had to report as ordinary income because of additional depreciation (\$20,000) had this transaction been a cash sale **less** the cost of the depreciable real property bought (\$15,000), or \$5,000.

The ordinary income not reported, \$14,000 (\$20,000 – \$6,000), is carried over to the depreciable real property you bought as additional depreciation.

Basis of property acquired. If the ordinary income that you have to report because of additional depreciation is limited, the total basis of the property you acquired is its fair market value (its cost, if bought to replace property involuntarily converted into money), minus the gain postponed.

If you acquired more than one item of property, allocate the total basis among the properties in proportion to their fair market value (their cost, in an involuntary conversion into money). However, if you acquired both depreciable real property and other property, allocate the total basis as follows.

- 1) Subtract the ordinary income because of additional depreciation that you do not have to report from the fair market value (or cost) of the depreciable real property acquired.
- 2) Add the fair market value (or cost) of the other property acquired to the result in (1).
- 3) Divide the result in (1) by the result in (2).
- 4) Multiply the total basis by the result in (3). This is the basis of the depreciable real property acquired. If you acquired more than one item of depreciable real property, allocate this basis amount among the properties in proportion to their fair market value (or cost).
- 5) Subtract the result in (4) from the total basis. This is the basis of the other property acquired. If you acquired more

than one item of other property, allocate this basis amount among the properties in proportion to their fair market value (or cost).

Example 1. In 1986, low-income housing property that you acquired and placed in service in 1981 was destroyed by fire, and you received a \$90,000 insurance payment. The property's adjusted basis was \$38,400, with additional depreciation of \$14,932. On December 1, 1986, you used the insurance payment to acquire and place in service replacement low-income housing property.

Your realized gain from the involuntary conversion was \$51,600 (\$90,000 – \$38,400). You chose to postpone the gain under the involuntary conversion rules. Under the rules for depreciation recapture on real property, the ordinary gain was \$14,932, but you did not have to report any of it because of the limit for involuntary conversions.

The basis of the replacement low-income housing property was its \$90,000 cost less the \$51,600 gain you postponed, or \$38,400. The \$14,932 ordinary gain that you did not report is treated as additional depreciation on the replacement property. When you dispose of the property, your holding period for figuring the applicable percentage of additional depreciation to report as ordinary income will have begun December 2, 1986, the day after you acquired the property.

Example 2. John Adams gets a \$90,000 fire insurance payment for depreciable real property (office building) with an adjusted basis of \$30,000. He uses the whole payment to buy property similar in use, spending \$42,000 for depreciable real property and \$48,000 for land. He chooses to postpone the \$60,000 gain realized on the involuntary conversion. Of this gain, \$10,000 is ordinary income because of additional depreciation but is not reported because of the limit for involuntary conversions of depreciable real property. The basis of the property bought is \$30,000 (\$90,000 – \$60,000), allocated as follows.

- 1) The \$42,000 cost of depreciable real property less \$10,000 ordinary income that is not reported is \$32,000.
- 2) The \$48,000 cost of other property (land) plus the \$32,000 figured in (1) is \$80,000.
- 3) The \$32,000 figured in (1) divided by the \$80,000 figured in (2) is 0.4.
- 4) The basis of the depreciable real property is \$12,000. This is the \$30,000 total basis multiplied by the 0.4 figured in (3).
- 5) The basis of the other property (land) is \$18,000. This is the \$30,000 total basis less the \$12,000 figured in (4).

The ordinary income that is not reported (\$10,000) is carried over as additional depreciation to the depreciable real property that was bought, and may be taxed as ordinary income on a later disposition.

Multiple Properties

If you dispose of both depreciable property and other property in one transaction and realize a gain, you must allocate the amount realized between the two types of property in proportion to their respective fair market values to figure the part of your gain to be reported as ordinary income because of depreciation.

Special rules may apply to the allocation of the amount realized on the sale of a business that includes a group of assets. See chapter 2.

In general, if a buyer and seller have adverse interests as to the allocation of the amount realized between the depreciable property and other property, any arm's-length agreement between them will establish the allocation.

In the absence of an agreement, the allocation should be made by taking into account the appropriate facts and circumstances. These include, but are not limited to, a comparison between the depreciable property and all the other property being disposed of in the transaction. The comparison should take into account:

- 1) The original cost and reproduction cost of construction, erection, or production,
- 2) The remaining economic useful life,
- 3) The state of obsolescence, and
- 4) The anticipated expenditures required to maintain, renovate, or modernize the properties.

Like-kind exchanges and involuntary conversions. If you dispose of and acquire both depreciable personal property and other property (other than depreciable real property) in a like-kind exchange or involuntary conversion, the amount realized is allocated the following way. The amount that is allocated to the depreciable personal property disposed of is treated as consisting of, first, the fair market value of the depreciable personal property acquired and, second (to the extent of any remaining balance), the fair market value of the other property acquired. The amount allocated to the other property disposed of is treated as consisting of the fair market value of all property acquired that has not already been taken into account.

If you dispose of and acquire **depreciable real property** and other property in a like-kind exchange or involuntary conversion, the amount realized is allocated the following way. The amount that is allocated to each of the three types of property (depreciable real property, depreciable personal property, or other property) disposed of is treated as consisting of, first, the fair market value of that type of property acquired and, second (to the extent of any remaining balance), any excess fair market value of the other types of property acquired. (If the excess fair market value is more than the remaining balance of the amount realized and is from both of the other two types of property, you can apply the excess in any manner you choose.)

Example. A fire destroyed your property having a total fair market value of \$50,000 and consisting of machinery worth \$30,000 and nondepreciable property worth \$20,000. You received an insurance payment of \$40,000 and immediately used it with \$10,000 of your own funds (for a total of \$50,000) to buy machinery with a fair market value of \$15,000 and nondepreciable property with a fair market value of \$35,000. The adjusted basis of the destroyed machinery was \$5,000 and your depreciation on it was \$35,000. You choose to postpone your gain from the involuntary conversion. You must report \$9,000 as ordinary income because of depreciation arising from this transaction, figured as follows.

