

# From Loss to Gain

*Managing Investment Gains and Losses for Trusts  
and Guardianships*

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# First, a Basic Primer on Investment Gains and Losses

# Understanding Unrealized / Realized

- Unrealized – Gains or losses of an asset that has not yet been sold
- Realized – Gains or losses of an asset that has been liquidated



# Short Term Gains

- Any gains from a sale of an asset, if the asset was held for one year or less
- These gains are considered as ordinary income by the IRS and are taxed as such



# Short Term Capital Gains - Ordinary Income Tax Rates

## Marginal tax brackets for tax year 2023, single individuals

The table shows the income brackets for single individuals for the 2023 tax year.

<b>Taxable income</b>	<b>Taxes owed</b>
\$11,000 or less	10% of the taxable income
\$11,001 to \$44,725	\$1,100 plus 12% of amount over \$11,000
\$44,726 to \$95,375	\$5,147 plus 22% of amount over \$44,725
\$95,376 to \$182,100	\$16,290 plus 24% of amount over \$95,375
\$182,101 to \$231,250	\$37,104 plus 32% of amount over \$182,100
\$231,251 to \$578,125	\$52,832 plus 35% of amount over \$231,250
\$578,126 or more	\$174,238.25 plus 37% of amount over \$578,125

# Short Term Capital Gains - Ordinary Income Tax Rates

## Marginal tax brackets for tax year 2023, married filing jointly

The table shows the income brackets for married couples filing jointly for the 2023 tax year.

Taxable income	Taxes owed
\$22,000 or less	10% of the taxable income
\$22,001 to \$89,450	\$2,200 plus 12% of amount over \$22,000
\$89,451 to \$190,750	\$10,294 plus 22% of amount over \$89,450
\$190,751 to \$364,200	\$32,580 plus 24% of amount over \$190,750
\$364,201 to \$462,500	\$74,208 plus 32% of amount over \$364,200
\$462,501 to \$693,750	\$105,664 plus 35% of amount over \$462,500
\$693,751 or more	\$186,601.50 plus 37% of amount over \$693,750

# Long Term Capital Gains

- Any gains from a sale of an asset, if the asset was held for one year and one day, or longer
- These gains are considered investment income and are taxed at the capital gains tax rate



# Long Term Capital Gains 2023

Long-term capital gains rate	Taxable income
Single filers	
0%	\$0 to \$44,625
15%	\$44,626 to \$492,300
20%	\$492,301 or higher
Married filing jointly	
0%	\$0 to \$89,250
15%	\$89,251 to \$553,850
20%	\$553,851 or higher



# Net Investment Income Tax

- Also Known as the “Medicare Tax”
- Additional 3.8% taxed on Net Investment Income, if income is equal to or over

Single	\$200,000
Married filing jointly	\$250,000
Married filing separately	\$125,000
Trust and Estates	\$14,450

# How Gains and Losses Offset

- Short Term Gains + Short Term Losses = Net Short Term Gains/Losses
- Long Term Gains + Long Term Losses = Net Long Term Gains/Losses

$$\begin{array}{c} \text{Net Short Term Gain/Loss} \\ + \\ \text{Net Long Term Gain/Loss} \\ \hline \text{Net Gain/Loss} \end{array}$$

# Realized Losses

- Short Term Losses
  - Ordinary Income
    - Losses may be used to offset income, but only up to \$3,000 per year.
- Long Term Losses
  - Investment Income
    - Losses may be used to offset realized gains (no limit). May be carried forward indefinitely.



# Why This Matters!

- Guardianships
  - For single filers, if income is under the threshold \$44,625 any long term realized gains are taxed at 0%
  - For joint filers, if income is under the threshold \$89,250 any long term realized gains are taxed at 0%
- Revocable Trusts (grantor trusts)
  - Grantor trusts are normally taxed at the grantor level, so the fiduciary may need to be cautious with how ordinary income is taxed
- Irrevocable Trusts
  - Irrevocable Trusts are normally taxed at the trust level, which have extremely compressed tax brackets

# Single Tax Bracket vs Trust Tax Bracket, 2023

Taxable Income Between	Single Filer Tax Bracket	Trust Tax Bracket
0 to \$2,900	10%	10%
\$2,901 to \$10,550	10%	24%
\$10,551 to \$11,000	10%	35%
\$11,001 to \$14,450	12%	35%
\$14,451 to \$44,725	12%	37%
\$44,726 to \$95,375	22%	37%
\$95,376 to \$182,100	24%	37%
\$182,101 to \$231,250	32%	37%
\$231,251 to \$578,125	35%	37%
Over \$578,125	37%	37%

# Married Tax Bracket vs Trust Tax Bracket, 2023

Taxable Income Between	Married Filed Jointly Tax Bracket	Trust Tax Bracket
0 to \$2,900	10%	10%
\$2,900 to \$10,550	10%	24%
\$10,551 to \$14,450	10%	35%
\$14,451 to \$20,550	10%	37%
\$20,551 to \$89,450	12%	37%
\$89,451 to \$190,750	22%	37%
\$190,751 to \$364,200	24%	37%
\$364,201 to \$462,500	32%	37%
\$462,501 to \$693,750	35%	37%
Over \$693,750	37%	37%

# Tax Loss Harvesting

Managing Gains and Losses

# What is Tax Loss Harvesting

If the IRS lets us offset gains with losses, and lets us carry forward losses, then maybe...

**We should harvest losses!**

Which means selling currently invested assets that are in a loss position, in order to realize losses. Then utilizing those losses against future realized gains in order to reduce capital gains (and corresponding taxes).





# What is Tax Loss Harvesting

However in some cases, we don't want to liquidate the positions we're invested in. **So what can we do?**

What if we sold out of a current position, and then bought it back?

## Sell

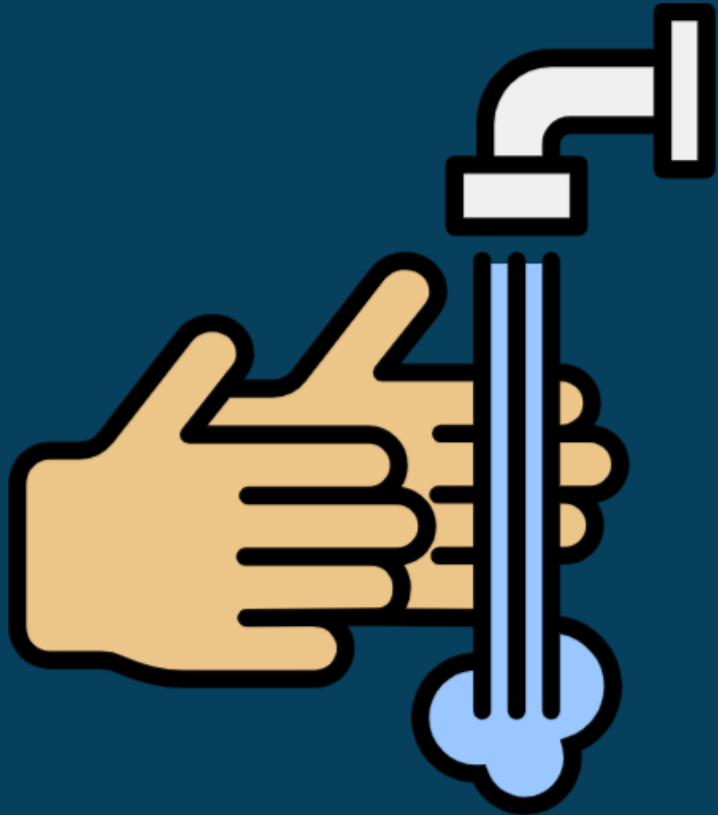


## Buy Back



Why would you invest in a gas station that loses money to save on taxes?

Because it's self-serving.



