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## **Internal Revenue Code Section 1250(a)(2)**

Gain from dispositions of certain depreciable realty

(a) General rule. Except as otherwise provided in this section—

(1) Additional depreciation after December 31, 1975.

(A) In general. If section 1250 property is disposed of after December 31, 1975, then the applicable percentage of the lower of—

- (i) that portion of the additional depreciation (as defined in subsection (b)(1) or (4)) attributable to periods after December 31, 1975, in respect of the property, or
- (ii) the excess of the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such property (in the case of any other disposition), over the adjusted basis of such property, shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(B) Applicable percentage. For purposes of subparagraph (A), the term "applicable percentage" means—

- (i) in the case of section 1250 property with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of State or local laws and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;
- (ii) in the case of dwelling units which, on the average, were held for occupancy by families or individuals eligible to receive subsidies under section 8 of the United States Housing Act of 1937, as amended, or under the provisions of State or local law authorizing similar levels of subsidy for lower-income families, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;

- (iii) in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service;
- (iv) in the case of section 1250 property with respect to which a loan is made or insured under title V of the Housing Act of 1949, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months; and
- (v) in the case of all other section 1250 property, 100 percent.

In the case of a building (or a portion of a building devoted to dwelling units), if, on the average, 85 percent or more of the dwelling units contained in such building (or portion thereof) are units described in clause (ii), such building (or portion thereof) shall be treated as property described in clause (ii). Clauses (i), (ii), and (iv) shall not apply with respect to the additional depreciation described in subsection (b)(4) which was allowed under section 167(k).



(2) Additional depreciation after December 31, 1969, and before January 1, 1976.

- (A) In general. If section 1250 property is disposed of after December 31, 1969, and the amount determined under paragraph (1)(A)(ii) exceeds the amount determined under paragraph (1)(A)(i), then the applicable percentage of the lower of—
  - (i) that portion of the additional depreciation attributable to periods after December 31, 1969, and before January 1, 1976, in respect of the property, or
  - (ii) the excess of the amount determined under paragraph (1)(A)(ii) over the amount determined under paragraph (1)(A)(i), shall also be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.
- (B) Applicable percentage. For purposes of subparagraph (A), the term "applicable percentage" means—
  - (i) in the case of section 1250 property disposed of pursuant to a written contract which was, on July 24, 1969, and at all times thereafter, binding on the owner of the property, 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;
  - (ii) in the case of section 1250 property with respect to which a mortgage is insured under section 221(d)(3) or 236 of the National

Housing Act, or housing financed or assisted by direct loan or tax abatement under similar provisions of State or local laws, and with respect to which the owner is subject to the restrictions described in section 1039(b)(1)(B) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 20 full months;

- (iii) in the case of residential rental property (as defined in section 167(j)(2)(B)) other than that covered by clauses (i) and (ii), 100 percent minus 1 percentage point for each full month the property was held after the date the property was held 100 full months;
- (iv) in the case of section 1250 property with respect to which a depreciation deduction for rehabilitation expenditures was allowed under section 167(k), 100 percent minus 1 percentage point for each full month in excess of 100 full months after the date on which such property was placed in service; and
- (v) in the case of all other section 1250 property, 100 percent.

Clauses (i), (ii), and (iii) shall not apply with respect to the additional depreciation described in subsection (b)(4).

(3) Additional depreciation before January 1, 1970.

- (A) In general. If section 1250 property is disposed of after December 31, 1963, and the amount determined under paragraph (1)(A)(ii) exceeds the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i), then the applicable percentage of the lower of—
  - (i) that portion of the additional depreciation attributable to periods before January 1, 1970, in respect of the property, or
  - (ii) the excess of the amount determined under paragraph (1)(A)(ii) over the sum of the amounts determined under paragraphs (1)(A)(i) and (2)(A)(i), shall also be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.
- (B) Applicable percentage. For purposes of subparagraph (A), the term "applicable percentage" means 100 percent minus 1 percentage point for each full month the property was held after the date on which the property was held for 20 full months.

(4) Special rule. For purposes of this subsection, any reference to section 167(k) or 167(j)(2)(B) shall be treated as a reference to such section as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990.

- (5) Cross reference. For reduction in the case of corporations on capital gain treatment under this section, see section 291(a)(1).

