

PUBLICATION UPDATE

Route to: _____ _____ _____ _____
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Taxation of Securities Transactions

Publication 729

Release 91

September 2024

HIGHLIGHTS

- *Taxation of Securities Transactions* is an essential publication covering all the vital issues and creative planning opportunities in this field.
- This publication has been fully updated to keep you abreast of recent federal court decisions and IRS rulings and releases affecting the taxation of securities transactions.

Release 91 continues the coverage of new developments in the field of taxation of securities transactions.

Chapter 1, Gains and Losses From the Disposition of Property.

Certain taxable events involving securities transactions, such as the repurchase by a corporation of its own stock, have additional tax consequences beyond the taxation of gains

and the realization of losses. An example of such a provision is IRC Section 4501, added to the IRC as part of the Inflation Reduction Act of 2022. For discussion of repurchases of stock by a corporation, see new § 1.02[2][c].

Chapter 17, Real Estate Investment Trusts. IRC Section 856(n) provides the circumstances under which foreign exchange gain under IRC Sections 987 and 988 constitute gross income for purposes of one or both gross income tests. “Real estate foreign exchange gain” is excluded from gross income for purposes of both the 75-percent and the 95-percent gross income tests. See discussion of foreign currency gains in new § 17.02[2][b][vii].

IRC Section 856(c)(5)(G) provides that any income or gain of a REIT from a hedging transaction that is

clearly identified pursuant to IRC Section 1221(a)(7) is excluded from a REIT's gross income for purposes of both the 75-percent and 95-percent gross income tests. For these purposes, a "hedging transaction" means either (1) any transaction entered into in the normal course of the REIT's trade or business primarily to manage the risk of interest rate, price changes, or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, to acquire or carry real estate assets (a "Debt Financing Hedge"), and (2) any transaction entered into primarily to manage the risk of currency fluctuations with respect to any item of income or gain that would be qualifying income under the 75% or 95% gross income test (or any property which generates such income or gain) (a "Currency Hedge"). See new § 17.02[2][b][viii] on hedging transactions.

Chapter 34, Tax Shelter Transactions: Penalties and Disclosure Requirements. In response to successful procedural validity challenges to IRS Notice 2017-10, which purported to classify certain conservation easements as a listed transaction, Congress legislatively adopted many of the notice's provisions by amending IRC Section 170(h) to provide that "a contribution of a partnership . . . shall not be treated as a qualified conservation contribution . . . if the amount of such contribution exceeds 2.5 times the sum of each partner's relevant basis in such partnership" (*i.e.*, the partner's investment). For

discussion of deduction for qualified conservation contributions made by pass-through entities, see new § 34.02[2][f].

A few other chapters that were also revised in this release are:

Chapter 9 (Stock Bail-Outs)

Chapter 11 (Stock Options)

Chapter 22 (The Taxpayer as the Beneficiary of an Estate or Trust)

Chapter 25 (Employee Stock Ownership Plans)

Chapter 27 (Contributions to Tax-Qualified Profit-Sharing and Stock Bonus Trusts and Individual Retirement Arrangements)

Chapter 28 (Distributions from Tax-Qualified Profit-Sharing and Stock Bonus Trusts and Individual Retirement Arrangements)

Chapter 29 (Transactions in Bonds and Other Debt Instruments)

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Publication 729 Release 91

September 2024

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<input type="checkbox"/>	Title page thru 1-4.1	Title page thru 1-4.1
<input type="checkbox"/>	1-15	1-15 thru 1-16.1
<input type="checkbox"/>	1-63	1-63
<input type="checkbox"/>	1-81	1-81
<input type="checkbox"/>	2-67 thru 2-68.1	2-67 thru 2-68.1
<input type="checkbox"/>	4-53 thru 4-54.1	4-53 thru 4-54.1
<input type="checkbox"/>	5-25	5-25 thru 5-26.1
<input type="checkbox"/>	7-9	7-9 thru 7-10.1
<input type="checkbox"/>	7-47 thru 8-3	7-47 thru 8-4.1
<input type="checkbox"/>	8-25 thru 10-16.1	8-25 thru 10-15
<input type="checkbox"/>	10-55.	10-55
<input type="checkbox"/>	10-67 thru 10-73	10-67 thru 10-73
<input type="checkbox"/>	10-83 thru 10-85	10-83 thru 10-86.1
<input type="checkbox"/>	10-95 thru 10-99	10-95 thru 10-99
<input type="checkbox"/>	11-43 thru 11-67	11-43 thru 11-67
<input type="checkbox"/>	15-3 thru 15-5	15-3 thru 15-6.1
<input type="checkbox"/>	15-14.1 thru 15-15	15-15 thru 15-16.1
<input type="checkbox"/>	15-31 thru 17-51	15-31 thru 17-51
<input type="checkbox"/>	18-13.	18-13 thru 18-14.1

VOLUME 2

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	22-1 thru 22-19	22-1 thru 22-19
<input type="checkbox"/>	25-7 thru 25-9	25-7 thru 25-10.1
<input type="checkbox"/>	27-1 thru 27-21	27-1 thru 27-21
<input type="checkbox"/>	28-17.	28-17
<input type="checkbox"/>	29-15.	29-15
<input type="checkbox"/>	29-41 thru 29-50.1	29-41 thru 29-50.1
<input type="checkbox"/>	29-71 thru 29-81	29-71 thru 29-82.1
<input type="checkbox"/>	29-99 thru 29-100.1	29-99 thru 29-100.1
<input type="checkbox"/>	29-109	29-109 thru 29-110.1
<input type="checkbox"/>	29-217 thru 29-223	29-217 thru 29-223
<input type="checkbox"/>	34-1 thru 34-57	34-1 thru 34-58.1
<input type="checkbox"/>	34-71 thru 35-5	34-71 thru 35-6.1

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