

**TAX TALK**  
**BY JEFFREY D. SKOLNICK, CPA, M.S. TAXATION**

## **CAPITAL GAINS – HOW ARE THEY TAXED?**

I think it's safe to say that most people have heard of capital gains; however they may not have a complete understanding of how they are taxed. I will try to cover some of the basic questions that are most often asked.

### **Do all capital gains qualify for a reduced tax rate?**

No, only long term capital gains qualify for reduced tax rates. To qualify as a long-term capital gain the property in question must be held for over 1 year.

Short-term capital gains, those held for 1 year or less, are taxed at ordinary income tax rates. Long-term capital gains are taxed at 0% in 2009 and 2010 if the taxpayer(s) are in either the 10% or 15% income tax brackets. Taxpayers in the 25% or higher brackets will have their capital gains taxed at a maximum of 15%. In 2009, the 25% bracket begins with taxable income of \$33,951 for individuals and \$67,901 for married taxpayers filing jointly.

Please keep in mind that there are additional capital gains rates of 25% pertaining to real property (i.e. buildings) held more than 1 year that have been depreciated and 28% on collectibles (works of art, rugs, antiques, stamps, precious metals, etc.).

### **Can I offset my capital gains with capital losses?**

Yes, taxpayers are allowed to deduct capital losses to the extent of capital gains plus an additional \$3,000. If for example a taxpayer had \$20,000 in capital gains in a tax year, then the taxpayer would be allowed to use \$23,000 of capital losses against those gains. If the taxpayer has capital losses that they cannot use, then they are carried forward to be used in future years.

### **If I can carry my capital losses forward, can I also carry them back?**

The answer to this question is no and in my opinion this is not a fair piece of legislation . The reason I say that the disallowance of a carryback is unfair can best be clarified with an example. If a taxpayer incurs a \$1,000,000 capital loss in a tax year and a \$1,000,000 capital gain in the following year, the taxpayer would use \$3,000 of his/her loss in year 1 and \$997,000 in year 2. This completely offsets capital gains. If however, a capital gain of \$1,000,000 is incurred in year 1 and a capital loss of \$1,000,000 is incurred in year 2, no carryback is allowed. The taxpayer has paid at least \$150,000 of

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income tax and is stuck writing off this \$1,000,000 loss for the rest of their life unless they show another large gain. While the tax result is significantly different the net economic effect of the two transactions is exactly the same, \$0 gain over the 2 year period.

**Conclusion**

This article addresses only the very basics of capital gain (loss) taxation and as always if you're not sure of the rules, then check with a tax professional.