- 1) The \$40,000 insurance payment must be allocated between the machinery and the other property destroyed, in proportion to the fair market value of each. The amount allocated to the machinery is 30,000/50,000 of \$40,000, or \$24,000. The amount allocated to the other property is 20,000/50,000 of \$40,000, or \$16,000. Your gain on the involuntary conversion of the machinery is \$24,000 less \$5,000 adjusted basis, or \$19,000.
- 2) The \$24,000 allocated to the machinery disposed of is treated as consisting of the \$15,000 fair market value of the replacement machinery bought and \$9,000 of the fair market value of other property bought in the transaction. All \$16,000 allocated to the other property disposed of is treated as consisting of the fair market value of the other property that was bought.
- 3) Your potential ordinary income because of depreciation is \$19,000, the gain on the machinery, because it is less than the \$35,000 depreciation. However, the amount you must report as ordinary income is limited to the \$9,000 included in the amount you realized for the machinery that represents the fair market value of property other than the depreciable property you bought.

Form (and Instructions)

- Schedule D (Form 1040)** Capital Gains and Losses
- 4684** Casualties and Thefts
- 4797** Sales of Business Property
- 6252** Installment Sale Income
- 8824** Like-Kind Exchanges

See chapter 5 for information about getting these publications and forms.

Information Returns

If you sell or exchange certain assets, you should receive an information return showing the proceeds of the sale. This information is also provided to the Internal Revenue Service.

Form 1099-B. If you sold stocks, bonds, commodities, etc., you should receive Form 1099-B or an equivalent statement. Whether or not you receive Form 1099-B, you must report all taxable sales of stocks, bonds, commodities, etc., on Schedule D. For more information on figuring gains and losses from these transactions, see chapter 4 in Publication 550.

Form 1099-S. An information return must be provided on certain real estate transactions. Generally, the person responsible for closing the transaction must report on Form 1099-S sales or exchanges of the following types of property.

- 1) Land (improved or unimproved), including air space.
- 2) An inherently permanent structure, including any residential, commercial, or industrial building.
- 3) A condominium unit and its appurtenant fixtures and common elements (including land).
- 4) Stock in a cooperative housing corporation.

If you sold or exchanged the above types of property, the reporting person must give you a copy of Form 1099-S or a statement containing the same information as the Form 1099-S.

If you receive or will receive property or services in addition to gross proceeds (cash or notes) in this transaction, the person reporting it does not have to value that property or those services. In that case, the gross proceeds reported on Form 1099-S will be less than the sales price of the property you sold. Figure any gain or loss according to the sales price, which is the total amount you realized on the transaction.

- For a sale, exchange, or involuntary conversion of business property, complete Form 4797.
- For a like-kind exchange, complete Form 8824. (See Reporting the exchange under Like-Kind Exchanges, in chapter 1.)
- For an installment sale, complete Form 6252. (See Publication 537.)
- For an involuntary conversion due to casualty or theft, complete Form 4684. (See Publication 547.)
- For a disposition of an interest in, or property used in, an activity to which the at-risk rules apply, complete Form 6198. (See Publication 925.)
- For a disposition of an interest in, or property used in, a passive activity, complete Form 8582. (See Publication 925.)

Personal use property. Report gain on the sale or exchange of property held for personal use (such as your home) on Schedule D. Loss from the sale or exchange of property held for personal use is not deductible. But if you had a loss from the sale or exchange of real estate held for personal use for which you received a Form 1099-S, report the transaction on Schedule D even though the loss is not deductible. Complete columns (a) through (e) and enter -0- in column (f), and column (g) if appropriate.

Long and Short Term

Where you report a capital gain or loss depends on how long you own the asset before you sell or exchange it. The time you own an asset before disposing of it is the holding period.

If you hold a capital asset 1 year or less, the gain or loss from its disposition is short term. Report it in Part I of Schedule D. If you hold a capital asset for more than 1 year, the gain or loss from its disposition is long term. Report it in Part II of Schedule D.

Table 4-1. Do I Have a Short-Term or Long-Term Gain or Loss?

If you hold the property:	Then you have a:
1 year or less	Short-term capital gain or loss
More than 1 year	Long-term capital gain or loss

These distinctions are essential to correctly arrive at your net capital gain or loss. Capital losses are allowed in full against capital gains plus up to \$3,000 of ordinary income. The maximum tax rate for capital gains is explained later under *Maximum Tax Rates on Net Capital Gain*.

Holding period. To figure if you held property more than 1 year, start counting on the day following the day you acquired the property. The same date of each following month is the beginning of a new month regardless of the number of days in the preceding month. The day you disposed of the property is part of your holding period.

4.

Reporting Gains and Losses

Introduction

This chapter explains how to report capital gains and losses and ordinary gains and losses from sales and exchanges, and other dispositions of property.

Although this discussion refers to Schedule D (Form 1040), the rules discussed here also apply to taxpayers other than individuals. However, the rules for property held for personal use will usually not apply to taxpayers other than individuals.

Topics

This chapter discusses:

- Information returns
- Schedule D (Form 1040)
- Form 4797

Useful Items

You may want to see:

Publication

- 550** Investment Income and Expenses
- 537** Installment Sales

Schedule D (Form 1040)

Use Schedule D to report sales, exchanges, and other dispositions of capital assets.



Before completing Schedule D (Form 1040), you may have to complete other forms as shown below.

Table 4-2. Holding Period for Different Types of Acquisitions

Type of acquisition:	When your holding period starts:
Stocks and bonds bought on a securities market	Day after trading date you bought security. Ends on trading date you sold security.
U.S. Treasury notes and bonds	If bought at auction, day after notification of bid acceptance. If bought through subscription, day after subscription was submitted.
Nontaxable exchanges	Day after date you acquired old property.
Gift	If your basis is giver's adjusted basis, same day as giver's holding period began. If your basis is FMV, day after date of gift.
Real property bought	Generally, day after date you received title to the property.
Real property repossessed	Day after date you originally received title to the property but does not include time between the original sale and date of repossession.

Example. If you bought an asset on June 18, 1997, you should start counting on June 19, 1997. If you sold the asset on June 18, 1998, your holding period is not more than 1 year, but if you sold it on June 19, 1998, your holding period is more than 1 year.

Patent property. If you dispose of patent property, you are generally considered to have held the property for more than 1 year, no matter how long you actually held it. For more information, see *Patents* in chapter 2.

Inherited property. If you inherit property, you are considered to have held the property for more than 1 year, regardless of how long you actually held it.

Installment sale. The gain from an installment sale of an asset qualifying for long-term capital gain treatment in the year of sale continues to be long term in later tax years. If it is short term in the year of sale, it continues to be short term when payments are received in later tax years.

