

of encumbrances subject to which the property was transferred). To illustrate, if in obedience to an order of the Securities and Exchange Commission the X Corporation, a registered holding company, transfers property to the Y Corporation in exchange for property (not nonexempt property) with a fair market value of \$500,000, the X Corporation receives \$100,000 of nonexempt property, if for example—

(i) The Y Corporation cancels \$100,000 of indebtedness owed to it by the X Corporation;

(ii) The Y Corporation assumes an indebtedness of \$100,000 owed by the X Corporation to another company, the A Corporation; or

(iii) The Y Corporation takes over the property conveyed to it by the X Corporation subject to a mortgage of \$100,000.

(2) Short-term obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace.

(3) Securities issued or guaranteed as to principal or interest by a government or subdivision thereof (including those issued by a corporation which is an instrumentality of a government or subdivision thereof).

(4) Stock or securities which were acquired from a registered holding company which acquired such stock or securities after February 28, 1938, or an associate company of a registered holding company which acquired such stock or securities after February 28, 1938, unless such stock or securities were acquired in obedience to an order of the Securities and Exchange Commission (as defined in section 1083 (a)) or were acquired with the authorization or approval of the Securities and Exchange Commission under any section of the Public Utility Holding Company Act of 1935, and are not nonexempt property within the meaning of section 1083(e) (1), (2), or (3).

(5) Money, and the right to receive money not evidenced by a security other than an obligation described as nonexempt property in section 1083 (e) (2) or (3). The term *the right to receive money* includes, among other items, ac-

counts receivable, claims for damages, and rights to refunds of taxes.

(f) *Stock or securities*. The term *stock or securities* is defined in section 1083(f) for the purposes of part VI (section 1081 and following), subchapter O, chapter 1 of the Code. As therein defined, the term includes voting trust certificates and stock rights or warrants.

#### WASH SALES OF STOCK OR SECURITIES

##### § 1.1091-1 Losses from wash sales of stock or securities.

(a) A taxpayer cannot deduct any loss claimed to have been sustained from the sale or other disposition of stock or securities if, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date (referred to in this section as the 61-day period), he has acquired (by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities. However, this prohibition does not apply (1) in the case of a taxpayer, not a corporation, if the sale or other disposition of stock or securities is made in connection with the taxpayer's trade or business, or (2) in the case of a corporation, a dealer in stock or securities, if the sale or other disposition of stock or securities is made in the ordinary course of its business as such dealer.

(b) Where more than one loss is claimed to have been sustained within the taxable year from the sale or other disposition of stock or securities, the provisions of this section shall be applied to the losses in the order in which the stock or securities the disposition of which resulted in the respective losses were disposed of (beginning with the earliest disposition). If the order of disposition of stock or securities disposed of at a loss on the same day cannot be determined, the stock or securities will be considered to have been disposed of in the order in which they were originally acquired (beginning with the earliest acquisition).

(c) Where the amount of stock or securities acquired within the 61-day period is less than the amount of stock or securities sold or otherwise disposed of,

then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be those with which the stock or securities acquired are matched in accordance with the following rule: The stock or securities acquired will be matched in accordance with the order of their acquisition (beginning with the earliest acquisition) with an equal number of the shares of stock or securities sold or otherwise disposed of.

(d) Where the amount of stock or securities acquired within the 61-day period is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which resulted in the nondeductibility of the loss shall be those with which the stock or securities disposed of are matched in accordance with the following rule: The stock or securities sold or otherwise disposed of will be matched with an equal number of the shares of stock or securities acquired in accordance with the order of acquisition (beginning with the earliest acquisition) of the stock or securities acquired.

(e) The acquisition of any share of stock or any security which results in the nondeductibility of a loss under the provisions of this section shall be disregarded in determining the deductibility of any other loss.

(f) The word *acquired* as used in this section means acquired by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law, and comprehends cases where the taxpayer has entered into a contract or option within the 61-day period to acquire by purchase or by such an exchange.

(g) For purposes of determining under this section the 61-day period applicable to a short sale of stock or securities, the principles of paragraph (a) of § 1.1233-1 for determining the consummation of a short sale shall generally apply except that the date of entering into the short sale shall be deemed to be the date of sale if, on the date of entering into the short sale, the taxpayer owns (or on or before such date has entered into a contract or option to acquire) stock or securities

identical to those sold short and subsequently delivers such stock or securities to close the short sale.

(h) The following examples illustrate the application of this section:

*Example 1.* A, whose taxable year is the calendar year, on December 1, 1954, purchased 100 shares of common stock in the M Company for \$10,000 and on December 15, 1954, purchased 100 additional shares for \$9,000. On January 3, 1955, he sold the 100 shares purchased on December 1, 1954, for \$9,000. Because of the provisions of section 1091, no loss from the sale is allowable as a deduction.

*Example 2.* A, whose taxable year is the calendar year, on September 21, 1954, purchased 100 shares of the common stock of the M Company for \$5,000. On December 21, 1954, he purchased 50 shares of substantially identical stock for \$2,750, and on December 27, 1954, he purchased 25 additional shares of such stock for \$1,125. On January 3, 1955, he sold for \$4,000 the 100 shares purchased on September 21, 1954. There is an indicated loss of \$1,000 on the sale of the 100 shares. Since, within the 61-day period, A purchased 75 shares of substantially identical stock, the loss on the sale of 75 of the shares (\$3,750-\$3,000, or \$750) is not allowable as a deduction because of the provisions of section 1091. The loss on the sale of the remaining 25 shares (\$1,250-\$1,000, or \$250) is deductible subject to the limitations provided in sections 267 and 1211. The basis of the 50 shares purchased December 21, 1954, the acquisition of which resulted in the nondeductibility of the loss (\$500) sustained on 50 of the 100 shares sold on January 3, 1955, is \$2,500 (the cost of 50 of the shares sold on January 3, 1955) + \$750 (the difference between the purchase price (\$2,750) of the 50 shares acquired on December 21, 1954, and the selling price (\$2,000) of 50 of the shares sold on January 3, 1955), or \$3,250. Similarly, the basis of the 25 shares purchased on December 27, 1954, the acquisition of which resulted in the nondeductibility of the loss (\$250) sustained on 25 of the shares sold on January 3, 1955, is \$1,250+\$125, or \$1,375. See § 1.1091-2.

*Example 3.* A, whose taxable year is the calendar year, on September 15, 1954, purchased 100 shares of the stock of the M Company for \$5,000. He sold these shares on February 1, 1956, for \$4,000. On each of the four days from February 15, 1956, to February 18, 1956, inclusive, he purchased 50 shares of substantially identical stock for \$2,000. There is an indicated loss of \$1,000 from the sale of the 100 shares on February 1, 1956, but, since within the 61-day period A purchased not less than 100 shares of substantially identical stock, the loss is not deductible. The particular shares of stock the purchase of which resulted in the nondeductibility of the loss are

the first 100 shares purchased within such period, that is, the 50 shares purchased on February 15, 1956, and the 50 shares purchased on February 16, 1956. In determining the period for which the 50 shares purchased on February 15, 1956, and the 50 shares purchased on February 16, 1956, were held, there is to be included the period for which the 100 shares purchased on September 15, 1954, and sold on February 1, 1956, were held.

[T.D. 6500, 25 FR 11910, Nov. 26, 1960, as amended by T.D. 6926, 32 FR 11468, Aug. 9, 1967]

**§ 1.1091-2 Basis of stock or securities acquired in "wash sales".**

(a) *In general.* The application of section 1091(d) may be illustrated by the following examples:

*Example 1.* A purchased a share of common stock of the X Corporation for \$100 in 1935, which he sold January 15, 1955, for \$80. On February 1, 1955, he purchased a share of common stock of the same corporation for \$90. No loss from the sale is recognized under section 1091. The basis of the new share is \$110; that is, the basis of the old share (\$100) increased by \$10, the excess of the price at which the new share was acquired (\$90) over the price at which the old share was sold (\$80).

*Example 2.* A purchased a share of common stock of the Y Corporation for \$100 in 1935, which he sold January 15, 1955, for \$80. On February 1, 1955, he purchased a share of common stock of the same corporation for \$70. No loss from the sale is recognized under section 1091. The basis of the new share is \$90; that is, the basis of the old share (\$100) decreased by \$10, the excess of the price at which the old share was sold (\$80) over the price at which the new share was acquired (\$70).

(b) *Special rule.* For a special rule as to the adjustment to basis required under section 1091(d) in the case of wash sales involving certain regulated investment company stock for which there is an average basis, see paragraph (e)(3)(iii) (c) and (d) of § 1.1012-1.

[T.D. 6500, 25 FR 11910, Nov. 26, 1960, as amended by T.D. 7129, 36 FR 12738, July 7, 1971]

**§ 1.1092(b)-1T Coordination of loss deferral rules and wash sale rules (temporary).**

(a) *In general.* Except as otherwise provided, in the case of the disposition of a position or positions of a straddle, the rules of paragraph (a)(1) of this sec-

tion apply before the application of the rules of paragraph (a)(2) of this section.

(1) Any loss sustained from the disposition of shares of stock or securities that constitute positions of a straddle shall not be taken into account for purposes of this subtitle if, within a period beginning 30 days before the date of such disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange on which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities.

(2) Except as otherwise provided, if a taxpayer disposes of less than all of the positions of a straddle, any loss sustained with respect to the disposition of that position or positions (hereinafter referred to as *loss position*) shall not be taken into account for purposes of this subtitle to the extent that the amount of unrecognized gain as of the close of the taxable year in one or more of the following positions—

- (i) Successor positions,
- (ii) Offsetting positions to the loss position, or
- (iii) Offsetting positions to any successor position,

exceeds the amount of loss disallowed under paragraph (a)(1) of this section. See § 1.1092(b)-5T relating to definitions.

(b) *Carryover of disallowed loss.* Any loss that is disallowed under paragraph (a) of this section shall, subject to any further application of paragraph (a)(1) of this section and the limitations under paragraph (a)(2) of this section, be treated as sustained in the succeeding taxable year. However, a loss disallowed in Year 1, for example, under paragraph (a)(1) of this section will not be allowed in Year 2 unless the substantially identical stock or securities, the acquisition of which caused the loss to be disallowed in Year 1, are disposed of during Year 2 and paragraphs (a)(1) and (a)(2) of this section do not apply in Year 2 to disallow the loss.

(c) *Treatment of disallowed loss—(1) Character.* If the disposition of a loss position would (but for the application of this section) result in a capital loss, the loss allowed under paragraph (b) of

this section with respect to the disposition of the loss position shall be treated as a capital loss. In any other case, a loss allowed under paragraph (b) of this section shall be treated as an ordinary loss. For example, if the disposition of a loss position would, but for the application of paragraph (a) of this section, give rise to a capital loss, that loss when allowed pursuant to paragraph (b) of this section will be treated as a capital loss on the date the loss is allowed regardless of whether any gain or loss with respect to one or more successor positions would be treated as ordinary income or loss.

(2) *Section 1256 contracts.* If the disposition of a loss position would (but for the application of this section) result in 60 percent long-term capital loss and 40 percent short-term capital loss, the loss allowed under paragraph (b) of this section with respect to the disposition of the loss position shall be treated as 60 percent long-term capital loss and 40 percent short-term capital loss regardless of whether any gain or loss with respect to one or more successor positions would be treated as 100 percent long-term or short-term capital gain or loss.

(d) *Exceptions.* (1) This section shall not apply to losses sustained—

(i) With respect to the disposition of one or more positions that constitute part of a hedging transaction;

(ii) With respect to the disposition of a loss position included in a mixed straddle account (as defined in paragraph (b) of § 1.1092(b)-4T); and

(iii) With respect to the disposition of a position that is part of a straddle consisting only of section 1256 contracts.

(2) Paragraph (a)(1) of this section shall not apply to losses sustained by a dealer in stock or securities if such losses are sustained in a transaction made in the ordinary course of such business.

(e) *Coordination with section 1091.* Section 1092(b) applies in lieu of section 1091 to losses sustained from the disposition of positions in a straddle. See example (18) of paragraph (g) of this section.

(f) *Effective date.* The provisions of this section apply to dispositions of

loss positions on or after January 24, 1985.

(g) *Examples.* This section may be illustrated by the following examples. It is assumed in each example that the following positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year and none of the exceptions contained in paragraph (d) of this section apply.

*Example 1.* On December 1, 1985, A enters into offsetting long and short positions. On December 10, 1985, A disposes of the short position at an \$11 loss, at which time there is \$5 of unrealized gain in the offsetting long position. At year-end there is still \$5 of unrecognized gain in the offsetting long position. Under these circumstances, \$5 of the \$11 loss will be disallowed for 1985 because there is \$5 of unrecognized gain in the offsetting long position; the remaining \$6 of loss, however, will be taken into account in 1985.

*Example 2.* Assume the facts are the same as in example (1), except that at year-end there is \$11 of unrecognized gain in the offsetting long position. Under these circumstances, the entire \$11 loss will be disallowed for 1985 because there is \$11 of unrecognized gain at year-end in the offsetting long position.

*Example 3.* Assume the facts are the same as in example (1), except that at year-end there is no unrecognized gain in the offsetting long position. Under these circumstances, the entire \$11 loss will be allowed for 1985.

*Example 4.* On November 1, 1985, A enters into offsetting long and short positions. On November 10, 1985, A disposes of the long position at a \$10 loss, at which time there is \$10 of unrealized gain in the short position. On November 11, 1985, A enters into a new long position (successor position) that is offsetting with respect to the retained short position but is not substantially identical to the long position disposed of on November 10, 1985. A holds both positions through year-end, at which time there is \$10 of unrecognized gain in the successor long position and no unrecognized gain in the offsetting short position. Under these circumstances, the entire \$10 loss will be disallowed for 1985 because there is \$10 of unrecognized gain in the successor long position.

*Example 5.* Assume the facts are the same as in example (4), except that at year-end there is \$4 of unrecognized gain in the successor long position and \$6 of unrecognized gain in the offsetting short position. Under these circumstances, the entire \$10 loss will be disallowed for 1985 because there is a total

of \$10 of unrecognized gain in both the successor long position and offsetting short position.

*Example 6.* Assume the facts are the same as in example (4), except that at year-end A disposes of the offsetting short position at a \$2 loss. Under these circumstances, \$10 of the total \$12 loss will be disallowed because there is \$10 of unrecognized gain in the successor long position.

*Example 7.* Assume the facts are the same as in example (4), and on January 10, 1986, A disposes of the successor long position at no gain or loss. A holds the offsetting short position until year-end, at which time there is \$10 of unrecognized gain. Under these circumstances, the \$10 loss will be disallowed for 1986 because there is \$10 of unrecognized gain in an offsetting position at year-end.

*Example 8.* Assume the facts are the same as in example (4), except at year-end there is \$8 of unrecognized gain in the successor long position and \$8 of unrecognized loss in the offsetting short position. Under these circumstances, \$8 of the total \$10 realized loss will be disallowed because there is \$8 of unrecognized gain in the successor long position.

*Example 9.* On October 1, 1985, A enters into offsetting long and short positions. Neither the long nor the short position is stock or securities. On October 2, 1985, A disposes of the short position at a \$10 loss and the long position at a \$10 gain. On October 3, 1985, A enters into a long position identical to the original long position. At year-end there is \$10 of unrecognized gain in the second long position. Under these circumstances, the \$10 loss is allowed because the second long position is not a successor position or offsetting position to the short loss position.

*Example 10.* On November 1, 1985, A enters into offsetting long and short positions. On November 10, 1985, there is \$20 of unrealized gain in the long position and A disposes of the short position at a \$20 loss. By November 15, 1985, the value of the long position has declined eliminating all unrealized gain in the position. On November 15, 1985, A establishes a second short position (successor position) that is offsetting with respect to the long position but is not substantially identical to the short position disposed of on November 10, 1985. At year-end there is no unrecognized gain in the offsetting long position or in the successor short position. Under these circumstances, the \$20 loss sustained with respect to the short loss position will be allowed for 1985 because at year-end there is no unrecognized gain in the successor short position or the offsetting long position.

*Example 11.* Assume the facts are the same as in example (10), except that the second short position was established on November 8, 1985, and there is \$20 of unrecognized gain in the second short position at year-end. Since the second short position was entered

into within 30 days before the disposition of the loss position, the second short position is considered a successor position to the loss position. Under these circumstances, the \$20 loss will be disallowed because there is \$20 of unrecognized gain in a successor position.

*Example 12.* Assume the facts are the same as in example (10), except that at year-end there is \$18 of unrecognized gain in the offsetting long position and \$18 of unrecognized gain in the successor short position. Under these circumstances, the entire loss will be disallowed because there is more than \$20 of unrecognized gain in both the successor short position and offsetting long position.

*Example 13.* Assume the facts are the same as in example (10), except that there is \$20 of unrecognized gain in the successor short position and no unrecognized gain in the offsetting long position at year-end. Under these circumstances, the entire \$20 loss will be disallowed because there is \$20 of unrecognized gain in the successor short position.

*Example 14.* On January 2, 1986, A enters into offsetting long and short positions. Neither the long nor the short position is stock or securities. On March 3, 1986, A disposes of the long position at a \$10 gain. On March 10, 1986, A disposes of the short position at a \$10 loss. On March 14, 1986, A enters into a new short position. On April 10, 1986, A enters into an offsetting long position. A holds both positions to year-end, at which time there is \$10 of unrecognized gain in the offsetting long position and no unrecognized gain or loss in the short position. Under these circumstances, the \$10 loss will be allowed because (1) the rules of paragraph (a)(1) of this section are not applicable; and (2) the rules of paragraph (a)(2) of this section do not apply, since all positions of the straddle that contained the loss position were disposed of.

