

§ 1.1242-1

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truck. Although it would require a fleet of fifteen or twenty trucks to carry out this operation, the distributor uses only one truck of his own and hires cartage companies to deliver the bulk of the merchandise to the customers. Payments received upon the cancellation of the distributorship agreement in such a case would not be considered received upon the sale or exchange of the agreement under section 1241 since the taxpayer does not have facilities for the physical handling of more than a small fraction of the goods involved in carrying on the distributorship and, therefore, does not have a substantial capital investment in the distributorship. On the other hand, if the taxpayer had acquired and used a substantial number of the trucks necessary for the deliveries to his customers, payments received upon the cancellation of the agreement would be considered received in exchange therefor under section 1241.

[T.D. 6500, 25 FR 12021, Nov. 26, 1960]

§ 1.1242-1 Losses on small business investment company stock.

(a) *In general.* Any taxpayer who sustains a loss for a taxable year beginning after September 2, 1958, as a result of the worthlessness, or from the sale or exchange, of the stock of a small business investment company (whether or not such stock was originally issued to such taxpayer) shall treat such loss as a loss from the sale or exchange of property which is not a capital asset, if at the time of such loss:

(1) The company which issued the stock is licensed to operate as a small business investment company pursuant to regulations promulgated by the Small Business Administration (13 CFR part 107), and

(2) Such loss would, but for the provisions of section 1242, be a loss from the sale or exchange of a capital asset.

(b) *Treatment of losses for purposes of section 172.* For the purposes of section 172 (relating to the net operating loss deduction), any amount of loss treated by reason of section 1242 as a loss from the sale or exchange of property which is not a capital asset shall be treated as attributable to the trade or business of the taxpayer. Accordingly, the limitation of section 172(d)(4) on the allowance of nonbusiness deductions in computing a net operating loss shall not apply to any loss with respect to the stock of a small business investment company as described in paragraph (a)

of this section. See section 172(d) and § 1.172-3.

(c) *Statement to be filed with return.* A taxpayer claiming a deduction for a loss on the stock of a small business investment company shall file with his income tax return a statement containing: The name and address of the small business investment company which issued the stock, the number of shares, basis, and selling price of the stock with respect to which the loss is claimed, the respective dates of purchase and sale of such stock, or the reason for its worthlessness and approximate date thereof. For the rules applicable in determining the worthlessness of securities, see section 165 and the regulations thereunder.

[T.D. 6500, 25 FR 12022, Nov. 26, 1960]

§ 1.1243-1 Loss of small business investment company.

(a) *In general—(1) Taxable years beginning after July 11, 1969.* For taxable years beginning after July 11, 1969, a small business investment company to which section 582(c) applies, and which sustains a loss as a result of the worthlessness, or on the sale or exchange, of the stock of a small business concern (as defined in section 103(5) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 662(5)) and in 13 CFR 107.3), shall treat such loss as a loss from the sale or exchange of property which is not a capital asset if:

(i) The stock was issued pursuant to the conversion privilege of the convertible debentures acquired in accordance with the provisions of section 304 of the Small Business Investment Act of 1958 (15 U.S.C. 684) and the regulations thereunder.

(ii) Such loss would, but for the provisions of section 1243, be a loss from the sale or exchange of a capital asset, and

(iii) At the time of the loss, the company is licensed to operate as a small business investment company pursuant to regulations promulgated by the Small Business Administration (13 CFR part 107).

If section 582(c) does not apply for the taxable year, see subparagraph (2) of this paragraph.

(2) *Taxable years beginning before July 11, 1974.* For taxable years beginning

after September 2, 1958, but before July 11, 1974, a small business investment company to which section 582(c) does not apply, and which sustains a loss as a result of the worthlessness, or on the sale or exchange, of the securities of a small business concern (as defined in section 103(5) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 662(5)) and in 13 CFR 107.3), shall treat such loss as a loss from the sale or exchange of property which is not a capital asset if:

(i) The securities are either the convertible debentures, or the stock issued pursuant to the conversion privilege thereof, acquired in accordance with the provisions of section 304 of the Small Business Investment Act of 1958 (15 U.S.C. 684) and the regulations thereunder.

(ii) Such loss would, but for the provisions of this subparagraph, be a loss from the sale or exchange of a capital asset, and

(iii) At the time of the loss, the company is licensed to operate as a small business investment company pursuant to regulations promulgated by the Small Business Administration (13 CFR part 107).

If section 582(c) applies for the taxable year, see subparagraph (1) of this paragraph.

(b) *Material to be filed with return.* A small business investment company which claims a deduction for a loss on the convertible debentures (pursuant to paragraph (a)(2) of this section) or stock (pursuant to paragraph (a) (1) or (2) of this section) of a small business concern shall submit with its income tax return a statement that it is a Federal licensee under the Small Business Investment Act of 1958 (15 U.S.C. chapter 14B). The statement shall also set forth: the name and address of the small business concern with respect to whose securities the loss was sustained, the number of shares of stock or the number and denomination of debentures with respect to which the loss is claimed, the basis and selling price thereof, and the respective dates of purchase and sale of the securities, or the reason for their worthlessness and the approximate date thereof. For the rules applicable in determining the

worthlessness of securities, see section 165 and the regulations thereunder.

[T.D. 7171, 37 FR 5621, Mar. 17, 1972]

§ 1.1244(a)-1 Loss on small business stock treated as ordinary loss.

(a) *In general.* Subject to certain conditions and limitations, section 1244 provides that a loss on the sale or exchange (including a transaction treated as a sale or exchange, such as worthlessness) of *section 1244 stock* which would otherwise be treated as a loss from the sale or exchange of a capital asset shall be treated as a loss from the sale or exchange of an asset which is not a capital asset (referred to in this section and §§ 1.1244(b)-1 to 1.1244(e)-1, inclusive, as an *ordinary loss*). Such a loss shall be allowed as a deduction from gross income in arriving at adjusted gross income. The requirements that must be satisfied in order that stock may be considered section 1244 stock are described in §§ 1.1244(c)-1 and 1.1244(c)-2. These requirements relate to the stock itself and the corporation issuing such stock. In addition, the taxpayer who claims an ordinary loss deduction pursuant to section 1244 must satisfy the requirements of paragraph (b) of this section.

(b) *Taxpayers entitled to ordinary loss.* The allowance of an ordinary loss deduction for a loss of section 1244 stock is permitted only to the following two classes of taxpayers:

(1) An individual sustaining the loss to whom the stock was issued by a small business corporation, or

(2) An individual who is a partner in a partnership at the time the partnership acquired the stock in an issuance from a small business corporation and whose distributive share of partnership items reflects the loss sustained by the partnership. The ordinary loss deduction is limited to the lesser of the partner's distributive share at the time of the issuance of the stock or the partner's distributive share at the time the loss is sustained. In order to claim a deduction under section 1244 the individual, or the partnership, sustaining the loss must have continuously held the stock from the date of issuance. A corporation, trust, or estate is not entitled to ordinary loss treatment under section 1244 regardless of how the stock