

# 2010

# Instructions for Schedule D (Form 1041)



Department of the Treasury  
Internal Revenue Service

## Capital Gains and Losses

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

### What's New

Public Law 111-312, Act section 301:

1. Reinstated the estate tax for 2010,
2. Repealed the modified carryover basis rules of section 1022 for property acquired from a decedent who died in 2010, and
3. Created a special election that disregards 1 and 2 above.

If the special election is not made, the rules for determining basis of property acquired from a decedent are the same for a decedent who died before 2010 or in 2010. Generally, this is FMV at the date of death. For more information, see section 1014 and Pub. 551, Basis of Assets.

If the special election is made, the estate of a decedent who died in 2010 would not be subject to the estate tax but such property acquired from the decedent has its basis determined under section 1022 (modified carryover of basis). Additionally:

- The holding period of such property is not automatically considered long-term (see *Short-Term or Long-Term*),
- The decedent's principal residence may be allowed an exclusion of up to \$250,000 of gain (see *Sale of Decedent's Main Home*), and
- Capital gain is reported on the satisfaction of certain pecuniary bequests with appreciated property (see *Items for Special Treatment*). For more information, see Pub. 4895, Tax Treatment of Property Acquired From a Decedent Dying in 2010.

### General Instructions

**Note.** Any reference in these instructions to "you" means the fiduciary of the estate or trust.

### Purpose of Form

Use Schedule D (Form 1041) to report gains and losses from the sale or exchange of capital assets by an estate or trust.

Details of each transaction must be reported on this schedule. If there are more transactions than spaces on lines 1a or 6a, you can report the additional transactions on Schedule D-1. Instead

of reporting the estate's or trust's transactions on Schedules D and D-1, you may report the transactions on an attached statement containing all the same information as Schedule D and D-1 using a similar format. Use as many Schedules D-1 or attachments as necessary. Enter on Schedule D, lines 1b and 6b, as appropriate, the totals from all Schedules D-1, or attached statements.

### Other Forms You May Have To File

Use Form 4797, Sales of Business Property, to report the following.

1. The sale or exchange of:
  - a. Property used in a trade or business;
  - b. Depreciable and amortizable property;
  - c. Oil, gas, geothermal, or other mineral property; and
  - d. Section 126 property.
2. The involuntary conversion (other than from casualty or theft) of property used in a trade or business and capital assets held for business or profit.
3. 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.
4. Ordinary loss on the sale, exchange, or worthlessness of small business investment company (section 1242) stock.
5. Ordinary loss on the sale, exchange, or worthlessness of small business (section 1244) stock.

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 estate or trust made one or more *like-kind* exchanges. A like-kind exchange occurs when the estate or trust exchanges business or investment property for property of a like kind.

### Capital Asset

Each item of property held by the estate or trust (whether or not

connected with its trade or business) is a capital asset *except* the following.

- Inventoriable assets or property held primarily for sale to customers.
- Depreciable or real property used in a trade or business, even if it is fully depreciated.
- Copyrights; literary, musical, or artistic compositions; letters or memoranda; or similar property (a) prepared or produced for the estate or trust (in the case of letters, memoranda, or similar property) or (b) that the trust received from someone who created them or for whom they were created in a way (such as by gift) that entitled the trust to the basis of the previous owner (other than by reason of section 1022). However, the trust can elect to treat musical compositions and copyrights in musical works as capital assets if it acquired the assets under circumstances entitling it to the basis of the person who created the property or for whom it was prepared or produced.
- Accounts or notes receivable acquired in the ordinary course of a trade or business for services rendered or from the sale of inventoriable assets or property held primarily for sale to customers.
- Certain U.S. Government publications not purchased at the public sale price.
- Certain "commodities derivative financial instruments" held by a dealer (see section 1221(a)(6)).
- Certain hedging transactions entered into in the normal course of a trade or business (see section 1221(a)(7)).
- Supplies regularly used in a trade or business.

You may find additional helpful information in the following publications.

- Pub. 544, Sales and Other Dispositions of Assets.
- Pub. 551, Basis of Assets.

### Short-Term or Long-Term

Separate the capital gains and losses according to how long the estate or trust held or owned the property. The holding period for short-term capital gains and losses is 1 year or less. The holding period for long-term capital gains and losses is more than 1 year. Property acquired from a decedent is considered as held for more than 1 year, unless the special election (see *What's New*) is made.

**Note.** This may not apply to property acquired from a decedent dying in 2010 where the use of carryover basis is elected by the estate if that property is held less than 1 year.

To figure the length of the period the estate or trust held property, begin counting on the day after the estate or trust acquired the property and include the day the estate or trust disposed of it. If the executor makes the special election (see *What's New*), include the period that the property was held by the decedent. Use the trade dates for the date of acquisition and sale of stocks and bonds traded on an exchange or over-the-counter market.

### Section 643(e)(3) Election

For noncash property distributions, a fiduciary may elect to have the estate or trust recognize gain or loss in the same manner as if the distributed property had been sold to the beneficiary at its fair market value (FMV). The distribution deduction is the property's FMV. This election applies to all distributions made by the estate or trust during the tax year and, once made, may be revoked only with IRS consent.

Note that section 267 does not allow a trust or a decedent's estate to claim a deduction for any loss on property to which a section 643(e)(3) election applies. In addition, when a trust or a decedent's estate distributes depreciable property, section 1239 applies to deny capital gains treatment for any gain on property to which a section 643(e)(3) election applies.

