

## § 1.544-1

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

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: