

the aggregate of such deductions for the taxable year and the four preceding taxable years in the hands of the transferor immediately before the disposition.

(ii) Upon a subsequent disposition by the transferee (including a computation of potential gain as defined in paragraph (b)(2)(ii) of § 1.1251-1), such deductions in the hands of the transferee shall be treated as having been allowable with respect to the transferee in the same taxable year they were allowable to the transferor, and

(iii) If the taxable years of the transferor and transferee regularly end on different dates, then the aggregate of such deductions allowable for taxable year with respect to the transferor shall be treated in the hands of the transferee as allowable in the transferee's taxable year in which the taxable year of the transferor regularly ends.

(2) *Certain partially tax-free transfers.* If farm recapture property which is land is disposed of in a transaction which either is in part a sale or exchange and in part a gift to which paragraph (a)(2) of this section applies, or is a partially tax-free transfer to which section 1251(b)(5)(A) applies, then for purposes of section 1251:

(i) The amount determined under subparagraph (1)(i) of this paragraph shall be reduced by the amount of gain taken into account under sections 1251(c) and 1252(a) to the extent such gain is attributable to the sections 175 and 182 deductions for the taxable year and the preceding four taxable years (determined by attributing gain under section 1252(a) to the oldest years first) by the transferor upon the disposition, and

(ii) For purposes of subparagraph (1)(ii) of this paragraph, the amount of such gain recognized under sections 1251(c) and 1252(a) shall reduce the aggregate of deductions allowable under sections 175 and 182 for the taxable year and each of the preceding four taxable years on a pro rata basis.

(3) *Examples.* The provisions of subparagraphs (1) and (2) of this paragraph may be illustrated by the following examples:

Example 1. Assume the same facts as in example (1) of paragraph (a)(4) of this section.

Therefore, on the date B receives the land in the gift transaction, under subparagraph (1) (i) and (ii) of this paragraph, the aggregate of the deductions allowable under sections 175 and 182 in respect of the land in the hands of B is the amount in the hands of A, \$24,000, and for purposes of applying section 1251 upon a subsequent disposition by B (including the computation of potential gain) such deductions in the hands of B shall be treated as allowable in the same year as they were allowable to A. Thus, in respect to the land in the hands of B, the allowable section 175 and 182 deductions of \$3,000 shall be treated as allowable in 1975.

Example 2. Assume the same facts as in example (2) of Paragraph (a)(4) of this section. Under paragraph (2) of this paragraph, the aggregate of the allowable sections 175 and 182 deductions with respect to the land which pass over to B for purposes of section 1251 is zero (\$3,000 deduction allowable under sections 175 and 182 for the taxable year and the four preceding taxable years minus \$3,000 gain taken into account by A in accordance with example (2) of paragraph (a)(4) of this section).

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§ 1.1252-1 General rule for treatment of gain from disposition of farm land.

(a) *Ordinary income—(1) General rule.*
(i) Except as otherwise provided in this section and § 1.1252-2, if farm land is disposed of during a taxable year beginning after December 31, 1969, then under section 1252(a)(1) there shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 (that is, shall be recognized as ordinary income) the lower of:

(a) The applicable percentage of the amount computed in subdivision (ii) of this subparagraph, or

(b) The amount computed in subdivision (iii) of this subparagraph.

(ii) The amount computed in this subdivision is an amount equal to:

(a) The aggregate of the deductions allowed, in any taxable year any day of which falls within the period the taxpayer held (or is considered to have held) the farm land, under sections 175 (relating to soil and water conservation expenditures) and 182 (relating to expenditures by farmers for clearing land) for expenditures paid or incurred after December 31, 1969, with respect to the farm land disposed of, minus

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(b) The amount of gain recognized as ordinary income under section 1251(c)(1) (relating to gain from disposition of property used in farming where farm losses offset nonfarm income) upon such disposition of such land.

(iii) The amount computed in this subdivision is an amount equal to:

(a) The gain realized, that is, the excess of the amount realized (in the case of a sale, exchange, or involuntary conversion) or the fair market value of the farm land (in the case of any other disposition), over the adjusted basis of the farm land, minus

(b) The amount of gain recognized as ordinary income under section 1251(c)(1) upon such disposition of such land.