### Related Persons

A trust cannot deduct a loss from the sale or exchange of property directly or indirectly between any of the following:

- A grantor and a fiduciary of a trust,
- A fiduciary and a fiduciary or beneficiary of another trust created by the same grantor,
- A fiduciary and a beneficiary of the same trust,
- A trust fiduciary and a corporation of which more than 50% in value of the outstanding stock is owned directly or indirectly by or for the trust or by or for the grantor of the trust, or
- An executor of an estate and a beneficiary of that estate, except when the sale or exchange is to satisfy a pecuniary bequest (that is, a bequest of a sum of money).

### Sale of Decedent's Main Home



*The following discussion applies only if the special election (see What's New) is made.*

If the decedent's estate or a qualified revocable trust (QRT) acquired the decedent's main home, gain from the sale or exchange of the decedent's main home by the estate or QRT may

be excluded up to \$250,000. To figure if all or part of the gain is excluded, apply the rules of section 121 by taking into account the ownership and use of the property by the decedent. See Pub. 4895 for details.

If the estate or QRT has a gain on the sale or exchange of the decedent's main home that is reportable on Schedule D, complete all columns of line 6a (line 1a, if applicable). If the estate or QRT qualifies for the exclusion, show it on the line directly below the line on which you reported the gain. Enter "section 121 exclusion" in column (a) of that line and show the amount of the exclusion in column (f) as a loss.

### Items for Special Treatment

- Bonds and other debt instruments. See Pub. 550, Investment Income and Expenses.
- Wash sales of stock or securities (including contracts or options to acquire or sell stock or securities) (section 1091).
- Gain or loss on options to buy or sell. See Pub. 550.
- Certain real estate subdivided for sale that may be considered a capital asset (section 1237).
- Gain on disposition of stock in an interest charge domestic international sales corporation (DISC) (section 995(c)).
- Gain on the sale or exchange of stock in certain foreign corporations (section 1248).
- Sales of stock received under a qualified public utility dividend reinvestment plan. See Pub. 550 for details.
- Transfer of appreciated property to a political organization (section 84).
- Amounts received by shareholders in corporate liquidations. See Pub. 550.
- Cash received in lieu of fractional shares of stock as a result of a stock split or stock dividend. See Pub. 550.
- Load charges to acquire stock in a regulated investment company (including a mutual fund), which may not be taken into account in determining gain or loss on certain dispositions of the stock if reinvestment rights were exercised. See Pub. 550.
- The sale or exchange of S corporation stock or an interest in a trust held for more than 1 year, which may result in collectibles gain (28% rate gain). See the instructions for line 14c on page 8.
- The sale or other disposition of a partnership interest may result in ordinary income, collectibles gain, or unrecovered section 1250 gain.
- Gain or loss on the disposition of securities futures contracts. See Pub. 550.
- Gains from certain constructive ownership transactions. Gain in excess of the gain the estate or trust would have recognized if the estate or trust had held a financial asset directly during the term of a derivative contract must be treated as ordinary income. See section 1260 for details.
- The sale of qualified empowerment zone assets acquired after December 21, 2000, that the estate or trust held for more than 1 year, if you elect to postpone gain by purchasing other qualified empowerment zone assets during the 60-day period that began on the date of the sale. See Pub. 550 and Pub. 954, Tax Incentives for Distressed Communities.
- If the estate or trust sold or exchanged a District of Columbia Enterprise Zone (DC Zone) asset that it acquired after 1997 but before 2010 and held for more than 5 years, it can exclude the amount of "qualified capital gain" from gross income. See Pub. 954.
- If the estate or trust sold or exchanged a qualified community asset held for more than 5 years, it can exclude the amount of any qualified capital gain from gross income. This exclusion applies to an interest in, or property of, certain businesses operating in a renewal community. See Pub. 954.
- If qualified dividends include extraordinary dividends, any loss on the sale or exchange of the stock is a long-term capital loss to the extent of the extraordinary dividends. An extraordinary dividend is a dividend that is at least 10% (5% in the case of preferred stock) of the basis in the stock.
- The sale of publicly traded securities, if the estate or trust elects to postpone gain by purchasing common stock or a partnership interest in a specialized small business investment company during the 60-day period that began on the date of the sale. See Pub. 550.
- If the special election (see *What's New*) is made, estates and certain trusts must report a capital gain on the distribution of appreciated property in satisfaction of a pecuniary bequest if (a) the estate (or certain trusts) acquired the property from the decedent and (b) the FMV of the property just before the distribution is greater than the FMV of the property at the date of the decedent's death. The gain reported is the difference between the FMVs described in (b). See Pub. 4895 for details.

### Constructive Sales Treatment for Certain Appreciated Positions

Generally, the estate or trust must recognize gain (but not loss) on the date it enters into a constructive sale of any appreciated position in stock, a partnership interest, or certain debt instruments as if the position were disposed of at FMV on that date.

The estate or trust is treated as making a constructive sale of an appreciated position when 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 (that is, 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, or
- 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 estate or trust closed the transaction before the end of the 30th day after the end of the year in which it was entered into,
- The estate or trust held the appreciated position to which the transaction relates throughout the 60-day period starting on the date the transaction was closed, and
- At no time during that 60-day period was the estate’s or trust’s risk of loss reduced by holding certain other positions.

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

### **Exclusion of Gain on Qualified Small Business (QSB) Stock (Section 1202)**

Section 1202 provides for an exclusion of 50% of the eligible gain on the sale or exchange of QSB stock. This exclusion can be up to 60% for certain empowerment zone business stock. The section 1202 exclusion applies only to QSB stock held for more than 5 years.

To be QSB stock, the stock must meet all of the following tests.

- It must be stock in a C corporation (that is, not S corporation stock).
- It must have been originally issued after August 10, 1993.
- As of the date the stock was issued, the corporation was a QSB. A QSB 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 estate or trust 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 estate or trust may meet the test if it acquired the stock from another person who met this test (such as by gift or at death) or through

a conversion or exchange of QSB stock the estate or trust held.

• During substantially all the time the estate or trust held the stock:

1. The corporation was a C corporation,
2. At least 80% of the value of the corporation’s assets was used in the active conduct of one or more qualified businesses (defined below), and
3. The 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 is treated as having met test 2 above.

**Qualified business.** 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; or
- Any business of operating a hotel, motel, restaurant, or similar business.

For more details about limits and additional requirements that may apply, see section 1202.

**Empowerment zone business stock.** Generally, the estate or trust can exclude up to 60% of its gain on certain QSB stock if it meets the following additional requirements.

1. The stock sold or exchanged was stock in a corporation that qualified as an empowerment zone business during substantially all of the time the estate or trust held the stock.
2. The estate or trust acquired the stock after December 21, 2000.

Requirement 1 will still be met if the corporation ceased to qualify after the 5-year period that began on the date the estate or trust acquired the stock. However, the gain that qualifies for the 60% exclusion cannot be more than the gain the estate or trust would have had if it had sold the stock on the date the corporation ceased to qualify.

For more information about empowerment zone businesses, see Pub. 954.

**Pass-through entities.** If the estate or trust held an interest in a pass-through entity (a partnership, S corporation,

mutual fund, or other regulated investment company) that sold QSB stock, the estate or trust generally must have held the interest on the date the pass-through entity acquired the QSB stock and at all times thereafter until the stock was sold to qualify for the exclusion.

**How to report.** Report in column (f) of line 6a the entire gain realized on the sale of QSB stock. Complete all other columns as indicated. Directly below the line on which you reported the gain, enter in column (a) “Section 1202 exclusion,” and enter as a (loss) in column (f) the amount of the allowable exclusion. On line 2 of the *28% Rate Gain Worksheet*, include an amount equal to the 50% exclusion ( $\frac{2}{3}$  of the exclusion if you claimed a 60% exclusion). Also, see the Instructions for Schedule I (Form 1041), line 9, for information on the amount of the exclusion to include on Schedule I (Form 1041).

**Gain from Form 1099-DIV.** If the estate or trust received a Form 1099-DIV, Dividends and Distributions, with a gain in box 2c, part or all of that gain (which is also included in box 2a) may be eligible for the section 1202 exclusion. In column (a) of line 6a, enter the name of the corporation whose stock was sold. In column (f), enter the amount of the allowable exclusion as a (loss). Also, include the amount of the 50% exclusion as a gain on line 2 of the *28% Rate Gain Worksheet* (include  $\frac{2}{3}$  of the exclusion if you claimed a 60% exclusion).

**Gain from Form 2439.** If the estate or trust received a Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains, with a gain in box 1c, part or all of that gain (which is also included in box 1a) may be eligible for the section 1202 exclusion. In column (a) of line 6a, enter the name of the corporation whose stock was sold. In column (f), enter the amount of the allowable exclusion as a (loss). Also, include the amount of the 50% exclusion as a gain on line 2 of the *28% Rate Gain Worksheet* (include  $\frac{2}{3}$  of the exclusion if you claimed a 60% exclusion).

**Gain from an installment sale of QSB stock.** If all payments are not received in the year of sale, a sale of QSB stock that is not traded on an established securities market generally is treated as an installment sale and is reported on Form 6252, Installment Sale Income. Part or all of any gain from the sale that is reported on Form 6252 for the current year may be eligible for the section 1202 exclusion. In column (a) of line 6a, enter the name of the corporation whose stock was sold. In column (f), enter the amount of the allowable exclusion as a loss. Also, include the amount of the 50% exclusion as a gain on line 2 of the *28% Rate Gain Worksheet* (include  $\frac{2}{3}$  of the

exclusion if you claimed a 60% exclusion).

**Alternative minimum tax.** You must enter 7% of the estate's or trust's allowable exclusion for the year on line 9 of Schedule I (Form 1041).

**Rollover of gain from QSB stock.** If the estate or trust held QSB stock (as defined above) for more than 6 months, it may elect to postpone gain if it purchased other QSB stock during the 60-day period that began on the date of the sale.

The estate or trust 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.

The estate or trust must make the election no later than the due date (including extensions) for filing Form 1041 for the tax year in which the stock was sold. If the original Form 1041 was filed on time, the election may be made on an amended return filed no later than 6 months after the due date of the original return (excluding extensions). Write "Filed pursuant to section 301.9100-2" at the top of the amended return, and file it at the same address used for the original Form 1041.

**How to report.** To make the election, report the entire gain realized on the sale on line 1a or 6a. Directly below the line on which you reported the gain, enter in column (a) "Section 1045 Rollover" and enter as a (loss) in column (f) the amount of the postponed gain.

**Rollover of gain from empowerment zone assets.** If you sold a qualified empowerment zone asset that the estate or trust held for more than 1 year, you may be able to elect to postpone part or all of the gain that would otherwise be included on Schedule D. If you make the election, the gain on the sale generally is recognized only to the extent, if any, that the amount realized on the sale exceeds the cost of qualified empowerment zone assets (replacement property) the estate or trust purchased during the 60-day period beginning on the date of the sale. See Pub. 954 for the definition of empowerment zone and enterprise zone business and section 1397B for details regarding the rules that apply to this election.

**How to report.** Report the entire gain realized from the sale as you otherwise would without regard to the election. On Schedule D, line 6a, enter "Section 1397B Rollover" in column (a) and enter as a loss in column (f) the amount of gain included on Schedule D that you are electing to postpone. If you are reporting the sale directly on Schedule D, line 6a, use the line directly below the line on which you are reporting the sale.

**Exclusion of gain from DC Zone assets or Qualified Community assets.** If the estate or trust sold or exchanged a District of Columbia Enterprise Zone asset or a Qualified Community Zone asset that it held for more than 5 years, it may be able to exclude the amount of qualified capital gain that it would otherwise include on Schedule D. The exclusion of gain from DC Zone assets applies to an interest in, or property of, certain businesses operating in the District of Columbia. See Pub. 954 and section 1400B for more details on this exclusion. The exclusion of gain from qualified community assets applies to an interest in, or property of, certain renewal community businesses. See Pub. 954 and section 1400F for more details on this exclusion.

**How to report.** Report the entire gain realized from the sale or exchange as you otherwise would without regard to either exclusion. On line 6a, enter "DC Zone asset" or "Qualified Community asset" (whichever is appropriate) in column (a), and enter as a loss in column (f) the amount of the allowable exclusion. If you are reporting the sale directly on line 6a, use the line directly below the line on which you are reporting the sale.

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## Specific Instructions

### Lines 1a and 6a

**Short-term and long-term capital gains and losses.** Enter all sales of stocks, bonds, etc.

**Redemption of stock to pay death taxes.** If stock is redeemed under the provisions of section 303, list and identify it on line 6a and give the name of the decedent and the IRS office where the estate tax or generation-skipping transfer tax return was filed.

If you are reporting capital gain from a lump-sum distribution, see the instructions for Form 4972, Tax on Lump-Sum Distributions, for information about the federal estate tax.

### Column (d)—Sales Price

Enter either the gross sales price or the net sales price from the sale. On sales of stocks and bonds, report the gross amount as reported to the estate or trust on Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, or similar statement. However, if the estate or trust was advised that gross proceeds less commissions and option premiums were reported to the IRS, enter that net amount in column (d).

### Column (e)—Cost or Other Basis

**Basis of trust property.** Generally, the basis of property acquired by gift is the same as the basis in the hands of

the donor. If the FMV of the property at the time it was transferred to the trust is less than the transferor's basis, then the FMV is used for determining any loss on disposition.

If the property was transferred to the trust after 1976, and a gift tax was paid under Chapter 12, then increase the donor's basis as follows:

Multiply the amount of the gift tax paid by a fraction, the numerator of which is the net appreciation in value of the gift (defined below), and the denominator of which is the amount of the gift. For this purpose, the net appreciation in value of the gift is the amount by which the FMV of the gift exceeds the donor's adjusted basis.

**Basis of decedent's estate property.** Generally, the basis of property acquired by a decedent's estate is the FMV of the property at the date of the decedent's death, or the alternate valuation date if the executor elected to use an alternate valuation under section 2032.

See Pub. 551 for a discussion of the valuation of qualified real property under section 2032A.

**Basis of property acquired from a decedent who died in 2010 where the special election is made.** See Pub. 4895 for details about determining the basis of property acquired from a decedent who died in 2010 where the special election (see *What's New*) is made.

**Basis of assets held on January 1, 2001, where an election to recognize gain was made.** If you elected on behalf of an estate or trust to recognize gain on an asset held on January 1, 2001, the basis in the asset is its closing market price or FMV, whichever applies, on the date of the deemed sale and reacquisition, whether the deemed sale resulted in a gain or an unallowed loss.

**Adjustments to basis.** Before figuring any gain or loss on the sale, exchange, or other disposition of property owned by the estate or trust, adjustments to the property's basis may be required.

Some items that may increase the basis include:

1. Broker's fees and commissions,
2. Reinvested dividends that were previously reported as income,
3. Reinvested capital gains that were previously reported as income,
4. Costs that were capitalized, and
5. Original issue discount that has been previously included in income.

Some items that may decrease the basis include:

1. Nontaxable distributions that consist of return of capital,
2. Deductions previously allowed or allowable for depreciation, and
3. Casualty or theft loss deductions.

See Pub. 551 for additional information.

See section 852(f) for treatment of load charges incurred in acquiring stock in a regulated investment company.

**Carryover basis.** Carryover basis determined under repealed section 1023 applies to property acquired from a decedent who died after December 31, 1976, and before November 7, 1978, only if the executor elected it on a Form 5970-A, Election of Carryover Basis, that was filed on time.

**Column (f)—Gain or (Loss)**

Make a separate entry in this column for each transaction reported on lines 1a and 6a and any other lines that apply to the estate or trust. For lines 1a and 6a, subtract the amount in column (e) from the amount in column (d). Enter negative amounts in parentheses.

**Lines 2 and 7**

**Undistributed capital gains.** Include on line 7, column (f), the amount from

box 1a of Form 2439. This represents the estate's or trust's share of the undistributed long-term capital gains of the regulated investment company (mutual fund) or real estate investment trust.

If there is an amount in box 1b of Form 2439, include that amount on line 11 of the *Unrecaptured Section 1250 Gain Worksheet* later if you are required to complete line 14b, column (2) of the schedule. If there is an amount in box 1c of Form 2439, see *Exclusion of Gain on Qualified Small Business (QSB) Stock (Section 1202)* on page 3. If there is an amount in box 1d of Form 2439, include that amount on line 4 of the *28% Rate Gain Worksheet*.

