

Reg. Section 1.267(d)-1(a)(2)

Amount of gain where loss previously disallowed

(a) General rule.

(1) If a taxpayer acquires property by purchase or exchange from a transferor who, on the transaction, sustained a loss not allowable as a deduction by reason of section 267(a)(1) (or by reason of section 24(b) of the Internal Revenue Code of 1939), then any gain realized by the taxpayer on a sale or other disposition of the property after December 31, 1953, shall be recognized only to the extent that the gain exceeds the amount of such loss as is properly allocable to the property sold or otherwise disposed of by the taxpayer.



(2) The general rule is also applicable to a sale or other disposition of property by a taxpayer when the basis of such property in the taxpayer's hands is determined directly or indirectly by reference to other property acquired by the taxpayer from a transferor through a sale or exchange in which a loss sustained by the transferor was not allowable. Therefore, section 267(d) applies to a sale or other disposition of property after a series of transactions if the basis of the property acquired in each transaction is determined by reference to the basis of the property transferred, and if the original property was acquired in a transaction in which a loss to a transferor was not allowable by reason of section 267(a)(1) (or by reason of section 24(b) of the Internal Revenue Code of 1939).

(3) The benefit of the general rule is available only to the original transferee but does not apply to any original transferee (for example, a donee or a person acquiring property from a decedent where the basis of property is determined under section 1014 or 1022) who acquired the property in any manner other than by purchase or exchange.

(4) The application of the provisions of this paragraph may be illustrated by the following examples:

Example (1). H sells to his wife, W, for \$500, certain corporate stock with an adjusted basis for determining loss to him of \$800. The loss of \$300 is not allowable to H by reason of section 267(a)(1) and paragraph (a) of §1.267(a)-1. W later sells this stock for \$1,000. Although W's realized gain is \$500 (\$1,000 minus \$500, her basis), her recognized gain under section 267(d) is only \$200, the excess of the realized gain of \$500 over the loss of \$300 not allowable to H. In determining capital gain or loss W's holding period commences on the date of the sale from H to W.

Example (2). Assume the same facts as in example (1) except that W later sells her stock for \$300 instead of \$1,000. Her recognized loss is \$200 and not \$500 since section 267(d) applies only to the nonrecognition of gain and does not affect basis.

Example (3). Assume the same facts as in example (1) except that W transfers her stock as a gift to X. The basis of the stock in the hands of X for the purpose of determining gain, under the provisions of section 1015, is the same as W's, or \$500. If X later sells the stock for \$1,000 the entire \$500 gain is taxed to him.

Example (4). H sells to his wife, W, for \$5,500, farmland, with an adjusted basis for determining loss to him of \$8,000. The loss of \$2,500 is not allowable to H by reason of section 267(a)(1) and paragraph (a) of § 1.267(a)-1. W exchanges the farmland, held for investment purposes, with S, an unrelated individual, for two city lots, also held for investment purposes. The basis of the city lots in the hands of W (\$5,500) is a substituted basis determined under section 1031(d) by reference to the basis of the farmland. Later W sells the city lots for \$10,000. Although W's realized gain is \$4,500 (\$10,000 minus \$5,500), her recognized gain under section 267(d) is only \$2,000, the excess of the realized gain of \$4,500 over the loss of \$2,500 not allowable to H.

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