Sales and Other Dispositions of Assets

For use in preparing 2007 Returns

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Important Reminders

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, the fair market value of other property, and any assumed liability). Corporations, partnerships, trusts, and estates also may 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, see Publication 519, U.S. Tax Guide for Aliens.

Foreign source income. If you are a U.S. citizen with income from dispositions of property outside the United States (foreign income), you must report all such income on your tax return unless it is exempt from U.S. law. This is true whether you reside inside or outside the United States and whether or not you receive a Form 1099 from the foreign payor.

Get forms and other information faster and easier by:

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Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

You dispose of property when any of the following occurs.

• You sell property.
• You exchange property for other property.
• Your property is condemned or disposed of under threat of condemnation.
• Your property is repossessed.
• You abandon property.
• You give property away.

This publication explains the tax rules that apply when you dispose of property. It discusses the following topics:

• How to figure a gain or loss.
• Whether your gain or loss is ordinary or capital.
• How to treat your gain or loss when you dispose of business property.
• How to report a gain or loss.

This publication also explains whether your gain is taxable or your loss is deductible. This publication does not discuss certain transactions covered in other IRS publications. These include the following:

• Most transactions involving stocks, bonds, options, forward and futures contracts, and similar investments. See chapter 4 of Publication 550, Investment Income and Expenses.
• Sale of your main home. See Publication 523, Selling Your Home.
• Installment sales. See Publication 537, Installment Sales.
• Transfers of property at death. See Publication 559, Survivors, Executors, and Administrators.

Forms to file. When you dispose of property, you usually will have to file one or more of the following forms.

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

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

Gain or Loss

You can write to us at the following address.

Internal Revenue Service
Business Forms and Publications Branch
SE:W:CAR:MP:T:B
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can call us at 1-800-THE-LOST. (The asterisk must be included in the address.) Please put "Publications Comment" on the subject line. Although we cannot respond individually to each email, we do appreciate your feedback and will consider your comments as we revise our tax products.

1. Gain or Loss

Topics

This chapter discusses:

• Sales and exchanges
• Abandonments
• Foreclosures and repossessions
• Involuntary conversions
• Nontaxable exchanges
• Transfers to spouse
• Rollovers and exclusions for certain capital gains

Useful Items

You may want to see:

Publication

• 523 Selling Your Home
• 537 Installment Sales
• 547 Casualties, Disasters, and Thefts
• 550 Investment Income and Expenses
• 551 Basis of Assets
• 908 Bankruptcy Tax Guide
• 954 Tax Incentives for Distressed Communities

Form (and Instructions)

• Schedule D (Form 1040) Capital Gains and Losses
• 1040 U.S. Individual Income Tax Return
• 1040X Amended U.S. Individual Income Tax Return
• 1099-C Cancellation of Contract
• 1099-C Cancellation of Debt
• 4797 Sales of Business Property
• 8824 Like-Kind Exchanges

See chapter 5 for information about getting publications and forms.

Sales and Exchanges

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. The following discussions describe the kinds of transactions that are treated as sales or exchanges and explain how to figure gain or loss.

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 and a 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 5 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 in the year in which they are received.

Copyright. Payments you receive for granting the exclusive use of (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 payments are 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 the payments are made over the same period as that covering the grantee's use of the copyrighted work.

If the copyright was used in your trade or business and you held it longer than a year, the gain or loss may be a section 1231 gain or loss. For more information, see Section 1231 Gains and Losses in chapter 3.

Easement. The amount received for granting an easement is subtracted from the basis of the property. If only a specific part of the entire tract of property is 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.

Property transferred to satisfy debt. A transfer of property to satisfy a debt is an exchange.

Note’s maturity date extended. The extension of a note’s maturity date is not treated as an exchange of an old note for a new and different note. Also, it is not considered a closed and completed transaction that would result in a gain or loss. However, an extension will be treated as a taxable exchange of the outstanding note for a new and materially different note if the changes in the terms of the note are significant. Each case must be determined by its own facts.

Transfer 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, Bankruptcy Tax Guide.

Gain or Loss From Sales and Exchanges

Gain or loss is usually realized when property is sold or exchanged. A gain is the amount you realize from a sale or exchange of property that is more than its adjusted basis. A loss is the adjusted basis of the property that is more than the amount you realize.

Table 1-1. How To Figure Whether You Have a Gain or Loss

<table>
<thead>
<tr>
<th>IF your...</th>
<th>THEN you have a...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjusted basis is more than the amount realized.</td>
<td>Loss.</td>
</tr>
<tr>
<td>Amount realized is more than the adjusted basis.</td>
<td>Gain.</td>
</tr>
</tbody>
</table>

Basis. You must know the basis of your property to determine whether you have a gain or loss from its sale or other disposition. The basis of property you buy is usually its cost. However, if you acquire the property by gift, inheritance, or in some way other than buying it, you must use a basis other than its cost. See Basis Other Than Cost in Publication 551, Basis of Assets.

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 costs of transferring property to a new owner, such as selling expenses, are 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 (defined below) 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 Treatment of liabilities under Multiple Property Exchanges, 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 are acting with 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. You used a building in your business 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 an FMV 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

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

Gain on sale: $84,000

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 recognized 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. The entire interest in the property is sold, so 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.

Bargain Sale

If you sell or exchange property for less than fair market value with the intent of making a gift, the transaction is partly a sale or exchange and partly a gift. You have a gain if the amount realized is more than your adjusted basis in the property. However, you do not have a loss if the amount realized is less than the adjusted basis of the property.

Bargain sales to charity. A bargain sale of property to a charitable organization is partly a sale or exchange and partly a charitable contribution. If a charitable deduction for the contribution is allowable, you must allocate your bargain sale of property between the part sold and the part contributed based on the fair market value of each. The adjusted basis of the part sold is figured as follows:

Adjusted basis of entire property × Amount realized (fair market value of part sold)
Fair market value of entire property

Based on this allocation rule, you will have a gain even if the amount realized is not more than your adjusted basis in the property. This allocation rule does not apply if a charitable contribution deduction is allowable.

See Publication 526, Charitable Contributions, for information on figuring your charitable contribution.

Example. You sold property with a fair market value of $10,000 to a charitable organization
Abandonments

The abandonment of property is a disposition of property. You abandon property when you voluntarily and permanently give up possession and use of the property with the intention of ending your ownership but without passing it on to anyone else.

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 property’s adjusted basis when abandoned. This rule also applies to leasehold improvements the lessor made for the lessee that were abandoned. However, if the property is later foreclosed on or repossessed, gain or loss is figured as discussed later. The abandonment loss is deducted in the tax year in which the loss is sustained.

You cannot deduct any loss from abandonment of your home or other property held for personal use.

Example. Ann abandoned her home that she bought 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 foreclosed on the loan or repossesses the house, she will have to figure her gain or loss as discussed later 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 canceled debt. This income is separate from any loss realized from abandonment of the property. Individuals, report income from cancellation of a debt related to a business or rental activity as business or rental income. For businesses that receive income from cancellation of a debt, report this income on the company’s tax return.

However, income from cancellation of debt is not taxed if any of the following conditions apply:

1. The cancellation is intended as a gift.
2. The debt is qualified farm debt (see chapter 3 of Publication 225, Farmer’s Tax Guide).
3. The debt is qualified real property business debt (see chapter 5 of Publication 334, Tax Guide for Small Business).
4. You are insolvent or bankrupt (see Publication 503).
5. The debt is qualified principal residence indebtedness.

File Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment), to report the income exclusion.

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, federal government agency, or any organization that has a significant trade or business of lending money. For abandonments of property and debt cancellations occurring in 2007, these forms should be sent to you by January 31, 2008.

Foreclosures and Repossessions

If you do not make payments you owe on a loan secured by property, the lender may foreclose on the loan or repossess the property. The foreclosure or repossession is treated as a sale or exchange from which you may realize gain or loss. This is true even if you voluntarily return the property.
Table 1-2. Worksheet for Foreclosures and Reposessions

Keep for Your Records

| Part 1. | Figure your income from cancellation of debt. (Note: If you are not personally liable for the debt, you do not have income from cancellation of debt. Skip Part 1 and go to Part 2.) |
| 1. Enter the amount of debt canceled by the transfer of property |
| 2. Enter the fair market value of the transferred property |
| 3. Income from cancellation of debt.* Subtract line 2 from line 1. If less than zero, enter zero. |

Part 2. Figure your gain or loss from foreclosure or repossession.

| 4. Enter the smaller of line 1 or line 2. Also include any proceeds you received from the foreclosure sale. (If you are not personally liable for the debt, enter the amount of debt canceled by the transfer of property.) |
| 5. Enter the adjusted basis of the transferred property |
| 6. Gain or loss from foreclosure or repossession. Subtract line 5 from line 4. |

* The income may not be taxable. See Cancellation of debt.

Gain or Loss From Sales and Exchanges, earlier.

You can use Table 1-2 to figure your gain or loss from a foreclosures or repossession.

Amount realized on a nonrecourse debt. If you are not personally liable for repaying the debt (nonrecourse debt) secured by the transferred property, the amount you realize includes the full debt canceled by the transfer. The full canceled debt is included even if the fair market value of the property is less than the canceled debt.

Example 1. Chris bought 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 for the loan (nonrecourse debt), but pledges the new car as security. The credit company repossession the car because he stopped making loan payments. The balance due after taking into account the payments Chris made was $10,000. The fair market value of the car when repossession assessed was $9,000. The amount Chris realized on the repossession is $9,000. That is the amount of debt canceled by the repossession, even though 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 ($9,000) with his adjusted basis ($15,000). He has a $6,000 nondeductible loss.

Example 2. Abena paid $200,000 for her home. She paid $15,000 down and borrowed the remaining $185,000 from a bank. Abena is not personally liable for the loan (nonrecourse debt), but pledges the house as security. The bank foreclosed on the loan because Abena stopped making payments. When the bank foreclosed on the loan, the balance due was $180,000, the fair market value of the house was $170,000, and Abena’s adjusted basis was $175,000 due to a casualty loss she had deducted. The amount Abena 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 ($175,000). She has a $5,000 realized gain.

Amount realized on a recourse debt. If you are personally liable for the debt (recourse debt), the amount realized on the foreclosure or repossession does not include the canceled debt that is your income from cancellation of debt. However, if the fair market value of the transferred property is less than the canceled debt, the amount realized includes the canceled debt up to the fair market value of the property. You are treated as receiving ordinary income from the canceled debt for the part of the debt that is more than the fair market value. See Cancellation of debt, later.

Example 1. Assume the same facts as in the previous Example 1, except Chris is personally liable for the car loan (recourse debt). In this case, the amount he realizes is $9,000. This is the canceled debt ($10,000) up to the car’s fair market value ($9,000). 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. Also he is 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.

Example 2. Assume the same facts as in the previous Example 2, except Abena is personally liable for the loan (recourse debt). In this case, the amount she realizes is $170,000. This is the canceled debt ($180,000) up to the fair market value of the house ($170,000). Abena figures her gain or loss on the foreclosure by comparing the amount realized ($170,000) with her adjusted basis ($175,000). She has a $5,000 nondeductible loss. She is also treated as receiving ordinary income from cancellation of debt. (The debt is not exempt from tax as discussed under Cancellation of debt, below.) That income is $10,000 ($180,000 – $170,000). This is the part of the canceled debt not included in the amount realized.

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 Repossession in Publication 537.

Cancellation of debt. If property that is repossessed or foreclosed 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 is more than the fair market value of the property. This income is separate from any gain or loss realized from the foreclosure or repossession. Repport the income from cancellation of a debt related to a business or rental activity as business or rental income. Individuals, report the income from cancellation of a nonbusiness debt as other income on Form 1040, line 21. Partnerships, corporations, and other entities, report the income on the comparable line on your tax return.

You can use Table 1-2 to figure your income from cancellation of debt.

However, income from cancellation of debt is not taxed if any of the following conditions apply:

- The cancellation is intended as a gift.
- The debt is qualified farm debt (see chapter 225).
- The debt is qualified real property business debt (see chapter 5 of Publication 334).
- You are insolvent or bankrupt (see Publication 908).
- The debt is qualified principal residence indebtedness.

File Form 942 to report the income exclusion.

Forms 1099-A and 1099-C. A lender who acquires an interest in a property in a foreclosure or repossession should send you Form 1099-A showing the 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, federal government agency, or any organization that has a significant trade or business of lending money. For foreclosures or repossessions occurring in 2007, these forms should be sent to you by January 31, 2008.
### 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 exchange. This event is also called an involuntary exchange. You cannot deduct the amount on line 16 if the condemned property was held for personal use.

### Condemnations

A 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 informed 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 informs you that the government body or official has decided to acquire your property. You must have reasonable grounds to believe that your property will be condemned.

### 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.

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**Table 1-3. Worksheet for Condemnations**

**Part 1. Gain from severance damages.
(If you did not receive severance damages, skip Part 1 and go to Part 2.)**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Formula</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Enter severance damages received</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Enter your expenses in getting severance damages</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Subtract line 2 from line 1. If less than zero, enter -0-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Enter any special assessment on remaining property taken out of your award</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Net severance damages. Subtract line 4 from line 3. If less than zero, enter -0-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Enter the adjusted basis of the remaining property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Subtract line 6 from line 5. If less than zero, enter -0-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Figured adjusted basis of the remaining property. Subtract line 5 from line 6. If less than zero, enter -0-</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Part 2. Gain or loss from condemnation award.**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Formula</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Enter the condemnation award received</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Enter your expenses in getting the condemnation award</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>If you completed Part 1, and line 4 is more than line 3, subtract line 3 from line 4. Otherwise, enter -0-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Add lines 10 and 11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Net condemnation award. Subtract line 12 from line 9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Enter the adjusted basis of the condemned property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Gain from condemnation award. If line 14 is more than line 13, enter -0-. Otherwise, subtract line 14 from line 13 and skip line 16.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Loss from condemnation award. Subtract line 13 from line 14</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Note: You cannot deduct the amount on line 16 if the condemned property was held for personal use.)

**Part 3. Postponed gain from condemnation.**

(Complete only if line 7 or line 15 is more than zero and you bought qualifying replacement property or made expenditures to restore the usefulness of your remaining property.

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Formula</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>If you completed Part 1, and line 7 is more than zero, enter the amount from line 5. Otherwise, enter -0-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>If line 15 is more than zero, enter the amount from line 13. Otherwise, enter -0-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Add lines 17 and 18</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Enter the total cost of replacement property and any expenses to restore the usefulness of your remaining property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Subtract line 20 from line 19. If less than zero, enter -0-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>If you completed Part 1, add lines 7 and 15. Otherwise, enter the amount from line 15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Recognized gain. Enter the smaller of line 21 or line 22</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Postponed gain. Subtract line 23 from line 22. If less than zero, enter -0-</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*If the condemned property was your main home, subtract from this total the gain you excluded from your income and enter the result.*
Example. Your property lies along public utility lines. The utility company has the authority to condemn your property. The company informs you that it intends to acquire your property by negotiation or condemnation. A threat of condemnation exists when you receive the 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 also must show that the condemned property could not reasonably or adequately be replaced. You can elect to postpone reporting the gain by buying replacement property. See Postponement of Gain, later.

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 can postpone reporting gain from a condemnation if you buy replacement property. If only part of your property is condemned, you can treat the cost of restoring the remaining part to its former usefulness as the cost of replacement property. See Postponement of Gain, later.

If your net condemnation 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 happens.

You can use Part 2 of Table 1-3 to figure your gain or loss from a condemnation award.

Main home condemned. If you have a gain because your main home is condemned, you generally can exclude the gain from your income as if you had sold or exchanged your home. You may be able to exclude up to $250,000 of the gain (up to $500,000 if married filing jointly). For information on this exclusion, see Publication 523. If your gain is more than you can exclude but you buy replacement property, you may be able to postpone reporting the rest of the gain. 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.

Payment of your debts. Amounts taken out of the award to pay your debts are considered paid to you. Amounts the government pays directly to the holder of a mortgage or lien against your property are part of your award, even if 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.

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.

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 also must reduce the award by any special assessment levied against the part of the property you retain. This is discussed later under Special assessment taken out of award.

Severance damages. Severance damages are not part of the award paid for the property condemned. They are 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 also may 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 as before the condemnation.

The contracting parties should agree on the specific amount of severance damages in writing. If this is not done, all proceeds from the condemning authority are considered awarded for your condemned property.

You cannot make a completely new allocation of the total award after the transaction is completed. However, you can 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 provided 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. Use them to reduce the basis of the remaining property. If the amount of severance damages is based on damage to a specific part of the property the kept, 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 may be able to postpone reporting the gain. See Postponement of Gain, later.

You can use Part 1 of Table 1-3 to figure any gain from severance damages and to refigure the adjusted basis of the remaining part of your property.

Net severance damages. To figure your net severance damages, you first must reduce your severance damages by your expenses in obtaining the damages. You then reduce them by any special assessment (described later) levied against the remaining part of the property and retained out of the award by the condemning authority. The balance is your net severance damages.

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 total condemnation award. Also, subtract the expenses of obtaining severance damages, that may include similar expenses, 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 condemnation award.

Special assessment retained out of award. When only part of your property is condemned, a special assessment levied against the remaining property may be retained by the governing body out of your condemnation award. 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.

To figure your net condemnation award, you must reduce the amount of the award by the assessment retained out of the award.

Example. To widen the street in front of your home, the city condemned a 25-foot deep strip 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 $700 for the special assessment retained).
If the $700 special assessment was not retained out of the award and you were paid $5,000, your net award would be $4,700 ($5,000 − $300). The net award would not change, even if you later paid the assessment from the amount you received.

Severance damages received. If severance damages are included in the condemnation proceeds, the special assessment retained out of the severance damages is first used to reduce the severance damages. 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 retained out of 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 condemnation award is reduced by the $100 balance of the special assessment, leaving a $3,900 net condemnation award.

Part business or 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. Figure your gain or loss separately because gain or loss on each part 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:

<table>
<thead>
<tr>
<th>Resi-</th>
<th>Busi-</th>
</tr>
</thead>
<tbody>
<tr>
<td>dential</td>
<td>Part</td>
</tr>
<tr>
<td>1) Condemnation award</td>
<td>$12,000</td>
</tr>
<tr>
<td>2) Minus: Legal expenses, $200</td>
<td>100</td>
</tr>
<tr>
<td>3) Net condemnation</td>
<td>$11,900</td>
</tr>
<tr>
<td>4) Adjusted basis</td>
<td>$12,500</td>
</tr>
<tr>
<td>5) Minus: Depreciation</td>
<td>500</td>
</tr>
<tr>
<td>6) Adjusted basis, business part</td>
<td>$8,400</td>
</tr>
<tr>
<td>7) (Loss) on residential property</td>
<td>($1,100)</td>
</tr>
<tr>
<td>8) Gain on business property</td>
<td>$3,900</td>
</tr>
</tbody>
</table>

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 the condemned property. Your basis for the new property is the same as your basis for the old.

Money or unlike property received. You ordinarily must report the gain if you receive money or unlike property. You can elect to postpone reporting the gain if you buy property that is similar or related in service or use to the condemned property within the replacement period, discussed later. You also can elect to postpone reporting the gain if you buy a controlling interest (at least 80%) in a corporation owning property that is similar or related in service or use to the condemned property. See Controlling Interest in a corporation, later.

To postpone reporting all the gain, you must buy replacement property costing at least as much as the amount realized for the condemned property. If the cost of the replacement property exceeds the amount realized, you must report the gain up to the unpaid part of the amount realized.

The basis of the replacement property is its cost plus any amount you spend to make it suitable for the use to which it will be put.

Example. If you postpone reporting the gain from your condemned building in which you live and operate a grocery, you must buy replacement property costing at least as much as the amount realized for the condemned property.

Example. You sold your building for your property because another part was condemned and you buy replacement property, you can elect 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 (if resulting in gain).

You also can make this election if you spend the severance damages, together with other money you received for the condemned property (if resulting in gain), 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 Postponing gain on the sale of related property, next.

TIP

If you pay a contractor in advance to build your replacement property, you have not bought replacement property unless it is finished before the end of the replacement period (discussed later).

Replacement property. To postpone reporting gain, you must buy replacement property for the specific purpose of replacing your condemned property. You do not have to use the actual funds from the condemnation award to acquire the replacement property. Property you acquire by gift or inheritance does not qualify as replacement property.

Similar or related in service or use. Your replacement property must be similar or related in service or use to the property it replaces.

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), but your replacement property is not similar or related in service or use, it will be treated as such if it is like-kind property to be held for use in a trade or business or for investment. For a discussion of like-kind property, see Like-Kind Property under Like-Kind Exchanges, later.

Owner-user. If you are an owner-user, similar or related in service or use means that replacement property must function in the same way as the property it replaces.

Example. Your home was condemned and you invested the proceeds from the condemnation in a grocery store. Your replacement property must be similar or related in service or use to the condemned property. To be similar or related in service or use, your replacement property must also be used by you as your home.

Owner-investor. If you are an owner-investor, similar or related in service or use means that any replacement property must have the same relationship of services or uses to the condemned property as the amount realized from the condemnation award to $24,000 ...

Advance payment. You spent $300 to obtain properties on which there are realized condemnation damages. You were awarded $4,000 for the interest (at least 80%) in a corporation owning property.

To postpone reporting your gain, you must acquire by gift or inheritance does not qualify as replacement property.

Severance damages received. If severance damages are included in the condemnation proceeds, the special assessment retained out of the severance damages is first used to reduce the severance damages. 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 retained out of 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 condemnation award is reduced by the $100 balance of the special assessment, leaving a $3,900 net condemnation award.

Part business or 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. Figure your gain or loss separately because gain or loss on each part 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:

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</table>

The loss on the residential part of the property is not deductible.

Buying replacement property from a related person. Certain taxpayers cannot postpone reporting gain from a condemnation if they buy the replacement property from a related person. For information on related persons, see Nondeductible Loss under Sales and Exchanges Between Related Persons in chapter 2.

This rule applies to the following taxpayers.

1. C corporations.
2. Partnerships in which more than 50% of the capital or profits interest is owned by C corporations.
3. All others (including individuals, partnerships (other than those in (2)), and S corporations) if the total realized gain for the tax year on all involuntarily converted properties on which there are realized gains is more than $100,000.

For taxpayers described in (3) above, gains cannot be offset with any losses when determining whether the total gain is more than $100,000. If the property is owned by a partner- ship, the $100,000 limit applies to the partner- ship and each partner. If the property is owned by an S corporation, the $100,000 limit applies to the S corporation and each shareholder.

Exception. This rule does not apply if the related person acquired the property from an unrelated person within the replacement period. Advance payment. If you pay a contractor in advance to build your replacement property, you have not bought replacement property unless it is finished before the end of the replacement period (discussed later).

Replacement property. To postpone reporting gain, you must buy replacement property for the specific purpose of replacing your condemned property. You do not have to use the actual funds from the condemnation award to acquire the replacement property. Property you acquire by gift or inheritance does not qualify as replacement property.

Similar or related in service or use. Your replacement property must be similar or related in service or use to the property it replaces.

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), but your replacement property is not similar or related in service or use, it will be treated as such if it is like-kind property to be held for use in a trade or business or for investment. For a discussion of like-kind property, see Like-Kind Property under Like-Kind Exchanges, later.

Owner-user. If you are an owner-user, similar or related in service or use means that replacement property must function in the same way as the property it replaces.

Example. Your home was condemned and you invested the proceeds from the condemnation in a grocery store. Your replacement property must be similar or related in service or use to the condemned property. To be similar or related in service or use, your replacement property must also be used by you as your home.

Owner-investor. If you are an owner-investor, similar or related in service or use means that any replacement property must have the same relationship of services or uses
Determining when gain is realized.

- Whether the properties are of similar service to you.
- The nature of the business risks connected with the properties.
- What the properties demand of you in the way of management, service, and relations to your tenants.

Example. You owned land and a building you rented to a manufacturing company. The building was condemned. During the replacement period, you had a new building built on other land you already owned. You rented out the new building for use as a wholesale grocery warehouse. The replacement property is also rental property, so the two properties are considered similar or related in service or use if there is a similarity in all the following areas.

- Your management activities.
- The amount and kind of services you provide to your tenants.
- The nature of your business risks connected with the properties.

Leasehold replaced with fee simple property. Fee simple property you will use in your trade or business for investment can qualify as replacement property that is similar or related in service or use to a condemned leasehold. A fee simple property interest generally is a property interest that entitles the owner to the entire property with unconditional power to dispose of it during his or her lifetime. A leasehold is property held under a lease, usually for a term of years.

Outdoor advertising display replaced with real property. You can elect to treat an outdoor advertising display as real property. If you make this election and you replace the display with real property in which you hold a different kind of interest, your replacement property can qualify as like-kind property. For example, real property bought to replace a destroyed billboard and leased property on which the billboard was located qualifies as property of a like kind.

You can make this election only if you did not claim a section 179 deduction for the display. You cannot cancel this election unless you get the consent of the IRS.

An outdoor advertising display is a sign or device rigidly assembled and permanently attached to the ground, a building, or any other permanent structure used to display a commercial or other advertisement to the public.

Substituting replacement property. Once you designate certain property as replacement property on your tax return, you cannot substitute other qualified property. But, if your previously designated replacement property does not qualify, you can substitute qualified property if you acquire it within the replacement period.

Controlling interest in a corporation. You can replace property by acquiring a controlling interest in a corporation that owns property similar or related in service or use to your condemned property. You have controlling interest if you own stock having at least 80% of the combined voting power of all classes of stock entitled to vote and at least 80% of the total number of shares of all other classes of stock of the corporation.

Basis adjustment to corporation’s property. The basis of property held by the corporation at the time you acquired control must be reduced by your postponed gain, if any. You are not required to reduce the adjusted basis of the corporation’s properties below your adjusted basis in the corporation’s stock (determined after reduction by your postponed gain).

Allocate this reduction to the following classes of property in the order shown below.

1. Property that is similar or related in service or use to the condemned property.
2. Depreciable property not reduced in (1).
3. All other property.

If two or more properties fall in the same class, allocate the reduction to each property in proportion to the adjusted basis of all the properties in that class. The reduced basis of any single property cannot be less than zero.

Main home replaced. If your gain from a condemnation of your main home is more than you can exclude from your income (see Main home condemned under Gain or Loss From Condemnation, earlier), you can postpone reporting the rest of the gain by buying replacement property that is similar or related in service or use. To postpone reporting all the gain, the replacement property must cost at least as much as the amount realized from the condemnation minus the excess gain.

You must reduce the basis of your replacement property by the postponed gain. Also, if you postpone reporting any part of your gain under these rules, you are treated as having owned and used the replacement property as your main home for the period you owned and used the condemned property as your main home.

Replacement period. To postpone reporting your gain from a condemnation, you must buy replacement property within a certain period of time. This is the replacement period.

The replacement period for a condemnation begins on the earlier of the following dates.

- The date on which you disposed of the condemned property.
- The date on which the threat of condemnation began.

The replacement period generally ends 2 years after the end of the first tax year in which any part of the gain on the condemnation is realized. However, see the exceptions below.

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 end 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.

Extended replacement period for property located in the Hurricane Katrina disaster area.

If property in the Hurricane Katrina disaster area is compulsorily or involuntarily converted after August 24, 2005, the replacement period extends 5 years after the end of the first tax year in which any part of the gain is realized on the involuntary conversion. This 5-year replacement period applies only if substantially all of the use of the replacement property is in the Hurricane Katrina disaster area. See Publication 4492, Information for Taxpayers Affected by Hurricanes Katrina and Rita.

New York Liberty Zone property condemned. If property in the New York Liberty Zone was condemned as a result of the Septem- ber 11, 2001 terrorist attacks, have a 5-year replacement period ends 5 years after the first tax year in which any part of the gain on the condemnation is realized. This 5-year replacement period applies only if substantially all of the use of the replacement property is in New York City. See Publication 547.

Weather-related sales of livestock in an area eligible for federal assistance. For the sale or exchange of livestock due to drought, flood, or other weather-related conditions in an area eligible for federal assistance, the replacement period ends 4 years after the close of the first tax year in which you realize any part of your gain from the sale or exchange. The IRS may extend the replacement period on a regional basis if the weather-related conditions continue for longer than 3 years.


For a list of counties, districts, cities, or parishes for which exceptional, extreme, or severe drought was reported during the 12-month period ending August 31, 2007, see Notice 2007-80. You can find Notice 2007-80-on page 867 of Internal Revenue Bulletin 2007-43 at www.irs.gov/pub/irs-irb/irb07-43.pdf. If you qualified for a 4-year replacement period for livestock sold or exchanged on account of drought and your replacement period is scheduled to expire at the end of 2007 (or at the end of the tax year that includes August 27, 2007), the replacement period will be extended under Notice 2006-82 if the applicable region is on the list.

Determining when gain is realized. If you are a cash basis taxpayer, you realize gain when you receive payments that are more than your basis in the property. If the condemning authority makes deposits with the court, you realize gain when you withdraw (or have the right to withdraw) amounts that are more than your basis.

This applies even if the amounts received are only partial or advance payments and the full award has not yet been determined. A replacement will be too late if you wait for a final determination that does not take place in the applicable replacement period after you first realize gain.

For accrual basis taxpayers, gain (if any) accrues in the earlier year when either of the following occurs.

- All events have occurred that fix the right to the condemnation award and the
amount can be determined with reasona-
ble accuracy.

- All or part of the award is actually or con-
structively received.

For example, if you have an absolute right to a
part of a condemnation award when it is depos-
ited with the court, the amount deposited ac-
crues in the year the deposit is made even though the full amount of the award is still con-
tested.

Repayment property bought before the con-
demnation. If you buy your replacement prop-
erty after there is a threat of condemnation but
before the actual condemnation and you still
hold the replacement property at the time of the con-
demnation, you have bought your replace-
ment 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 pe-
riod.

