

§ 1.1504-0

26 CFR Ch. I (4-1-04 Edition)

(g)(2)(ii) through (iv)(B)(3)(ii) [Reserved] For further guidance, see § 1.1503-2(g)(2)(ii) through (iv)(B)(3)(ii).

(g)(2)(iv)(B)(3)(iii) The unaffiliated domestic corporation or new consolidated group must file, with its timely filed income tax return for the taxable year in which the event described in § 1.1503-2(g)(2)(iv)(B)(1) or (2) occurs, an agreement described in paragraph (g)(2)(i) of this section (new (g)(2)(i) agreement), whereby it assumes the same obligations with respect to the dual consolidated loss as the corporation or consolidated group that filed the original (g)(2)(i) agreement with respect to that loss. The new (g)(2)(i) agreement must be signed under penalties of perjury by the person who signs the return and must include a reference to § 1.1503-2(g)(2)(iv)(B)(3)(iii) or this paragraph (g)(2)(iv)(B)(3)(iii). For taxable years beginning after December 31, 2002, the agreement attached to the return pursuant to the preceding sentence may be an unsigned copy. If an unsigned copy is attached to the return, the corporation or consolidated group must retain the original in its records in the manner specified by § 1.6001-1(e).

(g)(2)(iv)(C) through (vi)(A) [Reserved]. For further guidance, see § 1.1503-2(g)(2)(iv)(C) through (vi)(A).

(B) *Annual certification.* Except as provided in § 1.1503-2(g)(2)(vi)(C), until and unless Form 1120 or the Schedules thereto contain questions pertaining to dual consolidated losses, the consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner must file with its income tax return for each of the 15 taxable years following the taxable year in which the dual consolidated loss is incurred a certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. For taxable years beginning before January 1, 2003, the annual certification must be signed under penalties of perjury by a person authorized to sign the agreement described in paragraph (g)(2)(i) of this section. For taxable years beginning after December 31, 2002, the certification is verified by signing the return with which the cer-

tification is filed. The certification for a taxable year must identify the dual consolidated loss to which it pertains by setting forth the taxpayer's year in which the loss was incurred and the amount of such loss. In addition, the certification must warrant that arrangements have been made to ensure that the loss will not be used to offset the income of another person under the laws of a foreign country and that the taxpayer will be informed of any such foreign use of any portion of the loss. If dual consolidated losses of more than one taxable year are subject to the rules of this paragraph (g)(2)(vi)(B), the certifications for those years may be combined in a single document but each dual consolidated loss must be separately identified.

(g)(2)(vii) through (h) [Reserved]. For further guidance, see § 1.1503-2(g)(2)(vi) through (h).

[T.D. 9100, 68 FR 70707, Dec. 19, 2003]

§ 1.1504-0 Outline of provisions.

In order to facilitate the use of §§ 1.1504-1 through 1.1504-4, this section lists the captions contained in §§ 1.1504-1 through 1.1504-4.

§ 1.1504-1 Definitions.

§ 1.1504-2 [Reserved]

§ 1.1504-3 [Reserved]

§ 1.1504-4 Treatment of warrants, options, convertible obligations, and other similar interests.

- (a) Introduction.
 - (1) General rule.
 - (2) Exceptions.
- (b) Options not treated as stock or as exercised.
 - (1) General rule.
 - (2) Options treated as exercised.
 - (i) In general.
 - (ii) Aggregation of options.
 - (iii) Effect of treating option as exercised.
 - (A) In general.
 - (B) Cash settlement options, phantom stock, stock appreciation rights, or similar interests.
 - (iv) Valuation.
 - (3) Example.
- (c) Definitions.
 - (1) Issuing corporation.
 - (2) Related or sequential option.
 - (3) Related persons.
 - (4) Measurement date.
 - (i) General rule.
 - (ii) Issuances, transfers, or adjustments not treated as measurement dates.

Internal Revenue Service, Treasury

§ 1.1504-4

(iii) Transactions increasing likelihood of exercise.

(iv) Measurement date for options issued pursuant to a plan.

(v) Measurement date for related or sequential options.

(vi) Example.

(5) In-the-money.

(d) Options.

(1) Instruments treated as options.

(2) Instruments generally not treated as options.

(i) Options on section 1504(a)(4) stock.

(ii) Certain publicly traded options.

(A) General rule.

(B) Exception.

(iii) Stock purchase agreements.

(iv) Escrow, pledge, or other security agreements.

(v) Compensatory options.

(A) General rule.

(B) Exceptions.

(vi) Options granted in connection with a loan.

(vii) Options created pursuant to a title 11 or similar case.

(viii) Convertible preferred stock.

(ix) Other enumerated instruments.

(e) Elimination of federal income tax liability.

(f) Substantial amount of federal income tax liability.

(g) Reasonable certainty of exercise.

(1) Generally.

(i) Purchase price.

(ii) In-the-money option.

(iii) Not in-the-money option.

(iv) Exercise price.

(v) Time of exercise.

(vi) Related or sequential options.

(vii) Stockholder rights.

(viii) Restrictive covenants.

(ix) Intention to alter value.

(x) Contingencies.

(2) Cash settlement options, phantom stock, stock appreciation rights, or similar interests.

(3) Safe harbors.

(i) Options to acquire stock.

(ii) Options to sell stock.

(iii) Options exercisable at fair market value.

(iv) Exceptions.

(v) Failure to satisfy safe harbor.

(h) Examples.

(i) Effective date.

[T.D. 8462, 57 FR 61800, Dec. 29, 1992]

§ 1.1504-1 Definitions.

The privilege of filing consolidated returns is extended to all includible corporations constituting affiliated groups as defined in section 1504. See the regulations under § 1.1502 for a description of an affiliated group and the

corporations which may be considered as includible corporations.

[T.D. 6500, 25 FR 12106, Nov. 26, 1960]

§§ 1.1504-2—1.1504-3 [Reserved]

§ 1.1504-4 Treatment of warrants, options, convertible obligations, and other similar interests.

(a) *Introduction*—(1) *General rule*. This section provides regulations under section 1504(a)(5) (A) and (B) regarding the circumstances in which warrants, options, obligations convertible into stock, and other similar interests are treated as exercised for purposes of determining whether a corporation is a member of an affiliated group. The fact that an instrument may be treated as an option under these regulations does not prevent such instrument from being treated as stock under general principles of law. Except as provided in paragraph (a)(2) of this section, this section applies to all provisions under the Internal Revenue Code and the regulations to which affiliation within the meaning of section 1504(a) (with or without the exceptions in section 1504(b)) is relevant, including those provisions that refer to section 1504(a)(2) (with or without the exceptions in section 1504(b)) without referring to affiliation, provided that the 80 percent voting power and 80 percent value requirements of section 1504(a)(2) are not modified therein.

(2) *Exceptions*. This section does not apply to sections 163(j), 864(e), or 904(i) or to the regulations thereunder. This section also does not apply to any other provision specified by the Internal Revenue Service in regulations, a revenue ruling, or revenue procedure. See § 601.601(d)(2)(ii)(b) of this chapter.

(b) *Options not treated as stock or as exercised*—(1) *General rule*. Except as provided in paragraph (b)(2) of this section, an option is not considered either as stock or as exercised. Thus, options are disregarded in determining whether a corporation is a member of an affiliated group unless they are described in paragraph (b)(2) of this section.

(2) *Options treated as exercised*—(i) *In general*. Solely for purposes of determining whether a corporation is a member of an affiliated group, an option is treated as exercised if, on a