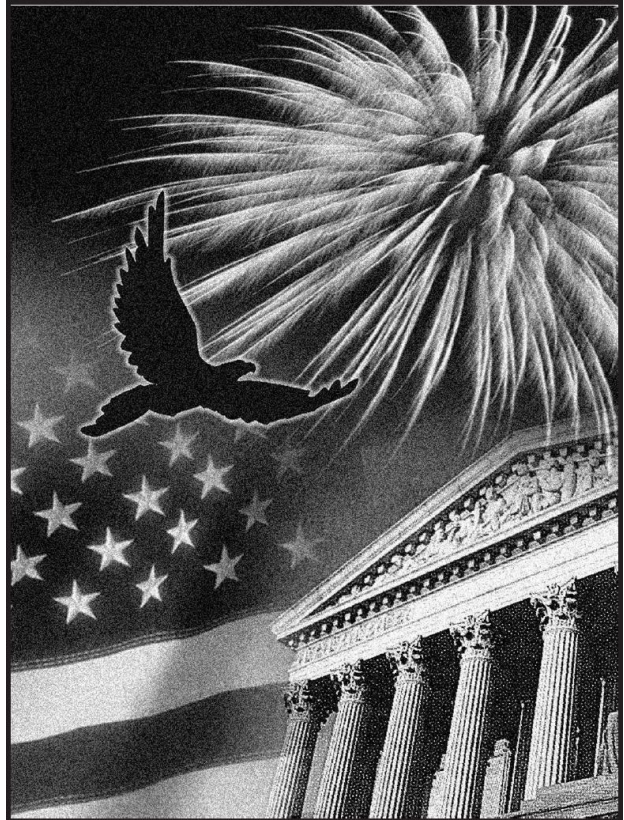


# Publication 550

## Investment Income and Expenses ((Including Capital Gains and Losses))

For use in preparing  
**2024** Returns

Volume 6 of 9



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Publication 550 (Rev 2024) Catalog Number 39296G  
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# Transfers Between Spouses

Generally, 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, if incident to a divorce, a former spouse. This nonrecognition rule does not apply in the following situations.

- The recipient spouse or former spouse is a nonresident alien.
- Property is transferred in trust and liability exceeds basis. Gain must be recognized to the extent the amount of the liabilities assumed by the trust, plus any liabilities on the property, exceed the adjusted basis of the property.
- An installment obligation is transferred in trust. For information on the disposition of an installment obligation, see Pub. 537.

- Certain stock redemptions, which are taxable to a spouse under the tax law, a divorce or separation instrument, or a valid written agreement, discussed in Regulations section 1.1041-2.

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 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 purposes of determining loss as well as gain. Any gain recognized on a transfer in trust increases the basis.

A transfer of property is incident to a divorce if the transfer occurs within 1 year after the date on which the marriage ends, or if the transfer is related to the ending of the marriage. For more information, see *Property Settlements* in Pub. 504, Divorced or Separated Individuals.

## **Related Party Transactions**

Special rules apply to the sale or trade of property between related parties.

## **Gain on Sale or Trade of Depreciable Property**

Your gain from the sale or trade of property to a related party may be ordinary income, rather than capital gain, if the property can be depreciated by the party receiving it. See chapter 2 in Pub. 544 for more information.

## **Like-Kind Exchanges**

Generally, if you trade business or investment real property for other business or investment

real property of a like kind, no gain or loss is recognized. See Like-Kind Exchanges under *Nontaxable Trades*, earlier.

This rule also applies to trades of real property between related parties, defined next under Losses on Sales or Trades of Property. However, if either you or the related party disposes of the like-kind property within 2 years after the trade, you both must report any gain or loss not recognized on the original trade on your return for the year in which the later disposition occurs.

This rule generally does not apply to:

- Dispositions due to the death of either related party,
- Involuntary conversions (see chapter 1 of Pub. 544), or
- Trades and later dispositions whose main purpose is not the avoidance of federal income tax.

If a property holder's risk of loss on the property is substantially diminished during any period, that period is not counted in determining whether the property was disposed of within 2 years. The property holder's risk of loss is substantially diminished by:

- The holding of a put on the property,
- The holding by another person of a right to acquire the property, or
- A short sale or any other transaction.

### **Losses on Sales or Trades of Property**

You cannot deduct a loss on the sale or trade of property, other than a distribution in complete liquidation of a corporation, if the transaction is directly or indirectly between you and the following related parties.

- Members of your family. This includes only your brothers and sisters, half-brothers and half-sisters, spouse, ancestors

(parents, grandparents, etc.), and lineal descendants (children, grandchildren, etc.).

- A partnership in which you directly or indirectly own more than 50% of the capital interest or the profits interest.
- A corporation in which you directly or indirectly own more than 50% in value of the outstanding stock (see Constructive ownership of stock, later).
- A tax-exempt charitable or educational organization directly or indirectly controlled, in any manner or by any method, by you or by a member of your family, whether or not this control is legally enforceable.

In addition, a loss on the sale or trade of property is not deductible if the transaction is directly or indirectly between the following related parties.

- A grantor and fiduciary, or the fiduciary and beneficiary, of any trust.
- Fiduciaries of two different trusts, or the fiduciary and beneficiary of two different trusts, if the same person is the grantor of both trusts.
- A trust fiduciary and a corporation of which more than 50% in value of the outstanding stock is directly or indirectly owned by or for the trust, or by or for the grantor of the trust.
- 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 the profits interest in the partnership.
- Two S corporations if the same persons own more than 50% in value of the outstanding stock of each corporation.

- Two corporations, one of which is an S corporation, if the same persons own more than 50% in value of the outstanding stock of each corporation.
- An executor and a beneficiary of an estate (except in the case of a sale or trade to satisfy a monetary bequest).
- Two corporations that are members of the same controlled group (under certain conditions, however, these losses are not disallowed but must be deferred).
- Two partnerships if the same persons own, directly or indirectly, more than 50% of the capital interests or the profit interests in both partnerships.

**Multiple property sales or trades.** If you sell or trade to a related party a number of blocks of stock or pieces of property in a lump sum, you must figure the gain or loss separately for each block of stock or piece of property.

The gain on each item may be taxable. However, you cannot deduct the loss on any item. Also, you cannot reduce gains from the sales of any of these items by losses on the sales of any of the other items.

**Indirect transactions.** You cannot deduct your loss on the sale of stock through your broker if, under a prearranged plan, a related party buys the same stock you had owned. This does not apply to a trade between related parties through an exchange that is purely coincidental and is not prearranged.

**Constructive ownership of stock.** In determining whether a person directly or indirectly owns any of the outstanding stock of a corporation, the following rules apply.

**Rule 1.** Stock 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.

**Rule 2.** An individual is considered to own the stock directly or indirectly owned by or for his or her family. Family includes only brothers and sisters, half-brothers and half-sisters, spouse, ancestors, and lineal descendants.

**Rule 3.** An individual owning, other than by applying rule 2, any stock in a corporation is considered to own the stock directly or indirectly owned by or for his or her partner.

**Rule 4.** When applying rule 1, 2, or 3, stock constructively owned by a person under rule 1 is treated as actually owned by that person. But stock constructively owned by an individual under rule 2 or rule 3 is not again treated as owned by that individual for applying either rule 2 or rule 3 to make another person the constructive owner of the stock.

### **Property received from a related party.**

If you sell or trade at a gain property you acquired from a related party,

you recognize the gain only to the extent that it is more than the loss previously disallowed to the related party. This rule applies only if you are the original transferee and you acquired the property by purchase or exchange. This rule does not apply if the related party's loss was disallowed because of the wash sale rules, described later under Wash Sales.

If you sell or trade at a loss property you acquired from a related party, you cannot recognize the loss that was not allowed to the related party.

**Example 1.** Your sibling sells you stock for \$7,600. Your sibling's cost basis is \$10,000. Your sibling cannot deduct the loss of \$2,400. Later, you sell the same stock to an unrelated party for \$10,500, realizing a gain of \$2,900. Your reportable gain is \$500 (the \$2,900 gain minus the \$2,400 loss not allowed to your sibling).

**Example 2.** If, in *Example 1*, you sold the stock for \$6,900 instead of \$10,500, your recognized loss is only \$700 (your \$7,600 basis minus \$6,900). You cannot deduct the loss that was not allowed to your sibling.

## **Capital Gains and Losses**

**Terms you may need to know (see Glossary):**

Call

Commodity future

Conversion transaction

Forward contract

Limited partner

Listed option

Nonequity option

Options dealer

Put

Regulated futures contract

Section 1256 contract

Straddle

Wash sale

This section discusses the tax treatment of gains and losses from different types of investment transactions.

**Character of gain or loss.** You need to classify your gains and losses as either ordinary or capital gains or losses. You then need to classify your capital gains and losses as either short term or long term. If you have long-term gains and losses, you must identify your 28% rate gains and losses. If you have a net capital gain, you must also identify any unrecaptured section 1250 gain.

The correct classification and identification helps you figure the limit on capital losses and the correct tax on capital gains.

For information about determining whether your capital gain or loss is short term or long term, see *Holding Period*, later. For information about 28% rate gain or loss and unrecaptured section 1250 gain, see *Capital Gain Tax Rates*, later.

## **Capital or Ordinary Gain or Loss**

If you have a taxable gain or a deductible loss from a transaction, it may be either a capital gain or loss or an ordinary gain or loss, depending on the circumstances. Generally, a sale or trade of a capital asset (defined next) results in a capital gain or loss. A sale or trade of a noncapital asset generally results in ordinary gain or loss. Depending on the circumstances, a gain or loss on a sale or trade of property used in a trade or business may be treated as either capital or ordinary, as explained in Pub. 544. In some situations, part of your gain or loss may be a capital gain or loss, and part may be an ordinary gain or loss.



*If you own and use a digital asset for personal or investment purposes, the income would be taxed as a capital gain or loss when you sell or dispose of it.*

## **Capital Assets and Noncapital Assets**

For the most part, everything you own and use for personal purposes, pleasure, or investment is a capital asset. Some examples are:

- Stocks or bonds held in your personal account;
- Digital assets that include: convertible virtual currencies, cryptocurrencies such as Bitcoin, Stablecoins, and Nonfungible tokens (NFTs);
- A house owned and used by you and your family;
- Household furnishings;
- A car used for pleasure or commuting;

- Coin or stamp collections;
- Gems and jewelry; and
- Gold, silver, or any other metal.

Any property you own is a capital asset, except the following noncapital assets.

1. Property held mainly for sale to customers or property that will physically become a part of the merchandise for sale to customers. For an exception, see *Capital asset treatment for self-created musical works*, later.
2. Depreciable property used in your trade or business, even if fully depreciated.
3. Real property used in your trade or business.
4. A patent; invention, model, or design (whether or not patented); a secret formula or process; a copyright; a

literary, musical, or artistic composition; a letter or memorandum; or similar property, held by:

- a. A person whose personal efforts created such property;
- b. In the case of a letter, memorandum, or similar property, a person for whom such property was prepared or produced; or
- c. Acquired under circumstances (for example, by gift) entitling you to the basis of the person who created the property or for whom it was prepared or produced.

For an exception to this rule, see *Capital asset treatment for self-created musical works*, later.

- 5. Accounts or notes receivable acquired in the ordinary course of a trade or

business for services rendered or from the sale of property described in (1).

6. U.S. Government publications, including the Congressional Record, that you received:
  - a. From the U.S. Government (or any governmental agency) for an amount other than the normal sales price, or
  - b. Under circumstances (such as by gift) that entitle you to the basis of someone who received the publication for an amount other than the normal sales price.
7. Certain commodities derivative financial instruments held by commodities derivatives dealers. For more information, see section 1221 of the Internal Revenue Code.

8. Hedging transactions, but only if the transaction is clearly identified as a hedging transaction before the close of the day on which it was acquired, originated, or entered into. For more information, see the definition of hedging transaction, earlier, and the discussion of hedging transactions under Commodity Futures, later.
9. Supplies of a type you regularly use or consume in the ordinary course of your trade or business.

**Investment property.** Investment property is a capital asset. Any gain or loss from its sale or trade is generally a capital gain or loss.

***Gold, silver, stamps, coins, gems, etc.***

These are capital assets except when they are held for sale by a dealer. Any gain or loss from their sale or trade is generally a capital gain or loss.

***Stocks, stock rights, and bonds.*** All of these, including stock received as a dividend, are capital assets except when they are held for sale by a securities dealer. However, see *Losses on Section 1244 (Small Business) Stock* and *Losses on Small Business Investment Company Stock*, later.

**Personal use property.** Property held for personal use only, rather than for investment, is a capital asset, and you must report a gain from its sale as a capital gain. However, you cannot deduct a loss from selling personal use property.

**Capital asset treatment for self-created musical works.** You can elect to treat musical compositions and copyrights in musical works as capital assets when you sell or exchange them if:

- Your personal efforts created the property, or

- You acquired the property under circumstances (for example, by gift) entitling you to the basis of the person who created the property or for whom it was prepared or produced.

You must make a separate election for each musical composition (or copyright in a musical work) sold or exchanged during the tax year. Make the election by the due date (including extensions) of the income tax return for the tax year of the sale or exchange. Make the election on Form 8949 and Schedule D (Form 1040) by treating the sale or exchange as the sale or exchange of a capital asset, according to Form 8949 and Schedule D (Form 1040) and their separate instructions.

You can revoke the election if you have IRS approval. To get IRS approval, you must submit a request for a letter ruling under the appropriate IRS revenue procedure.

See, for example, Revenue Procedure 2020-1, available at [IRS.gov/irb/2020-01\\_IRB#REV-PROC-2020-1](https://www.irs.gov/irb/2020-01_IRB#REV-PROC-2020-1). Alternatively, you are granted an automatic 6-month extension from the due date of your income tax return (excluding extensions) to revoke the election, provided you timely file your income tax return, and within this 6-month extension period, you file Form 1040-X that treats the sale or exchange as the sale or exchange of property that is not a capital asset.

## **Discounted Debt Instruments**

Treat your gain or loss on the sale, redemption, or retirement of a bond or other debt instrument originally issued at a discount or bought at a discount as capital gain or loss, except as explained in the following discussions.

**Short-term government obligations.** Treat gains on short-term federal, state, or local government obligations

(other than tax-exempt obligations) as ordinary income up to your ratable share of the acquisition discount. This treatment applies to obligations with a fixed maturity date of not more than 1 year from the date of issue. Acquisition discount is the stated redemption price at maturity minus your basis in the obligation.

However, do not treat these gains as income to the extent you previously included the discount in income. See *Discount on Short-Term Obligations* in chapter 1 for more information.

### **Short-term nongovernment obligations.**

Treat gains on short-term nongovernment obligations as ordinary income up to your ratable share of OID. This treatment applies to obligations with a fixed maturity date of not more than 1 year from the date of issue.