Nontaxable exchanges. If you acquire an asset in exchange for another asset and your basis for the new asset is figured, in whole or in part, by your basis in the old property, the holding period of the new property includes the holding period of the old property. That is, it begins on the same day as your holding period for the old property.

Example. You bought machinery on December 4, 1997. On June 3, 1998, you traded this machinery for other machinery in a nontaxable exchange. On December 5, 1998, you sold the machinery you got in the exchange. Your holding period for this machinery begins on December 5, 1997. Therefore, you will have a long term gain or loss.

Corporate liquidation. The holding period for property you receive in a liquidation generally starts on the day after you receive it if gain or loss is recognized.

Profit-sharing plan. The holding period of common stock withdrawn from a qualified contributory profit-sharing plan begins on the day following the day the plan trustee delivered the stock to the transfer agent with instructions to reissue the stock in your name.

Gifts. If you receive a gift of property and your basis in it is figured using the donor's basis, your holding period includes the donor's holding period. For more information on basis, get Publication 551.

Real property. To figure how long you held real property, start counting on the day after you received title to it or, if earlier, the day after you took possession of it and assumed the burdens and privileges of ownership.

However, taking possession of real property under an option agreement is not enough to start the holding period. The holding period cannot start until there is an actual contract of sale. The holding period of the seller cannot end before that time.

Repossession. If you sell real property but keep a security interest in it and then later repossess it, your holding period for a later sale includes the period you held the property before the original sale, as well as the period after the repossession. Your holding period does not include the time between the original sale and the repossession. That is, it does not include the period during which the first buyer held the property.

Nonbusiness bad debts. Nonbusiness bad debts are short-term capital losses. For information on nonbusiness bad debts, see chapter 4 of Publication 550.

Net Gain or Loss

The totals for short-term capital gains and losses and the totals for long-term capital gains and losses must be figured separately.

Net short-term capital gain or loss. Merge your short-term capital gains and losses, including your share of short-term capital gains or losses from partnerships, S corporations, and fiduciaries and any short-term capital loss carryover. Do this by adding all your short-term capital gains. Then add all your short-term capital losses. Subtract one total from the other. The result is your net short-term capital gain or loss.

Net long-term capital gain or loss. Follow the same steps to merge your long-term capital gains and losses. Include the following items.

- 1) Net section 1231 gain from Part I, Form 4797, after any adjustment for nonrecaptured section 1231 losses from prior tax years.

- 2) Capital gain distributions from regulated investment companies (mutual funds) and real estate investment trusts.
- 3) Your share of long-term capital gains or losses from partnerships, S corporations, and fiduciaries.
- 4) Any long-term capital loss carryover.

The result from combining these items with other long-term capital gains and losses is your net long-term capital gain or loss.

Net gain. If the total of your capital gains is more than the total of your capital losses, the excess is taxable. However, the part that is not more than your net capital gain may be taxed at a rate that is lower than the rate of tax on your ordinary income. See *Maximum Tax Rates on Net Capital Gain*, later.

Net loss. If the total of your capital losses is more than the total of your capital gains, the excess is deductible. But there are limits on how much loss you can deduct, and when you can deduct it. See *Treatment of Capital Losses*, next.

Treatment of Capital Losses

If your capital losses are more than your capital gains, you must deduct the excess even if you do not have ordinary income to offset it. The yearly limit on the amount of the capital loss you can deduct is \$3,000 (\$1,500 if you are married and file a separate return).

Capital loss carryover. Generally, you have a capital loss carryover if either of the following situations applies to you.

- 1) Your excess capital loss is more than the yearly limit, or
- 2) The amount shown on line 37, Form 1040 (your taxable income without your deduction for exemptions), is less than zero.

If either of these situations applies to you in 1998, complete the *Capital Loss Carryover Worksheet*, provided in the instructions for Schedule D, to figure the amount of your loss that you can carry over to 1999.

In 1999, you will treat the carryover loss as if it occurred in that year. It will be combined with any capital gains and losses you have in 1999, and any excess capital loss will be subject to the limit for that year. Any loss not used in 1999 will be carried over to 2000.

Example. Bob and Gloria Sampson sold property in 1998. The sale resulted in a capital loss of \$7,000. The Sampsons had no other capital transactions. On their joint 1998 return, the Sampsons deduct \$3,000, the yearly limit. They had taxable income of \$2,000. The unused part of the loss, \$4,000 (\$7,000 - \$3,000), is carried over to 1999. The allowable \$3,000 deduction is considered used in 1998.

If the Sampsons' capital loss had been \$2,000, it would not have been more than the yearly limit. Their capital loss deduction would have been \$2,000. They would have no carryover to 1999.

Short-term and long-term losses. When you carry over a loss, it retains its original character as either long term or short term. A short-term loss that you carry over to the next tax year is added to short-term losses

occurring in that year. A long-term loss that you carry over to the next tax year is added to long-term losses occurring in that year. Thus, a long-term capital loss you carry over to the next year reduces that year's long-term gains before its short-term gains.

If you have both short-term and long-term losses, your short-term losses are used first against your allowable capital loss deduction. If, after using your short-term losses, you have not reached the limit on the capital loss deduction, use your long-term losses until you reach the limit. This computation of your short-term capital loss carryover or your long-term capital loss carryover is made on the *Capital Loss Carryover Worksheet* provided in the instructions for Schedule D.

Joint and separate returns. On a joint return, the capital gains and losses of a husband and wife are figured as the gains and losses of an individual. If you are married and filing a separate return, your yearly capital loss deduction is limited to \$1,500. Neither you nor your spouse may deduct any part of the other's loss.

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 jointly and are now filing separately, any capital loss carryover from the joint return can be deducted only on the return of the spouse who actually had the loss.

Death of taxpayer. Capital losses cannot be carried over after a taxpayer's death. They are deductible only on the final income tax return filed on the decedent's behalf. The capital loss limit discussed earlier still applies in this situation. Even if the loss is greater than the limit, the decedent's estate cannot deduct the excess or carry it over to following years.

Corporations. A corporation may deduct capital losses only up to the amount of its capital gains. In other words, if a corporation has an excess capital loss, it cannot be deducted in the current tax year. It must be carried to other tax years and deducted from capital gains occurring in those years. For more information, see Publication 542.

Maximum Tax Rates on Net Capital Gain

The 31%, 36%, and 39.6% income tax rates for individuals do not apply to a net capital gain. In most cases, the 15% and 28% rates do not apply either. Instead, your net capital gain is taxed at a lower maximum rate.

