

§ 1.1250-2

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is, amount realized, \$630,000, minus adjusted basis \$350,000). The gain recognized as ordinary income under section 1250(a)(1) is computed in two steps. First, since the additional depreciation attributable to the years 1970 through 1980 (\$120,000) is lower than the gain realized attributable to such years determined under paragraph (a)(6) of this section (\$240,000, that is, gain realized, \$280,000, multiplied by $\frac{1}{2}\frac{1}{4}$), the gain recognized as ordinary income under section 1250(a)(1) in the first step is \$81,600, that is, 68 percent of \$120,000. Second, since the additional depreciation attributable to the years 1981 through 1984 (\$20,000) is lower than the gain realized attributable to those years (\$40,000, that is, gain realized, \$280,000, multiplied by $\frac{1}{4}$), the gain recognized as ordinary income under section 1250(a)(1) for the years from 1981 through 1984 is \$20,000 (that is, 100 percent of \$20,000). The total gain recognized under section 1250(a)(1) is \$101,600 (that is, \$81,600 plus \$20,000).

Example 2. Section 1250 property which has an adjusted basis of \$400,000 is sold for \$472,000 on December 31, 1978. The property was acquired on December 31, 1966. The additional depreciation attributable to periods before January 1, 1970, is \$40,000 and the applicable percentage under paragraph (d)(2) of this section is zero percent. The property qualifies as residential rental property for the years 1970 through 1976, but fails to qualify for 1977 and 1978. Under paragraph (d)(1) of this section, the applicable percentage for the years 1970 through 1976 is 80 percent (paragraph (d)(1)(i)(c) of this section), and the applicable percentage for the years 1977 and 1978 is 100 percent (paragraph (d)(1)(i)(e) of this section). The additional depreciation attributable to the years 1970 through 1976 is \$50,000, and the additional depreciation attributable to the years 1977 and 1978 is \$10,000. The gain recognized as ordinary income under section 1250(a)(1) is computed in two steps. First, since the additional depreciation attributable to the years 1970 through 1976 (\$50,000) is lower than the gain realized attributable to such years (\$60,000, that is, \$72,000 multiplied by $\frac{5}{6}$), the gain recognized under section 1250(a)(1) in the first step is \$40,000 (that is, 80 percent of \$50,000). Second, since the additional depreciation attributable to 1977 and 1978 (\$10,000) is lower than the gain realized attributable to such years (\$12,000, that is, \$72,000 multiplied by $\frac{1}{6}$), the gain recognized under section 1250(a)(1) in the second step is \$10,000 (that is, 100 percent of \$10,000). In addition, section 1250(a)(2) applies. However, since the applicable percentage is zero percent, none of the gain is recognized as ordinary income under section 1250(a)(2). Thus, the remaining \$22,000 (that is, gain realized, \$72,000, minus gain recognized under section 1250(a), \$50,000) of the gain may be treated as gain from the

sale or exchange of property described in section 1231.

Example 3. The facts are the same as in example (2) except that the property is disposed of on December 31, 1980. The property qualifies as residential rental property for the years 1979 and 1980. Thus, the applicable percentage for years 1970 through 1976, 1979, and 1980 is 56 percent (paragraph (d)(1)(i)(c) of this section). The applicable percentage for the years 1977 and 1978 is 100 percent (paragraph (d)(1)(i)(e) of this section). The additional depreciation for the years 1979 and 1980 is \$8,000. The gain recognized under section 1250(a)(1) is computed in two steps. First, since the additional depreciation attributable to the years 1970 through 1976, 1979, and 1980 (\$58,000) is lower than the gain realized attributable to such years (\$61,412, that is, \$72,000 multiplied by $\frac{58,000}{68,000}$), the gain recognized under section 1250(a)(1) in the first step is \$32,480 (that is, 56 percent of \$58,000). Second, since the additional depreciation attributable to 1977 and 1978 (\$10,000) is lower than the gain realized attributable to such years (\$10,588, that is, \$72,000 multiplied by $\frac{10,000}{68,000}$) the gain recognized under section 1250(a)(1) in the second step is \$10,000 (that is, 100 percent of \$10,000). In addition section 1250(a)(2) applies. However, since the applicable percentage is zero percent, none of the gain is recognized as ordinary income under section 1250(a)(2). Thus, the remaining \$29,520 (that is, gain realized, \$72,000, minus gain recognized under section 1250(a), \$42,480) of the gain may be treated as gain from the sale or exchange of property described in section 1231.

