

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 reasonable person, on the basis of all the facts and circumstances, ordinarily would expect to be offsetting with respect to positions in more than one mixed straddle account shall be allocated among such accounts under a reasonable and consistent method that clearly reflects income. This paragraph (b)(2) 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 year, and that gain or loss from the positions is treated as gain or loss from a capital asset.

*Example:* B holds stock in XYZ Corporation, UVW Corporation, and RST Corporation, and options on a broad based stock index future. A reasonable person, on the basis of all the facts and circumstances, would expect the stock in XYZ Corporation, UVW Corporation, and RST Corporation to be offsetting positions with respect to the options on the broad based stock index future. A reasonable person, on the basis of all the facts and circumstances, would not expect that stock in XYZ Corporation, UVW Corporation, or RST Corporation would be offsetting positions with respect to each other. If B makes the mixed straddle account election under this section for all such positions, B must designate three separate classes of activities: one consisting of stock in XYZ Corporation; one consisting of stock in UVW Corporation; and one consisting of stock in RST Corporation, and maintain three separate mixed straddle accounts. Options on the broad based stock index future must be designated as part of all three classes of activities and gains and losses from such options must be allocated among such accounts under a reasonable and consistent method that clearly reflects income, because such options are a type of position expected to be offsetting with respect to the positions in all three mixed straddle accounts.

(4) *Impermissible designations—(i) Types of positions that are not offsetting included in designated class of activities.*

If the Commissioner determines, on the basis of all the facts and circumstances, that a class of activities designated by a taxpayer includes types of positions that a reasonable person, on the basis of all the facts and circumstances, ordinarily would not expect to be offsetting positions with respect to other types of positions in the account, the Commissioner may—

(A) Amend the class of activities designated by the taxpayer and remove positions from the account that are not within the amended designated class of activities; or

(B) Amend the class of activities designated by the taxpayer to establish two or more mixed straddle accounts.

(ii) *Types of positions that are offsetting not included in designated class of activities.* If the Commissioner determines, on the basis of all the facts and circumstances, that a designated class of activities does not include types of positions that are offsetting with respect to types of positions within the designated class, the Commissioner may—

(A) Amend the class of activities designated by the taxpayer to include types of positions that are offsetting with respect to the types of positions within the designated class and place such positions in the account; or

(B) Amend the class of activities designated by the taxpayer to exclude types of positions that are offsetting with respect to the types of positions that are not in the account.

(iii) *Treatment of positions removed from or included in the account.* (A) Positions removed from a mixed straddle account will be subject to the rules of taxation generally applicable to such positions. Thus, for example, if the positions removed from the account are offsetting positions with respect to other positions outside the account, the rules of §§ 1.1092(b)-1T and 1.1092(b)-2T apply.

(B) If the taxpayer acted consistently and in good faith in designating the class of activities of the account and in placing positions in the account, the rules of § 1.1092(b)-2T(b)(2) shall not apply to any mixed straddles resulting from the removal of such positions from the account and the Commissioner, at the Commissioner's discretion, may identify such mixed straddles as section 1092(b)(2) identified mixed straddles and apply the rules of § 1.1092(b)-3T(b) to such straddles.

(C) If positions are placed in a mixed straddle account, such positions shall be treated as if they were originally included in the mixed straddle account in which they are placed.

(5) *Positions included in a mixed straddle account that are not within the designated class of activities.* The Commissioner may remove one or more positions from a mixed straddle account if, on the basis of all the facts and circumstances, the Commissioner determines that such positions are not within the designated class of activities of the account. See paragraph (b)(4)(iii) of this section for rules concerning the treatment of such positions.

(6) *Positions outside a mixed straddle account that are within the designated class of activities.* If a taxpayer holds types of positions outside of a mixed straddle account (including positions in another mixed straddle account) that are within the designated class of

activities of a mixed straddle account, the Commissioner may require the taxpayer to include such types of positions in the mixed straddle account, move positions from one account to another, or remove from the mixed straddle account types of positions that are offsetting with respect to the types of positions held outside the account. See paragraph (b)(4)(iii) of this section for the treatment of such positions.

(c) *Treatment of gains and losses from positions in a mixed straddle account*—(1) *Daily account net gain or loss.* Except as provided in paragraphs (d) and (e) of this section (relating to positions in a mixed straddle account before January 1, 1985) as of the close of each business day of the taxable year, gain or loss shall be determined for each position in a mixed straddle account that is disposed of during the day. Positions in a mixed straddle account that have not been disposed of as of the close of the day shall be treated as if sold for their fair market value at the close of each business day. Gains and losses for each business day from non-section 1256 positions in each mixed straddle account shall be netted to determine *net non-section 1256 position gain or loss* for the account, and gains and losses for each business day from section 1256 contracts in each mixed straddle account shall be netted to determine *net section 1256 contract gain or loss* for the account. Net non-section 1256 position gain or loss from the account is then offset against net section 1256 contract gain or loss from the same mixed straddle account to determine the *daily account net gain or loss* for the account. If daily account net gain or loss is attributable to the net non-section 1256 position gain or loss, daily account net gain or loss for such account shall be treated as short-term capital gain or loss. If daily account net gain or loss is attributable to the net section 1256 contract gain or loss, daily account net gain or loss for such account shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. If net non-section 1256 position gain or loss and net section 1256 contract gain or loss are either both gains or both losses, that portion of the daily account net gain or loss attributable to net non-section

1256 position gain or loss shall be treated as short-term capital gain or loss and that portion of the daily account net gain or loss attributable to net section 1256 contract gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss determined under this paragraph (c)(1) to take into account any gain or loss determined for prior business days under this paragraph (c)(1).

(2) *Annual account net gain or loss; total annual account net gain or loss.* On the last business day of the taxable year, the *annual account net gain or loss* for each mixed straddle account established by the taxpayer shall be determined by netting the daily account net gain or loss for each business day in the taxable year for each account. Annual account net gain or loss for each mixed straddle account shall be adjusted pursuant to paragraph (c)(3) of this section. The *total annual account net gain or loss* shall be determined by netting the annual account net gain or loss for all mixed straddle accounts established by the taxpayer, as adjusted pursuant to paragraph (c)(3) of this section. Total annual account net gain or loss is subject to the limitations of paragraph (c)(4) of this section. See paragraphs (d) and (e) of this section for determining the annual account net gain or loss for mixed straddle accounts established for taxable years beginning before January 1, 1985.

(3) *Application of section 263(g) to mixed straddle accounts.* No deduction shall be allowed for interest and carrying charges (as defined in section 263(g)(2)) properly allocable to a mixed straddle account. Interest and carrying charges properly allocable to a mixed straddle account means the excess of—

(i) The sum of—

(A) Interest on indebtedness incurred or continued during the taxable year to purchase or carry any position in the account; and

(B) All other amounts (including charges to insure, store or transport the personal property) paid or incurred to carry any position in the account; over

(ii) The sum of—

(A) The amount of interest (including original issue discount) includible in gross income for the taxable year with respect to all positions in the account;

(B) Any amount treated as ordinary income under section 1271(a)(3)(A), 1278, or 1281(a) with respect to any position in the account for the taxable year; and

(C) The excess of any dividends includible in gross income with respect to positions in the account for the taxable year over the amount of any deduction allowable with respect to such dividends under section 243, 244, or 245.

For purposes of paragraph (c)(3)(i) of this section, the term *interest* includes any amount paid or incurred in connection with positions in the account used in a short sale. Any interest and carrying charges disallowed under this paragraph (c)(3) shall be capitalized by treating such charges as an adjustment to the annual account net gain or loss and shall be allocated pro rata between net short-term capital gain or loss and net long-term capital gain or loss.

