

2006 Instructions for Schedule D (Form 1120)

Purpose: This is the first circulation of the 2006 Instructions for Schedule D (Form 1120) for your review and comments. See below for a discussion of the major changes. The 2006 Schedule D (Form 1120) was circulated on April 18th and can be accessed at: http://taxforms.web.irs.gov/Products/Drafts/2006/06df1120sd_d1.pdf

TPCC Meeting: None, but one may be arranged if requested.

Prior Version: The 2005 revision of the combined form and instructions is available at: <http://publish.no.irs.gov/FORMS/PUBLIC/PDF/11460Y05.PDF>.

Other Products: Circulations of draft tax forms, instructions, notices, and publications are posted at:

http://taxforms.web.irs.gov/draft_products.html

Comments: Please email, fax, or call, with any comments by Sept. 8, 2006.

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Major Changes to the 2006 Instructions for Schedule D (Form 1120)

1. When Schedule D (Form 1120) was circulated on April 18, we stated that the form was changing from an annual schedule to a continuous use schedule. We have since decided to keep Schedule D (Form 1120) as an annual product. We will not do a second circulation of Schedule D (Form 1120) to reflect this.

2. On page 1, a note has been added regarding the election that can be made to treat the sale or exchange of musical compositions or copyrights in musical works as capital assets. The election is effective for tax years beginning after May 17, 2006. IRC section 1221(b)(3), added by act section 204 of the Tax Increase Prevention and Reconciliation Act of 2005, P.L. 109-222.

3. On page 2, instructions have been added for the exclusion of gain from qualified community assets. IRC Section 1400F, added by act section 101 of the Community Renewal Tax Relief Act of 2000, P.L. 106-554.

2006


 Department of the Treasury
 Internal Revenue Service

Instructions for Schedule D (Form 1120)

Capital Gains and Losses

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

General Instructions

What's New

If the corporation sold or exchanged a qualified community asset held for more than 5 years, it may be able to exclude any qualified capital gain. See *Exclusion of gain from qualified community assets on page 2*.

Purpose of Schedule

Use Schedule D to report sales and exchanges of capital assets and gains on distributions to shareholders of appreciated capital assets.

Generally report every sale or exchange of a capital asset (including like-kind exchanges) on this schedule even if there is no gain or loss.

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

Other Forms the Corporation May Have To File

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

- The sale or exchange of:
 1. Property used in a trade or business;
 2. Depreciable and amortizable property;
 3. Oil, gas, geothermal, or other mineral property; and
 4. Section 126 property.
- The involuntary conversion (other than from casualty or theft) of property and capital assets held for business or profit.
- The disposition of noncapital assets other than inventory or property held primarily for sale to customers in the ordinary course of the corporation's trade or business.
- The section 291 adjustment to section 1250 property.

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" exchanges. A like-kind exchange occurs when the corporation exchanges business or investment property for property of a like kind. For exchanges of capital assets, include the gain or (loss) from Form 8824, if any, on line 3 or line 9.

Capital Assets

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

- 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 included in inventory or 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 memoranda; or similar property. See section 1221(a)(3).

Note. For tax years beginning after May 17, 2006, a corporation can elect to treat the sale or exchange of musical compositions or copyrights in self-created musical works as a sale or exchange of a capital asset. See section 1221(b)(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's basis.

- Certain commodities derivative financial instruments held by a dealer not in connection with its dealer activities. See section 1221(a)(6).
- Certain identified 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.

Capital losses. Capital losses are allowed only to the extent of capital gains. A net capital loss is carried back 3 years and forward up to 5 years as a short-term capital loss. Carry back a capital loss to the extent it does not increase or produce a net operating loss in the tax year to which it is carried. Foreign expropriation capital losses cannot be carried back, but are carried forward up to 10 years. A net capital loss of a regulated investment company (RIC) is carried forward up to 8 years.

Items for Special Treatment

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 without

making the election, 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.