Enter on Form 1041, line 24f the tax paid as shown in box 2 of Form 2439. Add to the basis of your stock the excess of the amount included in income over the amount of the credit for tax paid. See Pub. 550 for more details.



*The instructions above assume the estate or trust is a cash basis calendar year taxpayer.*

**Installment sales.** If the estate or trust sold property (other than publicly traded stocks or securities) at a gain during the tax year and will receive a payment in a later tax year, you generally report the sale on the installment method and file Form 6252, unless you elect not to do so.

Also, use Form 6252 to report any payment received in 2010 from a sale made in an earlier tax year that was reported on the installment method.

To elect out of the installment method, report the full amount of the gain on a timely filed return (including extensions). If the original return was filed on time, the election may be made on an amended return filed no later than 6 months after the due date of the original return (excluding extensions). Write "Filed pursuant to section 301.9100-2" at the top of the amended

**Unrecaptured Section 1250 Gain Worksheet—Line 14b**

*Keep for Your Records*

**If the estate or trust is not reporting a gain on Form 4797, line 7, skip lines 1 through 9 and go to line 10.**

1. If the estate or trust has a section 1250 property in Part III of Form 4797 for which you made an entry in Part I of Form 4797 (but not on Form 6252), enter the <b>smaller</b> of line 22 or line 24 of Form 4797 for that property. If the estate or trust did not have any such property, go to line 4. If it had more than one such property, see instructions . . . . .	1.	_____
2. Enter the amount from Form 4797, line 26g, for the property for which you made an entry on line 1 . . . . .	2.	_____
3. Subtract line 2 from line 1 . . . . .	3.	_____
4. Enter the total unrecaptured section 1250 gain included on line 26 or line 37 of Form(s) 6252 from installment sales of trade or business property held more than 1 year (see instructions) . . . . .	4.	_____
5. Enter the total of any amounts reported to the estate or trust on a Schedule K-1 from a partnership or an S corporation as "unrecaptured section 1250 gain" . . . . .	5.	_____
6. Add lines 3 through 5 . . . . .	6.	_____
7. Enter the <b>smaller</b> of line 6 or the gain from Form 4797, line 7 . . . . .	7.	_____
8. Enter the amount, if any, from Form 4797, line 8 . . . . .	8.	_____
9. Subtract line 8 from line 7. If zero or less, enter -0- . . . . .	9.	_____
10. Enter the amount of any gain from the sale or exchange of an interest in a partnership attributable to unrecaptured section 1250 gain (see instructions) . . . . .	10.	_____
11. Enter the total of any amounts reported to the estate or trust on a Schedule K-1, Form 1099-DIV, or Form 2439 as "unrecaptured section 1250 gain" from an estate, trust, real estate investment trust, or mutual fund (or other regulated investment company) . . . . .	11.	_____
12. Enter the total of any unrecaptured section 1250 gain from sales (including installment sales) or other dispositions of section 1250 property held more than 1 year for which you did not make an entry in Part I of Form 4797 for the year of sale (see instructions) . . . . .	12.	_____
13. Add lines 9 through 12 . . . . .	13.	_____
14. If the estate or trust had any section 1202 gain or collectibles gain or (loss), enter the total of lines 1 through 4 of the <i>28% Rate Gain Worksheet</i> on page 7. Otherwise, enter -0- . . . . .	14.	_____
15. Enter the (loss), if any, from Schedule D, line 5. If Schedule D, line 5, is zero or a gain, enter -0- . . . . .	15.	(_____)
16. Enter the estate's or trust's long-term capital loss carryovers from Schedule D, line 11, and from Schedule K-1 (Form 1041), box 11, code C, from another estate or trust . . . . .	16.	(_____)
17. Combine lines 14 through 16. If the result is a (loss), enter it as a positive amount. If the result is zero or a gain, enter -0- . . . . .	17.	_____
18. <b>Unrecaptured section 1250 gain.</b> Subtract line 17 from line 13. If zero or less, enter -0-. Enter the result here and in the appropriate columns of Schedule D, line 14b . . . . .	18.	_____

return, and file it at the same address used for the original Form 1041.

### Exchange of “like-kind” property.

Generally, no gain or loss is recognized when property held for productive use in a trade or business or for investment is exchanged solely for property of a like kind to be held either for productive use in a trade or business or for investment. However, if a trust exchanges like-kind property with a related person (see *Related Persons* on page 2), and before 2 years after the date of the last transfer that was part of the exchange, the related person disposes of the property, or the trust disposes of the property received in exchange from the related person, then the original exchange will not qualify for nonrecognition. See section 1031(f) for exceptions.

Complete and attach Form 8824, Like-Kind Exchanges, to Form 1041 for each exchange.

### Line 9—Capital Gain Distributions

Enter as a long-term capital gain on line 9, column (f), the total capital gain distributions paid during the year, regardless of how long the estate or trust held its investment. This amount is shown in box 2a of Form 1099-DIV. If there is an amount in box 2b, include that amount on line 11 of the *Unrecaptured Section 1250 Gain Worksheet* on page 5 if you are required to complete the worksheet. If there is an amount in box 2c, see *Exclusion of Gain on Qualified Small Business (QSB) Stock (Section 1202)* on page 3. If there is an amount in box 2d of Form 1099-DIV, include the amount on line 4 of the *28% Rate Gain Worksheet*.