(b) Additional depreciation defined. For purposes of this section—

- (1) In general. The term "additional depreciation" means, in the case of any property, the depreciation adjustments in respect of such property; except that, in the case of property held more than one year, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined for each taxable year under the straight line method of adjustment.
- (2) Property held by lessee. In the case of a lessee, in determining the depreciation adjustments which would have resulted in respect of any building erected (or other improvement made) on the leased property, or in respect of any cost of acquiring the lease, the lease period shall be treated as including all renewal periods. For purposes of the preceding sentence—
  - (A) the term "renewal period" means any period for which the lease may be renewed, extended, or continued pursuant to an option exercisable by the lessee, but
  - (B) the inclusion of renewal periods shall not extend the period taken into account by more than  $\frac{2}{3}$  of the period on the basis of which the depreciation adjustments were allowed.
- (3) Depreciation adjustments. The term "depreciation adjustments" means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185 (as in effect before its repeal by the Tax Reform Act of 1986), 188 (as in effect before its repeal by the Revenue Reconciliation Act of 1990), 190, or 193). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.
- (4) Additional depreciation attributable to rehabilitation expenditures. The term "additional depreciation" also means, in the case of section 1250 property with respect to which a depreciation or amortization deduction for rehabilitation expenditures was allowed under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) or 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981), the depreciation or amortization adjustments allowed under such section to the extent attributable to such property, except that, in the case of such property held for more than one year after the rehabilitation expenditures so allowed were incurred,

it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined under the straight line method of adjustment without regard to the useful life permitted under section 167(k) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990) or 191 (as in effect before its repeal by the Economic Recovery Tax Act of 1981).

- (5) Method of computing straight line adjustments. For purposes of paragraph (1), the depreciation adjustments which would have resulted for any taxable year under the straight line method shall be determined—
  - (A) in the case of property to which section 168 applies, by determining the adjustments which would have resulted for such year if the taxpayer had elected the straight line method for such year using the recovery period applicable to such property, and
  - (B) in the case any property to which section 168 does not apply, if a useful life (or salvage value) was used in determining the amount allowable as a deduction for any taxable year, by using such life (or value).
- (c) Section 1250 property. For purposes of this section, the term "section 1250 property" means any real property (other than section 1245 property, as defined in section 1245(a)(3)) which is or has been property of a character subject to the allowance for depreciation provided in section 167.
- (d) Exceptions and limitations.
  - (1) Gifts. Subsection (a) shall not apply to a disposition by gift.
  - (2) Transfers at death. Except as provided in section 691 (relating to income in respect of a decedent), subsection (a) shall not apply to a transfer at death.
  - (3) Certain tax-free transactions. If the basis of property in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 721, or 731, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the amount of gain recognized to the transferor on the transfer of such property (determined without regard to this section). Except as provided in paragraph (6), this paragraph shall not apply to a disposition to an organization (other than a cooperative described in section 521) which is exempt from the tax imposed by this chapter.
  - (4) Like kind exchanges; involuntary conversions, etc.
    - (A) Recognition limit. If property is disposed of and gain (determined without regard to this section) is not recognized in whole or in part under section 1031 or 1033, then the amount of gain taken into account by the transferor under subsection (a) shall not exceed the greater of the following:

- (i) the amount of gain recognized on the disposition (determined without regard to this section), increased as provided in subparagraph (B), or
  - (ii) the amount determined under subparagraph (C).
- (B) Increase for certain stock. With respect to any transaction, the increase provided by this subparagraph is the amount equal to the fair market value of any stock purchased in a corporation which (but for this paragraph) would result in nonrecognition of gain under section 1033(a)(2)(A).
- (C) Adjustment where insufficient section 1250 property is acquired. With respect to any transaction, the amount determined under this subparagraph shall be the excess of—
  - (i) the amount of gain which would (but for this paragraph) be taken into account under subsection (a), over
  - (ii) the fair market value (or cost in the case of a transaction described in section 1033(a)(2)) of the section 1250 property acquired in the transaction.
- (D) Basis of property acquired. In the case of property purchased by the taxpayer in a transaction described in section 1033(a)(2), in applying section 1033(b)(2), such sentence shall be applied—
  - (i) first solely to section 1250 properties and to the amount of gain not taken into account under subsection (a) by reason of this paragraph, and
  - (ii) then to all purchased properties to which such sentence applies and to the remaining gain not recognized on the transaction as if the cost of the section 1250 properties were the basis of such properties computed under clause (i).

In the case of property acquired in any other transaction to which this paragraph applies, rules consistent with the preceding sentence shall be applied under regulations prescribed by the Secretary.

- (E) Additional depreciation with respect to property disposed of. In the case of any transaction described in section 1031 or 1033, the additional depreciation in respect of the section 1250 property acquired which is attributable to the section 1250 property disposed of shall be an amount equal to the amount of the gain which was not taken into account under subsection (a) by reason of the application of this paragraph.
- (5) Property distributed by a partnership to a partner.