**Wash Sale**  
**Wait 31**  
**days**



Sell



Wait 31  
days

Buy



or

Sell



Buy



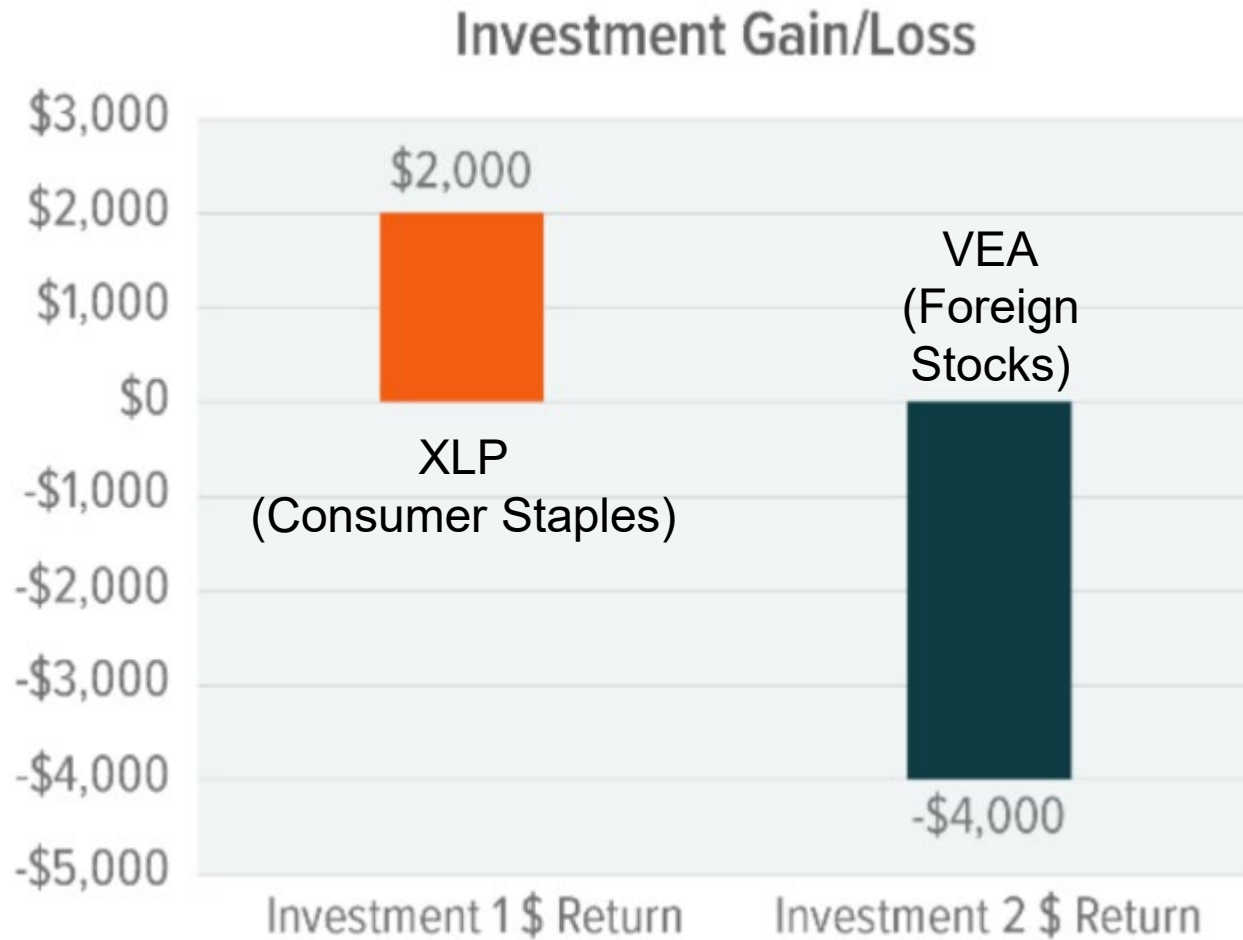
## How does this work in practice?

With ETFs or Mutual Funds, portfolios can sell and then buy a “substantially identical” investment

Usually this means finding similar funds that use a different underlying index



## Hypothetical Scenario (need to generate cash)



Sell XLP  
(Consumer Staples)

Sell VEA  
(Foreign Stocks)

Buy SCHF  
(Foreign Stocks,  
different index)

### Total "Net Loss"



## Pros of Tax Loss Harvesting

Losses can be used to offset future realized gains and a small amount of income each year (up to \$3,000)

Can substantially reduce the overall tax bill of the portfolio

Can extend the life of a trust or person under guardianship's assets by reducing the amount needed by the trust to pay for taxes



## Watch out for:

- Robo Advisors. These are automated services that may provide tax loss harvesting but will buy and sell according to the program's parameters
- Optics with court accountings. Can it be construed by the court as “churning”?
- Possible discrepancies between carry value and cost basis





# Practice Takeaways

# Takeaways For Guardians

- Communicate with the advisor information that will help them efficiently realize gains
  - Single vs Married (tax filing status)
  - Income for the year (including social security, SSDI, etc)
  - Estimated tax bracket
  - Estimates on expenses
    - How much of the portfolio is needed to cover shortfall (and may require realizing gains)?
    - Which expenses are deductible?



