STATE OF DELAWARE

DEPARTMENT OF FINANCE

DIVISION OF REVENUE
INFORMATION CIRCULAR 75-4

December 15, 1975

SUBJECT: Computation of Capital Gains and Losses where Husband and Wife File Joint Federal Returns and elect to File Separate or Combined Separate State Returns.

Under Section 1211 (b) (2) of the Internal Revenue Code if a husband and wife file separate returns, a maximum of $500 ordinary income may be offset by long-term capital losses on each return.

It is the position of the Division of Revenue that where taxpayers file a joint Federal return and elect to file separate Delaware returns, their income and deductions should be computed as if they had filed separate Federal returns.

Example:

Taxpayers file joint Federal return in which the husband reports a long-term capital gain of $4,000 and the wife a long-term capital loss of $2,000. On the joint Federal return the $2,000 loss offsets the $4,000 gain and the net gain of $2,000 is reduced by 50%, to show a $1,000 taxable gain. Under Delaware law if the taxpayers elect to file separate returns or combined separate returns the gain and loss would be computed as follows:

	Wife	Husband
Net long-term Capital Gain or (Loss)	$(2,000)	$4,000
Husband's State Return		4,000
Wife's State Return Apply $1,000 to offset ordinary income	-1,000	
Capital Loss Carry-over to Next Year	$(1,000)	

The loss is applied $2.00 for each $1.00 in the current year and therefore $1,000 would be used by wife to claim the $500 offset against her ordinary income.

On his State return the husband would be taxable on the entire $4,000 long-term gain, since the Section 1202 deduction of $2,000 that would have been allowable on his separate Federal return must be added back under Delaware law.

For the Director of Revenue,

Robert R. Smyers
Deputy Director

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