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**Internal Revenue Service**

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# Sales and Other Dispositions of Assets

For use in preparing

**1995** Returns

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## Important Changes

**Caution:** As this publication was being prepared for print, Congress was considering tax law changes that could affect your 1995 tax return and 1996 estimated taxes. These changes include:

- Capital gains and losses, and
- Sale of your home.

See Publication 553, *Highlights of 1995 Tax Changes,* for further developments. Information on these changes will also be available electronically through our bulletin board or via the Internet (see page 34 of the Form 1040 Instructions).

## Important Reminders

**Investing in small business stock.** Beginning in 1998, investments in certain small business stock held more than 5 years will qualify

for a special tax benefit. If you sell or exchange the stock at a gain, only one-half of the gain will be subject to federal income tax. For information on qualifying stock, see chapter 4 of Publication 550, *Investment Income and Expenses.*

**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.*

# Introduction

If you transfer property, you may have a gain or loss on the transaction. However, not all transactions result in taxable gains or deductible losses. This publication explains how to figure whether you have a gain or loss on various transactions, and the effect it has on your taxes.

**Ordering publications and forms.** To order free publications and forms, call 1–800–TAX–FORM (1-800-829-3676). Or you can write to the IRS Forms Distribution Center nearest you. Check your income tax package for the address.

If you have access to a personal computer and a modem, you can also get many forms and publications electronically. See *How To Get Forms and Publications* in your income tax package for details.

**Telephone help.** You can call the IRS with your tax question Monday through Friday during regular business hours. Check your telephone book for the local number or you can call **1–800–829–1040.**

**Telephone help for hearing-impaired persons.** If you have access to TDD equipment, you can call **1–800–829–4059** with your tax question or to order forms and publications. See your tax package for the hours of operation.

# 1. Transfers of Property

## Topics

This chapter discusses:

- Sales and exchanges
- Foreclosures and repossessions
- Involuntary conversions
- Nontaxable exchanges
- Rollover of capital gain

## Useful Items

You may want to see:

**Publication**

- ☐ **523** Selling Your Home
- ☐ **547** Nonbusiness Disasters, Casualties, and Thefts
- ☐ **550** Investment Income and Expenses
- ☐ **551** Basis of Assets
- ☐ **908** Tax Information on Bankruptcy

**Form (and Instructions)**

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

If you sell, exchange, or otherwise dispose of your property, you usually have a gain or a loss. This chapter explains some of the rules for determining whether any gain you have is taxable, and whether any loss you have is deductible.

**Sale of home.** Report the sale, exchange, or other disposition of your main home on Form 2119, *Sale of Your Home.* If you have a gain, you may be able to postpone paying tax on all or part of it, or you may be able to make a one-time election to exclude all or part of it. For information, get Publication 523, *Selling Your Home.*

# 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.** Amounts 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 payment is 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 it is paid over the same period as that covering the grantee's use of the copyrighted work.

If the property is used in your trade or business and you hold it for more than a year, the gain or loss is a section 1231 gain or loss. For more information, see *Section 1231 Property* in chapter 4.

**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 | 84,000 |
| **Gain on sale** | | $ 56,000 |

**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 zero. 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.

# Foreclosures and Repossessions

If the borrower (buyer) does not make payments due 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 the borrower may realize gain or loss (discussed next). This is true even if the property is voluntarily returned to the lender.

**Gain or loss on foreclosure or repossession.** The borrower's gain or loss from the foreclosure or repossession described previously is generally figured and reported in the same way as gain or loss from sales or exchanges. The gain or loss is the difference between the borrower's adjusted basis of the transferred property and the amount realized. See *Gain or Loss From Sales and Exchanges,* earlier.

***Amount realized on a nonrecourse debt.*** If the borrower is not personally liable for repaying the debt (nonrecourse debt) secured by the transferred property, the amount realized by the borrower 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 1992, 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 1995, 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 1990, 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 1995, 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 the borrower is 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 income to the borrower from cancellation of debt. However, if the fair market value of the transferred property is less than the canceled debt, the amount realized by the borrower includes the canceled debt up to the fair market value of the property. The borrower is 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.*

***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). 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. 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 nondeductible loss.

***Example 2.*** Assume the same facts as in Example 2 above 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). 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. 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.

**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 *Repossessions* 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 business debt as business income. Report the income from cancellation of a nonbusiness 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, if the debt is qualified farm indebtedness (see chapter 4 of Publication 225, *Farmer's Tax Guide*) or qualified real property indebtedness (see chapter 6 of Publication 334, *Tax Guide for Small Business*), or if you are insolvent or bankrupt (see Publication 908, *Tax Information on Bankruptcy*).

**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 1995, these forms should be sent to you by January 31, 1996.

# 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, you can choose to postpone reporting the gain if you buy qualifying replacement property.

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 nonbusiness property, see Publication 547. If you have a gain or loss from the destruction or theft of business property, see chapter 25 in Publication 334, *Tax Guide for Small Business.*

## 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.

**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.

***Amounts withheld from award.*** Amounts withheld from 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 though 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.

***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 any special assessment levied against the part of the property you retain. This is discussed later under *Special assessment withheld.*

***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.

**Severance damages.** Severance damages are not part of the award paid for the property condemned. They are compensation 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 conversion of the remaining part of your property. To figure that amount, you must first reduce your severance damages by your expenses in obtaining the damages. You then reduce them by any special assessment levied against the remaining part of the property if the assessment was withheld from the award by the condemning authority. The balance is your net severance damages.

You reduce the basis of the remaining property by your net severance damages. If the amount of severance damages is based on damage to a specific part of the property you kept, you may 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 can choose to postpone reporting the gain by purchasing replacement property. See the later discussion, *Postponement of Gain.* You can also make this choice if you spend the severance damages, together with other money you received for the condemned property, 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 *Related property voluntarily sold,* earlier.

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

**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 award for the condemned property.

**Special assessment withheld.** When part of your property is condemned and you do to receive severance damages, you must reduce the condemnation award by any amount withheld because of a special assessment levied against the remaining property. 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.

The assessment must be withheld from 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 minus $700 for the special assessment withheld).

If the $700 special assessment were not withheld from the award, and you were paid $5,000, your net award would be $4,700 ($5,000 minus $300). The net award is not

changed, even if you later paid the assessment from the amount you received.

***Severance damages received.*** If severance damages are included in the condemnation proceeds, you must first reduce them by any special assessment withheld. 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 withheld from 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 award for the condemned property is reduced by the $100 balance of the special assessment, leaving a $3,900 net condemnation award.

## 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 may be able to postpone reporting it. If your 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.

**Part business or part 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 and 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 | $11,900 | $11,900 |
| Minus: | | |
| Adjusted basis of residential part: | | |
| 1/2 of original cost, $25,000 | $12,500 | |
| 1/2 of cost of roof, $1,000 | 500 | |
| Adjusted basis, residential part | $13,000 | |
| Adjusted basis of business part: | | |
| 1/2 of original cost, $25,000 | | $12,500 |
| 1/2 of cost of roof, $1,000 | | 500 |
| Total | | $13,000 |
| Minus: Depreciation | | 4,600 |
| Adjusted basis, business part | | $ 8,400 |
| **Loss on residential property** | $ 1,100 | |
| **Gain on business property** | | $ 3,500 |

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.

**Choosing to postpone gain.** 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. To postpone all the gain, you must buy replacement property costing at least as much as the amount realized for the condemned property.

Report your election to postpone your gain, along with all necessary details, on 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.

***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.

***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 party.** A C corporation cannot postpone reporting gain from a condemnation of its property occurring after February 5, 1995, if it buys the replacement property from a related party. This rule also applies to a partnership in which more than 50% of the capital or profits interest is owned by C corporations. However, this rule does not apply if the related party acquired the property from an unrelated party within the period of time allowed for replacing the condemned property.

Under this rule, related parties include, for example, a corporation and an individual who owns more than 50% of the outstanding stock, and two partnerships in which the same C corporations own more than 50% of the capital or profits interests. For more information on related parties, see *Nondeductible Loss* under *Sales and Exchanges Between Related Parties* in chapter 2.