Net capital gain is the excess of net long-term capital gain for the year over the net short-term capital loss for the year.

You will need to use Part IV of Schedule D (Form 1040) to figure your tax using the maximum capital gains rates if both of the following are true.

- Both lines 16 and 17 of Schedule D are gains.
- Your taxable income on Form 1040, line 39, is more than zero.

The maximum rate may be 10%, 20%, 25%, or 28%, or a combination of those rates, as shown in Table 4-3.

Table 4-3. What Is Your Maximum Capital Gains Rate?

IF your net capital gain is from . . .	THEN your maximum capital gains rate is . . .
Collectibles gain	28% ¹
Section 1202 gain	28% ¹
Unrecaptured section 1250 gain	25% ¹
Other gain, and your regular tax rate would be 28% or higher	20%
Other gain, and your regular tax rate would be 15%	10% ²

¹ Does not apply if your regular tax rate would be 15%.

² The 10% rate applies only to the part of your net capital gain that would be taxed at 15% if there were no maximum capital gains rates.

Using the maximum rates. The part of a net capital gain that is subject to each maximum rate is determined by first netting long-term capital gains with long-term capital losses in the following tax rate groups.

- A 28% group, consisting of:
 - Collectibles gains and losses,
 - Section 1202 gain equal to the section 1202 exclusion, and
 - Any long-term capital loss carryover.
- A 25% group, consisting of unrecaptured section 1250 gain.
- A 20% group, consisting of gains and losses not in the 28% or 25% group.

If any group has a net loss, the following rules apply.

- A net loss from the 28% group reduces any gain from the 25% group, and then any net gain from the 20% group.
- A net loss from the 20% group reduces any net gain from the 28% group, and then any gain from the 25% group.

If you have a net short-term capital loss, it reduces any net gain from the 28% group, then any gain from the 25% group, and finally any net gain from the 20% group.

The resulting net gain (if any) from each group is subject to the maximum tax rate for that group. (The 10% maximum rate applies to a net gain from the 20% group to the extent that, if there were no maximum capital gains rates, the net capital gain would be taxed at the 15% regular tax rate.)

Collectibles gain or loss. This is gain or loss from the sale or exchange of a work of art, rug, antique, metal, 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 attributable to unrealized appreciation of collectibles.

Section 1202 gain. If you realized a gain from qualified small business stock that you held more than 5 years, you have a section 1202 gain. You exclude up to one-half of your gain from your income. The taxable part of your gain equal to your section 1202 exclusion is a 28% rate gain. See *Sales of Small Business Stock* in chapter 1.

Unrecaptured section 1250 gain. This is the part of any long-term capital gain on section 1250 property (real property) that is due to depreciation, *minus* any net loss in the 28% group. Unrecaptured section 1250 gain cannot exceed the net section 1231 gain or

include any gain that is otherwise treated as ordinary income. Use the worksheet in the Schedule D instructions to figure your unrecaptured section 1250 gain. For more information about section 1250 property and net section 1231 gain, see chapter 3.

Changes after 2000. After 2000, there will be changes to the maximum capital gains rates.

2001. Beginning in 2001, the 10% maximum capital gains rate will be lowered to 8% for "qualified 5-year gain."

2006. Beginning in 2006, the 20% maximum capital gains rate will be lowered to 18% for qualified 5-year gain from property with a holding period that begins after 2000.

Taxpayers who own certain stock on January 1, 2001, can choose to treat the stock as sold and repurchased on January 2, 2001, if they pay tax for 2001 on any resulting gain.

Qualified 5-year gain. This is long-term capital gain from the sale of property you held for more than 5 years that would otherwise be subject to the 10% or 20% maximum capital gains rate.

Net capital gain from disposition of investment property. If you elect to include any part of a net capital gain from a disposition of investment property in investment income for figuring your investment interest deduction, you must reduce the net capital gain eligible for the maximum tax rates by the same amount. You make this election on Form 4952, *Investment Interest Expense Deduction*, line 4e. For information on making this election, see the instructions to Form 4952. For information on the investment interest deduction, see chapter 3 in Publication 550.

Form 4797

Use Form 4797 to report gain or loss from a sale, exchange, or involuntary conversion of property used in your trade or business or held for the production of rents or royalties. Form 4797 can be used with Form 1040, 1065, 1120, or 1120S.

Section 1231 gains and losses. Any section 1231 gains and losses are shown in Part I. A net gain is carried to Schedule D (Form 1040) as a long-term capital gain. A net loss is carried to Part II of Form 4797 as an ordinary loss.

If you had any nonrecaptured net section 1231 losses from the preceding 5 tax years, reduce your net gain by those losses and re-

port the amount of the reduction as an ordinary gain in Part II. Any remaining gain is reported on Schedule D (Form 1040). See *Section 1231 Gains and Losses*, in chapter 3.

Ordinary gains and losses. Any ordinary gains and losses are shown in Part II. This includes a net loss or a recapture of losses from prior years figured in Part I of Form 4797. It also includes ordinary gain figured in Part III.

Ordinary income due to depreciation recapture. The ordinary income due to the recapture of depreciation on personal property and additional depreciation on real property (as discussed in chapter 3) is figured in Part III. The ordinary income is carried to Part II of Form 4797 as an ordinary gain. Any remaining gain is carried to Part I as section 1231 gain, unless it is from a casualty or theft. Any remaining gain that is from a casualty or theft is carried to Form 4684.

Example

Jane Smith is single. At the beginning of 1998, she owned and operated Jane's Dress Shop. On March 16, she traded the land and building where she operated her dress shop for other land and a building. She then opened the J. Smith Hardware Store. Jane also sold all the equipment she had used in her dress shop, as well as a vacant lot across the street from the shop used for customer parking. She reports these transactions as shown in the filled-in Form 4797 and Form 8824 at the end of this chapter.

Form 4797

Jane sold the equipment she used in her dress shop for \$3,000. She originally paid \$6,000 for it on January 20, 1986, and had fully depreciated it. Therefore, she realized a gain of \$3,000. Because the gain was less than the \$6,000 depreciation taken, all her gain is ordinary income from depreciation. This amount is reported in Part III of Form 4797 and entered in Part II, on line 13.

The adjusted basis of the vacant lot (acquired in 1977) was \$6,000, and its sales price was \$8,000. Jane reports her \$2,000 gain from the sale in Part I of Form 4797.

Jane had a nonrecaptured net section 1231 loss of \$1,200. She shows this amount in Part I on line 8. Since the net section 1231 gain of \$2,000 is more than the nonrecaptured loss, that gain is treated as ordinary gain only up to the amount of the loss. Therefore, the loss amount of \$1,200 on line 8 is entered as an ordinary gain in Part II of Form 4797 on line 12. The loss is also subtracted from the \$2,000 gain on line 7. The \$800 balance is entered on line 9.

Form 8824

Because Jane entered into a like-kind exchange by trading her business real property for other business real property, she must report the transaction on Form 8824 and attach the form to her tax return.

On lines 16 and 17 of Form 8824, Jane enters the fair market value (FMV) of her new property, \$120,000, consisting of \$95,000 for the building and \$25,000 for the land. On line 18 she enters the adjusted basis of the old property, \$100,000, consisting of \$65,768 for the building and \$34,232 for the land. Her

realized gain on line 19 is \$20,000. Under the like-kind exchange rules, this gain is not recognized. Jane enters "-0-" on line 20.

However, because there is additional depreciation on the old building of \$16,576, Jane must determine whether any of her gain has to be recognized as ordinary income under the recapture rules. The old building has an FMV of \$90,000. Had the transaction been a cash sale, Jane's realized gain on the building would have been \$24,232 (\$90,000 - \$65,768). The additional depreciation is less than that amount, so her ordinary income due to the additional depreciation would have been \$16,576. That amount is less than the \$95,000 FMV of the new building and, therefore, there is no ordinary income recognized on the exchange. The \$16,576 ordinary income that does not have to be reported is carried over to the new building as additional depreciation. Jane enters "-0-" on line 21 of Form 8824 and on line 16 of Form 4797.

All of Jane's \$20,000 gain is deferred (line 24). The basis of her new property (line 25) is \$100,000, the same as the adjusted basis of her old property. Of that amount, \$79,167 (\$95,000 ÷ \$120,000) is allocated to the building and \$20,833 (\$25,000 ÷ \$120,000) is allocated to the land.

Summary

The entries in Part II, Form 4797, show an ordinary gain of \$4,200, which is carried to line 14, Form 1040.

The entries in Part I, Form 4797, result in a gain of \$800 from section 1231 transactions. This is treated as long-term capital gain and carried to line 11, Schedule D (Form 1040), column (f).

Sales of Business Property
 (Also Involuntary Conversions and Recapture Amounts
 Under Sections 179 and 280F(b)(2))
 ▶ Attach to your tax return. ▶ See separate instructions.

Name(s) shown on return: Jane Smith Identifying number: 458-00-0327

1 Enter here the gross proceeds from the sale or exchange of real estate reported to you for 1998 on Form(s) 1099-S (or a substitute statement) that you will be including on line 2, 10, or 20 **1**

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft—Property Held More Than 1 Year

(a) Description of property	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) GAIN or (LOSS) Subtract (f) from the sum of (d) and (e)	(h) 28% RATE GAIN or (LOSS) * (see instr. below)
2 Store parking lot	10-1-77	3-16-98	8,000	0	6,000	2,000	

3 Gain, if any, from Form 4684, line 39 **3**

4 Section 1231 gain from installment sales from Form 6252, line 26 or 37 **4**

5 Section 1231 gain or (loss) from like-kind exchanges from Form 8824 **5**

6 Gain, if any, from line 32, from other than casualty or theft **6**

7 Combine lines 2 through 6 in columns (g) and (h). Enter gain or (loss) here, and on the appropriate line as follows:
Partnerships—Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 6. Skip lines 8, 9, 11, and 12 below.
S corporations—Report the gain or (loss) following the instructions for Form 1120S, Schedule K, lines 5 and 6. Skip lines 8, 9, 11, and 12 below, unless line 7, column (g) is a gain and the S corporation is subject to the capital gains tax.
All others—If line 7, column (g) is zero or a loss, enter that amount on line 11 below and skip lines 8 and 9. If line 7, column (g) is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain or (loss) in each column as a long-term capital gain or (loss) on Schedule D and skip lines 8, 9, and 12 below.

7	2,000	
8	1,200	
9	800	

8 Nonrecaptured net section 1231 losses from prior years (see instructions) **8**

9 Subtract line 8 from line 7. For column (g) **only**, if the result is zero or less, enter -0-. Enter here and on the appropriate line(s) as follows (see instructions): **9**

S corporations—Enter only the gain in column (g) on Schedule D (Form 1120S), line 14, and skip lines 11 and 12 below.
All others—If line 9, column (g) is zero, enter the gain from line 7, column (g) on line 12 below. If line 9, column (g) is more than zero, enter the amount from line 8, column (g) on line 12 below, and enter the gain or (loss) in each column of line 9 as a long-term capital gain or (loss) on Schedule D.

* Corporations (other than S corporations) should not complete column (h). Partnerships and S corporations must complete column (h). All others must complete column (h) only if line 7, column (g), is a gain. Use column (h) only to report pre-1998 28% rate gain (or loss) from a 1997-98 fiscal year partnership or S corporation.

Part II Ordinary Gains and Losses

10 Ordinary gains and losses not included on lines 11 through 17 (include property held 1 year or less):

--	--	--	--	--	--	--

11 Loss, if any, from line 7, column (g)	11	()
12 Gain, if any, from line 7, column (g) or amount from line 8, column (g) if applicable	12	1,200
13 Gain, if any, from line 31	13	3,000
14 Net gain or (loss) from Form 4684, lines 31 and 38a	14	
15 Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16 Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	-0-
17 Recapture of section 179 expense deduction for partners and S corporation shareholders from property dispositions by partnerships and S corporations (see instructions)	17	
18 Combine lines 10 through 17 in column (g). Enter gain or (loss) here, and on the appropriate line as follows: a For all except individual returns: Enter the gain or (loss) from line 18 on the return being filed. b For individual returns: (1) If the loss on line 11 includes a loss from Form 4684, line 35, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 27, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 22. Identify as from "Form 4797, line 18b(1)." See instructions (2) Redetermine the gain or (loss) on line 18, excluding the loss, if any, on line 18b(1). Enter here and on Form 1040, line 14	18	4,200
	18b(1)	
	18b(2)	4,200

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255

19 (a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)
A Store equipment	1-20-86	3-16-98
B		
C		
D		

These columns relate to the properties on lines 19A through 19D. ►		Property A	Property B	Property C	Property D
20 Gross sales price (Note: See line 1 before completing)	20	3,000			
21 Cost or other basis plus expense of sale	21	6,000			
22 Depreciation (or depletion) allowed or allowable	22	6,000			
23 Adjusted basis. Subtract line 22 from line 21	23	-0-			
24 Total gain. Subtract line 23 from line 20	24	3,000			
25 If section 1245 property:					
a Depreciation allowed or allowable from line 22	25a	6,000			
b Enter the smaller of line 24 or 25a	25b	3,000			
26 If section 1250 property: If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975 (see instructions)	26a				
b Applicable percentage multiplied by the smaller of line 24 or line 26a (see instructions)	26b				
c Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d Additional depreciation after 1969 and before 1976	26d				
e Enter the smaller of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26b, 26e, and 26f	26g				
27 If section 1252 property: Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage (see instructions)	27b				
c Enter the smaller of line 24 or 27b	27c				
28 If section 1254 property:					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, and mining exploration costs (see instructions)	28a				
b Enter the smaller of line 24 or 28a	28b				
29 If section 1255 property:					
a Applicable percentage of payments excluded from income under section 126 (see instructions)	29a				
b Enter the smaller of line 24 or 29a (see instructions)	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24	30	3,000
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	3,000
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 33. Enter the portion from other than casualty or theft on Form 4797, line 6	32	-0-

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less
See instructions.

	(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33	
34 Recomputed depreciation. See instructions	34	
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35	

Like-Kind Exchanges

(and nonrecognition of gain from conflict-of-interest sales)

▶ See separate instructions. ▶ Attach to your tax return.
▶ Use a separate form for each like-kind exchange.

Name(s) shown on tax return

Jane Smith

Identifying number

458-00-0327

Part I Information on the Like-Kind Exchange

Note: If the property described on line 1 or line 2 is real or personal property located outside the United States, indicate the country.

- 1 Description of like-kind property given up ▶ Commercial building and land
- 2 Description of like-kind property received ▶ Commercial building and land
- 3 Date like-kind property given up was originally acquired (month, day, year)

3	1	/	20	/	86
---	---	---	----	---	----
- 4 Date you actually transferred your property to other party (month, day, year)

4	3	/	16	/	98
---	---	---	----	---	----
- 5 Date the like-kind property you received was identified (month, day, year)

5	3	/	16	/	98
---	---	---	----	---	----
- 6 Date you actually received the like-kind property from other party (month, day, year)

6	3	/	16	/	98
---	---	---	----	---	----
- 7 Was the exchange made with a related party? If "Yes," complete Part II. If "No," go to Part III. See instructions.
a Yes, in this tax year b Yes, in a prior tax year c No.

Part II Related Party Exchange Information

- 8 Name of related party _____ Related party's identifying number _____
Address (no., street, and apt., room, or suite no.) _____
City or town, state, and ZIP code _____ Relationship to you _____
- 9 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did the related party sell or dispose of the like-kind property received from you in the exchange? Yes No
- 10 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did you sell or dispose of the like-kind property you received? Yes No
If both lines 9 and 10 are "No" and this is the year of the exchange, go to Part III. If either line 9 or line 10 is "Yes," the deferred gain or (loss) from line 24 must be reported on your return this tax year, unless one of the exceptions on line 11 applies. See Related party exchanges in the instructions.
- 11 If one of the exceptions below applies to the disposition, check the applicable box:
a The disposition was after the death of either of the related parties.
b The disposition was an involuntary conversion, and the threat of conversion occurred after the exchange.
c You can establish to the satisfaction of the IRS that neither the exchange nor the disposition had tax avoidance as its principal purpose. If this box is checked, attach an explanation. See instructions.

Part III Realized Gain or (Loss), Recognized Gain, and Basis of Like-Kind Property Received

Caution: If you transferred and received (a) more than one group of like-kind properties, or (b) cash or other (not like-kind) property, see Reporting of multi-asset exchanges in the instructions.

Note: Complete lines 12 through 14 ONLY if you gave up property that was not like-kind. Otherwise, go to line 15.


12 Fair market value (FMV) of other property given up	12			
13 Adjusted basis of other property given up	13			
14 Gain or (loss) recognized on other property given up. Subtract line 13 from line 12. Report the gain or (loss) in the same manner as if the exchange had been a sale	14			
15 Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses you incurred. See instructions	15	-0-		
16 FMV of like-kind property you received	16	120,000	00	
17 Add lines 15 and 16	17	120,000	00	
18 Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses not used on line 15. See instructions	18	100,000	00	
19 Realized gain or (loss). Subtract line 18 from line 17	19	20,000	00	
20 Enter the smaller of line 15 or line 19, but not less than zero	20	-0-		
21 Ordinary income under recapture rules. Enter here and on Form 4797, line 16. See instructions	21	-0-		
22 Subtract line 21 from line 20. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797, unless the installment method applies. See instructions	22	-0-		
23 Recognized gain. Add lines 21 and 22	23	-0-		
24 Deferred gain or (loss). Subtract line 23 from line 19. If a related party exchange, see instructions	24	20,000	00	
25 Basis of like-kind property received. Subtract line 15 from the sum of lines 18 and 23	25	100,000	00	

5.

How To Get More Information

You can order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Free tax services. To find out what services are available, get Publication 910, *Guide to Free Tax Services*. It contains a list of free tax publications and an index of tax topics. It also describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.

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TaxFax Service. Using the phone attached to your fax machine, you can receive forms, instructions, and tax information by calling **703-368-9694**. Follow the directions from the prompts. When you order forms, enter the catalog number for the form you need. The items you request will be faxed to you.



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- *Ordering forms, instructions, and publications.* Call **1-800-829-3676** to order current and prior year forms, instructions, and publications.
- *Asking tax questions.* Call the IRS with your tax questions at **1-800-829-1040**.
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call **1-800-829-4059** to ask tax questions or to order forms and publications.
- *TeleTax topics.* Call **1-800-829-4477** to listen to pre-recorded messages covering various tax topics.

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- Current tax forms, instructions, and publications.
- Prior-year tax forms, instructions, and publications.
- Popular tax forms which may be filled in electronically, printed out for submission, and saved for recordkeeping.
- Internal Revenue Bulletins.

