

## Qualified retirement plans

<i>No. 1</i>	<i>No. 2</i>	<i>No. 3</i>
Contributions deductible	Contributions not deductible	Contributions not deductible
No current tax on earnings	No current tax on earnings	No current tax on earnings
Withdrawals included in gross income	Withdrawals excluded from gross income	Withdrawals partly included (like annuities)
“Traditional” IRC §§ 219, 408	“Roth” § 408A Educ. §§ 529, 530	“Nondeductible” IRC § 408

## Nonqualified deferred compensation

IRC §§ 409A, 404(a)(5)

## Capital gain and loss

IRC § 1(h) - Preferential rates for “net capital gain”

- IRC § 1222(11) - Long-term capital gain

IRC § 1211(b) - Capital losses deductible only against capital gain  
(+ \$3,000/year ordinary income)

## Capital gain / loss - IRC § 1222

“...gain [loss] from the *sale or exchange* of a capital asset...”

Dividend on corporate stock - IRC § 1(h)(11)

## Capital assets - IRC § 1221(a)

*Everything but:*

- (1) Inventory and property held for sale to customers
- (2) Depreciable property, and real estate used in a business\*
- (3) Self-created ©, patent, etc.
- (4) Business accounts receivable
- (5)-(7) Esoterica
- (8) Supplies

## Examples

### *Capital assets (capital gain/loss):*

- Corporate stock (unless dealer or electing trader)
- Land held as an investment
- Other investments
- Personal-use assets (*gains only; losses not deductible at all!*)

### *Not capital assets (ordinary income/loss):*

- Inventory
- Real estate held by developer for sale to customers - *Winthrop*
- Account receivable from sale of above
- Screenplay that taxpayer wrote

### **\*IRC § 1231**

- Losses are ordinary
- Long-term gains are capital (best of both worlds!)
  - Except gain that is “depreciation recapture” - IRC §§ 1245, 1250

### **Depreciable equipment**

#### **IRC § 1245**

- Depreciation “recapture”
- Gains are ordinary to extent of depreciation previously taken
- Any amount realized in excess of original basis (unusual) = Sec. 1231 gain (capital)
- Losses are ordinary

### **Depreciable real property**

#### **IRC § 1250**

- Depreciation “recapture”
- Gains are capital (Sec. 1231), but top rate is 25% - IRC §§ 1(h)(1)(E), 1(h)(6)
- Losses are ordinary