

right to use, copyrights or interests in copyrights in works created, in whole or in part, by any shareholder owning, at any time during the corporation's taxable year, more than 10 percent in value of the outstanding stock of the corporation), and (2) dividends from any corporation in which the taxpayer owns, on the date the taxpayer becomes entitled to the dividends, at least 50 percent of all classes of stock entitled to vote and at least 50 percent of the total value of all classes of stock, provided the corporation which pays the dividends meets the requirements of subparagraphs (A), (B), and (C) of section 543(a)(9).

(c) The aggregate amount of the deductions allowable under section 162 must constitute 50 percent or more of the corporation's gross income for the taxable year. For this purpose, the deductions allowable under section 162 shall be computed by excluding deductions for compensation for personal services rendered by, and deductions for copyright and other royalties to, shareholders of the corporation.

(iii) *Determination of stock value and stock ownership.* For purposes of section 543(a)(9) and this subparagraph, the following rules shall apply:

(a) The amount and value of the outstanding stock of a corporation shall be determined in accordance with the rules set forth in the last two sentences of paragraph (b) and in paragraph (c) of § 1.542-3.

(b) The ownership of stock shall be determined in accordance with the rules set forth in section 544 and §§ 1.544-1 through 1.544-7.

(c) Any person who is considered to own stock within the meaning of section 544 and §§ 1.544-1 through 1.544-7 shall be a shareholder.

(iv) *Copyright royalties defined.* For purposes of section 543(a)(9) and this subparagraph, the term *copyright royalties* means compensation, however designated, for the use of, or the right to use, copyrights in works protected by copyright issued under title 17 of the United States Code (other than by reason of section 2 or 6 thereof), and to which copyright protection is also extended by the laws of any foreign country as a result of any international treaty, convention, or agreement to

which the United States is a signatory. Thus, *copyright royalties* includes not only royalties from sources within the United States under protection of United States laws relating to statutory copyrights but also royalties from sources within a foreign country with respect to United States statutory copyrights protected in such foreign country by any international treaty, convention, or agreement to which the United States is a signatory. The term *copyright royalties* includes compensation for the use of, or right to use, an interest in any such copyrighted works as well as payments from any person for performing rights in any such copyrighted works.

(v) *Compensation which is rent.* Section 543(a)(9) and subdivisions (i) through (iv) of this subparagraph shall not apply to compensation which is *rent* within the meaning of the second sentence of section 543(a)(7).

[T.D. 6500, 25 FR 11737, Nov. 26, 1960, as amended by T.D. 6739, 29 FR 7713, June 17, 1964; T.D. 7261, 38 FR 5467, Mar. 1, 1973]

**§ 1.543-2 Limitation on gross income and personal holding company income in transactions involving stocks, securities, and commodities.**

(a) Under section 543(b)(1) the gains which are to be included in gross income, and in personal holding company income with respect to transactions described in section 543(a)(2) and paragraph (b)(5) of § 1.543-1, shall be the net gains from the sale or exchange of stock or securities. If there is an excess of losses over gains from such transactions, such excess (or net loss) shall not be used to reduce gross income or personal holding company income for purposes of the personal holding company tax. Similarly, under section 543(b)(2) the gains which are to be included in gross income, and in personal holding company income with respect to transactions described in section 543(a)(3) and paragraph (b)(6) of § 1.543-1, shall be the net gains from commodity transactions which reflect personal holding company income. Any excess of losses over gains from such transactions (resulting in a net loss) shall not be used to reduce gross income or personal holding company income. The capital loss carryover under

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section 1212 shall not be taken into account.

(b) The application of section 543(b) may be illustrated by the following examples:

*Example 1.* The P Corporation, not a regular dealer in stocks and securities, received rentals of \$250,000 for its property from a 25-percent shareholder, and also had gains of \$50,000 during the taxable year from the sale of stocks and securities. It also had losses on the sale of stocks and securities in the amount of \$30,000. Accordingly, P Corporation had gross income during the taxable year of \$270,000 (\$250,000 plus \$20,000 net gain from the sales of stocks and securities). It had personal holding company income of \$20,000. (The rentals of \$250,000 would not be personal holding company income under section 543(a)(6) since the personal holding company income of the corporation, \$20,000 (after excluding any such income described in section 543(a)(6)), is not more than 10 percent of its gross income.)

*Example 2.* The R Corporation, not a regular dealer in stocks or securities, realized total gains during the taxable year of \$900,000 from commodity futures transactions and \$200,000 from the sales of stocks and securities. It also sustained total losses of \$1,000,000 on such commodity futures transactions, resulting in a net gain for the taxable year of \$100,000. None of the commodity futures transactions are hedging or other types of futures transactions excluded from the application of section 543(a)(3). No part of the loss on commodity futures transactions is to be taken into account in determining personal holding company income and gross income for personal holding company tax purposes for the taxable year. The full amount of the \$200,000 in gains from the sales of stocks and securities is to be included in personal holding company income and in gross income for personal holding company tax purposes for the taxable year.

### § 1.544-1 Constructive ownership.

(a) Rules relating to the constructive ownership of stock are provided by section 544 for the purpose of determining whether the stock ownership requirements of the following sections are satisfied:

(1) Section 542(a)(2), relating to ownership of stock by five or fewer individuals.

(2) Section 543(a)(5), relating to personal holding company income derived from personal service contracts.

(3) Section 543(a)(6), relating to personal holding company income derived from property used by shareholders.

(4) Section 543(a)(9), relating to personal holding company income derived from copyright royalties.

(b) Section 544 provides four general rules with respect to constructive ownership. These rules are:

(1) Constructive ownership by reason of indirect ownership. See section 544(a)(1) and § 1.544-2.

(2) Constructive ownership by reason of family and partnership ownership. See section 544(a)(2), (4), (5), and (6), and §§ 1.544-3, 1.544-6, and 1.544-7.

(3) Constructive ownership by reason of ownership of options. See section 544(a)(3), (4), (5), and (6), and §§ 1.544-4, 1.544-6, and 1.544-7.

(4) Constructive ownership by reason of ownership of convertible securities. See section 544(b) and § 1.544-5.

Each of the rules referred to in subparagraphs (2), (3), and (4) of this paragraph is applicable only if it has the effect of satisfying the stock ownership requirement of the section to which applicable; that is, when applied to section 542(a)(2), its effect is to make the corporation a personal holding company, or when applied to section 543(a)(5), section 543(a)(6), or section 543(a)(9), its effect is to make the amounts described in such provisions includible as personal holding company income.

(c) All forms and classes of stock, however denominated, which represent the interests of shareholders, members, or beneficiaries in the corporation shall be taken into consideration in applying the constructive ownership rules of section 544.

(d) For rules applicable in treating constructive ownership, determined by one application of section 544, as actual ownership for purposes of a second application of section 544, see section 544(a)(5) and § 1.544-6.

[T.D. 6500, 25 FR 11737, Nov. 26, 1960, as amended by T.D. 6739, 29 FR 7715, June 17, 1964]

### § 1.544-2 Constructive ownership by reason of indirect ownership.

The following example illustrates the application of section 544(a)(1), relating to constructive ownership by reason of indirect ownership: