short-term capital gain). **The convoluted language in § 1212(b) provides that, when a taxpayer has both a net long-term capital loss and net short-term capital loss in the realization year, the carryover loss is deemed to come *first* from the net long-term pot (to the extent thereof) and, if necessary, from the net short-term pot.** Thus, the first $1,000 of Lindsey's $5,000 carryover loss is treated as long-term capital loss in Year 2 (equal to her $1,000 net long-term capital loss in Year 1), with the remaining $4,000 treated as a short-term capital loss in Year 2. In other words, Lindsey would treat $1,000 of long-term capital loss as arising in Year 2, would treat $4,000 of short-term capital loss as arising in Year 2, and would again apply §§ 1211(b) to determine how much of these Year-2 losses (in addition to any other capital losses actually realized in Year 2) could be deducted.

Problem

Jacob earns $100,000 in wages each year. In addition, he realizes and recognizes the capital gains and losses listed below in each year. Each of the realized and recognized capital losses are otherwise deductible under § 165(c). Describe how §§ 1211(b) and 1212(b) apply to Jacob in each year.

	long-term cap gain	long-term cap loss	short-term cap gain	short-term cap loss
Year 1	$5,000	$0	$2,000	$10,000
Year 2	0	6,000	3,000	2,000
Year 3	4,000	5,000	1,000	5,000

B. Net capital gain

If capital gains exceed capital losses for the year, the taxpayer has a chance (though not the certainty) of having preferentially taxed "net capital gain." The extent of the tax preference for net capital gain has varied widely over time, as shown in the chart below.[3]

As illustrated above, there was no preference before 1922 and between 1987 and 1990. In the

[3] The chart is from Roberton Williams, *Tax Rates on Capital Gains*, 124 TAX NOTES 251 (2012). Reprinted with permission of Tax Analysts.