**8547. What new rules have been developed in the past years to change long-term capital gain rates?**

Congress has taken steps in recent years to reduce the rates applicable to long-term capital gains. As such, long-term capital gains recognized on or after May 6, 2003 are subject to lower tax rates today than has historically been the case. For taxpayers in the 25, 28, 33 and 35 percent tax brackets with respect to ordinary income, the rate on long-term capital gains was reduced from 20 percent to 15 percent in 2003 through 2012. For taxpayers in the 10 and 15 percent brackets, the rate on long-term capital gains was reduced from 10 percent to 5 percent in 2003 through 2007, and then down to 0 percent in 2008 through 2012. As discussed below, these lower capital gain rates have been made permanent for tax years beginning after 2012.[[1]](#footnote-1)

The American Taxpayer Relief Act of 2012 (“ATRA”) extended the 0 percent and 15 percent capital gain rates for most taxpayers and increased the rates for taxpayers in the highest income tax bracket.

ATRA permanently increased the rate on long-term capital gains to 20 percent for taxpayers with taxable income exceeding an annual applicable threshold amount (for 2014, the threshold amount is $406,750 for single taxpayers, $457,600 for married taxpayers filing jointly, $432,200 for heads of households and $228,800 for married taxpayers filing separately and for 2013, the threshold amount was $400,000 for single taxpayers, $450,000 for married taxpayers filing jointly, $425,000 for heads of households, and $225,000 for married taxpayers filing separately). The applicable threshold amounts are adjusted annually for inflation.[[2]](#footnote-2)

For taxpayers in the 10 or 15 percent income tax brackets, the rate on long-term capital gains is now permanently set at 0 percent. Taxpayers in the 25, 28, 33 and 35 percent tax brackets will continue to be taxed at 15 percent on long-term capital gains.[[3]](#footnote-3)

In addition, beginning January 1, 2013, a new investment income tax of 3.8 percent applies to certain investment-type income (including income received from capital gains). The investment income tax applies for taxpayers whose annual adjusted gross income exceeds the investment income threshold amount ($250,000 for married taxpayers filing jointly, $125,000 for married taxpayers filing separately and $200,000 for all other taxpayers).[[4]](#footnote-4) See Q 8560 to Q 8566 for a detailed discussion of the investment income tax.

The rates applicable for collectibles gain, IRC Section 1202 gain (i.e., qualified small business stock), and unrecaptured IRC Section 1250 gain have remained unchanged. See Q 8546.[[5]](#footnote-5)

*Repeal of qualified 5-year gain*. For tax years beginning after December 31, 2000, if certain requirements were met, the maximum rates on “qualified 5-year gain” could be reduced to 8 percent and 18 percent (in place of 10 percent and 20 percent respectively). Furthermore, a noncorporate taxpayer in the 25 percent bracket (or higher) who held a capital asset on January 1, 2001 could elect to treat the asset as if it had been sold and repurchased for its fair market value on January 1, 2001 (or on January 2, 2001 in the case of publicly traded stock). If a noncorporate taxpayer made this election, the holding period for the elected assets began after December 31, 2000, thereby making the asset eligible for the 18 percent rate if it was later sold after having been held by the taxpayer for more than five years from the date of the deemed sale and deemed reacquisition.[[6]](#footnote-6) Under JGTRRA 2003, the 5-year holding period requirement, and the 18 percent and 8 percent tax rates for qualified 5-year gain, were repealed. Though this repeal was scheduled to sunset along with the reduced rates on long-term capital gains, it was made permanent under ATRA.

1. . IRC Sec. 1(h)(1), as amended by ATRA; TIPRA 2005 Sec. 102, *amending* JGTRRA 2003 Sec. 303. [↑](#footnote-ref-1)
2. . IRC Secs. 1(i), 1(h), as amended by ATRA, Secs. 101(b)(3)(C) and 102(b); Rev. Proc. 2013-35, 2013-47 IRB 537. [↑](#footnote-ref-2)
3. . IRC Sec. 1(h), as amended by ATRA, Sec. 102. [↑](#footnote-ref-3)
4. . IRC Sec. 1411. [↑](#footnote-ref-4)
5. . IRC Sec. 1(h). [↑](#footnote-ref-5)
6. . IRC Secs. 1(h)(2), 1(h)(9), prior to amendment by JGTRRA 2003; JCWAA 2002 Sec. 414(a) and CRTRA 2000 Sec. 314(c), amending TRA ’97 Sec. 311(e). [↑](#footnote-ref-6)