Example. On April 3, 2006, city authorities
notified you that your property would be con-
demned. On June 5, 2006, you acquired prop-
erty 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, 2007. You have made a replacement within the
replacement period.

Extension. You can request an extension of
the replacement period from the IRS director
for your area. You should apply before the end of
the replacement period. Your request should
explain in detail why you need an extension. The
IRS will consider a request filed within a reason-
able time after the replacement period if you can
show reasonable cause for the delay. An exten-
sion of the replacement period 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 replace-
ment property is not a sufficient reason for grant-
ing an extension. If your replacement property is
being built and you clearly show that the re-
placement or restoration cannot be made within
the replacement period, you will be granted an
extension of the period.

Send your request to the address where you filed
your return, addressed as follows:
Extension Request for Replacement
Period of Involuntarily Converted Property
Area Director
Attention: Area Technical Services,
Compliance Function

Election to postpone gain. Report your elec-
tion to postpone reporting your gain, along with
all necessary details, on a statement attached to
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 elect to postpone reporting the
gain.

Replacement property acquired after re-
turn filed. If you buy the replacement property
after you file your return reporting your election
to postpone reporting the gain, attach a state-
ment to your return for the year in which you buy
the property. The statement should contain de-
tailed information on the replacement property.

Amended return. If you elect to postpone
reporting gain, you must file an amended return
for the year of the gain (individually file Form
1040X) in either of the following situations.

- You do not buy replacement property
within the replacement period. On your
amended return, you must report the gain
and pay any additional tax due.

- The replacement property you buy costs
less than the amount realized for the con-
demned property (minus the gain you ex-
cluded from income if the property was
your main home). On your amended re-
turn, you must report the part of the gain
you cannot postpone reporting and pay
any additional tax due.

Time for assessing a deficiency. Any defi-
cency for any tax year in which part of the gain
realized may be assessed at any time before the
expiration of 3 years from the date you notify the
IRS director for your area that you have re-
placed, or intend not to replace, the condemned
property within the replacement period.

Changing your mind. You can change your
mind about reporting or postponing the gain at
time before the end of the replace-
ment period.

Example. Your property was condemned and
you had a gain of $5,000. You reported the
gain on your return for the year in which you
realized it, and paid the tax due. You buy re-
placement property within the replacement pe-
riod. You used all but $1,000 of the amount
realized from the condemnation to buy the re-
placement property. You now change your mind
and want to postpone reporting the $4,000 of
gain equal to the amount you spent for the re-
placement property. You should file a claim for
refund on Form 1040X. Explain on Form 1040X
that you previously reported the entire gain from
the condemnation, but you now want to report
only the part of the gain equal to the condemna-
tion proceeds not spent for replacement prop-
erty ($1,000).

Reporting a Condemnation
Gain or Loss

Generally, you report gain or loss from a con-
demnation on your return for the year you realize
the gain or loss.

Personal-use property. Report gain from a
condemnation of property you held for personal
use (other than excluded gain from a condem-
nation of your main home or postponed gain) on
Schedule D (Form 1040).

Do not report loss from a condemnation of
personal-use property. But, if you received a
Form 1099-S, Proceeds From Real Estate
Transfers (for example, showing the pro-
ceed of a sale of real estate under threat of
condemnation), you must show the transaction
on Schedule D (Form 1040) even though the
loss is not deductible. Complete columns (a)
through (e), and enter 0– in column (f).

Business property. Report gain (other than
postponed gain) or loss from a condemnation of
property you held for business or profit on Form
4797. If you had a gain, you may have to report
all or part of it as ordinary income. See Like-Kind
Exchanges and Involuntary Conversions in
chapter 3.

Nontaxable Exchanges

Certain exchanges of property are not taxable.
This means any gain from the exchange is not
recognized, and any loss cannot be deducted.
Your gain or loss 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 a like-kind exchange, the prop-
erty traded and the property received must be both of the following.

- Qualifying property.
- Like-kind property.

These two requirements are discussed 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 Exchange, later.
If the like-kind exchange involves the receipt
of money or unlike property or the assumption
of your liabilities, you may have to recognize gain.
See Partially Nontaxable Exchanges, later.

Multiple-party transactions. The like-kind
exchange rules apply to property ex-
changes that involve three- and four-party trans-
actions. Any part of these multiple-party
transactions can qualify as a like-kind exchange
if it meets all the requirements described in
this section.

Receipt of title from third party. If you
receive property in a like-kind exchange and the
other person who transfers the property to you
does not give you the title, but a third party does,
you still can 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 generally the same as the basis
of the property you transferred.

For the basis of property received in an ex-
change that is only partially nontaxable, see
Partially Nontaxable Exchanges, later.

Example. You exchanged real estate held
for investment with an adjusted basis of $25,000
for other real estate held for investment. The fair
market value of both properties is $50,000. The
basis of your new property is the same as the
basis of the old ($25,000).

Money paid. If, in addition to giving up
like-kind property, you pay money in a like-kind
exchange, you still have no recognized gain or
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 $30,000. He is allowed $8,000 for the old cab and pays $22,000 cash. He has no recognized gain or loss on this transaction regardless of the adjusted basis of his old cab. If Bill sold the old cab to a third party for $8,000 and bought a new cab for $22,000 cash, 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 $20,000. Ordinarily, you would trade your old car for the new one and pay the dealer $15,500. Your basis for depreciation of the new car would then be $19,000 ($15,500 plus $3,500 adjusted basis of the old car).

You want your new car to have a larger basis for depreciation, so you arrange to sell your old car to the dealer for $4,500. You then buy the new one for $20,000 from the same dealer. However, you are treated as having exchanged your old car for your new one because the sale and purchase are reciprocal and mutually dependent. Your basis for depreciation for the new car is $19,000, the same as if you traded the old car.

Reporting the exchange. Report the exchange of like-kind property, even though no gain or loss is recognized, on Form 8824, Like-Kind Exchanges. The instructions for the form explain how to report the details of the exchange. If you have any recognized gain because you received money or unlike property, report it on Schedule D (Form 1040) or Form 4797, whichever applies. See chapter 4. You may have to report the recognized gain as ordinary income from depreciation recapture. See Like-Kind Exchanges and Involuntary Conversions in chapter 3.

Exchange expenses. Exchange expenses are generally the closing costs you pay. They include brokerage commissions, attorney fees, and deed preparation fees. Subtract these expenses from the consideration received to compute 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

In a like-kind exchange, both the property you give up and the property you receive must be held by you for investment or for productive use in your trade or business. Machinery, buildings, land, trucks, and rental houses are examples of property that may qualify. The rules for like-kind exchanges do not apply to exchanges of the following property:

- Property you use for personal purposes, such as your home and your family car.
- Stock in trade or other property held primarily for sale, such as inventories, raw materials, and real estate held by dealers.
- Stocks, bonds, notes, or other securities or evidences of indebtedness, such as accounts receivable.
- Partnership interests.
- Certificates of trust or beneficial interest.
- Choses in action.

However, you may have a nontaxable exchange under other rules. See Other Nontaxable Exchanges, later. 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 engage in a like-kind exchange depends on an analysis of each asset involved in the exchange. However, see Multiple Property Exchanges, later.

Like-Kind Property

There must be an exchange of like-kind property. Like-kind properties are properties of the same nature or character, even if they differ in grade or quality. The exchange of real estate for real estate and the exchange of personal property for similar personal property are exchanges of like-kind property. For example, the trade of land improved with an apartment house for land improved with 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. Also, the exchange of livestock of different sexes does not 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 longer 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 or character of the two property interests is the same.

Foreign real property exchanges. Real property located in the United States and real property located outside the United States are like-kind property under like-kind exchange rules. If you exchange foreign real property for property located in the United States, your gain or loss on the exchange is recognized. Foreign real property is real prop- erty not located in a state or the District of Co-lumbia.
Deferred Exchange
A deferred exchange is one in which you transfer property you use in business or hold for investment and later you receive like-kind property 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 used to buy 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 had sold it.)

You constructively receive money or unlike property when the money or property is credited to your account or made available to you. You also constructively receive money or unlike property when any limits or restrictions on it expire or are waived.

Example. You actually or constructively receive money or unlike property in full payment for property you transferred. The transaction will be treated as a sale.

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 the larger of the following:
• Three.
• Any number of properties whose total fair market value (FMV) at the end of the identification period is not more than double the total fair market value, 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 rule, the only property that will be considered identified is:
• Any replacement property you received before the end of the identification period.
• Any replacement property identified before the end of the identification period and received before the end of the receipt period, but only if the fair market value of the property is at least 95% of the total fair market value of all identified replacement properties.

Disregard incidental property. Do not treat incidental property to a larger item of property as separate from the larger item when you identify replacement property. Property is incidental if it meets both the following tests:
• It is typically transferred with the larger item.
• The total fair market value of all the incidental properties is not more than 15% of the total fair market value of the larger item of property.

Replacement property to be produced. Gain or loss from a deferred exchange can qualify as a like-kind exchange. However, the total fair market value of all the incidental property may have to be regarded in determining whether you actually or constructively receive property incidental to a larger item of property.

Example. You constructively receive money or unlike property in full payment for property you transferred. The property must be identified. 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 begin on the date of the earliest transfer.

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 cancel an identification of replacement property at any time before the due date.

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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 sold it.)

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• Any replacement property you received before the end of the identification period.
• Any replacement property identified before the end of the identification period and received before the end of the receipt period, but only if the fair market value of the property is at least 95% of the total fair market value of all identified replacement properties. Fair market value is determined on the earlier of the date you received the property or the last day of the receipt period.
Like-Kind Exchanges Using Qualified Intermediaries

If you transfer property through a qualified inter- 
mediary, the transfer of the property given up and 
receipt of like-kind property is treated as an 
exchange. This rule applies even if you receive 
monies or other property directly from a party to an exchange accommodation titleholder (EAT), 
2. One of the following requirements are met:

• The EAT will be treated as the beneficial 
owner of the property for all federal in-
come tax purposes.

• The EAT is holding the property for your 
benefit in order to facilitate an exchange 
under the like-kind exchange rules and 

An intermediary is treated as acquiring and 
transferring property if all the following require-
ments are met.  

• The intermediary enters into an agreement with a person other than you for the trans-
fer to that person of the property you give 
up and that property is transferred to that 
person.  

• The intermediary enters into an agreement with the owner of the replacement prop-
erty 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 agree-
ment are assigned to the intermediary and all 
parties to that agreement are notified in writing 
by the date of the relevant 
transfer of property.

Like-Kind Exchanges Using Qualified Exchange Accommodation Arrangements (QEAAs)

The like-kind exchange rules generally do not apply to an exchange in which you acquire re-
placement property (new property) before you 
transfer relinquished property (property you give 
up). However, if you use a qualified exchange 
accommodation arrangement (QEEA), the transfer may qualify as a like-kind exchange.

Under a QEEA, either the replacement prop-
erty or the relinquished property is transferred to an exchange accommodation titleholder (EAT), discussed later, who is treated as the beneficial owner of the property. However, for transfers of qualified indications of ownership (defined later) on or after July 20, 2004, the replacement prop-
erty held in a QEEA may not be treated as property received in an exchange if you previ-
ously owned it within 180 days of its transfer to 
the EAT. If the property is held in a QEEA, the 
IRS will accept the qualification of property as 
either replacement property or relinquished property and the treatment of an EAT as the 
beneficial owner of the property for federal in-
come tax purposes.

Requirements for a QEEA. Property is held in a QEEA only if all the following requirements are met.  

• You have a written agreement.  

• The time limits for identifying and transfer-
rning the property are met.  

• The qualified indications of ownership of property are transferred to an EAT.

Written agreement. Under a QEEA, you and the EAT must enter into a written agreement no 
later than 5 days business days after the qualified 
indications of ownership discussed later) are 
transferred to the EAT. The agreement must provide for the following:

• The EAT is holding the property for your 
benefit in order to facilitate an exchange 
under the like-kind exchange rules and 

• You and the EAT agree to report the ac-
quisition, holding, and disposition of the property on your federal income tax re-
turns in a manner consistent with the agree-

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Gain or Loss

surplus and deficiency, cash. You paid $500 in exchange expenses. The value of the properties received in that exchange can be personal liability. The other party in the trade has agreed to pay off the mortgage. Figure the gain realized as follows.

\[
\text{FMV of like-kind property received} - \text{Cash} = 10,000 - 1,000 = 9,000.
\]

Example. The facts are the same as in the previous example, except the property you gave up was worth $4,000. You received $2,500 in cash and a $1,000 mortgage for which you paid $1,300. The difference allocated to an exchange group may not be more than $3,000.

Assumption of liabilities. If the other party to a nontaxable exchange assumes any of your liabilities, you will be treated as if you received cash in the amount of the liability. For more information on the assumption of liabilities, see section 357(d) of the Internal Revenue Code. Example. You exchange real estate held for investment for real estate you do not make a property-by-property comparison if you do either of the following:

- Transfer and receive properties in two or more exchange groups.
- Transfer or receive more than one property within a single exchange group.

In these situations, 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-Kind 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:

- Money.
- Stock in trade or other property held primarily for sale.
- Stocks, bonds, notes, or other securities or evidences of debt or interest.
- Interests in a partnership.
- Certificates of trust or beneficial interests.
- 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) for computer R (asset class 00.12), automobile R (asset class 00.22), truck R (asset class 00.241), and $400. All properties transferred were used in Ben's business. Similarly, all properties received will be used in his business.

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.

Multiple Property Exchanges

Under the like-kind exchange rules, you generally must 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 do either of the following:

- Transfer and receive properties in two or more exchange groups.
- Transfer or receive more than one property within a single exchange group.

Partial Nontaxable Exchanges

If, in addition to like-kind property, you receive money or unlike property in an exchange on which you realize a gain, you have a partially nontaxable exchange. You are taxed on the gain you make but only up to the extent of the money and the fair market value of the unlike property you receive.

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

Tip

Figuring taxable gain. To figure the taxable gain, first determine the fair market value of any unlike property you receive and add it to any money you receive. Reduce that total by any exchange expenses (closing costs) you paid. The result is the maximum gain that can be taxed. Next, figure the 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.

Example. You exchange real estate held for investment with an adjusted basis of $8,000 for other real estate you want to hold for investment. The fair market value of the real estate you receive is $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).

Basis of property received. The total basis (other than money) for the properties received in a partially nontaxable exchange is the total adjusted basis of the properties you give up, with the following adjustments.

1. Add both the following amounts.
   a. Any additional costs you incur.
   b. Any gain you recognize on the exchange.

2. Subtract both the following amounts.
   a. Any money you receive.
   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 rest is the basis of the like-kind property.

Chapter 1 Gain or Loss

Rights of the parties for those arrangements. For a list of the types of arrangements, see Revenue Procedure 2000-37 in Internal Revenue Bulletin 2000-40.

Other permissible arrangements. Property will not fail to be treated as being held in a QEAA as a result of certain legal or contractual arrangements, regardless of whether the arrangements contain terms that typically would result from arm's-length bargaining between unrelated parties for those arrangements. For a list of those arrangements, see Revenue Procedure 2000-37 in Internal Revenue Bulletin 2000-40.