[T.D. 7084, 36 FR 271, Jan. 8, 1971, as amended by T.D. 7193, 37 FR 12953, June 30, 1972]

§ 1.1250-2 Additional depreciation defined.

(a) *In general*—(1) *Definition for purposes of section 1250(b)(1).* Except as otherwise provided in paragraph (e) of this section, for purposes of section 1250(b)(1), the term *additional depreciation* means:

(i) In the case of property which at the time of disposition has a holding period under section 1223 of not more than 1 year, the *depreciation adjustments* (as defined in paragraph (d) of this section) in respect of such property for periods after December 31, 1963, and

(ii) In the case of property which at the time of disposition has a holding period under section 1223 of more than 1 year, the depreciation adjustments in excess of straight line for periods after

December 31, 1963, computed under paragraph (b)(1) of this section.

(2) *Definition for purposes of section 1250(b)(4).* Except as otherwise provided in paragraph (e) of this section, for purposes of section 1250(b)(4), the term *additional depreciation* means:

(i) In the case of property with respect to which a deduction under section 167(k) (relating to depreciation of expenditures to rehabilitate low-income rental housing) was allowed, which at the time of disposition has a holding period under section 1223 of not more than 1 year from the time the rehabilitation expenditures were incurred, the *depreciation adjustments* (as defined in paragraph (d) of this section) in respect of the property, and

(ii) In the case of property with respect to which a deduction under section 167(k) (relating to depreciation of expenditures to rehabilitate low-income rental housing) was allowed, which at the time of disposition has a holding period under section 1223 of more than 1 year from the time the rehabilitation expenditures were incurred, the depreciation adjustments in excess of straight line for the property, computed under paragraph (b)(2) of this section.

For purposes of this subparagraph, all rehabilitation expenditures which are incurred in connection with the rehabilitation of an element of section 1250 property shall be considered incurred on the date the last such expenditure is considered incurred under the accrual method of accounting, regardless of the method of accounting used by the taxpayer with regard to other items of income and expense. If the property consists of two or more elements (for example, if the property is placed in service at different times), then each element shall be treated as if it were a separate property and the expenditures attributable to each such element shall be considered incurred on the date the last such expenditure is considered incurred.

(3) *Allocation to certain periods.* With respect to a taxable year beginning in 1963 and ending in 1964, or beginning in 1969 and ending in 1970, the amount of depreciation adjustments or of depreciation adjustments in excess of straight line (as the case may be) shall

be ascertained by applying the principles of paragraph (c)(3) of § 1.167(a)-8 (relating to determination of adjusted basis of retired asset), and the amount determined in such manner shall be allocated on a daily basis in order to determine the portion thereof which is attributable to a period after December 31, 1963, or after December 31, 1969, as the case may be.

(b) *Computation of depreciation adjustments in excess of straight line—(1) General rule.* For purposes of paragraph (a)(1) of this section, depreciation adjustments in excess of straight line shall be, in the case of any property, the excess of (i) the sum of the *depreciation adjustments* (as defined in paragraph (d) of this section) in respect of the property attributable to periods after December 31, 1963, over (ii) the sum such adjustments would have been for such periods if such adjustments had been determined for the entire period the property was held under the straight line method of depreciation (or, if applicable, under the lease-renewal-period provision in paragraph (c) of this section). Depreciation in excess of straight line may arise, for example, if the declining balance method, the sum of the years-digits method, or the units of production method is used, or for another example, if the cost of a leasehold improvement or of a leasehold is depreciated over a period which does not take into account certain renewal periods referred to in paragraph (c) of this section. For computations of depreciation adjustments in excess of straight line (or a deficit therein) both on an annual basis and on the basis of the entire period the property was held, see subparagraph (6) of this paragraph.

(2) *Depreciation under section 167(k).* For purposes of paragraph (a)(2) of this section, depreciation adjustments in excess of straight line shall be, in the case of any property with respect to which a deduction was allowed under section 167(k) (relating to depreciation of expenditures to rehabilitate low-income rental housing), the excess of (i) the sum of the *depreciation adjustments*

(as defined in paragraph (d) of this section) allowed in respect of the property, over (ii) the sum such adjustments would have been if such adjustments had been determined for the entire period the property was held under the straight line method of depreciation permitted by section 167(b)(1).

(3) *General rule for computing useful life and salvage value.* For purposes of computing under subparagraph (1)(ii) of this paragraph the sum of the depreciation adjustments would have been under the straight line method, if a useful life (or salvage value) was used in determining the amount allowed as a depreciation adjustment for any taxable year, such life (or value) shall be used in determining the amount such depreciation adjustment would have been for such taxable year under the straight line method. If, however, for any taxable year a method of depreciation was used as to which a useful life was not taken into account such as, for example, the units of production method, or as to which salvage value was not taken into account in determining the annual allowances, such as, for example, the declining balance method or the amortization of a leasehold improvement over the term of a lease, then, for the purpose of determining the amount such depreciation adjustment would have been under the straight line method for such taxable year:

(i) There shall be used the useful life (or salvage value) which would have been proper if depreciation had actually been determined under the straight line method throughout the period the property was held, and

(ii) Such useful life (or such salvage value) shall be determined by taking into account for each taxable year the same facts and circumstances as would have been taken into account if the taxpayer had used such method throughout the period the property was held.

(4) *Special rule for computing useful life and salvage value (section 167(k)).* For purposes of computing under subparagraph (2)(ii) of this paragraph the sum the depreciation adjustments would have been under the straight line method, the useful life and salvage value permitted under section 167(k)

shall not apply, the useful life of the property shall be determined under paragraph (b) of §1.167(a)-1 (or, if applicable, under the lease-renewal-period provision of paragraph (c) of this section), and the salvage value of the property shall be determined under paragraph (c) of §1.167(a)-1. Such useful life or salvage value shall be determined by taking into account for each taxable year the same facts and circumstances as would have been taken into account if the taxpayer had used the straight line method permitted under section 167(b)(1) throughout the period the property was held.

(5) *Property held before January 1, 1964.* In the case of property held before January 1, 1964:

(i) For purposes of computing under subparagraph (1)(ii) of this paragraph the sum the depreciation adjustments would have been under the straight line method, the adjusted basis of the property on such date shall be the amount such adjusted basis would have been if depreciation deductions allowed or allowable before such date had been determined under the straight line method computed in accordance with subparagraph (3) of this paragraph, and

(ii) The depreciation adjustments in excess of straight line in respect of the property computed under subparagraph (1) of this paragraph, but without regard to this subdivision, shall be reduced by the amount of depreciation adjustments less than straight line for periods before January 1, 1964, that is, by the excess (if any) of the sum the depreciation adjustments would have been for periods before January 1, 1964, under the straight line method, over the sum of the depreciation adjustments attributable to periods before such date.

