Part II: CAPITAL GAINS AND LOSSES

**8543. What is a “capital asset”?**

Generally, any property held as an investment is a capital asset, except that rental real estate is typically not a capital asset because it is treated as a trade or business asset.[[1]](#footnote-1)

The Code defines a “capital asset” by what it is not. So for purposes of determining whether a certain type of property is a capital asset, it cannot be any of the following types of property:

(1) property (including inventory and stock in trade) held primarily for sale to customers;

(2) real or depreciable property used in the taxpayer’s trade or business;

(3) copyrights and literary, musical, or artistic compositions (or similar properties) created by the taxpayer, or merely owned by him, if the taxpayer’s basis in the property is determined (other than by reason of IRC Section 1022, which governs the basis determination of inherited property) by reference to the creator’s tax basis;

(4) letters, memoranda, and similar properties produced by or for the taxpayer, or owned by him if the taxpayer’s basis is determined by reference to the tax basis of the producer or recipient;

(5) accounts or notes receivable acquired in the taxpayer’s trade or business for services rendered or sales of property described in (1), above;

(6) certain publications of the United States government;

(7) any commodities derivative financial instrument held by a commodities derivatives dealer;

(8) any hedging instrument clearly identified as such by the required time; or

(9) supplies of a type regularly used or consumed by the taxpayer in the ordinary course of the taxpayer’s trade or business.[[2]](#footnote-2)

1. . See IRS Pub. 544. [↑](#footnote-ref-1)
2. . IRC Sec. 1221; Treas. Reg. §1.1221-1. [↑](#footnote-ref-2)