

tests must be met under section 1083(d), since a corporation, in order to be a member of a system group, must also be a registered holding company or a majority-owned subsidiary company.

(e) *Nonexempt property.* The term *nonexempt property* is defined by section 1083(e) to include—

(1) The amount of any consideration in the form of a cancellation or assumption of debts or other liabilities of the transferor (including a continuance of encumbrances subject to which the property was transferred). To illustrate, if in obedience to an order of the Securities and Exchange Commission the X Corporation, a registered holding company, transfers property to the Y Corporation in exchange for property (not nonexempt property) with a fair market value of \$500,000, the X Corporation receives \$100,000 of nonexempt property, if for example—

(i) The Y Corporation cancels \$100,000 of indebtedness owed to it by the X Corporation;

(ii) The Y Corporation assumes an indebtedness of \$100,000 owed by the X Corporation to another company, the A Corporation; or

(iii) The Y Corporation takes over the property conveyed to it by the X Corporation subject to a mortgage of \$100,000.

(2) Short-term obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace.

(3) Securities issued or guaranteed as to principal or interest by a government or subdivision thereof (including those issued by a corporation which is an instrumentality of a government or subdivision thereof).

(4) Stock or securities which were acquired from a registered holding company which acquired such stock or securities after February 28, 1938, or an associate company of a registered holding company which acquired such stock or securities after February 28, 1938, unless such stock or securities were acquired in obedience to an order of the Securities and Exchange Commission (as defined in section 1083 (a)) or were acquired with the authoriza-

tion or approval of the Securities and Exchange Commission under any section of the Public Utility Holding Company Act of 1935, and are not nonexempt property within the meaning of section 1083(e) (1), (2), or (3).

(5) Money, and the right to receive money not evidenced by a security other than an obligation described as nonexempt property in section 1083 (e) (2) or (3). The term *the right to receive money* includes, among other items, accounts receivable, claims for damages, and rights to refunds of taxes.

(f) *Stock or securities.* The term *stock or securities* is defined in section 1083(f) for the purposes of part VI (section 1081 and following), subchapter O, chapter 1 of the Code. As therein defined, the term includes voting trust certificates and stock rights or warrants.

WASH SALES OF STOCK OR SECURITIES

§ 1.1091-1 Losses from wash sales of stock or securities.

(a) A taxpayer cannot deduct any loss claimed to have been sustained from the sale or other disposition of stock or securities if, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date (referred to in this section as the 61-day period), he has acquired (by purchase or by an exchange upon 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. However, this prohibition does not apply (1) in the case of a taxpayer, not a corporation, if the sale or other disposition of stock or securities is made in connection with the taxpayer's trade or business, or (2) in the case of a corporation, a dealer in stock or securities, if the sale or other disposition of stock or securities is made in the ordinary course of its business as such dealer.

(b) Where more than one loss is claimed to have been sustained within the taxable year from the sale or other disposition of stock or securities, the provisions of this section shall be applied to the losses in the order in which the stock or securities the disposition of which resulted in the respective losses were disposed of (beginning with

the earliest disposition). If the order of disposition of stock or securities disposed of at a loss on the same day cannot be determined, the stock or securities will be considered to have been disposed of in the order in which they were originally acquired (beginning with the earliest acquisition).

(c) Where the amount of stock or securities acquired within the 61-day period is less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the loss from the sale or other disposition of which is not deductible shall be those with which the stock or securities acquired are matched in accordance with the following rule: The stock or securities acquired will be matched in accordance with the order of their acquisition (beginning with the earliest acquisition) with an equal number of the shares of stock or securities sold or otherwise disposed of.

(d) Where the amount of stock or securities acquired within the 61-day period is not less than the amount of stock or securities sold or otherwise disposed of, then the particular shares of stock or securities the acquisition of which resulted in the nondeductibility of the loss shall be those with which the stock or securities disposed of are matched in accordance with the following rule: The stock or securities sold or otherwise disposed of will be matched with an equal number of the shares of stock or securities acquired in accordance with the order of acquisition (beginning with the earliest acquisition) of the stock or securities acquired.

(e) The acquisition of any share of stock or any security which results in the nondeductibility of a loss under the provisions of this section shall be disregarded in determining the deductibility of any other loss.

(f) The word *acquired* as used in this section means acquired by purchase or by an exchange upon which the entire amount of gain or loss was recognized by law, and comprehends cases where the taxpayer has entered into a contract or option within the 61-day period to acquire by purchase or by such an exchange.

(g) For purposes of determining under this section the 61-day period applicable to a short sale of stock or securities, the principles of paragraph (a) of § 1.1233-1 for determining the consummation of a short sale shall generally apply except that the date of entering into the short sale shall be deemed to be the date of sale if, on the date of entering into the short sale, the taxpayer owns (or on or before such date has entered into a contract or option to acquire) stock or securities identical to those sold short and subsequently delivers such stock or securities to close the short sale.

(h) The following examples illustrate the application of this section:

Example 1. A, whose taxable year is the calendar year, on December 1, 1954, purchased 100 shares of common stock in the M Company for \$10,000 and on December 15, 1954, purchased 100 additional shares for \$9,000. On January 3, 1955, he sold the 100 shares purchased on December 1, 1954, for \$9,000. Because of the provisions of section 1091, no loss from the sale is allowable as a deduction.

Example 2. A, whose taxable year is the calendar year, on September 21, 1954, purchased 100 shares of the common stock of the M Company for \$5,000. On December 21, 1954, he purchased 50 shares of substantially identical stock for \$2,750, and on December 27, 1954, he purchased 25 additional shares of such stock for \$1,125. On January 3, 1955, he sold for \$4,000 the 100 shares purchased on September 21, 1954. There is an indicated loss of \$1,000 on the sale of the 100 shares. Since, within the 61-day period, A purchased 75 shares of substantially identical stock, the loss on the sale of 75 of the shares (\$3,750 - \$3,000, or \$750) is not allowable as a deduction because of the provisions of section 1091. The loss on the sale of the remaining 25 shares (\$1,250 - \$1,000, or \$250) is deductible subject to the limitations provided in sections 267 and 1211. The basis of the 50 shares purchased December 21, 1954, the acquisition of which resulted in the nondeductibility of the loss (\$500) sustained on 50 of the 100 shares sold on January 3, 1955, is \$2,500 (the cost of 50 of the shares sold on January 3, 1955) + \$750 (the difference between the purchase price (\$2,750) of the 50 shares acquired on December 21, 1954, and the selling price (\$2,000) of 50 of the shares sold on January 3, 1955), or \$3,250. Similarly, the basis of the 25 shares purchased on December 27, 1954, the acquisition of which resulted in the nondeductibility of the loss (\$250) sustained on 25 of the shares sold on January 3, 1955, is \$1,250 + \$125, or \$1,375. See § 1.1091-2.

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Example 3. A, whose taxable year is the calendar year, on September 15, 1954, purchased 100 shares of the stock of the M Company for \$5,000. He sold these shares on February 1, 1956, for \$4,000. On each of the four days from February 15, 1956, to February 18, 1956, inclusive, he purchased 50 shares of substantially identical stock for \$2,000. There is an indicated loss of \$1,000 from the sale of the 100 shares on February 1, 1956, but, since within the 61-day period A purchased not less than 100 shares of substantially identical stock, the loss is not deductible. The particular shares of stock the purchase of which resulted in the nondeductibility of the loss are the first 100 shares purchased within such period, that is, the 50 shares purchased on February 15, 1956, and the 50 shares purchased on February 16, 1956. In determining the period for which the 50 shares purchased on February 15, 1956, and the 50 shares purchased on February 16, 1956, were held, there is to be included the period for which the 100 shares purchased on September 15, 1954, and sold on February 1, 1956, were held.

[T.D. 6500, 25 FR 11910, Nov. 26, 1960, as amended by T.D. 6926, 32 FR 11468, Aug. 9, 1967]

§ 1.1091-2 Basis of stock or securities acquired in "wash sales".

(a) *In general.* The application of section 1091(d) may be illustrated by the following examples:

Example 1. A purchased a share of common stock of the X 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 \$90. No loss from the sale is recognized under section 1091. The basis of the new share is \$110; that is, the basis of the old share (\$100) 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

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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