

Income Splitting (Attribution of Income)

- No splitting of personal service income
- Income from property
 - No “carving out”
Reversion - IRC § 673
 - No retained economic interests
Right to revoke - IRC § 676
 - No retained power to change beneficial enjoyment
Right to change beneficiaries - IRC § 674

Accumulation trusts - IRC § 1(e)

“Kiddie” tax - IRC § 1(g)

Capital Gain and Loss

Why do you care?

- 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)

What is capital gain or loss?

Gain [loss] from the *sale or exchange* of a capital asset (IRC § 1001)

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

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

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

Depreciation recapture

Equipment - IRC § 1245

- 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 per IRC § 1231

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

- Gains are capital (Sec. 1231), but top rate is 25% - IRC §
1(h)(7)
- Losses are ordinary