*Example 15.* On December 1, 1985, A enters into offsetting long and short positions. On December 4, 1985, A disposes of the short position at a \$10 loss. On December 5, 1985, A establishes a new short position that is offsetting to the long position, but is not substantially identical to the short position disposed of on December 4, 1985. On December 6, 1985, A disposes of the long position at a \$10 gain. On December 7, 1985, A enters into a second long position that is offsetting to the new short position, but is not substantially identical to the long position disposed of on December 6, 1985. A holds both positions to year-end at which time there is no unrecognized gain in the second short position and \$10 of unrecognized gain in the offsetting long position. Under these circumstances, the entire \$10 loss will be disallowed for the 1985 taxable year because the second long position is an offsetting position with respect to the second short position which is a successor position.

*Example 16.* On September 1, 1985, A enters into offsetting positions consisting of a long

section 1256 contract and short non-section 1256 position. No elections under sections 1256(d)(1) or 1092(b)(2)(A), relating to mixed straddles, are made. On November 1, 1985, at which time there is \$20 of unrecognized gain in the short non-section 1256 position, A disposes of the long section 1256 contract at a \$20 loss and on the same day acquires a long non-section 1256 position (successor position) that is offsetting with respect to the short non-section 1256 position. But for the application of this section, A's disposition of the section 1256 contract would give rise to a capital loss. At year-end there is a \$20 of unrecognized gain in the offsetting short non-section 1256 position and no unrecognized gain in the successor long position. Under these circumstances, the entire \$20 loss will be disallowed for 1985 because there is \$20 unrecognized gain in the offsetting short position. In 1986, A disposes of the successor long non-section 1256 position and there is no unrecognized gain at year-end in the offsetting short position. Under these circumstances, the \$20 loss disallowed in 1985 with respect to the section 1256 contract will be treated in 1986 as 60 percent long-term capital loss and 40 percent short-term capital loss.

*Example 17.* On January 2, 1986, A, not a dealer in stock or securities, acquires stock in X Corporation (X stock) and an offsetting put option. On March 3, 1986, A disposes of the X stock at a \$10 loss. On March 10, 1986, A disposes of the put option at a \$10 gain. On March 14, 1986, A acquires new X stock that is substantially identical to the X stock disposed of on March 3, 1986. A holds the X stock to year-end. Under these circumstances, the \$10 loss will be disallowed for 1986 under paragraph (a)(1) of this section because A, within a period beginning 30 days before March 3, 1986 and ending 30 days after such date, acquired stock substantially identical to the X stock disposed of.

*Example 18.* On June 2, 1986, A, not a dealer in stock or securities, acquires stock in X Corporation (X stock). On September 2, 1986, A disposes of the X stock at a \$100 loss. On September 15, 1986, A acquires new X stock that is substantially identical to the X stock disposed of on September 2, 1986, and an offsetting put option. A holds these straddle positions to year-end. Under these circumstances, section 1091, rather than section 1092(b), will apply to disallow the \$100 loss for 1986 because the loss was not sustained from the disposition of a position that was part of a straddle. See paragraph (e) of this section.

*Example 19.* On November 1, 1985, A, not a dealer in stock or securities, acquires stock in Y Corporation (Y stock) and an offsetting put option. On November 12, 1985, there is \$20 of unrealized gain in the put option and A disposes of the Y stock at a \$20 loss. By November 15, 1985, the value of the put option has declined eliminating all unrealized gain

in the position. On November 15, 1985, A acquires a second Y stock position that is substantially identical to the Y stock disposed of on November 12, 1985. At year-end there is no unrecognized gain in the put option or the Y stock. Under these circumstances, the \$20 loss will be disallowed for 1985 under paragraph (a)(1) of this section because A, within a period beginning 30 days before November 12, 1985 and ending 30 days after such date, acquired stock substantially identical to the Y stock disposed of.

*Example 20.* Assume the facts are the same as in Example 19 and that on December 31, 1986, A disposes of the put option at a \$40 gain and there is \$20 of unrecognized loss in the Y stock. Under these circumstances, the \$20 loss which was disallowed in 1985 also will be disallowed for 1986 under the rules of paragraph (a)(1) of this section because A has not disposed of the stock substantially identical to the Y stock disposed of on November 12, 1985.

*Example 21.* Assume the facts are the same as in example (19), except that on December 31, 1986, A disposes of the Y stock at a \$20 loss and there is \$40 of unrecognized gain in the put option. Under these circumstances, A will not recognize in 1986 either the \$20 loss disallowed in 1985 or the \$20 loss sustained with respect to the December 31, 1986 disposition of Y stock. Paragraph (a)(1) of this section does not apply to disallow the losses in 1986 since the substantially identical Y stock was disposed of during the year (and no substantially identical stock or securities was acquired by A within the 61 day period). However, paragraph (a)(2) of this section applies to disallow for 1986 the \$40 of losses sustained with respect to the dispositions of positions in the straddle because there is \$40 of unrecognized gain in the put option, an offsetting position to the loss positions.

*Example 22.* On January 2, 1986, A, not a dealer in stock or securities, acquires stock in X Corporation (X stock) and an offsetting put option. On March 3, 1986, A disposes of the X stock at a \$10 loss. On March 17, 1986, A acquires new X stock that is substantially identical to the X stock disposed of on March 3, 1986. On December 31, 1986, A disposes of the X stock at a \$5 gain, at which time there is \$5 of unrecognized gain in the put option. Under these circumstances, the \$10 loss sustained with respect to the March 3, 1986, disposition of X stock will be allowed under paragraph (a) (1) of this section since the substantially identical X stock acquired on March 17, 1986, was disposed of by year-end (and no substantially identical stock or securities were acquired by A within the 61 day period). However, \$5 of the \$10 loss will be disallowed under paragraph (a)(2) of this section because there is \$5 of unrecognized gain in the put option, an offsetting position to the loss position.

*Example 23.* Assume the facts are the same as in example (22), except that on December 31, 1986, A disposes of the offsetting put option at a \$5 loss and there is \$5 of unrecognized gain in the X stock acquired on March 17, 1986. Under these circumstances, the \$10 loss sustained with respect to the X stock disposed of on March 3, 1986, will be disallowed for 1986 under paragraph (a)(1) of this section. The \$5 loss sustained upon the disposition of the put option will be allowed because (1) the rules of paragraph (a)(1) of this section are not applicable; and (2) the rules of paragraph (a)(2) of this section allow the loss, since the unrecognized gain in the X stock (\$5) is not in excess of the loss (\$10) disallowed under paragraph (a)(1) of this section.

*Example 24.* On January 2, 1986, A, not a dealer in stock or securities, acquires 200 shares of Z Corporation stock (Z stock) and 2 put options on Z stock (giving A the right to sell 200 shares of Z stock). On September 2, 1986, there is \$200 of unrealized gain in the put option positions and A disposes of the 200 shares of Z stock at a \$200 loss. On September 10, 1986, A acquires 100 shares of Z stock substantially identical to the Z stock disposed of on September 2, 1986, and a call option that is offsetting to the put options on Z stock and that is not an option to acquire property substantially identical to the Z stock disposed of on September 2, 1986. At year-end, there is \$80 of unrecognized gain in the Z stock position, \$80 of unrecognized gain in the call option position, and no unrecognized gain or loss in the offsetting put option positions. Under these circumstances, \$40 of the \$200 loss sustained with respect to the September 2, 1986 disposition of Z stock will be recognized by A in 1986 under paragraph (a) of this section, as set forth below. Paragraph (a)(1) of this section applies first to disallow \$100 of the loss ( $\frac{1}{2}$  of the loss), since 100 shares of substantially identical Z stock ( $\frac{1}{2}$  of the stock) were acquired within the 61 day period. Paragraph (a)(2) of this section then applies to disallow that portion of the loss allowed under paragraph (a)(1) of this section ( $\$200 - \$100 = \$100$ ) equal to the excess of the total unrecognized gain in the Z stock and call option positions (successor positions to the loss position) ( $\$80 + \$80 = \$160$ ) over the \$100 loss disallowed under paragraph (a)(1) of this section ( $\$160 - \$100 = \$60$ ;  $\$100 - \$60 = \$40$ ).

*Example 25.* Assume the facts are the same as in example (24), except that at year-end there is \$110 of unrecognized gain in the Z stock position, \$78 of unrecognized gain in the call option position, and \$10 of unrecognized gain in the offsetting put option positions. Under these circumstances, \$2 of the \$200 loss sustained with respect to the September 2, 1986 disposition of Z stock will be allowed in 1986 under paragraph (a) of this section, as set forth below. Paragraph (a)(1)

of this section applies first to disallow \$100 of the loss ( $\frac{1}{2}$  of the loss) since 100 shares of substantially identical Z stock ( $\frac{1}{2}$  of the stock) were acquired within the 61 day period. Paragraph (a)(2) of this section then applies to disallow that portion of the loss allowed under paragraph (a)(1) of this section ( $\$200 - \$100 = \$100$ ) equal to the excess of the total unrecognized gain in the Z stock and call option positions (successor positions to the loss position) and the put option positions (offsetting positions to the loss position) ( $\$110 + \$78 + \$10 = \$198$ ) over the \$100 loss disallowed under paragraph (a)(1) of this section ( $\$198 - \$100 = \$98$ ;  $\$100 - \$98 = \$2$ ).

*Example 26.* Assume the facts are the same as in example (24), except that at year-end there is \$120 of unrecognized gain in the Z stock position, \$88 of unrecognized gain in the call option position, and \$10 of unrecognized loss in one of the offsetting put option positions. At year-end A disposes of the other put option position at a \$10 loss. Under these circumstances, \$2 of the \$210 loss sustained with respect to the September 2, 1986 disposition of Z stock (\$200) and the year-end disposition of a put option (\$10) will be allowed in 1986 under paragraph (a) of this section, as set forth below. Paragraph (a)(1) of this section applies first to disallow \$100 of the loss from the disposition of Z stock ( $\frac{1}{2}$  of the loss), since 100 shares of substantially identical Z stock ( $\frac{1}{2}$  of the stock) were acquired within the 61 day period. Paragraph (a)(2) of this section then applies to disallow that portion of the loss allowed under paragraph (a)(1) of this section ( $\$210 - \$100 = \$110$ ) equal to the excess of the total unrecognized gain in the Z stock and call option positions (successor positions to the Z stock loss position, and offsetting positions to the put option loss position) ( $\$120 + \$88 = \$208$ ) over the \$100 loss disallowed under paragraph (a)(1) of this section ( $\$208 - \$100 = \$108$ ;  $\$110 - \$108 = \$2$ ).

*Example 27.* On January 27, 1986, A enters into offsetting long (L1) and short (S1) positions. Neither L1 nor S1 nor any other positions entered into by A in 1986 are stock or securities. On February 3, 1986, A disposes of L1 at a \$10 loss. On February 5, 1986, A enters into a new long position (L2) that is offsetting to S1. On October 15, 1986, A disposes of S1 at an \$11 loss. On October 17, 1986, A enters into a new short position (S2) that is offsetting to L2. On December 30, 1986, A disposes of L2 at a \$12 loss. On December 31, 1986, A enters into a new long position (L3) that is offsetting to S2. At year-end, S2 has an unrecognized gain of \$33. Paragraph (a)(1) of this section does not apply since none of the positions were shares of stock or securities. However, all \$33 ( $\$10 + \$11 + \$12$ ) of the losses sustained with respect to L1, S1 and L2 will be disallowed under paragraph (a)(2) because there is \$33 of unrecognized gain in S2 at year-end. The \$10 loss from the disposition of L1 is disallowed because S2 is or was

an offsetting position to a successor long position (L2 or L3). The \$11 loss from the disposition of S1 is disallowed because S2 is a successor position to S1. The \$12 loss from the disposition of L2 is disallowed because S2 was an offsetting position to L2.

(Secs. 1092(b) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 95 Stat. 324, 26 U.S.C. 1092(b), 7805) and sec. 102(h) of the Tax Reform Act of 1984 (98 Stat. 625))

[T.D. 8007, 50 FR 3319, Jan. 24, 1985, as amended by T.D. 8070, 51 FR 1786, Jan. 15, 1986; 51 FR 3773, Jan. 30, 1986; 51 FR 5516, Feb. 14, 1986]

**§ 1.1092(b)-2T Treatment of holding periods and losses with respect to straddle positions (temporary).**

(a) *Holding period*—(1) *In general.* Except as otherwise provided in this section, the holding period of any position that is part of a straddle shall not begin earlier than the date the taxpayer no longer holds directly or indirectly (through a related person or flowthrough entity) an offsetting position with respect to that position. See § 1.1092(b)-5T relating to definitions.

(2) *Positions held for the long-term capital gain holding period (or longer) prior to establishment of the straddle.* Paragraph (a)(1) of this section shall not apply to a position held by a taxpayer for the long-term capital gain holding period (or longer) before a straddle that includes such position is established. The determination of whether a position has been held by a taxpayer for the long-term capital gain holding period (or longer) shall be made by taking into account the application of paragraph (a)(1) of this section. See section 1222(3) relating to the holding period for long-term capital gains.

(b) *Treatment of loss*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, loss on the disposition of one or more positions (*loss position*) of a straddle shall be treated as a long-term capital loss if—

(i) On the date the taxpayer entered into the loss position the taxpayer held directly or indirectly (through a related person or flowthrough entity) one or more offsetting positions with respect to the loss position; and

(ii) All gain or loss with respect to one or more positions in the straddle would be treated as long-term capital gain or loss if such positions were dis-

posed of on the day the loss position was entered into.

(2) *Special rules for non-section 1256 positions in a mixed straddle.* Loss on the disposition of one or more positions (*loss position*) that are part of a mixed straddle and that are non-section 1256 positions shall be treated as 60 percent long-term capital loss and 40 percent short-term capital loss if—

(i) Gain or loss from the disposition of one or more of the positions of the straddle that are section 1256 contracts would be considered gain or loss from the sale or exchange of a capital asset;

(ii) The disposition of no position in the straddle (other than a section 1256 contract) would result in a long-term capital gain or loss; and

(iii) An election under section 1092(b)(2)(A)(i)(I) (relating to straddle-by-straddle identification) or 1092(b)(2)(A)(i)(II) (relating to mixed straddle accounts) has not been made.

(c) *Exceptions*—(1) *In general.* This section shall not apply to positions that—

(i) Constitute part of a hedging transaction;

(ii) Are included in a straddle consisting only of section 1256 contracts; or

(iii) Are included in a mixed straddle account (as defined in paragraph (b) of § 1.1092(b)-4T).

(2) *Straddle-by-straddle identification.* Paragraphs (a)(2) and (b) of this section shall not apply to positions in a section 1092(b)(2) identified mixed straddle. See § 1.1092(b)-3T.

(d) *Special rule for positions held by regulated investment companies.* For purposes of section 851(b)(3) (relating to the definition of a regulated investment company), the holding period rule of paragraph (a) of this section shall not apply to positions of a straddle. However, if section 1233(b) (without regard to sections 1233(e)(2)(A) and 1092(b)) would have applied to such positions, then for purposes of section 851(b)(3) the rules of section 1233(b) shall apply. Similarly, the effect of daily marking-to-market provided under § 1.1092(b)-4T(c) will be disregarded for purposes of section 851(b)(3).

(e) *Effective date*—(1) *In general.* Except as provided in paragraph (e)(2) of



this section, the provisions of this section apply to positions in a straddle established after June 23, 1981, in taxable years ending after such date.

(2) *Special effective date for mixed straddle positions.* The provisions of paragraph (b)(2) of this section shall apply to positions in a mixed straddle established on or after January 1, 1984.

(f) *Examples.* Paragraphs (a) through (e) may be illustrated by the following examples. It is assumed in each example that the following positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year and none of the exceptions in paragraph (c) of this section apply.

*Example 1.* On October 1, 1984, A acquires gold. On January 1, 1985, A enters into an offsetting short gold forward contract. On April 1, 1985, A disposes of the short gold forward contract at no gain or loss. On April 10, 1985, A sells the gold at a gain. Since the gold had not been held for more than 6 months before the offsetting short position was entered into, the holding period for the gold begins no earlier than the time the straddle is terminated. Thus, the holding period of the original gold purchased on October 1, 1984, and sold on April 10, 1985, begins on April 1, 1985, the date the straddle was terminated. Consequently, gain recognized with respect to the gold will be treated as short-term capital gain.

*Example 2.* On January 1, 1985, A enters into a long gold forward contract. On May 1, 1985, A enters into an offsetting short gold regulated futures contract. A does not make an election under section 1256(d) or 1092(b)(2)(A). On August 1, 1985, A disposes of the gold forward contract at a gain. Since the forward contract had not been held by A for more than 6 months prior to the establishment of the straddle, the holding period for the forward contract begins no earlier than the time the straddle is terminated. Thus, the gain recognized on the closing of the gold forward contract will be treated as short-term capital gain.

*Example 3.* Assume the facts are the same as in example (2), except that A disposes of the short gold regulated futures contract on July 1, 1985, at no gain or loss and the forward contract on November 1, 1985. Since the forward contract had not been held for more than 6 months before the mixed straddle was established, the holding period for the forward contract begins July 1, 1985, the date the straddle terminated. Thus, the gain recognized on the closing of the forward contract will be treated as short-term capital gain.

*Example 4.* On January 1, 1985, A enters into a long gold forward contract and on August 4, 1985, A enters into an offsetting short gold forward contract. On September 1, 1985, A disposes of the short position at a loss. Since an offsetting long position had been held by A for more than 6 months prior to the acquisition of the offsetting short position, the loss with respect to the closing of the short position will be treated as long-term capital loss.

*Example 5.* On March 1, 1985, A enters into a long gold forward contract and on July 17, 1985, A enters into an offsetting short gold regulated futures contract. A does not make an election under section 1256(d) or 1092(b)(2)(A). On August 10, 1985, A disposes of the long gold forward contract at a loss. Since the gold forward contract was part of a mixed straddle, and the disposition of no position in the straddle (other than the regulated futures contract) would give rise to a long-term capital loss, the loss recognized on the termination of the gold forward contract will be treated as 40 percent short-term capital loss and 60 percent long-term capital loss.

*Example 6.* Assume the facts are the same as in example (5), except that on August 11, 1985, A disposes of the short gold regulated futures contract at a gain. Under these circumstances, the gain will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain since the holding period rules of paragraph (a) of this section are not applicable to section 1256 contracts.

*Example 7.* Assume the facts are the same as in example (5), except that A enters into the long gold forward contract on January 1, 1985, and does not dispose of the long gold forward contract but instead on August 10, 1985, disposes of the short gold regulated futures contract at a loss. Under these circumstances, the loss will be treated as a long-term capital loss since A held an offsetting non-section 1256 position for more than 6 months prior to the establishment of the straddle. However, such loss may be subject to the rules of § 1.1092(b)-1T.

(Secs. 1092(b) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 95 Stat. 324, 26 U.S.C. 1092(b), 7805) and sec. 102(h) of the Tax Reform Act of 1984 (98 Stat. 625))

[T.D. 8007, 50 FR 3320, Jan. 24, 1985, as amended by T.D. 8070, 51 FR 1788, Jan. 15, 1986]

**§ 1.1092(b)-3T Mixed straddles; straddle-by-straddle identification under section 1092(b)(2)(A)(i)(I) (temporary).**

(a) *In general.* Except as otherwise provided, a taxpayer shall treat in accordance with paragraph (b) of this section gains and losses on positions that

are part of a mixed straddle for which the taxpayer has made an election under paragraph (d) of this section (hereinafter referred to as a *section 1092(b)(2) identified mixed straddle*). No election may be made under this section for any straddle composed of one or more positions that are includible in a mixed straddle account (as defined in paragraph (b) of §1.1092(b)-4T) or for any straddle for which an election under section 1256(d) has been made. See §1.1092(b)-5T relating to definitions.

(b) *Treatment of gains and losses from positions included in a section 1092(b)(2) identified mixed straddle*—(1) *In general.* Gains and losses from positions that are part of a section 1092(b)(2) identified mixed straddle shall be determined and treated in accordance with the rules of paragraph (b) (2) through (7) of this section.

(2) *All positions of a section 1092(b)(2) identified mixed straddle are disposed of on the same day.* If all positions of a section 1092(b)(2) identified mixed straddle are disposed of (or deemed disposed of) on the same day, gains and losses from section 1256 contracts in the straddle shall be netted, and gains and losses from non-section 1256 positions in the straddle shall be netted. Net gain or loss from the section 1256 contracts shall then be offset against net gain or loss from the non-section 1256 positions to determine the net gain or loss from the straddle. If net gain or loss from the straddle is attributable to the positions of the straddle that are section 1256 contracts, such gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. If net gain or loss from the straddle is attributable to the positions of the straddle that are non-section 1256 positions, such gain or loss shall be treated as short-term capital gain or loss. This paragraph (b)(2) may be illustrated by the following examples. It is assumed in each example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year.

*Example 1.* On April 1, 1985, A enters into a non-section 1256 position and an offsetting

section 1256 contract and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On April 10, 1985, A disposes of the non-section 1256 position at a \$600 loss and the section 1256 contract at a \$600 gain. Under these circumstances, the \$600 loss on the non-section 1256 position will be offset against the \$600 gain on the section 1256 contract and the net gain or loss from the straddle will be zero.

*Example 2.* Assume the facts are the same as in example (1), except that the gain on the section 1256 contract is \$800. Under these circumstances, the \$600 loss on the non-section 1256 position will be offset against the \$800 gain on the section 1256 contract. The net gain of \$200 from the straddle will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain because it is attributable to the section 1256 contract.

*Example 3.* Assume the facts are the same as in example (1), except that the loss on the non-section 1256 position is \$800. Under these circumstances, the \$600 gain on the section 1256 contract will be offset against the \$800 loss on the non-section 1256 position. The net loss of \$200 from the straddle will be treated as short-term capital loss because it is attributable to the non-section 1256 position.

*Example 4.* On May 1, 1985, A enters into a straddle consisting of two non-section 1256 positions and two section 1256 contracts and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. On May 10, 1985, A disposes of the non-section 1256 positions, one at a \$700 loss and the other at a \$500 gain, and disposes of the section 1256 contracts, one at a \$400 gain and the other at a \$300 loss. Under these circumstances, the gain and losses from the section 1256 contracts and non-section 1256 positions will first be netted, resulting in a net gain of \$100 (\$400-\$300) on the section 1256 contracts and a net loss of \$200 (\$700-\$500) on the non-section 1256 positions. The net gain of \$100 from the section 1256 contracts will then be offset against the \$200 net loss on the non-section 1256 positions. The net loss of \$100 from the straddle will be treated as short-term capital loss because it is attributable to the non-section 1256 positions.

*Example 5.* On December 30, 1985, A enters into a section 1256 contract and an offsetting non-section 1256 position and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On December 31, 1985, A disposes of the non-section 1256 position at a \$2,000 gain. A also realizes a \$2,000 loss on the section 1256 contract because it is deemed disposed of under section 1256(a)(1). Under these circumstances, the \$2,000 gain on the non-section 1256 position will be offset against the \$2,000 loss on the section 1256 contract, and the net gain or loss from the straddle will be zero.

*Example 6.* Assume the facts are the same as in example (5), except that the section

1092(b)(2) identified mixed straddle was entered into on November 12, 1985, A realizes a \$2,200 loss on the section 1256 contract, and on December 15, 1985, A enters into a non-section 1256 position that is offsetting to the non-section 1256 gain position of the section 1092(b)(2) identified mixed straddle. At year-end there is \$200 of unrecognized gain in the non-section 1256 position that was entered into on December 15. Under these circumstances, the \$2,200 loss on the section 1256 contract will be offset against the \$2,000 gain on the non-section 1256 position. The net \$200 loss from the straddle will be treated as 60 percent long-term capital loss and 40 percent short-term capital loss because it is attributable to the section 1256 contract. The net loss of \$200 from the straddle will be disallowed in 1985 under the loss deferral rules of section 1092(a) because there is \$200 of unrecognized gain in a successor position (as defined in paragraph (n) of §1.1092(b)-5T) at year-end. See paragraph (c) of this section.

(3) *All of the non-section 1256 positions of a section 1092(b)(2) identified mixed straddle disposed of on the same day.* This paragraph (b)(3) applies if all of the non-section 1256 positions of a section 1092(b)(2) identified mixed straddle are disposed of on the same day or if this paragraph (b)(3) is made applicable by paragraph (b)(5) of this section. In the case to which this paragraph (b)(3) applies, gain and loss realized from non-section 1256 positions shall be netted. Realized and unrealized gain and loss with respect to the section 1256 contracts of the straddle also shall be netted on that day. Realized net gain or loss from the non-section 1256 positions shall then be offset against net gain or loss from the section 1256 contracts to determine the net gain or loss from the straddle on that day. Net gain or loss from the straddle that is attributable to the non-section 1256 positions shall be realized and treated as short-term capital gain or loss on that day. Net gain or loss from the straddle that is attributable to realized gain or loss with respect to section 1256 contracts shall be realized and treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. Any gain or loss subsequently realized on the section 1256 contracts shall be adjusted (through an adjustment to basis or otherwise) to take into account the extent to which gain or loss was offset by unrealized gain or loss on the section 1256 contracts on

that day. This paragraph (b)(3) may be illustrated by the following examples. It is assumed in each example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year.

*Example 1.* On July 20, 1985, A enters into a section 1256 contract and an offsetting non-section 1256 position and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On July 27, 1985, A disposes of the non-section 1256 position at a \$1,500 loss, at which time there is \$1,500 of unrealized gain in the section 1256 contract. A holds the section 1256 contract at year-end at which time there is \$1,800 of gain. Under these circumstances, on July 27, 1985, A offsets the \$1,500 loss on the non-section 1256 position against the \$1,500 gain on the section 1256 contract and realizes no gain or loss. On December 31, 1985, A realizes a \$300 gain on the section 1256 contract because the position is deemed disposed of under section 1256(a)(1). The \$300 gain is equal to \$1,800 of gain less a \$1,500 adjustment for unrealized gain offset against the loss realized on the non-section 1256 position on July 27, 1985, and the gain will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain.

*Example 2.* Assume the facts are the same as in example (1), except that on July 27, 1985, A realized a \$1,700 loss on the non-section 1256 position. Under these circumstances, on July 27, 1985, A offsets the \$1,700 loss on the non-section 1256 position against the \$1,500 gain on the section 1256 contract. A realizes a \$200 loss from the straddle on July 27, 1985, which will be treated as short-term capital loss because it is attributable to the non-section 1256 position. On December 31, 1985, A realizes a \$300 gain on the section 1256 contract, computed as in example (1), which will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain.

*Example 3.* On March 1, 1985, A enters into a straddle consisting of two non-section 1256 positions and two section 1256 contracts and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On March 11, 1985, A disposes of the non-section 1256 positions, one at a \$100 loss and the other at a \$150 loss, and disposes of one section 1256 contract at a \$100 loss. On that day there is \$100 of unrealized gain on the section 1256 contract retained by A. A holds the remaining section 1256 contract at year-end, at which time there is \$150 of gain. Under these circumstances, on March 11, 1985, A will first net the gains and losses from the section 1256 contracts and net the gains and losses from the non-section 1256

positions resulting in no gain or loss on the section 1256 contracts and a net loss of \$250 on the non-section 1256 positions. Since there is no gain or loss to offset against the non-section 1256 positions, the net loss of \$250 will be treated as short-term capital loss because it is attributable to the non-section 1256 positions. On December 31, 1985, A realizes a \$50 gain on the remaining section 1256 contract because the position is deemed disposed of under section 1256(a)(1). The \$50 gain is equal to \$150 gain less a \$100 adjustment to take into account the \$100 unrealized gain that was offset against the \$100 loss realized on the section 1256 contract on March 11, 1985.

*Example 4.* Assume the facts are the same as in example (3), except that A disposes of the section 1256 contract at a \$500 gain. As in example (3), A has a net loss of \$250 on the non-section 1256 positions disposed of. In this example, however, A has net gain of \$600 (\$500+\$100) on the section 1256 contracts on March 11, 1985. Therefore, of the net gain from the straddle of \$350 (\$600-\$250), \$250 (\$500-\$250) is treated as 60 percent long-term capital gain and 40 percent short-term capital gain because only \$250 is attributable to the realized gain from the section 1256 contract. In addition, because none of the \$100 unrealized gain from the remaining section 1256 contract was offset against gain or loss on the non-section 1256 positions, no adjustment is made under paragraph (b)(3) of this section and the entire \$150 gain on December 31 with respect to that contract is realized on that date.

(4) *All of the section 1256 contracts of a section 1092(b)(2) identified mixed straddle disposed of on the same day.* This paragraph (b)(4) applies if all of the section 1256 contracts of a section 1092(b)(2) identified mixed straddle are disposed of (or deemed disposed of) on the same day or if this paragraph (b)(4) is made applicable by paragraph (b)(5) of this section. In the case to which this paragraph (b)(4) applies, gain and loss realized from section 1256 contracts shall be netted. Realized and unrealized gain and loss with respect to the non-section 1256 positions of the straddle also shall be netted on that day. Realized net gain or loss from the section 1256 contracts shall be treated as short-term capital gain or loss to the extent of net gain or loss on the non-section 1256 positions on that day. Net gain or loss with respect to the section 1256 contracts that exceeds the net gain or loss with respect to the non-section 1256 positions of the straddle shall be treated as 60 percent long-term capital

gain or loss and 40 percent short-term capital gain or loss. See paragraph (b)(7) of this section relating to the gain or loss on such non-section 1256 positions. This paragraph (b)(4) may be illustrated by the following examples. It is assumed in each example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year.

*Example 1.* On December 30, 1985, A enters into a section 1256 contract and an offsetting non-section 1256 position and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On December 31, 1985, A disposes of the section 1256 contract at a \$1,000 gain, at which time there is \$1,000 of unrealized loss in the non-section 1256 position. Under these circumstances, the \$1,000 gain realized on the section 1256 contract will be treated as short-term capital gain because there is a \$1,000 loss on the non-section 1256 position.

*Example 2.* Assume the facts are the same as in example (1), except that A realized a \$1,500 gain on the disposition of the section 1256 contract. Under these circumstances, \$1,000 of the gain realized on the section 1256 contract will be treated as short-term capital gain because there is a \$1,000 loss on the non-section 1256 position. The net gain of \$500 from the straddle will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain because it is attributable to the section 1256 contract.

*Example 3.* Assume the facts are the same as in example (1), except that A realized a \$1,000 loss on the section 1256 contract and there is \$1,000 of unrecognized gain on the non-section 1256 position. Under these circumstances, the \$1,000 loss on the section 1256 contract will be treated as short-term capital loss because there is a \$1,000 gain on the non-section 1256 position. Such loss, however, will be disallowed in 1985 under the loss deferral rules of section 1092(a) because there is \$1,000 of unrecognized gain in an offsetting position at year-end. See paragraph (c) of this section.

*Example 4.* Assume the facts are the same as in example (1), except that the section 1256 contract and non-section 1256 position were entered into on December 1, 1985, and the section 1256 contract is disposed of on December 19, 1985, for a \$1,000 gain, at which time there is \$1,000 of unrealized loss on the non-section 1256 position. At year-end there is only \$800 of unrealized loss in the non-section 1256 position. Under these circumstances, the result is the same as in example (1) because there was \$1,000 of unrealized loss on the non-section 1256 position at

the time of the disposition of the section 1256 contract.

*Example 5.* On July 15, 1985, A enters into a straddle consisting of two non-section 1256 positions and two section 1256 contracts and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On July 20, 1985, A disposes of one non-section 1256 position at a gain of \$1,000 and both section 1256 contracts at a net loss of \$1,000. On the same day there is \$200 of unrealized loss on the non-section 1256 position retained by A. Under these circumstances, realized and unrealized gain and loss with respect to the non-section 1256 positions is netted, resulting in a net gain of \$800. Thus, \$800 of the net loss on the section 1256 contracts disposed of will be treated as short-term capital loss because there is \$800 of net gain on the non-section 1256 positions. In addition, the net loss of \$200 from the straddle will be treated as 60 percent long-term capital loss and 40 percent short-term capital loss because it is attributable to the section 1256 contract.

(5) *Disposition of one or more, but not all, positions of a section 1092(b)(2) identified mixed straddle on the same day.* If one or more, but not all, of the positions of a section 1092(b)(2) identified mixed straddle are disposed of on the same day, and paragraphs (b) (3) and (4) of this section are not applicable (without regard to this paragraph (b)(5)), the gain and loss from the non-section 1256 positions that are disposed of on that day shall be netted, and the gain and loss from the section 1256 contracts that are disposed of on that day shall be netted. In order to determine whether the rules of paragraph (b)(3) or (b)(4) of this section apply, net gain or loss from the section 1256 contracts disposed of shall then be offset against net gain or loss from the non-section 1256 positions disposed of to determine net gain or loss from such positions of the straddle. If net gain or loss from the disposition of such positions of the straddle is attributable to the non-section 1256 positions disposed of, the rules prescribed in paragraph (b)(3) of this section apply. If net gain or loss from the disposition of such positions is attributable to the section 1256 contracts disposed of, the rules prescribed in paragraph (b)(4) of this section apply. If the net gain or loss from the netting of non-section 1256 positions disposed of and the netting of section 1256 contracts disposed of are either both gains or losses, the rules pre-

scribed in paragraph (b)(3) of this section shall apply to net gain or loss from such non-section 1256 positions, and the rules prescribed in paragraph (b)(4) of this section shall apply to net gain or loss from such section 1256 contracts. However, for purposes of determining the treatment of gain or loss subsequently realized on a position of such straddle, to the extent that unrealized gain or loss on other positions was used to offset realized gain or loss on a non-section 1256 position under paragraph (b)(3) of this section, or was used to treat realized gain or loss on a section 1256 contract as short-term capital gain or loss under paragraph (b)(4) of this section, such amount shall not be used for such purposes again. This paragraph (b)(5) may be illustrated by the following examples. It is assumed that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year.

