

year pursuant to section 1212(a) or section 1212(b).

(2) Notwithstanding subparagraph (1) of this paragraph, in the case of a taxpayer other than a corporation for taxable years beginning before January 1, 1964, the term *net capital gain* means the excess of (i) the sum of the gains from sales or exchanges of capital assets, plus the taxable income (computed without regard to gains and losses from sales or exchanges of capital assets and without regard to the deductions provided by section 151, relating to personal exemptions, or any deductions in lieu thereof) of the taxpayer or \$1,000, whichever is smaller, over (ii) the losses from sales or exchanges of capital assets, which losses include amounts carried to the taxable year by such taxpayer under paragraph (a)(1) of § 1.1212-1. Thus, in the case of estates and trusts for taxable years beginning before January 1, 1964, taxable income for the purposes of this paragraph shall be computed without regard to gains and losses from sales or exchanges of capital assets and without regard to the deductions allowed by section 642(b) to estates and trusts in lieu of personal exemptions. The term *net capital gain* is not applicable in the case of a taxpayer other than a corporation for taxable years beginning after December 31, 1963, and before January 1, 1970. In the case of a taxpayer whose tax liability is computed under section 3 for taxable years beginning before January 1, 1964, the term *taxable income*, for purposes of this paragraph, shall be read as *adjusted gross income*.

(e) The term *net capital loss* means the excess of the losses from sales or exchanges of capital assets over the sum allowed under section 1211. However, in the case of a corporation, amounts which are short-term capital losses under § 1.1212-1(a) are excluded in determining such *net capital loss*.

(f) See section 165(g) and section 166(e), under which losses from worthless stocks, bonds, and other securities (if they constitute capital assets) are required to be treated as losses under subchapter P (section 1201 and following), chapter 1 of the Code, from the sale or exchange of capital assets, even though such securities are not actually sold or exchanged. See also section 1231

and § 1.1231-1 for the determination of whether or not gains and losses from the involuntary conversion of capital assets and from the sale, exchange, or involuntary conversion of certain property used in the trade or business shall be treated as gains and losses from the sale or exchange of capital assets. See also section 1236 and § 1.1236-1 for the determination of whether or not gains from the sale or exchange of securities by a dealer in securities shall be treated as capital gains, or whether losses from such sales or exchanges shall be treated as ordinary losses.

(g) In the case of nonresident alien individuals not engaged in trade or business within the United States, see section 871 and the regulations thereunder for the determination of the net amount of capital gains subject to tax.

(h) The term *net capital gain* (net section 1201 gain for taxable years beginning before January 1, 1977) means the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year.

[T.D. 6500, 25 FR 12004, Nov. 26, 1960, as amended by T.D. 6828, 30 FR 7808, June 17, 1965; T.D. 6867, 30 FR 15096, Dec. 7, 1965; T.D. 7301, 39 FR 971, Jan. 4, 1974; T.D. 7337, 39 FR 44978, Dec. 30, 1974; T.D. 7728, 45 FR 72650, Nov. 3, 1980]

§ 1.1223-1 Determination of period for which capital assets are held.

(a) The holding period of property received in an exchange by a taxpayer includes the period for which the property which he exchanged was held by him, if the property received has the same basis in whole or in part for determining gain or loss in the hands of the taxpayer as the property exchanged. However, this rule shall apply, in the case of exchanges after March 1, 1954, only if the property exchanged was at the time of the exchange a capital asset in the hands of the taxpayer or property used in his trade or business as defined in section 1231(b). For the purposes of this paragraph, the term *exchange* includes the following transactions:

(1) An involuntary conversion described in section 1033, and

(2) A distribution to which section 355 (or so much of section 356 as relates to section 355) applies.

Thus, if property acquired as the result of a compulsory or involuntary conversion of other property of the taxpayer has under section 1033(c) the same basis in whole or in part in the hands of the taxpayer as the property so converted, its acquisition is treated as an exchange and the holding period of the newly acquired property shall include the period during which the converted property was held by the taxpayer. Thus, also, where stock of a controlled corporation is received by a taxpayer pursuant to a distribution to which section 355 (or so much of section 356 as relates to section 355) applies, the distribution is treated as an exchange and the period for which the taxpayer has held the stock of the controlled corporation shall include the period for which he held the stock of the distributing corporation with respect to which such distribution was made.

(b) The holding period of property in the hands of a taxpayer shall include the period during which the property was held by any other person, if such property has the same basis in whole or in part in the hands of the taxpayer for determining gain or loss from a sale or exchange as it would have in the hands of such other person. For example, the period for which property acquired by gift after December 31, 1920, was held by the donor must be included in determining the period for which the property was held by the taxpayer if, under the provisions of section 1015, such property has, for the purpose of determining gain or loss from the sale or exchange, the same basis in the hands of the taxpayer as it would have in the hands of the donor.

(c) In determining the period for which the taxpayer has held stock or securities received upon a distribution where no gain was recognized to the distributee under section 1081(c) (or under section 112(g) of the Revenue Act of 1928 (45 Stat. 818) or the Revenue Act of 1932 (47 Stat. 197)), there shall be included the period for which he held the stock or securities in the distributing corporation before the receipt of the stock or securities on such distribution.

(d) If the acquisition of stock or securities resulted in the nondeductibility (under section 1091, relating to wash

sales) of the loss from the sale or other disposition of substantially identical stock or securities, the holding period of the newly acquired securities shall include the period for which the taxpayer held the securities with respect to which the loss was not allowable.

(e) The period for which the taxpayer has held stock, or stock subscription rights, received on a distribution shall be determined as though the stock dividend, or stock right, as the case may be, were the stock in respect of which the dividend was issued if the basis for determining gain or loss upon the sale or other disposition of such stock dividend or stock right is determined under section 307. If the basis of stock received by a taxpayer pursuant to a spin-off is determined under so much of section 1052(c) as refers to section 113(a)(23) of the Internal Revenue Code of 1939, and such stock is sold or otherwise disposed of in a taxable year which is subject to the Internal Revenue Code of 1954, the period for which the taxpayer has held the stock received in such spin-off shall include the period for which he held the stock of the distributing corporation with respect to which such distribution was made.

(f) The period for which the taxpayer has held stock or securities issued to him by a corporation pursuant to the exercise by him of rights to acquire such stock or securities from the corporation will, in every case and whether or not the receipt of taxable gain was recognized in connection with the distribution of the rights, begin with and include the day upon which the rights to acquire such stock or securities were exercised. A taxpayer will be deemed to have exercised rights received from a corporation to acquire stock or securities therein where there is an expression of assent to the terms of such rights made by the taxpayer in the manner requested or authorized by the corporation.

(g) The period for which the taxpayer has held a residence, the acquisition of which resulted under the provisions of section 1034 in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, shall include the period for which such other residence had been held as of the

date of such sale or exchange. See § 1.1034-1. For purposes of this paragraph, the term *sale or exchange* includes an involuntary conversion occurring after December 31, 1950, and before January 1, 1954.

(h) If a taxpayer accepts delivery of a commodity in satisfaction of a commodity futures contract, the holding period of the commodity shall include the period for which the taxpayer held the commodity futures contract, if such futures contract was a capital asset in his hands.

(i) If shares of stock in a corporation are sold from lots purchased at different dates or at different prices and the identity of the lots cannot be determined, the rules prescribed by the regulations under section 1012 for determining the cost or other basis of such stocks so sold or transferred shall also apply for the purpose of determining the holding period of such stock.

(j) In the case of a person acquiring property, or to whom property passed, from a decedent (within the meaning of section 1014(b)) dying after December 31, 1970, such person shall be considered to have held the property for more than 1 year (6 months for taxable years beginning before 1977; 9 months for taxable years beginning in 1977) if the property:

(1) Has a basis in the hands of such person which is determined in whole or in part under section 1014, and

(2) Is sold or otherwise disposed of by such person within 6 months after the decedent's death.

The provisions of this paragraph apply to sales of such property included in the decedent's gross estate for the purposes of the estate tax by the executor or administrator of the estate and to sales of such property by other persons who have acquired property from the decedent. The provisions of this paragraph may also be applicable to cases involving joint tenancies, community property, and properties transferred in contemplation of death. Thus, if a surviving joint tenant, who acquired property by right of survivorship, sells or otherwise disposes of such property within 6 months after the date of the decedent's death, and the basis of the property in his hands is determined in

whole or in part under section 1014, the property shall be considered to have been held by the surviving joint tenant for more than 6 months. Similarly, a surviving spouse's share of community property shall be considered to have been held by her for more than 6 months if it is sold or otherwise disposed of within 6 months after the date of the decedent's death, regardless of when the property was actually acquired by the marital community. For the purposes of this paragraph, it is immaterial that the sale or other disposition produces gain or loss. If property is considered to have been held for more than 6 months by reason of this paragraph, it also is considered to have been held for that period for purposes of section 1231 (if that section is otherwise applicable).

(k) Any reference in section 1223 or this section to another provision of the Internal Revenue Code of 1954 is, where applicable, to be deemed a reference to the corresponding provision of the Internal Revenue Code of 1939, or prior internal revenue laws. The provisions of prior internal revenue laws here intended are the sections referred to in the sections of the Internal Revenue Code of 1939 which correspond to the sections of the Internal Revenue Code of 1954 referred to in section 1223. Thus, the sections corresponding to section 1081(c) are section 371(c) of the Revenue Act of 1938 (52 Stat. 553) and section 371(c) of the Internal Revenue Code of 1939. The sections corresponding to section 1091 are section 118 of each of the following: The Revenue Acts of 1928 (45 Stat. 826), 1932 (47 Stat. 208), 1934 (48 Stat. 715), 1936 (49 Stat. 1692), 1938 (52 Stat. 503), and the Internal Revenue Code of 1939.

[T.D. 6500, 25 FR 12005, Nov. 26, 1960, as amended by T.D. 7238, 37 FR 28717, Dec. 29, 1972; T.D. 7728, 45 FR 72650, Nov. 3, 1980]

§ 1.1223-3 Rules relating to the holding periods of partnership interests.

(a) *In general.* A partner shall not have a divided holding period in an interest in a partnership unless—

(1) The partner acquired portions of an interest at different times; or

(2) The partner acquired portions of the partnership interest in exchange for property transferred at the same