The CD-ROM can be purchased from National Technical Information Service (NTIS) for \$25.00 by calling 1-877-233-6767 or for \$18.00 on the Internet at www.irs.ustreas.gov/cdorders. The first release is available in mid-December and the final release is available in late January.

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Tax Publications for Individual Taxpayers

See *How To Get More Information* for a variety of ways to get publications, including by computer, phone, and mail.

General Guides

- 1 Your Rights as a Taxpayer
- 17 Your Federal Income Tax (For Individuals)
- 225 Farmer's Tax Guide
- 334 Tax Guide for Small Business
- 509 Tax Calendars for 1999
- 553 Highlights of 1998 Tax Changes
- 595 Tax Highlights for Commercial Fishermen
- 910 Guide to Free Tax Services

Specialized Publications

- 3 Armed Forces' Tax Guide
- 378 Fuel Tax Credits and Refunds
- 463 Travel, Entertainment, Gift, and Car Expenses
- 501 Exemptions, Standard Deduction, and Filing Information
- 502 Medical and Dental Expenses
- 503 Child and Dependent Care Expenses
- 504 Divorced or Separated Individuals
- 505 Tax Withholding and Estimated Tax
- 508 Educational Expenses
- 514 Foreign Tax Credit for Individuals
- 516 U.S. Government Civilian Employees Stationed Abroad
- 517 Social Security and Other Information for Members of the Clergy and Religious Workers
- 519 U.S. Tax Guide for Aliens
- 520 Scholarships and Fellowships
- 521 Moving Expenses
- 523 Selling Your Home
- 524 Credit for the Elderly or the Disabled
- 525 Taxable and Nontaxable Income
- 526 Charitable Contributions
- 527 Residential Rental Property
- 529 Miscellaneous Deductions

- 530 Tax Information for First-Time Homeowners
- 531 Reporting Tip Income
- 533 Self-Employment Tax
- 534 Depreciating Property Placed in Service Before 1987
- 537 Installment Sales
- 541 Partnerships
- 544 Sales and Other Dispositions of Assets
- 547 Casualties, Disasters, and Thefts (Business and Nonbusiness)
- 550 Investment Income and Expenses
- 551 Basis of Assets
- 552 Recordkeeping for Individuals
- 554 Older Americans' Tax Guide
- 555 Community Property
- 556 Examination of Returns, Appeal Rights, and Claims for Refund
- 559 Survivors, Executors, and Administrators
- 561 Determining the Value of Donated Property
- 564 Mutual Fund Distributions
- 570 Tax Guide for Individuals With Income From U.S. Possessions
- 575 Pension and Annuity Income
- 584 Nonbusiness Disaster, Casualty, and Theft Loss Workbook
- 587 Business Use of Your Home (Including Use by Day-Care Providers)
- 590 Individual Retirement Arrangements (IRAs) (Including Roth IRAs and Education IRAs)
- 593 Tax Highlights for U.S. Citizens and Residents Going Abroad
- 594 Understanding the Collection Process
- 596 Earned Income Credit
- 721 Tax Guide to U.S. Civil Service Retirement Benefits

- 901 U.S. Tax Treaties
- 907 Tax Highlights for Persons with Disabilities
- 908 Bankruptcy Tax Guide
- 911 Direct Sellers
- 915 Social Security and Equivalent Railroad Retirement Benefits
- 919 Is My Withholding Correct for 1999?
- 925 Passive Activity and At-Risk Rules
- 926 Household Employer's Tax Guide
- 929 Tax Rules for Children and Dependents
- 936 Home Mortgage Interest Deduction
- 946 How To Depreciate Property
- 947 Practice Before the IRS and Power of Attorney
- 950 Introduction to Estate and Gift Taxes
- 967 IRS Will Figure Your Tax
- 968 Tax Benefits for Adoption
- 970 Tax Benefits for Higher Education
- 971 Innocent Spouse Relief
- 1542 Per Diem Rates
- 1544 Reporting Cash Payments of Over \$10,000
- 1546 The Problem Resolution Program of the Internal Revenue Service

Spanish Language Publications

- 1SP Derechos del Contribuyente
- 579SP Cómo Preparar la Declaración de Impuesto Federal
- 594SP Comprendiendo el Proceso de Cobro
- 596SP Crédito por Ingreso del Trabajo
- 850 English-Spanish Glossary of Words and Phrases Used in Publications Issued by the Internal Revenue Service
- 1544SP Informe de Pagos en Efectivo en Exceso de \$10,000 (Recibidos en una Ocupación o Negocio)

Commonly Used Tax Forms

See *How To Get More Information* for a variety of ways to get forms, including by computer, fax, phone, and mail. For fax orders only, use the catalog numbers when ordering.

Form Number and Title	Catalog Number	Form Number and Title	Catalog Number
1040 U.S. Individual Income Tax Return	11320	2106 Employee Business Expenses	11700
Sch A & B Itemized Deductions & Interest and Ordinary Dividends	11330	2106-EZ Unreimbursed Employee Business Expenses	20604
Sch C Profit or Loss From Business	11334	2210 Underpayment of Estimated Tax by Individuals, Estates and Trusts	11744
Sch C-EZ Net Profit From Business	14374	2441 Child and Dependent Care Expenses	11862
Sch D Capital Gains and Losses	11338	2848 Power of Attorney and Declaration of Representative	11980
Sch E Supplemental Income and Loss	11344	3903 Moving Expenses	12490
Sch EIC Earned Income Credit	11339	4562 Depreciation and Amortization	12906
Sch F Profit or Loss From Farming	11346	4868 Application for Automatic Extension of Time To File U.S. Individual Income Tax Return	13141
Sch H Household Employment Taxes	12187	4952 Investment Interest Expense Deduction	13177
Sch J Farm Income Averaging	25513	5329 Additional Taxes Attributable to IRAs, Other Qualified Retirement Plans, Annuities, Modified Endowment Contracts, and MSAs	13329
Sch R Credit for the Elderly or the Disabled	11359	6251 Alternative Minimum Tax—Individuals	13600
Sch SE Self-Employment Tax	11358	8283 Noncash Charitable Contributions	62294
1040A U.S. Individual Income Tax Return	11327	8582 Passive Activity Loss Limitations	63704
Sch 1 Interest and Ordinary Dividends for Form 1040A Filers	12075	8606 Nondeductible IRAs	63966
Sch 2 Child and Dependent Care Expenses for Form 1040A Filers	10749	8812 Additional Child Tax Credit	10644
Sch 3 Credit for the Elderly or the Disabled for Form 1040A Filers	12064	8822 Change of Address	12081
1040EZ Income Tax Return for Single and Joint Filers With No Dependents	11329	8829 Expenses for Business Use of Your Home	13232
1040-ES Estimated Tax for Individuals	11340	8863 Education Credits	25379
1040X Amended U.S. Individual Income Tax Return	11360		

Tax Publications for Business Taxpayers

See *How To Get More Information* for a variety of ways to get publications, including by computer, phone, and mail.

