

banking firm, or other person, participating in the sale of an issue may qualify for ordinary loss treatment only if the stock is not first issued to the firm or person. Thus, for example, if the firm acts as a selling agent for the issuing corporation the stock may qualify. On the other hand, stock purchased by an investment firm and subsequently resold does not qualify as section 1244 stock in the hands of the person acquiring the stock from the firm.

(c) *Examples.* The provisions of paragraph (b) of this section may be illustrated by the following examples:

Example 1. A and B, both individuals, and C, a trust, are equal partners in a partnership to which a small business corporation issues section 1244 stock. The partnership sells the stock at a loss. A's and B's distributive share of the loss may be treated as an ordinary loss pursuant to section 1244, but C's distributive share of the loss may not be so treated.

Example 2. The facts are the same as in example (1) except that the section 1244 stock is distributed by the partnership to partner A and he subsequently sells the stock at a loss. Section 1244 is not applicable to the loss since A did not acquire the stock by issuance from the small business corporation.

[T.D. 6495, 25 FR 9675, Oct. 8, 1960, as amended by T.D. 7779, 46 FR 29467, June 2, 1981]

§ 1.1244(b)-1 Annual limitation.

(a) *In general.* Subsection (b) of section 1244 imposes a limitation on the aggregate amount of loss that for any taxable year may be treated as an ordinary loss by a taxpayer by reason of that section. In the case of a partnership, the limitation is determined separately as to each partner. Any amount of loss in excess of the applicable limitation is treated as loss from the sale or exchange of a capital asset.

(b) *Amount of loss—(1) Taxable years beginning after December 31, 1978.* For any taxable year beginning after December 31, 1978, the maximum amount that may be treated as an ordinary loss under section 1244 is:

- (i) \$50,000, or
- (ii) \$100,000, if a husband and wife file a joint return under section 6013.

These limitations on the maximum amount of ordinary loss apply whether the loss or losses are sustained on pre-November 1978 stock (as defined in

§ 1.1244 (c)-1 (a)(1)), post-November 1978 stock (as defined in § 1.1244 (c)-1 (a)(2)), or on any combination of pre-November 1978 stock and post-November 1978 stock. The limitation referred to in (ii) applies to a joint return whether the loss or losses are sustained by one or both spouses.

(2) *Taxable years ending before November 6, 1978.* For any taxable year ending before November 6, 1978, the maximum amount that may be treated as an ordinary loss under section 1244 is:

- (i) \$25,000 or
- (ii) \$50,000, if a husband and wife file a joint return under section 6013.

The limitation referred to in (ii) applies to a joint return whether the loss or losses are sustained by one or both spouses.

(3) *Taxable years including November 6, 1978.* For a taxable year including November 6, 1978, the maximum amount that may be treated as ordinary loss under section 1244 is the sum of:

- (i) The amount calculated by applying the limitations described in subparagraph (1) of this paragraph (b) to the amount of loss, if any, sustained during the taxable year on post-November 1978 stock, plus
- (ii) The amount calculated by applying the limitations described in subparagraph (2) of this paragraph (b) to the amount of loss, if any, sustained during the taxable year on pre-November 1978 stock,

To the extent this sum does not exceed \$50,000, or, if a husband and wife file a joint return under section 6013 for the taxable year, \$100,000.

(4) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. A, a married taxpayer who files a joint return for the taxable year ending December 31, 1977, sustains a \$50,000 loss qualifying under section 1244 on pre-November 1978 stock in Corporation X and an equal amount of loss qualifying under section 1244 on pre-November 1978 stock in Corporation Y. A is limited to \$50,000 of ordinary loss under paragraph (b)(2)(ii). The remaining \$50,000 of loss is treated as loss from the sale or exchange of a capital asset.

Example 2. For the taxable year ending December 31, 1979, B, a married taxpayer who files a joint return, sustains a \$90,000 loss on post-November 1978 stock in Corporation X.

In the same taxable year, C, B's spouse, sustains a \$25,000 loss on post-November 1978 stock in Corporation Y. Both losses qualify under section 1244. B and C's ordinary loss is limited to \$100,000 under paragraph (b)(1)(ii). The remaining \$15,000 of loss is treated as loss from the sale or exchange of a capital asset.

Example 3. D, a married taxpayer who files a joint return and reports income on a fiscal year basis for the taxable year ending November 30, 1978, sustains a \$60,000 loss qualifying under section 1244 on pre-November 1978 stock and a \$40,000 loss qualifying under section 1244 on post-November 1978 stock. D's ordinary loss on pre-November 1978 stock is limited to \$50,000 under subparagraph (3)(ii) of this paragraph (b). D's \$40,000 loss on post-November 1978 stock is within the limit of subparagraph (3)(i) of this paragraph (b). The total of these losses, \$90,000, is the aggregate amount deductible by D as ordinary loss under section 1244. The remaining \$10,000 of loss is treated as loss from the sale or exchange of a capital asset.

Example 4. E, a married taxpayer who files a joint return for the taxable year ending December 31, 1980, sustains a \$75,000 loss qualifying under section 1244 on pre-November 1978 stock and a \$10,000 loss qualifying under section 1244 on post-November 1978 stock. E may deduct the total of these losses, \$85,000, as ordinary loss under paragraph (b)(1)(ii).

Example 5. Assume the same facts as in the preceding example, except that the losses are sustained in the taxable year beginning January 1, 1978, and ending December 31, 1978. E is limited to \$60,000 of ordinary loss (\$50,000 on pre-November 1978 stock plus \$10,000 on post-November 1978 stock) under paragraph (b)(3). The remaining \$25,000 of loss is treated as loss from the sale or exchange of a capital asset.

Example 6. F, a married taxpayer who files a joint return for the taxable year beginning January 1, 1978, and ending December 31, 1978, sustains a \$75,000 loss qualifying under section 1244 on pre-November 1978 stock and a \$125,000 loss qualifying under section 1244 on post-November 1978 stock. F's loss on pre-November 1978 stock is limited to \$50,000 of ordinary loss under subparagraph (3)(ii) of this paragraph (b). F's loss on post-November 1978 stock is limited to \$100,000 of ordinary loss under subparagraph (3)(i) of this paragraph (b). The total of these losses, \$150,000, is limited to \$100,000 of ordinary loss under paragraph (b)(3). F's aggregate amount of ordinary loss under section 1244 is \$100,000. The remaining \$100,000 of loss is treated as loss from the sale or exchange of a capital asset.

[T.D. 7779, 46 FR 29467, June 2, 1981]

§ 1.1244(c)-1 Section 1244 stock defined.

(a) *In general.* For purposes of §§ 1.1244(a)-1 to 1.1244(e)-1, inclusive:

(1) The term *pre-November 1978 stock* means stock issued after June 30, 1958, and on or before November 6, 1978.

(2) The term *post-November 1978 stock* means stock issued after November 6, 1978.

In order that stock may qualify as section 1244 stock, the requirements described in paragraphs (b) through (e) of this section must be satisfied. In addition, the requirements of paragraph (f) of this section must be satisfied in the case of pre-November 1978 stock. Whether these requirements have been met is determined at the time the stock is issued, except for the requirement in paragraph (e) of this section. Whether the requirement in paragraph (e) of this section, relating to gross receipts of the corporation, has been satisfied is determined at the time a loss is sustained. Therefore, at the time of issuance it cannot be said with certainty that stock will qualify for the benefits of section 1244.

(b) *Common stock.* Only common stock, either voting or nonvoting, in a domestic corporation may qualify as section 1244 stock. For purposes of section 1244, neither securities of the corporation convertible into common stock nor common stock convertible into other securities of the corporation are treated as common stock. An increase in the basis of outstanding stock as a result of a contribution to capital is not treated as an issuance of stock under section 1244. For definition of domestic corporation, see section 7701(a)(4) and the regulations under that section.

(c) *Small business corporation.* At the time the stock is issued (or, in the case of pre-November 1978 stock, at the time of adoption of the plan described in paragraph (f)(1) of this section) the corporation must be a *small business corporation*. See § 1.1244(c)-2 for the definition of a small business corporation.

(d) *Issued for money or other property.*
 (1) The stock must be issued to the taxpayer for money or other property transferred by the taxpayer to the corporation. However, stock issued in exchange for stock or securities, including stock or securities of the issuing corporation, cannot qualify as section 1244 stock, except as provided in