(iv) If a deduction under section 175 is allowed in respect of the farm land disposed of for a taxable year every day of which falls within the period after the taxpayer held (or is considered to have held) the farm land, and if the deduction is attributable to expenditures paid or incurred after December 31, 1969, with respect to such land during the period the taxpayer held (or is considered to have held) the land, then the amount of such deduction shall be applied to increase the amount computed (without regard to this subdivision) under subdivision (ii)(a) of this subparagraph.

(2) *Application of section.* Any gain treated as ordinary income under section 1252(a)(1) shall be recognized as ordinary income notwithstanding any other provision of subtitle A of the Code. For special rules with respect to the application of section 1252, see § 1.1252-2. For the relation of section 1252 to other provisions see paragraph (d) of this section.

(3) *Meaning of terms.* For purposes of section 1252:

(i) The term *farm land* means any land with respect to which deductions have been allowed under section 175 or 182. See section 1252(a)(2).

(ii) The period for which farm land shall be considered to be held shall be determined under section 1223.

(iii) The term *disposition* shall have the same meaning as in paragraph (a)(3) of § 1.1245-1.

(iv) The applicable percentage shall be determined as follows:

If the farm land is disposed of—	The applicable percentage is—
Within 5 years after the date it was acquired	100 percent.
Within the sixth year after it was acquired	80 percent.
Within the seventh year after it was acquired	60 percent.
Within the eighth year after it was acquired.	40 percent.
Within the ninth year after it was acquired.	20 percent.
Within the 10th year after it was acquired and thereafter.	0 percent.

(4) *Portion of parcel.* The amount of gain to be recognized as ordinary income under section 1252(a)(1) shall be determined separately for each parcel of farm land in a manner consistent with the principles of subparagraphs (4) and (5) of § 1.1245-1(a) (relating to gain from disposition of certain depreciable property). If (i) only a portion of a parcel of farm land is disposed of in a transaction, or if two or more portions of a single parcel are disposed of in one transaction, and (ii) the aggregate of the deductions allowed under sections 175 and 182 with respect to any such portion cannot be established to the satisfaction of the Commissioner or his delegate, then the aggregate of the deductions in respect of the entire parcel shall be allocated to each portion in proportion to the fair market value of each at the time of the disposition.

(b) *Instances of non-application—*(1) *In general.* Section 1252 does not apply if a taxpayer disposes of farm land for which the holding period is in excess of 9 years or with respect to which no deductions have been allowed under sections 175 and 182.

(2) *Losses.* Section 1252(a)(1) does not apply to losses. Thus, section 1252(a)(1) does not apply if a loss is realized upon a sale, exchange, or involuntary conversion of property, all of which is farm land, nor does the section apply to a disposition of such property other than by way of sale, exchange, or involuntary conversion if at the time of the disposition the fair market value of such property is not greater than its adjusted basis.

(c) *Treatment of partnerships and partners.* [Reserved]

(d) *Relation of section 1252 to other provisions—*(1) *General.* The provisions of section 1252 apply notwithstanding any other provisions of subtitle A of the

Code. Thus, unless an exception or limitation under §1.1252-2 applies, gain under section 1252(a)(1) is recognized notwithstanding any contrary non-recognition provision or income characterizing provision. For example, since section 1252 overrides section 1231 (relating to property used in the trade or business), the gain recognized under section 1252(a)(1) upon a disposition of farm land will be treated as ordinary income and only the remaining gain, if any, from the disposition may be considered as gain from the sale or exchange of a capital asset if section 1231 is applicable. See example (1) of paragraph (e) of this section.

(2) *Nonrecognition sections overridden.* The nonrecognition of gain provisions of subtitle A of the Code which section 1252 overrides include, but are not limited to, sections 267(d), 311(a), 336, 337, and 512(b)(5). See §1.1252-2 for the extent to which section 1252(a)(1) overrides sections 332, 351, 361, 371(a), 374(a), 721, 731, 1031, and 1033.

(3) *Installment method.* Gain from a disposition to which section 1252(a)(1) applies may be reported under the installment method if such method is otherwise available under section 453 of the Code. In such case, the income (other than interest) on each installment payment shall (i) first be deemed to consist of gain to which section 1251(c)(1) applies (if applicable) until all such gain has been reported, (ii) the next portion (if any) of such income shall be deemed to consist of gain to which section 1252(a)(1) applies until all such gain has been reported, and (iii) finally the remaining portion (if any) of such income shall be deemed to consist of gain to which neither section 1251(c)(1) nor 1252(a)(1) applies. For treatment of amounts as interest on certain deferred payments, see section 483.

(4) *Exempt income.* With regard to exempt income, the principles of paragraph (e) of §1.1245-6 shall be applicable.

(5) *Treatment of gain not recognized under section 1252(a)(1).* For treatment of gain not recognized under this section, the principles of paragraph (f) of §1.1245-6 shall be applicable.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. Individual A uses the calendar year as his taxable year. On April 10, 1975, he sells for \$75,000 a parcel of farm land which he had acquired on January 5, 1970, with an adjusted basis of \$52,500 for a realized gain of \$22,500. The aggregate of the deductions allowed under sections 175 and 182 with respect to such land is \$18,000 and all of such amount was allowed for 1970. Under the stated facts, none of the \$22,500 gain realized is recognized as ordinary income under section 1251(c)(1) as there is no potential gain (as defined in section 1251(e)(5)) with respect to the farm land. Since no gain is recognized as ordinary income under section 1251(c)(1), and since the applicable percentage, 80 percent, of the aggregate of the deductions allowed under sections 175 and 182, \$18,000, or \$14,400, is lower than the gain realized, \$22,500, the amount of gain recognized as ordinary income under section 1252(a)(1) is \$14,400. The remaining \$8,100 of the gain may be treated as gain from the sale or exchange of property described in section 1231.

Example 2. Assume the same facts as in example (2) of paragraph (b)(6) of §1.1251-1. Assume further that the aggregate of the amount of sections 175 and 182 deductions allowable to the M corporation is equal to the amount allowed. Under paragraph (a)(1) of the section, \$5,000 is recognized as ordinary income under section 1252(a)(1) upon the disposition of the land as a dividend, computed as follows:

(1) Aggregate of deductions allowed under sections 175 and 182	\$18,000
(2) Minus: Gain recognized as ordinary income under section 1251(c)(1)	\$13,000
(3) Difference	\$5,000
(4) Multiply: Applicable percentage for property disposed of within the fifth year after it was acquired	100%
(5) Amount in paragraph (a)(1)(i)(a) of this section	\$5,000
(6) Gain realized (fair market value \$67,500, less adjusted basis, \$45,000)	\$22,500
(7) Minus: Amount in line (2)	\$13,000
(8) Amount in paragraph (a)(1)(i)(b) of this section	\$9,500
(9) Lower of line (5) or line (8)	\$5,000

The *gain realized*, \$22,500, minus the sum of the gain recognized as ordinary income under section 1251(c)(1), \$13,000, and under section 1252(a)(1), \$5,000, equals \$4,500. Assuming section 311(d) (relating to certain distributions of appreciated property to redeem stock) does not apply, under section 311(a) the corporation does not recognize gain on account of the \$4,500.

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Example 3. Assume the same facts as in example (2) of this paragraph, except that M contracted to sell the land for \$67,500 which would be paid in 10 equal payments of \$6,750 each, plus a sufficient amount of interest so that section 483 does not apply. Assume further that the remaining gain of \$4,500 is treated as gain from the sale or exchange of property described in section 1231. M properly elects under section 453 to report under the installment method gain of \$13,000 to which section 1251(c)(1) applies, gain of \$5,000 to which section 1252(a)(1) applies, and gain of \$4,500 to which section 1231 applies. Since the total gain realized on the sale was \$22,500, the gross profit realized on each installment payment is \$2,250, i.e., \$6,750×(\$67,500). Accordingly, the treatment of the income to be reported on each installment payment is as follows:

Payment No.	Applicable sections		
	1251	1252	1231
1	\$2,250	.....	.....
2	2,250	.....	.....
3	2,250	.....	.....
4	2,250	.....	.....
5	2,250	.....	.....
6	1,750	\$500	.....
7 .....	.....	2,250	.....
8 .....	.....	2,250	.....
9 .....	.....	.....	\$2,250
10 .....	.....	.....	2,250
Totals	13,000	5,000	4,500

[T.D. 7418, 41 FR 18831, May 7, 1976; 41 FR 23669, June 11, 1976]

§ 1.1252-2 Special rules.

(a) *Exception for gifts*—(1) *General rule.* In general, no gain shall be recognized under section 1252(a)(1) upon a disposition of farm land by gift. For purposes of section 1252 and this paragraph, the term *gift* shall have the same meaning as in paragraph (a) of § 1.1245-4 and, with respect to the application of this paragraph, principles illustrated by the examples of paragraph (a)(2) of § 1.1245-4 shall apply. For reduction in amount of charitable contribution in case of a gift of farm land, see section 170(e) and § 1.170A-4.

(2) *Disposition in part a sale or exchange and in part a gift.* Where a disposition of farm land is in part a sale or exchange and in part a gift, the amount of gain which shall be recognized as ordinary income under section 1252(a)(1) shall be computed under paragraph (a)(1) of § 1.1252-1, applied by treating the gain realized (for purposes

of paragraph (a)(1)(iii)(a) of § 1.1252-1) as the excess of the amount realized over the adjusted basis of the farm land.

(3) *Treatment of farm land in hands of transferee.* See paragraph (f) of this section for treatment of the transferee in the case of a disposition to which this paragraph applies.

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

Example 1. On March 2, 1976, A, a calendar year taxpayer, makes a gift to B of a parcel of land having an adjusted basis of \$40,000, a fair market value of \$65,000, and a holding period of 6 years (A, having purchased the land on January 15, 1971). On the date of such gift, the aggregate of the deductions allowed to A under sections 175 and 182 with respect to the land is \$24,000 with \$21,000 of such amount attributable to 1971. Upon making the gift, A recognizes no gain under section 1251(c)(1) or section 1252(a)(1). See paragraph (a)(1) of § 1.1251-4 and subparagraph 1 of this paragraph. For treatment of the farm land in the hands of B, see example (1) of paragraph (f)(3) of this section. For effect of the gift on the excess deductions accounts of A and of B, see paragraph (e)(2) of § 1.1251-2.

Example 2. (i) Assume the same facts as in example (1), except that A transfers the land to B for \$50,000. Thus, the gain realized is \$10,000 (amount realized, \$50,000, minus adjusted basis, \$40,000), and A has made a gift of \$15,000 (fair market value, \$65,000, minus amount realized, \$50,000).

(ii) Upon the transfer of the land to B, A recognizes \$3,000 of gain under section 1251(c)(1). See example (2) of paragraph (a)(4) of § 1.1251-4. Thus, A recognizes \$7,000 as ordinary income under section 1252(a)(1), computed under subparagraph (2) of this paragraph as follows:

(1) Aggregate of deductions allowed under sections 175 and 182	\$24,000
(2) Minus: Gain recognized as ordinary income under section 1251(c)(1)	\$3,000
(3) Difference	\$21,000
(4) Multiply: Applicable percentage for land disposed of within sixth year after it was acquired	80%
(5) Amount in paragraph (a)(1)(i)(a) of § 1.1252-1	\$16,800
(6) Gain realized (see subdivision (i) of this example)	\$10,000
(7) Minus: Amount in line (2)	\$3,000
(8) Amount in paragraph (a)(1)(i)(b) of § 1.1252-1, applied in accordance with subparagraph (2) of this paragraph	\$7,000
(9) Lower of line (5) or line (8)	\$7,000

Thus, the entire gain realized on the transfer, \$10,000, is recognized as ordinary income