

**Capital Gains and Losses and Built-in Gains**

**2008**

Attach this Schedule to your Hawaii S Corporation Income Tax Return — Form N-35

<b>Name</b>	<b>Federal Employer I.D. No.</b>
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**PART I — Short-Term Capital Gains and Losses — Assets Held One Year or Less**

a. Kind of property and description (Example: 100 shares of "Z" Co.)	b. Date acquired (mo., day, yr.)	c. Date sold (mo., day, yr.)	d. Gross sales price	e. Cost or other basis, plus expense of sales	f. Gain or (loss) (d minus e)	g. Gain or (loss) Attributable to Hawaii
1						
2 Short-term capital gain from installment sales. (from federal Form 6252) . . . . .					<b>2</b>	
3 Short-term capital gain or (loss) from like-kind exchanges. (from federal Form 8824) . . . . .					<b>3</b>	
4 Short-term capital gain from stock acquired through stock options from qualified high technology businesses. . . . .					<b>4</b>	(        ) (        )
5 Section 235-7(a)(13), HRS, short-term gain (See Instructions.) . . . . .					<b>5</b>	(        ) (        )
6 Add lines 1, 2, 3, 4, and 5. Enter here. . . . .					<b>6</b>	
7 Tax on short-term gain included on line 23 below. (Enter same amount in cols. f and g) . . . . .					<b>7</b>	
8 Net short-term capital gain or (loss). Line 6 minus line 7. Enter this amount here and on Form N-35, Schedule K, line 4d or line 6. . . . .					<b>8</b>	

**PART II — Long-Term Capital Gains and Losses — Assets Held More Than One Year**

9						
10 Long-term capital gain from installment sales. (from federal Form 6252) . . . . .					<b>10</b>	
11 Long-term capital gain or (loss) from like-kind exchanges. (from federal Form 8824) . . . . .					<b>11</b>	
12 Capital gain distributions. . . . .					<b>12</b>	
13 Long-term capital gain from stock acquired through stock options from qualified high technology businesses. . . . .					<b>13</b>	(        ) (        )
14 Section 235-7(a)(13), HRS, long-term gain (See Instructions.) . . . . .					<b>14</b>	(        ) (        )
15 Add lines 9, 10, 11, 12, 13 and 14. Enter here. . . . .					<b>15</b>	
16 Tax on long-term gain included on line 23 below. (Enter same amount in cols. f and g) . . . . .					<b>16</b>	
17 Net long-term capital gain or (loss). Line 15 minus line 16. Enter this amount here and on Form N-35, Schedule K, line 4e or line 6. . . . .					<b>17</b>	

**PART III — Built-in Gains Tax (See Instructions before completing this part.)**

18 Excess of recognized built-in gains over recognized built-in losses. (see Instructions and attach computation schedule) . . . . .	<b>18</b>	
19 Taxable income. (see Instructions and attach computation schedule) . . . . .	<b>19</b>	
20 Net recognized built-in gain—Enter smaller of line 18 or line 19. (see Instructions) . . . . .	<b>20</b>	
21 IRC section 1374(b)(2) deduction. . . . .	<b>21</b>	
22 Subtract line 21 from line 20. (If zero or less, enter zero here and on line 23) . . . . .	<b>22</b>	
23 Enter 6.4% of line 22. Enter here and on Form N-35, page 1, line 22b. . . . .	<b>23</b>	

**Purpose of Schedule**

Schedule D (Form N-35) is used by S corporations to report sales or exchanges of capital assets and gains on distributions to shareholders of appreciated assets that are capital assets (hereafter referred to as distributions). In addition, this schedule is intended to partition the "flow-through" of an S corporation's net capital gain to its shareholders and to attribute the gain applicable to Hawaii sources. It will directly assist the shareholders of

the corporation in properly reporting such gains for the period.

Generally, if the corporation has net recognized built-in gain as defined in section 1374(d)(2) on assets attributable to Hawaii, it is liable for the built-in gains tax. Assets are attributable to Hawaii if they are physically located in Hawaii, are used in a Hawaii business, or if, in the case of intangible assets, the S corporation has its commercial domicile in Hawaii. The tax is figured in Part III of Schedule D.

