

§ 1.267(d)-2

part, item, or class of property not allowable to the taxpayer's transferor on the latter's sale or exchange of such property to the taxpayer.

(3) *Transferor's loss not allowable.* (i) The transferor's loss on the sale or exchange of a part, item, or class of the property to the taxpayer shall be the excess of the transferor's adjusted basis for determining loss on the part, item, or class of the property over the amount realized by the transferor on the sale or exchange of the part, item, or class. The amount realized by the transferor on the part, item, or class shall be determined (if such amount is not known) in the same manner that the taxpayer's basis for such part, item, or class is determined. See subparagraph (1) of this paragraph.

(ii) If the transferor's basis for determining loss on the part, item, or class cannot be determined, the transferor's loss on the particular part, item, or class transferred to the taxpayer shall be determined by allocating to the part, item, or class a portion of his loss on the entire property in the proportion that the fair market value of such part, item, or class bears to the fair market value of the entire property on the date of the taxpayer's acquisition of the entire property.

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

Example 1. During 1953, H sold class A stock which had cost him \$1,100, and common stock which had cost him \$2,000, to his wife W for a lump sum of \$1,500. Under section 24(b)(1)(A) of the 1939 Code, the loss of \$1,600 on the transaction was not allowable to H. At the time the stocks were purchased by W, the fair market value of class A stock was \$900 and the fair market value of common stock was \$600. In 1954, W sold the class A stock for \$2,500. W's recognized gain is determined as follows:

Amount realized by W on sale of class A stock ...	\$2,500
Less: Basis allocated to class A stock—\$900/ \$1,500 × \$1,500	900
Realized gain on transaction	1,600
Less: Loss sustained by H on sale of class A stock to W not allowable as a deduction:	
Basis to H of class A stock	\$1,100
Amount realized by H on class A stock—\$900/ \$1,500 × \$1,500	900
Unallowable loss to H on sale of class A stock	200

Recognized gain on sale of class A stock by W	1,400
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Example 2. Assume the same facts as those stated in *Example 1* of this subparagraph except that H originally purchased both classes of stock for a lump sum of \$3,100. The unallowable loss to H on the sale of all the stock to W is \$1,600 (\$3,100 minus \$1,500). An exact determination of the unallowable loss sustained by H on sale to W of class A stock cannot be made because H's basis for class A stock cannot be determined. Therefore, a determination of the unallowable loss is made by allocating to class A stock a portion of H's loss on the entire property transferred to W in the proportion that the fair market value of class A stock at the time acquired by W (\$900) bears to the fair market value of both classes of stock at that time (\$1,500). The allocated portion is \$900/\$1,500 × \$1,600, or \$960. W's recognized gain is, therefore, \$640 (W's realized gain of \$1,600 minus \$960).

(c) *Special rules.* (1) Section 267(d) does not affect the basis of property for determining gain. Depreciation and other items which depend on such basis are also not affected.

(2) The provisions of section 267(d) shall not apply if the loss sustained by the transferor is not allowable to the transferor as a deduction by reason of section 1091, or section 118 of the Internal Revenue Code of 1939, which relate to losses from wash sales of stock or securities.

(3) In determining the holding period in the hands of the transferee of property received in an exchange with a transferor with respect to whom a loss on the exchange is not allowable by reason of section 267, section 1223(2) does not apply to include the period during which the property was held by the transferor. In determining such holding period, however, section 1223(1) may apply to include the period during which the transferee held the property which he exchanged where, for example, he exchanged a capital asset in a transaction which, as to him, was non-taxable under section 1031 and the property received in the exchange has the same basis as the property exchanged.

§ 1.267(d)-2 Effective date; taxable years subject to the Internal Revenue Code of 1939.

Pursuant to section 7851(a)(1)(C), the regulations prescribed in § 1.267(d)-1, to

the extent that they relate to determination of gain resulting from the sale or other disposition of property after December 31, 1953, with respect to which property a loss was not allowable to the transferor by reason of section 267(a)(1) (or by reason of section 24(b) of the Internal Revenue Code of 1939), shall also apply to taxable years beginning before January 1, 1954, and ending after December 31, 1953, and taxable years beginning after December 31, 1953, and ending before August 17, 1954, which years are subject to the Internal Revenue Code of 1939.

§ 1.267(f)-1 Controlled groups.

(a) *In general*—(1) *Purpose.* This section provides rules under section 267(f) to defer losses and deductions from certain transactions between members of a controlled group (intercompany sales). The purpose of this section is to prevent members of a controlled group from taking into account a loss or deduction solely as the result of a transfer of property between a selling member (S) and a buying member (B).

(2) *Application of consolidated return principles.* Under this section, S's loss or deduction from an intercompany sale is taken into account under the *timing* principles of § 1.1502-13 (intercompany transactions between members of a consolidated group), treating the intercompany sale as an intercompany transaction. For this purpose:

(i) The matching and acceleration rules of § 1.1502-13 (c) and (d), the definitions and operating rules of § 1.1502-13 (b) and (j), and the simplifying rules of § 1.1502-13(e)(1) apply with the adjustments in paragraphs (b) and (c) of this section to reflect that this section—

(A) Applies on a controlled group basis rather than consolidated group basis; and

(B) Generally affects only the *timing* of a loss or deduction, and not *its attributes* (e.g., *its source and character*) or the holding period of property.

(ii) The special rules under § 1.1502-13(f) (stock of members) and (g) (obligations of members) apply under this section only to the extent the transaction is also an intercompany transaction to which § 1.1502-13 applies.

(iii) Any election under § 1.1502-13 to take items into account on a separate

entity basis does not apply under this section. See § 1.1502-13(e)(3).

(3) *Other law.* The rules of this section apply in addition to other applicable law (including nonstatutory authorities). For example, to the extent a loss or deduction deferred under this section is from a transaction that is also an intercompany transaction under § 1.1502-13(b)(1), attributes of the loss or deduction are also subject to re-characterization under § 1.1502-13. See also, sections 269 (acquisitions to evade or avoid income tax) and 482 (allocations among commonly controlled taxpayers). Any loss or deduction taken into account under this section can be deferred, disallowed, or eliminated under other applicable law. See, for example, section 1091 (loss eliminated on wash sale).

(b) *Definitions and operating rules.* The definitions in § 1.1502-13(b) and the operating rules of § 1.1502-13(j) apply under this section with appropriate adjustments, including the following:

(1) *Intercompany sale.* An intercompany sale is a sale, exchange, or other transfer of property between members of a controlled group, if it would be an intercompany transaction under the principles of § 1.1502-13, determined by treating the references to a consolidated group as references to a controlled group and by disregarding whether any of the members join in filing consolidated returns.

(2) *S's losses or deductions.* Except to the extent the intercompany sale is also an intercompany transaction to which § 1.1502-13 applies, S's losses or deductions subject to this section are determined on a separate entity basis. For example, the principles of § 1.1502-13(b)(2)(iii) (treating certain amounts not yet recognized as items to be taken into account) do not apply. A loss or deduction is from an intercompany sale whether it is directly or indirectly from the intercompany sale.

(3) *Controlled group; member.* For purposes of this section, a controlled group is defined in section 267(f). Thus, a controlled group includes a FSC (as defined in section 922) and excluded members under section 1563(b)(2), but does not include a DISC (as defined in section 992). Corporations remain members of a controlled group as long as