

Income Splitting (Attribution of Income)

Personal service income taxed to service provider

Income from property (grantor trust rules)

No “carving out”

Reversion - IRC § 673

No other retained economic interest

Right to revoke - IRC § 676

No right to control beneficial enjoyment

Right to change beneficiaries - IRC § 674

Accumulation trusts - IRC § 1(e)

“Kiddie tax” - IRC § 1(g)

Capital Gain and Loss

What's at stake

Favorable rates on long-term capital gain - IRC § 1(h)
Capital loss limitations - IRC § 1211(b)

What is capital gain?

Gain from sale or exchange of capital asset - IRC § 1222
Dividends on stock also taxed at capital gain rates - IRC § 1(h)(11)

What is a capital asset?

Everything! Except what's listed in IRC § 1221(a)

- (1) stock in trade, inventory, property held for sale to customers
- (2) depreciable property and real property used in a business*
- (3) copyright on self-created work
- (4) business accounts receivable
- (5)-(7) esoterica
- (8) supplies used in a business

* Depreciable property and real property used in a business - IRC § 1231

Long-term gain is capital gain
Loss is ordinary
Best of both worlds!
Exception for depreciation recapture

Depreciation recapture

Equipment - IRC § 1245
Gain is ordinary to extent of depreciation previously taken
(Losses are ordinary under IRC § 1231)

Example:

Sale of used truck-tractor unit, 3-year property
Original basis \$60,000
Adjusted basis \$6667 after \$53,333 depreciation taken
Selling price \$20,000
Gain is \$13,333 (\$20,000 - \$6667), all ordinary income

If selling price were \$64,000
Gain is \$57,333: \$53,333 ordinary income, \$4,000 capital gain

Depreciable real property - IRC §§ 1(h)(7), 1250

To extent of depreciation previously taken, gain is capital gain under IRC § 1231, but subject to 25% maximum rate instead of 15%
(Losses are ordinary under IRC § 1231)