**Replacing real property held for business or investment.** 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), your replacement property will qualify as similar or related in service or use if it is like-kind property. For a discussion of like-kind property, see *Like Property* under *Like-Kind Exchanges,* later.

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

***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, 1994, city authorities notified you that your property would be condemned. On June 5, 1994, 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, 1995. 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 time 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 replacement period, you will be granted an extension of the period.

***Time for assessing a deficiency.*** If you choose not to recognize gain from a condemnation, 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 District Director for your area that you are replacing, or intending not to replace, the condemned property within the replacement period.

# Nontaxable Exchanges

Certain exchanges are not taxable. This means that any gain from the exchange is not taxed, and any loss cannot be deducted. In other words, even if you realize a gain or loss on the exchange, it 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 nontaxable, a like-kind exchange must:

1) Involve qualifying property, and

2) Involve like property.

These two requirements are discussed later. If the like-kind exchange includes the receipt of money or unlike property, you may have a taxable gain. (See *Partially Nontaxable Exchanges,* 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.

**Multiple-party transactions.** The like-kind exchange rules also apply to property 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 conditions 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.

***Example.*** In 1995, 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 in 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. You may also have to report ordinary income because of depreciation on Form 4797. See *Like-Kind Exchanges and Involuntary Conversions* in chapter 4.

**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

The property must be business or investment property. Both the property you trade and the property you receive must be held by you for business or investment purposes. Neither may be property used for personal purposes, such as your home or family car.

The property must not be property you primarily hold for sale. Neither the property you trade nor the property you receive may be property you sell to customers, such as merchandise. It must be property held for investment or property held for productive use in your trade or business. Machinery, buildings, land, trucks, and rental houses are examples of property that may qualify. Inventories, raw materials, accounts receivable, and real estate that dealers hold for sale to customers are examples of property that do not qualify.

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.

The rules for like-kind exchanges do not apply to exchanges of stocks, bonds, notes, choses in action, certificates of trust or beneficial interests, or other securities or evidences of indebtedness or interest, or the exchange of partnership interests. However, you may have a nontaxable exchange under another

provision, as discussed later in this publication.

## 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 an apartment house for 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, any gain on the exchange is taxable. 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, Standard Industrial Classification Manual (SIC Manual). Copies of the SIC Manual may be obtained from the National Technical Information Service, an agency of the U.S. Department of Commerce.

***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 nondepreciable personal property.*** If you exchange intangible personal property or nondepreciable 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 is of a like kind to other intangible personal property generally depends on the nature or character of the rights involved, such as a patent or copyright. It also depends on the nature or character of the underlying property to which such 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.

## 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 business 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 are in actual or ***constructive receipt*** of money or unlike property at the time the money or property is credited to your account or made available to you. You are also in actual or constructive receipt of money or unlike property at the time any limitations or restrictions on it expire or are waived.

The determination of whether you are in actual or constructive receipt of 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 are in actual or constructive receipt of 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.** The property must meet the identification requirement. The property to be received must be identified by the day that is 45 days after the date you transfer the property given up in the exchange. Any property received by that day is considered to have been identified. The identification requirement may be met by designating the property to be received in the contract between the parties. See *Identifying replacement property* .

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:

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 exchange must meet the 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:

1) 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.
2) Is neither of the following:
   a) 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.
   b) 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, or
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, 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.

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

***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 and the amount of gain to be taxed as follows:

| | |
|---|---|
| FMV of like property received | $10,000 |
| Cash | 1,000 |
| Mortgage assumed on property given up | 3,000 |
| Total received | $14,000 |
| Minus: Exchange expenses | (500) |
| **Amount Realized** | $13,500 |
| Minus: Adjusted basis of property you transferred | (8,000) |
| **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 only 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 the 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:

Add—

a) Any additional costs you incur, and

b) Any gain you recognize on the exchange, and

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 remainder 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 class (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:

1) Money,

2) Stock in trade or other property held primarily for sale,

3) Stocks, bonds, notes, other securities or evidences of debt or interest,

4) Interests in a partnership,

5) Certificates of trust or beneficial interests, or

6) 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), with Chuck for computer R (asset class 00.12), automobile R (asset class 00.22), truck R (asset class 00.241), and $400. All properties transferred by Ben were used in his business. Similarly, all properties to be received by Ben will be used in his business.

For Ben, 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 were 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 (excess liabilities), 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 (excess liabilities), 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 assumed or the excess liabilities of which you were relieved based on all liabilities you assumed or were 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, and liabilities secured by each property, if any, are as follows:

| | Fair Market Value | Liability |
|---|---|---|
| Ben Transfers: | | |
| Computer A | $1,500 | $ 0 |
| Automobile A | 2,500 | 500 |
| Truck A | 2,000 | 0 |
| Chuck Transfers: | | |
| 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 Ben 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 by Ben in the exchange groups as follows:

- $131 ($500 × $1,600 ÷ $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 × $3,100 ÷ $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 × $1,400 ÷ $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:

1) Stock in trade or other property held primarily for sale,

2) Stocks, bonds, and notes,

3) Other securities or evidences of indebtedness or interest,

4) Interests in a partnership,

5) Certificates of trust or beneficial interests, and

6) Choses in action.

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

For Fran, 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 |
| Gina Transfers: | |
| Printer B | 800 |
| Automobile B | 2,950 |
| Corporate Stock | 750 |
| Cash | 500 |

Because the total fair market value of the properties transferred by Fran in the exchange groups ($5,000) exceeds the total fair market value of the properties received by Fran 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 you 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 you transferred in that exchange group. An ***exchange group deficiency*** is the excess of the total fair market value of the properties you transferred in an exchange group over the total fair market value of the properties you received in that exchange group (less any excess liabilities you assumed 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, with Will for printer B (asset class 00.12) and automobile B (asset class 00.22), both of which Karen will use in her business. Karen's adjusted basis and the fair market value of the exchanged properties are as follows:

| | Adjusted Basis | Fair Market Value |
|---|---|---|
| Karen Transfers: | | |
| Computer A | $ 375 | $1,000 |
| Automobile A | 1,500 | 4,000 |
| Will Transfers: | | |
| Printer B | | 2,050 |
| Automobile B | | 2,950 |

For Karen 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 for Karen 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, recognize gain to the extent of 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 you received in each exchange group is:

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

***PLUS,***

Your recognized gain on the exchange group,

***PLUS,***

The exchange group surplus (or minus the exchange group deficiency),

***PLUS,***

The excess liabilities you assume that are allocated to the group.

You allocate the total basis of each exchange group proportionately to each property you receive in the exchange group according to the property's fair market value. The basis of each property you receive 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 adjusted basis of the property transferred within that exchange group ($375),

***PLUS,***

The amount of gain recognized for that exchange group ($0),

***PLUS,***

The amount of the exchange group surplus ($1,050),

***PLUS,***

The amount of excess liabilities assumed allocated to that exchange group ($0).

Because printer B was 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:

The adjusted basis of the property transferred within that exchange group ($1,500),

***PLUS,***

The amount of gain recognized for that exchange group ($1,050),

***MINUS,***

The amount of the exchange group deficiency ($1,050),

***PLUS,***

The amount of excess liabilities assumed allocated to that exchange group ($0).

Because automobile B was 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 Parties

Special rules apply to like-kind exchanges made between related parties. These rules affect both direct and indirect exchanges. Under these rules, if either party 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 parties.** Under these rules, related parties 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 parties, see *Nondeductible Loss* under *Sales and Exchanges Between Related Parties* in chapter 2.

***Example.*** You use a panel truck in your house painting business. Your sister is a landscaper who uses a station wagon in her business. The fair market value (FMV) of your truck is $7,000 and its adjusted basis is $6,000. The FMV of your sister's station wagon is $7,200 and its adjusted basis is $1,000. In December 1994, you exchange vehicles with your sister. This is a like-kind exchange in which no gain or loss is recognized.

In January 1995, you sell the station wagon to a third party for $7,200. Since you sold the station wagon within 2 years after the exchange, you must recognize the gain from the like-kind exchange you made with your sister. That gain is $1,200 ($7,200 FMV of your sister's station wagon minus $6,000, adjusted basis of your truck) and must be included in your income for 1995, the year of the sale. You must also report any gain you realized on the sale of the station wagon. In this case, however, the gain is zero because the $7,200 sales price equals the increased basis of $7,200 ($6,000 plus $1,200 recognized gain) for the station wagon.

In addition, your sister must recognize her gain on the like-kind exchange. That gain is $6,000 ($7,000, FMV of your truck minus $1,000 adjusted basis of her station wagon) and must be included in her income for 1995, the year the station wagon was sold. Her basis in the truck would then be increased to $7,000 (adjusted basis of $1,000 plus $6,000 recognized gain).

**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 related party rules.** The following kinds of property dispositions are excluded from these rules:

1) Dispositions due to the death of either related person,
2) Involuntary conversions, or
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.

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 *Contributions of Property* and *Sale, Exchange, or Other Transfer* in Publication 541, *Tax Information on Partnerships.*

### 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 income from these investments. For other information on the notes or bonds involved, call the Bureau of the Public Debt at (202) 874-4000, or write to the:

Bureau of the Public Debt
Capital Area Servicing Center
1300 C Street, S.W.
Washington, DC 20239-1500

### 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, if the following requirements are met, you can treat a cash distribution and reinvestment as meeting the nonrecognition or nontaxable transfer rules.

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, and
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.

## Corporate Stock

In certain cases, exchanges of corporate stock are not taxable. The rules for these exchanges are given next.

**A corporation's own stock.** A corporation may dispose of its own stock, including treasury stock, without having a taxable gain or loss.

**Stock for stock of the same corporation.** You may exchange common stock for common stock in the same corporation, or preferred stock for preferred stock in the same corporation, without having a taxable gain or loss.

**Convertible stocks and bonds.** If you convert corporate bonds into stock of the same corporation, or preferred stock into common stock of the same corporation, you will not have a taxable gain or loss. The conversion must be made according to the terms of the bond or preferred stock certificate.

**Corporate reorganizations.** When a corporation reorganizes, the exchange of securities in the old organization for securities in the new organization may not be taxable.

**Property for stock.** If you transfer property to a corporation in exchange for stock or securities in that corporation, and immediately afterwards you are in control of the corporation, the exchange is usually not taxable. This rule applies both to individual investors and to groups of investors who transfer property to a corporation. It does not apply if the corporation is an investment company.

***Control of a corporation.*** To be in control of a corporation, you or your group of investors 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% already was 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. 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 investors exchange property for corporate stock, each investor 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.** 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 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 4. No loss is recognized.

**Liabilities.** If the corporation assumes your liabilities, or the property is taken subject to a liability, the transfer 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 exchange, 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. The gain realized is as follows:

| | |
|---|---|
| FMV of stock received | $16,000 |
| Cash received | 10,000 |
| Liability assumed by corporation | 5,000 |
| Total received | $31,000 |
| Minus: Adjusted basis of property transferred | 20,000 |
| **Realized gain** | $11,000 |

The recognized gain is limited to $10,000, the amount of cash received.

**Installment obligation exchanged for debtor stock.** If you exchange an installment obligation for the debtor's stock having a greater value than your basis in the installment obligation, the exchange satisfies the installment obligation at other than its face value. You must recognize the gain on the exchange even if right after the exchange you are in ***control*** of the corporation. The recognized gain is the difference between the fair market value of the stock and your basis in the installment obligation. Your basis in the installment obligation is the excess of the obligation's face value over the income returnable if the obligation were satisfied in full. The corporation does not recognize any gain or loss from the exchange.

## 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 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.

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

## Rollover of Capital Gain

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:

$50,000 ($25,000 for married individuals filing separately), or

$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:

$250,000, or

$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.*

# 2. Ordinary or Capital Gain or Loss

### Topics

This chapter discusses:

- Capital assets
- Noncapital assets
- Sales and exchanges between related parties
- 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

You must distinguish gains and losses as ordinary or capital gains or losses (and capital gains or losses as either short-term or long-term gains or losses). These distinctions need to be made to arrive at 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 Rate on Capital Gains* in chapter 3. Your deduction for a net capital loss may be limited. For information on how to treat your gains or losses, see chapter 3.

**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 you sell or exchange section 1231 property.

***Section 1231 property.*** Generally, this is property held more than 1 year and either used in a trade or business or held for the production of rents or royalties. Section 1231 property also includes any property (including a capital asset used in a trade or business) that is subject to an involuntary conversion. A net gain on the sale of section 1231 property is a capital gain unless the gain is subject to the recapture rule. A net loss on the sale of section 1231 property is an ordinary loss. For more information, see *Section 1231 Property,* in chapter 4.

## Capital Assets

For the most part, everything you own and use for personal purposes or investment is a capital asset. For exceptions to capital assets, 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.

***Personal casualty gains and losses.*** To figure your personal casualty (or theft) gain, subtract your adjusted basis in the property from any insurance or other reimbursement. To figure your personal casualty (or theft) loss, reduce each loss by any reimbursement and by $100. If your personal casualty gains for the tax year exceed your personal casualty losses, all your gains and losses are treated as sales and exchanges of capital assets. If your personal casualty losses for the tax year exceed your personal casualty gains, the excess is deductible on Schedule A (Form 1040) to the extent it exceeds 10% of your adjusted gross income. Use Section A of Form 4684, *Casualties and Thefts,* to report all personal casualty gains and losses. For more information, get Publication 547.

**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.*

**Nonbusiness bad debts.** Nonbusiness bad debts, except those evidenced by corporate securities, are short-term capital losses.

**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, literary, musical, or artistic composition, 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.** If you hold property mainly for sale to customers, it is a noncapital asset. Whether property

is held mainly for sale to customers in the ordinary course of business is a question of fact to be judged in each case. Among the factors to be considered are:

1) The purpose for which the property is acquired,
2) The development of the property between the time it was acquired and sold,
3) The number and frequency of sales, and
4) The time the property is held before it is sold.

***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.

**Business assets.** Business assets classified as real property or depreciable property used in your trade or business (including section 197 intangibles, defined later under *Dispositions of Intangible Property*) are not capital assets, but may be treated as such if held for more than 1 year. See *Section 1231 property* under *Capital gain or loss* at the beginning of this chapter.

You report gain on depreciable property that you use in your trade or business and hold for more than 1 year in Part III, Form 4797. This part of Form 4797 is used to figure the part of gain, if any, that is subject to recapture as ordinary income due to depreciation, amortization, or depletion. Any gain that is more than the amount subject to recapture as ordinary gain is netted with other section 1231 gains and losses in Part I.

If you hold assets that you use in your trade or business for 1 year or less, any gain or loss on disposition is an ordinary gain or loss and is reported in Part II, Form 4797. Ordinary gains may be taxed at a higher rate of tax than capital gains, as discussed later in chapter 3. For more information on business assets held for more than 1 year, see *Section 1231 Property* in chapter 4.

***Rental property.*** Treat rental property as a business asset on Form 4797.

**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 Parties

This section discusses the special rules that may apply to the sale or exchange of property between related parties. 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, including a leasehold or a patent application, that is depreciable property in the hands of the party who receives it, the gain may be ordinary income. The gain is ordinary income if the transaction is either directly or indirectly between:

1) A person and the person's controlled entity or entities (discussed below),
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, or
3) An employer (and any person related to the employer under rules (1) and (2)) 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 (and 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 control.** For purposes of the above rules, use the following discussion to determine if you control an entity.