Rollover of gain from empowerment zone assets. If the corporation sold a qualified empowerment zone asset held for more than 1 year, it may be able to elect to postpone part or all of the gain that would otherwise be included on Schedule D. If the corporation makes 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 corporation purchased during the 60-day period beginning on the date of the sale. The following rules apply.

- No portion of the cost of the replacement property may be taken into account to the extent the cost is taken into account to exclude gain on a different empowerment zone asset.
- The replacement property must qualify as an empowerment zone asset with respect to the same empowerment zone as the asset sold.
- The corporation must reduce the basis of the replacement property by the amount of postponed gain.
- This election does not apply to any gain (a) treated as ordinary income or (b) attributable to real property, or an intangible asset, which is not an integral part of an enterprise zone business.
- The District of Columbia enterprise zone is not treated as an empowerment zone for this purpose.
- The election is irrevocable without IRS consent.

See Pub. 954, Tax Incentives for Distressed Communities, for the definition of empowerment zone and enterprise zone business. The corporation can find out if its business is located within an empowerment zone by using the RC/EZ/EC Address Locator at <http://www.hud.gov/crlocator>.

Qualified empowerment zone assets are:

- Tangible property, if:
 1. The corporation acquired the property after December 21, 2000,
 2. The original use of the property in the empowerment zone began with the corporation, and
 3. Substantially all of the use of the property, during substantially all

of the time that the corporation held it, was in the corporation's enterprise zone business; and

- Stock in a domestic corporation or a capital or profits interest in a domestic partnership, if:

1. The corporation acquired the stock or partnership interest after December 21, 2000, solely in exchange for cash, from the corporation at its original issue (directly or through an underwriter) or from the partnership;

2. The business was an enterprise zone business (or a new business being organized as an enterprise zone business) as of the time the corporation acquired the stock or partnership interest; and

3. The business qualified as an enterprise zone business during substantially all of the time during which the corporation held the stock or partnership interest.

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

See section 1397B for more details.

Gain on distributions 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 (FMV) exceeds its adjusted basis. See section 311.

Exclusion of gain from DC Zone assets. If the corporation sold or exchanged a District of Columbia Enterprise Zone (DC Zone) asset held for more than 5 years, it may be able to exclude any qualified capital gain. The exclusion applies to an interest in, or property of, certain businesses operating in the District of Columbia.

DC Zone asset. A DC Zone asset is any of the following.

- DC Zone business stock.
- DC Zone partnership interest.
- DC Zone business property.

Qualified capital gain. Qualified capital gain is any gain recognized on the sale or exchange of a DC Zone

asset, but does not include any of the following.

- Gain treated as ordinary income under section 1245.
- Section 1250 gain figured as if section 1250 applied to all depreciation rather than the additional depreciation.
- Gain attributable to real property, or an intangible asset, that is not an integral part of a DC Zone business.
- Gain from a related-party transaction. See Sales and Exchanges Between Related Persons in chapter 2 of Pub. 544.

See Pub. 954 and section 1400B for more details on DC Zone assets and special rules.

How to report. Report the entire gain realized from the sale or exchange as the corporation otherwise would without regard to the exclusion. On Schedule D, line 6, enter "DC Zone Asset" in column (a) and enter as a loss in column (f) the amount of the allowable exclusion. If reporting the sale directly on Schedule D, line 6, use the line directly below the line on which the corporation is reporting the sale.

Exclusion of gain from qualified community assets. If the corporation sold or exchanged a qualified community asset held for more than 5 years, it may be able to exclude any qualified capital gain. The exclusion applies to an interest in, or property of, certain qualified community assets.

Qualified community asset. A qualified community asset is any of the following.

- Qualified community stock.
- Qualified community partnership interest.
- Qualified community business property.

Qualified capital gain. Qualified capital gain is any gain recognized on the sale or exchange of a qualified community asset, but does not include any of the following.