Sales, exchanges, and distributions of property other than capital assets, including property used in a trade or business, involuntary conversions (other than casualties or thefts), and gain from the disposition of an interest in oil, gas, or geothermal property should be reported on Schedule D-1, Sales of Business Property, see the instructions for Schedule D-1. If property is involuntarily converted because of a casualty or theft, use federal Form 4684, Casualties and Thefts.

## INSTRUCTIONS

Section references are to the Internal Revenue Code, unless otherwise noted.

**NOTE: The special federal election for capital assets acquired in tax years beginning before January 1, 2001 (election under section 311 of the Taxpayer Relief Act of 1997) was not available for Hawaii tax purposes.**

### Capital Asset

Each item of property the corporation held (whether or not connected with its trade or business) is a capital asset **except**:

- Stock in trade or other property included in inventory or held mainly for sale to customers.
- Accounts or notes receivable acquired in the ordinary course of the trade or business for services rendered or from the sale of stock in trade or other property held mainly for sale to customers.
- Depreciable or real property used in the trade or business.
- Certain copyrights, literary, musical, or artistic compositions; letters or memorandums; or similar property. See section 1221(3).
- U.S. Government publications, including the Congressional Record, that the corporation received from the Government, other than by purchase at the normal sales price, or that the corporation got from another taxpayer who had received it in a similar way, if the corporation's basis is determined by reference to the previous owner.
- Certain commodities derivative financial instruments held by a dealer. See section 1221(a)(6).
- Certain hedging transactions entered into in the normal course of the trade or business. See section 1221(a)(7).
- Supplies regularly used in the trade or business.

## Parts I and II

Generally, report sales and exchanges (including like-kind exchanges) even if there is no gain or loss. In Part I, report the sale, exchange, or distribution of capital assets held one year or less. In Part II, report the sale, exchange, or distribution of capital assets held more than 1 year. Use the trade dates for the dates of acquisition and sale of stocks and bonds on an exchange or over-the-counter market.

For more information, see federal Publication 544, Sales and Other Dispositions of Assets, and federal Publication 589, Tax Information on S Corporations.

**Exchange of like-kind property.**—Complete and attach federal Form 8824, Like-Kind Exchanges, to the corporation's return for each exchange. Also, report the exchange of like-kind property on Schedule D or on Schedule D-1, whichever applies. Report it even if no gain or loss is recognized when business or investment property is exchanged for property of like-kind. For exceptions, see federal Publication 544.

Enter the gain or loss from federal Form 8824 in column (f) and in column (g) if the property traded was Hawaii property. Write in the top margin of Schedule D "Like-Kind Exchange" or if the exchange involved a related party, write "Related Party Like-Kind Exchange."

### Special Rules for the Treatment of Certain Gains and Losses

All income earned and proceeds derived from stock options or stock, including stock issued through the exercise of stock options or warrants, from a qualified high technology business or from a

holding company of a qualified high technology business by an employee, officer or director of the qualified high technology business, or investor who qualifies for the high technology business investment tax credit is excluded from income. Sales of this stock should be reported on line 1 or line 8, as appropriate. Total capital gains are then reduced by the qualifying capital gains on line 4 or line 12. Capital losses on the sale of this stock do not need to be added back to income.

**Lines 5 and 14 - Section 235-7(a)(13), HRS, Short-Term and Long-Term Capital Gain Exemption**—For tax years beginning after 2007 and ending before 2013, the gain realized by a fee simple owner from the sale of a leased fee interest in units within a condominium project, cooperative project, or planned unit development to the association of owners under chapter 514A or 514B, HRS, or the residential cooperative corporation of the leasehold units is exempt from Hawaii income taxation.

Use lines 5 and 14 to reduce the corporation's capital gain for these amounts reported on other lines of Schedule D.

For purposes of this exemption, "fee simple owner" means the person who owns the fee simple title to the land which is leased, including a life tenant with a remainder over, vested or contingent, and a holder of a defeasible estate, and the holder's heirs, successors, legal representatives, and assigns. "Leased fee interest" means all of the interests of the fee owner, lessor, and all legal and equitable owners of the land which is leased, other than the lessee's interest as defined by chapter 516, HRS. "Legal and equitable owners" means the fee simple owner and all persons having legal or equitable interests in the fee or in the lessor's leasehold estate, including mortgagees, developers, lienors, and sublessors, and their respective heirs, successors, legal representatives, and assigns. "Condominium project" means a real estate condominium project; a plan or project whereby a condominium of two or more units located within the condominium property regime have been sold or leased or are offered or proposed to be offered for sale or lease. "Cooperative project" means a real estate cooperative housing corporation project; a plan or project whereby two or more apartments located in a building owned by a cooperative housing corporation have been leased or are offered or proposed to be offered to be leased.

See the instructions for federal Schedule D (Form 1120S) for a discussion of special rules for the treatment of certain other gains and losses.

### How to Determine the Cost or Other Basis of the Property

In determining gain or loss, the basis of property is generally its cost (see section 1012 and related regulations). Special rules for determining basis are provided in sections in subchapters C, K, O, and P of the Code. These rules may apply to the corporation on the receipt of certain distributions with respect to stock (section 301), liquidation of another corporation (section 334), transfer to another corporation (section 358), transfer from a shareholder or reorganization (section 362), bequest (section 1014), contribution or gift (section 1015), tax-free exchange (section 1031), involuntary conversion (section 1033), certain asset acquisitions (section 1060), or wash sale of stock (section 1091). Attach an explanation if you use a basis other than actual cash cost of the property.

If the corporation is allowed a charitable contribution deduction because it sold property to a char-

itable organization, figure the adjusted basis for determining gain from the sale by dividing the amount realized by the fair market value and multiplying that result by the adjusted basis.

See section 852(f) for the treatment of certain load charges incurred in acquiring stock in a mutual fund with a reinvestment right.

Before making an entry in column (e), increase the cost or other basis by any expense of sale, such as broker's fees, commissions, option premiums, and state and local transfer taxes.

## Part III—Built-In Gains Tax

Section 1374 provides for a tax on built-in gains without regard to when S corporation status was elected, if the corporation acquired an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation.

### Transitional Relief from Built-In Gains Tax

See the instructions for federal Schedule D (Form 1120S) for a discussion of special transitional relief from the built-in gains tax for qualified corporations.

**Line 18**—Enter the amount that would be the taxable income of the corporation for the tax year if only recognized built-in gains (including any carryover of gain under section 1374(d)(2)(B)) attributable to Hawaii and recognized built-in losses attributable to Hawaii were taken into account.

See the instructions for federal Schedule D (Form 1120S) for definitions of recognized built-in gain and recognized built-in loss.

A qualified corporation must show on an attachment to Schedule D its total net recognized built-in gain attributable to Hawaii and also list separately the gain or loss attributable to Hawaii that is: (1) gain or loss from capital assets held 6 months or less and (2) gain or loss from assets for which the disposition results in ordinary income or loss. A nonqualified corporation must show on an attachment its total net recognized built-in gain attributable to Hawaii and list separately any capital gain or loss and ordinary gain or loss.

**Line 19**—Figure taxable income by completing lines 1 through 10 and 1 through 12 of Schedule J of Form N-30, Hawaii Corporation Income Tax Return. Enter the amount from Schedule J, line 12 that is attributable to Hawaii on line 19 of Schedule D. Attach to Schedule D the Form N-30 computation or other worksheet used to figure taxable income.

**Line 20**—Do not enter on line 20 more than the excess (if any) of the net unrealized built-in gain attributable to Hawaii over the net recognized built-in gain attributable to Hawaii for prior years. This is the amount that should have been entered in item 11 on Form N-35, page 2. See section 1374(c)(2). If, for any tax year, the amount on line 18 exceeds the taxable income on line 19, the excess is treated as a recognized built-in gain attributable to Hawaii in the succeeding tax year. This carryover provision applies only in the case of an S corporation that made its election to be an S corporation on or after March 31, 1988. See section 1374(d)(2)(B).

**Line 21**—Enter the section 1374(b)(2) deduction. Generally, this is any net operating loss carryforward attributable to Hawaii or capital loss carryforward (to the extent of net capital gain included in recognized built-in gain for the tax year) attributable to Hawaii arising in tax years for which the corporation was a C corporation. For details, see section 1374(b)(2).