(6) *Determination of additional depreciation in certain cases.* If an item of section 1250 property is subject to two (or more) applicable percentages, a separate computation of additional depreciation shall be made for the portion of the taxpayer's holding period subject to each such percentage. That is, a separate computation shall be made to determine the excess of (i) the depreciation adjustments (as defined in paragraph (d) of this section) for each such

portion of the taxpayer's holding period after December 31, 1963, over (ii) the amount such adjustments would have been for each such portion if such adjustments were determined under the straight line method of depreciation (or, if applicable, under the lease-renewal-period provision in paragraph (c) of this section). Thus, for example, in the case of an item of section 1250 property acquired on January 1, 1968, and disposed of on January 1, 1973, if the applicable percentage for the period before January 1, 1970, were determined under paragraph (d)(2) of § 1.1250-1 and the applicable percentage for the period after December 31, 1969, were determined under paragraph (d)(1)(i)(e) of § 1.1250-1, the additional depreciation would be computed separately for the period before January 1, 1970, and for the period after December 31, 1969. If the additional depreciation attributable to any such portion of the taxpayer's holding period is a deficit (that is, if the depreciation adjustments for that portion are less than the amount such adjustments would have been for that portion if depreciation adjustments were determined for the entire period the property was held under the straight line method of depreciation, or, if applicable, under the lease-renewal-period provision in paragraph (c) of this section), then such deficit will be applied to reduce the additional depreciation for other portion (or portions) of the taxpayer's holding period. (See examples (4) and (5) of subparagraph (7) of this paragraph.)

(7) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. A calendar year taxpayer sells section 1250 property on January 1, 1968, which he purchased for \$10,000 on January 1, 1963. For the period of 1963 through 1967 he computed depreciation deductions in respect of the property under the declining balance method using a rate of 200 percent of the straight line rate and a proper useful life of 10 years. Under such method salvage value is not taken into account in computing annual allowances. For purposes of applying subparagraph (3) of this paragraph, if the taxpayer had used the straight line method for such period, he would have used a salvage value of \$1,000, and the depreciation under the straight line method would have been \$900 each year, that is, one-tenth of \$10,000 minus \$1,000. As of January 1, 1968, the addi-

tional depreciation for the property is \$1,123, as computed in the table below:

Year	Actual depreciation	Straight line	Additional depreciation (deficit)
1963	\$2,000	\$900
1964	1,600	900	\$700
1965	1,280	900	380
1966	1,024	900	124
1967	819	900	(81)
Sum for periods after Dec. 31, 1963	4,723	3,600	1,123

Example 2. Assume the same facts as in example (1) except that the taxpayer sells the section 1250 property on January 1, 1970. Assume further that as of January 1, 1968, the taxpayer elects under section 167(e)(1) to change to the straight line method. On that date the adjusted basis of the property is \$3,277 (\$10,000 minus \$6,723). He redetermines the remaining useful life of the property to be 8 years and its salvage value to be \$77, and thus takes depreciation deductions for 1968 and 1969 of \$400 (the amount allowable) for each such year, that is, one-eighth of \$3,200 (that is, \$3,277 minus \$77). For purposes of applying subparagraph (3) of this paragraph, if he had used the straight line method throughout the period he held the property, the adjusted basis of the property on January 1, 1968, would have been \$5,500 (\$10,000 minus \$4,500), and the depreciation which would have resulted under such method for 1968 and 1969 would have been \$678 for each such year, that is, one-eighth of \$5,423 (\$5,500 minus \$77). As of January 1, 1970, the additional depreciation for the property is \$567, as computed in the table below:

Years	Depreciation	Straight line	Additional depreciation (deficit)
1964 through 1967 ..	\$4,723	\$3,600	\$1,123
1968	400	678	(278)
1969	400	678	(278)
Sum for periods after Dec. 31, 1963	5,523	4,956	567

Example 3. On January 1, 1978, a calendar year taxpayer sells section 1250 property. The property, which is attributable to rehabilitation expenditures of \$50,000 incurred in 1970, was placed in service on January 1, 1971. The taxpayer elected to compute depreciation for the period of 1971 through 1975 under section 167(k). Under such section salvage value is not taken into account in computing annual allowances, and the useful life of the property is deemed to be 5 years. For purposes of applying subparagraph (4) of this paragraph, if the taxpayer had used the

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straight line method permitted under section 167(b)(1) for such period, he would have used a salvage value of \$5,000 and a useful life of 15 years. Depreciation under the straight line method would thus have been \$3,000 each year, $\frac{1}{15}$ of \$45,000 (that is, \$50,000 minus \$5,000). As of January 1, 1978, the additional depreciation for the property is \$29,000, as computed in the table below:

Year	Actual depreciation	Straight line	Additional depreciation (deficit)
1971	\$10,000	\$3,000	\$7,000
1972	10,000	3,000	7,000
1973	10,000	3,000	7,000
1974	10,000	3,000	7,000
1975	10,000	3,000	7,000
1976		3,000	(3,000)
1977		3,000	(3,000)
Total	50,000	21,000	29,000

Example 4. Section 1250 property which has an adjusted basis of \$108,000 is sold for \$146,000 on December 31, 1972, and thus the gain realized is \$38,000. The property was acquired on December 31, 1963. The applicable percentage for the period before January 1, 1970, is 12 percent (paragraph (d)(2) of § 1.1250-1) and the applicable percentage for the period after December 31, 1969, is 100 percent (paragraph (d)(1)(i)(e) of § 1.1250-1). The additional depreciation must be computed separately for the period before January 1, 1970, and for the period after December 31, 1969. Assume that the additional depreciation for the period before January 1, 1970, is \$32,000 and that there is a deficit in additional depreciation of \$2,000 for the period after December 31, 1969. Accordingly, the additional depreciation for the period before January 1, 1970 (\$32,000) is reduced to \$30,000 by the \$2,000 deficit in additional depreciation for the period after December 31, 1969. Although section 1250(a)(1) applies to the property, none of the gain is recognized as ordinary income under that section since there is a deficit in additional depreciation for the period after December 31, 1969. Gain is recognized under section 1250(a)(2) since there is remaining gain of \$38,000 (that is, gain realized, \$38,000, minus the additional depreciation attributable to periods after December 31, 1969, zero). Since the additional depreciation attributable to the period before January 1, 1970 (\$30,000), is lower than the gain realized (\$38,000), the amount of gain recognized under section 1250(a)(2) is \$3,600 (that is, 12 percent of \$30,000).

Example 5. Section 1250 property which has an adjusted basis of \$207,000 is sold for \$267,000 on February 24, 1988, and thus the gain realized is \$60,000. The property was acquired on April 30, 1970. The applicable percentage for the period from April 30, 1970, through December 31, 1981, is 60 percent

(paragraph (d)(1)(i)(c) of § 1.1250-1) and the applicable percentage for the period from January 1, 1982, through February 24, 1988, is 100 percent (paragraph (d)(1)(i)(e) of § 1.1250-1). The additional depreciation must be computed separately for the period before January 1, 1982, and for the period after December 31, 1981. Assume that the additional depreciation for the period before January 1, 1982, is \$43,000 and that there is a deficit in additional depreciation of \$6,000 for the period after December 31, 1981. Accordingly, the additional depreciation for the period before January 1, 1982 (\$43,000), is reduced to \$37,000 by the \$6,000 deficit for the period after December 31, 1981. There is no gain recognized under section 1250(a)(1) for the period after December 31, 1981, since there is a deficit in additional depreciation for that period. The gain recognized under section 1250(a)(1) for the period before January 1, 1982, is \$22,200, that is, the lower of the gain realized attributable to that period (\$60,000) or the additional depreciation attributable to that period (\$37,000), or \$37,000, multiplied by 60 percent, the applicable percentage.

(c) *Property held by lessee*—(1) *Amount depreciation would have been.* For purposes of paragraph (b) of this section, in case of a leasehold which is section 1250 property, in determining the amount the depreciation adjustments would have been under the straight line method in respect of any building or other improvement (which is section 1250 property) erected or 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. See section 1250(b)(2). For determination of the extent to which a leasehold is section 1250 property, see paragraph (e)(3) of § 1.1250-1.

