

tax rates occurs, see section 21 and the regulations thereunder.

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§ 1.1(h)-1 Capital gains look-through rule for sales or exchanges of interests in a partnership, S corporation, or trust.

(a) *In general.* When an interest in a partnership held for more than one year is sold or exchanged, the transferor may recognize ordinary income (*e.g.*, under section 751(a)), collectibles gain, section 1250 capital gain, and residual long-term capital gain or loss. When stock in an S corporation held for more than one year is sold or exchanged, the transferor may recognize ordinary income (*e.g.*, under sections 304, 306, 341, 1254), collectibles gain, and residual long-term capital gain or loss. When an interest in a trust held for more than one year is sold or exchanged, a transferor who is not treated as the owner of the portion of the trust attributable to the interest sold or exchanged (sections 673 through 679) (a non-grantor transferor) may recognize collectibles gain and residual long-term capital gain or loss.

(b) *Look-through capital gain*—(1) *In general.* Look-through capital gain is the share of collectibles gain allocable to an interest in a partnership, S corporation, or trust, plus the share of section 1250 capital gain allocable to an interest in a partnership, determined under paragraphs (b)(2) and (3) of this section.

(2) *Collectibles gain*—(i) *Definition.* For purposes of this section, *collectibles gain* shall be treated as gain from the sale or exchange of a collectible (as defined in section 408(m) without regard to section 408(m)(3)) that is a capital asset held for more than 1 year.

(ii) *Share of collectibles gain allocable to an interest in a partnership, S corporation, or a trust.* When an interest in a partnership, S corporation, or trust held for more than one year is sold or exchanged in a transaction in which all realized gain is recognized, the transferor shall recognize as collectibles gain the amount of net gain (but not net loss) that would be allocated to that partner (taking into account any remedial allocation under § 1.704-3(d)),

shareholder, or beneficiary (to the extent attributable to the portion of the partnership interest, S corporation stock, or trust interest transferred that was held for more than one year) if the partnership, S corporation, or trust transferred all of its collectibles for cash equal to the fair market value of the assets in a fully taxable transaction immediately before the transfer of the interest in the partnership, S corporation, or trust. If less than all of the realized gain is recognized upon the sale or exchange of an interest in a partnership, S corporation, or trust, the same methodology shall apply to determine the collectibles gain recognized by the transferor, except that the partnership, S corporation, or trust shall be treated as transferring only a proportionate amount of each of its collectibles determined as a fraction that is the amount of gain recognized in the sale or exchange over the amount of gain realized in the sale or exchange. With respect to the transfer of an interest in a trust, this paragraph (b)(2) applies only to transfers by non-grantor transferors (as defined in paragraph (a) of this section). This paragraph (b)(2) does not apply to a transaction that is treated, for Federal income tax purposes, as a redemption of an interest in a partnership, S corporation, or trust.

(3) *Section 1250 capital gain*—(i) *Definition.* For purposes of this section, *section 1250 capital gain* means the capital gain (not otherwise treated as ordinary income) that would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent.

(ii) *Share of section 1250 capital gain allocable to interest in partnership.* When an interest in a partnership held for more than one year is sold or exchanged in a transaction in which all realized gain is recognized, there shall be taken into account under section 1(h)(7)(A)(i) in determining the partner's unrecaptured section 1250 gain the amount of section 1250 capital gain that would be allocated (taking into account any remedial allocation under § 1.704-3(d)) to that partner (to the extent attributable to the portion of the partnership interest transferred that

was held for more than one year) if the partnership transferred all of its section 1250 property in a fully taxable transaction for cash equal to the fair market value of the assets immediately before the transfer of the interest in the partnership. If less than all of the realized gain is recognized upon the sale or exchange of an interest in a partnership, the same methodology shall apply to determine the section 1250 capital gain recognized by the transferor, except that the partnership shall be treated as transferring only a proportionate amount of each section 1250 property determined as a fraction that is the amount of gain recognized in the sale or exchange over the amount of gain realized in the sale or exchange. This paragraph (b)(3) does not apply to a transaction that is treated, for Federal income tax purposes, as a redemption of a partnership interest.

(iii) *Limitation with respect to net section 1231 gain.* In determining a transferor partner's net section 1231 gain (as defined in section 1231(c)(3)) for purposes of section 1(h)(7)(B), the transferor partner's allocable share of section 1250 capital gain in partnership property shall not be treated as section 1231 gain, regardless of whether the partnership property is used in the trade or business (as defined in section 1231(b)).

(c) *Residual long-term capital gain or loss.* The amount of residual long-term capital gain or loss recognized by a partner, shareholder of an S corporation, or beneficiary of a trust on account of the sale or exchange of an interest in a partnership, S corporation, or trust shall equal the amount of long-term capital gain or loss that the partner would recognize under section 741, that the shareholder would recognize upon the sale or exchange of stock of an S corporation, or that the beneficiary would recognize upon the sale or exchange of an interest in a trust (pre-look-through long-term capital gain or loss) minus the amount of look-through capital gain determined under paragraph (b) of this section.

(d) *Special rule for tiered entities.* In determining whether a partnership, S corporation, or trust has gain from collectibles, such partnership, S corpora-

tion, or trust shall be treated as owning its proportionate share of the collectibles of any partnership, S corporation, or trust in which it owns an interest either directly or indirectly through a chain of such entities. In determining whether a partnership has section 1250 capital gain, such partnership shall be treated as owning its proportionate share of the section 1250 property of any partnership in which it owns an interest, either directly or indirectly through a chain of partnerships.

(e) *Notification requirements.* Reporting rules similar to those that apply to the partners and the partnership under section 751(a) shall apply in the case of sales or exchanges of interests in a partnership, S corporation, or trust that cause holders of such interests to recognize collectibles gain and in the case of sales or exchanges of interests in a partnership that cause holders of such interests to recognize section 1250 capital gain. See § 1.751-1(a)(3).

(f) *Examples.* The following examples illustrate the requirements of this section:

Example 1. Collectibles gain. (i) *A* and *B* are equal partners in a personal service partnership (*PRS*). *B* transfers *B*'s interest in *PRS* to *T* for \$15,000 when *PRS*'s balance sheet (reflecting a cash receipts and disbursements method of accounting) is as follows:

	ASSETS	
	Adjusted basis	Market value
Cash	\$3,000	\$3,000
Loans Owed to Partnership	10,000	10,000
Collectibles	1,000	3,000
Other Capital Assets	6,000	2,000
Capital Assets	7,000	5,000
Unrealized Receivables	0	14,000
Total	20,000	32,000

	LIABILITIES AND CAPITAL	
	Adjusted basis	Market value
Liabilities	2,000	2,000
Capital:		
<i>A</i>	9,000	15,000
<i>B</i>	9,000	15,000
Total	20,000	32,000

(ii) At the time of the transfer, *B* has held the interest in *PRS* for more than one year, and *B*'s basis for the partnership interest is

\$10,000 (\$9,000 plus \$1,000, B's share of partnership liabilities). None of the property owned by PRS is section 704(c) property. The total amount realized by B is \$16,000, consisting of the cash received, \$15,000, plus \$1,000, B's share of the partnership liabilities assumed by T. See section 752. B's undivided one-half interest in PRS includes a one-half interest in the partnership's unrealized receivables and a one-half interest in the partnership's collectibles.

(iii) If PRS were to sell all of its section 751 property in a fully taxable transaction for cash equal to the fair market value of the assets immediately prior to the transfer of B's partnership interest to T, B would be allocated \$7,000 of ordinary income from the sale of PRS's unrealized receivables. Therefore, B will recognize \$7,000 of ordinary income with respect to the unrealized receivables. The difference between the amount of capital gain or loss that the partner would realize in the absence of section 751 (\$6,000) and the amount of ordinary income or loss determined under §1.751-1(a)(2) (\$7,000) is the partner's capital gain or loss on the sale of the partnership interest under section 741. In this case, the transferor has a \$1,000 pre-look-through long-term capital loss.

(iv) If PRS were to sell all of its collectibles in a fully taxable transaction for cash equal to the fair market value of the assets immediately prior to the transfer of B's partnership interest to T, B would be allocated \$1,000 of gain from the sale of the collectibles. Therefore, B will recognize \$1,000 of collectibles gain on account of the collectibles held by PRS.

(v) The difference between the transferor's pre-look-through long-term capital gain or loss (-\$1,000) and the look-through capital gain determined under this section (\$1,000) is the transferor's residual long-term capital gain or loss on the sale of the partnership interest. Under these facts, B will recognize a \$2,000 residual long-term capital loss on account of the sale or exchange of the interest in PRS.

Example 2. Special allocations. Assume the same facts as in *Example 1*, except that under the partnership agreement, all gain from the sale of the collectibles is specially allocated to B, and B transfers B's interest to T for \$16,000. All items of income, gain, loss, or deduction of PRS, other than the gain from the collectibles, are divided equally between A and B. Under these facts, B's amount realized is \$17,000, consisting of the cash received, \$16,000, plus \$1,000, B's share of the partnership liabilities assumed by T. See section 752. B will recognize \$7,000 of ordinary income with respect to the unrealized receivables (determined under §1.751-1(a)(2)). Accordingly, B's pre-look-through long-term capital gain would be \$0. If PRS were to sell all of its collectibles in a fully taxable transaction for cash equal to the fair market

value of the assets immediately prior to the transfer of B's partnership interest to T, B would be allocated \$2,000 of gain from the sale of the collectibles. Therefore, B will recognize \$2,000 of collectibles gain on account of the collectibles held by PRS. B will recognize a \$2,000 residual long-term capital loss on account of the sale of B's interest in PRS.

Example 3. Net collectibles loss ignored. Assume the same facts as in *Example 1*, except that the collectibles held by PRS have an adjusted basis of \$3,000 and a fair market value of \$1,000, and the other capital assets have an adjusted basis of \$4,000 and a fair market value of \$4,000. (The total adjusted basis and fair market value of the partnership's capital assets are the same as in *Example 1*.) If PRS were to sell all of its collectibles in a fully taxable transaction for cash equal to the fair market value of the assets immediately prior to the transfer of B's partnership interest to T, B would be allocated \$1,000 of loss from the sale of the collectibles. Because none of the gain from the sale of the interest in PRS is attributable to unrealized appreciation in the value of collectibles held by PRS, the net loss in collectibles held by PRS is not recognized at the time B transfers the interest in PRS. B will recognize \$7,000 of ordinary income (determined under §1.751-1(a)(2)) and a \$1,000 long-term capital loss on account of the sale of B's interest in PRS.

Example 4. Collectibles gain in an S corporation. (i) A corporation (X) has always been an S corporation and is owned by individuals A, B, and C. In 1996, X invested in antiques. Subsequent to their purchase, the antiques appreciated in value by \$300. A owns one-third of the shares of X stock and has held that stock for more than one year. A's adjusted basis in the X stock is \$100. If A were to sell all of A's X stock to T for \$150, A would realize \$50 of pre-look-through long-term capital gain.

(ii) If X were to sell its antiques in a fully taxable transaction for cash equal to the fair market value of the assets immediately before the transfer to T, A would be allocated \$100 of gain on account of the sale. Therefore, A will recognize \$100 of collectibles gain (look-through capital gain) on account of the collectibles held by X.

(iii) The difference between the transferor's pre-look-through long-term capital gain or loss (\$50) and the look-through capital gain determined under this section (\$100) is the transferor's residual long-term capital gain or loss on the sale of the S corporation stock. Under these facts, A will recognize \$100 of collectibles gain and a \$50 residual long-term capital loss on account of the sale of A's interest in X.

Example 5. Sale or exchange of partnership interest where part of the interest has a short-term holding period. (i) A, B, and C form an equal partnership (PRS). In connection with the formation, A contributes \$5,000 in cash

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and a capital asset with a fair market value of \$5,000 and a basis of \$2,000; *B* contributes \$7,000 in cash and a collectible with a fair market value of \$3,000 and a basis of \$3,000; and *C* contributes \$10,000 in cash. At the time of the contribution, *A* had held the contributed property for two years. Six months later, when *A*'s basis in *PRS* is \$7,000, *A* transfers *A*'s interest in *PRS* to *T* for \$14,000 at a time when *PRS*'s balance sheet (reflecting a cash receipts and disbursements method of accounting) is as follows:

	ASSETS	
	Adjusted basis	Market value
Cash	\$22,000	\$22,000
Unrealized Receivables	0	6,000
Capital Asset	2,000	5,000
Collectible	3,000	9,000
Capital Assets	5,000	14,000
Total	27,000	42,000

(ii) Although at the time of the transfer *A* has not held *A*'s interest in *PRS* for more than one year, 50 percent of the fair market value of *A*'s interest in *PRS* was received in exchange for a capital asset with a long-term holding period. Therefore, 50 percent of *A*'s interest in *PRS* has a long-term holding period. See § 1.1223-3(b)(1).

(iii) If *PRS* were to sell all of its section 751 property in a fully taxable transaction immediately before *A*'s transfer of the partnership interest, *A* would be allocated \$2,000 of ordinary income. Accordingly, *A* will recognize \$2,000 ordinary income and \$5,000 (\$7,000-\$2,000) of capital gain on account of the transfer to *T* of *A*'s interest in *PRS*. Fifty percent (\$2,500) of that gain is long-term capital gain and 50 percent (\$2,500) is short-term capital gain. See § 1.1223-3(c)(1).

(iv) If the collectible were sold or exchanged in a fully taxable transaction immediately before *A*'s transfer of the partnership interest, *A* would be allocated \$2,000 of gain attributable to the collectible. The gain attributable to the collectible that is allocable to the portion of the transferred interest in *PRS* with a long-term holding period is \$1,000 (50 percent of \$2,000). Accordingly, *A* will recognize \$1,000 of collectibles gain on account of the transfer of *A*'s interest in *PRS*.

(v) The difference between the amount of pre-look-through long-term capital gain or loss (\$2,500) and the look-through capital gain (\$1,000) is the amount of residual long-term capital gain or loss that *A* will recognize on account of the transfer of *A*'s interest in *PRS*. Under these facts, *A* will recognize a residual long-term capital gain of \$1,500 and a short-term capital gain of \$2,500.

(g) *Effective date.* This section applies to transfers of interests in partner-

ships, S corporations, and trusts that occur on or after September 21, 2000.

[T.D. 8902, 65 FR 57096, Sept. 21, 2000]

§ 1.1(i)-1T Questions and answers relating to the tax on unearned income certain minor children (Temporary).

IN GENERAL

Q-1. To whom does section 1(i) apply?

A-1. Section 1(i) applies to any child who is under 14 years of age at the close of the taxable year, who has at least one living parent at the close of the taxable year, and who recognizes over \$1,000 of unearned income during the taxable year.

Q-2. What is the effective date of section 1(i)?

A-2. Section 1(i) applies to taxable years of the child beginning after December 31, 1986.

COMPUTATION OF TAX

Q-3. What is the amount of tax imposed by section 1 on a child to whom section 1(i) applies?

A-3. In the case of a child to whom section 1(i) applies, the amount of tax imposed by section 1 equals the greater of (A) the tax imposed by section 1 without regard to section 1(i) or (B) the sum of the tax that would be imposed by section 1 if the child's taxable income was reduced by the child's net unearned income, plus the child's share of the allocable parental tax.

Q-4. What is the allocable parental tax?

A-4. The allocable parental tax is the excess of (A) the tax that would be imposed by section 1 on the sum of the parent's taxable income plus the net unearned income of all children of such parent to whom section 1(i) applies, over (B) the tax imposed by section 1 on the parent's taxable income. Thus, the allocable parental tax is not computed with reference to unearned income of a child over 14 or a child under 14 with less than \$1,000 of unearned income. See A-10 through A-13 for rules regarding the determination of the parent(s) whose taxable income is taken into account under section 1(i). See A-14 for rules regarding the determination of children of the parent whose net unearned income is taken into account under section 1(i).