Qualified indications of ownership. Qualified indications of ownership are any of the following:

- Legal title to the property.
- Other indications of ownership of the property that are treated as beneficial ownership of the property under principles of commercial law (for example, a contract for deed).
- Interests in an entity that is disregarded as a separate entity for federal income tax purposes (for example, a single-member limited liability company) and that holds either legal title to the property or other indications of ownership.

Treatment of liabilities. Offset all liabilities you assume as part of the exchange against all liabilities of which you are 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, allocate the difference among the exchange groups in proportion to the total fair market value of the properties you received in the exchange groups. The allocation of the liabilities allocated to each exchange group may not be more than the total fair market value of the properties you received in the exchange group.

The amount of the liabilities 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, treat the difference as cash, general deposit accounts (other than certificates of deposit), and similar items when making allocations to the residual group, discussed later.

The treatment of liabilities and any differences between amounts you assume and amounts you are relieved of will be the same even if the like-kind exchange treatment applies to only part of a larger transaction. If so, determine the difference in liabilities based on all liabilities you assume or are 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 of liabilities secured by each property are as follows.

| Computer A | $1,500 | $-0- |
| Automobile A | 2,500 | 500 |
| Truck A | 2,000 | -0- |

Ben Transfers:

| Computer A | $1,600 | $-0- |
| Automobile A | 3,100 | 750 |
| Truck R | 1,400 | 250 |
| Cash | 400 |

Ben Receives:

| 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 he is relieved ($500), resulting in a difference of $500. The difference is allocated among Ben’s exchange groups in proportion to the fair market value of the properties received 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 the following items.

- Stock in trade or other property held primarily for sale.
- Stocks, bonds, notes, or other securities or evidences of debt or interest.
- Interests in a partnership.
- Certificates of trust or beneficial interests.
- Chosen in action.

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

For asset acquisitions occurring after March 15, 2001, money and properties allocated to the residual group are considered to come from the following assets in the following order.

1. Cash and general deposit accounts (including checking and savings accounts but excluding certificates of deposit). Also, include excess liabilities of which you are relieved over the amount of liabilities you assume.
2. Certificates of deposit, U.S. Government securities, foreign currency, and actively traded personal property, including stock and securities.
3. Accounts receivable, other debt instruments, and assets that you mark to market at least annually for federal income tax purposes. However, see section 1388(b)(2)(ii) of the regulations for exceptions that apply to debt instruments issued by persons related to a target corporation, contingent debt instruments, and debt instruments convertible into stock or other property.
4. Property of a kind that would properly be included in inventory if on hand at the end of the tax year or property held by the taxpayer primarily for sale to customers in the ordinary course of business.
5. Assets other than those listed in (1), (2), (3), (4), and (7).
6. All section 197 intangibles except goodwill and going concern value.
7. Goodwill and going concern value.

Within each category, you can choose which properties to allocate to the residual group. If an asset described in any of the categories above, except (1), is includible in more than one category, include it in the lower number category. For example, if an asset is described in both (3) and (4), include it in (3).

Example. Fran exchanges computer A (asset class 00.12) and automobile B (asset class 00.22) for printer B (asset class 00.12), corporate stock, and $500. Fran used computer A and automobile B in her business and will use printer B and automobile B in her business.

This transaction results in two exchange groups: (1) computer A and printer B, and (2) automobile A and automobile B.
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, recognized gain is 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 gain realized is the fair market value of computer A ($1,000) minus its adjusted basis ($375), or $625. The gain recognized is the lesser of the gain realized, $625, or the exchange group deficiency, $0.

For the second exchange group, the gain realized is the fair market value of automobile A ($4,000) minus its adjusted basis ($1,500), or $2,500. The gain recognized is the lesser of the gain realized, $2,500, or the exchange group deficiency, $1,050.

The total gain recognized by Karen in the exchange is the sum of the gains recognized with respect to both exchange groups ($625 + $2,050), or $1,050.

Basis of properties received. The total basis of properties received in each exchange group is the sum of the following amounts.

1. The total adjusted basis of the transferred properties within that exchange group.
2. Your recognized gain on the exchange group.
3. The excess liabilities you assume that are allocated to the group.
4. The exchange group surplus (or minus the exchange group deficiency).

You allocate the total basis of each exchange group proportionately to each property received in the exchange group according to the property’s fair market value.

The basis of each property received 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 sum of the following amounts.

1. Adjusted basis of the property transferred within that exchange group ($375).
2. Gain recognized for that exchange group ($625).
3. Excess liabilities assumed allocated to that exchange group ($0).
4. Exchange group surplus ($1,050).

Printer B is the only property received within the first exchange group, so the entire basis ($1,425) is allocated to printer B. The basis of the property received in the second exchange group is $1,000. This is figured as follows.

First, add the following amounts.

1. Adjusted basis of the property transferred within that exchange group ($1,500).
2. Gain recognized for that exchange group ($2,500).
3. Excess liabilities assumed allocated to that exchange group ($0).

Then subtract the exchange group deficiency ($1,050).

Automobile B is the only property received within the second exchange group, so the entire basis ($1,500) is allocated to automobile B.

Like-Kind Exchanges Between Related Persons

Special rules apply to like-kind exchanges between related persons. These rules affect both direct and indirect exchanges. Under these rules, if either person disposes of the property within 2 years after the exchange, the exchange is disqualified from nonrecognition treatment. The gain or loss on the original exchange must be recognized as of the date of the later disposition.

Related persons. Under these rules, related persons 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, and you and a partnership in which you directly or indirectly own more than 50% of the capital or profits.

An exchange structured to avoid the related party rules is not a like-kind exchange. See Like-Kind Exchanges Using Qualified Intermediaries, earlier.

For more information on related persons, see Nondeductible Loss under Sales and Exchanges Between Related Persons in chapter 2.

Example. You used a panel truck in your house painting business. Your sister used a pickup truck in her landscaping business. In December 2006, you exchanged your panel truck plus $200 for your sister’s pickup truck. At that time, the fair market value (FMV) of your panel truck was $7,200 and its adjusted basis was $6,000. The fair market value of your sister’s pickup truck was $7,200 and its adjusted basis was $1,000. You realized a gain of $1,000 (the $7,200 fair market value of the pickup truck minus the $200 you paid minus the $6,000 adjusted basis of the panel truck). Your sister realized a gain of $6,200 (the $7,000 fair market value of your panel truck plus the $200 you paid minus the $1,000 adjusted basis of the pickup truck).

However, because this was a like-kind exchange, you recognized no gain. Your basis in the pickup truck was $6,200 (the $6,000 adjusted basis of the panel truck plus the $200 you paid). Your sister recognized gain only to the extent of the money she received, $200. Her basis in the panel truck was $1,000 (the $1,000 adjusted basis of the pickup truck minus the $200 received, plus the $200 gain recognized).

In 2007, you sold the pickup truck to a third party for $7,000. You sold it within 2 years after the exchange, so the exchange is disqualified from nonrecognition treatment. On your 2007 tax return, you must report your $1,000 gain on the 2006 exchange. You also report a loss on the sale of $200 (the adjusted basis of the pickup truck, $7,200 (its $6,200 basis plus the $1,000 gain recognized), minus the $7,000 realized from the sale).

In addition, your sister must report on her 2007 tax return the $6,000 balance of her gain on the 2006 exchange. Her adjusted basis in the panel truck is increased to $7,000 (its $1,000 basis plus the $6,000 gain recognized).

Two-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 any of the following events.

• The holding of a put on the property.
• The holding by another person of a right to acquire the property.
• 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 rules for related persons. The following kinds of property dispositions are excluded from these rules.

• Dispositions due to the death of either related person.
• Involuntary conversions.
• 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.

Partner 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 certain circum-
stances the exchange may be treated as a tax-free contribution of property to a partnership. See Publication 541, Partnerships.

An interest in a partnership that has a valid election to be excluded from being treated as a partnership for federal tax purposes is treated as an interest in each of the partnership assets and not as a partnership interest. See Publication 541.

U.S. Treasury Notes or Bonds

Certain issues of U.S. Treasury obligations may be exchanged for certain other issues design-
ated 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 in-
formation on the tax treatment of income from these investments.

For other information on these notes and bonds, call the Bureau of the Pub-
lic Debt at 1-800-722-2678 (Legacy Treasury Direct).

Or, visit www.publicdebt.treas.gov on the Internet.

Insurance Policies and Annuities

No gain or loss is recognized if you make any of the following exchanges.

• A life insurance contract for another or for an endowment or annuity contract.

• An endowment contract for an annuity contract or for another endowment con-
tract providing for regular payments begin-
ing at a date not later than the beginning date under the old contract.

• One annuity contract for another if the in-
sured or annuitant remains the same.

• A portion of an annuity contract for a new annuity contract 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 Publica-
tion 571, Tax-Sheltered Annuity Plans (403(b) Plans).

Cash received. The nonrecognition and non-
taxable transfer rules do not apply to a rollover in which you receive cash proceeds from the sur-
render of one policy and invest the cash in an-
other policy. However, you can treat a cash distribution and reinvestment as meeting the nonrecognition or nontaxable transfer rules if all the following requirements are met.

1. When you receive the distribution, the in-
surance company that issued the policy or contract is subject to a rehabilitation, con-
servatorship, insolvency, or similar state proceeding.

2. You withdraw all amounts to which you are entitled or, if less, the maximum permitted under the state proceeding.

3. You reinvest the distribution within 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 re-
stricted by the state proceeding.

5. You would have qualified under the non-
recognition 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, dis-
cussed earlier, apply.

In addition to meeting these five require-
ments, you must do both the following.

1. Give to the issuer of the new policy or contract a statement that includes all the following information.
   a. The gross amount of cash distributed.
   b. The amount reinvested.
   c. Your investment in the affected policy or contract on the date of the initial cash distribution.

2. Attach the following items to your timely fil-
tax return for the year of the initial distribution.
   a. A statement titled “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.
   b. A copy of the statement given to the issuer of the new policy or contract.

Property Exchanged for Stock

If you transfer property to a corporation in ex-
change for stock in that corporation (other than nonqualified preferred stock, described later), and immediately afterward you are in control of the corporation, the exchange is usually not tax-
able. This rule applies both to individuals and to groups who transfer property to a corporation. It does not apply in the following situations.

• The corporation is an investment com-
pany.

• You transfer the property in a bankruptcy or similar proceeding in exchange for stock used to pay creditors.

• The stock is received in exchange for the corporation’s debt (other than a security) or for interest on the corporation’s debt (including a security) that accrued while you held the debt.

Control of a corporation. To be in control of a corporation, you or your group of transferors 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 total number of shares of all other classes of stock of the corporation.

The control requirement can be met even though there are successive transfers of property and stock. For more information, see Revenue Ruling 2003-51 in Internal Revenue Bulletin 2003-21.

Example 1. You and Bill Jones buy 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 cor-
poration for all its authorized capital stock, which has a par value of $300,000. No gain is recog-
nized by you, Bill, or the corporation.

Example 2. You and Bill transfer the prop-
erty with a basis of $100,000 to a corporation in exchange for stock with a fair market value of $300,000. This represents only 75% of each class of stock of the corporation. The other 25% was already 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. The value of 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 recog-
nized on the exchange of property. However, you recognize ordinary income of $3,000 as payment for services you rendered to the corpo-
ration.

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 non-
recognition 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 disproportionate property transferred. If a group of transferors ex-
change property for corporate stock, each trans-
feror does not have to receive the stock in pro-
portion to his or her interest in the property transferred. If a disproportionate transfer takes place, it will be treated for tax purposes in accor-
dance 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 compen-
sation for services, or satisfy the transferor’s obligations.

Money or other property received. If, in an otherwise nontaxable exchange of property for corporate stock, you also receive money or property other than stock, you may have to recog-
nize gain. You must recognize gain only up to
the amount of money plus the fair market value of the other property you receive. The rules for figuring the gain recognized 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 recognized gain may have to be reported as ordinary income from depreciation. See chapter 3. No loss is recognized.

**Nonqualified preferred stock.** Nonqualified preferred stock is treated as property other than stock. Generally, it is treated as stock with any of the following tests.

- The holder has the right to require the issuer or a related person to redeem or buy the stock.
- The issuer or a related person is required to redeem or buy the stock.
- The issuer or a related person has the right to redeem or buy the stock and, on the issue date, it is more likely than not that the right will be exercised.
- The dividend rate on the stock varies with reference to interest rates, commodity prices, or similar indices.

For a detailed definition of nonqualified preferred stock, see section 351(g)(2) of the Internal Revenue Code.

**Liabilities.** If the corporation assumes your liabilities, the exchange generally is not treated as if you received money or other property. There are two exceptions to this treatment.

- If the liabilities the corporation assumes are more than your adjusted basis in the property you transfer, gain is recognized up to the difference. However, if the liabilities assumed give rise to a deduction when paid, such as a trade account payable or interest, no gain is recognized.
- 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.

For more information on the assumption of liabilities, see section 367(d) of the Internal Revenue Code.

**Example.** You transfer property to a corporation for stock. Immediately after the transfer, you control the corporation. 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 for which you are personally liable. Gain is realized as follows.

<table>
<thead>
<tr>
<th>FMV of stock received</th>
<th>$16,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash received</td>
<td>$10,000</td>
</tr>
<tr>
<td>Liability assumed by corporation</td>
<td>$5,000</td>
</tr>
<tr>
<td>Total received</td>
<td>$31,000</td>
</tr>
</tbody>
</table>

**Realized gain**: $11,000

The liability assumed is not treated as money or other property. The recognized gain is limited to $10,000, the cash received.

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**Transfers to Spouse**

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 to the transfer of certain stock redemptions, as discussed in section 1.1041-2 of the regulations.

Any transfer of property to a spouse or former spouse on which gain or loss is not recognized is treated by the recipient as a gift and is not considered a sale or exchange. The recipient’s basis in the property will be the same as the adjusted basis of the property to the giver immediately before the transfer. This carryover basis rule applies whether the adjusted basis of the transferred property is less than, equal to, or greater than either its fair market value at the time of transfer or any consideration paid by the recipient. This rule applies for determining loss as well as gain. Any gain recognized on a transfer in trust increases the basis.

For more information on transfers to a spouse, see Property Settlements in Publication 504, Divorced or Separated Individuals.

**Rollover of Gain From Publicly Traded Securities**

You can elect 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 (SBIC). If you make this election, the gain from the sale is recognized only to the extent the amount realized is more than the cost of the SBIC stock or partnership interest bought during the 60-day period beginning on the date of sale. You must reduce your basis in the SBIC 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 lesser of the following amounts.

- $50,000 ($250,000 for married individuals filing separately).
- $500,000 ($250,000 for married individuals filing separately) minus the gain rolled over in all earlier tax years.

For more information, see chapter 4 of Publication 550.

**Sales of Small Business Stock**

If you sell qualified small business stock, you may be able to roll over your gain tax free or exclude part of the gain from your income. Qualified small business stock is stock originally issued by a qualified small business after August 10, 1993, that meets all 7 tests listed in chapter 4 of Publication 550.