General Guides

- 1 Your Rights as a Taxpayer
- 17 Your Federal Income Tax (For Individuals)
- 225 Farmer's Tax Guide
- 334 Tax Guide for Small Business
- 509 Tax Calendars for 1999
- 553 Highlights of 1998 Tax Changes
- 595 Tax Highlights for Commercial Fishermen
- 910 Guide to Free Tax Services

Employer's Guides

- 15 Employer's Tax Guide (Circular E)
- 15-A Employer's Supplemental Tax Guide
- 51 Agricultural Employer's Tax Guide (Circular A)
- 80 Federal Tax Guide For Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (Circular SS)
- 179 Guía Contributiva Federal Para Patronos Puertorriqueños (Circular PR)
- 926 Household Employer's Tax Guide

Specialized Publications

- 378 Fuel Tax Credits and Refunds

- 463 Travel, Entertainment, Gift, and Car Expenses
- 505 Tax Withholding and Estimated Tax
- 510 Excise Taxes for 1999
- 515 Withholding of Tax on Nonresident Aliens and Foreign Corporations
- 517 Social Security and Other Information for Members of the Clergy and Religious Workers
- 527 Residential Rental Property
- 533 Self-Employment Tax
- 534 Depreciating Property Placed in Service Before 1987
- 535 Business Expenses
- 536 Net Operating Losses
- 537 Installment Sales
- 538 Accounting Periods and Methods
- 541 Partnerships
- 542 Corporations
- 544 Sales and Other Dispositions of Assets
- 551 Basis of Assets
- 556 Examination of Returns, Appeal Rights, and Claims for Refund
- 560 Retirement Plans for Small Business (SEP, SIMPLE, and Keogh Plans)
- 561 Determining the Value of Donated Property
- 583 Starting a Business and Keeping Records
- 587 Business Use of Your Home (Including Use by Day-Care Providers)
- 594 Understanding the Collection Process

- 597 Information on the United States-Canada Income Tax Treaty
- 598 Tax on Unrelated Business Income of Exempt Organizations
- 686 Certification for Reduced Tax Rates in Tax Treaty Countries
- 901 U.S. Tax Treaties
- 908 Bankruptcy Tax Guide
- 911 Direct Sellers
- 925 Passive Activity and At-Risk Rules
- 946 How To Depreciate Property
- 947 Practice Before the IRS and Power of Attorney
- 953 International Tax Information for Businesses
- 1544 Reporting Cash Payments of Over \$10,000
- 1546 The Problem Resolution Program of the Internal Revenue Service

Spanish Language Publications

- 1SP Derechos del Contribuyente
- 579SP Cómo Preparar la Declaración de Impuesto Federal
- 594SP Comprendiendo el Proceso de Cobro
- 850 English-Spanish Glossary of Words and Phrases Used in Publications Issued by the Internal Revenue Service
- 1544SP Informe de Pagos en Efectivo en Exceso de \$10,000 (Recibidos en una Ocupación o Negocio)

Commonly Used Tax Forms

See *How To Get More Information* for a variety of ways to get forms, including by computer, fax, phone, and mail. Items with an asterisk are available by fax. For these orders only, use the catalog numbers when ordering.

Form Number and Title	Catalog Number	Form Number and Title	Catalog Number
W-2 Wage and Tax Statement	10134	1120S U.S. Income Tax Return for an S Corporation	11510
W-4 Employee's Withholding Allowance Certificate*	10220	Sch D Capital Gains and Losses and Built-In Gains	11516
940 Employer's Annual Federal Unemployment (FUTA) Tax Return*	11234	Sch K-1 Shareholder's Share of Income, Credits, Deductions, etc.	11520
940EZ Employer's Annual Federal Unemployment (FUTA) Tax Return*	10983	2106 Employee Business Expenses*	11700
941 Employer's Quarterly Federal Tax Return	17001	2106-EZ Unreimbursed Employee Business Expenses*	20604
1040 U.S. Individual Income Tax Return*	11320	2210 Underpayment of Estimated Tax by Individuals, Estates, and Trusts*	11744
Sch A & B Itemized Deductions & Interest and Ordinary Dividends*	11330	2441 Child and Dependent Care Expenses*	11862
Sch C Profit or Loss From Business*	11334	2848 Power of Attorney and Declaration of Representative*	11980
Sch C-EZ Net Profit From Business*	14374	3800 General Business Credit	12392
Sch D Capital Gains and Losses*	11338	3903 Moving Expenses*	12490
Sch E Supplemental Income and Loss*	11344	4562 Depreciation and Amortization*	12906
Sch F Profit or Loss From Farming*	11346	4797 Sales of Business Property*	13086
Sch H Household Employment Taxes*	12187	4868 Application for Automatic Extension of Time To File U.S. Individual Income Tax Return*	13141
Sch J Farm Income Averaging*	25513	5329 Additional Taxes Attributable to IRAs, Other Qualified Retirement Plans, Annuities, Modified Endowment Contracts, and MSAs*	13329
Sch R Credit for the Elderly or the Disabled*	11359	6252 Installment Sale Income*	13601
Sch SE Self-Employment Tax*	11358	8283 Noncash Charitable Contributions*	62299
1040-ES Estimated Tax for Individuals*	11340	8300 Report of Cash Payments Over \$10,000 Received in a Trade or Business*	62133
1040X Amended U.S. Individual Income Tax Return*	11360	8582 Passive Activity Loss Limitations*	63704
1065 U.S. Partnership Return of Income	11390	8606 Nondeductible IRAs*	63966
Sch D Capital Gains and Losses	11393	8822 Change of Address*	12081
Sch K-1 Partner's Share of Income, Credits, Deductions, etc.	11394	8829 Expenses for Business Use of Your Home*	13232
1120 U.S. Corporation Income Tax Return	11450		
1120-A U.S. Corporation Short-Form Income Tax Return	11456		