*Example 1.* On July 15, 1985, A enters into a straddle consisting of four non-section 1256 positions and four section 1256 contracts and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On July 20, 1985, A disposes of one non-section 1256 position at a gain of \$800 and one section 1256 contract at a loss of \$300. On the same day there is \$400 of unrealized net loss on the section 1256 contracts retained by A and \$100 of unrealized net loss on the non-section 1256 positions retained by A. Under these circumstances, the loss of \$300 on the section 1256 contract disposed of will be offset against the gain of \$800 on the non-section 1256 position disposed of. The net gain of \$500 is attributable to the non-section 1256 position. Therefore, the rules of paragraph (b)(3) of this section apply. Under the rules of paragraph (b)(3) of this section, the net loss of \$700 on the section 1256 contracts is offset against the net gain of \$800 attributable to the non-section 1256 position disposed of. The net gain of \$100 will be treated as short-term capital gain because it is attributable to the non-section 1256 position disposed of. Gain or loss subsequently realized on the section 1256 contracts will be adjusted to take into account the unrealized loss of \$400 that was offset against the \$800 gain attributable to the non-section 1256 position disposed of.

*Example 2.* Assume the facts are the same as in Example 1, except that A disposes of the non-section 1256 position at a gain of \$300 and the section 1256 contract at a loss of \$800, and there is \$200 of unrealized net gain in the

non-section 1256 positions retained by A. Under these circumstances, the gain of \$300 on the non-section 1256 position disposed of will be offset against the loss of \$800 on the section 1256 contract disposed of. The net loss of \$500 is attributable to the section 1256 contract. Therefore, the rules of paragraph (b)(4) of this section apply. Under the rules of paragraph (b)(4) of this section, \$500 of the net loss realized on the section 1256 contract will be treated as short-term capital loss because there is \$500 of realized and unrealized gain in the non-section 1256 positions. The remaining net loss of \$300 will be treated as 60 percent long-term capital loss and 40 percent short-term capital loss because it is attributable to a section 1256 contract disposed of. In addition, A realizes a \$300 short-term capital gain attributable to the disposition of the non-section 1256 position.

*Example 3.* (i) Assume the facts are the same as in example (1), except that the section 1256 contract was disposed of at a \$500 gain. Under these circumstances, there is gain of \$500 attributable to the section 1256 contract disposed of and a gain of \$800 attributable to the non-section 1256 position. Therefore, the rules of both paragraphs (b)(3) and (4) of this § 1.1092(b)-3T apply.

(ii) Under paragraph (b)(3) of this section, the realized and unrealized gains and losses on the section 1256 contracts are netted, resulting in a net gain of \$100 (\$500-\$400). The section 1256 contract net gain does not offset the gain on the non-section 1256 position disposed of. Therefore, the gain of \$800 on the non-section 1256 position disposed of will be treated as a short-term capital gain because there is no net loss on the section 1256 contracts.

(iii) Under paragraph (b)(4) of this section, the realized and unrealized gains and losses on the non-section 1256 positions are netted, resulting in a non-section 1256 position net gain of \$700 (\$800-\$100). Because there is no net loss on the non-section 1256 positions, the \$500 gain realized on the section 1256 contract will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain.

(6) *Accrued gain and loss with respect to positions of a section 1092(b)(2) identified mixed straddle.* If one or more positions of a section 1092(b)(2) identified mixed straddle were held by the taxpayer on the day prior to the day the section 1092(b)(2) identified mixed straddle is established, such position or positions shall be deemed sold for their fair market value as of the close of the last business day preceding the day such straddle is established. See §§ 1.1092(b)-1T and 1.1092(b)-2T for application of the loss deferral and wash

sale rules and for treatment of holding periods and losses with respect to such positions. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss realized with respect to such position or positions for any gain or loss recognized under this paragraph (b)(6). This paragraph (b)(6) may be illustrated by the following examples. It is assumed in each example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year.

*Example 1.* On January 1, 1985, A enters into a non-section 1256 position. As of the close of the day on July 9, 1985, there is \$500 of unrealized long-term capital gain in the non-section 1256 position. On July 10, 1985, A enters into an offsetting section 1256 contract and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. Under these circumstances, on July 9, 1985, A will recognize \$500 of long-term capital gain on the non-section 1256 position.

*Example 2.* On February 1, 1985, A enters into a section 1256 contract. As of the close of the day on February 4, 1985, there is \$500 of unrealized gain on the section 1256 contract. On February 5, 1985, A enters into an offsetting non-section 1256 position and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. Under these circumstances, on February 4, 1985, A will recognize a \$500 gain on the section 1256 contract, which will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain.

*Example 3.* Assume the facts are the same as in example (2) and that on February 10, 1985, there is \$2,000 of unrealized gain in the section 1256 contract. A disposes of the section 1256 contract at a \$2,000 gain and disposes of the offsetting non-section 1256 position at a \$1,000 loss. Under these circumstances, the \$2,000 gain on the section 1256 contract will be reduced to \$1,500 to take into account the \$500 gain recognized when the section 1092(b)(2) identified mixed straddle was established. The \$1,500 gain on the section 1256 contract will be offset against the \$1,000 loss on the non-section 1256 position. The net \$500 gain from the straddle will be treated as 60 percent long-term capital gain and 40 percent short-term capital gain because it is attributable to the section 1256 contract.

*Example 4.* On March 1, 1985, A enters into a non-section 1256 position. As of the close of the day on March 2, 1985, there is \$400 of unrealized short-term capital gain in the non-

section 1256 position. On March 3, 1985, A enters into an offsetting section 1256 contract and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. On March 10, 1985, A disposes of the section 1256 contract at a \$500 loss and the non-section 1256 position at a \$500 gain. Under these circumstances, on March 2, 1985, A will recognize \$400 of short-term capital gain attributable to the gain accrued on the non-section 1256 position prior to the day the section 1092(b)(2) identified mixed straddle was established. On March 10, 1985, the gain of \$500 on the non-section 1256 position will be reduced to \$100 to take into account the \$400 of gain recognized when the section 1092(b)(2) identified mixed straddle was established. The \$100 gain on the non-section 1256 position will be offset against the \$500 loss on the section 1256 contract. The net loss of \$400 from the straddle will be treated as 60 percent long-term capital loss and 40 percent short-term capital loss because it is attributable to the section 1256 contract.

(7) *Treatment of gain and loss from non-section 1256 positions after disposition of all section 1256 contracts.* Gain or loss on a non-section 1256 position that is part of a section 1092(b)(2) identified mixed straddle and that is held after all section 1256 contracts in the straddle are disposed of shall be treated as short-term capital gain or loss to the extent attributable to the period when the positions were part of such straddle. See §1.1092(b)-2T for rules concerning the holding period of such positions. This paragraph (b)(7) may be illustrated by the following example. It is assumed that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) during the taxable years.

*Example:* On December 1, 1985, A, an individual calendar year taxpayer, enters into a section 1256 contract and an offsetting non-section 1256 position and makes a valid election to treat such straddle as a section 1092(b)(2) identified mixed straddle. On December 31, 1985, A disposes of the section 1256 contract at a \$1,000 loss. On the same day, there is \$1,000 of unrecognized gain in the non-section 1256 position. The \$1,000 loss on the section 1256 contract is treated as short-term capital loss because there is a \$1,000 gain on the non-section 1256 position, but the \$1,000 loss is disallowed in 1985 because there is \$1,000 of unrecognized gain in the offsetting nonsection 1256 position. See section 1092(a) and §1.1092(b)-1T. On July 10, 1986, A disposes of the non-section 1256 position at a \$1,500 gain, \$500 of which is attributable to

the post-straddle period. Under these circumstances, \$1,000 of the gain on the non-section 1256 position will be treated as short-term capital gain because that amount of the gain is attributable to the period when the position was part of a section 1092(b)(2) identified mixed straddle. The remaining \$500 of the gain will be treated as long-term capital gain because the position was held for more than six months after the straddle was terminated. In addition, the \$1,000 short-term capital loss disallowed in 1985 will be taken into account at this time.

(c) *Coordination with loss deferral and wash sale rules of §1.1092(b)-1T.* This section shall apply prior to the application of the loss deferral and wash sale rules of §1.1092(b)-1T.

(d) *Identification required—(1) In general.* To elect the provisions of this section, a taxpayer must clearly identify on a reasonable and consistently applied economic basis each position that is part of the section 1092(b)(2) identified mixed straddle before the close of the day on which the section 1092(b)(2) identified mixed straddle is established. If the taxpayer disposes of a position that is part of a section 1092(b)(2) identified mixed straddle before the close of the day on which the straddle is established, such identification must be made at or before the time that the taxpayer disposes of the position. In the case of a taxpayer who is an individual, the close of the day is midnight (local time) in the location of the taxpayer's principal residence. In the case of all other taxpayers, the close of the day is midnight (local time) in the location of the taxpayer's principal place of business. Only the person or entity that directly holds all positions of a straddle may make the election under this section.

(2) *Presumptions.* A taxpayer is presumed to have identified a section 1092(b)(2) identified mixed straddle by the time prescribed in paragraph (d)(1) of this section if the taxpayer receives independent verification of the identification (within the meaning of paragraph (d)(4) of this section). The presumption referred to in this paragraph (d)(2) may be rebutted by clear and convincing evidence to the contrary.

(3) *Corroborating evidence.* If the presumption of paragraph (d)(2) of this section does not apply, the burden shall be on the taxpayer to establish

that an election under paragraph (d)(1) of this section was made by the time specified in paragraph (d)(1) of this section. If the taxpayer has no evidence of the time when the identification required by paragraph (d)(1) of this section is made, other than the taxpayer's own testimony, the election is invalid unless the taxpayer shows good cause for failure to have evidence other than the taxpayer's own testimony.

(4) *Independent verification.* For purposes of this section, the following constitute independent verification:

(i) *Separate account.* Placement of one or more positions of a section 1092(b)(2) identified mixed straddle in a separate account designated as a *section 1092(b)(2) identified mixed straddle account* that is maintained by a broker (as defined in § 1.6045-1(a)(1)), futures commission merchant (as defined in 7 U.S.C. 2 and 17 CFR 1.3(p)), or similar person and in which notations are made by such person identifying all positions of the section 1092(b)(2) identified mixed straddle and stating the date the straddle is established.

(ii) *Confirmation.* A written confirmation from a person referred to in paragraph (d)(4)(i) of this section, or from the party from which one or more positions of the section 1092(b)(2) identified mixed straddle are acquired, stating the date the straddle is established and identifying the other positions of the straddle.

(iii) *Other methods.* Such other methods of independent verification as the Commissioner may approve at the Commissioner's discretion.

(5) *Section 1092 (b)(2) identified mixed straddles established before February 25, 1985.* Notwithstanding the provisions of paragraph (d)(1) of this section, relating to the time of identification of a section 1092(b)(2) identified mixed straddle, a taxpayer may identify straddles that were established before February 25, 1985 as section 1092(b)(2) identified mixed straddles after the time specified in paragraph (d)(1) of this section if the taxpayer adopts a reasonable and consistent economic basis for identifying the positions of such straddles.

(e) *Effective date—(1) In general.* The provisions of this section shall apply to

straddles established on or after January 1, 1984.

(2) *Pre-1984 accrued gain.* If the last business day referred to in paragraph (b)(6) of this section is contained in a period to which paragraph (b)(6) does not apply, the gains and losses from the deemed sale shall be included in the first period to which paragraph (b)(6) applies.

(Secs. 1092(b)(1), 1092(b)(2) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 98 Stat. 627; 26 U.S.C. 1092(b)(1), 1092(b)(2), 7805))

[T.D. 8008, 50 FR 3325, Jan. 24, 1985; 50 FR 12243, Mar. 28, 1985; 50 FR 19344, May 8, 1985]

**§ 1.1092(b)-4T Mixed straddles; mixed straddle account (temporary).**

(a) *In general.* A taxpayer may elect (in accordance with paragraph (f) of this section) to establish one or more mixed straddle accounts (as defined in paragraph (b) of this section). Gains and losses from positions includible in a mixed straddle account shall be determined and treated in accordance with the rules set forth in paragraph (c) of this section. A mixed straddle account is treated as established as of the first day of the taxable year for which the taxpayer makes the election or January 1, 1984, whichever is later. See § 1.1092(b)-5T relating to definitions.

(b) *Mixed straddle account defined—(1) In general.* The term *mixed straddle account* means an account for determining gains and losses from all positions held as capital assets in a designated class of activities by the taxpayer at the time the taxpayer elects to establish a mixed straddle account. A separate mixed straddle account must be established for each separate designated class of activities.

(2) *Permissible designations.* Except as otherwise provided in this section, a taxpayer may designate as a class of activities the types of positions that a reasonable person, on the basis of all the facts and circumstances, would ordinarily expect to be offsetting positions. This paragraph (b)(2) may be illustrated by the following example. It is assumed in the example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) during the taxable year, and that gain or loss



from the positions is treated as gain or loss from a capital asset.

*Example:* B engages in transactions in dealer equity options on XYZ Corporation stock, stock in XYZ Corporation, dealer equity options on UVW Corporation stock, and stock in UVW Corporation. A reasonable person, on the basis of all the facts and circumstances, would not expect dealer equity options on XYZ Corporation stock and stock in XYZ Corporation to offset any dealer equity options on UVW Corporation stock or any stock in UVW Corporation. If B makes the mixed straddle account election under this section for all such positions, B must designate two separate classes of activities, one consisting of transactions in dealer equity options on XYZ Corporation stock and stock in XYZ Corporation, and the other consisting of transactions in dealer equity options on UVW Corporation stock and stock in UVW Corporation, and maintain two separate mixed straddle accounts.

(3) *Positions that offset positions in more than one mixed straddle account.* Gains and losses from positions that a reasonable person, on the basis of all the facts and circumstances, ordinarily would expect to be offsetting with respect to positions in more than one mixed straddle account shall be allocated among such accounts under a reasonable and consistent method that clearly reflects income. This paragraph (b)(2) may be illustrated by the following example. It is assumed that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) during the taxable year, and that gain or loss from the positions is treated as gain or loss from a capital asset.

*Example:* B holds stock in XYZ Corporation, UVW Corporation, and RST Corporation, and options on a broad based stock index future. A reasonable person, on the basis of all the facts and circumstances, would expect the stock in XYZ Corporation, UVW Corporation, and RST Corporation to be offsetting positions with respect to the options on the broad based stock index future. A reasonable person, on the basis of all the facts and circumstances, would not expect that stock in XYZ Corporation, UVW Corporation, or RST Corporation would be offsetting positions with respect to each other. If B makes the mixed straddle account election under this section for all such positions, B must designate three separate classes of activities: one consisting of stock in XYZ Corporation; one consisting of stock in UVW Corporation; and one consisting of

stock in RST Corporation, and maintain three separate mixed straddle accounts. Options on the broad based stock index future must be designated as part of all three classes of activities and gains and losses from such options must be allocated among such accounts under a reasonable and consistent method that clearly reflects income, because such options are a type of position expected to be offsetting with respect to the positions in all three mixed straddle accounts.

(4) *Impermissible designations—(i) Types of positions that are not offsetting included in designated class of activities.* If the Commissioner determines, on the basis of all the facts and circumstances, that a class of activities designated by a taxpayer includes types of positions that a reasonable person, on the basis of all the facts and circumstances, ordinarily would not expect to be offsetting positions with respect to other types of positions in the account, the Commissioner may—

(A) Amend the class of activities designated by the taxpayer and remove positions from the account that are not within the amended designated class of activities; or

(B) Amend the class of activities designated by the taxpayer to establish two or more mixed straddle accounts.

(ii) *Types of positions that are offsetting not included in designated class of activities.* If the Commissioner determines, on the basis of all the facts and circumstances, that a designated class of activities does not include types of positions that are offsetting with respect to types of positions within the designated class, the Commissioner may—

(A) Amend the class of activities designated by the taxpayer to include types of positions that are offsetting with respect to the types of positions within the designated class and place such positions in the account; or

(B) Amend the class of activities designated by the taxpayer to exclude types of positions that are offsetting with respect to the types of positions that are not in the account.

(iii) *Treatment of positions removed from or included in the account.* (A) Positions removed from a mixed straddle account will be subject to the rules of taxation generally applicable to such positions. Thus, for example, if the positions removed from the account are

offsetting positions with respect to other positions outside the account, the rules of §§ 1.1092(b)-1T and 1.1092(b)-2T apply.

(B) If the taxpayer acted consistently and in good faith in designating the class of activities of the account and in placing positions in the account, the rules of § 1.1092(b)-2T(b)(2) shall not apply to any mixed straddles resulting from the removal of such positions from the account and the Commissioner, at the Commissioner's discretion, may identify such mixed straddles as section 1092(b)(2) identified mixed straddles and apply the rules of § 1.1092(b)-3T(b) to such straddles.

(C) If positions are placed in a mixed straddle account, such positions shall be treated as if they were originally included in the mixed straddle account in which they are placed.

(5) *Positions included in a mixed straddle account that are not within the designated class of activities.* The Commissioner may remove one or more positions from a mixed straddle account if, on the basis of all the facts and circumstances, the Commissioner determines that such positions are not within the designated class of activities of the account. See paragraph (b)(4)(iii) of this section for rules concerning the treatment of such positions.

(6) *Positions outside a mixed straddle account that are within the designated class of activities.* If a taxpayer holds types of positions outside of a mixed straddle account (including positions in another mixed straddle account) that are within the designated class of activities of a mixed straddle account, the Commissioner may require the taxpayer to include such types of positions in the mixed straddle account, move positions from one account to another, or remove from the mixed straddle account types of positions that are offsetting with respect to the types of positions held outside the account. See paragraph (b)(4)(iii) of this section for the treatment of such positions.

(c) *Treatment of gains and losses from positions in a mixed straddle account—(1) Daily account net gain or loss.* Except as provided in paragraphs (d) and (e) of this section (relating to positions in a mixed straddle account before January 1, 1985) as of the close of each business

day of the taxable year, gain or loss shall be determined for each position in a mixed straddle account that is disposed of during the day. Positions in a mixed straddle account that have not been disposed of as of the close of the day shall be treated as if sold for their fair market value at the close of each business day. Gains and losses for each business day from non-section 1256 positions in each mixed straddle account shall be netted to determine *net non-section 1256 position gain or loss* for the account, and gains and losses for each business day from section 1256 contracts in each mixed straddle account shall be netted to determine *net section 1256 contract gain or loss* for the account. Net non-section 1256 position gain or loss from the account is then offset against net section 1256 contract gain or loss from the same mixed straddle account to determine the *daily account net gain or loss* for the account. If daily account net gain or loss is attributable to the net non-section 1256 position gain or loss, daily account net gain or loss for such account shall be treated as short-term capital gain or loss. If daily account net gain or loss is attributable to the net section 1256 contract gain or loss, daily account net gain or loss for such account shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. If net non-section 1256 position gain or loss and net section 1256 contract gain or loss are either both gains or both losses, that portion of the daily account net gain or loss attributable to net non-section 1256 position gain or loss shall be treated as short-term capital gain or loss and that portion of the daily account net gain or loss attributable to net section 1256 contract gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss determined under this paragraph (c)(1) to take into account any gain or loss determined for prior business days under this paragraph (c)(1).

(2) *Annual account net gain or loss; total annual account net gain or loss.* On the last business day of the taxable

year, the *annual account net gain or loss* for each mixed straddle account established by the taxpayer shall be determined by netting the daily account net gain or loss for each business day in the taxable year for each account. Annual account net gain or loss for each mixed straddle account shall be adjusted pursuant to paragraph (c)(3) of this section. The *total annual account net gain or loss* shall be determined by netting the annual account net gain or loss for all mixed straddle accounts established by the taxpayer, as adjusted pursuant to paragraph (c)(3) of this section. Total annual account net gain or loss is subject to the limitations of paragraph (c)(4) of this section. See paragraphs (d) and (e) of this section for determining the annual account net gain or loss for mixed straddle accounts established for taxable years beginning before January 1, 1985.

(3) *Application of section 263(g) to mixed straddle accounts.* No deduction shall be allowed for interest and carrying charges (as defined in section 263(g)(2)) properly allocable to a mixed straddle account. Interest and carrying charges properly allocable to a mixed straddle account means the excess of—

(i) The sum of—

(A) Interest on indebtedness incurred or continued during the taxable year to purchase or carry any position in the account; and

(B) All other amounts (including charges to insure, store or transport the personal property) paid or incurred to carry any position in the account; over

(ii) The sum of—

(A) The amount of interest (including original issue discount) includible in gross income for the taxable year with respect to all positions in the account;

(B) Any amount treated as ordinary income under section 1271(a)(3)(A), 1278, or 1281(a) with respect to any position in the account for the taxable year; and

(C) The excess of any dividends includible in gross income with respect to positions in the account for the taxable year over the amount of any deduction allowable with respect to such dividends under section 243, 244, or 245.

For purposes of paragraph (c)(3)(i) of this section, the term *interest* includes

any amount paid or incurred in connection with positions in the account used in a short sale. Any interest and carrying charges disallowed under this paragraph (c)(3) shall be capitalized by treating such charges as an adjustment to the annual account net gain or loss and shall be allocated pro rata between net short-term capital gain or loss and net long-term capital gain or loss.

(4) *Limitation on total annual account net gain or loss.* No more than 50 percent of total annual account net gain for the taxable year shall be treated as long-term capital gain. Any long-term capital gain in excess of the 50 percent limit shall be treated as short-term capital gain. No more than 40 percent of total annual account net loss for the taxable year shall be treated as short-term capital loss. Any short-term capital loss in excess of the 40 percent limit shall be treated as long-term capital loss.

(5) *Accrued gain and loss with respect to positions includible in a mixed straddle account.* Positions includible in a mixed straddle account that are held by a taxpayer on the day prior to the day the mixed straddle account is established shall be deemed sold for their fair market value as of the close of the last business day preceding the day such mixed straddle account is established. See §§ 1.1092(b)-1T and 1.1092(b)-2T for application of the loss deferral and wash sale rules and for treatment of holding periods and losses with respect to such positions. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss realized with respect to such positions for any gain or loss recognized under this paragraph (c)(5).

(6) *Examples.* This paragraph (c) may be illustrated by the following examples. It is assumed in each example that the positions are the only positions held directly or indirectly (through a related person or flowthrough entity) by an individual calendar year taxpayer during the taxable year, and that gain or loss from the positions is treated as gain or loss from a capital asset.

*Example 1.* A establishes a mixed straddle account for a class of activities consisting of transactions in stock of XYZ Corporation

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and dealer equity options on XYZ Corporation stock. Assume that A enters into no transactions in XYZ Corporation stock or dealer equity options on XYZ Corporation stock prior to December 26, 1985. Thus, the net non-section 1256 position gain or loss and the net section 1256 contract gain or loss for the account are zero for each business day except the following days:

	Net non-section 1256 position gain or loss (XYZ corporation stock)	Net section 1256 contract gain or loss (XYZ corporation dealer equity options)
December 26, 1985 .....	\$1,000	\$20,000
December 27, 1985 .....	(9,000)	3,000
December 30, 1985 .....	(5,000)	15,000
December 31, 1985 .....	7,000	(2,000)

The daily account net gain or loss is as follows:

	Daily account net gain or loss	Treatment of daily account net gain or loss	Long-term	Short-term
December 26, 1985 ..	\$21,000	\$1,000 short-term capital gain, \$20,000 60 percent long-term capital gain and 40 percent short-term capital gain.	\$12,000	\$9,000
December 27, 1985 ..	(6,000)	Short-term capital loss .....	.....	(6,000)
December 30, 1985 ..	10,000	60 percent long-term capital gain and 40 percent short-term capital gain.	6,000	4,000
December 31, 1985 ..	5,000	Short-term capital gain .....	.....	5,000

The annual account net gain or loss is \$18,000 of long-term capital gain and \$12,000 of short-term capital gain. Because A has no other mixed straddle accounts, total annual account net gain or loss is also \$18,000 long-term capital gain and \$12,000 short-term capital gain. Because more than 50 percent of the total annual account net gain is long-term capital gain, \$3,000 of the \$18,000 long-term capital gain will be treated as short-term capital gain.

*Example 2.* Assume the facts are the same as in example (1), except that interest and carrying charges in the amount of \$6,000 are allocable to the mixed straddle account and are capitalized under paragraph (c)(3) of this section. Under these circumstances, \$3,600  $((\$18,000/\$30,000) \times \$6,000)$  of the interest and carrying charges will reduce the \$18,000 long-term capital gain to \$14,400 long-term capital gain and \$2,400  $((\$12,000/\$30,000) \times \$6,000)$  of the interest and carrying charges will reduce the \$12,000 short-term capital gain to \$9,600 short-term capital gain. Because more than 50 percent of the total annual account net gain is long-term capital gain, \$2,400 of the \$14,400 long-term capital gain will be treated as short-term capital gain.

*Example 3.* Assume the facts are the same as in example (1), except that A has a second mixed straddle account, which has an annual account net loss of \$14,000 of long-term capital loss and \$6,000 of short-term capital loss. Under these circumstances, the total annual account net gain is \$4,000  $(\$18,000 - \$14,000)$  of long-term capital gain and \$6,000  $(\$12,000 - \$6,000)$  of short-term capital gain. Because not more than 50 percent of the total annual account net gain is long-term capital gain, none of the long-term capital gain will be treated as short-term capital gain.

*Example 4.* Assume the facts are the same as in example (3), except that interest and carrying charges in the amount of \$4,000 are allocable to the second mixed straddle account and are capitalized under paragraph (c)(3) of this section. Under these circumstances, \$2,800  $((\$14,000/\$20,000) \times \$4,000)$  of the interest and carrying charges will increase the \$14,000 long-term capital loss to \$16,800 of long-term capital loss and \$1,200  $((\$6,000/\$20,000) \times \$4,000)$  of the interest and carrying charges will increase the \$6,000 short-term capital loss to \$7,200 short-term capital loss. The total annual account net gain is \$1,200 of long-term capital gain  $(\$18,000 - \$16,800)$  and \$4,800  $(\$12,000 - \$7,200)$  of short-term capital gain. Because not more than 50 percent of the total annual account net gain is long-term capital gain, none of the \$1,200 long-term capital gain will be treated as short-term capital gain.

*Example 5.* Assume the facts are the same as in example (1), except that A has a second mixed straddle account, which has an annual account net loss of \$20,000 of long-term capital loss and \$15,000 of short-term capital loss. Under these circumstances, the total annual account net loss is \$2,000  $(\$20,000 - \$18,000)$  of long-term capital loss and \$3,000  $(\$15,000 - \$12,000)$  of short-term capital loss. Because more than 40 percent of the total annual account net loss is short-term capital loss, \$1,000 of the short-term capital loss will be treated as long-term capital loss.

*Example 6.* A establishes two mixed straddle accounts. Account 1 has an annual account net gain of \$5,000 short-term capital gain, which results from netting \$5,000 of long-term capital loss and \$10,000 of short-term capital gain. Account 2 has an annual account net loss of \$2,000 long-term capital loss, which results from netting \$3,000 of long-term capital loss against \$1,000 of short-

term capital gain. The total annual account net gain is \$3,000 short-term capital gain, which results from netting the annual account net gain of \$5,000 short-term capital gain from Account 1 against the annual account net loss of \$2,000 long-term capital loss from Account 2.

(d) *Treatment of gains and losses from positions in a mixed straddle account established on or before December 31, 1984, in taxable years ending after December 31, 1984; pre-1985 account net gain or loss.* For mixed straddle accounts established on or before December 31, 1984, in taxable years ending after December 31, 1984, the taxpayer on December 31, 1984, shall determine gain or loss for each position in the mixed straddle account that has been disposed of on any day during the period beginning on the first day of the taxpayer's taxable year that includes December 31, 1984, and ending on December 31, 1984. Positions in the mixed straddle account that have not been disposed of as of the close of December 31, 1984, shall be treated as if sold for their fair market value as of the close of December 31, 1984. Gains and losses for such period from non-section 1256 positions in each mixed straddle account shall be netted to determine *pre-1985 net non-section 1256 position gain or loss* and gains and losses for such period from section 1256 contracts in each mixed straddle account shall be netted to determine *pre-1985 net section 1256 contract gain or loss*. Pre-1985 net non-section 1256 position gain or loss is then offset against pre-1985 net section 1256 contract gain or loss from the same mixed straddle account to determine the *pre-1985 account net gain or loss* for the period. If the pre-1985 account net gain or loss is attributable to pre-1985 net non-section 1256 position gain or loss, the pre-1985 account net gain or loss from such account shall be treated as short-term capital gain or loss. If the pre-1985 account net gain or loss is attributable to pre-1985 net section 1256 contract gain or loss, the pre-1985 account net gain or loss from such account shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. If pre-1985 net non-section 1256 position gain or loss and pre-1985 net section 1256 contract gain or loss are either both gains or losses, that portion of the pre-1985 account net gain

or loss attributable to pre-1985 net non-section 1256 position gain or loss shall be treated as short-term capital gain or loss and that portion of the pre-1985 account net gain or loss attributable to pre-1985 net section 1256 contract gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss realized with respect to such positions for any gain or loss recognized under this paragraph (d). To determine the annual account net gain or loss for such account, the pre-1985 account net gain or loss shall be treated as daily account net gain or loss for purposes of paragraph (c)(2) of this section. See paragraph (c)(5) of this section for treatment of accrued gain or loss with respect to positions includible in a mixed straddle account.

(e) *Treatment of gains and losses from positions in a mixed straddle account for taxable years ending on or before December 31, 1984—(1) In general.* For mixed straddle accounts established on or before December 31, 1984, in taxable years ending on or before December 31, 1984, the taxpayer at the close of the taxable year shall determine gain or loss for each position in the mixed straddle account that has been disposed of on any day during the period beginning on the later of the first day of the taxable year or January 1, 1984, and ending on the last day of the taxable year. Positions in the mixed straddle account that have not been disposed of as of the close of the last business day of the taxable year shall be treated as if sold for their fair market value at the close of such day. Gains and losses from non-section 1256 positions in each mixed straddle account shall be netted to determine *1984 net non-section 1256 position gain or loss* for the account and gains and losses from section 1256 contracts shall be netted to determine *1984 net section 1256 contract gain or loss* for the account. The 1984 net non-section 1256 position gain or loss is then offset against 1984 net section 1256 contract gain or loss from the same mixed straddle account to determine *annual account net gain or loss* for the account. If

annual account net gain or loss is attributable to 1984 net non-section 1256 position gain or loss, annual account net gain or loss shall be treated as short-term capital gain or loss. If annual account net gain or loss is attributable to 1984 net section 1256 contract gain or loss, annual account net gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. If 1984 net non-section 1256 position gain or loss and 1984 net section 1256 contract gain or loss are either both gains or both losses, that portion of annual account net gain or loss attributable to 1984 net non-section 1256 position gain or loss shall be treated as short-term capital gain or loss and that portion of annual account net gain or loss attributable to 1984 net section 1256 contract gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss realized with respect to such positions for any gain or loss recognized under this paragraph (e). See paragraph (c) (2) through (5) of this section relating to determining the total annual account net gain or loss, application of section 263(g) to mixed straddle accounts, the limitation on the total annual account net gain or loss, and treatment of accrued gain or loss with respect to positions includible in a mixed straddle account.

(2) *Pre-1984 accrued gain.* If the last business day referred to in paragraph (c)(5) of this section is contained in a period to which such paragraph (c)(5) does not apply, the gains and losses from the deemed sale shall be included in the first period to which paragraph (c)(5) applies.

(f) *Election*—(1) *Time for making the election.* Except as otherwise provided, the election under this section to establish one or more mixed straddle accounts for a taxable year must be made by the due date (without regard to automatic and discretionary extensions) of the taxpayer's income tax return for the immediately preceding taxable year (or part thereof). For example, an individual taxpayer on a calendar year basis must make the elec-

tion by April 15, 1986, to establish one or more mixed straddle accounts for taxable year 1986. Similarly, a calendar year corporate taxpayer must make its election by March 15, 1986, to establish one or more mixed straddle accounts for 1986. If a taxpayer begins trading or investing in positions in a new class of activities during a taxable year, the election under this section with respect to the new class of activities must be made by the taxpayer by the later of the due date of the taxpayer's income tax return for the immediately preceding taxable year (without regard to automatic and discretionary extensions), or 60 days after the first mixed straddle in the new class of activities is entered into. Similarly, if on or after the date the election is made with respect to an account, the taxpayer begins trading or investing in positions that are includible in such account but were not specified in the original election, the taxpayer must make an amended election as prescribed in paragraph (f)(2)(ii) of this section by the later of the due date of the taxpayer's income tax return for the immediately preceding taxable year (without regard to automatic and discretionary extensions), or 60 days after the acquisition of the first of the positions. If an election is made after the times specified in this paragraph (f)(1), the election will be permitted only if the Commissioner concludes that the taxpayer had reasonable cause for failing to make a timely election. For example, if a calendar year taxpayer holds few positions in one class of activities prior to April 15 of a taxable year, and the taxpayer greatly increases trading activity with respect to positions in the class of activities after April 15, then the Commissioner may conclude that the taxpayer had reasonable cause for failing to make a timely election and allow the taxpayer to make a mixed straddle account election for the taxable year. See paragraph (f)(2) of this section for rules relating to the manner for making these elections.

(2) *Manner for making the election*—(i) *In general.* A taxpayer must make the election on Form 6781 in the manner prescribed by such Form, and by attaching the Form to the taxpayer's income tax return for the immediately

preceding taxable year (or request for an automatic extension). In addition, the taxpayer must attach a statement to Form 6781 designating with specificity the class of activities for which a mixed straddle account is established. The designation must describe the class of activities in sufficient detail so that the Commissioner may determine, on the basis of the designation, whether specific positions are includible in the mixed straddle account. In the case of a taxpayer who elects to establish more than one mixed straddle account, the Commissioner must be able to determine, on the basis of the designations, that specific positions are placed in the appropriate account. The election applies to all positions in the designated class of activities held by the taxpayer during the taxable year.

(ii) *Elections for new classes of activities and expanded elections.* Amended elections and elections made with respect to a new class of activities that the taxpayer has begun trading or investing in during a taxable year, shall be made on Form 6781 within the times prescribed in paragraph (f)(1) of this section. A statement must be attached to the Form containing the information required in paragraph (f)(2)(i) of this section, with respect to the new or expanded designated class of activities.

(iii) *Special rule.* The Commissioner may disregard a mixed straddle account election if the Commissioner determines, on the basis of all the facts and circumstances, that the principal purpose for making the mixed straddle account election with respect to a class of activities was to avoid the rules of § 1.1092(b)-1T (a). For example, if a taxpayer holds stock that is not part of a straddle and that would generate a loss if sold or otherwise disposed of, and the taxpayer both acquires offsetting option positions with respect to the stock and makes a mixed straddle account election with respect to the stock and stock options near the end of a taxable year, the Commissioner may disregard the mixed straddle account election.

