

§ 1244. Losses on small business stock**(a) General rule**

In the case of an individual, a loss on section 1244 stock issued to such individual or to a partnership which would (but for this section) be treated as a loss from the sale or exchange of a capital asset shall, to the extent provided in this section, be treated as an ordinary loss.

(b) Maximum amount for any taxable year

For any taxable year the aggregate amount treated by the taxpayer by reason of this section as an ordinary loss shall not exceed—

- (1) \$50,000, or
- (2) \$100,000, in the case of a husband and wife filing a joint return for such year under section 6013.

(c) Section 1244 stock defined**(1) In general**

For purposes of this section, the term “section 1244 stock” means stock in a domestic corporation if—

(A) at the time such stock is issued, such corporation was a small business corporation,

(B) such stock was issued by such corporation for money or other property (other than stock and securities), and

(C) such corporation, during the period of its 5 most recent taxable years ending before the date the loss on such stock was sustained, derived more than 50 percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interests, annuities, and sales or exchanges of stocks or securities.

(2) Rules for application of paragraph (1)(C)**(A) Period taken into account with respect to new corporations**

For purposes of paragraph (1)(C), if the corporation has not been in existence for 5 taxable years ending before the date the loss on the stock was sustained, there shall be substituted for such 5-year period—

(i) the period of the corporation’s taxable years ending before such date, or

(ii) if the corporation has not been in existence for 1 taxable year ending before such date, the period such corporation has been in existence before such date.

(B) Gross receipts from sales of securities

For purposes of paragraph (1)(C), gross receipts from the sales or exchanges of stock or securities shall be taken into account only to the extent of gains therefrom.

(C) Nonapplication where deductions exceed gross income

Paragraph (1)(C) shall not apply with respect to any corporation if, for the period taken into account for purposes of paragraph (1)(C), the amount of the deductions allowed by this chapter (other than by sections 172, 243, 244, and 245) exceeds the amount of gross income.

(3) Small business corporation defined**(A) In general**

For purposes of this section, a corporation shall be treated as a small business corpora-

tion if the aggregate amount of money and other property received by the corporation for stock, as a contribution to capital, and as paid-in surplus, does not exceed \$1,000,000. The determination under the preceding sentence shall be made as of the time of the issuance of the stock in question but shall include amounts received for such stock and for all stock theretofore issued.

(B) Amount taken into account with respect to property

For purposes of subparagraph (A), the amount taken into account with respect to any property other than money shall be the amount equal to the adjusted basis to the corporation of such property for determining gain, reduced by any liability to which the property was subject or which was assumed by the corporation. The determination under the preceding sentence shall be made as of the time the property was received by the corporation.

(d) Special rules**(1) Limitations on amount of ordinary loss****(A) Contributions of property having basis in excess of value**

If—

(i) section 1244 stock was issued in exchange for property,

(ii) the basis of such stock in the hands of the taxpayer is determined by reference to the basis in his hands of such property, and

(iii) the adjusted basis (for determining loss) of such property immediately before the exchange exceeded its fair market value at such time,

then in computing the amount of the loss on such stock for purposes of this section the basis of such stock shall be reduced by an amount equal to the excess described in clause (iii).

(B) Increases in basis

In computing the amount of the loss on stock for purposes of this section, any increase in the basis of such stock (through contributions to the capital of the corporation, or otherwise) shall be treated as allocable to stock which is not section 1244 stock.

(2) Recapitalizations, changes in name, etc.

To the extent provided in regulations prescribed by the Secretary, stock in a corporation, the basis of which (in the hands of a taxpayer) is determined in whole or in part by reference to the basis in his hands of stock in such corporation which meets the requirements of subsection (c)(1) (other than subparagraph (C) thereof), or which is received in a reorganization described in section 368(a)(1)(F) in exchange for stock which meets such requirements, shall be treated as meeting such requirements. For purposes of paragraphs (1)(C) and (3)(A) of subsection (c), a successor corporation in a reorganization described in section 368(a)(1)(F) shall be treated as the same corporation as its predecessor.

(3) Relationship to net operating loss deduction

For purposes of section 172 (relating to the net operating loss deduction), any amount of loss treated by reason of this section as an ordinary loss shall be treated as attributable to a trade or business of the taxpayer.

(4) Individual defined

For purposes of this section, the term “individual” does not include a trust or estate.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Added Pub. L. 85-866, title II, §202(b), Sept. 2, 1958, 72 Stat. 1676; amended Pub. L. 94-455, title XIX, §§1901(b)(1)(W), (3)(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1792, 1793, 1834; Pub. L. 95-600, title III, §345(a)-(d), Nov. 6, 1978, 92 Stat. 2844, 2845; Pub. L. 98-369, div. A, title IV, §481(a), July 18, 1984, 98 Stat. 847.)

AMENDMENTS

1984—Subsecs. (c)(1), (d)(2). Pub. L. 98-369 substituted “stock in a” for “common stock in a”.

1978—Subsec. (b). Pub. L. 95-600, §345(b), substituted in par. (1) “\$50,000” for “\$25,000” and in par. (2) “\$100,000” for “\$50,000”.

Subsec. (c). Pub. L. 95-600, §345(a), (c), among other changes, substituted provisions permitting a corporation to issue common stock under the provisions of this section without a written plan for provisions requiring that a written plan to issue section 1244 stock must be adopted by the issuing corporation and increased the amount of section 1244 stock that a qualified small business corporation may issue from \$500,000 to \$1,000,000.

Subsec. (d)(2). Pub. L. 95-600, §345(d), substituted “subparagraph (C)” for “subparagraph (E)” and “paragraphs (1)(C) and (3)(A)” for “paragraphs (1)(E) and (2)(A)”.

1976—Subsecs. (a), (b). Pub. L. 94-455, §1901(b)(3)(G), substituted “an ordinary loss” for “a loss from the sale or exchange of an asset which is not a capital asset”.

Subsec. (c)(1)(E). Pub. L. 94-455, §1901(b)(1)(W), struck out reference to section 242 of this title.

Subsec. (d)(2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (d)(3). Pub. L. 94-455, §1901(b)(3)(G), substituted “an ordinary loss” for “a loss from the sale or exchange of an asset which is not a capital asset”.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 481(b) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [amending this section] shall apply to stock issued after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.”

EFFECTIVE DATE OF 1978 AMENDMENT

Section 345(e) of Pub. L. 95-600, as amended by Pub. L. 96-222, title I, §103(a)(9), Apr. 1, 1980, 94 Stat. 212, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to stock issued after November 6, 1978.

“(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1978.

“(3) TRANSITIONAL RULE FOR SUBSECTION (b).—In the case of a taxable year which includes November 6, 1978, the amendments made by subsection (b) [amending this section] shall apply with respect to stock issued after such date.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(1)(W), (3)(G) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

§ 1245. Gain from dispositions of certain depreciable property**(a) General rule****(1) Ordinary income**

Except as otherwise provided in this section, if section 1245 property is disposed of the amount by which the lower of—

(A) the recomputed basis of the property,

or

(B)(i) in the case of a sale, exchange, or involuntary conversion, the amount realized,

or

(ii) in the case of any other disposition, the fair market value of such property,

exceeds the adjusted basis of such property shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Recomputed basis

For purposes of this section—

(A) In general

The term “recomputed basis” means, with respect to any property, its adjusted basis recomputed by adding thereto all adjustments reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation or amortization.

(B) Taxpayer may establish amount allowed

For purposes of subparagraph (A), if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation or amortization for any period was less than the amount allowable, the amount added for such period shall be the amount allowed.

(C) Certain deductions treated as amortization

Any deduction allowable under section 179, 179A, 179B, 179C, 179D, 179E, 181, 190, 193, or 194 shall be treated as if it were a deduction allowable for amortization.

(3) Section 1245 property

For purposes of this section, the term “section 1245 property” means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 and is either—

(A) personal property,

(B) other property (not including a building or its structural components) but only if such other property is tangible and has an adjusted basis in which there are reflected adjustments described in paragraph (2) for a period in which such property (or other property)—

(i) was used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communica-