- Gain treated as ordinary income under section 1245.
- Section 1250 gain figured as if section 1250 applied to all depreciation rather than the additional depreciation.
- Gain attributable to real property, or an intangible asset, that is not an integral part of a qualified community business.
- Gain from a related-party transaction. See Sales and Exchanges Between Related Persons in chapter 2 of Pub. 544.

See Pub. 954 and section 1400F for more details on qualified community assets and special rules.

How to report. Report the entire gain realized from the sale or exchange as the corporation otherwise would without regard to the exclusion. On Schedule D, line 6, enter "Qualified Community Asset" in column (a) and enter as a loss in column (f) the amount of the allowable exclusion. If reporting the sale directly on Schedule D, line 6, use the line directly below the line on which the corporation is reporting the sale.

Gain on the constructive sale of certain appreciated financial positions. Generally, if the corporation holds an appreciated financial position in stock or certain other interests, it may have to recognize gain (but not loss) if it enters into a constructive sale (such as a "short sale against the box"). See Pub. 550, Investment Income and Expenses.

Gain from certain constructive ownership transactions. Gain in excess of the underlying net long-term capital 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. If any portion of the constructive ownership transaction was open in any prior year, the corporation may have to pay interest. See section 1260(b) for details, including how to figure the interest. Include the interest as an additional tax on Form 1120, Schedule J, **line 9** (or the applicable line for other income tax returns). Write "Section 1260(b) interest" and the amount of the interest to the left of Schedule J, line 9.

Rollover of publicly traded securities gain into specialized small business investment companies (SSBICs). If the corporation sold publicly traded securities, it may elect under section 1044(a) to postpone all or part of the gain on that sale if it bought common stock or a partnership interest in an SSBIC during the 60-day period that began on the date of the sale. An SSBIC is any partnership or corporation licensed by the Small Business Administration under section 301(d) of the Small Business Investment Act of 1958. The corporation must recognize gain to the extent the sale proceeds exceed the cost (not taken into account

previously) of its SSBIC stock or partnership interest purchased during the 60-day period that began on the date of the sale. The gain a corporation may postpone each tax year is limited to the smaller of (a) \$1 million, reduced by the gain previously excluded under section 1044(a) or (b) \$250,000. Reduce the basis of the SSBIC stock or partnership interest by any postponed gain.

To make the election, report the entire gain realized on the sale on line 1 or 6, whichever applies, in column (f). Directly below the line on which the gain is reported, enter in column (a), "SSBIC Rollover." Enter the amount of the postponed gain (in parentheses) in column (f). Also attach a schedule showing (a) how the postponed gain was figured, (b) the name of the SSBIC stock in which the common stock or partnership interest was purchased, (c) the date of that purchase, and (d) the new basis in that SSBIC stock or partnership interest. For more details, see section 1044 and Regulations section 1.1044(a)-1.

The corporation must make the election no later than the due date (including extensions) for filing its tax return for the year in which it sold the securities or partnership interest. If the original return was filed on time without making the election, 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 on disposition of market discount bonds. See section 1276 for rules on the disposition of market discount bonds.

Gains on certain insurance property. Form 1120-L filers with gains on property held on December 31, 1958, and certain substituted property acquired after 1958, should see section 818(c).

Gains and losses from passive activities. A closely held or personal service corporation that has a gain or loss that relates to a passive activity (section 469) may be required to complete Form 8810, Corporate Passive Activity Loss and Credit Limitation, before completing Schedule D. A Schedule D loss may be limited under the passive activity rules. See Form 8810.

Gains and losses of foreign corporations from the disposition

of investment in U.S. real property. Foreign corporations must report gains and losses from the disposition of U.S. real property interests. See section 897.

Gain or loss on distribution of property in complete liquidation. Generally, gain or loss is recognized on property distributed in a complete liquidation. Treat the property as if it had been sold at its FMV. An exception to this rule applies for liquidations of certain subsidiaries. See sections 336 and 337 for more information and other exceptions to the general rules.

Gain or loss on certain asset transfers to a tax-exempt entity. A taxable corporation that transfers all or substantially all of its assets to a tax-exempt entity or converts from a taxable corporation to a tax-exempt entity in a transaction other than a liquidation generally must recognize gain or loss as if it had sold the assets transferred at their FMV. For details, see Regulations section 1.337(d)-4.

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). See Pub. 550 for details.

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.

Gain or loss on certain short-term federal, state, and municipal obligations (other than tax-exempt obligations). If these obligations are treated as capital assets in determining gain or loss. On any gain realized, a portion is treated as ordinary income and **any remaining** balance as a short-term capital gain. See section 1271.

At-risk limitations (section 465). If the corporation sold or exchanged a capital asset used in an activity to which the at-risk rules apply, combine the gain or loss on the sale or exchange with the profit or loss from the activity. If the result is a net loss, complete Form 6198, At-Risk Limitations. Report any gain from the capital asset on Schedule D and on Form 6198.

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.

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.

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.

Losses limited after an ownership change or acquisition. If the corporation has undergone an "ownership change" as defined in section 382(g), section 383 may limit the amount of capital gains that may be offset by prechange capital losses. Also, if a corporation acquires control of another corporation (or acquires its assets in a reorganization), section 384 may limit the amount of recognized built-in capital gains that may be offset by preacquisition capital losses.

Loss from the sale or exchange of capital assets of an insurance company taxable under section 831. Capital losses of a casualty insurance company are deductible to the extent that the assets were sold to meet abnormal insurance losses or to provide for the payment of dividend and similar distributions to policyholders. See section 834(c)(6).

Gains and losses from partnerships. Report the corporation's share of capital gains and losses from investments in

partnerships. Report a net short-term capital gain (loss) in Part I. On line 1, column (a), write "From Schedule K-1 (Form 1065)." Enter the amount of the gain (loss) in column (f). Report net long-term capital gains (losses) in Part II. On line 6, column (a), enter "From Schedule K-1 (Form 1065)." Enter the amount of the gain (loss) in column (f).

Specific Instructions

Parts I and II

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. A RIC or REIT's acquisition date for an asset it held on January 1, 2001, for which it made an election to recognize any gain under section 311 of the Taxpayer Relief Act of 1997, is the date of the deemed sale and reacquisition.

Column (d). Sales price. Enter either the gross sales price or the net sales price. If the net sales price is entered, do not increase the cost or other basis in column (e) by any expenses reflected in the net sales price.

Column (e). Cost or other basis. In general, the basis of property is its cost. See section 1012 and the 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:

- Receipt of certain distributions with respect to stock (section 301 or 1059),
- Liquidation of another corporation (section 334),
- Transfer to another corporation (section 358),
- Transfer from a shareholder or reorganization (section 362),

- Bequest (section 1014),
- Contribution or gift (section 1015),
- Tax-free exchange (section 1031),
- Involuntary conversion (section 1033),
- Certain asset acquisitions (section 1060), or
- Wash sale of stock (section 1091).

Attach an explanation if the corporation uses a basis other than actual cost of the property.

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

A RIC or REIT's basis in an asset it held on January 1, 2001, for which it made an election to recognize any gain under section 311 of the Taxpayer Relief Act of 1997, is the asset's 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 unallowed loss.

If the corporation is allowed a charitable contribution deduction because it sold property in a bargain sale to a charitable organization, figure the adjusted basis for determining gain from the sale by dividing the amount realized by the FMV and multiplying that result by the adjusted basis. No loss is allowed in a bargain sale to a charity.

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

Line 10. Enter the total capital gain distributions paid by a RIC or REIT during the year, regardless of how long the corporation owned stock in the RIC or REIT.

Also enter any amount received from a RIC or REIT that qualifies as a distribution in complete liquidation under section 332(b) and is designated by the RIC or REIT as a capital gain distribution. See section 332(c).