1) Stock or a partnership interest owned, directly or indirectly, by or for a corporation, partnership, estate, or trust is treated as being 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 treated as owning the stock or partnership interest owned, directly or indirectly, by or for the individual's family, including only brothers and sisters (either whole or half), spouse, ancestors, and lineal descendants.
3) Stock or a partnership interest ***constructively owned*** by a person under rule (1), for applying rules (1) and (2), is treated as actually owned by that person. But stock or partnership interest constructively owned by an individual under rule (2) will not be treated as owned by the individual for applying 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 is not deductible if the transaction is directly or indirectly between the following ***related parties:***

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) Two partnerships if the same persons own, directly or indirectly, more than 50% of the capital interests or profits interests in both partnerships.
12) 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 parties 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 parties described in (11) or (12) 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 Rules 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 the stock or partnership interest.

**Indirect transactions.** You may not deduct your loss on the sale of stock through your broker if, for example, 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 has no evidence of prearrangement.

**Property received from a related party.** If, in a purchase or exchange, you received property from a related party 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 party. 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.

## Abandonments

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. However, if the property is later foreclosed on or repossessed, gain or loss is figured as discussed in chapter 1 under *Foreclosures and Repossessions.* 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 personal residence or other property held for personal use.

***Example.*** In 1995, Ann abandoned her home that she purchased in 1990 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 in chapter 1 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 nonbusiness 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, if the debt is qualified farm indebtedness (see chapter 4 of Publication 225, *Farmer's Tax Guide*) or qualified real property indebtedness (see chapter 6 of Publication 334, *Tax Guide for Small Business*), or if you are insolvent or bankrupt (see Publication 908, *Tax Information on Bankruptcy*).

**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 1995, these forms should be sent to you by January 31, 1996.

## 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 (discussed in chapter 3). 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 4). 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 on partnerships, see *Payments for Unrealized Receivables and Inventory Items* 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.

**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.

For information on section 197 intangibles, see *Dispositions of Intangible Property,* later.

***Consideration.*** The buyer's consideration is the cost of the assets acquired. The seller's consideration is the amount realized (money plus 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, and
3) Section 197 intangibles.

***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 goodwill or other section 197 intangibles.

***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 4. 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 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 one 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 capital assets held for more than one year, see chapter 3.

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:

The individual whose effort created the patent property and who qualifies as the original and first inventor, or

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 are of 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. (But a transfer of rights that are to one or more whole countries could be a transfer of all substantial rights.)
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 Parties,* and its discussion *Nondeductible 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 parties. 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 in order 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 income or loss. It is reported in the gross receipts/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., may be entered as 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 sale or exchange of section 1231 property. 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 rules, discussed next.

**Timber 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 sale or exchange 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 income or loss. See *Example,* later.

***Qualifying for treatment under this rule.*** For your timber to qualify for 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,
2) Cut the timber for sale or use in your trade or business, and
3) Elect to treat the cutting of timber as a sale or exchange of property used in a trade or business (regardless of whether

the timber is includible in inventory or held primarily for sale to customers).

***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. You may 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.

***Special revocation.*** A special rule for any election you made for a tax year beginning before 1987 allows you to revoke it for any tax year ending after 1986 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 1995, you owned 4,000 MBF (1,000 board feet) of standing timber for more than 1 year. It has an adjusted basis for depletion of $40 per MBF. You are a calendar year taxpayer. On January 1, 1995, the timber had a fair market value (FMV) of $120 per MBF. It was cut in April for sale. On your 1995 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, 1995 | $480,000 |
| Minus: Adjusted basis for depletion | 160,000 |
| Section 1231 gain | $320,000 |

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 income or loss.

**Cutting contract.** If you own standing timber and dispose of it under a cutting contract, you must treat the disposal as a sale or exchange if you held the timber for more than 1 year before its disposal. You must also retain an economic interest in it.

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. The election is made by a statement attached to the tax return filed by the due date (including extensions) for the year payment is received. The statement identifies the advance payments subject to the election and the contract under which they were made.

***Owner.*** The owner is any person who owns an economic interest in timber, including a sublessor and the holder of a contract to cut timber.

***Economic interest.*** An economic interest in standing timber means you acquired an interest by investment and get, by any form of legal relationship, income from cutting that timber, for a return of your capital investment.

**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 income reportable on Schedule C (Form 1040).

# Coal and Iron Ore

If you own, for more than 1 year, coal (including lignite) or iron ore mined in the United States, and dispose of it under a contract in which you keep an economic interest in the coal or iron ore, the disposition is treated as a sale of section 1231 property. 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 (see *Nondeductible Loss* under *Sales and Exchanges Between Related Parties,* earlier), whose relationship to you would result in the disallowance of a loss, 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

Special rules prevent the conversion of ordinary income into capital gain through participation in a conversion transaction. A conversion transaction generally consists of two or more positions taken with regard to the same

or similar property. The return from the transaction is attributable to the time value of your net investment, in the nature of interest. Under the special rules, gain that would otherwise be capital gain is treated as ordinary income.

Ordinary income treatment applies to recognized gain on the disposition or termination of any position held as part of certain conversion transactions entered into after April 30, 1993. This applies if substantially all your expected return is attributable to the time value of your net investment 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. Tax Treatment of Capital Gains and Losses

## Topics

This chapter discusses:

- Long and short term
- Net gain or loss
- Treatment of capital losses
- Maximum tax rate on capital gains

## Useful Items

You may want to see:

**Form (and Instructions)**

☐ **Schedule D (Form 1040)** Capital Gains and Losses

# Long and Short Term

The treatment of 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. If you hold a capital asset for more than 1 year, the gain or loss from its disposition is long term.

Table 3-1. **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 Rate on Capital Gains.*

**Holding period.** To figure if you held property more than 1 year, start counting on the day following the day you acquire 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 dispose of the property is part of your holding period.

***Example.*** If you bought an asset on June 18, 1995, you should start counting on June 19, 1995. If you sell the asset on June 18, 1996, your holding period is not more than 1 year, but if you sell it on June 19, 1996, your holding period is more than 1 year.

***Patent property.*** Any gain or loss from the disposition of your own patent property is generally long term, no matter how long you actually owned 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 even if you dispose of it within 1 year after the decedent's death.

***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 3, 1994. On June 3, 1995, you traded this machinery for other machinery in a nontaxable exchange. On December 5, 1995, you sold the machinery you got in the exchange. Your holding period for this machinery begins on December 4, 1994. 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 the taxpayer's 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

Table 3-2. **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. |

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.

# 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. 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. The result 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. This net gain is generally taxed at the same rate as your ordinary income. However, the part that is not more than your net long-term capital gain is taxed at a rate no higher than 28%. See *Maximum Tax Rate on Capital Gains,* 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

This discussion relates only to individuals who have allowable capital losses. See chapter 2, for information on allowable 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 35, Form 1040 (your taxable income without your deduction for exemptions), is less than zero.

If either of these situations applies to you in 1995, complete the *Capital Loss Carryover Worksheet,* provided in the instructions to Schedule D (Form 1040), to figure the amount of your loss that you can carry over to 1996.

In 1996, 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 1996, and any excess capital loss will be subject to the limit for that year. Any loss not used in 1996 will be carried over to 1997.

***Example.*** Bob and Gloria Sampson sold property in 1995. The sale resulted in a capital loss of $7,000. The Sampsons had no other capital transactions. On their joint 1995 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 1996. The allowable $3,000 deduction is considered used in 1995.

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 1996.

**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 (Form 1040).

**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 Rate on Capital Gains

The 31%, 36%, and 39.6% income tax rates for individuals do not apply to net capital gains. The maximum tax rate on a net capital gain (the smaller of line 17 or 18 of Schedule D, Form 1040) is 28%. 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.

***Caution:*** As this publication was being prepared for print, Congress was considering tax law changes that would affect capital gains and losses. The line numbers on Schedule D (Form 1040) could change for 1995. See Publication 553, *Highlights of 1995 Tax Changes,* for further developments. Information on these changes will also be available electronically through our bulletin board or via the Internet (see page 34 of the Form 1040 Instructions).

However, 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 28% rate 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.

