Title 12 – Department of Revenue
Division 10 – Director of Revenue
Chapter 2 – Income Tax

PROPOSED AMENDMENT

12 CSR 10-2.010 Capital *[Gain (Loss)]* Loss Allocation Between Spouses. The division is amending the title of the rule, the purpose, sections (1) and (2), and deleting sections (3) and (4).

PURPOSE: The amendment reflects the changes in federal rules on capital gains and losses. The treatment of losses is simplified. The rules on gains are no longer necessary and they are deleted.

PURPOSE: *This rule sets forth the method to be used by married persons filing joint federal income tax returns in allocating capital* [*gains and*] *losses between the spouses for Missouri income tax purposes.*

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) The following general rules have been issued by the Missouri Department of Revenue and should be used in arriving at Missouri adjusted gross income (MAGI) of each spouse in situations involving [*gains or*] losses from sale or exchange of capital assets, but only if the [*husband and the wife*] **spouses** file a joint federal income tax return for the year. [*The rules presume the applicability of the Missouri Income Tax Law of 1973 (Senate Bill 549).*]

(2) Losses: General Rule. If the losses from the sale or exchange of capital assets exceed the net gains from the sales, so [*that line 14, Schedule D, Form 1040 is*] a loss **is reported on Form 1040**, then, subject to the limitation provided for *in Internal Revenue Code* (IRC) Section 1211, allocate the excess to the spouse responsible for the excess. (**For examples 1-3 below, the Section 1211 limitation is $3,000.)** If both spouses are responsible for the excess, then allocate the excess, subject to IRC Section 1211 limitation, between the spouses on a *pro rata* basis. [*Allocate excess short-term capital losses before allocating excess long-term capital losses.*]

(A) Example No. 1: Assume the following facts on the joint federal income tax return for [*1973*] **2017**:

	[*Husband*	*Wife*	*Total*
Wages	*$10,000*	*$5000*	*$15,000*

Short-Term			
Gain (Loss)	*0*	*0*	
Long-Term			
Gain (Loss)	*($2000)*	*($3000)*	*($5000)*
FAGI			**$14,000*

**Section 1211 Limitation of ($1000).*]

	Spouse 1	Spouse 2	Total
Wages	**$10,000**	**$5,000**	**$15,000**
Gain (loss)	**($2,000)**	**($3,000)**	**($5,000)**
Section 1211 limitation			**($3,000)**
Federal adjusted gross income (FAGI)			**$12,000**

Missouri Answer: The amount of the excess is [*(5000)*] **$5,000** but, because of the limitation of IRC Section 1211, the deductibility of the loss is limited to [*(1000)*] **$3,000**. Since both spouses are responsible for the excess, then allocate the [*(1000)*] **$3,000** on a *pro rata* basis, that is [*husband*] **Spouse 1** (2/5 x [*1000*] **3,000**) and [wife] **Spouse 2** (3/5 x [*1000*] **3,000**).

MAGI is therefore

	[*Husband*	*Wife*	*Total*
Wages	*$10,000*	*$5000*	
Less			
Section 1211			
Deduction	*($400)*	*($600)*	
MAGI	*$9600*	*$4400*	*$14,000*]

	Spouse 1	Spouse 2	Total
Wages	**$10,000**	**$5,000**	
Section 1211 deduction	**($1,200)**	**($1,800)**	
MAGI	**$8,800**	**$3,200**	**$12,000**

(B) Example No. 2: Assume the following facts on the joint federal income tax return for [*1973*] **2017**:

	[*Husband*	*Wife*	*Total*
Wages	*$10,000*	*$5000*	*$15,000*

Short-Term

Gain (Loss)	*($200)*	*($300)*	*($500)*
Long-Term			
Gain (Loss)	*($8000)*	*($3000)*	*($5000)*
FAGI			**$14,000*

**Section 1211 Limitation of ($1000).*]

	Spouse 1	**Spouse 2**	**Total**
Wages	**$10,000**	**$5,000**	**$15,000**
Short-term Gain (loss)	**($200)**	**($300)**	**($500)**
Long-term Gain (loss)	**($8,000)**	**$3,000**	**($5,000)**
Section 1211 limitation			**($3,000)**
Federal adjusted gross income (FAGI)			**$12,000**

Missouri Answer: [*The Section 1211 limitation of (1000) should be allocated as follows: a) Allocate excess short-term losses of (500) first and, since both spouses are responsible for the excess, it should be allocated on a pro rata basis, that is husband (2/5 x 500) and wife (3/5 x 500); b) Allocate the remaining (500) of the limitation from excess long-term losses and, since the husband is responsible for the excess, the remaining (500) should be allocated entirely to him. Note that husband must use $2 of net long-term loss to offset $1 of ordinary income.*] **The amount of the excess is $5,500 but, because of the limitation of IRC Section 1211, the deductibility of the loss is limited to $3,000. The $5,500 excess includes $5,200 for Spouse 1 and $300 for Spouse 2. Since both spouses are responsible for the excess, then allocate the $3,000 on a *pro rata* basis, that is, Spouse 1 (5,200/5,500 x 3,000) and Spouse 2 (300/5,500 x 3,000).**

