

exceeds \$10,000 and more than 2 percent of the stock held by the taxpayer and related persons is acquired. The following rules apply for purposes of determining whether the 2-percent limit is exceeded. The percentage of stock acquired in any single purchase is determined by dividing the stock's value (as of the time of purchase) by the value (as of the time of purchase) of all stock held (directly or indirectly) by the taxpayer and related persons immediately before the purchase. The percentage of stock acquired in multiple purchases is the sum of the percentages determined for each separate purchase.

(b) *Significant redemptions*—(1) *In general.* Stock is not qualified small business stock if, in one or more purchases during the 2-year period beginning on the date 1 year before the issuance of the stock, the issuing corporation purchases more than a de minimis amount of its stock and the purchased stock has an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of the issuing corporation's stock as of the beginning of such 2-year period.

(2) *De minimis amount.* For purposes of this paragraph (b), stock exceeds a de minimis amount only if the aggregate amount paid for the stock exceeds \$10,000 and more than 2 percent of all outstanding stock is purchased. The following rules apply for purposes of determining whether the 2-percent limit is exceeded. The percentage of the stock acquired in any single purchase is determined by dividing the stock's value (as of the time of purchase) by the value (as of the time of purchase) of all stock outstanding immediately before the purchase. The percentage of stock acquired in multiple purchases is the sum of the percentages determined for each separate purchase.

(c) *Transfers by shareholders in connection with the performance of services not treated as purchases.* A transfer of stock by a shareholder to an employee or independent contractor (or to a beneficiary of an employee or independent contractor) is not treated as a purchase of the stock by the issuing corporation for purposes of this section even if the stock is treated as having first been

transferred to the corporation under § 1.83-6(d)(1) (relating to transfers by shareholders to employees or independent contractors).

(d) *Exceptions for termination of services, death, disability or mental incompetency, or divorce.* A stock purchase is disregarded if the stock is acquired in the following circumstances:

(1) *Termination of services*—(i) *Employees and directors.* The stock was acquired by the seller in connection with the performance of services as an employee or director and the stock is purchased from the seller incident to the seller's retirement or other bona fide termination of such services;

(ii) *Independent contractors.* [Reserved]

(2) *Death.* Prior to a decedent's death, the stock (or an option to acquire the stock) was held by the decedent or the decedent's spouse (or by both), by the decedent and joint tenant, or by a trust revocable by the decedent or the decedent's spouse (or by both), and—

(i) The stock is purchased from the decedent's estate, beneficiary (whether by bequest or lifetime gift), heir, surviving joint tenant, or surviving spouse, or from a trust established by the decedent or decedent's spouse; and

(ii) The stock is purchased within 3 years and 9 months from the date of the decedent's death;

(3) *Disability or mental incompetency.* The stock is purchased incident to the disability or mental incompetency of the selling shareholder; or

(4) *Divorce.* The stock is purchased incident to the divorce (within the meaning of section 1041(c)) of the selling shareholder.

(e) *Effective date.* This section applies to stock issued after August 10, 1993.

[T.D. 8749, 62 FR 68166, Dec. 31, 1997]

TREATMENT OF CAPITAL LOSSES

§ 1.1211-1 Limitation on capital losses.

(a) *Corporations*—(1) *General rule.* In the case of a corporation, there shall be allowed as a deduction an amount equal to the sum of:

(i) Losses sustained during the taxable year from sales or exchanges of capital assets, plus

(ii) The aggregate of all losses sustained in other taxable years which are

treated as a short-term capital loss in such taxable year pursuant to section 1212(a)(1),

but only to the extent of gains from such sales or exchanges of capital assets in such taxable year.

(2) *Banks.* See section 582(c) for modification of the limitation under section 1211(a) in the case of a bank, as defined in section 581.

