

“(ii) PASS-THROUGH ENTITY DEFINED.—For purposes of clause (i), the term ‘pass-through entity’ means—

- “(I) a regulated investment company,
- “(II) a real estate investment trust,
- “(III) an electing small business corporation,
- “(IV) a partnership,
- “(V) an estate or trust, and
- “(VI) a common trust fund.”

PART II—TREATMENT OF CAPITAL LOSSES

Sec.

- 1211. Limitation on capital losses.
- 1212. Capital loss carrybacks and carryovers.

Editorial Notes

AMENDMENTS

1969—Pub. L. 91-172, title V, § 512(f)(2), Dec. 30, 1969, 83 Stat. 641, substituted “carrybacks and carryovers” for “carryover” in item 1212.

§ 1211. Limitation on capital losses

(a) Corporations

In the case of a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of gains from such sales or exchanges.

(b) Other taxpayers

In the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) the lower of—

- (1) \$3,000 (\$1,500 in the case of a married individual filing a separate return), or
- (2) the excess of such losses over such gains.

(Aug. 16, 1954, ch. 736, 68A Stat. 321; Pub. L. 91-172, title V, § 513(a), Dec. 30, 1969, 83 Stat. 642; Pub. L. 94-455, title V, § 501(b)(6), title XIV, § 1401(a), (b), Oct. 4, 1976, 90 Stat. 1559, 1731; Pub. L. 95-30, title I, § 102(b)(14), May 23, 1977, 91 Stat. 138; Pub. L. 99-514, title III, § 301(b)(10), Oct. 22, 1986, 100 Stat. 2217.)

Editorial Notes

AMENDMENTS

1986—Subsec. (b). Pub. L. 99-514 amended subsec. (b) generally, substituting present provisions for provisions which had declared in: par. (1), general rule for limitation on capital losses for taxpayer other than corporation; in par. (2), meaning of term “applicable amount”; and in par. (3), rule relating to computation of taxable income.

1977—Subsec. (b)(1)(A). Pub. L. 95-30 inserted “reduced (but not below zero) by the zero bracket amount” after “taxable year”.

1976—Subsec. (b)(1)(B). Pub. L. 94-455, § 1401(a), substituted “the applicable amount” for “\$1,000”.

Subsec. (b)(2). Pub. L. 94-455, § 1401(b), substituted provision relating to “applicable amount” for prior provision limiting amount of capital losses for married individuals and reading “In the case of a husband or wife who files a separate return, the amount specified in paragraph (1)(B) shall be \$500 in lieu of \$1,000.”

Subsec. (b)(3). Pub. L. 94-455, § 501(b)(6), struck out last sentence “If the taxpayer elects to pay the optional tax imposed by section 3, ‘taxable income’ as used in this subsection shall read as ‘adjusted gross income’.”

1969—Subsec. (b). Pub. L. 91-172 provided for only 50 percent of an individual’s long-term capital losses to be offset against his ordinary income up to the \$1,000 limit

although short-term capital losses continue to be fully deductible within the \$1,000 limit and the deduction of capital losses against ordinary income for married persons filing separate returns to be limited to \$500 for each spouse rather than the \$1,000 formerly allowed.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99-514, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 501(b)(6) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as a note under section 3 of this title.

Pub. L. 94-455, title XIV, § 1401(c), Oct. 4, 1976, 90 Stat. 1731, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1976.”

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title V, § 513(d), Dec. 30, 1969, 83 Stat. 643, provided that: “The amendments made by this section [amending this section and sections 1212 and 1222 of this title] shall apply to taxable years beginning after December 31, 1969.”

§ 1212. Capital loss carrybacks and carryovers

(a) Corporations

(1) In general

If a corporation has a net capital loss for any taxable year (hereinafter in this paragraph referred to as the “loss year”), the amount thereof shall be—

(A) a capital loss carryback to each of the 3 taxable years preceding the loss year, but only to the extent—

(i) such loss is not attributable to a foreign expropriation capital loss, and

(ii) the carryback of such loss does not increase or produce a net operating loss (as defined in section 172(c)) for the taxable year to which it is being carried back;

(B) except as provided in subparagraph (C), a capital loss carryover to each of the 5 taxable years succeeding the loss year; and

(C) a capital loss carryover to each of the 10 taxable years succeeding the loss year, but only to the extent such loss is attributable to a foreign expropriation loss,

and shall be treated as a short-term capital loss in each such taxable year. The entire amount of the net capital loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried, and the portion of such loss which shall be carried to each of the other taxable years to which such loss may be carried shall be the excess, if any, of such loss over the total of the capital gain net income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence,