

810-3-8-.01. Recognition of Gain or Loss.

(1) For transactions closed before January 1, 1985, gain or loss shall be recognized in accordance with the following rules:

(a) The Federal Internal Revenue Code contains provisions similar to those in §40-18-8, Code of Alabama 1975. Decisions and interpretations of the federal courts and agencies will be given due weight in interpreting this section. The terms "property of like kind", "for productive use", and "party to a reorganization" are considered to have the same meaning as in Federal taxation. The terms "control" and "reorganization" as defined in §40-18-8 have a somewhat different meaning from the same terms as used in Federal taxation.

(b) The entire amount of gain or loss realized upon the sale or exchange of property shall normally be recognized on the tax return for that year. Exceptions from the general rule are made in §40-18-8 with respect to certain exchanges of property in which at the time of the exchange the particular differences existing between the property disposed of and the property acquired are more formal than substantial. The law provides that such differences shall not be deemed controlling and that gain or loss shall not be recognized at the time of the exchange. The underlying assumption of these exceptions is that the new property is substantially a continuation of the old investment.

(c) The exceptions from the general rule requiring the recognition of all gains and losses are strictly construed. Nonrecognition is accorded by the law only if the exchange is one which satisfies both the specific description in the law of an excepted exchange, and the underlying purpose for which such exchange is excepted from the general rule.

(d) The law makes specific provision for the case in which, in addition to property which may be received tax-free on the exchange, additional money or property is received. In such a case, gain is recognized to the extent of the additional property or money, but no loss of any kind is recognized.

(e) To constitute an exchange within the meaning of this section the transaction must be a reciprocal transfer of property, as distinguished from a transfer of property for money consideration only.

(f) For nonrecognition of gain on the sale of a personal residence in the year of the sale, see §40-18-14, Code of Alabama 1975, Regs. 810-3-14-.07 and 810-3-14-.08.

(2) For transactions closed after December 31, 1984, upon the sale, exchange, or other disposition of property the entire amount of the gain or loss realized shall be recognized on the current year tax return, except as provided in Regs. 810-3-8-.02, et seq.

Author: Income Tax Division  
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