(b) *Taxpayers other than corporations—*
(1) *General rule.* In the case of a taxpayer other than a corporation, there shall be allowed as a deduction an amount equal to the sum of:

(i) Losses sustained during the taxable year from sales or exchanges of capital assets, plus

(ii) The aggregate of all losses sustained in other taxable years which are treated either as a short-term capital loss or as a long-term capital loss in such taxable year pursuant to section 1212(b), but only to the extent of gains from sales or exchanges of capital assets in such taxable year, plus (if such losses exceed such gains) the additional allowance or transitional additional allowance deductible under section 1211(b) from ordinary income for such taxable year. The additional allowance deductible under section 1211(b) shall be determined by application of subparagraph (2) of this paragraph, and the transitional additional allowance by application of subparagraph (3) of this paragraph.

(2) *Additional allowance.* Except as otherwise provided by subparagraph (3) of this paragraph, the additional allowance deductible under section 1211(b) for taxable years beginning after December 31, 1969, shall be the least of:

(i) The taxable income for the taxable year reduced, but not below zero, by the zero bracket amount (in the case of taxable years beginning before January 1, 1977, the taxable income for the taxable year);

(ii) \$3,000 (\$2,000 for taxable years beginning in 1977; \$1,000 for taxable years beginning before January 1, 1977); or

(iii) The sum of the excess of the net short-term capital loss over the net long-term capital gain, plus one-half of the excess of the net long-term capital loss over the net short-term capital gain.

(3) *Transitional additional allowance—*
(i) *In general.* If, pursuant to the provisions of § 1.1212-1(b) and subdivision (iii) of this subparagraph, there is carried to the taxable year from a taxable year beginning before January 1, 1970, a long-term capital loss, and if for the taxable year there is an excess of net long-term capital loss over net short-term capital gain, then, in lieu of the additional allowance provided by subparagraph (2) of this paragraph, the transitional additional allowance deductible under section 1211(b) shall be the least of:

(a) The taxable income for the taxable year reduced, but not below zero, by the zero bracket amount (in the case of taxable years beginning before January 1, 1977, the taxable income for the taxable year);

(b) \$3,000 (\$2,000 for taxable years beginning in 1977; \$1,000 for taxable years beginning before January 1, 1977); or

(c) The sum of the excess of the net short-term capital loss over the net long-term capital gain; that portion of the excess of the net long-term capital loss over the net short-term capital gain computed as provided in subdivision (ii) of this subparagraph; plus one-half of the remaining portion of the excess of the net long-term capital loss over the net short-term capital gain.

(ii) *Computation of specially treated portion of excess long-term capital loss over net short-term capital gain.* In determining the transitional additional allowance deductible as provided by this subparagraph, there shall be applied thereto in full on a dollar-for-dollar basis the excess of net long-term capital loss over net short-term capital gain (computed with regard to capital losses carried to the taxable year) to the extent that the long-term capital losses carried to the taxable year from taxable years beginning before January 1, 1970, as provided by § 1.1212-1(b) and subdivision (iii) of this subparagraph, exceed the sum of (a) the portion of the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) actually realized in the taxable year (i.e., computed without regard to capital losses carried to the taxable year) which consists of net long-term capital gain actually realized in the taxable year, plus (b) the

amount by which the portion of the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) actually realized in the taxable year (i.e., computed without regard to capital losses carried to the taxable year) which consists of net short-term capital gain actually realized in the taxable year exceeds the total of short-term capital losses carried to the taxable year from taxable years beginning before January 1, 1970, as provided by § 1.1212-1(b) and subdivision (iv) of this subparagraph.

The amount by which the net long-term capital losses carried to the taxable year from taxable years beginning before January 1, 1970, exceeds the sum of (a) plus (b) shall constitute the *transitional net long-term capital loss component* for the taxable year for the purpose of this subparagraph.

(iii) *Carryover of certain long-term capital losses not utilized in computation of transitional additional allowance.* If for a taxable year beginning after December 31, 1969, the transitional net long-term capital loss component determined as provided in subdivision (ii) of this subparagraph exceeds the amount of such component applied to the transitional additional allowance for the taxable year as provided by subdivision (i) of this subparagraph and subparagraph (4)(ii) of this paragraph, then such excess shall for the purposes of this subparagraph be carried to the succeeding taxable year as long-term capital losses from taxable years beginning before January 1, 1970, for utilization in the computation of the transitional additional allowance in the succeeding taxable year as provided in subdivisions (i) and (ii) of this subparagraph. In no event, however, shall the amount of such component carried to the following taxable year as otherwise provided by this subdivision exceed the total of net long-term capital losses actually carried to such succeeding taxable year pursuant to section 1212(b) and § 1.1212-1(b).

(iv) *Carryover of certain short-term capital losses not utilized in computation of additional allowance or transitional additional allowance.* If for a taxable year beginning after December 31, 1969, the total short-term capital losses carried to such year from taxable years

beginning before January 1, 1970, as provided by § 1.1212-1(b) and this subdivision exceed the sum of:

(a) The portion of the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) actually realized in the taxable year (i.e., computed without regard to capital losses carried to the taxable year) which consists of net short-term capital gain actually realized in the taxable year, plus

(b) The amount by which the portion of the capital gain net income (net capital gain for taxable years beginning before January 1, 1977) actually realized in the taxable year (i.e., computed without regard to capital losses carried to the taxable year) which consists of net long-term capital gain actually realized in the taxable year exceeds the total long-term capital losses carried to the taxable year from taxable years beginning before January 1, 1970, as provided in § 1.1212-1(b) and subdivision (iii) of this subparagraph,

then such excess shall constitute the *transitional net short-term capital loss component* for the taxable year, and to the extent such component also exceeds the net short-term capital loss applied to the additional allowance (as provided in subparagraphs (2) and (4)(i) of this paragraph) or the transitional additional allowance (as provided by subdivision (i) of this subparagraph and subparagraph (4)(i) of this paragraph) for the taxable year shall be carried to the succeeding taxable year as short-term capital losses from taxable years beginning before January 1, 1970, for utilization in such succeeding taxable year in the computation of the additional allowance (as provided by subparagraph (2) of this paragraph) or the transitional additional allowance (as provided by subdivision (i) and (ii) of this subparagraph). In no event, however, shall the amount of such component so carried to the following taxable year as otherwise provided by this subdivision exceed the total of net short-term capital losses actually carried to such succeeding taxable year pursuant to section 1212(b) and § 1.1212-1(b).

(v) *Scope of rules.* The rules provided by this subparagraph are for the purpose of computing the amount of the

transitional additional allowance deductible for the taxable year pursuant to the provisions of section 1212(b)(3) and this subparagraph. More specifically, their operation permits the limited use of a long-term capital loss carried to the taxable year from a taxable year beginning before December 31, 1969, in full on a dollar-for-dollar basis in computing the transitional additional allowance deductible for the taxable year. These rules have no application to, or effect upon, a determination of the character or amount of capital gain net income (net capital gain for taxable years beginning before January 1, 1977) reportable in the taxable year. See paragraph (b)(1) of this section and § 1.1212-1 for the determination of the amount and character of capital gains and losses reportable in the taxable year. Further, except to the extent that their application may affect the amount of the transitional additional allowance deductible for the taxable year and thus the amount to be treated as short-term capital loss for carryover purposes under section 1212(b) and § 1.1212-1(b)(2), these rules have no effect upon a determination of the character or amount of capital losses carried to or from the taxable year pursuant to section 1212(b) and § 1.1212-1(b).

(4) *Order of application of capital losses to additional allowance or transitional additional allowance.* In applying the excess of the net short-term capital loss over the net long-term capital gain and the excess of the net long-term capital loss over the net short-term capital gain to the additional allowance or transitional additional allowance deductible under section 1211(b) and this paragraph, such excesses shall, subject to the limitations of subparagraph (2) or (3) of this paragraph, be used in the following order:

(i) First, there shall be applied to the additional allowance or transitional additional allowance the excess, if any, of the net short-term capital loss over the net long-term capital gain.