- (A) In general. For purposes of this section, the basis of section 1250 property distributed by a partnership to a partner shall be deemed to be determined by reference to the adjusted basis of such property to the partnership.
  - (B) Additional depreciation. In respect of any property described in subparagraph (A), the additional depreciation attributable to periods before the distribution by the partnership shall be—
    - (i) the amount of the gain to which subsection (a) would have applied if such property had been sold by the partnership immediately before the distribution at its fair market value at such time and the applicable percentage for the property had been 100 percent, reduced by
    - (ii) if section 751(b) applied to any part of such gain, the amount of such gain to which section 751(b) would have applied if the applicable percentage for the property had been 100 percent.
- (6) Transfers to tax-exempt organization where property will be used in unrelated business.
- (A) In general. The second sentence of paragraph (3) shall not apply to a disposition of section 1250 property to an organization described in section 511(a)(2) or 511(b)(2) if, immediately after such disposition, such organization uses such property in an unrelated trade or business (as defined in section 513).
  - (B) Later change in use. If any property with respect to the disposition of which gain is not recognized by reason of subparagraph (A) ceases to be used in an unrelated trade or business of the organization acquiring such property, such organization shall be treated for purposes of this section as having disposed of such property on the date of such cessation.
- (7) Foreclosure dispositions. If any section 1250 property is disposed of by the taxpayer pursuant to a bid for such property at foreclosure or by operation of an agreement or of process of law after there was a default on indebtedness which such property secured, the applicable percentage referred to in paragraph (1)(B), (2)(B), or (3)(B) of subsection (a), as the case may be, shall be determined as if the taxpayer ceased to hold such property on the date of the beginning of the proceedings pursuant to which the disposition occurred, or, in the event there are no proceedings, such percentage shall be determined as if the taxpayer ceased to hold such property on the date, determined under regulations prescribed by the Secretary, on which such operation of an agreement or process of law, pursuant to which the disposition occurred, began.
- (e) Holding period. For purposes of determining the applicable percentage under this section, the provisions of section 1223 shall not apply, and the holding period of section 1250 property shall be determined under the following rules:

- (1) Beginning of holding period. The holding period of section 1250 property shall be deemed to begin—
    - (A) in the case of property acquired by the taxpayer, on the day after the date of acquisition, or
    - (B) in the case of property constructed, reconstructed, or erected by the taxpayer, on the first day of the month during which the property is placed in service.
  - (2) Property with transferred basis. If the basis of property acquired in a transaction described in paragraph (1), (2), or (3) of subsection (d) is determined by reference to its basis in the hands of the transferor, then the holding period of the property in the hands of the transferee shall include the holding period of the property in the hands of the transferor.
- (f) Special rules for property which is substantially improved.
- (1) Amount treated as ordinary income. If, in the case of a disposition of section 1250 property, the property is treated as consisting of more than one element by reason of paragraph (3), then the amount taken into account under subsection (a) in respect of such section 1250 property as ordinary income shall be the sum of the amounts determined under paragraph (2).
  - (2) Ordinary income attributable to an element. For purposes of paragraph (1), the amount taken into account for any element shall be the sum of a series of amounts determined for the periods set forth in subsection (a), with the amount for any such period being determined by multiplying—
    - (A) the amount which bears the same ratio to the lower of the amounts specified in clause (i) or (ii) of subsection (a)(1)(A), in clause (i) or (ii) of subsection (a)(2)(A), or in clause (i) or (ii) of subsection (a)(3)(A), as the case may be, for the section 1250 property as the additional depreciation for such element attributable to such period bears to the sum of the additional depreciation for all elements attributable to such period, by
    - (B) the applicable percentage for such element for such period.
- For purposes of this paragraph, determinations with respect to any element shall be made as if it were a separate property.
- (3) Property consisting of more than one element. In applying this subsection in the case of any section 1250 property, there shall be treated as a separate element—
    - (A) each separate improvement,



- (B) if, before completion of section 1250 property, units thereof (as distinguished from improvements) were placed in service, each such unit of section 1250 property, and
- (C) the remaining property which is not taken into account under subparagraphs (A) and (B).

(4) Property which is substantially improved. For purposes of this subsection—

- (A) In general. The term "separate improvement" means each improvement added during the 36-month period ending on the last day of any taxable year to the capital account for the property, but only if the sum of the amounts added to such account during such period exceeds the greatest of—
  - (i) 25 percent of the adjusted basis of the property,
  - (ii) 10 percent of the adjusted basis of the property, determined without regard to the adjustments provided in paragraphs (2) and (3) of section 1016(a), or
  - (iii) \$5,000.

For purposes of clauses (i) and (ii), the adjusted basis of the property shall be determined as of the beginning of the first day of such 36-month period, or of the holding period of the property (within the meaning of subsection (e)), whichever is the later.

- (B) Exception. Improvements in any taxable year shall be taken into account for purposes of subparagraph (A) only if the sum of the amounts added to the capital account for the property for such taxable year exceeds the greater of—
  - (i) \$2,000, or
  - (ii) one percent of the adjusted basis referred to in subparagraph (A)(ii), determined, however, as of the beginning of such taxable year.

For purposes of this section, if the amount added to the capital account for any separate improvement does not exceed the greater of clause (i) or (ii), such improvement shall be treated as placed in service on the first day, of a calendar month, which is closest to the middle of the taxable year.

- (C) Improvement. The term "improvement" means, in the case of any section 1250 property, any addition to capital account for such property after the initial acquisition or after completion of the property.

- (g) Adjustments to basis. The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under subsection (a).
- (h) Application of section. This section shall apply notwithstanding any other provision of this subtitle.