(3) *Special rule for taxable years ending after 1983 and before September 1, 1986.* An election under this section to establish one or more mixed straddle accounts for any taxable year that includes July 17, 1984, and any taxable

year that ends before September 1, 1986 (or, in the case of a corporation, October 1, 1986), must be made by the later of—

(i) December 31, 1985, or

(ii) The due date (without regard to automatic and discretionary extensions) of the return for the taxpayer's taxable year that begins in 1984 if the due date of the taxpayer's return for such year (without regard to automatic and discretionary extensions) is after December 31, 1985.

The election shall be made by attaching Form 6781 together with a statement to the taxpayer's income tax return, amended return, or other appropriate form that is filed on or before the deadline determined in the preceding sentence. The attached statement must designate with specificity, in accordance with paragraph (f)(2)(i) of this section, the class of activities for which a mixed straddle account is established. For example, if a fiscal year taxpayer's return (for its taxable year ending September 30, 1985) is due (without regard to extensions) on January 15, 1986, and the taxpayer intends to obtain an automatic extension to file the return, the election under this section for any or all of the fiscal years ending in 1984, 1985 or 1986 must be made on or before January 15, 1986, with the request for an automatic extension. Similarly, a calendar year taxpayer (whether or not such taxpayer has obtained an automatic extension of time to file) who has filed its 1984 income tax return before October 15, 1985, without making a mixed straddle account election for either 1984 or 1985, or both, may make the mixed straddle account election under this section for either or for both of such years with an amended return filed on or before December 31, 1985. The mixed straddle account elected on this amended return will be effective for all positions in the designated class of activities even if the taxpayer had elected straddle-by-straddle identification as provided under § 1.1092(b)-3T for purposes of the previously filed 1984 income tax return. For taxable years beginning in 1984 and 1985, the election under this paragraph (f)(3) is effective for the entire taxable year. For taxable years beginning in 1983, an election shall be effective for

that part of the year beginning after December 31, 1983, for which the election under § 1.1256(h)-1T or 1.1256(h)-2T is made. See § 1.6081-1T regarding an extension of time to file certain individual income tax returns.

(4) *Period for which election is effective.* For taxable years beginning on or after January 1, 1984, an election under this section, including an amendment to the election pursuant to paragraph (f)(1) of this section, shall be effective only for the taxable year for which the election is made. This election may be revoked during the taxable year for the remainder of the taxable year only with the consent of the Commissioner. An application for consent to revoke the election shall be filed with the service center with which the election was filed and shall—

(i) Contain the name, address, and taxpayer identification number of the taxpayer;

(ii) Show that the volume or nature of the taxpayer's activities has changed substantially since the election was made, and that the taxpayer's activities no longer warrant the use of such mixed straddle account; and

(iii) Any other relevant information. If a taxpayer's election for a taxable year is revoked, the taxpayer may not make a new election for the same class of activities under paragraph (f)(1) of this section during the same taxable year.

(g) *Effective date.* The provisions of this section apply to positions held on or after January 1, 1984.

(Secs. 1092(b)(1), 1092(b)(2) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 98 Stat. 627; 26 U.S.C. 1092(b)(1), 1092(b)(2), 7805))

[T.D. 8008, 50 FR 3329, Jan. 24, 1985; 50 FR 12243, Mar. 28, 1985, as amended by T.D. 8058, 50 FR 42013, Oct. 17, 1985]

**§ 1.1092(b)-5T Definitions (temporary).**

The following definitions apply for purposes of §§ 1.1092(b)-1T through 1.1092(b)-4T.

(a) *Disposing, disposes, or disposed.* The term *disposing, disposes, or disposed* includes the sale, exchange, cancellation, lapse, expiration, or other termination of a right or obligation with respect to personal property (as defined in section 1092(d)(1)).

(b) *Hedging transaction.* The term *hedging transaction* means a hedging transaction as defined in section 1256(e).

(c) *Identified straddle.* The term *identified straddle* means an identified straddle as defined in section 1092(a)(2)(B).

(d) *Loss.* The term *loss* means a loss otherwise allowable under section 165(a) (without regard to the limitation contained in section 165(f)) and includes a write-down in inventory.

(e) *Mixed straddle.* The term *mixed straddle* means a straddle—

(1) All of the positions of which are held as capital assets;

(2) At least one (but not all) of the positions of which is a section 1256 contract;

(3) For which an election under section 1256(d) has not been made; and

(4) Which is not part of a larger straddle.

(f) *Non-section 1256 position.* The term *non-section 1256 position* means a position that is not a section 1256 contract.

(g) *Offsetting position.* The term *offsetting position* means an offsetting position as defined in section 1092(c)(2).

(h) *Position.* The term *position* means a position as defined in section 1092(d)(2).

(i) [Reserved]

(j) *Related person or flowthrough entity.* The term *related person or flowthrough entity* means a related person or flowthrough entity as defined in sections 1092(d)(4) (B) and (C) respectively.

(k) *Section 1256 contract.* The term *section 1256 contract* means a section 1256 contract as defined in section 1256(b).

(l) [Reserved]

(m) *Straddle.* The term *straddle* means a straddle as defined in section 1092(c)(1).

(n) *Successor position.* The term *successor position* means a position ("P") that is or was at any time offsetting to a second position if—

(1) The second position was offsetting to any loss position disposed of; and

(2) P is entered into during a period commencing 30 days prior to, and ending 30 days after, the disposition of the loss position referred to in paragraph (n)(1) of this section.



(o) *Unrecognized gain.* The term *unrecognized gain* means unrecognized gain as defined in section 1092(a)(3)(A).

(p) *Substantially identical.* The term *substantially identical* has the same meaning as substantially identical in section 1091(a).

(q) *Securities.* The term *security* means a security as defined in section 1236(c).

(Secs. 1092(b) and 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 95 Stat. 324, 26 U.S.C. 1092(b), 7805) and sec. 102(h) of the Tax Reform Act of 1984 (98 Stat. 625))

[T.D. 8007, 50 FR 3321, Jan. 24, 1985, as amended by T.D. 8070, 51 FR 1788, Jan. 15, 1986]

#### § 1.1092(c)-1 Qualified covered calls.

(a) *In general.* Section 1092(c) defines a straddle as offsetting positions with respect to personal property. Under section 1092(d)(3)(B)(i)(I), stock is personal property if the stock is part of a straddle that involves an option on that stock or substantially identical stock or securities. Under section 1092(c)(4), however, writing a qualified covered call option and owning the optioned stock is not treated as a straddle under section 1092 if certain conditions, described in section 1092(c)(4)(B), are satisfied. Section 1092(c)(4)(H) authorizes the Secretary to modify these conditions to carry out the purposes of section 1092(c)(4) in light of changes in the marketplace.

(b) *Term limitation—(1) General rule.* Except as provided in paragraph (b)(2) of this section, an option is not a qualified covered call unless it is granted not more than 12 months before the day on which the option expires or satisfies term limitation and qualified benchmark requirements established by the Commissioner in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(2) *Special benchmark rule for an option granted not more than 33 months before the day on which the option expires—(i) In general.* The 12-month limitation described in paragraph (b)(1) of this section is extended to 33 months provided the lowest qualified benchmark is determined using the adjusted applicable stock price, as defined in § 1.1092(c)-4(e).

(ii) *Examples.* The following examples illustrate the rules set out in paragraph (b)(2)(i) of this section:

*Example 1.* Taxpayer owns stock in Corporation X. Taxpayer writes an equity option with standardized terms on Corporation X stock through a national securities exchange with a term of 21 months. The applicable stock price for Corporation X stock is \$100. The bench marks for a 21-month equity option with standardized terms with an applicable stock price of \$100 will be based upon the adjusted applicable stock price. Using the table at § 1.1092(c)-4(e), the applicable stock price of \$100 is multiplied by the adjustment factor 1.12, resulting in an adjusted applicable stock price of \$112. Using the bench marks for an equity option with standardized terms with an adjusted applicable stock price of \$112, the highest available strike price less than the adjusted applicable stock price is \$110, and the second highest strike price less than the adjusted applicable stock price is \$105. Therefore, a 21-month equity call option with standardized terms on Corporation X stock will not be deep in the money if the strike price is not less than \$105.

*Example 2.* Taxpayer owns stock in Corporation Y. Taxpayer writes an equity option with standardized terms on Corporation Y stock through a national securities exchange with a term of 21 months. The applicable stock price for Corporation Y stock is \$13.25. The bench marks for a 21-month equity option with standardized terms with an applicable stock price of \$13.25 will be based upon the adjusted applicable stock price. Using the table at § 1.1092(c)-4(e), the applicable stock price of \$13.25 is multiplied by the adjustment factor 1.12, resulting in an adjusted applicable stock price of \$14.84. Using the bench marks for an equity option with standardized terms with an adjusted applicable stock price of \$14.84, the highest available strike price less than the adjusted applicable stock price is \$12.50. However, under section 1092(c)(4)(D), the lowest qualified bench mark can be no lower than 85% of the applicable stock price, which for Corporation Y stock is \$12.61 (85% of the adjusted applicable stock price of \$14.84). Thus, because the highest available strike price less than the adjusted applicable stock price for an equity option with standardized terms is lower than the lowest qualified bench mark under section 1092(c)(4)(D), the lowest strike price at which a qualified covered call option can be written is the next higher strike price, or \$15.00. Therefore, a 21-month equity call option with standardized terms on Corporation Y stock will not be deep in the money if the strike price is not less than \$15.

(c) *Effective date.* This section applies to qualified covered call options entered into on or after July 29, 2002.

[67 FR 20899, Apr. 29, 2002]

**§ 1.1092(c)-2 Equity options with flexible terms.**

(a) *In general.* Section 1092(c)(4) provides an exception to the general rule that a straddle exists if a taxpayer holds stock and writes a call option on that stock. Under section 1092(c)(4), the ownership of stock and the issuance of a call option meeting certain requirements result in a qualified covered call, which is exempted from the general straddle rules of section 1092. This section addresses the consequences of the availability of equity options with flexible terms under the qualified covered call rules.

(b) *No effect on lowest qualified bench mark for standardized options.* The availability of strike prices for equity options with flexible terms does not affect the determination of the lowest qualified bench mark, as defined in section 1092(c)(4)(D), for an equity option with standardized terms.

(c) *Qualified covered call option status—(1) Requirements.* An equity option with flexible terms is a qualified covered call option only if—

(i) The option meets the requirements of section 1092(c)(4)(B) and § 1.1092(c)-1 (taking into account paragraph (c)(2) of this section);

(ii) The only payments permitted with respect to the option are a single fixed premium paid not later than 5 business days after the day on which the option is granted, and a single fixed strike price, as defined in § 1.1092(c)-4(d), that is payable entirely at (or within 5 business days of) exercise;

(iii) An equity option with standardized terms is outstanding for the underlying equity; and

(iv) The underlying security is stock in a single corporation.

(2) *Lowest qualified bench mark—(i) In general.* For purposes of determining whether an equity option with flexible terms is deep in the money within the meaning of section 1092(c)(4)(C), the lowest qualified bench mark under section 1092(c)(4)(D) is the same for an equity option with flexible terms as the lowest qualified bench mark for an equity option with standardized terms on the same stock having the same applicable stock price.

(ii) *Examples.* The following examples illustrate the rules set out in paragraph (c)(2)(i) of this section:

*Example 1.* Taxpayer owns stock in Corporation X. Taxpayer writes an equity call option with flexible terms on Corporation X stock through a national securities exchange for a term of not more than 12 months. The applicable stock price for Corporation X stock is \$73.75. Using the bench marks for an equity option with standardized terms with an applicable stock price of \$73.75, the highest available strike price less than the applicable stock price is \$70, and the second highest strike price less than the applicable stock price is \$65. Therefore, an equity call option with flexible terms on Corporation X stock with a term of 90 days or less will not be deep in the money if the strike price is not less than \$70. If the term is greater than 90 days, an equity call option with flexible terms on Corporation X will not be deep in the money if the strike price is not less than \$65.

*Example 2.* Taxpayer owns stock in Corporation Y. Taxpayer writes a 9-month equity call option with flexible terms on Corporation Y stock through a national securities exchange. The applicable stock price for Corporation Y stock is \$14.75. Using the bench marks for an equity option with standardized terms with an applicable stock price of \$14.75, the highest available strike price less than the applicable stock price is \$12.50. However, under section 1092(c)(4)(D), the lowest qualified bench mark can be no lower than 85% of the applicable stock price, which for Corporation Y stock is \$12.54. Thus, because the highest available strike price less than the applicable stock price for an equity option with standardized terms is lower than the lowest qualified bench mark under section 1092(c)(4)(D), the lowest strike price at which a qualified covered call option can be written is the next higher strike price, or \$15.00. This \$15.00 strike price requirement for a qualified covered call option applies to equity options with flexible terms, equity options with standardized terms, and qualifying over-the-counter options.

*Example 3.* Taxpayer owns stock in Corporation Z. On May 8, 2003, Taxpayer writes a 21-month equity call option with flexible terms on Corporation Z stock through a national securities exchange. The applicable stock price for Corporation Z stock is \$100. The bench marks for a 21-month equity option with standardized terms with an applicable stock price of \$100 will be based upon the adjusted applicable stock price. Using the table at § 1.1092(c)-4(e), the applicable stock price of \$100 is multiplied by the adjustment factor 1.12, resulting in an adjusted applicable stock price of \$112. The highest available strike price less than the adjusted applicable stock price is \$110, and the second

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highest strike price less than the adjusted applicable stock price is \$105. Therefore, a 21-month equity call option with flexible terms on Corporation Z stock will not be deep in the money if the strike price is not less than \$105.

(d) *Effective date*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, this section applies to equity options with flexible terms entered into on or after January 25, 2000.

(2) *Effective date for paragraphs (b) and (c) of this section.* Paragraphs (b) and (c) of this section apply to equity options with flexible terms entered into on or after July 29, 2002.

[T.D. 8866, 65 FR 3813, Jan. 25, 2000; Redesignated at 67 FR 20899, Apr. 29, 2002]

**§ 1.1092(c)-3 Qualifying over-the-counter options.**

(a) *In general.* Under section 1092(c)(4)(B)(i), an equity option is not a qualified covered call option unless it is traded on a national securities exchange that is registered with the Securities and Exchange Commission or other market that the Secretary determines has rules adequate to carry out the purposes of section 1092(c)(4). In accordance with section 1092(c)(4)(H), this requirement is modified as provided in paragraph (b) of this section.

(b) *Qualified covered call option status.* A qualifying over-the-counter option, as defined in § 1.1092(c)-4(c), is a qualified covered call option if it meets the requirements of §§ 1.1092(c)-1 and 1.1092(c)-2(c) after using the language “qualifying over-the-counter option” in place of “equity option with flexible terms”. For purposes of this paragraph (b), a qualifying over-the-counter option is deemed to satisfy the requirements of section 1092(c)(4)(B)(i).

(c) *Effective date.* This section applies to qualifying over-the-counter options entered into on or after July 29, 2002.

[67 FR 20900, Apr. 29, 2002]

**§ 1.1092(c)-4 Definitions.**

The following definitions apply for purposes of §§ 1.1092(c)-1 through 1.1092(c)-3:

(a) *Equity option with flexible terms* means an equity option—

(1) That is described in any of the following Securities Exchange Act Releases—

(i) Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendments by the Chicago Board Options Exchange, Inc. and the Pacific Stock Exchange, Inc., Relating to the Listing of Flexible Equity Options on Specified Equity Securities, Securities Exchange Act Release No. 34-36841 (Feb. 21, 1996); or

(ii) Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing of Flexible Equity Options on Specified Equity Securities, Securities Exchange Act Release No. 34-37336 (June 27, 1996); or

(iii) Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2, 4 and 5 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Traded Equity and Index Options, Securities Exchange Act Release No. 34-39549 (Jan. 23, 1998); or

(iv) Any changes to the Security Exchange Act Releases described in paragraphs (a)(1)(i) through (iii) of this section that are approved by the Securities and Exchange Commission; or

(2) That is traded on any national securities exchange that is registered with the Securities and Exchange Commission (other than those described in the Security Exchange Act Releases set forth in paragraph (a)(1) of this section) and is—

(i) Substantially identical to the equity options described in paragraph (a)(1) of this section; and

(b) *Equity option with standardized terms* means an equity option—

(1) That is traded on a national securities exchange registered with the Securities and Exchange Commission;

(2) That, on the date the option is written, expires on the Saturday following the third Friday of the month of expiration;

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(3) That has a strike price that is set at a uniform minimum strike price interval, that is established by the applicable national securities exchange registered with the Securities and Exchange Commission, and that is not less than \$1.00; and

(4) That has stock in a single corporation as its underlying security.

(c) *Qualifying over-the-counter option* means an equity option that—

(1) Is not traded on a national securities exchange registered with the Securities and Exchange Commission; and

(2) Is entered into with—

(i) A broker-dealer, acting as principal or agent, who is registered with the Securities and Exchange Commission under section 15 of the Securities Act of 1934 (15 U.S.C. 78a through 78mm) and the regulations thereunder and who must comply with the record-keeping requirements of 17 CFR 240.17a-3; or

(ii) An alternative trading system under 17 CFR 242.300 through 17 CFR 242.303; or

(iii) A person, acting as principal or agent, who must comply with the recordkeeping requirements for securities transactions described in 12 CFR 12.3, 12 CFR 208.34, or 12 CFR 344.4.

(d) *Single fixed strike price* means a strike price that is fixed, determinable, and stated as a dollar amount on the date the option is written. An option will not fail to have a single fixed strike price if, after the date the option is written, the strike price is adjusted to account for the effects of a dividend, stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or reclassification with respect to the underlying security, or a merger, consolidation, dissolution, or liquidation of the issuer of the underlying security.