(2) *Renewal period.* (i) For purposes of this paragraph, the term *renewal period* means any period for which the lease may be renewed, extended, or continued pursuant to an option or options exercisable by the lessee (whether or not specifically provided for in the lease) except that the inclusion of one or more renewal periods shall not extend the period taken into account by more than two-thirds of the period on the basis of which the depreciation adjustments were allowed.

(ii) In respect of the cost of any building erected (or other improvement made) on the leased property by the lessee, or in respect of the portion of the cost of acquiring a leasehold which is attributable to an existing building

(or other improvement) on the leasehold at the time the lessee acquires the leasehold, the inclusion of one or more renewal periods shall not extend the period taken into account to a period which exceeds the useful life remaining, at the time the leasehold is disposed of, of such building (or such other improvement). Determinations under this subdivision shall be made without regard to the proper period under section 167 or 178 for depreciating or amortizing a leasehold acquisition cost or improvement.

(iii) The provisions of this subparagraph may be illustrated by the following example:

Example: Assume that a leasehold improvement with a useful life of 30 years is properly amortized on the basis of a 10-year initial lease term. The lease is renewable for an additional 9 years. The period taken into account is 16 $\frac{2}{3}$ years, that is, 10 years plus two-thirds of 10 years. If, however, the leasehold improvement were disposed of at the end of 12 years, and if its remaining useful life were only 3 years, then the period taken into account would be 15 years.

(d) *Depreciation adjustments*—(1) *General.* For purposes of this section, the term *depreciation adjustments* means, in respect of any property, all adjustments reflected in the adjusted basis of such property on account of deductions described in subparagraph (2) of this paragraph allowed or allowable (whether in respect of the same or other property) to the taxpayer or to any other person. For cases where the taxpayer can establish that the amount allowed for any period was less than the amount allowable, see subparagraph (4) of this paragraph. For determination of adjusted basis of property in a multiple asset account, see paragraph (c)(3) of §1.167(a)-8. The term *depreciation adjustments* as used in this section does not have the same meaning as the term *adjustments reflected in the adjusted basis* as defined in paragraph (a)(2) of §1.1245-2.

(2) *Deductions.* The deductions described in this subparagraph are allowances (and amounts treated as allowances) for depreciation or amortization (other than amortization under section 168, 169 (as enacted by section 704(a), Tax Reform Act of 1969 (83 Stat. 667)), or 185). Thus, for example, such deduc-

tions include a reasonable allowance for exhaustion, wear, and tear (including a reasonable allowance for obsolescence) under section 167, the periodic deductions referred to in §1.162-11 in respect of a specified sum paid for the acquisition of a leasehold and in respect of the cost to a lessee of improvements on property of which he is the lessee. However, such deductions do not include deductions for the periodic payment of rent.

(3) *Depreciation of other taxpayers or in respect of other property.* (i) The depreciation adjustments (reflected in the adjusted basis) referred to in subparagraph (1) of this paragraph (a) are not limited to adjustments with respect to the property disposed of, nor to those allowed or allowable to the taxpayer disposing of such property, and (b) except as provided in subparagraph (4) of this paragraph, are taken into account, whether allowed or allowable in respect of the same or other property and whether to the taxpayer or to any other person. For manner of determining the amount of additional depreciation after certain dispositions, see paragraph (e) of this section.

(ii) The provisions of this subparagraph may be illustrated by the following example:

Example: On January 1, 1966, a calendar year taxpayer purchases for \$100,000 a building for use in his trade or business. He takes depreciation deductions of \$20,000 (the amount allowable), of which \$3,000 is additional depreciation, and transfers the building to his son as a gift on January 1, 1968. Since the exception for gifts in section 1250(d)(1) applies, the taxpayer does not recognize gain under section 1250(a)(2). In the son's adjusted basis of \$80,000 for the building there is reflected \$3,000 of additional depreciation. On January 1, 1969, after taking a depreciation deduction of \$10,000 (the amount allowable), of which \$1,000 is additional depreciation, the son sells the building. At the time of the sale the additional depreciation is \$4,000 (\$3,000 allowed the father plus \$1,000 allowed the son).

