

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 section 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))

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§ 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