**Rollover of gain.** You can elect to roll over a capital gain from the sale of qualified small business stock held longer than 6 months into other qualified small business stock. This election is not allowed to C corporations. Different rules apply when the stock is held by a partnership, S corporation, regulated investment company, or common trust fund.

You may qualify for a tax-free rollover of certain C corporations. If you make this election, the gain from the sale generally is recognized only to the extent the amount realized is more than the cost of the replacement qualified small business stock bought within 60 days of the date of sale. You must reduce your basis in the replacement qualified small business stock by the gain not recognized.

**Exclusion of gain.** You may be able to exclude from your gross income 50% of your gain from the sale or exchange of qualified small business stock you held more than 5 years. This exclusion is not allowed to C corporations.

Your gain from the stock of any one issuer that is eligible for the exclusion is limited to the greater of the following amounts.

- Ten times your basis in all qualified stock of the issuer you sold or exchanged during the year.
- $10 million ($5 million for married individuals filing separately) minus the gain from the stock of the same issuer you used to trade on an established securities market.

More information. For more information on sales of small business stock, see chapter 4 of Publication 550.

**Rollover of Gain From Sale of Empowerment Zone Assets**

You may qualify for a tax-free rollover of certain gain from the sale of qualified empowerment zone assets. This means that if you buy certain replacement property and make the election described in this section, you postpone part or all of the recognition of your gain.

You can make this election if you meet all the following tests.
1. You hold a qualified empowerment zone asset for more than 1 year and sell it at a gain.
2. Your gain from the sale is a capital gain.
3. During the 60-day period beginning on the date of the sale, you buy a replacement qualified empowerment zone asset in the same zone as the asset sold.

Any part of the gain that is ordinary income cannot be postponed and must be recognized.

**Qualified empowerment zone asset.** This means certain stock or partnership interests in an enterprise zone business. It also includes certain tangible property used in an enterprise zone business. You must have acquired the asset after December 21, 2000.

**Amount of gain recognized.** If you make the election described in this section, the gain on the sale is generally recognized only to the extent, if any, that the amount realized on the sale exceeds the cost of the qualified empowerment zone asset that you bought during the 60-day period beginning on the date of sale (and did not previously take into account in rolling over gain on an earlier sale of qualified empowerment zone assets).

If this amount is equal to or more than the amount of your gain, you must recognize the full amount of your gain. If this amount is less than the amount of your gain, you can postpone the rest of your gain by adjusting the basis of your replacement property as described next.

**Basis of replacement property.** You must subtract the amount of postponed gain from the basis of the qualified empowerment zone assets you bought as replacement property.

**More information.** For more information about empowerment zones, see Publication 954, Tax Incentives for Distressed Communities. For more information about this rollover of gain, see the Instructions for Form 4797 and Schedule D (Form 1040). Also, see section 1397B of the Internal Revenue Code.

**Exclusion of Gain From Sale of DC Zone Assets**

If you sold or exchanged a District of Columbia Enterprise Zone (DC Zone) asset that you held for more than 5 years, you may be able to exclude the “qualified capital gain.” The qualified gain is, generally, any gain recognized in a trade or business that you would otherwise include on Form 4797, Part I. This exclusion also applies to an interest in, or property of, certain businesses operating in the District of Columbia.

**DC Zone asset.** A DC Zone asset is any of the following.
- DC Zone business stock.
- DC Zone partnership interest.
- DC Zone business property.

**Qualified capital gain.** The qualified capital gain is any gain recognized on the sale or exchange of a DC Zone asset that is a capital asset or property used in a trade or business. It does not include any of the following gains.
- Gain treated as ordinary income under section 1245;
- Gain treated as unrecaptured section 1250 gain. The section 1250 gain must be figured as if it applied to all depreciation rather than the additional depreciation;
- Gain attributable to real property, or an intangible asset, which is not an integral part of a DC Zone business; and
- Gain from a related-party transaction. See Sales and Exchanges Between Related Persons in chapter 2.

See Publication 954 and section 1400B for more details on DC Zone assets and special rules.

**Useful Items**

You may want to see:
- **Publication**
  - 550 Investment Income and Expenses
  - 954 Tax Incentives for Distressed Communities
- **Form (and Instructions)**
  - Schedule D (Form 1040) Capital Gains and Losses
  - 4797 Sales of Business Property
  - 8594 Asset Acquisition Statement Under Section 1060

See chapter 5 for information about getting publications and forms.

**Capital Assets**

Almost everything you own and use for personal purposes or investment is a capital asset. For exceptions, see Noncapital Assets, later.

The following items are examples of capital assets.
- Stocks and bonds.
- A home owned and occupied by you and your family.
- Timber grown on your home property or investment property, even if you make casual sales of the timber.
- Household furnishings.
- A car used for pleasure or commuting.
- Coin or stamp collections.
- Gems and jewelry.
- 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.

**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.

**Release of restriction on land.** Amounts you receive for the release of a restrictive covenant in a deed to land are treated as proceeds from the sale of a capital asset.

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**Chapter 2 Ordinary or Capital Gain or Loss**

**Ordinary or Capital Gain or Loss**

**Introduction**

You must classify your gains and losses as either ordinary or capital (and your capital gains and losses as either short-term or long-term). You must do this to figure your net capital gain or loss.

For individuals, a net capital gain may be taxed at a lower tax rate than ordinary income. See Capital Gains Tax Rates in chapter 4. Your deduction for a net capital loss may be limited. See Treatment of Capital Losses in chapter 4.

**Capital gain or loss.** Generally, you will have a capital gain or loss if you sell or exchange a capital asset. You also may have a capital gain if your section 1231 transactions result in a net gain.

Section 1231 transactions. Section 1231 transactions are sales and exchanges of property held longer than 1 year and either used in a trade or business or held for the production of rents or royalties. They also include certain involuntary conversions of business or investment property, including capital assets. See Section 1231 Gains and Losses in chapter 3 for more information.

**Topics**

This chapter discusses:
- Capital assets
- Noncapital assets
Noncapital Assets

A noncapital asset is property that is not a capital asset. The following kinds of property are not capital assets.

1. Stock in trade, inventory, and other property you hold mainly for sale to customers in your trade or business. Inventories are discussed in Publication 538, Accounting Periods and Methods. But, see the Tip below.

2. Accounts or notes receivable acquired in the ordinary course of a trade or business for services rendered or from the sale of any properties described in (1).

3. Depreciable property used in your trade or business or as rental property (including section 197 intangibles defined later), even if the property is fully depreciated (or amortized). Sales of this type of property are discussed in chapter 3.

4. Real property used in your trade or business or as rental property, even if the property is fully depreciated.

5. A copyright; a literary, musical, or artistic composition; a letter; a memorandum; or similar property (such as drafts of speeches, recordings, transcripts, manuscripts, drawings, or photographs) are not treated as capital assets (as discussed earlier) if your personal efforts created them or if they were prepared or produced for you. Nor is this property a noncapital asset. The following kinds of property are not capital assets. Inventories are discussed in Publication 538.

6. A person's controlled entity. If a gain is recognized on the sale or exchange of property between related persons, the gain may be treated as ordinary income and losses may not be deductible. See Transfers to Spouse in chapter 1 for rules that apply to spouses.

Sales and Exchanges Between Related Persons

This section discusses the rules that may apply to the sale or exchange of property between related persons. If these rules apply, gains may be treated as ordinary income and losses may not be deductible. See Transfers to Spouse in chapter 1 for rules that apply to spouses.

Gain Is Ordinary Income

If a gain is recognized on the sale or exchange of property to a related person, the gain may be ordinary income even if the property is a capital asset. It is ordinary income if the sale or exchange is a depreciable property transaction or a controlled partnership transaction.

Depreciable property transaction. Gain on the sale or exchange of property, including a leasehold or a patent application, that is depreciable property in the hands of the person who receives it is ordinary income if the transaction is either directly or indirectly between any of the following pairs of entities:

1. A person and the person's controlled entity or entities.

2. A taxpayer and any trust in which the taxpayer (or his or her spouse) is a beneficiary unless the value of the trust property is 5% or less of the value of the trust property.

3. An executor and a beneficiary of an estate unless the sale or exchange is in satisfaction of a pecuniary bequest.

4. An employer (or any person related to the employer under rules (1), (2), or (3)) 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 (or any person related to the employer).

Controlled entity. A person's controlled entity is either of the following:

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 directly or indirectly owned by or for that person.

2. An entity whose relationship with that person is one of the following:

   a. If 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
the partnership. realizing a gain of $2,900 ($10,500
Nondeductible Loss
stock or a partnership interest. respectively owned by a person under (1) is
Determining ownership. In the transactions under Depreciable property transaction and Controlled partnership transaction, earlier, use the following rules to determine the ownership of stock or a partnership interest.

• A partnership and a partner who directly or indirectly owns more than 50% of the capital interest or profits interest in the partnership.

• Two partnerships, if the same persons directly or indirectly own more than 50% of the capital interests or profits interests in both partnerships.

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 either of the following pairs of entities.

1. Stock or a partnership interest directly or indirectly owned 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 directly or indirectly own 5% or more in value of the stock of the corporation.)

2. An individual is considered as owning the stock or partnership interest directly or indirectly owned by or for his or her family. Family includes only brothers, sisters, half-brothers, half-sisters, spouse, ancestors, and lineal descendants.

3. An individual is considered as owning the stock or partnership interest directly or indirectly owned by or for his or her family. For purposes of applying (2) any stock in a corporation is considered to own the stock directly or indirectly owned. This does not apply to a cross-trade between related parties through an exchanged property. your loss on the sale of stock through your broker if under a prearranged plan a related person or entity buys the same stock you had owned. This does not apply to a cross-trade between related parties through an exchange that is merely coincidental and is not prearranged.

Indirect transactions. You cannot deduct your loss on the sale of stock through your broker if in a purchase or exchange, you received property from a related person 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 it is more than the loss previously disallowed to the related person. 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 gain that is more than 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 rules for determining the treatment of gain or loss from various dispositions of property.

Sale of a Business
The sale of a business usually is not a sale of one asset. Instead, all 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. Each asset is figured separately. The sale of capital assets results in capital gain or loss. The sale of real property or depreciable property used in the business and held longer than 1 year results in gain or loss from a section 1231 transaction discussed in chapter 3. 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 will be treated as ordinary gain or loss. For more information, see Disposition of Partner’s Interest 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 generally are treated as a sale or exchange. Gain or loss generally is recognized on a liquidating sale of its assets. Gain or loss generally is recognized on a liquidating distribution of assets as if the corporation sold the assets to the distributee at fair market value.

In certain cases in which the distributee is a corporation in control of the distributing corporation, the distribution may not be taxable. For more information, see Internal Revenue Code section 332 and the related regulations.

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 of a single asset. Except for assets exchanged under any nontaxable 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.

Consideration. The buyer’s consideration is the total of the assets acquired. The seller’s consideration is the amount realized (money plus the fair market value of property received) from the sale of assets.

Residual method. 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 buyer of the share of the partnership asset is adjusted for the amount paid under section 743(b) of the Internal Revenue Code. Section 743(b) applies if a partnership has an election in effect under section 754 of the Internal Revenue Code.

A group of assets constitutes a trade or business if either of the following applies.

- Goodwill or going concern value could, under any circumstances, attach to them.
- The use of the assets would constitute an active trade or business under section 365 of the Internal Revenue Code.

The residual method provides for the consideration to be reduced first by the amount of Class I assets (defined below). The consideration remaining after this reduction must be allocated among the various business assets in a certain order. See Classes of assets next for the complete order.

Classes of assets. The following definitions are the classifications for deemed or actual asset acquisitions. Allocate the consideration among the assets in the following order. The amount allocated to an asset, other than a Class VII asset, cannot exceed its fair market value as of the purchase date. The amount you can allocate to an asset also is subject to applicable limits under the Internal Revenue Code or general principles of tax law.

- Class I assets are cash and general deposit accounts (including checking and savings accounts but excluding certificates of deposit).
- Class II assets are certificates of deposit, U.S. Government securities, foreign currency, and actively traded personal property, including stock and securities.
- Class III assets are accounts receivable, other debt instruments, and assets that you mark to market at least annually for federal income tax purposes. However, see section 1.338-6(b)(2)(ii)(A) of the regulations for exceptions that apply to debt instruments issued by persons related to a target corporation, contingent debt instruments, and debt instruments convertible into stock or other property.
- Class IV assets are property of a kind that would properly be included in inventory if on hand at the end of the tax year or property held by the taxpayer primarily for sale to customers in the ordinary course of business.

Class V assets are all assets other than Class I, II, III, IV, and VII assets.

Note. Furniture and fixtures, buildings, land, vehicles, and equipment, which constitute all or part of a trade or business are generally Class V assets.

Class VI assets are section 197 intangibles (other than goodwill and going concern value).

Class VII assets are goodwill and going concern value (whether the goodwill or going concern value qualifies as a section 197 intangible).

If an asset described in one of the classifications described above can be included in more than one class, include it in the lower numbered class. For example, if an asset is described in both Class II and Class IV, choose Class II.

Example. The total paid in the sale of the assets of Company SKB is $21,000. No cash or deposit accounts or similar accounts were sold. The company’s U.S. Government securities sold had a fair market value of $3,200. The only other asset transferred (other than goodwill and going concern value) was inventory with a fair market value of $15,000. Of the $21,000 paid for the assets of Company SKB, $3,200 is allocated to U.S. Government securities, $15,000 to inventory assets, and the remaining $2,800 to goodwill and going concern value.

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 IRS determines 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 longer 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 3. See chapter 8 of Publication 535, Business Expenses, for information on depreciable intangible property and chapter 1 of Publication 946, How To Depreciate Property, for information on intangible property that can and cannot be depreciated. Gain or loss on
dispositions of other intangible property is ordi-
nary or capital depending on whether the prop-
erty is a capital asset or a noncapital asset.

The following discussions explain special
rules that apply to certain dispositions of intangi-
ble property.

Section 197 Intangibles

Section 197 intangibles are certain intangible
assets acquired after August 10, 1993 (after July
25, 1991, if held in connection with the con-
duct of a trade or business) or an activity
entered into for profit whose costs are amortized
over 15 years. They include the following as-
sets:

• Goodwill.

• Going concern value.

• Workforce in place.

• Business books and records, operating
systems, and other information bases.

• Patents, copyrights, formulas, processes,
designs, patterns, know how, formats, and
similar items.

• Customer-based intangibles.

• Supplier-based intangibles.

• Licenses, permits, and other rights
granted by a governmental unit.

• Covenants not to compete entered into
connection with the acquisition of a busi-
ness.

• Franchises, trademarks, and trade names.

For more information, see chapter 8 of Publica-
tion 535.

Dispositions. You cannot deduct a loss from
the disposition or worthlessness of a section 197
intangible 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 re-
tained section 197 intangible by the nondeduct-
able loss. If you retain more than one section 197
intangible, increase each intangible’s adjusted
basis. Figure the increase by multiplying the
nondeductible loss by a fraction, the numerator
(top number) of which is the retained intangible’s
adjusted basis on the date of the loss and the
denominator (bottom number) 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 in determining whether a member has
disposed of its entire interest in a trade or
business.