**Figuring tax on net capital gains.** If you file Schedule D and both lines 17 and 18 of Schedule D are gains, or if you reported capital gain distributions on line 13, Form 1040, you may need to use the *Capital Gain Tax Worksheet,* provided in the instructions for line 38 of Form 1040, to figure your tax. Be sure to check the box for *Capital Gain Tax Worksheet (box c)* on line 38, Form 1040, when you enter the amount of tax on that line. Use the *Capital Gain Tax Worksheet* if your taxable income (line 37, Form 1040) is more than the amount

shown in the following table for your filing status.

| Filing Status | Amount |
|---|---|
| Single | $56,550 |
| Married filing jointly or qualifying widow (er) | 94,250 |
| Married filing separately | 47,125 |
| Head of household | 80,750 |

# 4. Dispositions of Depreciable Property

## Topics
This chapter discusses:

- Section 1231 property
- Depreciation recapture on personal property
- Depreciation recapture on real property
- Recapture on installment sales
- Other dispositions

## 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

If you dispose of depreciable or amortizable property at a gain, you may have to treat all or part of the gain as ordinary income.

**Records.** 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 the following:

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.

**Property received by gift or inheritance.** If the basis of section 1250 property you received as a gift or inheritance, or in a tax-free exchange, etc., is reduced by the depreciation that was either allowed or allowable to a former owner, a separate statement containing the information above must be attached to your return for the year the property was acquired.

**Corporate distributions.** For information on depreciable property distributed by corporations, see *Distributions of depreciated 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 1231 Property

Real property and depreciable or amortizable personal property used in a trade or business or held for the production of rents or royalties and held more than 1 year is section 1231 property. Gain or loss recognized on its sale, exchange, or involuntary conversion is subject to section 1231 treatment. Capital assets held in connection with a trade or business or a transaction entered into for profit and subjected to an involuntary conversion are also section 1231 property if held more than 1 year.

Before you apply section 1231 treatment to a gain on a disposition of depreciable section 1231 property, first figure any ordinary gain from the deduction of depreciation. See the rules discussed later under *Depreciation Recapture on Personal Property* or *Depreciation Recapture on Real Property.* Any remaining gain is subject to the section 1231 treatment.

**Property for sale to customers.** Property held mainly for sale to customers or includible in your inventory is not section 1231 property. 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. For information about inventory, see chapter 1 of Publication 946, *How To Depreciate Property.*

**Sales and exchanges.** Sales or exchanges of the following types of property may result in gain or loss subject to section 1231 treatment—

***Real property or depreciable personal property.*** This property must be used in a trade or business or held for the production of rents or royalties, and held for more than 1 year, to qualify as section 1231 property. This includes amortizable section 197 intangibles (described in chapter 2 under *Other Dispositions).*

***Leaseholds.*** Leaseholds used in a trade or business and held for more than 1 year qualify as section 1231 property.

***Cattle and horses.*** Cattle and horses held for draft, breeding, dairy, or sporting purposes and held for 2 years or more from acquisition date are section 1231 property.

***Livestock.*** Livestock (other than cattle, horses, and poultry) held for draft, breeding, dairy, or sporting purposes and held 1 year or more from acquisition date is section 1231 property.

***Unharvested crops.*** An unharvested crop on land used in farming is section 1231 property if the crop and land are sold, exchanged, or involuntarily converted at the same time and to the same person and the land was 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. Nor is a sale, exchange, or involuntary conversion of an unharvested crop with land included if the taxpayer keeps any right or option to reacquire the land, directly or indirectly (other than a right customarily incident to a mortgage or other security transaction).

**Other dispositions.** Dispositions that may result in gain or loss subject to section 1231 treatment —

***Timber, coal, and iron ore.*** Gain or loss from the cutting of timber and the disposal of timber, coal, or domestic iron ore with a retained economic interest, as described in chapter 2 under *Timber* and *Coal and Iron Ore,* is subject to section 1231 treatment.

***Condemnations.*** The gain or loss on condemnations (described in chapter 1 under *Involuntary Conversions*) is treated as section 1231 gain or loss if the property was held for more than 1 year. This includes business property and capital assets held in connection with a trade or business or transaction entered into for profit, such as investment property. Property held for personal use is not included.

***Casualty and theft gains and losses.*** For casualty and theft gains and losses to receive section 1231 treatment, the property must be held for more than 1 year. These include casualty to or theft of business property, property held for the production of rents and royalties, and investment property (such as notes and bonds). Insurance payments or other reimbursement must be taken into account in arriving at the net gain or loss. 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.

**Treatment of gains and losses.** Combine all gains and losses from the sale or other disposition of section 1231 property for the tax year. If your section 1231 gains exceed your section 1231 losses, you have a net section 1231 gain. These gains and losses are treated as long-term capital gains or long-term capital losses, unless you have nonrecaptured section 1231 losses. (See the next discussion.) If

your section 1231 losses exceed your section 1231 gains, you have a net section 1231 loss. If you have a net section 1231 loss or your section 1231 gains and losses are equal, treat each item as an ordinary gain or loss.

***Recapture of net ordinary losses.*** A net section 1231 gain is treated as ordinary income to the extent it does not exceed your nonrecaptured net section 1231 losses taken in prior years. ***Nonrecaptured losses*** are the total of your net section 1231 losses for your five most recent preceding tax years that have not yet been applied (recaptured) against any net section 1231 gains in those years. Your losses are recaptured beginning with the earliest year subject to recapture.

***Example.*** Ashley, Inc., a graphic arts company, is a calendar year corporation. In 1992, it had a net section 1231 loss of $8,000. For tax years 1994 and 1995, the company has net section 1231 gains of $5,250 and $4,600, respectively. In figuring taxable income for 1994, 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 1995, it applies its remaining net section 1231 loss, $2,750 ($8,000 minus $5,250) against its net section 1231 gain, $4,600. For 1995, the company reports $2,750 as ordinary income and $1,850 ($4,600 minus $2,750) as long-term capital gain.

# Depreciation Recapture on Personal 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 *Treatment of Gain,* later.

**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*** include structures that are essentially items of machinery or equipment as buildings and structural components. Also, do not include, 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. To be fungible, a commodity must be such that one part may be used in place of another. Bulk storage means the storage of a commodity in a large mass before it is used. 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. Thus, if a facility is used to store oranges that have been sorted and boxed, it is not used for bulk storage. The storage of different grades and forms of aluminum scrap is not bulk storage of fungible commodities.

## Treatment of Gain

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 limited to the ***lower*** of:

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

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 *Other Dispositions,* later.

**Recomputed basis.** The recomputed basis of your section 1245 property is the total of its adjusted basis plus depreciation and amortization adjustments (allowed or allowable) reflected in the adjusted basis. These include adjustments:

On property you exchanged for, or converted to, your section 1245 property in a like-kind exchange or involuntary conversion, and

Allowed or allowable to a previous owner, if your basis is determined with reference to that person's adjusted basis.

***Example.*** In January 1993, Don Smith bought and placed in service section 1245 property that cost $10,000 and had a 5–year life. By the end of 1995, he deducted $7,120 of depreciation using the MACRS method which reduced the asset's adjusted basis to $2,880. Since this adjusted basis reflects deductions for depreciation of $7,120, the recomputed basis of the property is $10,000.

***Property received in an exchange or conversion.*** If you received property in a like-kind exchange or involuntary conversion, the recomputed basis of that property includes a depreciation or amortization adjustment allowed or allowable on the old property you exchanged or converted. This adjustment is reduced by any gain you recognized on the exchange or conversion of the old property.

***Property received as a gift.*** If you received property as a gift, the recomputed basis includes any depreciation or amortization adjustments allowed or allowable to the donor for that property.

**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 10, 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); and
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 1993, you purchased and placed in service for 100% use in your business a light-duty truck (5–year property) with an adjusted basis of $10,000. You used the half-year convention and figured your MACRS deductions for the truck were $2,000 in 1993 and $3,200 in 1994. You did not take the section 179 deduction on it. You sell the truck in May 1995 for $7,000. Your adjusted basis is $3,840 ($10,000 minus $6,160). The MACRS deduction in 1995, the year of sale, is $960 (1/2 of $1,920). Your recomputed basis is $10,000 ($3,840 plus $6,160). The amount you treat as ordinary income is the ***lower*** of the following:

1) Recomputed basis ($10,000) minus the adjusted basis ($3,840), or $6,160, ***or***
2) Amount realized ($7,000) minus the adjusted basis ($3,840), or $3,160.

The lower of these two amounts, $3,160, is the amount of gain treated as ordinary income. Figure this amount in Part III, Form 4797.

**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.

**Section 1245 property and other property in the same disposition.** A sale or other disposition may involve a combination of section 1245 property and other property. To figure the gain or loss on each item, the total amount realized must be allocated among the section 1245 property and the other property in proportion to each item's fair market value. If a buyer and seller have adverse interests, their arm's-length agreement setting values for the items will establish the allocation. Special allocation rules apply to the sale of a group of assets that can be a trade or business. See chapter 2. Losses cannot be used to offset gains to report a combined gain or loss for section 1245 property.

**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 1231 gain.** Any gain recognized that is more than the part that is ordinary income because of depreciation is a section 1231 gain. See *Treatment of gains and losses* under *Section 1231 Property,* earlier.

# Depreciation Recapture on Real 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.

**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 of a change in use, section 1250 property becomes section 1245 property in the hands of a taxpayer, it may never again be treated as section 1250 property by that taxpayer.

Generally, the deductions taken under ***ACRS*** on property placed in service before 1987 are treated as ordinary income under section 1245, except for deductions taken on the following properties, which are treated as section 1250 property:

1) 15–year, 18–year, or 19–year real property and low-income housing that is residential rental property,
2) 15–year, 18–year, or 19–year real property and low-income housing that is used mostly outside the United States,
3) 15–year, 18–year, or 19–year real property and low-income housing on which the alternate ACRS method of depreciation is taken, and
4) Low-income property.

For more information on ACRS 15–year, 18–year, and 19–year property, get Publication 534.

***The ordinary income rules for gains on section 1250 property dispositions do not apply 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 realize a loss on the sale, exchange, or involuntary conversion of the property,
3) You dispose of residential low-income rental property that you held for 16 2/3 years or more (for low-income rental housing on which the special 60-month depreciation for rehabilitation expenditures was allowed, the 16 2/3 years starts when the rehabilitated property is placed in service),
4) You chose the alternate ACRS method for the types of 15–, 18–, or 19–year real property covered by the section 1250 rules, discussed earlier, or
5) You dispose of residential rental property or nonresidential real property placed in service after December 31, 1986 (or after July 31, 1986, if the election to use MACRS was made). These properties are depreciated using the straight line method.

## Gain Treated as Ordinary Income

To find what part of the gain 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.

Use Part III, Form 4797, to figure the ordinary income part of section 1250 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 28(f) of Form 4797, Part III.

## Additional Depreciation

If you hold section 1250 property longer than 1 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 *Depreciation Recapture on Personal Property,* earlier.

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.

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 carryover 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.*** If a wing of a 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.

**Useful life and salvage value.** 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. Salvage value and useful life are not used for either the ACRS or MACRS methods of depreciation. 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.

**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 and for figuring the additional depreciation includes all renewal periods. This extension cannot extend the period taken into account to a period which exceeds the remaining useful life of the improvement. The same rule applies to the cost of acquiring a lease.

***Renewal period.*** 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 in connection with low-income rental housing is additional depreciation. After 1986, the special 60–month treatment of expenditures is no longer available, unless the expenditures were incurred under a binding contract, or if rehabilitation began, before 1987.

If the property is held 1 year or less after the expenses are incurred, the entire special depreciation adjustment is treated as additional depreciation. If the property is held more than 1 year after the expenses are incurred, the additional depreciation is the excess of the special depreciation adjustments from the rehabilitation expenditures 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, 1995, Fred Plums, a calendar year taxpayer, sells real property, in which the entire basis is from rehabilitation expenses of $50,000 incurred in 1981. The property was placed in service on January 3, 1982, and under the special depreciation provisions for rehabilitation expenses 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 had a depreciable basis of $45,000. Depreciation under the straight line method would be $3,000 each year (1/15 × $45,000). On January 1, 1995, the additional depreciation for the property was $11,000, figured as follows:

| | Depreciation Claimed | Straight Line Depreciation | Additional Depreciation |
|---|---|---|---|
| 1982 | $10,000 | $ 3,000 | $ 7,000 |
| 1983 | 10,000 | 3,000 | 7,000 |
| 1984 | 10,000 | 3,000 | 7,000 |
| 1985 | 10,000 | 3,000 | 7,000 |
| 1986 | 10,000 | 3,000 | 7,000 |
| 1987 | | 3,000 | (3,000) |
| 1988 | | 3,000 | (3,000) |
| 1989 | | 3,000 | (3,000) |
| 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) |
| **Total** | $50,000 | $39,000 | $ 11,000 |

## Applicable Percentage

The applicable percentage used to figure the amount taxable as 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%. For residential rental property, 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, and
4) Housing financed or assisted by direct loan or insured under Title V of the Housing Act of 1949.

The applicable percentage for periods after 1975 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.

For periods before 1976, the applicable percentage is zero. Therefore, no ordinary income will result from a disposition of low-income housing because of additional depreciation before 1976.

***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, 1983, you acquired low-income housing property. On April 3, 1994 (130 months after the property was acquired), foreclosure proceedings were started on the property and on December 2, 1995 (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, 1994, 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 you acquired generally starts on the day after it is acquired. Thus, if you bought low-income housing on January 1, 1979, the holding period starts on January 2, 1979. If you sold it on January 2, 1995, 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 exchange.*** For low-income housing acquired by gift or inheritance or in a tax-free exchange 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 the hands of the transferee 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 low-income housing property has more than one separate 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, 1994, 50 on July 18, 1994, and the remaining 20 on January 18, 1995. 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 period 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 period 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 the 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 is treated as part of the basic property and 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 | $10,000 | 68% | $ 6,800 |
| X ........ | $0÷ $24,000 | $ 0 | 85% | 0 |
| Y ........ | $6,000÷ $24,000 | $ 5,000 | 92% | 4,600 |
| Z ........ | $6,000÷ $24,000 | $ 5,000 | 100% | 5,000 |
| **Sum of the ordinary income of the separate elements** | | | | $16,400 |

# Recapture on 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 remainder 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. Any depreciation recapture income must be reported in the year of sale before using the installment method for any remaining gain.

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

# Other Dispositions

This section discusses the tax treatment of transfers of depreciable property by gift, at death, in like-kind exchanges, and in involuntary conversions. It also explains how to handle a single transaction involving a combination of depreciable property and other property.

## 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 *Depreciation Recapture on Real 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 sale to charitable organization,* 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 sale to charitable organization.** A bargain sale is a sale or exchange of property to a charitable organization for less than its fair market value. It results in a transaction that is partly a sale or exchange and partly a charitable contribution. A special computation must be made to figure: 1) the gain from the part of the transaction that is a sale, and 2) the amount of any deductible charitable contribution. Primarily, the adjusted basis of the property must be divided between the part sold and the part given to charity. See *Allocation of basis,* next.

If a deduction for the contribution is not allowable, the transaction is treated as a regular sale. In that case, any gain is figured (without allocation of basis) in the normal manner (selling price less adjusted basis of entire property).

***Allocation of basis.*** If a bargain sale results in a charitable contribution deduction, the adjusted basis of the property must be allocated between the part of the property sold and the part of the property given to charity. The ***adjusted basis of the contributed part*** is figured as follows:

$$\text{Adjusted basis of entire property} \times \frac{\text{Fair market value of contributed part}}{\text{Fair market value of entire property}}$$

To determine the fair market value of the contributed part, subtract the amount you realized on the sale (or the selling price) from the fair market value of the entire property.

