



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
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December 29, 1983

You state that you have sold certain lots from a tract of land whereby you have recovered the cost of the entire property. You propose to sell additional lots this calendar year. Additionally, you plan to convey a portion of the subdivided land to a Conservation Land Trust for one dollar.

You inquire whether for Massachusetts income tax purposes the proposed "sale" of the balance of the land to the Conservation Land Trust for one dollar results in a loss in set-off against taxable gain on the remaining lots to be sold.

Massachusetts gross income is federal gross income with certain modifications. (G.L. c. 62, §§ 1, 2). Gain realized on the sale of property is included in gross income under Section 61 of the Internal Revenue Code ("Code"). Generally, under Section 1001 of the Code the gain from the sale or other disposition of property is the excess of the amount realized over the unrecovered cost or other basis provided in Section 1011 for determining gain, and the loss is the excess of the adjusted basis provided in such section for determining loss over the amount realized. Generally, where real estate is subdivided, the sale of each lot is treated as a separate transaction and the computation of gain or loss must be made upon each separate sale. (U.S. Treas. Reg. 1.61-6(a)). Unless the purchase and complete resale fall into the same taxable year, the cost or other basis of the entire property must be allocated among the various parcels and the gain realized or loss sustained on each part.

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Massachusetts adopts federal characterization of gain as either capital gain or ordinary income. Under federal law, unless a taxpayer comes within the rules of Section 1237 of the Code which permit limited subdivisions without loss of capital gain treatment, a taxpayer who actively subdivides property generally will be deemed to have held the property for sale to customers resulting in treatment of gain as ordinary income and loss as fully deductible loss.

There is no deduction for charitable contributions for Massachusetts income tax purposes. Although Sections 161 and 170(h) of the Code allow a charitable deduction for a "qualified conservation contribution" of real property, these provisions have not been incorporated into Massachusetts tax law and are not relevant for Massachusetts income tax purposes.

Where real estate is subdivided into lots, for purposes of determining gain or loss for Massachusetts income tax purposes, the basis of property sold or exchanged is the same as the federal adjusted basis for such property. Net capital gain and net capital loss are computed in the same manner as for federal purposes without taking into effect any federal carryback or carryover. Any portion of gain from the disposition of lots which is considered ordinary income for federal purposes will be taxed by Massachusetts as Part B income (5% income).

Very truly yours,



Commissioner of Revenue

IAJ:ADH:mf

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