(e) *Adjusted applicable stock price* means the applicable stock price, as defined in section 1092(c)(4)(G), adjusted for time. To determine the adjusted applicable stock price, the applicable stock price, which is determined in accordance with the rules in section 1092(c)(4)(G), is multiplied by an adjustment factor. The adjustment factor table is as follows:

Option term (in months)		Adjustment factor
Greater than	Not more than	
12 .....	15 .....	1.08
15 .....	18 .....	1.10
18 .....	21 .....	1.12
21 .....	24 .....	1.14
24 .....	27 .....	1.16
27 .....	30 .....	1.18
30 .....	33 .....	1.20

(f) *Securities Exchange Act Release* means a release issued by the Securities and Exchange Commission. To determine identifying information for releases referenced in paragraph (d)(1) of this section, including release titles, identification numbers, and issue dates, contact the Office of the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. To obtain a copy of a Securities Exchange Act Release, submit a written request, including the specific release identification number, title, and issue date, to Securities and Exchange Commission, Attention Public Reference, 450 5th Street, NW., Washington, DC 20549.

(g) *Effective dates.* (1) Except for paragraph (a)(2) of this section, paragraph (a) of this section applies to equity options with flexible terms entered into on or after January 25, 2000. Paragraph (a)(2) of this section applies to equity options with flexible terms entered into on or after July 29, 2002.

(2) Paragraphs (b), (c), (d), and (e) of this section apply to equity options entered into on or after July 29, 2002.

(3) Paragraph (f) of this section applies to equity options entered into on or after January 25, 2000.

[67 FR 20900, 20901, Apr. 29, 2002]

**§ 1.1092(d)-1 Definitions and special rules.**

(a) *Actively traded.* Actively traded personal property includes any personal property for which there is an established financial market.

(b) *Established financial market*—(1) *In general.* For purposes of this section, an established financial market includes—

(i) A national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934;

(iii) A domestic board of trade designated as a contract market by the Commodities Futures Trading Commission;

(iv) A foreign securities exchange or board of trade that satisfies analogous regulatory requirements under the law of the jurisdiction in which it is organized (such as the London International Financial Futures Exchange, the Marche a Terme International de France, the International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited, the Frankfurt Stock Exchange, and the Tokyo Stock Exchange);

(v) An interbank market;

(vi) An interdealer market (as defined in paragraph (b)(2)(i) of this section); and

(vii) Solely with respect to a debt instrument, a debt market (as defined in paragraph (b)(2)(ii) of this section).

(2) *Definitions*—(i) *Interdealer market*. An interdealer market is characterized by a system of general circulation (including a computer listing disseminated to subscribing brokers, dealers, or traders) that provides a reasonable basis to determine fair market value by disseminating either recent price quotations (including rates, yields, or other pricing information) of one or more identified brokers, dealers, or traders or actual prices (including rates, yields, or other pricing information) of recent transactions. An interdealer market does not include a directory or listing of brokers, dealers, or traders for specific contracts (such as yellow sheets) that provides neither price quotations nor actual prices of recent transactions.

(ii) *Debt market*. A debt market exists with respect to a debt instrument if price quotations for the instrument are readily available from brokers, dealers, or traders. A debt market does not exist with respect to a debt instrument if—

(A) No other outstanding debt instrument of the issuer (or of any person who guarantees the debt instrument) is traded on an established financial market described in paragraph (b)(1)(i), (ii),

(iii), (iv), (v), or (vi) of this section (other traded debt);

(B) The original stated principal amount of the issue that includes the debt instrument does not exceed \$25 million;

(C) The conditions and covenants relating to the issuer's performance with respect to the debt instrument are materially less restrictive than the conditions and covenants included in all of the issuer's other traded debt (e.g., the debt instrument is subject to an economically significant subordination provision whereas the issuer's other traded debt is senior); or

(D) The maturity date of the debt instrument is more than 3 years after the latest maturity date of the issuer's other traded debt.

(c) *Notional principal contracts*. For purposes of section 1092(d)—

(1) A notional principal contract (as defined in §1.446-3(c)(1)) constitutes personal property of a type that is actively traded if contracts based on the same or substantially similar specified indices are purchased, sold, or entered into on an established financial market within the meaning of paragraph (b) of this section; and

(2) The rights and obligations of a party to a notional principal contract are rights and obligations with respect to personal property and constitute an interest in personal property.

(d) *Effective dates*. Paragraph (b)(1)(vii) of this section applies to positions entered into on or after October 14, 1993. Paragraph (c) of this section applies to positions entered into on or after July 8, 1991.

[T.D. 8491, 58 FR 53135, Oct. 14, 1993]

#### § 1.1092(d)-2 Personal property.

(a) *Special rules for stock*. Under section 1092(d)(3)(B), personal property includes any stock that is part of a straddle, at least one of the offsetting positions of which is a position with respect to substantially similar or related property (other than stock). For purposes of this rule, the term *substantially similar or related property* is defined in §1.246-5 (other than §1.246-5(b)(3)). The rule in §1.246-5(c)(6) does not narrow the related party rule in section 1092(d)(4).

(b) *Effective date*—(1) *In general.* This section applies to positions established on or after March 17, 1995.

(2) *Special rule for certain straddles.* This section applies to positions established after March 1, 1984, if the taxpayer substantially diminished its risk of loss by holding substantially similar or related property involving the following types of transactions—

(i) Holding offsetting positions consisting of stock and a convertible debenture of the same corporation where the price movements of the two positions are related; or

(ii) Holding a short position in a stock index regulated futures contract (or alternatively an option on such a regulated futures contract or an option on the stock index) and stock in an investment company whose principal holdings mimic the performance of the stocks included in the stock index (or alternatively a portfolio of stocks whose performance mimics the performance of the stocks included in the stock index).

[T.D. 8590, 60 FR 14641, Mar. 20, 1995]

#### CAPITAL GAINS AND LOSSES

##### Treatment of Capital Gains

#### § 1.1201-1 Alternative tax.

(a) *Corporations*—(1) *In general.* (i) If for any taxable year a corporation has net capital gain (net section 1201 gain for taxable years beginning before January 1, 1977) (as defined in section 1222(11)) section 1201(a) imposes an alternative tax in lieu of the tax imposed by sections 11 and 511, but only if such alternative tax is less than the tax imposed by sections 11 and 511. The alternative tax is not in lieu of the personal holding company tax imposed by section 541 or of any other tax not specifically set forth in section 1201(a).

(ii) In the case of an insurance company, the alternative tax imposed by section 1201(a) is also in lieu of the tax imposed by sections 821 (a) or (c) and 831 (a), except that for taxable years beginning before January 1, 1963, the reference to section 821 (a) or (c) is to be read as reference to section 821 (a)(1) or (b). For taxable years beginning after December 31, 1954, and before January 1, 1958, the alternative tax im-

posed by section 1201(a) shall also be in lieu of the tax imposed by section 802(a), as amended by the Life Insurance Company Tax Act for 1955 (70 Stat. 38), if such alternative tax is less than the tax imposed by such section. See section 802(e), as added by the Life Insurance Company Tax Act for 1955 (70 Stat. 39). However, for taxable years beginning after December 31, 1958, and before January 1, 1962, section 802(a)(2), as amended by the Life Insurance Company Income Tax Act of 1959 (73 Stat. 115), imposes a separate tax equal to 25 percent of the amount by which the net long-term capital gain of any life insurance company (as defined in section 801(a) and paragraph (b) of § 1.801-3) exceeds its net short-term capital loss. See paragraph (f) of § 1.802-3. For alternative tax for life insurance companies in the case of taxable years beginning after December 31, 1961, see section 802(a)(2) and the regulations thereunder.

(iii) See section 56 and the regulations thereunder for provisions relating to the minimum tax for tax preferences.

(2) *Alternative tax.* The alternative tax is the sum of:

(i) A partial tax computed at the rates provided in sections 11, 511, 821 (a) or (c), and 831(a), on the taxable income of the taxpayer reduced by the amount of the net capital gain (net section 1201 gain for taxable years beginning before January 1, 1977), and

(ii) An amount equal to the tax determined under subparagraph (3) of this paragraph.

For taxable years beginning after December 31, 1954, and before January 1, 1958, the partial tax under subdivision (i) of this subparagraph shall also be computed at the rates provided in section 802(a). For taxable years beginning before January 1, 1963, the reference in such subdivision to section 821 (a) or (c) is to be read as a reference to section 821 (a) or (b).

(3) *Tax on capital gains.* For purposes of subparagraph (2)(ii) of this paragraph, the tax shall be:

(i) In the case of a taxable year beginning after December 31, 1974, a tax of 30 percent of the net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976),

(ii) In the case of a taxable year beginning after December 31, 1969, and before January 1, 1975:

(a) A tax of 25 percent of the lesser of the amount of the subsection (d) gain (as defined in section 1201(d) and paragraph (f) of this section) or the amount of the net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976), plus

(b) A tax of 30 percent (28 percent in the case of a taxable year beginning after December 31, 1969, and before January 1, 1971) of the excess, if any, of the net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976) over the subsection (d) gain,

(iii) In the case of a taxable year beginning before January 1, 1970, and after March 31, 1954, a tax of 25 percent of the net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976), or

(iv) In the case of a taxable year beginning before April 1, 1954, a tax of 26 percent of the net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976).

(4) *Determination of special deductions.* In the computation of the partial tax described in subparagraph (2)(i) of this paragraph the special deductions provided for in sections 243, 244, 245, 247, 922, and 941 shall not be recomputed as the result of the reduction of taxable income by the net capital gain (net section 1201 gain for taxable years beginning before January 1, 1977).

(b) *Other taxpayers*—(1) *In general.* If for any taxable year a taxpayer (other than a corporation) has net capital gain (net section 1201 gain for taxable years beginning before January 1, 1977) (as defined in section 1222(11)) section 1201(b) imposes an alternative tax in lieu of the tax imposed by sections 1 and 511, but only if such alternative tax is less than the tax imposed by sections 1 and 511. The alternative tax is not in lieu of any other tax not specifically set forth in section 1201(b). See section 56 and the regulations thereunder for provisions relating to the minimum tax for tax preferences.

(2) *Alternative tax.* The alternative tax is the sum of:

(i) A partial tax computed at the rates provided by sections 1 and 511 on

the taxable income reduced by an amount equal to 50 percent of the net capital gain (net section 1201 gain for taxable years beginning before January 1, 1977), and

(ii) In the case of a taxable year beginning after December 31, 1969:

(a) A tax of 25 percent of the lesser of the amount of the subsection (d) gain (as defined in section 1201(d) and paragraph (f) of this section) or the amount of the net capital gain (net section 1201 gain for taxable years beginning before January 1, 1977), plus

(b) A tax computed as provided in section 1201(c) and paragraph (e) of this section on the excess, if any, of the net capital gain (net section 1201 gain for taxable years beginning before January 1, 1977) over the subsection (d) gain, or

(iii) In the case of a taxable year beginning before January 1, 1970, a tax of 25 percent of the net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976).

(3) *Cross references.* See § 1.1-2(a) for rule relating to the computation of the limitation on tax in cases where the alternative tax is imposed. See § 1.34-2 (a) for rule relating to the computation of the dividend received credit under section 34 (for dividends received on or before December 31, 1964), and § 1.35-1 (a) for rule relating to the computation of credit for partially tax-exempt interest under section 35 in cases where the alternative tax is imposed.

(c) *Tax-exempt trusts and organizations.* In applying section 1201 in the case of tax-exempt trusts or organizations subject to the tax imposed by section 511, the only amount which is taken into account as capital gain or loss is that which is taken into account in computing unrelated business taxable income under section 512. Under section 512, the only amount taken into account as capital gain or loss is that resulting from the application of section 631(a), relating to the election to treat the cutting of timber as a sale or exchange.

(d) *Joint returns.* In the case of a joint return, the excess of any net long-term capital gain over any net short-term capital loss is to be determined by combining the long-term capital gains and losses and the short-term capital gains and losses of the spouses.

(e) *Computation of tax on capital gain in excess of subsection (d) gain*—(1) *In general.* The tax computed for purposes of section 1201(b)(3) and paragraph (b)(2)(ii)(b) of this section shall be the amount by which a tax determined under section 1 or 511 on an amount equal to the taxable income (but not less than 50 percent of the net capital gain (net section 1201 gain for taxable years beginning before January 1, 1977)) for the taxable year exceeds a tax determined under section 1 or 511 on an amount equal to the sum of (i) the amount subject to tax under section 1201 (b)(1) and paragraph (b)(2)(i) of this section for such year plus (ii) an amount equal to 50 percent of the subsection (d) gain for such year.

(2) *Limitation.* Notwithstanding subparagraph (1) of this paragraph, the tax computed for purposes of section 1201(b)(3) and paragraph (b)(2)(ii)(b) of this section shall not exceed an amount equal to the following percentage of the excess of the net capital gain (net section 1201 gain for taxable years beginning before January 1, 1977) over the subsection (d) gain for the taxable year:

(i) 29½ percent, in the case of a taxable year beginning after December 31, 1969, and before January 1, 1971, or

(ii) 32½ percent, in the case of a taxable year beginning after December 31, 1970, and before January 1, 1972.

(f) *Definition of subsection (d) gain*—(1) *In general.* For purposes of section 1201 and this section, the term *subsection (d) gain* means the sum of the long-term capital gains for the taxable year arising:

(i) In the case of amounts received or accrued, as the case may be, before January 1, 1975 (other than any gain from a transaction described in section 631 or 1235), from:

(a) Sales or other dispositions on or before October 9, 1969, including sales or other dispositions the income from which is returned as provided in section 453 (a)(1) or (b)(1), or

(b) Sales or other dispositions after October 9, 1969, pursuant to binding contracts entered into on or before that date, including sales or other dispositions the income from which is returned as provided in section 453 (a)(1) or (b)(1),

(ii) From liquidating distributions made by a corporation which are made (a) before October 10, 1970, and (b) pursuant to a plan of complete liquidation adopted on or before October 9, 1969, or

(iii) In the case of a taxpayer (other than a corporation), from any other source not described in subdivision (i) or (ii) of this subparagraph, but the amount taken into account from such other sources shall be limited to the amount, if any, by which \$50,000 (\$25,000 in the case of a married individual filing a separate return) exceeds the sum of the gains to which subdivisions (i) and (ii) of this subparagraph apply.

(2) *Special rules.* For purposes of subparagraph (1) of this paragraph:

(i) A binding contract entered into on or before October 9, 1969, means a contract, whether written or unwritten, which on or before that date was legally enforceable against the taxpayer under applicable law. If on or before October 9, 1969, a taxpayer grants an irrevocable option or irrevocable contractual right to another party to buy certain property and such other party exercises that option or right after October 9, 1969, the sale of such property is a sale pursuant to a binding contract entered into on or before October 9, 1969. The application of this subdivision may be illustrated by the following example:

*Example:* During 1964, A, B, and C formed a closely held corporation, and A was appointed as president of the organization. On July 1, 1964, A received for consideration 100 shares of common stock in the corporation subject to the agreement that, if A should retire from the management of the corporation or die, A or his estate would first offer his shares of stock to the corporation for purchase and that, if the corporation did not buy the stock within 60 days, the stock could be sold to any party other than the corporation. On September 1, 1970, A retired from the management of the corporation and offered his shares to the corporation for purchase. Pursuant to the agreement, the corporation purchased A's stock on September 30, 1970. A's sale of such stock was pursuant to a binding contract entered into on or before October 9, 1969.

(ii) A contract which pursuant to subdivision (i) of this subparagraph constitutes a binding contract entered into on or before October 9, 1969, does not cease to qualify as such a contract



by reason of the fact that after October 9, 1969, there is a modification of the terms of the contract such as a change in the time of performance, or in the amount of the debt or in the terms and mode of payment, or in the rate of interest, or there is a change in the form or nature of the obligation or the character of the security, so long as the taxpayer is at all times on and after October 9, 1969, legally bound by such contract. The application of this subdivision may be illustrated by the following examples:

*Example 1.* On August 1, 1969, A sold certain capital assets to B on the installment plan and elected to return the gain therefrom under section 453, the agreement providing for payments over a period of 2 years. At the time of the sale these assets had been held by A for more than 6 months. On July 31, 1970, A and B agreed to a modification of the terms of payment under the sales agreement, the only change in the contract being that the installment payments due after July 31, 1970, would be paid over a 3-year period. For purposes of this paragraph the payments received by A after July 31, 1970, are considered amounts received from the sale on August 1, 1969. (See section 483 for rules with respect to interest on deferred payments.)

*Example 2.* On April 1, 1969, A sold certain capital assets to B on the installment plan and elected to return the gain therefrom under section 453, the agreement providing for payments over a period of 3 years. At the time of the sale these assets had been held by A for more than 6 months. On March 31, 1970, C assumed B's obligation to pay the balance of the installments which were due after that date. For purposes of this paragraph any installment payments received by A after March 31, 1970, from C are considered amounts received from a sale made on or before October 9, 1969.

*Example 3.* On May 1, 1969, A offers to sell certain capital assets to B if B accepts the offer within 1 year, unless it is previously withdrawn by A. B accepts the offer on November 1, 1969, and the transaction is consummated shortly thereafter. For purposes of this paragraph, any payment received by A pursuant to the sale is not considered an amount received from a sale made on or before October 9, 1969, or from a sale pursuant to a binding contract entered into on or before that date.

(iii) An amount which is considered under section 402(a)(2) or 403(a)(2) as gain of the taxpayer from the sale or exchange of a capital asset held for more than 6 months shall be treated as gain subject to the provisions of sec-

tion 1201 (d)(1) and subdivision (i) of such subparagraph, but only if on or before October 9, 1969, (a) the employee with respect to whom such amount is distributed or paid, died or was otherwise separated from the service, and (b) the terms of the plan required, or the employee elected, that total distributions or amounts payable be paid to the taxpayer within 1 taxable year.

(iv) Gain described in section 1201(d)(1) or (2) with respect to a partnership, estate, or trust, which is required to be included in the gross income of a partner in such partnership, or of a beneficiary of such estate or trust, shall be treated as such gain with respect to such partner or beneficiary. Thus, for example, if during 1974 a partnership which uses the calendar year as its taxable year receives amounts which give rise to section 1201(d)(1) gain, a partner who uses the fiscal year ending June 30 as his taxable year shall treat his distributive share of such gain as subsection (d) gain for his taxable year ending June 30, 1975, even though such share is distributed to him after December 31, 1974. See §1.706-1.

(v) An individual shall be considered married for purposes of subdivision (iii) of such subparagraph if for the taxable year he may elect with his spouse to make a joint return under section 6013(a).

(vi) In applying such subparagraph for purposes of section 21(a)(1) long-term capital gains arising from amounts received before January 1, 1970, shall be taken into account if such amounts are received during the taxable year.

(g) *Illustrations.* The application of this section may be illustrated by the following examples in which the assumption is made that section 56 (relating to minimum tax for tax preferences) does not apply:

*Example 1.* A, a single individual, has for the calendar year 1954 taxable income (exclusive of capital gains and losses) of \$99,400. He realizes in 1954 a gain of \$50,000 on the sale of a capital asset held for 19 months and sustains a loss of \$20,000 on the sale of a capital asset held for 5 months. He had no other capital gains or losses. Since the alternative tax is less than the tax otherwise computed under section 1, the tax payable is the alternative tax, that is \$74,298. The tax is computed as follows:

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Tax Under Section 1	
Taxable income exclusive of capital gains and losses .....	\$99,400
Net long-term capital gain (100 percent of \$50,000) .....	50,000
Net short-term capital loss (100 percent of \$20,000) .....	20,000
Excess of net long-term capital gain over the net short-term capital loss .....	30,000
	129,400
Deduction of 50 percent of excess of net long-term capital gain over the net short-term capital loss (section 1202) .....	15,000
Taxable income .....	114,400
Tax under section 1 .....	80,136
Alternative Tax Under Section 1201(b)	
Taxable income .....	\$114,400
Less 50 percent of excess of net long-term capital gain over net short-term capital loss (section 1201(b)(1)) .....	15,000
Taxable income exclusive of capital gains and losses .....	99,400
Partial tax (tax on \$99,400) .....	66,798
Plus 25 percent of \$30,000 .....	7,500
Alternative tax under section 1201(b) .....	74,298

*Example 2.* A husband and wife, who file a joint return for the calendar year 1970, have taxable income (exclusive of capital gains and losses) of \$100,000. In 1970 they realize \$200,000 of net long-term capital gain in excess of net short-term capital loss, including long-term capital gains of \$100,000 arising from sales consummated in 1968 the income from which is returned on the installment method under section 453, and long-term capital gains of \$50,000, arising in respect of distributions from X corporation made before October 10, 1970, which were pursuant to a plan of complete liquidation adopted on October 9, 1969. Since the alternative tax under section 1201(b) is less than the tax otherwise computed under section 1, the tax payable for 1970 is the alternative tax, that is, \$97,430 plus the tax surcharge under section 51. The tax (without regard to the tax surcharge) is computed as follows:

Tax Under Section 1	
Taxable income exclusive of capital gains and losses .....	\$100,000
Net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976) (excess of net long-term capital gain over the net short-term capital loss) .....	200,000
Total .....	300,000
Deduction of 50 percent of net section 1201 (net capital gain for taxable years beginning after December 31, 1976) gain (section 1202) .....	100,000
Taxable income .....	200,000
Tax under section 1 .....	110,980
Alternative Tax Under Section 1201(b)	
(1) Net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976) .....	\$200,000

(2) Subsection (d) gain:		
Section 1201(d)(1) .....	100,000	
Section 1201(d)(2) .....	50,000	
Total subsection (d) gain .....	150,000	
(3) Net section 1201 (net capital gain for taxable years beginning after December 31, 1976) gain in excess of subsection (d) gain (\$200,000 less \$150,000) .....	50,000	
(4) Tax under section 1201(b)(1):		
(i) Taxable income .....	\$200,000	
(ii) Less: 50% of item (1) .....	100,000	
(iii) Amount subject to tax under section 1201(b)(1) .....	100,000	
Partial tax (computed under section 1) ...		45,180
(5) Tax under section 1201(b)(2): (25% of item (1) or of item (2), whichever is lesser [25% of \$150,000]) .....		37,500
(6) Tax under section 1201(b)(3) on item (3):		
Tax under section 1 on taxable income (\$200,000) .....	\$110,980	
Less: Tax under section 1 on sum of item (4)(iii)(c) (\$100,000) plus 50% of item (2) (\$75,000) (Total \$175,000) .....	93,780	
Tax under section 1201(c)(1) .....	17,200	
Limitation under section 1201(c)(2)(A) (29½% of item (3)) .....	14,750	14,750
(7) Alternative tax under section 1201(b) .....		97,430

*Example 3.* A husband and wife, who file a joint return for the calendar year 1971, have taxable income (exclusive of capital gains and losses) of \$80,000. In 1971 they realize long-term capital gain of \$30,000 arising from a sale consummated on July 1, 1969, the income from which is returned on the installment method under section 453. From securities transactions in 1971 they have long-term capital gains of 60,000 and a short-term capital loss of \$10,000. Since the alternative tax under section 1201(b) is less than the tax otherwise computed under section 1, the tax payable is the alternative tax, that is, \$55,140. The tax is computed as follows:

Tax Under Section 1	
Taxable income exclusive of capital gains and losses .....	\$80,000
Net long-term capital gains (100% of \$90,000) .....	90,000
Net short-term capital loss (100% of \$10,000) .....	10,000
Net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976) .....	80,000
Total .....	160,000
Deduction of 50% of net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976) (section 1202) .....	40,000
Taxable income .....	120,000
Tax under section 1 .....	57,580

**Internal Revenue Service, Treasury**

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Alternative Tax Under Section 1201(b)	
(1) Net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976)	\$80,000
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(2) Subsection (d) gain:	
Section 1201(d)(1)	30,000
Section 1201(d)(2)	
Section 1201(d)(3) (\$50,000 less \$30,000) ...	20,000
Total subsection (d) gain	50,000
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(3) Net section 1201 (net capital gain for taxable years beginning after December 31, 1976) gain in excess of subsection (d) gain (\$80,000 less \$50,000)	30,000
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(4) Tax under section 1201(b)(1):	
(i) Taxable income	\$120,000
(ii) Less: 50% of item (1)	40,000
(iii) Amount subject to tax under section 1201(b)(1)	80,000
Partial tax (computed under section 1) ...	33,340
(5) Tax under section 1201(b)(2): (25% of item (1) or of item (2), whichever is lesser [25% of \$50,000])	12,500
(6) Tax under section 1201 (b)(3) on item (3):	
Tax under section 1 on taxable income (\$120,000)	\$57,580
Less: Tax under sec. 1 on sum of item (4) (iii) (\$80,000) plus 50% of item (2) (\$25,000) (Total \$105,000)	\$48,280
Tax under section 1201(c)(1)	9,300
Limitation under section 1201(c) (2)(B) (32½% of item (3))	9,750
(7) Alternative tax under section 1201(b)	55,140

*Example 4.* A husband and wife, who file a joint return for the calendar year 1973, have taxable income (exclusive of capital gains and losses) of \$250,000. In 1973 they realize long-term capital gains (not described in section 1201(d) (1) or (2)) of \$140,000 and a short-term capital loss of \$50,000. Since the alternative tax under section 1201(b) is less than the tax otherwise computed under section 1, the tax payable is the alternative tax, that is, \$172,480. The tax is computed as follows:

Tax Under Section 1	
Taxable income exclusive of capital gains and losses	\$250,000
Net long-term capital gains (100% of \$140,000)	\$140,000
Net short-term capital loss (100% of \$50,000)	50,000
Net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976)	90,000
Total	340,000
Deduction of 50% of net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976) (section 1202)	45,000
Taxable income	295,000
Tax under section 1	177,480

Alternative Tax Under Section 1201(b)	
(1) Net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976)	\$90,000
<hr/>	
(2) Subsection (d) gain:	
Section 1201(d)(1)	50,000
Section 1201(d)(2)	
Section 1201(d)(3)	50,000
Total subsection (d) gain	50,000
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(3) Net section 1201 gain (net capital gain for taxable years beginning after December 31, 1976) in excess of subsection (d) gain (\$90,000 less \$50,000)	40,000
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(4) Tax under section 1201(b)(1):	
(i) Taxable income	\$295,000
(ii) Less: 50% of item (1)	45,000
(iii) Amount subject to tax under section 1201(b)(1)	250,000
Partial tax (computed under section 1) ...	145,980
(5) Tax under section 1201(b)(2): (25% of item (1) or of item (2), whichever is lesser [25% of \$50,000])	\$12,500
(6) Tax under section 1201(b)(3) on item (3):	
Tax under section 1 on taxable income (\$295,000)	\$177,480
Less: Tax under section 1 on sum of item (4) (iii) (\$250,000) plus 50% of item (2) (\$25,000) (Total \$275,000)	163,480
(7) Alternative tax under section 1201(b)	14,000
	172,480

[T.D. 7337, 39 FR 44975, Dec. 30, 1974, as amended by T.D. 7728, 45 FR 72651, Nov. 3, 1980]

**§ 1.1202-0 Table of contents.**

This section lists the major captions that appear in the regulations under § 1.1202-2.

*§ 1.1202-2 Qualified small business stock; effect of redemptions.*

- (a) Redemptions from taxpayer or related person.
  - (1) In general.
  - (2) De minimis amount.
  - (b) Significant redemptions.
    - (1) In general.
    - (2) De minimis amount.
  - (c) Transfers by shareholders in connection with the performance of services not treated as purchases.
  - (d) Exceptions for termination of services, death, disability or mental incompetency, or divorce.
    - (1) Termination of services.
    - (2) Death.
    - (3) Disability or mental incompetency.
    - (4) Divorce.
    - (e) Effective date.

[T.D. 8749, 62 FR 68166, Dec. 31, 1997]

**§ 1.1202-1 Deduction for capital gains.**

- (a) In computing gross income, adjusted gross income, taxable income,

capital gain net income (net capital gain for taxable years beginning before January 1, 1977) and net capital loss, 100 percent of any gain or loss (computed under section 1001, recognized under section 1002, and taken into account without regard to subchapter P (section 1201 and following), chapter 1 of the Code) upon the sale or exchange of a capital asset shall be taken into account regardless of the period for which the capital asset has been held. Nevertheless, the net short-term capital gain or loss and the net long-term capital gain or loss must be separately computed. In computing the adjusted gross income or the taxable income of a taxpayer other than a corporation, if for any taxable year the net long-term capital gain exceeds the net short-term capital loss, 50 percent of the amount of the excess is allowable as a deduction from gross income under section 1202.

(b) For the purpose of computing the deduction allowable under section 1202 in the case of an estate or trust, any long-term or short-term capital gains which, under sections 652 and 662, are includible in the gross income of its income beneficiaries as gains derived from the sale or exchange of capital assets must be excluded in determining whether, for the taxable year of the estate or trust, its net long-term capital gain exceeds its net short-term capital loss. To determine the extent to which such gains are includible in the gross income of a beneficiary, see the regulations under sections 652 and 662. For example, during 1954 a trust realized a gain of \$1,000 upon the sale of stock held for 10 months. Under the terms of the trust instrument all of such gain must be distributed during the taxable year to A, the sole income beneficiary. Assuming that under section 652 or 662 A must include all of such gain in his gross income, the trust is not entitled to any deduction with respect to such gain under section 1202. Assuming A had no other capital gains or losses for 1954, he would be entitled to a deduction of \$500 under section 1202. For purposes of this section, an income beneficiary shall be any beneficiary to whom an amount is required to be distributed, or is paid or credited, which is includible in his gross income.

(c) The provisions of this section may be illustrated by the following example:

*Example:* A, an individual, had the following transactions in 1954:

Long-term capital gain .....	\$6,000	
Long-term capital loss .....	4,000	
	\$2,000	
Net long-term capital gain .....		\$2,000
Short-term capital loss .....	1,800	
Short-term capital gain .....	300	
	1,500	
Net short-term capital loss .....		1,500
Excess of net long-term capital gain over net short-term capital loss .....		500

Since the net long-term capital gain exceeds the net short-term capital loss by \$500, 50 percent of the excess, or \$250, is allowable as a deduction under section 1202.

[T.D. 6500, 25 FR 12001, Nov. 26, 1960, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980]

**§ 1.1202-2 Qualified small business stock; effect of redemptions.**

(a) *Redemptions from taxpayer or related person*—(1) *In general.* Stock acquired by a taxpayer is not qualified small business stock if, in one or more purchases during the 4-year period beginning on the date 2 years before the issuance of the stock, the issuing corporation purchases (directly or indirectly) more than a de minimis amount of its stock from the taxpayer or from a person related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(2) *De minimis amount.* For purposes of this paragraph (a), stock acquired from the taxpayer or a related person exceeds a de minimis amount only if the aggregate amount paid for the stock exceeds \$10,000 and more than 2 percent of the stock held by the taxpayer and related persons is acquired. The following rules apply for purposes of determining whether the 2-percent limit is exceeded. The percentage of stock acquired in any single purchase is determined by dividing the stock's value (as of the time of purchase) by the value (as of the time of purchase) of all stock held (directly or indirectly) by the taxpayer and related persons immediately before the purchase. The percentage of stock acquired in multiple purchases is the sum of the percentages determined for each separate purchase.

(b) *Significant redemptions*—(1) *In general.* Stock is not qualified small business stock if, in one or more purchases during the 2-year period beginning on the date 1 year before the issuance of the stock, the issuing corporation purchases more than a de minimis amount of its stock and the purchased stock has an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of the issuing corporation's stock as of the beginning of such 2-year period.

(2) *De minimis amount.* For purposes of this paragraph (b), stock exceeds a de minimis amount only if the aggregate amount paid for the stock exceeds \$10,000 and more than 2 percent of all outstanding stock is purchased. The following rules apply for purposes of determining whether the 2-percent limit is exceeded. The percentage of the stock acquired in any single purchase is determined by dividing the stock's value (as of the time of purchase) by the value (as of the time of purchase) of all stock outstanding immediately before the purchase. The percentage of stock acquired in multiple purchases is the sum of the percentages determined for each separate purchase.

(c) *Transfers by shareholders in connection with the performance of services not treated as purchases.* A transfer of stock by a shareholder to an employee or independent contractor (or to a beneficiary of an employee or independent contractor) is not treated as a purchase of the stock by the issuing corporation for purposes of this section even if the stock is treated as having first been transferred to the corporation under § 1.83-6(d)(1) (relating to transfers by shareholders to employees or independent contractors).

(d) *Exceptions for termination of services, death, disability or mental incompetency, or divorce.* A stock purchase is disregarded if the stock is acquired in the following circumstances:

(1) *Termination of services*—(i) *Employees and directors.* The stock was acquired by the seller in connection with the performance of services as an employee or director and the stock is purchased from the seller incident to the seller's retirement or other bona fide termination of such services;

(ii) *Independent contractors.* [Reserved]

(2) *Death.* Prior to a decedent's death, the stock (or an option to acquire the stock) was held by the decedent or the decedent's spouse (or by both), by the decedent and joint tenant, or by a trust revocable by the decedent or the decedent's spouse (or by both), and—

(i) The stock is purchased from the decedent's estate, beneficiary (whether by bequest or lifetime gift), heir, surviving joint tenant, or surviving spouse, or from a trust established by the decedent or decedent's spouse; and

(ii) The stock is purchased within 3 years and 9 months from the date of the decedent's death;

(3) *Disability or mental incompetency.* The stock is purchased incident to the disability or mental incompetency of the selling shareholder; or

(4) *Divorce.* The stock is purchased incident to the divorce (within the meaning of section 1041(c)) of the selling shareholder.

(e) *Effective date.* This section applies to stock issued after August 10, 1993.

[T.D. 8749, 62 FR 68166, Dec. 31, 1997]

#### TREATMENT OF CAPITAL LOSSES

##### § 1.1211-1 Limitation on capital losses.

(a) *Corporations*—(1) *General rule.* In the case of a corporation, there shall be allowed as a deduction an amount equal to the sum of:

(i) Losses sustained during the taxable year from sales or exchanges of capital assets, plus

(ii) The aggregate of all losses sustained in other taxable years which are treated as a short-term capital loss in such taxable year pursuant to section 1212(a)(1),

but only to the extent of gains from such sales or exchanges of capital assets in such taxable year.

(2) *Banks.* See section 582(c) for modification of the limitation under section 1211(a) in the case of a bank, as defined in section 581.

(b) *Taxpayers other than corporations*—(1) *General rule.* In the case of a taxpayer other than a corporation, there shall be allowed as a deduction an amount equal to the sum of: