

properly taken into account on the basis of a reasonable estimate and the exact amount is subsequently determined the difference, if any, must be taken into account for the taxable year in which the subsequent determination is made. However, the shareholder may file an amended return for the earlier year in lieu of taking the difference into account for the subsequent taxable year.

(e) *Effective date.* This section is applicable to distributions of qualifying installment obligations made on or after January 28, 1998.

[T.D. 8762, 63 FR 4170, Jan. 28, 1998]

§ 1.453-12 Allocation of unrecaptured section 1250 gain reported on the installment method.

(a) *General rule.* Unrecaptured section 1250 gain, as defined in section 1(h)(7), is reported on the installment method if that method otherwise applies under section 453 or 453A and the corresponding regulations. If gain from an installment sale includes unrecaptured section 1250 gain and adjusted net capital gain (as defined in section 1(h)(4)), the unrecaptured section 1250 gain is taken into account before the adjusted net capital gain.

(b) *Installment payments from sales before May 7, 1997.* The amount of unrecaptured section 1250 gain in an installment payment that is properly taken into account after May 6, 1997, from a sale before May 7, 1997, is determined as if, for all payments properly taken into account after the date of sale but before May 7, 1997, unrecaptured section 1250 gain had been taken into account before adjusted net capital gain.

(c) *Installment payments received after May 6, 1997, and on or before August 23, 1999.* If the amount of unrecaptured section 1250 gain in an installment pay-

ment that is properly taken into account after May 6, 1997, and on or before August 23, 1999, is less than the amount that would have been taken into account under this section, the lesser amount is used to determine the amount of unrecaptured section 1250 gain that remains to be taken into account.

(d) *Examples.* In each example, the taxpayer, an individual whose taxable year is the calendar year, does not elect out of the installment method. The installment obligation bears adequate stated interest, and the property sold is real property held in a trade or business that qualifies as both section 1231 property and section 1250 property. In all taxable years, the taxpayer's marginal tax rate on ordinary income is 28 percent. The following examples illustrate the rules of this section:

Example 1. General rule. This example illustrates the rule of paragraph (a) of this section as follows:

(i) In 1999, A sells property for \$10,000, to be paid in ten equal annual installments beginning on December 1, 1999. A originally purchased the property for \$5000, held the property for several years, and took straight-line depreciation deductions in the amount of \$3000. In each of the years 1999-2008, A has no other capital or section 1231 gains or losses.

(ii) A's adjusted basis at the time of the sale is \$2000. Of A's \$8000 of section 1231 gain on the sale of the property, \$3000 is attributable to prior straight-line depreciation deductions and is unrecaptured section 1250 gain. The gain on each installment payment is \$800.

(iii) As illustrated in the table in this paragraph (iii) of this *Example 1.*, A takes into account the unrecaptured section 1250 gain first. Therefore, the gain on A's first three payments, received in 1999, 2000, and 2001, is taxed at 25 percent. Of the \$800 of gain on the fourth payment, received in 2002, \$600 is taxed at 25 percent and the remaining \$200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1999	2000	2001	2002	2003	2004-2008	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at 25%	800	800	800	600	.....	.....	3000
Taxed at 20% .....	.....	.....	.....	200	800	4000	5000
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 2. Installment payments from sales prior to May 7, 1997. This example illus-

trates the rule of paragraph (b) of this section as follows:

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(i) The facts are the same as in *Example 1* except that A sold the property in 1994, received the first of the ten annual installment payments on December 1, 1994, and had no other capital or section 1231 gains or losses in the years 1994-2003.

(ii) As in *Example 1*, of A's \$8000 of gain on the sale of the property, \$3000 was attributable to prior straight-line depreciation deductions and is unrecaptured section 1250 gain.

(iii) As illustrated in the following table, A's first three payments, in 1994, 1995, and 1996, were received before May 7, 1997, and

taxed at 28 percent. Under the rule described in paragraph (b) of this section, A determines the allocation of unrecaptured section 1250 gain for each installment payment after May 6, 1997, by taking unrecaptured section 1250 gain into account first, treating the general rule of paragraph (a) of this section as having applied since the time the property was sold, in 1994. Consequently, of the \$800 of gain on the fourth payment, received in 1997, \$600 is taxed at 25 percent and the remaining \$200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1994	1995	1996	1997	1998	1999-2003	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at 28%	800	800	800	.....	.....	.....	2400
Taxed at 25% .....	.....	.....	.....	600	.....	.....	600
Taxed at 20% .....	.....	.....	.....	200	800	4000	5000
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 3. Effect of section 1231(c) recapture. This example illustrates the rule of paragraph (a) of this section when there are non-recaptured net section 1231 losses, as defined in section 1231(c)(2), from prior years as follows:

(i) The facts are the same as in *Example 1*, except that in 1999 A has non-recaptured net section 1231 losses from the previous four years of \$1000.

(ii) As illustrated in the table in paragraph (iv) of this *Example 3*, in 1999, all of A's \$800 installment gain is recaptured as ordinary income under section 1231(c). Under the rule described in paragraph (a) of this section, for purposes of determining the amount of unrecaptured section 1250 gain remaining to be taken into account, the \$800 recaptured as ordinary income under section 1231(c) is treated as reducing unrecaptured section

1250 gain, rather than adjusted net capital gain. Therefore, A has \$2200 of unrecaptured section 1250 gain remaining to be taken into account.

(iii) In the year 2000, A's installment gain is taxed at two rates. First, \$200 is recaptured as ordinary income under section 1231(c). Second, the remaining \$600 of gain on A's year 2000 installment payment is taxed at 25 percent. Because the full \$800 of gain reduces unrecaptured section 1250 gain, A has \$1400 of unrecaptured section 1250 gain remaining to be taken into account.

(iv) The gain on A's installment payment received in 2001 is taxed at 25 percent. Of the \$800 of gain on the fourth payment, received in 2002, \$600 is taxed at 25 percent and the remaining \$200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1999	2000	2001	2002	2003	2004-2008	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at ordinary rates under section 1231(c)	800	200	.....	.....	.....	.....	1000
Taxed at 25% .....	.....	600	800	600	.....	.....	2000
Taxed at 20% .....	.....	.....	.....	200	800	4000	5000
Remaining non-recaptured net section 1231 losses	200	.....	.....	.....	.....	.....	.....
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 4. Effect of a net section 1231 loss. This example illustrates the application of paragraph (a) of this section when there is a net section 1231 loss as follows:

(i) The facts are the same as in *Example 1* except that A has section 1231 losses of \$1000 in 1999.

(ii) In 1999, A's section 1231 installment gain of \$800 does not exceed A's section 1231

losses of \$1000. Therefore, A has a net section 1231 loss of \$200. As a result, under section 1231(a) all of A's section 1231 gains and losses are treated as ordinary gains and losses. As illustrated in the following table, A's entire \$800 of installment gain is ordinary gain. Under the rule described in paragraph (a) of this section, for purposes of determining the

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amount of unreaptured section 1250 gain remaining to be taken into account, A's \$800 of ordinary section 1231 installment gain in 1999 is treated as reducing unreaptured section 1250 gain. Therefore, A has \$2200 of unreaptured section 1250 gain remaining to be taken into account.

(iii) In the year 2000, A has \$800 of section 1231 installment gain, resulting in a net section 1231 gain of \$800. A also has \$200 of non-recaptured net section 1231 losses. The \$800 gain is taxed at two rates. First, \$200 is taxed at ordinary rates under section 1231(c), recapturing the \$200 net section 1231 loss sustained in 1999. Second, the remaining \$600 of gain on A's year 2000 installment payment is

taxed at 25 percent. As in *Example 3*, the \$200 of section 1231(c) gain is treated as reducing unreaptured section 1250 gain, rather than adjusted net capital gain. Therefore, A has \$1400 of unreaptured section 1250 gain remaining to be taken into account.

(iv) The gain on A's installment payment received in 2001 is taxed at 25 percent, reducing the remaining unreaptured section 1250 gain to \$600. Of the \$800 of gain on the fourth payment, received in 2002, \$600 is taxed at 25 percent and the remaining \$200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1999	2000	2001	2002	2003	2004-2008	Total gain
Installment gain	800	800	800	800	800	4000	8000
Ordinary gain under section 1231(a)	800	.....	.....	.....	.....	.....	800
Taxed at ordinary rates under section 1231(c) .....	.....	200	.....	.....	.....	.....	200
Taxed at 25% .....	.....	600	800	600	.....	.....	2000
Taxed at 20% .....	.....	.....	.....	200	800	4000	5000
Net section 1231 loss	200	.....	.....	.....	.....	.....	.....
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

(e) *Effective date.* This section applies to installment payments properly taken into account after August 23, 1999.

[T.D. 8836, 64 FR 45875, Aug. 23, 1999]

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- (e) Effective date.

[T.D. 8270, 54 FR 46376, Nov. 3, 1989]

§ 1.453A-1 Installment method of reporting income by dealers on personal property.

(a) *In general.* A dealer (as defined in paragraph (c)(1) of this section) may elect to return the income from the sale of personal property on the installment method if such sale is a sale on the installment plan (as defined in paragraphs (c)(3) and (d) of this section). Under the installment method of accounting, a taxpayer may return as income from installment sales in any