

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))

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§ 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 prescribed 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