(ii) Second, if such transitional additional allowance exceeds the amount so applied thereto as provided in subdivision (i) of this subparagraph, there shall next be applied thereto as provided in subparagraph (3) of this paragraph the excess, if any, of the net

long-term capital loss over the net short-term capital gain to the extent of the transitional net long-term capital loss component for the taxable year computed as provided by subdivision (ii) of subparagraph (3) of this paragraph.

(iii) Third, if such additional allowance or transitional additional allowance exceeds the sum of the amounts so applied thereto as provided in subdivisions (i) and (ii) of this subparagraph, there shall be applied thereto one-half of the balance, if any, of the excess net long-term capital loss not applied pursuant to the provisions of subdivision (ii) of this subparagraph.

(5) *Taxable years beginning prior to January 1, 1970.* For any taxable year beginning prior to January 1, 1970, subparagraphs (2) and (3) of this paragraph shall not apply and losses from sales or exchanges of capital assets shall be allowed as a deduction only to the extent of gains from such sales or exchanges, plus (if such losses exceed such gains) the taxable income of the taxpayer or \$1,000, whichever is smaller.

(6) *Special rules.* (i) For purposes of section 1211(b) and this paragraph, taxable income is to be computed without regard to gains or losses from sales or exchanges of capital assets and without regard to the deductions provided in section 151 (relating to personal exemptions) or any deduction in lieu thereof. For example, the deductions available to estates and trusts under section 642(b) are in lieu of the deductions allowed under section 151, and, in the case of estates and trusts, are to be added back to taxable income for the purposes of section 1211(b) and this paragraph.

(ii) For taxable years beginning before January 1, 1976, in case the tax is computed under section 3 and the regulations thereunder (relating to optional tax tables for individuals), the term *taxable income* as used in section 1211(b) and this paragraph shall be read as *adjusted gross income*.

(iii) In the case of a joint return, the limitation under section 1211(b) and this paragraph, relating to the allowance of losses from sales or exchanges of capital assets, is to be computed and the net capital loss determined with respect to the combined taxable income

and the combined capital gains and losses of the spouses.

(7) *Married taxpayers filing separate returns*—(i) *In general.* In the case of a husband or a wife who files a separate return for a taxable year beginning after December 31, 1969, the \$3,000, \$2,000, and \$1,000 amounts specified in subparagraphs (2)(ii) and (3)(i)(b) of this paragraph shall instead be \$1,500, \$1,000, and \$500, respectively.

(ii) *Special rule.* If, pursuant to the provisions of § 1.1212-1(b) and subparagraph (3) (iii) or (iv) of this paragraph, there is carried to the taxable year from a taxable year beginning before January 1, 1970, a short-term capital loss or a long-term capital loss, the \$1,500, \$1,000 and \$500 amounts specified in subdivision (i) of this subparagraph shall instead be maximum amounts of \$3,000, \$2,000, and \$1,000 respectively, equal to \$1,500, \$1,000, and \$500, respectively, plus the total of the transitional net long-term capital loss component for the taxable year computed as provided by subparagraph (3)(ii) of this paragraph and the transitional net short-term capital loss component for the taxable year computed as provided by subparagraph (3)(iv) of this paragraph.