The ***adjusted basis of the part sold*** is figured as follows:

$$\text{Adjusted basis of entire property} \times \frac{\text{Amount realized (fair market value of part sold)}}{\text{Fair market value of entire property}}$$

***Example.*** In 1995, you sold depreciable personal property to a charitable organization for its adjusted basis of $12,000. The property had a fair market value (FMV) of $25,000. It originally cost $22,000 and you claimed depreciation of $10,000 for it. If you had sold the property at its FMV at the time of the contribution, $10,000 of the gain of $13,000 ($25,000 minus $12,000 adjusted basis) would have been recognized as section 1245 ordinary income and the remaining $3,000 as long-term capital gain. You made a charitable gift to the organization of $13,000 ($25,000 minus $12,000 selling price). To determine the amount you can deduct, you must reduce the gift by the gain that would have been recognized as ordinary income if the contributed part of the property had been sold at its FMV at the time of the contribution. For this example, assume that you must also reduce the gift by the gain that would have been long-term capital gain (the section 1231 gain).

The sale of your property is a bargain sale resulting in a charitable contribution. To figure 1) your gain on the part sold, and 2) the deduction you can take for the part contributed, you must allocate 48% ($12,000 selling price, or amount realized, divided by $25,000 FMV of the entire property) of the adjusted basis to the part sold and 52% ($13,000 FMV of the gift divided by $25,000) to the part contributed. Using these allocation percentages, you figure the gain you have to report as follows:

***Gain on part sold:***

| | |
|---|---|
| Sales price | $12,000 |
| Less: Adjusted basis (48% × $12,000) | 5,760 |
| Total gain on part sold | $ 6,240 |
| Less: Ordinary income (48% × $10,000) | 4,800 |
| Section 1231 gain | $ 1,440 |

Your charitable contribution deduction is $6,240, as follows:

***Deductible charitable contribution:***

| | | |
|---|---|---|
| Value of contribution | | $13,000 |
| Less: Gain on bargain sale that would have been recognized if the contributed part of the property had been sold at its FMV at the time of the contribution: | | |
| FMV of contributed part | $13,000 | |
| Less: Adjusted basis (52% of $12,000) | 6,240 | 6,760 |
| **Contribution deduction allowable** | | $ 6,240 |

You can also figure your deductible contribution by reducing the amount of the contribution by 52% of the potential ordinary income and long-term capital gain attributable to the contributed part of the property, as follows:

| | | |
|---|---|---|
| Value of contribution | | $13,000 |
| Less: Ordinary income ($10,000 × 52%) | $5,200 | |
| Less: Long-term capital gain ($3,000 × 52%) | 1,560 | 6,760 |
| **Amount of contribution** | | $ 6,240 |

# 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, figured under the rules explained earlier (see *Depreciation Recapture on Personal Property*), is 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 excluded under the rules for like-kind exchanges and you received only depreciable personal property in the exchange.

***Example 2.*** On January 4, 1993, you bought office machinery for $1,500. You deducted $300 and $480 under MACRS on your 1993 and 1994 returns. On January 3, 1995, 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. (See the discussion of *Replacement Property* in chapter 25 of Publication 334, *Tax Guide for Small Business.*) 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 tax on your 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) | | $91,640 |
| 2) Gain includible in income (amount unexpended) | $3,000 | |
| FMV of property other than depreciable personal property (the stock) | 9,000 | |
| Total | | $12,000 |
| Amount reportable as ordinary income (lesser of (1) or (2)) | | $12,000 |

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, figured under the rules explained earlier (see *Depreciation Recapture on Real Property*), is 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 tax on 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.

***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 on which tax is 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 tax on 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 on which you postponed tax, 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 tax on 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), figured and allocated as follows:

1) The $42,000 cost of depreciable real property less $10,000 ordinary income that does not have to be 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 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.

## Depreciable Property and Other Property in One Transaction

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 (or 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 tax on 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.

# 5. Reporting Gains and Losses

## Topics

This chapter discusses:

- Schedule D (Form 1040)
- Form 4797

## Useful Items

You may want to see:

**Publication**

☐ **550** Investment Income and Expenses

☐ **537** Installment Sales

**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

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.

**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 (other than your main home), report the transaction on Schedule D even though the loss is not deductible. Complete columns (a) through (e) and write "Personal Loss" across columns (f) and (g).

***Caution:*** As this publication was being prepared for print, Congress was considering tax law changes that would affect capital gains and losses. The line numbers on Schedule D (Form 1040) could change for 1995. See Publication 553, *Highlights of 1995 Tax Changes,* for further developments. Information on these changes will also be available electronically through our bulletin board or via the Internet (see page 34 of the Form 1040 Instructions).

**Other forms.** Before completing Schedule D (Form 1040), you may have to complete other forms. For the sale of business property, complete Form 4797.Form 4797 is used along with Form 1040, as well as Forms 1065, 1120, and 1120S.

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 *Recapture on Installment Sales,* in chapter 4.

**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.*** Information reporting 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:

1) Land (improved or unimproved), including air space,
2) Inherently permanent structures, including any residential, commercial, or industrial building,
3) A condominium unit and its appurtenant fixtures and common elements (including land), or
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.

## Schedule D (Form 1040)

Where you report a sale or exchange on Schedule D (Form 1040) depends on how long you held (owned) the property. See chapter 3.

***Caution:*** As this publication was being prepared for print, Congress was considering tax law changes that would affect capital gains and losses. The line numbers on Schedule D (Form 1040) could change for 1995. See Publication 553, *Highlights of 1995 Tax Changes,* for further developments. Information on these changes will also be available electronically through our bulletin board or via the Internet (see page 34 of the Form 1040 Instructions).

**Short-term capital gains and losses.** Gain or loss on the sale or exchange of capital assets held one year or less is short-term capital gain or loss and is reported in Part I.

***Net short-term gain or loss.*** Combine your share of short-term capital gains or losses from partnerships, S corporations, or fiduciaries with any short-term capital loss carryover and other short-term gains and losses to figure your net short-term capital gain or loss.

**Long-term gains and losses.** Gain or loss on the sale or exchange of capital assets held more than 1 year is long-term capital gain or loss and is reported in Part II.

***Net long-term gain or loss.*** Net section 1231 gain from Part I, Form 4797, after any adjustment for nonrecaptured section 1231 losses from prior tax years, is long-term capital gain. It is reported in Part II of Schedule D (Form 1040). The following are also reported in Part II:

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

**Total net gain or loss.** Figure your total net gain or loss by combining your net short-term capital gain or loss with your net long-term capital gain or loss. Enter the result on line 18, Part III. If losses are more than gains, see *Treatment of Capital Losses* in chapter 3.

## 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.

**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 report 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 Property,* in chapter 4.

**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 4) 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 1995, she owned and operated Jane's Dress Shop. During the year, 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. For the 1995 tax year, she had this and the following transactions, which are reported as shown in the accompanying filled-in Form 4797 and Form 8824.

### Form 4797

Jane was also able to sell all the equipment she used in her dress shop for $3,000 on March 16, 1995. She originally paid $6,000 for it on January 20, 1986, and deducted $4,000 in depreciation since then. Therefore, she realized a gain of $1,000. Because the gain was less than the 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, line 14.

In March 1995, Jane also sold a small vacant lot (acquired in 1977) located across the street from the dress shop, which she had used as parking for her customers. The adjusted basis of the lot was $6,000 and its sales price was $8,000. She reports the sale in Part I of Form 4797. Jane had a nonrecaptured net section 1231 loss of $1,200. She shows this amount on line 9. 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 9 is entered as an ordinary gain in Part II of Form 4797 on line 13. The loss is also subtracted from the $2,000 gain on line 8. The $800 balance on line 10 is a long-term capital gain entered on Schedule D (Form 1040).

### 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 $85,000 for the building and $15,000 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 lines 20 and 22.