However, to the extent you previously included the discount in income, you do not have to include it in income again.

See *Discount on Short-Term Obligations* in chapter 1 for more information.

**Tax-exempt state and local government bonds.** If these bonds were originally issued at a discount before September 4, 1982, or you acquired them before March 2, 1984, treat your part of OID as tax-exempt interest. To figure your gain or loss on the sale or trade of these bonds, reduce the amount realized by your part of OID.

If the bonds were issued after September 3, 1982, and acquired after March 1, 1984, increase the adjusted basis by your part of OID to figure gain or loss. For more information on the basis of these bonds, see *Discounted tax-exempt obligations*, earlier in this chapter.

Any gain from market discount is usually taxable on disposition or redemption of tax-exempt bonds. If you bought the bonds before May 1, 1993, the gain from market discount is capital gain.

If you bought the bonds after April 30, 1993, the gain from market discount is ordinary income.

You figure market discount by subtracting the price you paid for the bond from the sum of the original issue price of the bond and the amount of accumulated OID from the date of issue that represented interest to any earlier holders. For more information, see Market Discount Bonds in chapter 1.

A loss on the sale or other disposition of a tax-exempt state or local government bond is deductible as a capital loss.

***Redeemed before maturity.*** If a state or local bond issued before June 9, 1980, is redeemed before it matures, the OID is not taxable to you.

If a state or local bond issued after June 8, 1980, is redeemed before it matures,

the part of OID earned while you hold the bond is not taxable to you. However, you must report the unearned part of OID as a capital gain.

**Example.** On July 2, 2013, the date of issue, you bought a 20-year, 6% municipal bond for \$800. The face amount of the bond was \$1,000. The \$200 discount was OID. At the time the bond was issued, the issuer had no intention of redeeming it before it matured. The bond was callable at its face amount beginning 10 years after the issue date.

The issuer redeemed the bond at the end of 11 years (July 2, 2024) for its face amount of \$1,000 plus accrued annual interest of \$60. The OID earned during the time you held the bond, \$73, is not taxable. The \$60 accrued annual interest is also not taxable. However, you must report the unearned part of OID, \$127 (\$200 – \$73), as a capital gain.

**Long-term debt instruments issued after May 27, 1969 (or after July 1, 1982, if a government instrument).** If you hold one of these debt instruments, you must include a part of OID in your gross income each year you own the instrument. Your basis in that debt instrument is increased by the amount of OID that you have included in your gross income. See Original Issue Discount (OID) in chapter 1.

If you sell or trade the debt instrument before maturity, your gain is a capital gain.

However, if at the time the instrument was originally issued there was an intention to call it before its maturity, your gain is generally ordinary income to the extent of the entire OID reduced by any amounts of OID previously includible in your income. In this case, the rest of the gain is capital gain.

An intention to call a debt instrument before maturity means there is a written or oral agreement or understanding not provided for

in the debt instrument between the issuer and original holder that the issuer will redeem the debt instrument before maturity. In the case of debt instruments that are part of an issue, the agreement or understanding must be between the issuer and the original holders of a substantial amount of the debt instruments in the issue.

**Example 1.** On February 9, 2023, you bought at original issue for \$7,600, Jones Corporation's 10-year, 5% bond which has a stated redemption price at maturity of \$10,000. On February 13, 2024, you sold the bond for \$9,040. Assume you have included \$334 of OID in your gross income (including the amount accrued for 2024) and increased your basis in the bond by that amount. Your basis is now \$7,934. If at the time of the original issue there was no intention to call the bond before maturity, your gain of \$1,106 (\$9,040 amount realized minus \$7,934 adjusted basis) is capital gain.

**Example 2.** If, in *Example 1*, at the time of original issue there was an intention to call the bond before maturity, your entire gain is ordinary income. You figure this as follows:

- |  |                |
|--|----------------|
| 1. Entire OID (\$10,000 stated redemption price at maturity minus \$7,600 issue price) ..... | <u>\$2,400</u> |
| 2. Minus: Amount previously included in income .....   | <u>334</u>     |
| 3. Maximum amount of ordinary income .....   | <u>\$2,066</u> |

Because the amount in (3) is more than your gain of \$1,106, your entire gain is ordinary income.

**Market discount bonds.** If the debt instrument has market discount and you chose to include the discount in income as it accrued, increase your basis in the debt instrument by the accrued discount to figure capital gain or loss on its disposition.

If you did not choose to include the discount in income as it accrued, you must report gain as ordinary interest income up to the instrument's accrued market discount. See *Market Discount Bonds* in chapter 1. The rest of the gain is capital gain.

However, a different rule applies if you dispose of a market discount bond that was:

- Issued before July 19, 1984; and
- Purchased by you before May 1, 1993.

In that case, any gain is treated as interest income up to the amount of your deferred interest deduction for the year you dispose of the bond. The rest of the gain is capital gain. (The limit on the interest deduction for market discount bonds is discussed in chapter 3 under *When To Deduct Investment Interest*.)

Report the sale or trade of a market discount bond in Form 8949, Part I or Part II, whichever is appropriate.

Use the table How To Complete Form 8949, Columns (f) and (g) in the Instructions for Form 8949 to help you figure the amounts to report for a sale or trade of a market discount bond. Also report the amount of accrued market discount in column (g) as interest income on Schedule B (Form 1040), line 1, and identify it as "Accrued Market Discount."



*Report your sales or trades of a market discount bond on Form 8949 with the correct box checked for these transactions. See Form 8949 and the Instructions for Form 8949.*

**Retirement of debt instrument.** Any amount you receive on the retirement of a debt instrument is treated in the same way as if you had sold or traded that instrument.

**Notes of individuals.** If you hold an obligation of an individual issued with OID after March 1, 1984, you must generally include the OID in your income currently, and your gain or loss on its sale or retirement is

generally capital gain or loss. An exception to this treatment applies if the obligation is a loan between individuals and all the following requirements are met.

- The lender is not in the business of lending money.
- The amount of the loan, plus the amount of any outstanding prior loans, is \$10,000 or less.
- Avoiding federal tax is not one of the principal purposes of the loan.

If the exception applies, or the obligation was issued before March 2, 1984, you do not include the OID in your income currently.

When you sell or redeem the obligation, the part of your gain that is not more than your accrued share of OID at that time is ordinary income. The rest of the gain, if any, is capital gain. Any loss on the sale or redemption is capital loss.

## **Bearer Obligations**

You cannot deduct any loss on an obligation required to be in registered form that is instead held in bearer form. In addition, any gain on the sale or other disposition of the obligation is ordinary income. However, if the issuer was subject to a tax when the obligation was issued, then you can deduct any loss, and any gain may qualify for capital gain treatment.

**Obligations required to be in registered form.** Any obligation must be in registered form unless:

- It is issued by a natural person,
- It is not of a type offered to the public,
- It has a maturity at the date of issue of not more than 1 year, or
- It was issued before 1983.

## Deposit in Insolvent or Bankrupt Financial Institution

If you lose money you have on deposit in a bank, credit union, or other financial institution that becomes insolvent or bankrupt, you may be able to deduct your loss in one of two ways.

- Casualty loss.
- Nonbusiness bad debt (short-term capital loss).



*You can no longer claim any miscellaneous itemized deductions, including the deduction for an ordinary loss on deposits in insolvent or bankrupt financial institutions.*

**Casualty loss.** If you can reasonably estimate your loss, you can treat the estimated loss as a casualty loss in the current year.

If you claim a casualty loss, attach Form 4684 to your return. Each loss must be reduced by \$100. The amount of your casualty loss may be limited. See Pub. 547, Casualties, Disasters, and Thefts.

You cannot choose this method if:

- You own at least 1% of the financial institution,
- You are an officer of the institution, or
- You are related to such an owner or officer. You are related if you and the owner or officer are "related parties," as defined earlier under Related Party Transactions, or if you are the aunt, uncle, nephew, or niece of the owner or officer.

If the actual loss that is finally determined is more than the amount you deducted as an estimated loss, you can claim the excess loss as a nonbusiness bad debt. If the actual loss is less than the amount deducted as an estimated loss,

you must include in income (in the final determination year) the excess loss claimed. See *Recoveries* in Pub. 525.

**Nonbusiness bad debt.** If you do not choose to deduct your estimated loss as a casualty loss or an ordinary loss, you wait until the year the amount of the actual loss is determined and deduct it as a nonbusiness bad debt in that year. Report it as a short-term capital loss on Form 8949, Part I, line 1, as explained under *How to report bad debts*, later.

## **Sale of Annuity**

The part of any gain on the sale of an annuity contract before its maturity date that is based on interest accumulated on the contract is ordinary income.

## **Conversion Transactions**

Generally, all or part of a gain on a conversion transaction is treated as ordinary income.

This applies to gain on the disposition or other termination of any position you held as part of a conversion transaction you entered into after April 30, 1993.

A conversion transaction is any transaction that meets both of these tests.

1. Substantially all of your expected return from the transaction is due to the time value of your net investment. In other words, the return on your investment is, in substance, like interest on a loan.
2. The transaction is one of the following.
  - a. A straddle as defined under Straddles, later, but including any set of offsetting positions on stock established before October 22, 2004.
  - b. Any transaction in which you acquire property (whether or not actively traded) at substantially

the same time that you contract to sell the same property, or substantially identical property, at a price set in the contract.

- c. Any other transaction that is marketed or sold as producing capital gains from a transaction described in (1).

**Amount treated as ordinary income.** The amount of gain treated as ordinary income is the smaller of:

- The gain recognized on the disposition or other termination of the position, or
- The “applicable imputed income amount.”

**Applicable imputed income amount.**

Figure this amount as follows.

1. Figure the amount of interest that would have accrued on your net investment in the conversion

transaction for the period ending on the earlier of:

- a. The date you dispose of the position, or
- b. The date the transaction stops being a conversion transaction.

To figure this amount, use an interest rate equal to 120% of the “applicable rate,” defined later.

- 2. Subtract from (1) the amount treated as ordinary income from any earlier disposition or other termination of a position held as part of the same conversion transaction.

***Applicable rate.*** If the term of the conversion transaction is indefinite, the applicable rate is the federal short-term rate in effect under section 6621(b) during the period of the conversion transaction, compounded daily.

In all other cases, the applicable rate is the “applicable federal rate” determined as if the conversion transaction were a debt instrument and compounded semiannually.

The rates discussed above are published by the IRS in the Internal Revenue Bulletin. The Internal Revenue Bulletin is available through IRS.gov. You can also find applicable federal rates in the Index of Applicable Federal Rates (AFRs) Rulings at

<https://apps.irs.gov/app/picklist/list/federalRates.html>.

See chapter 5, *How To Get Tax Help*, for information on contacting the IRS.

**Net investment.** To determine your net investment in a conversion transaction, include the fair market value of any position at the time it becomes part of the transaction. This means your net investment will generally be the total amount you invested, less any

amount you received for entering into the position (for example, a premium you received for writing a call).

**Position with built-in loss.** A special rule applies when a position with a built-in loss becomes part of a conversion transaction. A built-in loss is any loss you would have realized if you had disposed of or otherwise terminated the position at its fair market value at the time it became part of the conversion transaction.

When applying the conversion transaction rules to a position with a built-in loss, use the position's fair market value at the time it became part of the transaction. But, when you dispose of or otherwise terminate the position in a transaction in which you recognize gain or loss, you must recognize the built-in loss. The conversion transaction rules do not affect whether the built-in loss is treated as an ordinary or capital loss.

**Netting rule for certain conversion transactions.** Before determining the amount of gain treated as ordinary income, you can net certain gains and losses from positions of the same conversion transaction. To do this, you have to dispose of all the positions within a 14-day period that is within a single tax year. You cannot net the built-in loss against the gain.



You can net gains and losses only if you identify the conversion transaction as an identified netting transaction on your books and records. Each position of the conversion transaction must be identified before the end of the day on which the position becomes part of the conversion transaction. For conversion transactions entered into before February 20, 1996, this requirement is met if the identification was made by that date.

## **Options dealers and commodities**

**traders.** These rules do not apply to options dealers and commodities traders.

**How to report.** Use Form 6781 to report conversion transactions. See the instructions for lines 11 and 13 of Form 6781.

## **Commodity Futures**

A commodity futures contract is a standardized, exchange-traded contract for the sale or purchase of a fixed amount of a commodity at a future date for a fixed price.

If the contract is a regulated futures contract, the rules described earlier under Section 1256 Contracts Marked to Market apply to it.

The termination of a commodity futures contract generally results in capital gain or loss unless the contract is a hedging transaction.

**Hedging transaction.** A futures contract that is a hedging transaction generally produces ordinary gain or loss. A futures contract is a hedging transaction if you enter into the contract in the ordinary course of your business primarily to manage the risk of interest rate or price changes or currency fluctuations on borrowings, ordinary property, or ordinary obligations. (Generally, ordinary property or obligations are those that cannot produce capital gain or loss under any circumstances.) For example, the offset or exercise of a futures contract that protects against price changes in your business inventory results in an ordinary gain or loss.

For more information about hedging transactions, see Regulations section 1.1221-2. Also, see *Hedging Transactions* under *Section 1256 Contracts Marked to Market*, earlier.



If you have multiple transactions in the commodity futures market during the year, the burden of proof is on you to show which transactions are hedging transactions. Clearly identify any hedging transactions on your books and records before the end of the day you entered into the transaction. It may be helpful to have separate brokerage accounts for your hedging and nonhedging transactions. For specific requirements concerning identification of hedging transactions and the underlying item, items, or aggregate risk being hedged, see Regulations section 1.1221-2(f).

## **Gains From Certain Constructive Ownership Transactions**

If you have a gain from a constructive ownership transaction entered into after July 11, 1999, involving a financial asset (discussed later) and the gain would normally be treated as long-term capital gain,

all or part of the gain may be treated instead as ordinary income. In addition, if any gain is treated as ordinary income, your tax is increased by an interest charge.

### **Constructive ownership transactions.**

The following are constructive ownership transactions.

- A notional principal contract in which you have the right to receive all or substantially all of the investment yield on a financial asset and you are obligated to reimburse all or substantially all of any decline in value of the financial asset.
- A forward or futures contract to acquire a financial asset.
- The holding of a call option and writing of a put option on a financial asset at substantially the same strike price and maturity date.

This provision does not apply if all the positions are marked to market. Mark-to-market rule for section 1256 contracts is discussed in detail under Section 1256 Contracts Marked to Market, earlier.

**Financial asset.** A financial asset, for this purpose, is any equity interest in a pass-through entity. Pass-through entities include partnerships, S corporations, trusts, regulated investment companies, and REITs.

**Amount of ordinary income.** Long-term capital gain is treated as ordinary income to the extent it is more than the net underlying long-term capital gain. The net underlying long-term capital gain is the net capital gain you would have realized if you acquired the asset for its fair market value on the date the constructive ownership transaction was opened and sold the asset for its fair market value on the date the transaction was closed.

If you do not establish the amount of net underlying long-term capital gain by clear and convincing evidence, it is treated as zero.

**More information.** For more information about constructive ownership transactions, see section 1260 of the Internal Revenue Code.

### **Losses on Section 1244 (Small Business) Stock**

Subject to the limitations discussed under Ordinary loss limit, later, you can deduct as an ordinary loss, rather than as a capital loss, a loss on the sale, trade, or worthlessness of section 1244 stock. Report the loss on Form 4797, line 10. Any loss in excess of the amounts described in Ordinary loss limit, later, should be reported on Form 8949.

Any gain on section 1244 stock is a capital gain if the stock is a capital asset in your hands.

Do not offset gains against losses that are within the ordinary loss limit, explained later in this discussion, even if the transactions are in stock of the same company. Report the gain on Form 8949.

If you must figure a net operating loss, any ordinary loss from the sale of section 1244 stock is a business loss.

**Ordinary loss limit.** The amount you can deduct as an ordinary loss is limited to \$50,000 each year. On a joint return, the limit is \$100,000, even if only one spouse has this type of loss. If your loss is \$110,000 and your spouse has no loss, you can deduct \$100,000 as an ordinary loss on a joint return. The remaining \$10,000 is a capital loss.

**Section 1244 (small business) stock.**

This is stock issued for money or property (other than stock and securities) in a domestic small business corporation. During its 5 most recent tax years before the loss,

this corporation must have derived more than 50% of its gross receipts from other than royalties, rents, dividends, interest, annuities, and gains from sales and trades of stocks or securities. If the corporation was in existence for at least 1 year, but less than 5 years, the 50% test applies to the tax years ending before the loss. If the corporation was in existence less than 1 year, the 50% test applies to the entire period the corporation was in existence before the day of the loss. However, if the corporation's deductions (other than the net operating loss and dividends received deductions) were more than its gross income during this period, this 50% test does not apply.

The corporation must have been largely an operating company for ordinary loss treatment to apply.

If the stock was issued before July 19, 1984, the stock must be common stock.

If issued after July 18, 1984, the stock may be either common or preferred. For more information about the requirements of a small business corporation or the qualifications of section 1244 stock, see section 1244 of the Internal Revenue Code and its regulations.

**The stock must be issued to the person taking the loss.** You must be the original owner of the stock to be allowed ordinary loss treatment. To claim a deductible loss on stock issued to your partnership, you must have been a partner when the stock was issued and have remained so until the time of the loss. You add your distributive share of the partnership loss to any individual section 1244 stock loss you may have before applying the ordinary loss limit.

***Stock distributed by partnership.*** If your partnership distributes the stock to you, you cannot treat any later loss on that stock as an ordinary loss.

***Stock sold through underwriter.*** Stock sold through an underwriter is not section 1244 stock unless the underwriter only acted as a selling agent for the corporation.

**Stock dividends and reorganizations.**

Stock you receive as a stock dividend qualifies as section 1244 stock if:

- You receive it from a small business corporation in which you own stock, and
- The stock you own meets the requirements when the stock dividend is distributed.

If you trade your section 1244 stock for new stock in the same corporation in a reorganization that qualifies as a recapitalization or that is only a change in identity, form, or place of organization, the new stock is section 1244 stock if the stock you trade meets the requirements when the trade occurs.

If you hold section 1244 stock and other stock in the same corporation, not all of the stock you receive as a stock dividend or in a reorganization will qualify as section 1244 stock. Only that part based on the section 1244 stock you hold will qualify.

**Example.** Your basis for 100 shares of X common stock is \$1,000. These shares qualify as section 1244 stock. If, as a nontaxable stock dividend, you receive 50 more shares of common stock, the basis of which is determined from the 100 shares you own, the 50 shares are also section 1244 stock.

If you also own stock in the corporation that is not section 1244 stock when you receive the stock dividend, you must divide the shares you receive as a dividend between the section 1244 stock and the other stock. Only the shares from the former can be section 1244 stock.

**Contributed property.** To determine ordinary loss on section 1244 stock you receive in a trade for property, you have to reduce the basis of the stock if:

- The adjusted basis (for figuring loss) of the property, immediately before the trade, was more than its fair market value; and
- The basis of the stock is determined by the basis of the property.

Reduce the basis of the stock by the difference between the adjusted basis of the property and its fair market value at the time of the trade. You reduce the basis only to figure the ordinary loss. Do not reduce the basis of the stock for any other purpose.

**Example.** You transfer property with an adjusted basis of \$1,000 and a fair market value of \$250 to a corporation for its section 1244 stock.

The basis of your stock is \$1,000, but to figure the ordinary loss under these rules, the basis of your stock is \$250 ( $\$1,000 - \$750$ ). If you later sell the section 1244 stock for \$200, your \$800 loss is an ordinary loss of \$50 and a capital loss of \$750.

**Contributions to capital.** If the basis of your section 1244 stock has increased, through contributions to capital or otherwise, you must treat this increase as applying to stock that is not section 1244 stock when you figure an ordinary loss on its sale.

**Example.** You buy 100 shares of section 1244 stock for \$10,000. You are the original owner. You later make a \$2,000 contribution to capital that increases the total basis of the 100 shares to \$12,000. You then sell the 100 shares for \$9,000 and have a loss of \$3,000. You can deduct only \$2,500 ( $\$3,000 \times \$10,000/\$12,000$ ) as an ordinary loss under these rules. The remaining \$500 is a capital loss.



**Recordkeeping.** You must keep records sufficient to show that your stock qualifies as section 1244 stock.

Your records must also distinguish your section 1244 stock from any other stock you own in the corporation.

## **Losses on Small Business Investment Company Stock**

A small business investment company (SBIC) is one that is licensed and operated under the Small Business Investment Act of 1958.

If you are an investor in SBIC stock, you can deduct as an ordinary loss, rather than a capital loss, a loss from the sale, trade, or worthlessness of that stock. A gain from the sale or trade of that stock is a capital gain. Do not offset your gains and losses, even if they are on stock of the same company.

**How to report.** You report this type of ordinary loss on Form 4797, Part II, line 10.

In addition to the information required by the form, you must include the name and address of the company that issued the stock. If applicable, also include the reason the stock is worthless and the approximate date it became worthless. Report a capital gain from the sale of SBIC stock on Form 8949.

**Short sale.** If you close a short sale of SBIC stock with other SBIC stock you bought only for that purpose, any loss you have on the sale is a capital loss. See Short Sales, later in this chapter, for more information.

## **Holding Period**

If you sold or traded investment property, you must determine your holding period for the property. Your holding period determines whether any capital gain or loss was a short-term or a long-term capital gain or loss.

**Long-term or Short-term.** If you hold investment property more than 1 year, any capital gain or loss is a long-term capital gain

or loss. If you hold the property 1 year or less, any capital gain or loss is a short-term capital gain or loss.

To determine how long you held the investment property, begin counting on the date after the day you acquired the property. The day you disposed of the property is part of your holding period.

**Example.** If you bought investment property on January 31, 2023, and sold it on January 29, 2024, your holding period is not more than 1 year and you have a short-term capital gain or loss. If you sold it on February 6, 2024, your holding period is more than 1 year and you have a long-term capital gain or loss.

**Holding period and digital assets.** A digital asset is treated as property, and general tax principles that apply to property transactions apply to transactions using digital assets, including how to figure your holding period for short-term and long-term capital gains and losses explained earlier under Long-Term or

Short-Term. Digital assets include property that has been referred to as "convertible virtual currency," "cryptocurrency," and "non-fungible tokens."

If a particular asset has the characteristics of a digital asset, it will be treated as a digital asset for federal income tax purposes. For more information on the tax treatment of digital assets, see Notice 2014-21, 2014-16 I.R.B. 938, available at [IRS.gov/irb/ 2014-16 IRB#NOT-2014-21](https://www.irs.gov/irb/2014-16_IRB#NOT-2014-21), (as modified by Notice 2023-34, 2023-19 I.R.B. 837, available at [IRS.gov/irb/2023-19 IRB#NOT-2023-34](https://www.irs.gov/irb/2023-19_IRB#NOT-2023-34)). For more information on virtual currency transactions, see [IRS.gov/VirtualCurrencyFAQs](https://www.irs.gov/VirtualCurrencyFAQs), Instructions for Form 1040 or go to [IRS.gov/DigitalAsset](https://www.irs.gov/DigitalAsset).

**Securities traded on an established market.** For securities traded on an established securities market, your holding

period begins the day after the trade date you bought the securities, and ends on the trade date you sold them.



*Do not confuse the trade date with the settlement date, which is the date by which the stock must be delivered and payment must be made.*

**Example.** You are a cash method, calendar year taxpayer. You sold stock on December 31, 2024. According to the rules of the stock exchange, the sale was closed by delivery of the stock and payment of the sale price in January 2025. You received payment of the sale price on that same day. Report your gain or loss on your 2024 return, even though you received the payment in 2025. The gain or loss is long term or short term depending on whether you held the stock more than 1 year. Your holding period ended on December 31.

**U.S. Treasury notes and bonds.** The holding period of U.S. Treasury notes and bonds sold at auction on the basis of yield

starts the day after the Secretary of the Treasury, through news releases, gives notification of acceptance to successful bidders. The holding period of U.S. Treasury notes and bonds sold through an offering on a subscription basis at a specified yield starts the day after the subscription is submitted.

**Automatic investment service.** In determining your holding period for shares bought by the bank or other agent, full shares are considered bought first and any fractional shares are considered bought last. Your holding period starts on the day after the bank's purchase date. If a share was bought over more than one purchase date, your holding period for that share is a split holding period. A part of the share is considered to have been bought on each date that stock was bought by the bank with the proceeds of available funds.

**Nontaxable trades.** If you acquire investment property in a trade for other investment property and your basis for the new property is determined, in whole or in part, by your basis in the old property, your holding period for the new property begins on the day following the date you acquired the old property.

**Property received as a gift.** If you receive a gift of property and your basis is determined by the donor's adjusted basis, your holding period is considered to have started on the same day the donor's holding period started.

If your basis is determined by the fair market value of the property, your holding period starts on the day after the date of the gift.

**Digital assets received as a gift.** Your basis in virtual currency received as a bona fide gift differs depending on whether you will have a gain or a loss when you sell or dispose of it.

For purposes of determining whether you have a gain, your basis is equal to the donor's basis, plus any gift tax the donor paid on the gift. For purposes of determining whether you have a loss, your basis is equal to the lesser of the donor's basis or the fair market value of the virtual currency at the time you received the gift. If you do not have any documentation to substantiate the donor's basis, then your basis is zero. For more information on basis of property received as a gift, see [Pub. 551](#).

**Holding period of digital assets received as a gift.** Your holding period in virtual currency received as a gift includes the time that the virtual currency was held by the person from whom you received the gift. However, if you do not have documentation substantiating that person's holding period, then your holding period begins the day after you receive the gift. For more information on holding periods, see [Pub. 544](#).

**Inherited property.** If you inherited property from someone who died before or after 2010, or from someone who died in 2010 and the executor of the decedent's estate did not elect to file Form 8939, your capital gain or loss on any later disposition of that property is treated as long-term gain or loss, regardless of how long you held the property. If you acquired the property from someone who died in 2010 and the executor made the election to file Form 8939, see Revenue Procedure 2011-41 to determine your holding period. Revenue Procedure 2011-41 is available at [IRS.gov/irb/2011-35 IRB#RP-2011-41](https://www.irs.gov/irb/2011-35_IRB#RP-2011-41). For additional information on the executor making the election see also Notice 2011-66, 2011-35 I.R.B. 184, available at [IRS.gov/irb/2011-35 IRB#NOT-2011-66](https://www.irs.gov/irb/2011-35_IRB#NOT-2011-66).

**Real property bought.** To figure how long you have held real property bought under an unconditional contract,

begin counting on the day after you received title to it or on the day after you took possession of it and assumed the burdens and privileges of ownership, whichever happened first. However, taking delivery or possession of real property under an option agreement is not enough to start the holding period. The holding period cannot start until there is an actual contract of sale. The holding period of the seller cannot end before that time.

**Real property repossessed.** If you sell real property but keep a security interest in it, and then later repossess the property under the terms of the sales contract, your holding period for a later sale includes the period you held the property before the original sale and the period after the repossession. Your holding period does not include the time between the original sale and the repossession. That is, it does not include the period during which the first buyer held the property.

However, the holding period for any improvements made by the first buyer begins at the time of repossession.

**Stock dividends.** The holding period for stock you received as a taxable stock dividend begins on the date of distribution.

The holding period for new stock you received as a nontaxable stock dividend begins on the same day as the holding period of the old stock. This rule also applies to stock acquired in a spin-off, which is a distribution of stock or securities in a controlled corporation.

**Nontaxable stock rights.** Your holding period for nontaxable stock rights includes the holding period of the underlying stock. The holding period for stock acquired through the exercise of stock rights begins on the date the right was exercised.

**Section 1256 contracts.** Gains or losses on section 1256 contracts open at the end of the year, or terminated during the year,

are treated as 60% long term and 40% short term, regardless of how long the contracts were held. See Section 1256 Contracts Marked to Market, earlier.

**Option exercised.** Your holding period for property you acquire when you exercise an option begins the day after you exercise the option.

**Wash sales.** Your holding period for substantially identical stock or securities you acquire in a wash sale includes the period you held the old stock or securities.

**Qualified small business stock.** Your holding period for stock you acquired in a tax-free rollover of gain from a sale of qualified small business stock, described later under Gains on Qualified Small Business Stock, includes the period you held the old stock.

**Commodity futures.** Your holding period for a commodity received in satisfaction of a commodity futures contract,

other than a regulated futures contract subject to Internal Revenue Code section 1256, includes your holding period for the futures contract if you held the contract as a capital asset.

**Securities futures contract.** Your holding period for a security received in satisfaction of a securities futures contract, other than one that is a section 1256 contract, includes your holding period for the futures contract if you held the contract as a capital asset.

Your holding period for a security received in satisfaction of a securities futures contract to sell, other than one that is a section 1256 contract, is determined by the rules that apply to short sales, discussed later under Short Sales.

**Loss on mutual fund or REIT stock held 6 months or less.** If you hold stock in a mutual fund (or other regulated investment company) or REIT for 6 months or less and then sell it at a loss

(other than under a periodic liquidation plan), special rules may apply.

***Capital gain distributions received.*** The loss (after reduction for any exempt-interest dividends you received, as explained later) is treated as a long-term capital loss up to the total of any capital gain distributions you received and your share of any undistributed capital gains. Any remaining loss is short-term capital loss.

***Reinvested distributions.*** If your dividends and capital gain distributions are reinvested in new shares, the holding period of each new share begins the day after that share was purchased. Therefore, if you sell both the new shares and the original shares, you might have both short-term and long-term gains and losses.

***Example.*** On April 3, 2024, you bought a mutual fund share for \$20. On June 17, 2024, the mutual fund paid a capital gain distribution of \$2 per share,

which is taxed as a long-term capital gain. On July 15, 2024, you sold the share for \$17.50. If it were not for the capital gain distribution, your loss would be a short-term loss of \$2.50 ( $\$20 - \$17.50$ ). However, the part of the loss that is not more than the capital gain distribution (\$2) must be reported as a long-term capital loss. The remaining \$0.50 of the loss can be reported as a short-term capital loss.

***Exempt-interest dividends on mutual fund stock.*** If you received exempt-interest dividends on the stock, at least part of your loss is disallowed. You can deduct only the amount of loss that is more than the exempt-interest dividends. Report the loss as a short-term capital loss. On Form 8949, Part I, line 1, column (d), increase the sales price by the amount of exempt-interest dividends, but do not increase it to more than the cost or other basis shown in column (e).



*For more information on Form 8949 and Schedule D (Form 1040), see the Instructions for Form 8949 and the Instructions for Schedule D (Form 1040).*

**Example.** On January 10, 2024, you bought a mutual fund share for \$40. On February 7, 2024, the mutual fund paid a \$5 dividend from tax-exempt interest, which is not taxable to you. On February 14, 2024, you sold the share for \$34. If it were not for the tax-exempt dividend, your loss would be \$6 (\$40 – \$34). However, you must increase the sales price from \$34 to \$39 (to account for the \$5 portion of the loss that is not deductible). You can deduct only \$1 as a short-term capital loss.

**Loss on stock that paid qualified dividends.** Any loss on the sale or trade of stock must be treated as a long-term capital loss to the extent you received, from that stock, qualified dividends (defined in chapter 1) that are extraordinary dividends.

This is true regardless of how long you actually held the stock. Generally, an extraordinary dividend is a dividend that equals or exceeds 10% (5% in the case of preferred stock) of your adjusted basis in the stock.

## **Nonbusiness Bad Debts**

If someone owes you money that you cannot collect, you have a bad debt. You may be able to deduct the amount owed to you when you figure your tax for the year the debt becomes worthless.

There are two kinds of bad debts—business and nonbusiness. A business bad debt, generally, is one that comes from operating your trade or business and is deductible as a business loss. All other bad debts are nonbusiness bad debts and are deductible as short-term capital losses.

***Example.*** An architect made personal loans to several friends who were not clients. The architect could not collect on some of these loans. They are deductible only as nonbusiness bad debts because the architect was not in the business of lending money and the loans do not have any relationship to the architect's business.

**Business bad debts.** For information on business bad debts of an employee, see Pub. 334, Tax Guide For Small Business (For Individuals Who Use Schedule C).

**Deductible nonbusiness bad debts.** To be deductible, nonbusiness bad debts must be totally worthless. You cannot deduct a partly worthless nonbusiness debt.

***Genuine debt required.*** A debt must be genuine for you to deduct a loss. A debt is genuine if it arises from a debtor-creditor relationship based on a valid and enforceable obligation to repay a fixed or determinable sum of money.

***Loan or gift.*** For a bad debt, you must show there was an intention at the time of the transaction to make a loan and not a gift. If you lend money to a relative or friend with the understanding that it may not be repaid, it is considered a gift and not a loan. You cannot take a bad debt deduction for a gift. There cannot be a bad debt unless there is a true creditor-debtor relationship between you and the person or organization that owes you the money.

When minor children borrow from their parents to pay for their basic needs, there is no genuine debt. A bad debt cannot be deducted for such a loan.

***Basis in bad debt required.*** To deduct a bad debt, you must have a basis in it—that is, you must have already included the amount in your income or loaned out your cash. For example, you cannot claim a bad debt deduction for court-ordered child support not paid to you by your former spouse.

If you are a cash method taxpayer (most individuals are), you generally cannot take a bad debt deduction for unpaid salaries, wages, rents, fees, interest, dividends, and similar items.

**When deductible.** You can take a bad debt deduction only in the year the debt becomes worthless. You do not have to wait until a debt is due to determine whether it is worthless. A debt becomes worthless when there is no longer any chance that the amount owed will be paid.

It is not necessary to go to court if you can show that a judgment from the court would be uncollectible. You must only show that you have taken reasonable steps to collect the debt. Bankruptcy of your debtor is generally good evidence of the worthlessness of at least a part of an unsecured and unpreferred debt.

If your bad debt is the loss of a deposit in a financial institution, see *Deposit in Insolvent or Bankrupt Financial Institution*, earlier.

***Filing a claim for refund.*** If you do not deduct a bad debt on your original return for the year it becomes worthless, you can file a claim for a credit or refund due to the bad debt. To do this, use Form 1040-X to amend your return for the year the debt became worthless. You must file it within 7 years from the date your original return for that year had to be filed, or 2 years from the date you paid the tax, whichever is later. (Claims not due to bad debts or worthless securities must generally be filed within 3 years from the date a return is filed, or 2 years from the date the tax is paid, whichever is later.) For more information about filing a claim, see Pub. 556.

**Loan guarantees.** If you guarantee a debt that becomes worthless, you cannot take a bad debt deduction for your payments on the debt unless you can show either that your reason for making the guarantee was to protect your investment or that you entered the guarantee transaction with a profit

motive. If you make the guarantee as a favor to friends and do not receive any consideration in return, your payments are considered a gift and you cannot take a deduction.

**Example 1.** Henry Lloyd, an officer and principal shareholder of the Spruce Corporation, guaranteed payment of a bank loan the corporation received. The corporation defaulted on the loan and Henry made full payment. Because Henry guaranteed the loan to protect his investment in the corporation, Henry can take a nonbusiness bad debt deduction.

**Example 2.** Milt and Pat are co-workers. Milt, as a favor to Pat, guarantees a note at their local credit union. Pat does not pay the note and declares bankruptcy. Milt pays off the note. However, since Milt did not enter into the guarantee agreement to protect an investment or to make a profit, Milt cannot take a bad debt deduction.

***Deductible in year paid.*** Unless you have rights against the borrower, discussed next, a payment you make on a loan you guaranteed is deductible in the year you make the payment.

***Rights against the borrower.*** When you make payment on a loan you guaranteed, you may have the right to take the place of the lender (the right of subrogation). The debt is then owed to you. If you have this right or some other right to demand payment from the borrower, you cannot take a bad debt deduction until these rights become totally worthless.

**Debts owed by political parties.** You cannot take a nonbusiness bad debt deduction for any worthless debt owed to you by:

- A political party;
- A national, state, or local committee of a political party; or

- A committee, association, or organization that either accepts contributions or spends money to influence elections.

**Mechanics' and suppliers' liens.** Workers and material suppliers may file liens against property because of debts owed by a builder or contractor. If you pay off the lien to avoid foreclosure and loss of your property, you are entitled to repayment from the builder or contractor. If the debt is uncollectible, you can take a bad debt deduction.

**Insolvency of contractor.** You can take a bad debt deduction for the amount you deposit with a contractor if the contractor becomes insolvent and you are unable to recover your deposit. If the deposit is for work unrelated to your trade or business, it is a nonbusiness bad debt deduction.

**Secondary liability on home mortgage.** If the buyer of your home assumes your mortgage, you may remain secondarily liable for repayment of the mortgage loan.

If the buyer defaults on the loan and the house is then sold for less than the amount outstanding on the mortgage, you may have to make up the difference. You can take a bad debt deduction for the amount you pay to satisfy the mortgage if you cannot collect it from the buyer.

**Worthless securities.** If you own securities that become totally worthless, you can take a deduction for a loss, but not for a bad debt. See Worthless Securities under *What Is a Sale or Trade*, earlier in this chapter.

**Recovery of a bad debt.** If you deducted a bad debt and in a later tax year you recover (collect) all or part of it, you may have to include the amount you recover in your gross income. However, you can exclude from gross income the amount recovered up to the amount of the deduction that did not reduce your tax in the year deducted. See *Recoveries* in Pub. 525.

**How to report bad debts.** Deduct nonbusiness bad debts as short-term capital losses on Form 8949.

On Form 8949, Part I, line 1, enter the name of the debtor and “bad debt statement attached” in column (a). Enter your basis in the bad debt in column (e) and enter zero in column (d). Use a separate line for each bad debt.



*Make sure you report your bad debt(s) (and any other short-term transactions for which you did not receive a Form 1099-B) on Form 8949 with box C checked.*

For each bad debt, attach a statement to your return that contains:

- A description of the debt, including the amount, and the date it became due;
- The name of the debtor, and any business or family relationship between you and the debtor;

- The efforts you made to collect the debt; and
- Why you decided the debt was worthless. For example, you could show that the borrower has declared bankruptcy, or that legal action to collect would probably not result in payment of any part of the debt.

## **Short Sales**

A short sale occurs when you agree to sell property you do not own (or own but do not wish to sell). You make this type of sale in two steps.

- You sell short. You borrow property and deliver it to a buyer.
- You close the sale. At a later date, you either buy substantially identical property and deliver it to the lender or make delivery out of property you held at the time of the sale. Delivery of property borrowed from another lender does not satisfy this requirement.

You do not realize gain or loss until delivery of property to close the short sale. You will have a capital gain or loss if the property used to close the short sale is a capital asset.

The Instructions for Form 1099-B discuss when you should receive a Form 1099-B for short sales. For more information, see the Instructions for Form 1099-B.

**Reporting a short sale.** Report any short sale on Form 8949 in the year it closes. If a short sale closed in 2024 but you did not get a Form 1099-B for it because you entered into it before 2011, report it on a Form 8949 in Part I or Part II (whichever applies). In column (a), enter (for example) "100 sh. XYZ Co. — 2010 short sale closed." Fill in the other columns according to their instructions. Report the short sale the same way if you received a 2024 Form 1099-B that does not show proceeds (sales price).

**Exception if property becomes worthless.**

A different rule applies if the property sold short becomes substantially worthless. In that case, you must recognize gain as if the short sale were closed when the property became substantially worthless.

**Exception for constructive sales.** Entering into a short sale may cause you to be treated as having made a constructive sale of property. In that case, you will have to recognize gain on the date of the constructive sale. For details, see Constructive Sales of Appreciated Financial Positions, earlier.

**Example.** On May 6, 2024, you bought 100 shares of Baker Corporation stock for \$1,000. On September 9, 2024, you sold short 100 shares of similar Baker stock for \$1,600. You made no other transactions involving Baker stock for the rest of 2024 and the first 30 days of 2025. Your short sale is treated as a constructive sale of an appreciated financial position because a sale of your Baker stock

on the date of the short sale would have resulted in a gain. You recognize a \$600 short-term capital gain from the constructive sale and your new holding period in the Baker stock begins on September 8.

## **Short-Term or Long-Term Capital Gain or Loss**

As a general rule, you determine whether you have short-term or long-term capital gain or loss on a short sale by the amount of time you actually hold the property eventually delivered to the lender to close the short sale.

**Example.** Even though you do not own any stock of Ace Corporation, you contract to sell 100 shares of it, which you borrow from your broker. After 13 months, when the price of the stock has risen, you buy 100 shares of Ace Corporation stock and immediately deliver them to your broker to close out the short sale. Your loss is a short-term capital loss because your holding period for the delivered property is less than 1 day.

**Special rules.** Special rules may apply to gains and losses from short sales of stocks, securities, and commodity and securities futures (other than certain straddles) if you held or acquired property substantially identical to property that sold short. But if the amount of property you sold short is more than the amount of that substantially identical property, the special rules do not apply to the gain or loss on the excess.

***Gains and holding period.*** If you held the substantially identical property for 1 year or less on the date of the short sale, or if you acquired the substantially identical property after the short sale and by the date of closing the short sale, then:

***Rule 1.*** Your gain, if any, when you close the short sale is a short-term capital gain; and

***Rule 2.*** The holding period of the substantially identical property begins on the date of the closing of the short sale or on the

date of the sale of this property, whichever comes first.

***Losses.*** If, on the date of the short sale, you held substantially identical property for more than 1 year, any loss you realize on the short sale is a long-term capital loss, even if you held the property used to close the sale for 1 year or less. Certain losses on short sales of stock or securities are also subject to wash sale treatment. For information, see *Wash Sales*, later.

***Mixed straddles.*** Under certain elections, you can avoid the treatment of loss from a short sale as long term under the special rule. These elections are for positions that are part of a mixed straddle. See *Other elections*, later, for more information about these elections.

## **Reporting Substitute Payments**

If any broker transferred your securities for use in a short sale or similar transaction and

received certain substitute dividend payments on your behalf while the short sale was open, that broker must give you a Form 1099-MISC or a similar statement reporting the amount of these payments. Form 1099-MISC must be used for those substitute payments totaling \$10 or more that are known on the payment's record date to be in lieu of an exempt-interest dividend, a capital gain dividend, a return of capital distribution, or a dividend subject to a foreign tax credit, or that are in lieu of tax-exempt interest. Do not treat these substitute payments as dividends or interest. Instead, report the substitute payments shown on Form 1099-MISC as "Other income" on Schedule 1 (Form 1040), line 8z.

**Substitute payment.** A substitute payment means a payment in lieu of:

- Tax-exempt interest (including OID) accrued while the short sale was open; and

- A dividend, if the ex-dividend date is after the transfer of stock for use in a short sale and before the closing of the short sale.

**Payments in lieu of dividends.** If you borrow stock to make a short sale, you may have to remit to the lender payments in lieu of the dividends distributed while you maintain your short position. You can deduct these payments only if you hold the short sale open at least 46 days (more than 1 year in the case of an extraordinary dividend, as defined later) and you itemize your deductions.

You deduct these payments as investment interest on Schedule A (Form 1040). See *Interest Expenses* in chapter 3 for more information.

If you close the short sale by the 45th day after the date of the short sale (1 year or less in the case of an extraordinary dividend), you cannot deduct the payment in lieu of the dividend you make to the lender.

Instead, you must increase the basis of the stock used to close the short sale by that amount.

To determine how long a short sale is kept open, do not include any period during which you hold, have an option to buy, or are under a contractual obligation to buy substantially identical stock or securities.

If your payment is made for a liquidating distribution or nontaxable stock distribution, or if you buy more shares equal to a stock distribution issued on the borrowed stock during your short position, you have a capital expense. You must add the payment to the cost of the stock sold short.

***Exception.*** If you close the short sale within 45 days, the deduction for amounts you pay in lieu of dividends will be disallowed only to the extent the payments are more than the amount you receive as ordinary income from the lender of the stock for the use of collateral with the short sale.