



Instructions for Schedule D (Form 1120S)

Capital Gains and Losses and Built-In Gains

Section references are to the Internal Revenue Code unless otherwise noted.

A Change To Note

The maximum tax rate on net capital gain has been reduced for most sales and other dispositions after May 5, 2003 (and installment payments received after that date). Additional reporting is required for tax years that include May 5, 2003.

General Instructions

Purpose of Schedule

Schedule D is used by all S corporations to report:

- Sales or exchanges of capital assets.
- Gains on distributions to shareholders of appreciated capital assets (referred to here as distributions).
- Nonbusiness bad debts.
- Net recognized built-in gain as defined in section 1374(d)(2). The built-in gains tax is figured in Part III of Schedule D.

Other Forms the Corporation May Have To File

Use **Form 4797**, Sales of Business Property, to report:

- Sales, exchanges, and distributions of property used in a trade or business.
- Sales, exchanges, and distributions of depreciable and amortizable property.
- Sales or other dispositions of securities or commodities held in connection with a trading business, if the corporation made a mark-to-market election (see page 4 of the Instructions for Form 1120S).
- Involuntary conversions (other than from casualties or thefts).
- The disposition of noncapital assets (other than inventory or property held primarily for sale to customers in the ordinary course of a trade or business).

Use **Form 4684**, Casualties and Thefts, to report involuntary

conversions of property due to casualty or theft.

Use **Form 6781**, Gains and Losses From Section 1256 Contracts and Straddles, to report gains and losses from section 1256 contracts and straddles.

Use **Form 8824**, Like-Kind Exchanges, if the corporation made one or more like-kind exchange. A "like-kind exchange" occurs when business or investment property is exchanged for property of a like kind. For exchanges of capital assets, enter the gain or loss from Form 8824, if any, on line 3 or line 9 in column (f), and in column (g) if required.

Capital Asset

Each item of property the corporation held (whether or not connected with its trade or business) is a capital asset **except**:

- Stock in trade or other property included in inventory or held mainly for sale to customers.
- Accounts or notes receivable acquired in the ordinary course of the trade or business for services rendered or from the sale of stock in trade or other property held mainly for sale to customers.
- Depreciable or real property used in the trade or business, even if it is fully depreciated.
- Certain copyrights; literary, musical, or artistic compositions; letters or memorandums; or similar property. See section 1221(a)(3).
- U.S. Government publications, including the Congressional Record, that the corporation received from the Government, other than by purchase at the normal sales price, or that the corporation got from another taxpayer who had received it in a similar way, if the corporation's basis is determined by reference to the previous owner.
- Certain commodities derivative financial instruments held by a dealer. See section 1221(a)(6).

- Certain hedging transactions entered into in the normal course of the trade or business. See section 1221(a)(7).
- Supplies regularly used in the trade or business.

Items for Special Treatment

Note: For more information, see **Pub. 544**, *Sales and Other Dispositions of Assets*.

Loss from a sale or exchange between the corporation and a related person. Except for distributions in complete liquidation of a corporation, no loss is allowed from the sale or exchange of property between the corporation and certain related persons. See section 267 for details.

Loss from a wash sale. The corporation cannot deduct a loss from a wash sale of stock or securities (including contracts or options to acquire or sell stock or securities) unless the corporation is a dealer in stock or securities and the loss was sustained in a transaction made in the ordinary course of the corporation's trade or business. A wash sale occurs if the corporation acquires (by purchase or exchange), or has a contract or option to acquire, substantially identical stock or securities within 30 days before or after the date of the sale or exchange. See section 1091 for more information.

Gain on distribution of appreciated property. Generally, gain (but not loss) is recognized on a nonliquidating distribution of appreciated property to the extent that the property's fair market value exceeds its adjusted basis. See section 311 for details.

Gain or loss on distribution of property in complete liquidation. Generally, gain or loss is recognized by a corporation upon the liquidating distribution of property as if it had sold the property at its fair market value. See section 336 for details and exceptions.

Gain or loss on certain short-term Federal, state, and municipal obligations. Such obligations are treated as capital assets in determining gain or loss. On any gain realized, a portion is treated as ordinary income and the balance is considered as a short-term capital gain. See section 1271.

Gain from installment sales. If the corporation sold property at a gain and it will receive a payment in a tax year after the year of sale, it generally must report the sale on the installment method unless it elects not to. However, the installment method may not be used to report sales of stock or securities traded on an established securities market.

Use **Form 6252**, Installment Sale Income, to report the sale on the installment method. Also use Form 6252 to report any payment received during the tax year from a sale made in an earlier year that was reported on the installment method. To elect out of the installment method, report the full amount of the gain on Schedule D for the year of the sale on a return filed by the due date (including extensions). If the original return was filed on time, the corporation may make the election on an amended return filed no later than 6 months after the original due date (excluding extensions). Write "Filed pursuant to section 301.9100-2" at the top of the amended return.

Gain or loss on an option to buy or sell property. See sections 1032 and 1234 for the rules that apply to a purchaser or grantor of an option or a securities futures contract (as defined in section 1234B). For details, **Pub. 550**, Investment Income and Expenses.

Gain or loss from a short sale of property. Report the gain or loss to the extent that the property used to close the short sale is considered a capital asset in the hands of the taxpayer.

Loss from securities that are capital assets that become worthless during the year. Except for securities held by a bank, treat the loss as a capital loss as of the last day of the tax year. See section 582 for the rules on the treatment of securities held by a bank.

Nonrecognition of gain on sale of stock to an employee stock ownership plan (ESOP) or an eligible cooperative. See section 1042 and Temporary Regulations section 1.1042-1T for rules under which a taxpayer may elect not to recognize gain from the sale of certain stock to an ESOP or an eligible cooperative.

Disposition of market discount bonds. See section 1276 for rules on the disposition of any market discount bonds.

Capital gain distributions. Report the **total** amount of capital gain distributions (for the entire year) as long-term capital gain on line 10, column (f), regardless of how long the corporation held the investment. Enter on line 10, column (g) capital gain distributions from column (f) that were attributed to periods after May 5, 2003.

Nonbusiness bad debts. A nonbusiness bad debt must be treated as a short-term capital loss and can be deducted only in the year the debt becomes totally worthless. For each bad debt, enter the name of the debtor and "schedule attached" in column (a) of line 1 and the amount of the bad debt as a loss in column (f). Also attach a statement of facts to support each bad debt deduction.

Real estate subdivided for sale. Certain lots or parcels that are part of a tract of real estate subdivided for sale may be treated as capital assets. See section 1237.

Sale of a partnership interest. A sale or other disposition of an interest in a partnership owning unrealized receivables or inventory items may result in ordinary gain or loss. See **Pub. 541**, Partnerships, for more details.

Special rules for traders in securities. Traders in securities are engaged in the **business** of buying and selling securities for their own account. To be engaged in a business as a trader in securities the corporation:

- Must seek to **profit from daily market movements** in the prices of securities and not from dividends, interest, or capital appreciation.
- Must be involved in a trading activity that is **substantial**.
- Must carry on the activity with **continuity and regularity**.

The following facts and circumstances should be considered in determining if a corporation's activity is a business:

- Typical holding periods for securities bought and sold.
- The frequency and dollar amount of the corporation's trades during the year.
- The extent to which the activity is pursued to produce income for a livelihood.
- The amount of time devoted to the activity.

Like an investor, a trader must report each sale of securities (taking into account commissions and any other costs of acquiring or disposing of the securities) on Schedule D or on an

attached statement containing all the same information for each sale in a similar format. However, if a trader made the mark-to-market election (see page 4 of the Instructions for Form 1120S), each transaction is reported in Part II of Form 4797 instead of Schedule D.

The limitation on investment interest expense that applies to investors does not apply to interest paid or incurred in a trading business. A trader reports interest expense and other expenses (excluding commissions and other costs of acquiring and disposing of securities) from a trading business on page 1 of Form 1120S.

A trader also may hold securities for investment. The rules for investors generally will apply to those securities. Allocate interest and other expenses between a trading business and investment securities. Investment interest expense is reported on line 11a of Schedules K and K-1.

Certain constructive ownership transactions. Gain in excess of the gain the corporation would have recognized if it had held a financial asset directly during the term of a derivative contract must be treated as ordinary income. See section 1260 for details.

Constructive sale treatment for certain appreciated positions. Generally, the corporation must recognize gain (but not loss) on the date it enters into a constructive sale of any appreciated interest in stock, a partnership interest, or certain debt instruments as if the position were disposed of at fair market value on that date.

The corporation is treated as making a constructive sale of an appreciated position if it (or a related person, in some cases) does **one** of the following:

- Enters into a short sale of the same or substantially identical property (i.e., a "short sale against the box").
- Enters into an offsetting notional principal contract relating to the same or substantially identical property.
- Enters into a futures or forward contract to deliver the same or substantially identical property.
- Acquires the same or substantially identical property (if the appreciated position is a short sale, offsetting notional principal contract, or a futures or forward contract).

Exception. Generally, constructive sale treatment **does not** apply if:

- The transaction was closed before the end of the 30th day after the end of the year in which it was entered into,

- The appreciated position to which the transaction relates was held throughout the 60-day period starting on the date the transaction was closed, **and**
- At no time during that 60-day period was the corporation's risk of loss reduced by holding certain other positions.

For details and other exceptions to these rules, see Pub. 550.

Gain from qualified stock. If the corporation sold qualified small business stock (defined below) that it held for more than 6 months, it may postpone gain if it purchased other qualified small business stock during the 60-day period that began on the date of the sale. The corporation must recognize gain to the extent the sale proceeds exceed the cost of the replacement stock. Reduce the basis of the replacement stock by any postponed gain.

If the corporation chooses to postpone gain, report the entire gain realized on the sale on line 1 or 7. Directly below the line on which the corporation reported the gain, enter in column (a) "Section 1045 Rollover" and enter as a (loss) in column (f) the amount of the postponed gain.



The corporation also must separately state the amount of the gain rolled over on qualified stock under section 1045 on Form 1120S, Schedule K, line 6, because each shareholder must determine if he or she qualifies for the rollover at the shareholder level. Also, the corporation must include on Schedule D, line 1 or 7 (and on Form 1120S, Schedule K, line 6), any gain that could qualify for the section 1045 rollover at the shareholder level instead of the corporate level (because a shareholder was entitled to purchase replacement stock). If the corporation had a gain on qualified stock that could qualify for the 50% exclusion under section 1202, report that gain on Schedule D, line 7 (and on Form 1120S, Schedule K, line 6).

To be **qualified small business stock**, the stock must meet **all** of the following tests:

- It must be stock in a C corporation.
- It must have been originally issued after August 10, 1993.
- As of the date the stock was issued, the C corporation was a qualified small business. A qualified small business is a domestic C corporation with total gross assets of \$50 million or less **(a)** at all times after August 9, 1993, and before the stock was issued, and **(b)** immediately after the stock was issued. Gross assets include those of any

predecessor of the corporation. All corporations that are members of the same parent-subsidiary controlled group are treated as one corporation.

- The corporation must have acquired the stock at its original issue (either directly or through an underwriter), either in exchange for money or other property or as pay for services (other than as an underwriter) to the corporation. In certain cases, the corporation may meet the test if it acquired the stock from another person who met this test (such as by gift or inheritance) or through a conversion or exchange of qualified small business stock held by the corporation.
- During substantially all the time the corporation held the stock:

1. The issuer was a C corporation,
2. At least 80% of the value of the issuer's assets were used in the active conduct of one or more qualified businesses (defined below), and
3. The issuing corporation **was not** a foreign corporation, DISC, former DISC, corporation that has made (or that has a subsidiary that has made) a section 936 election, regulated investment company, real estate investment trust, REMIC, FASIT, or cooperative.

Note: A specialized small business investment company (SSBIC) is treated as having met test 2 above.

A **qualified business** is any business **other than** the following:

- One involving services performed in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, or brokerage services.
- One whose principal asset is the reputation or skill of one or more employees.
- Any banking, insurance, financing, leasing, investing, or similar business.
- Any farming business (including the raising or harvesting of trees).
- Any business involving the production of products for which percentage depletion can be claimed.
- Any business of operating a hotel, motel, restaurant, or similar business.

Rollover of gain from empowerment zone assets. If the corporation sold a qualified empowerment zone asset it held for than one year, it may be able to elect to postpone part or all of the gain. For details, see **Pub. 954**, Tax Incentives for Distressed Communities, and section 1397B.

28% rate gain or (loss). Report any 28% gain or loss (i.e., collectibles gain or loss) on a statement attached to line 21 of Schedule K (and each

shareholder's share on line 23 of Schedule K-1). A **collectibles gain or loss** is any long-term gain or deductible long-term loss from the sale or exchange of a collectible that is a capital asset.

Collectibles include works of art, rugs, antiques, metals (such as gold, silver, and platinum bullion), gems, stamps, coins, alcoholic beverages, and certain other tangible property.

Also include gain (but not loss) from the sale or exchange of an interest in a partnership or trust held more than 1 year and attributable to unrealized appreciation of collectibles. For details, see Regulations section 1.1(h)-1. Also, attach the statement required under Regulations section 1.1(h)-1(e).

Specific Instructions

Parts I and II

Generally, report sales or exchanges (including like-kind exchanges) even if there is no gain or loss. In Part I, report the sale, exchange, or distribution of capital assets held 1 year or less. In Part II, report the sale, exchange, or distribution of capital assets held more than 1 year. Use the trade dates for the dates of acquisition and sale of stocks and bonds traded on an exchange or over-the-counter market.

Column (b)—Date acquired. The acquisition date for an asset the corporation held on January 1, 2001, for which it made an election to recognize any gain on a deemed sale is the date of the deemed sale and reacquisition.

Column (e)—Cost or other basis. In determining gain or loss, the basis of property is generally its cost (see section 1012 and related regulations). Special rules for determining basis are provided in sections in subchapters C, K, O, and P of the Code. These rules may apply to the corporation on the receipt of certain distributions with respect to stock (section 301), liquidation of another corporation (334), transfer to another corporation (358), transfer from a shareholder or reorganization (362), bequest (1014), contribution or gift (1015), tax-free exchange (1031), involuntary conversion (1033), certain asset acquisitions (1060), or wash sale of stock (1091). Attach an explanation if you use a basis other than actual cash cost of the property.

If the corporation is allowed a charitable contribution deduction

because it sold property to a charitable organization, figure the adjusted basis for determining gain from the sale by dividing the amount realized by the fair market value and multiplying that result by the adjusted basis.

If the corporation elected to recognize gain on an asset held on January 1, 2001, its basis in the asset is its closing market price or fair market value, whichever applies, on the date of the deemed sale and reacquisition, whether the deemed sale resulted in a gain or unallowed loss.

See section 852(f) for the treatment of certain load charges incurred in acquiring stock in a mutual fund with a reinvestment right.

Before making an entry in column (e), increase the cost or other basis by any expense of sale, such as broker's fees, commissions, option premiums, and state and local transfer taxes, unless the net sales price was reported in column (d).

Column (f)—Gain or (loss) for the entire year. Make a separate entry in this column for each transaction reported on lines 1 and 7 and any other line(s) that apply to the corporation. For lines 1 and 7, subtract the amount in column (e) from the amount in column (d). Enter negative amounts in parentheses.

Column (g)—Post-May 5, 2003, gain or (loss). Enter in this column all gains and losses from column (f) from sales, exchanges, or conversions (including installment payments received) after May 5, 2003. However, **do not** include gain attributable to unrecaptured section 1250 gain, or collectibles gains and losses (defined on page 3).

Part III—Built-In Gains Tax

Section 1374 provides for a tax on built-in gains, **without regard to when S corporation status was elected**, if the corporation acquired an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation.

Line 15. Enter the amount that would be the taxable income of the corporation for the tax year if only

recognized built-in gains (including any carryover of gain under section 1374(d)(2)(B)) and recognized built-in losses were taken into account.

Section 1374(d)(3) defines a **recognized built-in gain** as any gain recognized during the recognition period (the 10-year period beginning on the first day of the first tax year for which the corporation is an S corporation, or beginning the date the asset was acquired by the S corporation, for an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation) on the sale or distribution (disposition) of any asset, except to the extent the corporation establishes that—

- The asset was not held by the corporation as of the beginning of the first tax year the corporation was an S corporation (except this does not apply to an asset acquired by the S corporation with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation), or
- The gain exceeds the excess of the fair market value of the asset as of the start of the first tax year (or as of the date the asset was acquired by the S corporation, for an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation) over the adjusted basis of the asset at that time.

Certain transactions involving the disposal of timber, coal, or domestic iron ore under section 631 are not subject to the built-in gains tax. For details, see Rev. Rul. 2001-50, 2001-43 I.R.B. 343.

Section 1374(d)(4) defines a **recognized built-in loss** as any loss recognized during the recognition period (stated above) on the disposition of any asset to the extent the corporation establishes that—

- The asset was held by the corporation as of the beginning of the first tax year the corporation was an S corporation (except that this does not apply to an asset acquired by the S corporation with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation), and

- The loss does not exceed the excess of the adjusted basis of the asset as of the beginning of the first tax year (or as of the date the asset was acquired by the S corporation, for an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation), over the fair market value of the asset as of that time.

The corporation must show on an attachment its total net recognized built-in gain and list separately any capital gain or loss and ordinary gain or loss.

Line 16. Figure taxable income by completing lines 1 through 28 of Form 1120. Follow the instructions for Form 1120. Enter the amount from line 28 of Form 1120 on line 16 of Schedule D. Attach to Schedule D the Form 1120 computation or other worksheet used to figure taxable income.

Note: *Taxable income is defined in section 1375(b)(1)(B) and is generally figured in the same manner as taxable income for line 9 of the worksheet for line 22a of Form 1120S (see page 17 of the Instructions for Form 1120S).*

Line 17. If for any tax year the amount on line 15 exceeds the taxable income on line 16, the excess is treated as a recognized built-in gain in the succeeding tax year. This carryover provision applies only in the case of an S corporation that made its election to be an S corporation after March 30, 1988. See section 1374(d)(2)(B).

Line 18. Enter the section 1374(b)(2) deduction. Generally, this is any net operating loss carryforward or capital loss carryforward (to the extent of net capital gain included in recognized built-in gain for the tax year) arising in tax years for which the corporation was a C corporation. See section 1374(b)(2) for details.

Line 22. The built-in gains tax is treated as a loss sustained by the corporation during the same tax year. Deduct the tax attributable to:

- Ordinary gain as a deduction for taxes on Form 1120S, line 12.
- Short-term capital gain as short-term capital loss on Schedule D, line 5.
- Long-term capital gain as long-term capital loss on Schedule D, line 12.