However, because there is additional depreciation on the old building of $22,540, Jane must determine whether any of her gain has to be recognized as ordinary income under the recapture rules. The old building has a FMV of $90,000. Had the transaction been a cash sale, Jane's ordinary income due to the additional depreciation would have been limited to the realized gain on the building, $5,000 ($90,000 − $85,000). 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 $5,000 ordinary income that does not have to be reported is carried over to the new building as additional depreciation. Jane enters ''–0–'' on lines 21 and 23 of Form 8824 and on line 17 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 $2,200, 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 12, Schedule D (Form 1040).

Form **4797**

Department of the Treasury
Internal Revenue Service (T)

# 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.

OMB No. 1545-0184

**1995**

Attachment Sequence No. **27**

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 1995 on Form(s) 1099-S (or a substitute statement) that you will be including on line 2, 11, or 22 . . . . . 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) LOSS ((f) minus the sum of (d) and (e)) | (h) GAIN ((d) plus (e) minus (f)) |
|---|---|---|---|---|---|---|---|
| 2 Store parking lot | 10-1-77 | 3-16-95 | 8,000 | -0- | 6,000 | -0- | 2,000 |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

| Line | Description | | (g) | (h) |
|---|---|---|---|---|
| 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 34, from other than casualty or theft | 6 | | |
| 7 | Add lines 2 through 6 in columns (g) and (h) | 7 | ( ) | 2,000 |

8 Combine columns (g) and (h) of line 7. Enter gain or (loss) here, and on the appropriate line as follows: . . . . 8 2,000

**Partnerships**—Enter the gain or (loss) on Form 1065, Schedule K, line 6. Skip lines 9, 10, 12, and 13 below.

**S corporations**—Report the gain or (loss) following the instructions for Form 1120S, Schedule K, lines 5 and 6. Skip lines 9, 10, 12, and 13 below, unless line 8 is a gain and the S corporation is subject to the capital gains tax.

**All others**—If line 8 is zero or a loss, enter the amount on line 12 below and skip lines 9 and 10. If line 8 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 as a long-term capital gain on Schedule D and skip lines 9, 10, and 13 below.

9 Nonrecaptured net section 1231 losses from prior years (see instructions) . . . . 9 1,200

10 Subtract line 9 from line 8. If zero or less, enter -0-. Also enter on the appropriate line as follows (see instructions): 10 800

**S corporations**—Enter this amount on Schedule D (Form 1120S), line 13, and skip lines 12 and 13 below.

**All others**—If line 10 is zero, enter the amount from line 8 on line 13 below. If line 10 is more than zero, enter the amount from line 9 on line 13 below, and enter the amount from line 10 as a long-term capital gain on Schedule D.

## Part II Ordinary Gains and Losses

11 Ordinary gains and losses not included on lines 12 through 18 (include property held 1 year or less):

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

| Line | Description | | (g) | (h) |
|---|---|---|---|---|
| 12 | Loss, if any, from line 8 | 12 | | |
| 13 | Gain, if any, from line 8, or amount from line 9 if applicable | 13 | | 1,200 |
| 14 | Gain, if any, from line 33 | 14 | | 1,000 |
| 15 | Net gain or (loss) from Form 4684, lines 31 and 38a | 15 | | |
| 16 | Ordinary gain from installment sales from Form 6252, line 25 or 36 | 16 | | |
| 17 | Ordinary gain or (loss) from like-kind exchanges from Form 8824 | 17 | -0- | -0- |
| 18 | Recapture of section 179 expense deduction for partners and S corporation shareholders from property dispositions by partnerships and S corporations (see instructions) | 18 | | |
| 19 | Add lines 11 through 18 in columns (g) and (h) | 19 | ( -0- ) | 2,200 |

20 Combine columns (g) and (h) of line 19. Enter gain or (loss) here, and on the appropriate line as follows: . . . 20

a For all except individual returns: Enter the gain or (loss) from line 20 on the return being filed.

b For individual returns:

(1) If the loss on line 12 includes a loss from Form 4684, line 35, column (b)(ii), enter that part of the loss here and on line 22 of Schedule A (Form 1040). Identify as from "Form 4797, line 20b(1)." See instructions . . . . 20b(1)

(2) Redetermine the gain or (loss) on line 20, excluding the loss, if any, on line 20b(1). Enter here and on Form 1040, line 14 . . 20b(2) 2,200

**For Paperwork Reduction Act Notice, see page 1 of separate instructions.** Cat. No. 13086I Form **4797** (1995)

## Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255

| 21 | (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 | 3-16-95 |
| B | | | |
| C | | | |
| D | | | |

| | Relate lines 21A through 21D to these columns ▶ | | Property A | Property B | Property C | Property D |
|---|---|---|---|---|---|---|
| 22 | Gross sales price (**Note:** *See line 1 before completing.*) | 22 | 8,000 | | | |
| 23 | Cost or other basis plus expense of sale | 23 | 6,000 | | | |
| 24 | Depreciation (or depletion) allowed or allowable | 24 | 4,000 | | | |
| 25 | Adjusted basis. Subtract line 24 from line 23 | 25 | 2,000 | | | |
| 26 | Total gain. Subtract line 25 from line 22 | 26 | 6,000 | | | |
| 27 | **If section 1245 property:** | | | | | |
| a | Depreciation allowed or allowable from line 24 | 27a | 4,000 | | | |
| b | Enter the **smaller** of line 26 or 27a | 27b | 6,000 | | | |
| 28 | **If section 1250 property:** If straight line depreciation was used, enter -0- on line 28g, except for a corporation subject to section 291. | | | | | |
| a | Additional depreciation after 1975 (see instructions) | 28a | | | | |
| b | Applicable percentage multiplied by the **smaller** of line 26 or line 28a (see instructions) | 28b | | | | |
| c | Subtract line 28a from line 26. If residential rental property or line 26 is not more than line 28a, skip lines 28d and 28e | 28c | | | | |
| d | Additional depreciation after 1969 and before 1976 | 28d | | | | |
| e | Enter the **smaller** of line 28c or 28d | 28e | | | | |
| f | Section 291 amount (corporations only) | 28f | | | | |
| g | Add lines 28b, 28e, and 28f | 28g | | | | |
| 29 | **If section 1252 property:** Skip this section if you did not dispose of farmland or if this form is being completed for a partnership. | | | | | |
| a | Soil, water, and land clearing expenses | 29a | | | | |
| b | Line 29a multiplied by applicable percentage (see instructions) | 29b | | | | |
| c | Enter the **smaller** of line 26 or 29b | 29c | | | | |
| 30 | **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) | 30a | | | | |
| b | Enter the **smaller** of line 26 or 30a | 30b | | | | |
| 31 | **If section 1255 property:** | | | | | |
| a | Applicable percentage of payments excluded from income under section 126 (see instructions) | 31a | | | | |
| b | Enter the **smaller** of line 26 or 31a (see instructions) | 31b | | | | |

**Summary of Part III Gains.** Complete property columns A through D, through line 31b before going to line 32.

| | | | |
|---|---|---|---|
| 32 | Total gains for all properties. Add property columns A through D, line 26 | 32 | 6,000 |
| 33 | Add property columns A through D, lines 27b, 28g, 29c, 30b, and 31b. Enter here and on line 14 | 33 | 6,000 |
| 34 | Subtract line 33 from line 32. 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 | 34 | -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) |
|---|---|---|---|---|
| 35 | Section 179 expense deduction or depreciation allowable in prior years | 35 | | |
| 36 | Recomputed depreciation. See instructions | 36 | | |
| 37 | Recapture amount. Subtract line 36 from line 35. See the instructions for where to report | 37 | | |

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Form **8824**

Department of the Treasury
Internal Revenue Service

# 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.

OMB No. 1545-1190

**1995**

Attachment Sequence No. 49

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 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 / 95 |
| 5 | Date the like-kind property you received was identified (month, day, year). See instructions | 5 | 3 / 16 / 95 |
| 6 | Date you actually received the like-kind property from other party (month, day, year) | 6 | 3 / 16 / 95 |

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 instructions under* ***Multi-Asset Exchanges.***

**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 17. 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 |