New Generation Cooperative Investment
Gain or Loss on Disposal
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It is becoming increasingly common for producers to have investments in new generation cooperatives. Questions are beginning to surface regarding the tax treatment of gain or loss if a producer was to sell some or all of their investment in a new generation cooperative.

Some people have suggested that if there is a requirement that investors have to be producers at risk – then any gain or loss on disposal of the investment should be reported as a Section 1231 ordinary gain or loss (not Section 1221 capital gain or loss). Section 1221 provides for long-term capital gain or loss treatment.

Dr. Neil Harl, a noted ag economist and attorney, indicates in an Ag Decision Maker article that cooperative stock does not fall within the definition of ‘property used in a trade or business’.

Code Section 1231 provides “The term ‘property used in the trade or business’ means property used in trade or business, of a character which is subject to the allowance of depreciation provided in section 167, held for more than 1 year, and real property used in the trade or business, held for more than 1 year ….”

Further, Harl reminds us the IRS Code provides that all assets are considered to be capital assets other than for specific exceptions. The exceptions are:

1. inventory property
2. property held by the taxpayer primarily for sale to customers in the ordinary course of a trade or business,
3. depreciable property used in the trade or business,
4. real property used in the trade or business,
5. copyrights and compositions, and

Given cooperative stock does not appear to fall within any of the above exceptions, gain or loss from the disposal of stock in new generation cooperatives should qualify for Section 1221 capital gain or loss treatment.

Dr. Harl’s article can be read online at: http://www.extension.iastate.edu/AgDM/articles/harl/HarlFeb02.htm