MAGI is therefore

	[*Husband*	*Wife*	*Total*
Wages	*$10,000*	*$5000*	
Less			
Section 1211			
Deduction	*($700) i.e.*	*($300) i.e.*	
	S.T. ($200)	*S.T.*	
		($300)	
x	+	+	

	L.T. ($500)	*0*	
MAGI	*$9300*	*$4700*	*$14,000*]

	Spouse 1	**Spouse 2**	**Total**
Wages	**$10,000**	**$5,000**	
Section 1211 deduction	**($2,850)**	**($150)**	
MAGI	**$7,150**	**$4,850**	**$12,000**

(C) Example No. 3: Assume the following facts on the joint federal income tax return for [*1973*] **2017**:

	[*Husband*	*Wife*	*Total*
Wages	*$10,000*	*$5000*	*$15,000*
Short-Term			
Gain (Loss)	*($1000)*	*($1000)*	*(0)*
Long-Term			
Gain (Loss)	*($8000)*	*($3000)*	*($5000)*
FAGI			**$14,000*

**Section 1211 Limitations of ($1000)*].

	Spouse 1	**Spouse 2**	**Total**
Wages	**$10,000**	**$5,000**	**$15,000**
Short-term Gain (loss)	**$1,000**	**($1,000)**	**$0**
Long-term Gain (loss)	**($8,000)**	**$3,000**	**($5,000)**
Section 1211 limitation			**($3,000)**
FAGI			**$12,000**

Missouri Answer: Since there are no net short-term losses, all of the IRC Section 1211 limitation of [*(1000)*] **$3,000** should be allocated from excess long-term losses. Since [*the husband*] **Spouse 1** is responsible for the excess, the entire amount of the limitation is allocated to [him] **Spouse 1**.

MAGI is therefore:

	[*Husband*	*Wife*	*Total*
Wages	*$10,000*	*$5000*	

Less			
Section 1211			
Deduction	*($1000)*	*0*	
MAGI	*$9,000*	*$5,000*	*$14,000*]

	Spouse 1	Spouse 2	Total
Wages	**$10,000**	**$5,000**	
Section 1211 deduction	**($3,000)**	**$0**	
MAGI	**$7,000**	**$5,000**	**$12,000**

[*(3) Gains: General Rule. If net gains from the sale or exchange of capital assets exceed net losses from the sales, so that line 14, Schedule D, Form 1040 is a gain, then allocate the excess short-term capital gain to the spouse(s) responsible for the gains, and allocate the excess long-term capital gain to the spouse(s) responsible for the gain and allocate the IRC Section 1202 deduction in the same manner and to the same spouse(s) to whom excess long-term gains are allocated. If both spouses are responsible for the excess short-term (long-term) gain, then allocate the excess of short-term (long-term) gain on a pro rata basis.*

(A) Example No. 4: Assume the following facts on the joint federal income tax return for 1973:

	Husband	*Wife*	*Total*
Wages	*$10,000*	*$5,000*	*$15,000*
Short-Term			
Gain (Loss)	*0*	*0*	
Long-Term			
Gain (Loss)	*($3,000)*	*($8,000)*	*($5,000)*
FAGI			**$17,500*

**$5000 net long-term gain less IRC Section 1202 deduction of $2500.*

Missouri Answer: Since the excess gains are all net long-term gains and since the wife is responsible for the excess, then allocate the entire amount of the excess to the wife and also allocate the entire IRC Section 1202 deduction to the wife.

MAGI is therefore

	Husband	Wife	Total
Wages	$10,000	$5000	
Plus			
Excess			
Gains	0	$5000	
	(L.T.)		
Less			
Section			
1202			
Deduction	0	$2500	
MAGI	$10,000	$7500	$17,500

(B) Example No. 5: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	$15,000
Short-Term			
Gain (Loss)	($8000)	($3000)	($5000)
Long-Term			
Gain (Loss)	($3000)	($8000)	($5000)
FAGI			*$22,500

**IRC Section 1202 deduction of $2,500.*

Missouri Answer: Since the husband is responsible for the entire amount of excess short-term gains, the excess is allocated to the husband. Since the wife is responsible for the entire amount of excess long-term gains, the excess, as well as the IRC Section 1202 deduction, should be allocated to her.

Missouri AGI is therefore:

	Husband	Wife	Total
Wages	$10,000	$5000	
Plus			
Excess			
Gains	$5000	$5000	
	(S.T.)	(L.T.)	
Less			
Section			
1202			
Deduction	0	$2500	
MAGI	$15,000	$7500	$22,500

(C) Example No. 6: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	$15,000
Short-Term			
Gain (Loss)	($4000)	($1000)	($5000)
Long-Term			
Gain (Loss)	($2000)	($3000)	($5000)
FAGI			*$22,500

*IRC section 1202 deduction of $2500.

Missouri Answer: Excess short-term capital gains are allocated to the spouses on a pro rata basis, that is husband (4/5 x 5000) and wife (1/5 x 5000). Excess long-term capital gains are allocated to the spouses on a pro rata basis, that is husband (2/5 x 5000) and wife (3/5 x 5000). The IRC Section 1202 deduction of $2500 is also allocated on a 2/5 3/5 basis. Note that the Section 1202 deduction may be computed on this basis, or it may be separately computed by deducting 50% of each spouse's pro rata share of excess long-term capital gains.

MAGI is therefore

	Husband	Wife	Total
Wages	$10,000	$5000	
Plus			
Excess			
Gains	$4000	$1000	
	(S.T.)	(S.T.)	
	$2000	$3000	
	(L.T.)	(L.T.)	
Less			
Section			
1202			
Deduction	$1000	$1500	
MAGI	$15,000	$7500	$22,500

(4) The following three (3) examples are designed to show that, for allocation purposes, the primary focus is on the gain (loss) shown on line 14, Schedule D, Form 1040:

(A) Example No. 7: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total

Wages	*$10,000*	*$5000*	*$15,000*
Short-Term Gain (Loss)	*($3000)*	*($8000)*	*($5000)*
Long-Term Gain (Loss)	*($6000)*	*($4000)*	*($10,000)*
FAGI			**$17,500*

**Excess of net long-term capital gain over net short-term capital loss is $5000, less IRC Section 1202 deduction $2500.*

Missouri Answer: Since net long-term capital gains exceeds net short-term capital loss, the 5000 figure reported on line 14, Schedule D, Form 1040 is an excess long-term gain. Since both spouses are responsible for the excess, then the excess long-term capital gain, as well as the IRC Section 1202 deduction, are allocated to the spouses on a pro rata basis, that is husband (6/10 x 5000) and wife (4/10 x 5000). The IRC Section 1202 deduction of 2500 is also allocated on 6/10 4/10 basis.

MAGI is therefore

	Husband	*Wife*	*Total*
Wages	*$10,000*	*$5000*	
Plus Excess Gains	*$300 (L.T.)*	*$2000 (L.T.)*	

	Husband	*Wife*	*Total*
Less Section			

1202			
Deduction	$1500	$1000	
MAGI	$11,500	$6000	$17,500

(B) Example No. 8: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	15,000
Short-Term			
Gain (Loss)	($14,000)	($9000)	($5000)
Long-Term			
Gain (Loss)	($12,000)	($2000)	($10,000)
FAGI			*$17,500

*Excess of net long-term capital gain over net short-term capital loss is $5000, less IRC Section 1202 deduction of $2500.

Missouri Answer: Since net long-term capital gain exceeds net short-term capital loss, the $5000 figure reported on line 14, Schedule D, Form 1040 is an excess long-term gain. Since the husband is responsible for the excess, then allocate the entire amount of the excess to the husband and also allocate the entire IRC Section 1202 deduction to the husband.

MAGI is therefore:

	Husband	Wife	Total
Wages	$10,000	$5000	
Plus			
Excess			

Gains	$5000		
	(L.T.)	0	
Less			
Section			
1202			
Deduction	$2500	0	
MAGI	$12,500	$5000	$17,500

(C) Example No. 9: Assume the following facts on the joint federal income tax return for 1973:

	Husband	Wife	Total
Wages	$10,000	$5000	$15,000
Short-Term			
Gain (Loss)	($20,000)	($9000)	$11,000
Long-Term			
Gain (Loss)	($28,000)	$22,000	($6000)
FAGI			*$20,000

*Excess of net short-term gain over net long-term capital loss is $5000.

Missouri Answer: Since net short-term capital gains exceed net long-term capital loss, the $5000 figure reported on line 14, Schedule D, Form 1040 is an excess short-term gain. Since the husband is responsible for the entire amount of excess short-term gain, the excess is allocated to the husband.

MAGI is therefore

	Husband	Wife	Total

Wages	*$10,000*	*$5000*	
Plus			
Excess			
Gains	*$5000*		
	(S.T.)	*0*	
Less			
Section			
1202			
Deduction	*0*	*0*	
MAGI	*$15,000*	*$5000*	*$20,000*]

AUTHORITY: section 143.961, RSMo [1986] 2016. This rule was previously filed as Income Tax Release 73-11, Jan. 29, 1974, effective Feb. 8, 1974. Amended: Filed Oct. 2, 2018.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*