*The instructions above assume the estate or trust is a cash basis calendar year taxpayer.*

### Line 13, Column (1)—Beneficiaries’ Net Short-Term Capital Gain or Loss

Enter the amount of net short-term capital gain or loss allocable to the beneficiary or beneficiaries. Include only those short-term capital losses that are taken into account in determining the amount of gain from the sale or exchange of capital assets that is paid, credited, or required to be distributed to any beneficiary during the tax year. See Regulations section 1.643(a)-3 for more information about allocation of capital gains and losses.

If the losses from the sale or exchange of capital assets are more than the gains, the net loss must be allocated to the estate or trust and not to the beneficiaries.

### Line 13, Column (2)—Estate’s or Trust’s Net Short-Term Capital Gain or Loss

Enter the amount of the net short-term capital gain or loss allocable to the estate or trust. Include any capital gain paid or permanently set aside for a charitable purpose specified in section 642(c).

### Line 13, Column (3)—Total

Enter the total of the amounts entered in columns (1) and (2). The amount in column (3) should be the same as the amount on line 5.

### Line 14a—Net Long-Term Capital Gain or Loss

Allocate the net long-term capital gain or loss on line 14a in the same manner as the net short-term capital gain or loss on line 13. However, do not take the section 1202 exclusion on gain from the sale or exchange of qualified small business stock into account when figuring net long-term capital gain or loss allocable to the beneficiaries.

### Line 14b—Unrecaptured Section 1250 Gain

Complete the worksheet on page 5 if any of the following apply.

- During the tax year, the estate or trust sold or otherwise disposed of section 1250 property (generally, real property that was depreciated) held more than 1 year.
- The estate or trust received installment payments during the tax year for section 1250 property held more than 1 year for which it is reporting gain on the installment method.
- The estate or trust received a Schedule K-1 from an estate or trust, partnership, or S corporation that shows “unrecaptured section 1250 gain” reportable for the tax year.
- The estate or trust received a Form 1099-DIV or Form 2439 from a real estate investment trust or regulated investment company (including a mutual fund) that reports “unrecaptured section 1250 gain” for the tax year.
- The estate or trust reported a long-term capital gain from the sale or exchange of an interest in a partnership that owned section 1250 property.

### Instructions for the Unrecaptured Section 1250 Gain Worksheet

**Lines 1 through 3.** If the estate or trust had more than one property described on line 1, complete lines 1 through 3 for each property on a separate worksheet. Enter the total of the line 3 amounts for all properties on line 3 and go to line 4.

**Line 4.** To figure the amount to enter on line 4, follow the steps below for

each installment sale of trade or business property held more than 1 year.

**Step 1.** Figure the smaller of (a) the depreciation allowed or allowable or (b) the total gain for the sale. This is the smaller of line 22 or line 24 of the 2010 Form 4797 (or the comparable lines of Form 4797 for the year of sale) for that property.

**Step 2.** Reduce the amount figured in step 1 by any section 1250 ordinary income recapture for the sale. This is the amount from line 26g of the 2010 Form 4797 (or the comparable line of Form 4797 for the year of sale) for that property. The result is the total unrecaptured section 1250 gain that must be allocated to the installment payments received from the sale.

**Step 3.** Generally, the amount of section 1231 gain on each installment payment is treated as unrecaptured section 1250 gain until the total unrecaptured section 1250 gain figured in step 2 has been used in full. Figure the amount of gain treated as unrecaptured section 1250 gain for installment payments received during the tax year as the smaller of (a) the amount from line 26 or line 37 of the 2010 Form 6252, whichever applies, or (b) the amount of unrecaptured section 1250 gain remaining to be reported. This amount is generally the total unrecaptured section 1250 gain for the sale reduced by all gain reported in prior years (excluding section 1250 ordinary income recapture). However, if you chose not to treat all of the gain from payments received after May 6, 1997, and before August 24, 1999, as unrecaptured section 1250 gain, use only the amount you chose to treat as unrecaptured section 1250 gain for those payments to reduce the total unrecaptured section 1250 gain remaining to be reported for the sale. Include this amount on line 4.

**Line 10.** Include on line 10 the estate’s or trust’s share of the partnership’s unrecaptured section 1250 gain that would result if the partnership had transferred all of its section 1250 property in a fully taxable transaction immediately before the estate or trust sold or exchanged its interest in that partnership. If the estate or trust recognized less than all of the realized gain, the partnership will be treated as having transferred only a proportionate amount of each section 1250 property.

**Line 12.** An example of an amount to include on line 12 is unrecaptured section 1250 gain from the sale of a vacation home previously used as a rental property but converted to personal use prior to the sale. To figure the amount to enter on line 12, follow the applicable instructions below.

**Installment sales.** To figure the amount to include on line 12, follow the

# Capital Loss Carryover Worksheet

Keep for Your Records

Use this worksheet to figure the estate's or trust's capital loss carryovers from 2010 to 2011 if Schedule D, line 16 is a loss and (a) the loss on Schedule D, line 15, col. (3) is more than \$3,000 or (b) Form 1041, page 1, line 22 is a loss. 

1. Enter taxable income or (loss) from Form 1041, line 22	1. _____
2. Enter the loss from line 16 of Schedule D as a positive amount	2. _____
3. Enter amount from Form 1041, line 20	3. _____
4. Adjusted taxable income. Combine lines 1, 2, and 3. If zero or less, enter -0-	4. _____
5. Enter the <b>smaller</b> of line 2 or line 4	5. _____
<b>Note:</b> If line 5 of Schedule D is a loss, go to line 6; otherwise, enter -0- on line 6 and go to line 10.	
6. Enter loss from Schedule D, line 5 as a positive amount	6. _____
7. Enter gain, if any, from Schedule D, line 12. If that line is blank or shows a loss, enter -0-	7. _____
8. Add lines 5 and 7	8. _____
9. <b>Short-term capital loss carryover to 2011.</b> Subtract line 8 from line 6. If zero or less, enter -0-. If this is the final return of the estate or trust, also enter on Schedule K-1 (Form 1041), box 11, using code B	9. _____
<b>Note:</b> If line 12 of Schedule D is a loss, go to line 10; otherwise, skip lines 10 through 14.	
10. Enter loss from Schedule D, line 12, as a positive amount	10. _____
11. Enter gain, if any, from Schedule D, line 5. If that line is blank or shows a loss, enter -0-	11. _____
12. Subtract line 6 from line 5. If zero or less, enter -0-	12. _____
13. Add lines 11 and 12	13. _____
14. <b>Long-term capital loss carryover to 2011.</b> Subtract line 13 from line 10. If zero or less, enter -0-. If this is the final return of the estate or trust, also enter on Schedule K-1 (Form 1041), box 11, using code C	14. _____

steps below for each installment sale of property held more than 1 year for which you did not make an entry in Part I of Form 4797 for the year of sale.

**Step 1.** Figure the smaller of (a) the depreciation allowed or allowable or (b) the total gain for the sale. This is the smaller of line 22 or line 24 of the 2010 Form 4797 (or comparable lines of Form 4797 for the year of sale) for that property.

**Step 2.** Reduce the amount figured in step 1 by any section 1250 ordinary income recapture for the sale. This is the amount from line 26g of the 2010 Form 4797 (or the comparable line of Form 4797 for the year of sale) for that

property. The result is the total unrecaptured section 1250 gain that must be allocated to the installment payments received from the sale.

**Step 3.** Generally, the amount of capital gain on each installment payment is treated as unrecaptured section 1250 gain until the total unrecaptured section 1250 gain figured in step 2 has been used in full. Figure the amount of gain treated as unrecaptured section 1250 gain for installment payments received during the tax year as the smaller of (a) the amount from line 26 or line 37 of the 2010 Form 6252, whichever applies, or (b) the amount of unrecaptured section

1250 gain remaining to be reported. This amount is generally the total unrecaptured section 1250 gain for the sale reduced by all gain reported in prior years (excluding section 1250 ordinary income recapture). However, if you chose not to treat all of the gain from payments received after May 6, 1997, and before August 24, 1999, as unrecaptured section 1250 gain, use only the amount you chose to treat as unrecaptured section 1250 gain for those payments to reduce the total unrecaptured section 1250 gain remaining to be reported for the sale. Include this amount on line 12.

# 28% Rate Gain Worksheet—Line 14c

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1. Enter the total of all collectibles gain or (loss) from items reported on line 6a, column (f), of Schedules D and D-1	1. _____
2. Enter as a positive number the amount of any section 1202 exclusion reported on line 6a, column (f), of Schedules D and D-1 for which you excluded 50% of the gain, plus 2/3 of any section 1202 exclusion reported on line 6a, column (f), of Schedules D and D-1 for which you excluded 60% of the gain.	2. _____
3. Enter the total of all collectibles gain or (loss) from Form 4684, line 4 (but only if Form 4684, line 15 is more than zero); Form 6252; Form 6781, Part II; and Form 8824	3. _____
4. Enter the total of any collectibles gain reported to the estate or trust on:	
• Form 1099-DIV, box 2d;	} _____
• Form 2439, box 1d; and	
• Schedule K-1 from a partnership, S corporation, estate, or trust.	
5. Enter the estate's or trust's long-term capital loss carryovers from Schedule D, line 11, and from box 11, code C of Schedule K-1 (Form 1041) from another estate or trust	5. (_____)
6. If Schedule D, line 5 is a (loss), enter that (loss) here. Otherwise, enter -0-	6. (_____)
7. Combine lines 1 through 6. If zero or less, enter -0-. If more than zero, also enter this amount in the appropriate columns of Schedule D, line 14c	7. _____

**Schedule D Tax Worksheet**

*Keep for Your Records*

**Complete** this worksheet only if:

- On Schedule D, line 14b, column (2), **or** line 14c, column (2), is more than zero, **or**
- Both line 2b(1) of Form 1041 **and** line 4g of Form 4952 are more than zero.

**Exception: Do not** use this worksheet to figure the estate's or trust's tax if line 14a, column (2), or line 15, column (2), of Schedule D or Form 1041, line 22 is zero or less; instead, see the Instructions for Form 1041, Schedule G, line 1a.