# Takeaways For Trustees

- Do you allocate trust gains towards principal or income?
  - Capital gains, whether long or short term, are generally excluded from distributable net income (DNI) to the extent they are allocated to the corpus and not:
    - Paid, credited, or required to be distributed to any beneficiary during the tax year
    - Or paid, permanently set aside, or to be used for a charitable purpose

IRS Reg Code: Reg. § 1.643(a)-3



# Takeaways For Trustees

- Losses from the sale or exchange of capital assets are first netted at the trust level against any capital gains, except for capital gains utilized by the fiduciary in determining the amount to be distributed to a particular beneficiary
- Losses cannot be passed through to beneficiaries except for year the trust is terminated.

Reg. §1.643(a)-3(d)



# Takeaways For Trustees

- Capital gains are included in DNI if they are
  - Allocated to income
  - Allocated to corpus but consistently treated by the fiduciary as part of distribution to a beneficiary
  - Allocated to corpus but actually distributed to beneficiary or used by the fiduciary in determining the amount that is distributed or required to be distributed to the beneficiary



# Takeaways For Trustees

- For Trusts, ask some of the following questions:
  - Is it a grantor or non-grantor trust. How are capital gains taxed?
  - Does the trust give you authority to distribute principal as income? If so, how much?
  - Are there expenses on the trust level that can offset realized gains?
  - Are there expenses at the beneficiary level that could help offset the income distribution?
    - Meaning, does the fiduciary have flexibility to shift the income from the realized gain to the beneficiary, who may have their own expenses to help offset the tax impact



# Takeaways for the Fiduciary

## GIGO

- How accurate is your cost basis?
- Is cost basis older than 2013?
- How were stock certificates handled (book vs physical copy)



# Phantom Gains with Mutual Funds

- Beware phantom realized gains with mutual funds!
- Mutual funds are required to distribute any realized gains to their shareholders. These can result in some surprises (especially because they occur at the end of the year)!

AMERICAN CENTURY INVESTMENTS EQTY GROWTH I LONG TERM GAIN DISTRIBUTION PAID 12/21/2021 AND RECORD DATE 12/20/2021	AMEIX	\$ 271,851.64
AMERICAN CENTURY INVESTMENTS EQTY GROWTH I SHORT TERM CAPITAL GAINS PAID 12/21/2021 AND RECORD DATE 12/20/2021	AMEIX	\$ 181,179.17





# N.C. Gen. Stat. §35A-1251

In the case of an incompetent ward, a general guardian or guardian of the estate has the power to perform in a reasonable and prudent manner every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the ward's estate to accomplish the desired result of administering the ward's estate legally and in the ward's best interest, including but not limited to the following specific powers:

- **(16)** To acquire and retain every kind of property and every kind of investment, including specifically, but without in any way limiting the generality of the foregoing, bonds, debentures, and other corporate or governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan associations; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended.



# Strategies in dealing with Mutual Funds

- Are there ways to eliminate mutual funds in an account without substantial tax hits?
  - Convert from Mutual Fund to ETF?
    - Depends if investment company offers both Mutual Funds and ETFs
  - Tax Loss Harvesting?
    - Is there a way to offset the gain if liquidating the mutual fund?
  - Sell some or all of the fund after capital gain distributions were completed
    - After a fund distributes realized gains, they will have a lower NAV (net asset value) price. Selling out a mutual fund when the price is lower will reduce the realized gain



# Coordinate with your Experts

- Work with both the investment advisor and CPA to create a schedule to realize gains/losses cost effectively.
  - Strategies might include
    - Selling Specific Lots
    - Timing when to Realize Gains
    - Realizing losses to offset sale of real property
- Investment Advisor should also take into account the impact that sells will have on overall portfolio allocation and risk exposure

# Other Ways to avoid Gains

- Step up in Basis
  - Applies to individuals
  - Applies to Revocable Trusts
  - Does not apply to irrevocable trusts (no step up when grantor dies)
- Joint Titling to gain potential step up at death?
  - Adams Howell example, pros and cons of moving assets into a joint account

## Case Study

# Irene Valencias

- Fiduciary finds old stock certificates



ABT

74217

AUTHORIZED OFFICER

RE  
DO  
ES

Purchased 10/13/1983

Split

5/30/1986 2:1

Split

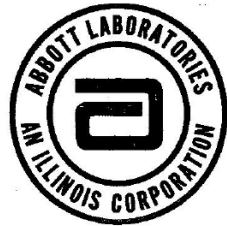
5/31/1990 2:1

Split

5/29/1992 2:1

Split

5/29/1998 2:1



INCORPORATED UNDER THE LAWS OF THE STATE OF ILLINOIS

# ABBOTT LABORATORIES

THIS CERTIFICATE IS TRANSFERABLE IN THE CITY OF NEW YORK OR IN BOSTON

SHARES  
#563\*

COMMON STOCK

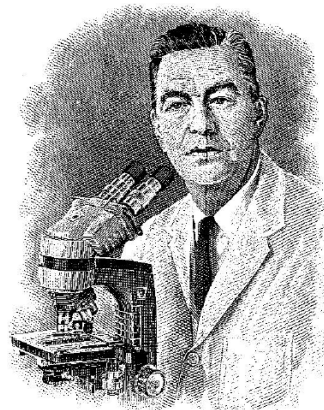
SEE REVERSE FOR CERTAIN DEFINITIONS

CUSIP 002824 10 0

*This certifies that*

174217 4730 046-6962 2604

*is the owner of*



#563\*\*\*\*\*  
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#FIVE HUNDRED SIXTY THREE\*

*full-paid and non-assessable common shares without par value of Abbott Laboratories, transferable on the books of the Corporation in person or by duly authorized attorney, upon surrender of this certificate properly endorsed. This certificate and the shares represented hereby are issued subject to all of the provisions of the Articles of Incorporation and amendments thereto to all of which the holder by acceptance hereof assents. This certificate is not valid unless countersigned by the Transfer Agent and registered by the Registrar. Witness the corporate seal and the signatures of the duly authorized officers. Dated OCT 13 1983*

*Lawrence D. Lee*

SECRETARY

*R. A. Schollhorn*

CHAIRMAN OF THE BOARD

# Questions to ask

Were there splits?

Were there spinoffs?

What's the cost basis?

Book entry or physical certificate?

Was there a step up in basis?

What would be an appropriate schedule to realize gains if Irene needs cash?



For Healthcare  
Professionals

The Abbvie logo, consisting of the word "abbvie" in a white, lowercase, sans-serif font on a dark blue rectangular background.

# Case Study

# Valerie Packer

- Fiduciary inherits an account with mostly mutual funds

## Investment Detail — Mutual Funds

Bond Funds	Quantity	Market Price	Market Value	% of Account Assets	Average Cost Basis	Cost Basis	Unrealized Gain or (Loss)
<b>INCOME FUND<sup>(M)</sup></b> SYMBOL: YYXXX	7,000.0000	73.1451	512,015.95	15%	42.95	300,650.00	211,365.95
<b>Total Bond Funds</b>			<b>512,015.95</b>	<b>15%</b>		<b>300,650.00</b>	<b>211,365.95</b>
Equity Funds	Quantity	Market Price	Market Value	% of Account Assets	Average Cost Basis	Cost Basis	Unrealized Gain or (Loss)
<b>TWENTY-FIRST FUND<sup>(M)</sup></b> SYMBOL: YTENW	4,600.0000	93.3336	429,334.74	13%	79.87	367,402.00	61,932.74
<b>Total Equity Funds</b>			<b>429,334.74</b>	<b>13%</b>		<b>367,402.00</b>	<b>61,932.74</b>
<b>Total Mutual Funds</b>			<b>941,350.69</b>	<b>28%</b>		<b>668,052.00</b>	<b>273,298.69</b>

Recommendations to buy, sell or continue to hold any investment or investment type.



# Questions to ask

- Which funds have historically generated capital gain distributions?
- What has been the historical distribution (% of share, dollar amount)?
- Would selling the fund create a large realized gain?
- If unable to sell the fund, is it in the lowest cost share class (institutional share class)?



# Q&A

# Thank You!

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