(4) *Depreciation allowed or allowable.* (i) For purposes of subparagraph (1) of this paragraph, generally all deductions (described in subparagraph (2) of this paragraph) allowed or allowable shall be taken into account. See section 1016(a)(2) and the regulations thereunder for the meaning of *allowed*

and *allowable*. However, if a taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for any period was less than the amount allowable for such period, the amount to be taken into account for such period shall be the amount allowed. The preceding sentence shall not apply for purposes of computing under paragraph (b)(1)(ii) of this section the amount such deductions would have been under the straight line method.

(ii) The provisions of subdivision (i) of this subparagraph may be illustrated by the following example:

Example: In the year 1969 it becomes necessary to determine the additional depreciation in respect of section 1250 property, the adjusted basis of which reflects a depreciation adjustment of \$1,000 with respect to depreciation deductions allowable for the calendar year 1965 under the sum of the years-digits method. Under paragraph (b)(1)(ii) of this section, the depreciation which would have resulted under the straight line method for 1965 is \$800. If the taxpayer can establish by adequate records or other sufficient evidence that he did not take, and was not allowed, any deduction for depreciation in respect of the property in 1965, then, for purposes of computing the depreciation adjustments in excess of straight line in respect of the property, the amount to be taken into account for 1965 as allowed or allowable is zero, and the amount to be taken into account in computing deductions which would have resulted under the straight line method in 1965 is \$800. Thus, in effect, there is a deficit in additional depreciation for 1965 of \$800.

(5) *Retired or demolished property.* Depreciation adjustments referred to in subparagraph (1) of this paragraph generally do not include adjustments in respect of retired or demolished portions of an item of section 1250 property. If a retired or demolished portion is replaced in a disposition described in section 1250(d)(4)(A) (relating to like kind exchanges and involuntary conversions), see paragraph (d)(7) of § 1.1250-3.

(6) *Exempt organization.* In respect of property disposed of by an organization which is or was exempt from income taxes (within the meaning of section 501(a), the depreciation adjustments (reflected in the adjusted basis) referred to in subparagraph (1) of this paragraph shall include only adjust-

ments allowed or allowable (i) in computing unrelated business taxable income (as defined in section 512(a)), or (ii) in computing taxable income of the organization for a period during which it was not exempt or, by reason of the application of section 502, 503, or 504, was denied its exemption.

(e) *Additional depreciation immediately after certain acquisitions—(1) Zero.* If on the date a person acquires property his basis for the property is determined solely (i) by reference to its cost (within the meaning of section 1012), (ii) by reason of the application of section 301(d) (relating to basis of property received in corporate distribution) or section 334(a) (relating to basis of property received in a liquidation in which gain or loss is recognized), or (iii) under the rules of section 334 (b)(2) or (c) (relating to basis of property received in certain corporate liquidations), then on such date the additional depreciation for the property is zero.

(2) *Transactions referred to in section 1250(d).* In the case of property acquired in a disposition described in section 1250(d) (relating to exceptions and limitations to application of section 1250), additional depreciation shall be computed in accordance with the rules prescribed in § 1.1250-3.

(f) *Records to be kept and information to be filed—(1) Records to be kept.* In any case in which it is necessary to determine the additional depreciation of an item of section 1250 property, the taxpayer shall have available permanent records of all the facts necessary to determine with reasonable accuracy the amount of such additional depreciation, including the following:

(i) The date, and the manner in which, the property was acquired,

(ii) The taxpayer's basis on the date the property was acquired and the manner in which the basis was determined,

(iii) The amount and date of all adjustments to the basis of the property allowed or allowable to the taxpayer for depreciation adjustments referred to in paragraph (d)(1) of this section and the amount and date of any other adjustments by the taxpayer to the basis of the property, and

(iv) In the case of section 1250 property which has an adjusted basis reflecting depreciation adjustments referred to in paragraph (d)(1) of this section taken by the taxpayer with respect to other property, or by another taxpayer with respect to the same or other property, the information described in subdivisions (i), (ii), and (iii) of this subparagraph with respect to such other property or such other taxpayer.

