

§ 1.1252-2

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Payment No.	Applicable sections		
	1251	1252	1231
2 .....	2,250	.....	.....
3 .....	2,250	.....	.....
4 .....	2,250	.....	.....
5 .....	2,250	.....	.....
6 .....	1,750	\$500	.....
7 .....	.....	2,250	.....
8 .....	.....	2,250	.....
9 .....	.....	.....	\$2,250
10 .....	.....	.....	2,250
Totals .....	13,000	5,000	4,500

[T.D. 7418, 41 FR 18831, May 7, 1976; 41 FR 23669, June 11, 1976]

§ 1.1252-2 Special rules.

(a) *Exception for gifts*—(1) *General rule.* In general, no gain shall be recognized under section 1252(a)(1) upon a disposition of farm land by gift. For purposes of section 1252 and this paragraph, the term *gift* shall have the same meaning as in paragraph (a) of § 1.1245-4 and, with respect to the application of this paragraph, principles illustrated by the examples of paragraph (a)(2) of § 1.1245-4 shall apply. For reduction in amount of charitable contribution in case of a gift of farm land, see section 170(e) and § 1.170A-4.

(2) *Disposition in part a sale or exchange and in part a gift.* Where a disposition of farm land is in part a sale or exchange and in part a gift, the amount of gain which shall be recognized as ordinary income under section 1252(a)(1) shall be computed under paragraph (a)(1) of § 1.1252-1, applied by treating the gain realized (for purposes of paragraph (a)(1)(iii)(a) of § 1.1252-1) as the excess of the amount realized over the adjusted basis of the farm land.

(3) *Treatment of farm land in hands of transferee.* See paragraph (f) of this section for treatment of the transferee in the case of a disposition to which this paragraph applies.

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

*Example 1.* On March 2, 1976, A, a calendar year taxpayer, makes a gift to B of a parcel of land having an adjusted basis of \$40,000, a fair market value of \$65,000, and a holding period of 6 years (A, having purchased the land on January 15, 1971). On the date of such gift, the aggregate of the deductions allowed to A under sections 175 and 182 with respect

to the land is \$24,000 with \$21,000 of such amount attributable to 1971. Upon making the gift, A recognizes no gain under section 1251(c)(1) or section 1252(a)(1). See paragraph (a)(1) of § 1.1251-4 and subparagraph 1 of this paragraph. For treatment of the farm land in the hands of B, see example (1) of paragraph (f)(3) of this section. For effect of the gift on the excess deductions accounts of A and of B, see paragraph (e)(2) of § 1.1251-2.

*Example 2.* (i) Assume the same facts as in example (1), except that A transfers the land to B for \$50,000. Thus, the gain realized is \$10,000 (amount realized, \$50,000, minus adjusted basis, \$40,000), and A has made a gift of \$15,000 (fair market value, \$65,000, minus amount realized, \$50,000).

(ii) Upon the transfer of the land to B, A recognizes \$3,000 of gain under section 1251(c)(1). See example (2) of paragraph (a)(4) of § 1.1251-4. Thus, A recognizes \$7,000 as ordinary income under section 1252(a)(1), computed under subparagraph (2) of this paragraph as follows:

(1) Aggregate of deductions allowed under sections 175 and 182 .....	\$24,000
(2) Minus: Gain recognized as ordinary income under section 1251(c)(1) .....	\$3,000
(3) Difference .....	\$21,000
(4) Multiply: Applicable percentage for land disposed of within sixth year after it was acquired .....	80%
(5) Amount in paragraph (a)(1)(i)(a) of § 1.1252-1 .....	\$16,800
(6) Gain realized (see subdivision (i) of this example) .....	\$10,000
(7) Minus: Amount in line (2) .....	\$3,000
(8) Amount in paragraph (a)(1)(i)(b) of § 1.1252-1, applied in accordance with subparagraph (2) of this paragraph .....	\$7,000
(9) Lower of line (5) or line (8) .....	\$7,000

Thus, the entire gain realized on the transfer, \$10,000, is recognized as ordinary income since that amount is equal to the sum of the gain recognized as ordinary income under section 1251(c)(1), \$3,000, and under section 1252(a)(1), \$7,000. For treatment of the farm land in the hands of B, see example (2) of paragraph (f)(3) of this section.

(b) *Exception for transfers at death*—(1) *In general.* Except as provided in section 691 (relating to income in respect of a decedent), no gain shall be recognized under section 1252(a)(1) upon a transfer at death. For purposes of section 1252 and this paragraph, the term *transfer at death* shall have the same meaning as in paragraph (b) of § 1.1245-4 and, with respect to the application of this paragraph, principles illustrated by the examples of paragraph (b)(2) of § 1.1245-4 shall apply.

(2) *Treatment of farm land in hands of transferee.* If as of the date a person acquires farm land from a decedent such person's basis is determined, by reason of the application of section 1014(a), solely by reference to the fair market value of the property on the date of the decedent's death or on the applicable date provided in section 2032 (relating to alternative valuation date), then on such date the aggregate of the sections 175 and 182 deductions allowed with respect to the farm land in the hands of such transferee is zero.

(c) *Limitation for certain tax-free transactions—(1) Limitation on amount of gain.* Upon a transfer of farm land described in subparagraph (2) of this paragraph, the amount of gain recognized as ordinary income under section 1252(a)(1) shall not exceed an amount equal to the excess (if any) of (i) the amount of gain recognized to the transferor on the transfer (determined without regard to section 1252) over (ii) the amount (if any) of gain recognized as ordinary income under section 1251(c)(1). For purposes of this subparagraph, the principles of paragraph (c)(1) of § 1.1245-4 shall apply. Thus, in the case of a transfer of farm land and property other than farm land in one transaction, the amount realized from the disposition of the farm land (as determined in a manner consistent with the principles of paragraph (a)(5) of § 1.1245-1) shall be deemed to consist of that portion of the fair market value of each property acquired which bears the same ratio to the fair market value of such acquired property as the amount realized from the disposition of the farm land bears to the total amount realized. The preceding sentence shall be applied solely for purposes of computing the portion of the total gain (determined without regard to section 1252) which is eligible to be recognized as ordinary income under section 1252(a)(1). The provisions of this paragraph do not apply to a disposition of property to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by Chapter 1 of the Code.

(2) *Transfers covered.* The transfers referred to in subparagraph (1) of this paragraph are transfers of farm land in which the basis of such property in the

hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of any of the following provisions:

(i) Section 332 (relating to distributions in complete liquidation of an 80-percent-or-more controlled subsidiary corporation). For application of subparagraph (1) of this paragraph to such a complete liquidation, the principles of paragraph (c)(3) of § 1.1245-4 shall apply. Thus, for example, the provisions of subparagraph (1) of this paragraph do not apply to a liquidating distribution of farm land by an 80-percent-or-more controlled subsidiary to its parent if the parent's basis for the property is determined, under section 334(b)(2), by reference to its basis for the stock of the subsidiary.

(ii) Section 351 (relating to transfer to a corporation controlled by transferor).

(iii) Section 361 (relating to exchanges pursuant to certain corporate reorganizations).

(iv) Section 371(a) (relating to exchanges pursuant to certain receivership and bankruptcy proceedings).

(v) Section 374(a) (relating to exchanges pursuant to certain railroad reorganizations).

(vi) Section 721 (relating to transfers to a partnership in exchange for a partnership interest). See paragraph (e) of this section.

(vii) Section 731 (relating to distributions by a partnership to a partner). For special carryover of basis rule, see paragraph (e) of this section.

(3) *Treatment of farm land in the hands of transferee.* See paragraph (f) of this section for treatment of the transferee in the case of a disposition to which this paragraph applies.

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

*Example 1.* On January 4, 1975, A, an individual calendar year taxpayer, owns a parcel of farm land, which he acquired on March 25, 1970, having an adjusted basis of \$15,000 and a fair market value of \$40,000. On that date he transfers the parcel to corporation M in exchange for stock in the corporation worth \$40,000 in a transaction qualifying under section 351. On the date of such transfer, the aggregate of the deductions allowed under sections 175 and 182 with respect to the land is \$18,000. Without regard to section 1252, A

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would recognize no gain under section 351 upon the transfer and M's basis for the land would be determined under section 362(a) by reference to its basis in the hands of A. Thus, as a result of the disposition, no gain is recognized as ordinary income under section 1251(c)(1) or section 1252(a)(1) by A since the amount of gain recognized under such sections is limited to the amount of gain which is recognized under section 351 (determined without regard to sections 1251 and 1252). See paragraph (c)(1) of § 1.1251-4 and subparagraph (1) of this paragraph. For treatment of the farm land in the hands of B, see paragraph (f)(1) of this section. For effect of the transfer on the excess deductions account of A and of B, see paragraph (e)(1) of § 1.1251-2.

*Example 2.* Assume the same facts in example (1), except that A transferred the land to M for stock in the corporation worth \$32,000 and \$8,000 cash. The gain realized is \$25,000 (amount realized, \$40,000, minus adjusted basis, \$15,000). Without regard to section 1252, A would recognize \$8,000 of gain under section 351(b). Assume further that no gain is recognized as ordinary income under section 1251(c)(1). Therefore, since the applicable percentage, 100 percent, of the aggregate of the deductions allowed under sections 175 and 182, \$18,000, is lower than the gain realized, \$25,000, the amount of gain to be recognized as ordinary income under section 1252(a)(1) would be \$18,000 if the provisions of subparagraph (1) of this paragraph do not apply. Since under section 351(b) gain in the amount of \$8,000 would be recognized to the transferor without regard to section 1252, the limitation provided in subparagraph (1) of this paragraph limits the gain taken into account by A under section 1252(a)(1) to \$8,000.

*Example 3.* Assume the same facts as in example (2), except that \$5,000 of gain is recognized as ordinary income under section 1251(c)(1). The amount of gain recognized as ordinary income under section 1252(a)(1) is \$3,000 computed as follows:

(1) Amount of gain under section 1252(a)(1) (determined without regard to subparagraph (1) of this paragraph):	
(a) Aggregate of deductions allowed under sections 175 and 182 .....	\$18,000
(b) Minus: Gain recognized as ordinary income under section 1251(c)(1) .....	\$5,000
(c) Difference .....	\$13,000
(d) Multiply: Applicable percentage for property disposed of within the fifth year after it was acquired .....	100%
(e) Amount in paragraph (a)(1)(i)(a) of § 1.1252-1 .....	\$13,000
(f) Gain realized (amount realized \$40,000, less adjusted basis, \$15,000) .....	\$25,000
(g) Minus: Amount in line (b) .....	\$5,000
(h) Amount in paragraph (a)(1)(i)(b) of § 1.1252-1 .....	\$20,000
(i) Lower of line (e) or (h) .....	\$13,000

(2) Limitation in subparagraph (1) of this paragraph:	
(a) Gain recognized (determined without regard to section 1252) .....	\$8,000
(b) Minus: Gain recognized as ordinary income under section 1251(c)(1) .....	\$5,000
(c) Difference .....	\$3,000
(3) Lower of line (1)(i) or line (2)(c) .....	\$3,000

Thus, the entire gain recognized under section 351(b) (determined without regard to sections 1251 and 1252), \$8,000, is recognized as ordinary income since that amount is equal to the sum of the gain recognized as ordinary income under section 1251(c)(1), \$5,000, and under section 1252(a)(1), \$3,000.

(d) *Limitation for like kind exchanges and involuntary conversions*—(1) *General rule.* If farm land is disposed of and gain (determined without regard to section 1252) is not recognized in whole or in part under section 1031 (relating to like kind exchanges) or section 1033 (relating to involuntary conversions), then the amount of gain recognized as ordinary income by the transferor under section 1252(a)(1) shall not exceed the sum of:

(i) The excess (if any) of (a) the amount of gain recognized on such disposition (determined without regard to section 1252) over (b) the amount (if any) of gain recognized as ordinary income under section 1251(c)(1), plus

(ii) The fair market value of property acquired which is not farm land and which is not taken into account under subdivision (i) of this subparagraph (that is, the fair market value of property other than farm land acquired which is qualifying property under section 1031 or 1033, as the case may be).

(2) *Examples.* The provisions of subparagraph (1) of this paragraph may be illustrated by the following examples:

*Example 1.* (i) Assume the same facts as in example (2)(ii) of paragraph (d)(3) of § 1.1251-4. Assume further that the aggregate of the amount of sections 175 and 182 deductions allowable is equal to the amount allowed. Under paragraph (a)(1) of § 1.1252-1, \$18,000 would be recognized as ordinary income under section 1252(a)(1) (determined without regard to subparagraph (1) of this paragraph), computed as follows:

(1) Aggregate of deductions allowed under sections 175 and 182 .....	\$18,000
(2) Minus: Gain recognized as ordinary income under section 1251(c)(1) .....	0
(3) Difference .....	\$18,000

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(4) Multiply: Applicable percentage for property disposed of within the fifth year after it was acquired .....	100%
(5) Amount in paragraph (a)(1)(i)(a) of § 1.1252-1 .....	\$18,000
(6) Gain realized (amount realized, \$67,500, less adjusted basis, \$48,000) .....	\$19,500
(7) Minus: Amount in line (2) .....	0
(8) Amount in paragraph (a)(1)(i)(b) of § 1.1252-1 .....	\$19,500
(9) Lower of line (5) or line (8) .....	\$18,000

(ii) Although no gain was recognized under section 1251(c)(1) and the stock purchased by A for \$67,500 is farm recapture property for purposes of section 1251, it is not farm land for purposes of section 1252. Nevertheless, although no gain would be recognized under sections 1033(a)(3) and 1251(c)(1) (determined without regard to section 1252), the limitation under subparagraph (1) of this paragraph is \$67,500 (that is, the fair market value of property other than farm land acquired which is qualifying property under section 1033). Since the amount of gain which would be recognized as ordinary income under section 1252(a)(1) (determined without regard to subparagraph (1) of this paragraph), \$18,000 (as computed in subdivision (i) of this example), is lower than the amount of such limitation, \$67,500, accordingly, only \$18,000 is recognized as ordinary income under section 1252(a)(1). For determination of basis of the stock acquired, see subparagraph (5) of this paragraph.

*Example 2.* (i) Assume the same facts as in example (1) of this subparagraph, except that the cost of the stock was \$62,500 (its fair market value). Thus, the amount of gain recognized on the disposition under section 1033(a)(3) (determined without regard to sections 1251 and 1252) is \$5,000, that is, \$67,500 minus \$62,500. Assume further that \$5,000 (the amount of gain recognized under section 1033(a)(3) (so determined)) was recognized as ordinary income under section 1251(c)(1). The amount of gain recognized as ordinary income under section 1252(a)(1) is \$13,000, computed as follows:

(1) Amount of gain under section 1252(a)(1) (determined without regard to subparagraph (1) of this paragraph):	
(a) Aggregate of deductions allowed under sections 175 and 182 .....	\$18,000
(b) Minus: Gain recognized as ordinary income under section 1251(c)(1) .....	\$5,000
(c) Difference .....	\$13,000
(d) Multiply: Applicable percentage for property disposed of within the fifth year after it was acquired .....	100%
(e) Amount in paragraph (a)(1)(i)(a) of § 1.1252-1 .....	\$13,000
(f) Gain realized (amount realized, \$67,500 (less adjusted basis, \$48,000)) .....	\$19,500
(g) Minus: Amount in line (b) .....	\$5,000

(h) Amount in paragraph (a)(1)(i)(b) of § 1.1252-1 .....	\$14,500
(i) Lower of line (e) or (h) .....	\$13,000
(2) Limitation in subparagraph (1) of this paragraph:	
(a) Gain recognized (determined without regard to section 1252) .....	\$5,000
(b) Minus: Gain recognized as ordinary income under section 1251(c)(1) .....	\$5,000
(c) Difference .....	0
(d) Plus: The fair market value of property other than farm land acquired which is qualifying property under section 1033 .....	\$62,500
(e) Sum of lines (c) and (d) .....	\$62,500
(3) Lower of line (1)(i) or line (2)(e) .....	\$13,000

(3) *Application to single disposition of farm land and property of different class.*

(i) If upon a sale of farm land gain would be recognized under section 1252(a)(1), and if such land together with property of a different class or classes is disposed of in one transaction in which gain is not recognized in whole or in part under section 1031 or 1033 (without regard to section 1252(a)(1)), then rules consistent with the principles of paragraph (d)(6) of § 1.1250-3 (relating to gain from disposition of certain depreciable realty) shall apply for purposes of allocating the amount realized to each of the classes of property disposed of and for purposes of determining what property the amount realized for each class consists of.

(ii) For purposes of this subparagraph, the classes of property other than farm recapture property (as defined in section 1251(e) and paragraph (a)(1) of § 1.1251-3) are (a) section 1245 property, (b) section 1250 property, and (c) other property.

(iii) For purposes of this subparagraph, the classes of farm recapture property are (a) land, (b) section 1245 property, and (c) other property.

(4) *Treatment of farm land received in like kind exchange or involuntary conversion.* The aggregate of the deductions allowed under sections 175 and 182 in respect of land acquired in a transaction described in subparagraph (1) of this paragraph shall include the aggregate of the deductions allowed under sections 175 and 182 in respect of the land transferred or converted (as the cr sections 175 and 182 in respect of land

acquired in a transaction described in subparagraph (1) of this paragraph shall include the aggregate of the deductions allowed under sections 175 and 182 in respect of the land transferred or converted (as the case may be) in such transaction minus the amount of gain taken into account under sections 1251(c) and 1252(a) with respect to the land transferred or converted. Upon a subsequent disposition of such land, the holding period shall include the holding period with respect to the land transferred or converted.

(5) *Basis adjustment.* In order to reflect gain recognized under section 1252(a)(1) if property is acquired in a transaction to which subparagraph (1) of this paragraph applies, its basis shall be determined under the rules of section 1031(d) or 1033(c).

(e) *Partnerships.* [Reserved]

(f) *Treatment of farm land received by a transferee in a disposition by gift and certain tax-free transactions—(1) General rule.* If farm land is disposed of in a transaction which is either a gift to which paragraph (a)(1) of this section applies, or a completely tax-free transfer to which paragraph (c)(1) of this section applies, then for purposes of section 1252:

(i) The aggregate of the deductions allowed under sections 175 and 182 in respect of the land in the hands of the transferee immediately after the disposition shall be an amount equal to the amount of such aggregate in the hands of the transferor immediately before the disposition, and

(ii) For purposes of applying section 1252 upon a subsequent disposition by the transferee (including a computation of the applicable percentage), the holding period of the transferee shall include the holding period of the transferor.

(2) *Certain partially tax-free transfers.* If farm land is disposed of in a transaction which either is in part a sale or exchange and in part a gift to which paragraph (a)(2) of this section applies, or is a partially tax-free transfer to which paragraph (c)(1) of this section applies, then for purposes of section 1252 the amount determined under subparagraph (1)(i) of this paragraph shall be reduced by the amount of gain taken into account under sections

1251(c) and 1252(a) by the transferor upon the disposition. Upon a subsequent disposition by the transferee, the holding period for purposes of computing the amount under section 1252(a)(1)(A), with respect to the 175 and 182 deductions taken by the transferor, shall include the holding period of the transferor. With respect to the 1975 and 182 deductions taken by the transferee, the holding period shall not include the holding period of the transferor.

(3) *Examples.* The provisions of subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

*Example 1.* Assume the same facts as in example (1) of paragraph (a)(4) of this section. Therefore, on the date B receives the farm land in the gift transaction, under subparagraph (1) of this paragraph the aggregate of the deductions allowed under sections 175 and 182 in respect of the farm land in the hands of B is the amount in the hands of A, \$24,000, and for purposes of applying section 1252 upon a subsequent disposition by B (including a computation of the applicable percentage) the holding period of B includes the holding period of A.

*Example 2.* Assume the same facts as in example (2) of paragraph (a)(4) of this section. Under subparagraph (2) of this paragraph, the aggregate of the sections 175 and 182 deductions which pass over to B for purposes of section 1252 is \$14,000 (\$24,000 deductions allowable under sections 175 and 182 minus \$3,000 gain recognized under section 1251(c) in accordance with example (2) of paragraph (a)(4) of § 1.1251-4, minus \$7,000 gain recognized under section 1252(a) in accordance with example (2) of paragraph (a)(4) of this section). B's holding period includes the holding period of A (i.e., the period back to January 15, 1971) with respect to A's deductions.

(g) *Disposition of farm land not specifically covered.* If farm land is disposed of in a transaction not specifically covered under § 1.1252-1 and this section, then the principles of section 1245 shall apply.

[T.D. 7418, 41 FR 18832, May 7, 1976; 41 FR 23669, June 11, 1976]

#### § 1.1254-0 Table of contents for section 1254 recapture rules.

This section lists the major captions contained in §§ 1.1254-1 through 1.1254-6.