Anti-churning rules. Anti-churning rules
prevent a taxpayer from converting section 197
intangibles that do not qualify for amortization
into property that would qualify for amortization.
However, these rules do not apply to part of the
basis of property acquired by certain related perso-
ns if the transferor elects to do both the
following:

• Recognize gain on the transfer of the
property.

• Pay income tax on the gain at the highest
tax rate.

If the transferor is a partnership or S corpo-
ation, the partnership or S corporation (not the
partners or shareholders) can make the elec-
tion. But each partner or shareholder must pay
the tax on his or her share of gain.

To make the election, you, as the transferor,
must attach a statement containing certain infor-
mation to your income tax return for the year of
the transfer. You must file the tax return by the
due date of the return (excluding extensions). You
must also notify the transferee of the election in
writing by the due date of the return.

If you timely filed your return without making
the election, you can make the election by filing
an amended return within 6 months after the due
date of the return (excluding extensions). Attach
the statement to the amended return and write
"Filed pursuant to section 301.9100-2" at the top
of the statement. File the amended return at the
same address the original return was filed.

For more information about making the elec-
tion, see section 1.197-2(h)(9) of the regula-
tions. For information about reporting the tax on
your income tax return, see the Instructions for
Form 4797.

Patents

The transfer of a patent by an individual is
treated as a sale or exchange of a capital asset
held longer than 1 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 gain or loss
on the transfer of capital assets, see chapter 4.

This treatment applies to your transfer of a patent
if you meet all the following conditions:

• You are the holder of the patent.

• You transfer the patent other than by gift,
handover, or devise.

• You transfer all substantial rights to the
patent or an undivided interest in all such
rights.

• You do not transfer the patent to a related
person.

Holder. You are the holder of a patent if you
are either of the following:

• The individual whose effort created the
patent property and who qualifies as the
original and first inventor.

• The individual who bought an interest in
the patent from the inventor before the in-
vention was tested and operated success-
fully 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 have 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.

All substantial rights to a patent are not trans-
ferred if any of the following apply to the transfer.

• The rights are limited geographically within
a country.

• The rights are limited to a period less than
the remaining life of the patent.

• 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.

• 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. This tax treatment does not
apply if the transfer is directly or indirectly be-
 tween you and a related person as defined ear-
er under Nondeductible Loss, with the following
changes.

1. Members of your family include your
spouse, ancestors, and lineal descend-
ants, 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), earlier, does not
apply. For example, a transfer between a
brother and a sister as beneficiary and fiduciary
of the same trust is a transfer between related
persons. The brother-sister exception does not
apply because the trust relationship is indepen-
dent of family status.

Franchise, Trademark,
or Trade Name

If you transfer or renew a franchise, trademark,
or trade name for a price contingent on its pro-
ductivity, use, or disposition, the amount you
receive generally is treated as an amount real-
ized from the sale of a noncapital asset. A
franchise includes an agreement that gives one
of the parties the right to distribute, sell, or pro-
vide goods, services, or facilities within a speci-
fied area.

Significant power, right, or continuing inter-
est. 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:

- A right to disagree any assignment of the interest, or any part of it.
- A right to end the agreement at will.
- 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.
- A right to make the recipient sell or advertise only your products or services.
- A right to make the recipient buy most supplies and equipment from you.
- A right to receive 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, to sell or exchange it, you subdivide it into individual lots or parcels, the gain normally is ordinary income. However, 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 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 business income or loss. It is reported in the gross receipts or 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., are ordinary farm income and expenses reported on Schedule F (Form 1040), Profit or Loss From Farming.

Different rules apply if you owned the timber longer than 1 year and elect to either:

- Treat timber cutting as a sale or exchange, or
- Enter into a cutting contract.

Timber is considered cut on the date when, in the ordinary course of business, the quantity of felled timber is first definitely determined. This is true whether the timber is cut under contract or whether you cut it yourself.

Under the rules discussed below, disposition of the timber is treated as a section 1231 transaction. See chapter 3. 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 below.

Election to treat 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 can elect to treat the cutting of timber as a section 1231 transaction in the year the timber 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 business income or loss. See Example, later.

To elect this treatment, you must:

- Own or hold a contractual right to cut the timber for a period of more than 1 year before it is cut, and
- Cut the timber for sale or for use in your trade or business.

Making the election. You make the 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 the gain or loss. You do not have to make the election in the first year you cut timber. You can make it in any year to which the election would apply. If the timber is in a 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 cancel it.

Election under section 631(a) may be revoked. If you previously elected for any tax year ending before October 23, 2004, to treat the cutting of timber as a sale or exchange under section 631(a), you may revoke this election without the consent of the IRS for any tax year ending after October 22, 2004. The prior election and revocation is disregarded for purposes of making a subsequent election. See Form T (Timber), Forest Activities Schedule, for more information.

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 interest 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 regulation section 1.611-3. Timber depletion is discussed in chapter 9 of Publication 535.

Example. In April 2007, you had owned 4,000 MBF (1,000 board feet) of standing timber longer than 1 year. It had an adjusted basis for depletion of $40 per MBF. You are a calendar year taxpayer. On January 1, 2007, the timber had a fair market value (FMV) of $350 per MBF. It was cut in April for sale. On your 2007 tax return, you elect to treat the cutting of the timber as a sale or exchange. You report the difference between the fair market value and your adjusted basis for depletion on Form 4797. If you held the timber primarily for trade or business (Form 1040). If you held the timber primarily for trade or business, you report your gain or loss on the cutting of the timber as a section 1231 transaction in the year the timber is cut. Any later sale results in ordinary business income or loss. See Example, later.

FMV of timber January 1, 2007 $1,400,000 Minus: Adjusted basis for depletion $160,000 Section 1231 gain $1,240,000

The fair market value 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 business income or loss.

Outright sales of timber. Outright sales of timber by landowners qualify for capital gains treatment using rules similar to the rules for certain dispositions of timber under a contract with retained economic interest (defined below). However, for outright sales, the date of disposition is determined to be the date you cut the timber because the landowner can elect to treat the payment date as the date of disposition (see below).

Cutting contract. You must treat the disposal of standing timber under a cutting contract as a section 1231 transaction if all the following apply to you:

- You are the owner of the timber.
- You held the timber longer than 1 year before its disposal.
- You kept an economic interest in the timber.

You have kept an economic interest in standing timber if, under the cutting contract, the expected return on your investment is conditioned on the cutting of the timber.

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, for outright sales by landowners or if you receive payment under the contract before the timber is cut, you can elect to treat the date of payment as the date of disposal.

This election applies only to figure the holding period of the timber. It has no effect on the time for reporting gain or loss (generally when the timber is sold or exchanged).

To make this election, attach a statement to the tax return filed by the due date (including extensions) for the year payment is received. The statement must identify the advance payments subject to the election and the contract under which they were made.

If you timely filed your return for the year you received payment without making the election, you still can make the election by filing an amended return within 6 months after the due date for that year’s return (excluding extensions). Attach the statement to the amended return and write “Filed pursuant to section 301.9100-2(a)” at the top of the statement. File the return before the final due date (including extensions) for the year. The returns claimed in this manner can be amended to correct any underreporting of gain or loss. The election is made 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.
amended return at the same address the original return was filed.

**Owner.** The owner of timber is any person who owns an interest in it, including a sublessor and the holder of a contract to cut the timber. You own an interest in timber if you have the right to cut it for sale on your own account or for use in your business.

**Tree stumps.** Tree stumps are a capital asset if they are 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.

See Form 4797 and its separate instructions for more information about dispositions of timber.

**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 generally is a capital gain or loss. If you are a dealer, the amount received from the sale is ordinary business income.

**Coal and Iron Ore**

You must treat the disposal of coal (including lignite) or iron ore mined in the United States as a section 1231 transaction if both the following apply to you.

- You owned the coal or iron ore longer than 1 year before its disposal.
- You kept an economic interest in the coal or iron ore.

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 or gain from all your section 1231 transactions result in gain or loss subject to ordinary or capital income. This applies if substantially all your expected return is attributable to the time value of your net investment (like interest on a loan) and the transaction is any of the following.

- An applicable straddle (generally, any set of offsetting positions with respect to personal property, including stock).
- A transaction in which you acquire property and, at or about the same time, you contract to sell the same or substantially identical property at a specified price.
- 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.

**Special rule.** The above treatment does not apply if you directly or indirectly dispose of the ore or coal to any of the following persons.

- A related person whose relationship to you would result in the disallowance of a loss (see Nondeductible Loss under Sales and Exchanges Between Related Persons, earlier).
- 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**

Recognized gain on the disposition or termination of any position held as part of certain conversion transactions is treated as ordinary income. This applies if substantially all your expected return is attributable to the time value of your net investment (like interest on a loan) and the transaction is any of the following.

- An applicable straddle (generally, any set of offsetting positions with respect to personal property, including stock).
- A transaction in which you acquire property and, at or about the same time, you contract to sell the same or substantially identical property at a specified price.
- 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.

Ordinary or Capital Gain or Loss for Business Property

**Introduction**

When you dispose of business property, your taxable gain or loss is usually a section 1231 gain or loss. Its treatment as ordinary or capital is determined under rules for section 1231 transactions. When you dispose of depreciable property (section 1245 property or section 1250 property) at a gain, you may have to recognize all or part of the gain as ordinary income under the depreciation recapture rules. Any remaining gain is a section 1231 gain.

**Topics**

This chapter discusses:

- Section 1231 gains and losses
- Depreciation recapture

**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
  - 954 Tax Incentives for Distressed Communities

- Form (and Instructions)
  - 4797 Sales of Business Property

See chapter 5 for information about getting publications and forms.
must be held for draft, breeding, dairy, or sporting purposes and held for 1 year or longer.

- Sales or exchanges of unharvested crops. The crop and land must be sold, exchanged, or involuntarily converted at the same time and to the same person and the land must be held longer than 1 year. You cannot keep any right or option to directly or indirectly reacquire the land (other than a right customarily incident to a mortgage or other security transaction). Growing crops sold with a lease on the land, held to the same person in the same transaction, are not included.

- Cutting of timber or disposal of timber, coal, or iron ore. The cutting or disposal must be treated as a sale, as described in chapter 2 under Timber and Coal and Iron Ore.

- Condemnations. The condemned property must have been held longer than 1 year. It must be business property or a capital asset held in connection with a trade or business or a transaction entered into for profit, such as investment property. It cannot be property held for personal use.

- Casualties and thefts. The casualty or theft must have affected business property, property held for the production of rents and royalties, or investment property (such as notes and bonds). You must have held the property longer than 1 year. However, if your casualty or theft losses are more than 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.

Property for sale to customers. A sale, exchange, or involuntary conversion of property held mainly for sale to customers is not a section 1231 transaction. 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.

Example. You manufacture and sell steel cable, which you deliver on returnable reels that 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 1-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.

Copyrights. The sale of a copyright, a literary, musical, or artistic composition, or similar property is not a section 1231 transaction if your personal efforts created the property, or if you acquired the property in a way that entitled you to the basis of the previous owner whose personal efforts created it (for example, if you receive the property as a gift). The sale of such property results in ordinary income and generally is reported in Part II of Form 4797.

Treatment as ordinary or capital. To determine the treatment of section 1231 gains and losses, combine all your section 1231 gains and losses for the year.

- If you have a net section 1231 loss, it is ordinary loss.
- If you have a net section 1231 gain, it is ordinary income up to the amount of your nonrecaptured section 1231 losses from previous years. The rest, if any, is long-term capital gain.

Nonrecaptured section 1231 losses. Your nonrecaptured section 1231 losses are your net section 1231 losses for the 5 years that have not been applied against a net section 1231 gain by treating the gain as ordinary income. These losses are applied against your net section 1231 gain beginning with the earliest loss in the 5-year period.

Example. Ashley, Inc., a graphic arts company, is a calendar year corporation. In 2004, it had a net section 1231 loss of $8,000. For tax years 2006 and 2007, the company has net section 1231 gains of $5,250 and $4,600, respectively. In figuring taxable income for 2006, 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 from 2004. In 2007, it applies its remaining net section 1231 loss, $2,750 ($8,000 – $5,250) against its net section 1231 gain, $4,600. For 2007, the company reports $2,750 as ordinary income and $1,850 ($4,600 – $2,750) as long-term capital gain.

Depreciation Recapture

If you dispose of depreciable or amortizable property at a gain, you may have to treat all or part of the gain (even if otherwise nontaxable) as ordinary income.

To figure any gain that must be reported as ordinary income, you must keep permanent records of the facts necessary to figure the 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 acquired in a nontaxable exchange or as a gift, your records also must indicate the following information.

- Whether the adjusted basis was figured using depreciation or amortization you claimed on other property.
- Whether the adjusted basis was figured using depreciation or amortization another person claimed.

Corporate distributions. For information on property distributed by corporations, see Publications 544, 545, 547.

General asset accounts. Different rules apply to dispositions of property you depreciated using a general asset account. For information on these rules, see section 1.168(j)-1(e) of the regulations. Also see Publication 946.

Section 1245 Property

A gain in the disposition of section 1245 property is treated as ordinary income to the extent of depreciation allowed or allowable on the property. See Gain Treated as Ordinary Income, later.

Any gain recognized that is more than the part that is ordinary income from depreciation is a section 1231 gain. See Treatment as ordinary or capital under Section 1231 Gains and Losses, earlier.

Section 1245 property defined. Section 1245 property includes any property that is or has been subject to an allowance for depreciation or amortization and that is any of the following types of property.

1. Personal property (either tangible or intangible).
2. Other tangible property (except buildings and their structural components) used as any of the following. See Buildings and structural components below.
   a. An integral part of manufacturing, production, or extraction, or of furnishing transportation, communications, electric, gas, water, or sewage disposal services.
   b. A research facility in any of the activities in (a).
   c. A facility in any of the activities in (a) for the bulk storage of fungible commodities (discussed on the next page).
3. That part of real property (not included in (2)) with an adjusted basis reduced by (but not limited to) the following:
   a. Amortization of certified pollution control facilities.
   b. The section 179 expense deduction.
   d. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
   e. Deduction for certain qualified refinery property placed in service after December 31, 2005.
   f. Deduction for energy efficient commercial building property placed in service after August 8, 2005.
   g. Deduction for election to expense qualified advanced mine safety equipment property.

Different rules apply to dispositions of property you depreciated using a general asset account. For information on these rules, see section 1.168(j)-1(e) of the regulations. Also see Publication 946.

Section 1245 Property

A gain in the disposition of section 1245 property is treated as ordinary income to the extent of depreciation allowed or allowable on the property. See Gain Treated as Ordinary Income, later.

Any gain recognized that is more than the part that is ordinary income from depreciation is a section 1231 gain. See Treatment as ordinary or capital under Section 1231 Gains and Losses, earlier.

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1. Personal property (either tangible or intangible).
2. Other tangible property (except buildings and their structural components) used as any of the following. See Buildings and structural components below.
   a. An integral part of manufacturing, production, or extraction, or of furnishing transportation, communications, electric, gas, water, or sewage disposal services.
   b. A research facility in any of the activities in (a).
   c. A facility in any of the activities in (a) for the bulk storage of fungible commodities (discussed on the next page).
3. That part of real property (not included in (2)) with an adjusted basis reduced by (but not limited to) the following:
   a. Amortization of certified pollution control facilities.
   b. The section 179 expense deduction.
   d. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
   e. Deduction for certain qualified refinery property placed in service after December 31, 2005.
   f. Deduction for energy efficient commercial building property placed in service after August 8, 2005.
   g. Deduction for election to expense qualified advanced mine safety equipment property.
Gain Treated as Ordinary Income

The gain treated as ordinary income on the sale, exchange, or involuntary conversion of section 1245 property, including a sale and leaseback transaction, is the lesser of the following amounts.

1. The depreciation and amortization allowed or allowable on the property.

2. The gain realized on the disposition (the amount realized from the disposition minus the adjusted basis of the property).

A limit on this amount for gain on like-kind exchanges and involuntary conversions is explained later.

For any other disposition of section 1245 property, ordinary income is the lesser of (1) or (2) earlier or the amount by which its fair market value is more than its adjusted basis. See Gifts and Transfers at Death, later.

Use Part III of Form 4797 to figure the ordinary income part of the gain.

Depreciation taken on other property or taken by other taxpayers.

Depreciation and amortization include the amounts you claimed on the section 1245 property as well as the following depreciation and amortization amounts.

- Amounts you claimed on property you exchanged for, or converted to, your section 1245 property in a like-kind exchange or involuntary conversion. See Caution, below.
- Amounts a previous owner of the section 1245 property claimed if your basis is determined with reference to that person’s adjusted basis (for example, the donor’s depreciation deductions on property you received as a gift).

Simpler rules apply for section 1245 property you acquired after February 27, 2004.

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. Any special depreciation allowance you claimed.

3. Amortization deductions for all the following costs.
   a. Acquiring a lease.
   b. Lessee improvements.
   c. Certified pollution control facilities.
   d. Certain reforestation expenses.
   e. Section 197 intangibles.
   g. Franchises, trademarks, and trade names acquired before August 11, 1993.

4. The section 179 deduction.

5. Deductions for all the following costs.
   a. Removing barriers to the disabled and the elderly.
   b. Tertiary injectant expenses.
   c. Depreciable clean-fuel vehicles and re-fueling property (minus the amount of any recaptured deduction).
   d. Environmental cleanup costs.
   e. Certain reforestation expenses

6. Any basis reduction for the investment credit (minus any basis increase for credit recapture).

7. Any basis reduction for the qualified electric vehicle credit (minus any basis increase for credit recapture).

Example.

You file your returns on a calendar year basis. In February 2005, you bought and placed in service for 100% use in your business a light-duty truck (5-year property) that cost $10,000. You used the half-year convention and your MACRS deductions for the truck were $2,000 in 2005 and $3,200 in 2006. You did not take the section 179 deduction. You sold the truck in May 2007 for $7,000. The MACRS de-

duction in 2007, the year of sale, is $960 (1/2 of $1,920). Figure the gain treated as ordinary income as follows.

1) Amount realized...................... $7,000
2) Cost (February 2005)....... $10,000
3) Depreciation allowed or allowable (MACRS deductions: $2,000 + $3,200 + $960).......... 6,160
4) Adjusted basis (subtract line 3
   from line 2)............................ $3,840
5) Gain (subtract line 4
   from line 1)............................. $3,160
6) Gain treated as ordinary income (lesser of line 3 or line 5).................. $3,160

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 activ-

ity, you must use the entire $10,000 in determin-

ing ordinary income from 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 de-

uctions under one method, the amount allowed for your prior years will not be increased even
though a greater amount would have been al-
lowed 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.

**Multiple asset accounts.** In figuring ordinary income from depreciation, you can treat any number of units of section 1245 property in a single depreciation account as one item if the total ordinary income from depreciation figured by using this method is less than it would be if depreciation on each unit were figured sepa-

rately. Example. In one transaction you sold 50 machines, 25 trucks, and certain other property that is not section 1245 property. All of the depre-
ciation is 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 can figure the ordinary income from depre-
ciation 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 from depreciation.

Normal retirement. The normal retirement of section 1245 property in multiple asset ac-
counts does not require recognition of gain as ordinary income from depreciation if your method of accounting for asset retirements does not require recognition of that gain.

**Section 1250 Property**

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 depre-
ciation on section 1250 property, see Additional Depreciation, later.

If you hold section 1250 property for 1 year or less, all the depreciation is additional depre-
ciation. You will not have additional depreciation if any of the following conditions apply to the prop-
erty disposed of.

- 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; you held the property longer than 1 year; and, if the property was qualified New York Liberty Zone property, you made a timely election not to claim any special depreciation al-

lowance. In addition, if the property was in a renewal community, you must not have elected to claim a commercial revitalization deduc-
tion as figured under section 14001 of the Internal Revenue Code.

- The property was residential low-income rental property you held for 16 years or longer. For low-income rental housing on which the special 60-month depreciation for rehabilitation expenses was allowed, the 16 years start when the rehabilitated property is placed in service.

- You chose the alternate ACRS method for the property, which was a type of 15-, 18-, or 19-year real property covered by the section 1250 rules.

- The property was residential rental prop-
erty or nonresidential real property placed in service after 1986 (or after July 31, 1986, if the choice to use MACRS was made); you held it longer than 1 year; and, if the property was qualified New York Lib-

erty Zone property, you made a timely elec-
tion not to claim any special deprecia-
tion allowance. These properties are depre-
ciated using the straight line method. In addition, if the property was in a renewal community, you must not have elected to claim a commercial revitalization deduc-
tion as figured under section 14001 of the Internal Revenue Code.

- Depreciation taken by other taxpayers or on other property. Additional depreciation in-
cludes all depreciation adjustments to the basis of section 1250 property whether allowed to you or another person (as carryover basis property).

**Section 1250 property defined.** This in-
cludes all real property that is subject to an allowance for depreciation and that is not and never has been section 1245 property. It in-
cludes a leasehold of land or section 1250 prop-
erty subject to an allowance for depreciation. A fee simple interest in land is not included be-
cause it is not depreciable.

If your section 1250 property becomes sec-

tion 1245 property because you change its use, you can never again treat it as section 1250 property.

Additional Depreciation

If you hold section 1250 property longer than 1 year, the additional depreciation is the actual depreciation adjustments that are more than the depreciation figured using the straight line method. For a list of items treated as deprecia-
tion adjustments, see Depreciation and amori-
zation under Gain Treated as Ordinary Income, earlier.
100%. For periods before 1970, the percentage is zero and no ordinary income because of additional depreciation before 1970 will result from its disposition.

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%. The percentage for periods before 1976 is zero. Therefore, no ordinary income because of additional depreciation results from a disposition of residential rental property.

Low-income housing. Low-income housing includes all the following types of residential rental property.

- Federally assisted housing projects if 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.
- Low-income rental housing for which a depreciation deduction for rehabilitation expenses was allowed.
- 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.
- Housing financed or assisted by direct loan or insured under Title V of the Housing Act of 1949.

The applicable percentage 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 percentage is zero and no ordinary income will result from its disposition.

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, 1995, you acquired low-income housing property. On April 3, 2006 (130 months after the property was acquired), foreclosure proceedings were started on the property and on December 3, 2007 (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% (150 months minus 100 months) rather than 50% (150 months minus 100 months) because it does not apply after April 3, 2006, 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 generally starts on the day after you acquired it. For example, if you bought low-income housing on January 1, 1991, the holding period starts on January 2, 1991. If you sold it on January 2, 2007, the holding period is exactly 192 full months. The applicable percentage for additional depreciation is 8%, or 100% minus 1% for each full month the property was held over 100 full months.

Holding period for 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 transfer. For low-income housing you acquired by gift or in a tax-free transfer the basis of which is figured by reference to the basis in the hands of the transferor, the holding period for the applicable percentage includes the holding period of the transferor.

If the adjusted basis of the property in your hands just after acquiring it is more than its adjusted basis to the transferor just before transferring it, the holding period of the difference 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 you dispose of low-income housing property that has two or more separate elements, the applicable percentage used to figure ordinary income because of additional depreciation may be different for each element. The gain to be reported as ordinary income is the sum of the applicable percentage for each element. The following are the types of separate elements.

- A separate improvement (defined later).
- The basic section 1250 property plus improvements not qualifying as separate improvements.
- 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, 2006, 50 on July 18, 2006, and the remaining 20 on January 18, 2007. As a result, the apartment house consists of three separate elements.

The 36-month test for separate improvements. A separate improvement is any improvement (qualifying under The 1-year test, below) added to the capital account of the property, but only if the total of the improvements during the 36-month period ending on the last day of any tax year is more than the greatest of the following amounts.

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).
3. $5,000.

The 1-year test. An addition to the capital account in 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 greater 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, 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 of this year. During the year, the taxpayer made improvements A, B, and C, which cost $1,000, $600, and $700, respectively. The sum of the improvements, $2,300, is less than 1% of the unadjusted basis ($3,000), so the improvements do not satisfy the 1-year test and are not treated as improvements for the 36-month test. However, if improvement C had cost $1,500, the sum of these improvements would have been $3,100. Then, it would be necessary to apply the 36-month test 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. For example, 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. Therefore, the capital account is not affected by whether it is treated as a separate property for determining depreciation.

Whether an expense is treated as an addition to the capital account may depend on the final disposition of the entire property. If the expense items are sold, the basic property is 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 of a separate improvement, 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. Use the following guidelines for figuring the applicable percentage for property with two or more elements.
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.

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.

The holding period for each improvement not qualifying as a separate element 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 undepreciated basis) but qualifies 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 closest 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.

Step 1. Divide the element’s additional depreciation after 1975 by the sum of all the elements’ additional depreciation after 1975 to determine the percentage used in Step 2.

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 a gain of $25,000 low-income housing property subject to the ordinary income rules of section 1250. The property consisted of four elements (W, X, Y, and Z).

Step 1. The additional depreciation for each element is: W-$12,000; X-$6,000; Y-$6,000; and Z-$6,000. The sum of the additional depreciation for all the elements is $24,000.

Step 2. 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 − $4,000). $20,000 is lower than the $25,000 gain on the sale, so $20,000 is used in Step 2.

Step 3. The applicable percentages to be used in Step 3 for the elements are: W-68%; X-85%; Y-92%; and Z-100%.

Ordinary income attributable to each separate element is figured as follows:

<table>
<thead>
<tr>
<th>Element</th>
<th>Percentage</th>
<th>Ordinary Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>W</td>
<td>68%</td>
<td>$10,000</td>
</tr>
<tr>
<td>X</td>
<td>85%</td>
<td>$16,400</td>
</tr>
<tr>
<td>Y</td>
<td>92%</td>
<td>$16,400</td>
</tr>
<tr>
<td>Z</td>
<td>100%</td>
<td>$16,400</td>
</tr>
</tbody>
</table>

Gain Treated as Ordinary Income

To find what part of the gain from the disposition of section 1250 property is treated as ordinary income, follow these steps.

1. In a sale, exchange, or involuntary conversion of the property, figure the amount realized that is more than the adjusted basis of the property. In any other disposition of the property, figure the fair market value that is more than the adjusted basis.

2. Figure the additional depreciation for the periods after 1975.

3. Multiply the lesser of (1) or (2) by the applicable percentage, discussed earlier. Stop here if this is residential rental property or if (2) is equal to or more than (1). This is the gain treated as ordinary income because of additional depreciation.

4. Subtract (2) from (1).

5. Figure the additional depreciation for periods after 1969, if applicable, or after 1976.

6. Add the lesser of (4) or (5) to the result in (3). This is the gain treated as ordinary income because of additional depreciation.

A limit on the amount treated as ordinary income for gain on like-kind exchanges and involuntary conversions is explained later.

Use Part III, Form 4797, to figure the ordinary income part of the gain.

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 Form 4797, Part III, line 26(f).

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 rest of the gain using the rules of the installment method. For this purpose, include the recapture income in your installment sale basis to determine your gross profit on the installment sale.

If you dispose of more than one asset in a single transaction, you must figure the gain on each asset separately 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. Report any depreciation recapture income in the year of sale before using the installment method for any remaining gain.

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

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 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 Section 1250 Property, earlier.”

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 charity,” 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 minus $10,000 adjusted basis) that must be reported as ordinary income from depreciation. You report $10,000 of your $30,000 depreciation as ordinary income on the transfer of the property, so 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 you would have reported had you sold the property at its fair market value at the time of the contribution. Thus, your deduction for depreciable property or real property given to a charitable organization does not include the potential long-term capital gain.

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.

Bargain sale to charity. If you transfer section 1245 or section 1250 property to a charitable organization for less than its fair market value and a deduction for the contribution part of the transfer is allowable, your ordinary income from depreciation is figured under different rules. First, figure the ordinary income as if you had sold the property at its fair market value.
Then, allocate that amount between the sale and the contribution parts of the transfer in the same ratio as your allocable adjusted basis in the property to figure your gain. See Bargain Sale under Gain or Loss From Sales and Exchanges in chapter 1. Report as ordinary income the lesser of the ordinary income allocated to the sale or your gain from the sale.

Example. You sold section 1245 property in a bargain sale to a charitable organization and are allowed a deduction for contributions to charity. Your gain on the sale was $1,200, figured by allocating 20% of your adjusted basis in the property. However, if you had sold property at its fair market value, your ordinary income would have been $5,000. Your ordinary income is $1,000 ($5,000 × 20%) and your section 1231 gain is $200 ($1,200 − $1,000).

Transfers at Death

When a taxpayer dies, no gain is reported on depreciable personal property or real property transferred to his or her estate or beneficiary. For information on the tax liability of a decedent, see Publication 559, 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 a person acquiring control of a corporation.

Example 1. Janet Smith owned depreciable property that, upon her death, was inherited by her son. No ordinary income from depreciation is reportable on the transfer, even though the value used for estate tax valuation 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 from depreciation.

Example 2. The trustee of a trust created by property similar in use to the property owned by Janet Smith transferred depreciable personal property to the trust on the transfer. Amounts allocable to the part sold. If you had sold the property at its fair market value, your ordinary income would have been $5,000. Your ordinary income is limited to the sum of the following amounts.

- The gain that must be included in income under the rules for like-kind exchanges or involuntary conversions.
- 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 two years ago. You took depreciation deductions of $3,950. The $310 gain ($1,360 trade-in allowance minus $1,050 adjusted basis) is not reported because it is postponed under the rules for like-kind exchanges and you received only depreciable personal property in the exchange.

Example 2. You bought office machinery for $1,500 two years ago and deducted $780 depreciation. This year a fire destroyed the machine and you received $1,200 from your fire insurance, realizing a gain of $480 ($1,200 − $720 adjusted basis). You choose to postpone reporting gain, but replacement machinery cost you only $1,000. Your taxable gain under the rules for involuntary conversions is limited to the remaining $200 insurance payment. All your replacement property is depreciable personal property, so your ordinary income from depreciation is limited to $200.

Example 3. A fire destroyed office machinery you bought for $116,000. The depreciation deductions were $91,640 and the machinery had an adjusted basis of $24,360. You received a $117,000 insurance payment, realizing a gain.

- 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 reporting the gain. $114,000 of the $117,000 insurance payment was used to buy replacement property, so the gain that must be included in income under the rules for involuntary conversions is the part not spent, or $3,000. The part of the insurance payment ($9,000) used to buy the nondepreciable property (the stock) also must be included in figuring the gain from depreciable property.
- 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) = $1,000
2) Gain includible in income (amount not spent) = $3,000
Plus: Fair market value of property other than depreciable personal property (the stock) = 9,000

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 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, ordinary income from additional depreciation is figured under the rules explained earlier (see Section 1250 Property), limited to the greater of the following amounts.

- 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.
- The gain you would have had to report as ordinary income from additional depreciation had the transaction been a cash sale minus 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 decedent's estate or trust and is limited to the lesser of (1) or (2) above. 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 is limited to the lesser of (1) or (2) above. If the deceased disposed of the depreciable real property owned by the estate or trust while it was still alive and the decedent disposed of the real property while he or she was still alive, the gain that would have been reported as ordinary income from additional depreciation had the property been sold before death must be reported as ordinary income in the year of the event.

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 reporting 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 greater of the following amounts.

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.
2. The gain you would have had to report as ordinary income from additional depreciation ($20,000) had this transaction been a
Example 2. John Adams received 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 reporting the $60,000 gain realized on the involuntary conver-
sion. Of this gain, $10,000 is ordinary income from 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), allocated as follows:

1. The $42,000 cost of depreciable real prop-
erty minus $10,000 ordinary income not 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 is 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 minus the $12,000 figured in (4).

The ordinary income that is not reported ($10,000) is carried over to the depreciable real property and allocated as follows. The $42,000 cost of depreciable real property and $48,000 for land. He chooses to postpone reporting the $60,000 gain realized on the involuntary conver-
sion. Of this gain, $10,000 is ordinary income from 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), allocated 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. 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).
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).
5. Subtract the result in (4) from the total ba-
sis. 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 in place in service replacement low-income hous-
ing property.

Your realized gain from the involuntary con-
version was $51,600 ($90,000 – $38,400). You chose to postpone reporting the gain under the involuntary conversion rules. Under the rules for depreciation recapture on real property, the ord-
inary gain was $14,932, but you did not have to report any of it because of the limit for involun-
tary conversions.

The basis of the replacement low-income housing property was its $90,000 cost minus the $51,600 gain you postponed, or $38,400. The $14,932 ordinary gain you did not report is treated as additional depreciation on the re-
placement 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

Like-kind exchanges and involuntary con-
versions. If you dispose of and acquire both depreciable personal property or other prop-
erty (other than depreciable real property) in a like-kind exchange or involuntary conversion, the amount realized is allocated in the following way. The amount allocated to the depreciable personal property disposed of is treated as con-
sisting of, first, the fair market value of the depre-
ciable 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 al-
ready 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 in the following way. The amount 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, sec-
ond (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 unallo-
cated amount in any manner you choose.

Example. A fire destroyed your property with a total fair market value of $50,000. It con-
sisted of machinery worth $30,000 and non-de-
preciable property worth $20,000. You received an insurance payment of $40,000 and immedi-
ately used it with $10,000 of your own funds (for 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 $25,000 and your depreciation on it was $5,000. You choose to postpone reporting your gain from the involuntary conversion. You must re-
port $5,000 as ordinary income from deprecia-
tion 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 × $40,000, or $24,000. The amount allocated to the other property is $20,000/50,000 × $40,000, or $16,000. Your gain on the involuntary conversion of the ma-
ninery is $24,000 minus $5,000, 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 replace-
ment 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 from depre-
ciation is $19,000, the gain on the machin-
ery, 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 realized for the machinery that represents the fair market value of property other than the depreciable property you bought.

4. Reporting Gains and Losses

Introduction
This chapter explains how to report capital gains and losses and ordinary gains and losses from sales, exchanges, and other dispositions of property. 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 usually will not apply to taxpayers other than individuals.

Topics
This chapter discusses:

- Information returns
- Schedule D (Form 1040)
- Form 4797

Useful Items
You may want to see:

Publication
- 550 Investment Income and Expenses
- 537 Installment Sales
- 954 Tax Incentives for Distressed Communities

Form (and Instructions)
- Schedule D (Form 1040) Capital Gains and Losses
- 1099-B Proceeds From Broker and Barter Exchange Transactions
- 1099-S Proceeds From Real Estate Transactions
- 4684 Casualties and Thefts
- 4797 Sales of Business Property
- 6252 Installment Sale Income
- 8824 Like-Kind Exchanges

See chapter 5 for information about getting publications and forms.

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 IRS.

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. An information return 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 types of property:

- Land (improved or unimproved), including air space.
- An inherently permanent structure, including any residential, commercial, or industrial building.
- A condominium unit and its related fixtures and common elements (including land).
- Stock in a cooperative housing corporation.

If you sold or exchanged any of 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)
Use Schedule D (Form 1040) to report sales, exchanges, and other dispositions of capital assets. Before completing Schedule D, you may have to complete other forms as shown below.

- For a sale, exchange, or involuntary conversion of business property, complete Form 4797.
- 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 Publication 537.
- For an involuntary conversion due to casualty or theft, complete Form 4684. See Publication 547, Casualties, Disasters, and Thefts.
- For a disposition of an interest in, or property used in, an activity to which the at-risk rules apply, complete Form 6198, At-Risk Limitations. See Publication 925, Passive Activity and At-Risk Rules.

For a disposition of an interest in, or property used in, a passive activity, complete Form 8852, Passive Activity Loss Limitations. See Publication 925.

Personal-use property. Report gain on the sale or exchange of personal-use property (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 for which you received a Form 1099-S, report the transaction on Schedule D, even though the loss is not deductible. Complete columns (a) through (e) and enter ‘0’ in column (f).

Long and Short Term

Where you report 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 held a capital asset 1 year or less, the gain or loss from its disposition is short term. Report it in Part I of Schedule D. If you held a capital asset longer than 1 year, the gain or loss from its disposition is long term. Report it in Part II of Schedule D.

Table 4-1. Do I Have a Short-Term or Long-Term Gain or Loss?

<table>
<thead>
<tr>
<th>IF you hold the property...</th>
<th>THEN you have a...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 year or less.</td>
<td>Short-term capital gain or loss.</td>
</tr>
<tr>
<td>More than 1 year.</td>
<td>Long-term capital gain or loss.</td>
</tr>
</tbody>
</table>

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. See Capital Gains Tax Rates, later.

Holding period. To figure if you held property longer than 1 year, start counting on the day following the day you acquired the property. The holding period of the property is part of your holding period.

Example. If you bought an asset on June 19, 2006, you should start counting on June 20, 2006. If you sold the asset on June 19, 2007, your holding period is not longer than 1 year, but if you sold it on June 20, 2007, your holding period is longer than 1 year.

Patent property. If you dispose of patent property, you generally are considered to have held the property longer than 1 year, no matter how long you actually held it. For more information, see Patents, in chapter 2.

Inherited property. If you inherit property, you are considered to have held the property longer than 1 year, regardless of how long you actually held it.

Installment sale. The gain from an installment sale of an asset qualifying for long-term
### Holding Period for Different Types of Acquisitions

<table>
<thead>
<tr>
<th>Type of acquisition:</th>
<th>When your holding period starts:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stocks and bonds bought on a securities market</td>
<td>Day after trading date you bought security. Ends on trading date you sold security.</td>
</tr>
<tr>
<td>U.S. Treasury notes and bonds</td>
<td>If bought at auction, day after notification of bid acceptance. If bought through subscription, day after subscription was submitted.</td>
</tr>
<tr>
<td>Nontaxable exchanges</td>
<td>Day after date you acquired old property.</td>
</tr>
<tr>
<td>Gift</td>
<td>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.</td>
</tr>
<tr>
<td>Real property bought</td>
<td>Generally, day after date you received title to the property.</td>
</tr>
<tr>
<td>Real property repossessed</td>
<td>Day after date you originally received title to the property, but does not include time between the original sale and date of repossession.</td>
</tr>
</tbody>
</table>

The type and rule above prints on all proofs including departmental reproduction proofs. MUST be removed before printing.
To figure your capital loss carryover from 2006 to 2007, use the Capital Loss Carryover Worksheet in the 2007 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 can deduct any part of the other’s loss.

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 yearly limit discussed earlier still applies in this situation. Even if the loss is greater than the limit, the decedent’s estate cannot deduct the difference or carry it over to following years.

Corporations. A corporation can deduct capital losses only up to the amount of its capital gains. In other words, if a corporation has a net 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.

Capital Gains Tax Rates

The tax rates that apply to a net capital gain are generally lower than the tax rates that apply to other income. These lower rates are called the maximum capital gains rates. The term “net capital gain” means the amount by which your net long-term capital gain for the year is more than your net short-term capital loss.

See the Schedule D (Form 1040) Instructions.

Unrecovered section 1250 gain. This is the part of any long-term capital gain on section 1250 property (real property) that is due to depreciation. Unrecovered section 1250 gain can not be more than the net section 1231 gain or include any gain otherwise treated as ordinary income. Use the worksheet in the Schedule D instructions to figure your unrecovered section 1250 gain. For more information about section 1250 property and net section 1231 gain, see 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 that is depreciable real property. You can use Form 4797 with Forms 1040, 1065, 1120, or 1120S.

Section 1231 gains and losses. Show any section 1231 gains and losses in Part I. Carry a net gain to Schedule D (Form 1040) as a long-term capital gain. Carry a net loss to Part II of Form 4797 as an ordinary loss.

If you had any unrecovered section 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. Report any remaining gain on Schedule D (Form 1040). See Section 1231 Gains and Losses in chapter 3.

Ordinary gains and losses. Show any ordinary gains and losses 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 from depreciation. Figure the ordinary income from depreciation on personal property and additional depreciation on real property (as discussed in chapter 3) in Part III. Carry the ordinary income to Part II of Form 4797 as an ordinary gain. Carry any remaining gain to Part I as section 1231 gain, unless it is from a casualty or theft. Carry any remaining gain from a casualty or theft to Form 4684.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employee assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should.

You can contact the TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059 to see if you are eligible for assistance. You can also call or write to your local taxpayer advocate, whose phone number and address are listed in your local telephone directory and in Publication 1546, Taxpayer Advocate Service - Your Voice at the IRS. You can file Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), or ask an IRS employee to complete it on your behalf. For more information, go to www.irs.gov/advocate.

Taxpayer Advocacy Panel (TAP). The TAP listens to taxpayers, identifies taxpayer issues, and makes suggestions for improving IRS services and customer satisfaction. If you have suggestions for improvements, contact the TAP, toll free at 1-888-912-1227 or go to www.improveirs.org.

Low Income Taxpayer Clinics (LITCs). LITCs are independent organizations that provide low income taxpayers with representation in federal tax controversies with the IRS for free or for a nominal charge. The clinics also provide tax education and outreach for taxpayers with limited English proficiency or who speak English as a second language. Publication 4134, Low Income Taxpayer Clinic List, provides information on clinics in your area. It is available at www.irs.gov or at your local IRS office.

Free tax services. To find out what services are available, get Publication 910, IRS Guide to Free Tax Services. It contains a list of free tax publications and describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.

Internet. You can access the IRS website at www.irs.gov 24 hours a day, 7 days a week to:

- E-file your return. Find out about commercial tax preparation and e-file services available free to eligible taxpayers.
- Check the status of your 2007 refund. Click on Where’s My Refund? Wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically).
- Have your 2007 tax return available because you will need to know your social security number, your filing status, and the exact whole dollar amount of your refund.
- Download forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- View Internal Revenue Bulletins that are published in the last few years.
- Figure your withholding allowances using the withholding calculator online at www.irs.gov/individuals.
- Determine if Form 6251 must be filed using our Alternative Minimum Tax (AMT) Assistant.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.

Phone. Many services are available by phone.

- Ordering forms, instructions, and publications. Call 1-800-829-3676 to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 working days.
- Asking tax questions. Call the IRS with your tax questions at 1-800-829-4933.

Chapter 5 How To Get Tax Help Page 35
• Solving problems. You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to www.irs.gov/localcontacts or look in the phone book under United States Government, Internal Revenue Service.

• TTY/TDD equipment. If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.

• TeleTax topics. Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.

• Refund information. To check the status of your 2007 refund, call 1-800-829-4477 and press 1 for automated refund information or call 1-800-829-1954. Be sure to wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically). Have your 2007 tax return available because you will need to know your social security number, your filing status, and the exact whole dollar amount of your refund.

Evaluating the quality of our telephone services. To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to listen in on or record telephone calls. Another is to ask some callers to complete a short survey at the end of the call.

Walk-in. Many products and services are available on a walk-in basis.

• Products. You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have a collection of products available to print from a CD or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.

• Services. You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you’re more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary, but if you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. To find the number, go to www.irs.gov/localcontacts or look in the phone book under United States Government, Internal Revenue Service.

Mail. You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 days after your request is received.

National Distribution Center
P.O. Box 8903
Bloomington, IL 61702-8903

CD/DVD for tax products. You can order Publication 1796, IRS Tax Products CD/DVD, and obtain:
• Current-year forms, instructions, and publications.
• Prior-year forms, instructions, and publications.
• Bonus: Historical Tax Products DVO - Ships with the final release.
• Tax Map: an electronic research tool and finding aid.
• Tax law frequently asked questions.
• Tax Topics from the IRS telephone response system.

• Fill-in, print, and save features for most tax forms.
• Internal Revenue Bulletins.
• Toll-free and email technical support.
• The CD which is released twice during the year. – The first release will ship the beginning of January 2008. – The final release will ship the beginning of March 2008.

Purchase the CD/DVD from National Technical Information Service (NTIS) at www.irs.gov/cdorders for $35 (no handling fee) or call 1-877-CDFORMS (1-877-233-6767) toll free to buy the CD/DVD for $35 (plus a $5 handling fee). Price is subject to change.

CD for small businesses. Publication 3207, The Small Business Resource Guide CD for 2007, is a must for every small business owner or any taxpayer about to start a business. This year’s CD includes:
• Helpful information, such as how to prepare a business plan, find financing for your business, and much more.
• All the business tax forms, instructions, and publications needed to successfully manage a business.
• Tax law changes for 2007.
• Tax Map: an electronic research tool and finding aid.
• Web links to various government agencies, business associations, and IRS organizations.
• “Rate the Product” survey—your opportunity to suggest changes for future editions.
• A site map of the CD to help you navigate the pages of the CD with ease.
• An interactive “Teens in Biz” module that gives practical tips for teens about starting their own business, creating a business plan, and filing taxes.

An updated version of this CD is available each year in early April. You can get a free copy by calling 1-800-829-3676 or by visiting www.irs.gov/smbiz.
Index

To help us develop a more useful index, please let us know if you have ideas for index entries.
See “Comments and Suggestions” in the “Introduction” for the ways you can reach us.

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