

Internal Revenue Code Section 1212(a)(1)

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, the capital gain net income for any such prior taxable year shall be computed without regard to the net capital loss for the loss year or for any taxable year thereafter. In the case of any net capital loss which cannot be carried back in full to a preceding taxable year by reason of clause (ii) of subparagraph (A) , the capital gain net income for such prior taxable year shall in no case be treated as greater than the amount of such loss which can be carried back to such preceding taxable year upon the application of such clause (ii) .

(2) Definitions and special rules.

(A) Foreign expropriation capital loss defined. For purposes of this subsection , the term "foreign expropriation capital loss" means, for any taxable year, the sum of the losses taken into account in computing the net capital loss for such year which are-

(i) losses sustained directly by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign



country, any political subdivision thereof, or any agency or instrumentality of the foregoing, or

(ii) losses (treated under section 165(g)(1) as losses from the sale or exchange of capital assets) from securities which become worthless by reason of the expropriation, intervention, seizure, or similar taking of property by the government of any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing.

(B) Portion of loss attributable to foreign expropriation capital loss. For purposes of paragraph (1) , the portion of any net capital loss for any taxable year attributable to a foreign expropriation capital loss is the amount of the foreign expropriation capital loss for such year (but not in excess of the net capital loss for such year).

(C) Priority of application. For purposes of paragraph (1) , if a portion of a net capital loss for any taxable year is attributable to a foreign expropriation capital loss, such portion shall be considered to be a separate net capital loss for such year to be applied after the other portion of such net capital loss.

(3) Regulated investment companies.

(A) In general. If a regulated investment company has a net capital loss for any taxable year-

(i) paragraph (1) shall not apply to such loss,

(ii) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss arising on the first day of the next taxable year, and

(iii) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss arising on the first day of the next taxable year.

(B) Coordination with general rule. If a net capital loss to which paragraph (1) applies is carried over to a taxable year of a regulated investment company-

(i) Losses to which this paragraph applies. Clauses (ii) and (iii) of subparagraph (A) shall be applied without regard to any amount treated as a short-term capital loss under paragraph (1) .

(ii) Losses to which general rule applies. Paragraph (1) shall be applied by substituting "net capital loss for the loss year or any taxable year thereafter (other than a net capital loss to which paragraph(3)(A) applies)" for "net capital loss for the loss year or any taxable year thereafter".

(4) Special rules on carrybacks.

A net capital loss of a corporation shall not be carried back under paragraph (1)(A) to a taxable year-

(A) for which it is a regulated investment company (as defined in section 851),
or

(B) for which it is a real estate investment trust (as defined in section 856).

(b) Other taxpayers.

(1) In general.

If a taxpayer other than a corporation has a net capital loss for any taxable year-

(A) the excess of the net short-term capital loss over the net long-term capital gain for such year shall be a short-term capital loss in the succeeding taxable year, and

(B) the excess of the net long-term capital loss over the net short-term capital gain for such year shall be a long-term capital loss in the succeeding taxable year.

(2) Treatment of amounts allowed under section 1211(b)(1) or (2) .

(A) In general. For purposes of determining the excess referred to in subparagraph (A) or (B) of paragraph (1) , there shall be treated as a short-term capital gain in the taxable year an amount equal to the lesser of-

(i) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) , or

(ii) the adjusted taxable income for such taxable year.

(B) Adjusted taxable income. For purposes of subparagraph (A) , the term "adjusted taxable income" means taxable income increased by the sum of-

(i) the amount allowed for the taxable year under paragraph (1) or (2) of section 1211(b) , and

(ii) the deduction allowed for such year under section 151 or any deduction in lieu thereof.

For purposes of the preceding sentence, any excess of the deductions allowed for the taxable year over the gross income for such year shall be taken into account as negative taxable income.

(c) Carryback of losses from section 1256 contracts to offset prior gains from such contracts.

(1) In general.

If a taxpayer (other than a corporation) has a net section 1256 contracts loss for the taxable year and elects to have this subsection apply to such taxable year, the amount of such net section 1256 contracts loss-

(A) shall be a carryback to each of the 3 taxable years preceding the loss year, and

(B) to the extent that, after the application of paragraphs (2) and (3) , such loss is allowed as a carryback to any such preceding taxable year-

(i) 40 percent of the amount so allowed shall be treated as a short-term capital loss from section 1256 contracts, and

(ii) 60 percent of the amount so allowed shall be treated as a long-term capital loss from section 1256 contracts.

(2) Amount carried to each taxable year.

The entire amount of the net section 1256 contracts loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried back under paragraph (1) . The portion of such loss which shall be carried to each of the 2 other taxable years to which such loss may be carried back shall be the excess (if any) of such loss over the portion of such loss which, after the application of paragraph (3) , was allowed as a carryback for any prior taxable year.

(3) Amount which may be used in any prior taxable year.

An amount shall be allowed as a carryback under paragraph (1) to any prior taxable year only to the extent-

(A) such amount does not exceed the net section 1256 contract gain for such year, and

(B) the allowance of such carryback does not increase or produce a net operating loss (as defined in section 172(c)) for such year.

(4) Net section 1256 contracts loss.

For purposes of paragraph (1) , the term "net section 1256 contracts loss" means the lesser of-

(A) the net capital loss for the taxable year determined by taking into account only gains and losses from section 1256 contracts, or

(B) the sum of the amounts which, but for paragraph (6)(A) , would be treated as capital losses in the succeeding taxable year under subparagraphs (A) and (B) of subsection (b)(1) .

(5) Net section 1256 contract gain.

For purposes of paragraph (1) -

(A) In general. The term "net section 1256 contract gain" means the lesser of-

(i) the capital gain net income for the taxable year determined by taking into account only gains and losses from section 1256 contracts, or

(ii) the capital gain net income for the taxable year.

(B) Special rule. The net section 1256 contract gain for any taxable year before the loss year shall be computed without regard to the net section 1256 contracts loss for the loss year or for any taxable year thereafter.

(6) Coordination with carryforward provisions of subsection (b)(1) .

(A) Carryforward amount reduced by amount used as carryback. For purposes of applying subsection (b)(1) , if any portion of the net section 1256 contracts loss for any taxable year is allowed as a carryback under paragraph (1) to any preceding taxable year-

(i) 40 percent of the amount allowed as a carryback shall be treated as a short-term capital gain for the loss year, and

(ii) 60 percent of the amount allowed as a carryback shall be treated as a long-term capital gain for the loss year.

(B) Carryover loss retains character as attributable to section 1256 contract. Any amount carried forward as a short-term or long-term capital loss to any taxable year under subsection (b)(1) (after the application of subparagraph (A)) shall, to the extent attributable to losses from section 1256 contracts, be treated as loss from section 1256 contracts for such taxable year.

(7) Other definitions and special rules.

For purposes of this subsection -

(A) Section 1256 contract. The term "section 1256 contract" means any section 1256 contract (as defined in section 1256(b)) to which section 1256 applies.

(B) Exclusion for estates and trusts. This subsection shall not apply to any estate or trust.