(2) *Information to be filed.* If a taxpayer acquires in a transaction (other than a like kind exchange or involuntary conversion described in section 1250(d)(4)) section 1250 property which has a basis reflecting depreciation adjustments referred to in paragraph (d)(1) of this section allowed or allowable to another taxpayer, then the taxpayer shall file with its income tax return or information return for the taxable year in which the property is acquired a statement showing all information described in subparagraph (1) of this paragraph. See section 6012 (relating to persons required to make returns of income) and part III of subchapter A of chapter 61 of the Code (relating to information returns).

[T.D. 7084, 36 FR 273, Jan. 8, 1971, as amended by T.D. 7193, 37 FR 12956, June 30, 1972]

§ 1.1250-3 Exceptions and limitations.

(a) *Exception for gifts*—(1) *General rule.* Section 1250(d)(1) provides that no gain shall be recognized under section 1250(a) upon a disposition by gift. For purposes of this paragraph, the term *gift* shall have the same meaning as in paragraph (a) of § 1.1245-4. For reduction in amount of charitable contribution in case of a gift of section 1250 property, see section 170(e) and paragraph (c)(3) of § 1.170-1.

(2) *Disposition in part a sale or exchange and in part a gift.* Where a disposition of property is in part a sale or exchange and in part a gift, the disposition shall be subject to the provisions of § 1.1250-1 and the gain to which section 1250(a) applies, shall be computed under that section.

(3) *Treatment of property in hands of transferee.* If property is disposed of in a transaction which is a gift:

(i) The additional depreciation for the property in the hands of the trans-

feree immediately after the disposition shall be an amount equal to (a) the amount of the additional depreciation for the property in the hands of the transferor immediately before the disposition, minus (b) the amount of any gain (in case the disposition is in part a sale or exchange and in part a gift) which would have been taken into account under section 1250(a) by the transferor upon the disposition if the applicable percentage had been 100 percent.

(ii) For purposes of computing the applicable percentage, the holding period under section 1250(e)(2) of property received as a gift in the hands of the transferee includes the transferor's holding period.

(iii) In case of a disposition which is in part a sale or exchange and in part a gift, if the adjusted basis of the property in the hands of the transferee exceeds its adjusted basis immediately before the transfer, the excess is an addition to capital account under paragraph (d)(2)(ii) of § 1.1250-5 (relating to property with 2 or more elements), and

(iv) If the property disposed of consists of two or more elements within the meaning of paragraph (c) of § 1.1250-5, see paragraph (e)(1) of § 1.1250-5 for the amount of additional depreciation and holding period for each element in the hands of the transferee.

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

Example 1. (i) On May 15, 1967, Smith transfers section 1250 property to his son for \$45,000. In the hands of Smith the property had an adjusted basis of \$40,000 and a fair market value of \$70,000. Thus, the gain realized is \$5,000 (amount realized, \$45,000, minus adjusted basis, \$40,000), and Smith has made a gift of \$25,000 (fair market value, \$70,000, minus amount realized, \$45,000).

(ii) Smith's holding period for the property is 80 full months and, thus, the applicable percentage under section 1250(a)(2) is 40 percent. The additional depreciation for the property is \$10,000. Since the gain realized (\$5,000) is lower than the additional depreciation (\$10,000), Smith recognized as ordinary income under section 1250(a)(2) gain of \$2,000 (that is, applicable percentage, 40 percent, multiplied by gain realized, \$5,000) and the \$3,000 remaining portion of the gain realized may be treated as gain from the sale of property described in section 1231.