1. Enter the estate's or trust's taxable income from Form 1041, line 22 . . . . .	1.	_____
2. Enter qualified dividends, if any, from Form 1041, line 2b(2) . . . . .	2.	_____
3. Enter the amount from Form 4952, line 4g . . . . .	3.	_____
4. Enter the amount from Form 4952, line 4e* . . . . .	4.	_____
5. Subtract line 4 from line 3. If zero or less, enter -0- . . . . .	5.	_____
6. Subtract line 5 from line 2. If zero or less, enter -0- . . . . .	6.	_____
7. Enter the <b>smaller</b> of line 14a, col. (2) or line 15, col. (2) from Sch. D . . . . .	7.	_____
8. Enter the <b>smaller</b> of line 3 or line 4 . . . . .	8.	_____
9. Subtract line 8 from line 7. If zero or less, enter -0- . . . . .	9.	_____
10. Add lines 6 and 9 . . . . .	10.	_____
11. Add lines 14b, column (2) and 14c, column (2) from Schedule D . . . . .	11.	_____
12. Enter the <b>smaller</b> of line 9 or line 11 . . . . .	12.	_____
13. Subtract line 12 from line 10. . . . .	13.	_____
14. Subtract line 13 from line 1. If zero or less, enter -0-. . . . .	14.	_____
15. Enter the <b>smaller</b> of line 1 or \$2,300 . . . . .	15.	_____
16. Enter the <b>smaller</b> of line 14 or line 15 . . . . .	16.	_____
17. Subtract line 10 from line 1. If zero or less, enter -0- . . . . .	17.	_____
18. Enter the <b>larger</b> of line 16 or line 17 . . . . .	▶ 18.	_____
<b>If lines 15 and 16 are the same, skip line 19 and go to line 20. Otherwise, go to line 19.</b>		
19. Subtract line 16 from line 15 . . . . .	▶ 19.	_____
<b>If lines 1 and 15 are the same, skip lines 20 through 32 and go to line 33. Otherwise, go to line 20.</b>		
20. Enter the <b>smaller</b> of line 1 or line 13 . . . . .	20.	_____
21. Enter the amount from line 19 (if line 19 is blank, enter -0-) . . . . .	21.	_____
22. Subtract line 21 from line 20. If zero or less, enter -0- . . . . .	▶ 22.	_____
23. Multiply line 22 by 15% (.15) . . . . .	23.	_____
<b>If Schedule D, line 14b, column (2) is zero or blank, skip lines 24 through 29 and go to line 30. Otherwise, go to line 24.</b>		
24. Enter the <b>smaller</b> of line 9 (above) or line 14b, col. (2) (from Schedule D) . . . . .	24.	_____
25. Add lines 10 and 18 . . . . .	25.	_____
26. Enter the amount from line 1 above . . . . .	26.	_____
27. Subtract line 26 from line 25. If zero or less, enter -0- . . . . .	27.	_____
28. Subtract line 27 from line 24. If zero or less, enter -0- . . . . .	▶ 28.	_____
29. Multiply line 28 by 25% (.25) . . . . .	29.	_____
<b>If Schedule D, line 14c, column (2) is zero or blank, skip lines 30 through 32 and go to line 33. Otherwise, go to line 30.</b>		
30. Add lines 18, 19, 22, and 28 . . . . .	30.	_____
31. Subtract line 30 from line 1 . . . . .	31.	_____
32. Multiply line 31 by 28% (.28) . . . . .	32.	_____
33. Figure the tax on the amount on line 18. Use the 2010 Tax Rate Schedule in the Instructions for Form 1041 . . . . .	33.	_____
34. Add lines 23, 29, 32, and 33 . . . . .	34.	_____
35. Figure the tax on the amount on line 1. Use the 2010 Tax Rate Schedule in the Instructions for Form 1041 . . . . .	35.	_____
36. <b>Tax on all taxable income (including capital gains and qualified dividends).</b> Enter the <b>smaller</b> of line 34 or line 35 here <b>and</b> on Form 1041, Schedule G, line 1a . . . . .	36.	_____

\*If applicable, enter instead the smaller amount entered on the dotted line next to line 4e of Form 4952.

**Other sales or dispositions of section 1250 property.** For each sale of property held more than 1 year (for which an entry was not made in Part I of Form 4797), figure the smaller of (a) the depreciation allowed or allowable or (b) the total gain for the sale. This is the smaller of line 22 or line 24 of Form 4797 for that property. Next, reduce that amount by any section 1250 ordinary income recapture for the sale. This is the amount from line 26g of Form 4797 for that property. The result is the total unrecaptured section 1250 gain for the sale. Include this amount on line 12.

**Line 14c—28% Rate Gain**

Complete the *28% Rate Gain Worksheet* on page 7 if lines 14a and 15 for column (3) are both greater than zero and at least one of the following apply:

- The estate or trust reports in Part II, column (f), a section 1202 exclusion from the eligible gain on QSB stock (see page 3), or
- The estate or trust reports in Part II, column (f), a collectibles gain or (loss).

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, S corporation, or trust held for 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).

## **Part IV—Capital Loss Limitation**

If the sum of all the capital losses is more than the sum of all the capital gains, then these capital losses are allowed as a deduction only to the extent of the smaller of the net loss or \$3,000.

For any year (including the final year) in which capital losses exceed capital gains, the estate or trust may have a capital loss carryover. Use the *Capital Loss Carryover Worksheet* (above) to figure any capital loss carryover. A capital loss carryover may be carried forward indefinitely. Capital losses keep their character as either

short-term or long-term when carried over to the following year.

## **Part V—Tax Computation Using Maximum Capital Gains Rates**

### **Line 22**

If the estate or trust received qualified dividends or capital gains that were derived from income in respect of a decedent and a section 691(c) deduction was claimed, you must reduce the amount on Form 1041, page 1, line 2b(2), or Schedule D, line 18, (line 7 of the Schedule D Tax Worksheet, if applicable) by the portion

of the section 691(c) deduction claimed on Form 1041, page 1, line 19 that is attributable to the estate's or trust's portion of qualified dividends or capital gains.

### **Line 34**

If the tax using the maximum capital gains rates is less than the regular tax, enter the amount from line 34 on line 1a of Schedule G, Form 1041.

### **Schedule D Tax Worksheet**

If you completed the *Schedule D Tax Worksheet* instead of Part V of Schedule D, be sure to enter the amount from line 36 of the worksheet on line 1a of Schedule G, Form 1041.