(8) *Examples.* The provisions of section 1211(b) may be illustrated by the following examples:

Example 1. A. an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1970:

Taxable income exclusive of capital gains and losses	\$4,400
Deduction provided by section 151	625
<hr/>	
Taxable income for purposes of section 1211(b) ..	5,025
Long-term capital gain	\$1,200
Long-term capital loss	(5,300)
<hr/>	
Net long-term capital loss	(4,100)
Losses to the extent of gains	(1,200)
Additional allowance deductible under section 1211(b)	1,000

The net long-term capital loss of \$4,100 is deductible in 1970 only to the extent of an additional allowance of \$1,000 which is smaller than the taxable income of \$5,025. Under section 1211(b) and subparagraph (2) of this paragraph, \$2,000 of excess net long-term capital loss was required to produce the \$1,000 additional allowance. Therefore, a net long-term capital loss of \$2,100 (\$4,100 minus \$2,000) is carried over under section 1212(b) to the succeeding taxable year. If A had the

same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions in 1977, the additional allowance would be \$2,000, and a net long-term capital loss of \$100 would be carried over. For a taxable year beginning in 1978 or thereafter, these facts would give rise to a \$2,050 additional allowance and no carry-over.

Example 2. B. an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1970:

Taxable income exclusive of capital gains and losses	\$90
Deduction provided by section 151 ...	625
<hr/>	
Taxable income for purposes of section 1211(b)	715
Long-term capital gain	\$1,200
Long-term capital loss	(5,200)
<hr/>	
Net long-term capital loss	(4,000)
Losses to the extent of gains	(1,200)
Additional allowance deductible under section 1211(b)	715

The net long-term capital loss of \$4,000 is deductible in 1970 only to the extent of an additional allowance of \$715, since the \$715 of taxable income for purposes of section 1211(b) is smaller than \$1,000. Under section 1211(b) and subparagraph (2) of this paragraph, \$1,430 of net long-term capital loss was required to produce the \$715 additional allowance. Therefore, a net long-term capital loss of \$2,570 (\$4,000 minus \$1,430) is carried over under section 1212(b) to the succeeding taxable year. For illustration of the result if the net capital loss for the taxable year is smaller than both \$1,000 and taxable income for the purposes of section 1211(b), see examples (3) and (4) of this subparagraph. For carry-over of a net capital loss, see § 1.1212-1. Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for taxable years beginning in 1977 or thereafter, the same result would be reached.

Example 3. A. an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1971:

Taxable income exclusive of capital gains and losses	\$13,300
Deduction provided by section 151 ...	675
<hr/>	
Taxable income for purposes of section 1211(b)	13,975
Long-term capital gain	\$400
Long-term capital loss	(\$600)
<hr/>	
Net long-term capital loss	(200)
<hr/>	
Short-term capital gain	900
Short-term capital loss	(1,400)
<hr/>	
Net short-term capital loss	(500)

Internal Revenue Service, Treasury

§ 1.1211-1

Losses to extent of gains	(1,300)	
Additional allowance deductible under section 1211(b)		\$600

The \$600 additional allowance deductible under section 1211(b) is the least of: (i) Taxable income of \$13,975, (ii) \$1,000, or (iii) the sum of the excess of the net short-term capital loss of \$500 over the net long-term capital gain, plus one-half of the excess of the net long-term capital loss of \$200 over the net short-term capital gain. The \$600 additional allowance, therefore, consists of the net short-term capital loss of \$500, plus \$100 (one-half of the net long-term capital loss of \$200), the total of which is smaller than both \$1,000 and taxable income for purposes of section 1211(b). No amount of net capital loss remains to be carried over under section 1212(b) to the succeeding taxable year since the entire amount of the net short-term capital loss of \$500 plus the entire amount of the net long-term capital loss of \$200 required to produce \$100 of the deduction was absorbed by the additional allowance deductible under section 1211(b) for 1971. Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for taxable years beginning in 1977 or thereafter, the result would remain unchanged.

Example 4. A, a married individual filing a separate return with one exemption allowable as a deduction under section 151, has the following transactions in 1971:

Taxable income exclusive of capital gains and losses	\$12,000	
Deduction provided by section 151		675
<hr/>		
Taxable income for purposes of section 1211(b)	12,675	
Long-term capital loss	(\$800)	
Long-term capital gain		300
<hr/>		
Net long-term capital loss	(500)	
<hr/>		
Short-term capital loss	(500)	
Short-term capital gain		600
<hr/>		
Net short-term capital gain		100
<hr/>		
Losses to the extent of gains		(900)
Additional allowance deductible under section 1211(b)		200

The excess net long-term capital loss of \$400 (net long-term capital loss of \$500 minus net short-term capital gain of \$100) is deductible in 1971 only to the extent of an additional allowance of \$200 (one-half of \$400) which is smaller than both \$500 (married taxpayer filing a separate return for a taxable year beginning after December 31, 1969) and taxable income for purposes of section 1211(b). Since there is no net short-term capital loss in excess of net long-term capital gains for the taxable year, the \$200 additional allowance deductible under section 1211(b) consists en-

tirely of excess net long-term capital loss. No amount of net capital loss remains to be carried over under section 1212(b) to the succeeding taxable year. Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for taxable years beginning in 1977 or thereafter, the result would remain unchanged.

Example 5. A, an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1970:

Taxable income exclusive of capital gains and losses	\$13,300
Deduction provided by section 151	625
<hr/>	
Taxable income for purposes of section 1211(b)	13,925
Long-term capital loss	(\$6,000)
Long-term capital gain	2,000
<hr/>	
Net long-term capital loss	(4,000)
<hr/>	
Short-term capital gain	3,000
Short-term capital loss carried to 1970 from 1969 under section 1212(b)(1)	(3,000)
<hr/>	
Net short-term capital loss	0
<hr/>	
Losses to the extent of gains	(5,000)
Additional allowance deductible under section 1211(b)	1,000

The \$1,000 additional allowance deductible under section 1211(b) is the least of (i) taxable income of \$13,925, (ii) \$1,000, or (iii) the sum of the net short-term capital loss (\$0) plus one-half of the net long-term capital loss of \$4,000. The \$1,000 additional allowance, therefore, consists of net long-term capital loss. Since \$2,000 of the net long-term capital loss of \$4,000 was required to produce the \$1,000 additional allowance, the \$2,000 balance of the net long-term capital loss is carried over under section 1212(b) to 1971. Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for taxable years beginning in 1977 or thereafter, the additional allowance would be \$2,000, and there would be no carry-over.

Example 6. A, an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1970:

Taxable income exclusive of capital gains and losses	\$13,300
Deduction provided by section 151	625
<hr/>	
Taxable income for purposes of section 1211(b) ..	13,925
Long-term capital gain	\$5,000
Long-term capital loss	(7,000)
Long-term capital loss carried to 1970 from 1969 under section 1212 (b)(1)	(500)
<hr/>	
Net long-term capital Loss	(2,500)

§ 1.1211-1

26 CFR Ch. I (4-1-04 Edition)

Short-term capital gain	1,100
Short-term capital loss	(1,400)
	<hr/>
Net short-term capital loss	(300)
	<hr/>
Losses to extent of gains	(6,100)
Transitional additional allowance de- ductible under section 1211(b)	1,000
	<hr/>

Transitional additional allowance de- ductible under section 1211(b)	1,000
	<hr/>

Because a component of the net long-term capital loss for 1970 is a \$500 long-term capital loss carried to 1970 from 1969, the transitional additional allowance deductible under section 1211(b) and subparagraph (3) of this paragraph is the least of (i) taxable income of \$13,925, (ii) \$1,000 or (iii) the sum of the net short-term capital loss of \$300, plus the net long-term capital loss for 1970, to the extent of the \$500 long-term capital loss carried to 1970 from 1969 and one-half of the \$2,000 balance of the net long-term capital loss. The entire \$500 long-term capital loss carried to 1970 from 1969 is applicable in full to the transitional additional allowance because there was no net capital gain (capital gain net income for taxable years beginning after December 31, 1976) actually realized in 1970. The \$1,000 transitional additional allowance, therefore, consists of the net short-term capital loss of \$300, the \$500 long-term capital loss carried to 1970 from 1969, plus one-half of enough of the balance of the 1970 net long-term capital loss (\$400) to make up the \$200 balance of the \$1,000 transitional additional allowance. A long-term capital loss of \$1,600 (\$2,500 minus \$900), all of which is attributable to 1970, is carried over under section 1212(b) to 1971. Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for taxable years beginning in 1977 or thereafter, the transitional additional allowance would be \$1,800. No amount would remain to be carried over to the succeeding taxable year.

Example 7. A, an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1970:

Taxable income exclusive of capital gains and losses	\$13,300
Deduction provided by section 151	625
	<hr/>
Taxable income for purposes of section 1211(b) ..	13,925
Long-term capital loss	(\$2,000)
Long-term capital loss carried to 1970 from 1969 under section 1212 (b)(1)	(500)
	<hr/>
Net long-term capital loss	(2,500)
	<hr/>
Short-term capital gain	2,600
Short-term capital loss carried to 1970 from 1969 under section 1212 (b)(1)	(3,000)
	<hr/>
Net short-term capital loss	(400)
	<hr/>
Losses to the extent of gains	(2,600)

Because a component of the net long-term capital loss for 1970 is a \$500 long-term capital loss carried to 1970 from 1969, the transitional additional allowance deductible under section 1211(b) and subparagraph (3) of this paragraph is the least of (i) taxable income of \$13,925, (ii) \$1,000, or (iii) the sum of the net short-term capital loss of \$400, plus the net long-term capital loss for 1970 to the extent of the \$500 long-term capital loss carried to 1970 from 1969, and one-half of the \$2,000 balance of the net long-term capital loss. The entire \$500 long-term capital loss carried to 1970 from 1969 is applicable in full to the transitional additional allowance because the net capital gain (capital gain net income for taxable years beginning after December 31, 1976) for the taxable year (computed without regard to capital losses carried to the taxable year) consisted entirely of net short-term capital gain not in excess of the short-term capital loss carried to 1970 from 1969. The \$1,000 transitional additional allowance, therefore, consists of the net short-term capital loss of \$400, the \$500 long-term capital loss carried to 1970 from 1969, plus one-half of enough of the balance of the 1970 net long-term capital loss (\$200) to make up the \$100 balance of the \$1,000 transitional additional allowance. A long-term capital loss of \$1,800 (\$2,500 minus \$700), all of which is attributable to 1970, is carried over under section 1212(b) to 1971. Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for taxable years beginning in 1977 or thereafter, the transitional additional allowance would be \$1,900. No amount would remain to be carried over to the succeeding taxable year.

Example 8. Assume the facts in Example (7) but assume that the individual with one exemption allowable as a deduction under section 151 is married and files a separate return for 1970. The maximum transitional additional allowance to which the individual would be entitled for 1970 pursuant to subparagraph (7)(ii) of this paragraph would be the sum of \$500 plus (i) \$2,400 of the short-term capital loss of \$3,000 carried to 1970 from 1969 (the amount by which such carry-over exceeds the \$600 net capital gain (capital gain net income for taxable years beginning after December 31, 1976) actually realized in 1970, all of which is net short-term capital gain) and (ii) the \$500 long-term capital loss carried to 1970 from 1969. However, since this sum (\$3,400) exceeds \$1,000, the maximum transitional additional allowance to which the individual is entitled for 1970 is limited to \$1,000. If for 1971, the same married individual had taxable income of \$13,925 for purposes of section 1211(b) and no capital

transactions, and filed a separate return, the additional allowance deductible under section 1211(b) for 1971 would be limited to \$500 by reason of subdivision (i) of subparagraph (7) of this paragraph, since, as illustrated in Example 7, no part of the capital loss carried over to 1971 under section 1212 (b) is attributable to 1969. Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions as in example (7) for a married individual filing a separate return for a taxable year beginning in 1977 or thereafter, the transitional additional allowance would be \$1,900. No amount would remain to be carried over to the succeeding taxable year.

Example 9. B, an unmarried individual with one exemption allowable as a deduction under section 151, has the following transactions in 1971:

Taxable income exclusive of capital gains and losses	\$10,000
Deductions provided by section 151	675
<hr/>	
Taxable income for purposes of section 1211(b) ..	10,675
Long-term capital gain	\$2,500
Long-term capital loss treated under § 1.1211-1 (b)(3)(iii) as carried over from 1969	(5,000)
<hr/>	
Net long-term capital loss	(2,500)
Short-term capital gain	2,700
Short-term capital loss carried to 1971 from 1970 under section 1212 (b)(1)	(1,000)
Short-term capital loss treated under § 1.1211-1 (b)(3)(iv) as carried over from 1969	(\$2,000)
<hr/>	
Net short-term capital loss	(300)
Losses to extent of gain	(5,200)
Transitional additional allowance deductible under section 1211(b)	1,000
<hr/>	

Because a component of the net long-term capital loss for 1971 is a long-term capital loss treated under subparagraph (3)(iii) of this paragraph as carried over from 1969, the rules for computation of the transitional additional allowance under subparagraph (3) (i) and (ii) of this paragraph apply. The *transitional net long-term capital loss component* for 1971 under subparagraph (3)(ii) of this paragraph is \$1,800, that is, the amount by which the \$5,000 long-term loss treated as carried over from 1969 to 1971 exceeds (a) the net long-term capital gain of \$2,500 actually realized in 1971 plus (b) the \$700 excess of the \$2,700 net short-term capital gain actually realized in 1971 over the \$2,000 short-term capital loss treated as carried over to 1971 from 1969. The transitional additional allowance for 1971 consists of the \$300 net short-term capital loss plus \$700 of the net long-term capital loss attributable to 1969. A net long-term capital loss of \$1,800 (\$2,500 minus

\$700) is carried over to 1972 under section 1212(b). Only \$1,100 of the \$1,800 will be treated in 1972 as carried over from 1969 since under subparagraph (3)(iii) of this paragraph the *transitional net long-term capital loss component* of \$1,800 is reduced by the amount (\$700) applied to the transitional additional allowance for 1971. Assuming the same taxable income for purposes of section 1211(b) (after reduction by the zero bracket amount) and the same transactions for a taxable year beginning in 1977, the transitional additional allowance would be \$2,000. A net long-term capital loss of \$800 would remain to be carried over. Of this amount \$100 would be treated as carried over from 1969. Assuming the original facts for a taxable year beginning in 1978, the transitional additional allowance would be \$2,450. No amount would remain to be carried over to the succeeding taxable year.

[T.D. 7301, 39 FR 964, Jan. 4, 1974; 39 FR 2758, Jan. 24, 1974, as amended by T.D. 7597, 44 FR 12419, Mar. 7, 1979; T.D. 7728, 45 FR 72650, Nov. 3, 1980]

§ 1.1212-1 Capital loss carryovers and carrybacks.

(a) *Corporations; other taxpayers for taxable years beginning before January 1, 1964—*(1) *Regular net capital loss sustained for taxable years beginning before January 1, 1970.* (i) A corporation sustaining a net capital loss for any taxable year beginning before January 1, 1970, and a taxpayer other than a corporation sustaining a net capital loss for any taxable year beginning before January 1, 1964, shall carry over such net loss to each of the 5 succeeding taxable years and treat it in each of such 5 succeeding taxable years as a short-term capital loss to the extent not allowed as a deduction against any net capital gains (capital gain net income for taxable years beginning after December 31, 1976) of any taxable years intervening between the taxable year in which the net capital loss was sustained and the taxable year to which carried. The carryover is thus applied in each succeeding taxable year to offset any net capital gain in such succeeding taxable year. The amount of the capital loss carryover may not be included in computing a new net capital loss of a taxable year which can be carried over to the next 5 succeeding taxable years. For purposes of this subparagraph, a net capital gain (capital gain net income for taxable years beginning after December 31, 1976) shall