(4) *Limitation on total annual account net gain or loss.* No more than 50 percent of total annual account net gain for the taxable year shall be treated as long-term capital gain. Any long-term capital gain in excess of the 50 percent limit shall be treated as short-term capital gain. No more than 40 percent of total annual account net loss for the taxable year shall be treated as short-term capital loss. Any short-term capital loss in excess of the 40 percent limit shall be treated as long-term capital loss.

(5) *Accrued gain and loss with respect to positions includible in a mixed straddle account.* Positions includible in a mixed straddle account that are held by a taxpayer on the day prior to the day the mixed straddle account is established shall be deemed sold for their fair market value as of the close of the last business day preceding the day such mixed straddle account 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

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(through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss realized with respect to such positions for any gain or loss recognized under this paragraph (c)(5).

(6) *Examples.* This paragraph (c) 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, and that gain or loss from the positions is treated as gain or loss from a capital asset.

*Example 1.* A establishes a mixed straddle account for a class of activities consisting of transactions in stock of XYZ Corporation

and dealer equity options on XYZ Corporation stock. Assume that A enters into no transactions in XYZ Corporation stock or dealer equity options on XYZ Corporation stock prior to December 26, 1985. Thus, the net non-section 1256 position gain or loss and the net section 1256 contract gain or loss for the account are zero for each business day except the following days:

	Net non-section 1256 position gain or loss (XYZ corporation stock)	Net section 1256 contract gain or loss (XYZ corporation dealer equity options)
December 26, 1985 .....	\$1,000	\$20,000
December 27, 1985 .....	(9,000)	3,000
December 30, 1985 .....	(5,000)	15,000
December 31, 1985 .....	7,000	(2,000)

The daily account net gain or loss is as follows:

	Daily account net gain or loss	Treatment of daily account net gain or loss	Long-term	Short-term
December 26, 1985 .....	\$21,000	\$1,000 short-term capital gain, \$20,000 60 percent long-term capital gain and 40 percent short-term capital gain.	\$12,000	\$9,000
December 27, 1985 .....	(6,000)	Short-term capital loss .....		(6,000)
December 30, 1985 .....	10,000	60 percent long-term capital gain and 40 percent short-term capital gain.	6,000	4,000
December 31, 1985 .....	5,000	Short-term capital gain .....		5,000

The annual account net gain or loss is \$18,000 of long-term capital gain and \$12,000 of short-term capital gain. Because A has no other mixed straddle accounts, total annual account net gain or loss is also \$18,000 long-term capital gain and \$12,000 short-term capital gain. Because more than 50 percent of the total annual account net gain is long-term capital gain, \$3,000 of the \$18,000 long-term capital gain will be treated as short-term capital gain.

*Example 2.* Assume the facts are the same as in example (1), except that interest and carrying charges in the amount of \$6,000 are allocable to the mixed straddle account and are capitalized under paragraph (c)(3) of this section. Under these circumstances, \$3,600  $((\$18,000/\$30,000) \times \$6,000)$  of the interest and carrying charges will reduce the \$18,000 long-term capital gain to \$14,400 long-term capital gain and \$2,400  $((\$12,000/\$30,000) \times \$6,000)$  of the interest and carrying charges will reduce the \$12,000 short-term capital gain to \$9,600 short-term capital gain. Because more than 50 percent of the total annual account net gain is long-term capital gain, \$2,400 of the \$14,400 long-term capital gain will be treated as short-term capital gain.

*Example 3.* Assume the facts are the same as in example (1), except that A has a second mixed straddle account, which has an annual account net loss of \$14,000 of long-term cap-

ital loss and \$6,000 of short-term capital loss. Under these circumstances, the total annual account net gain is \$4,000  $(\$18,000 - \$14,000)$  of long-term capital gain and \$6,000  $(\$12,000 - \$6,000)$  of short-term capital gain. Because not more than 50 percent of the total annual account net gain is long-term capital gain, none of the long-term capital gain will be treated as short-term capital gain.

*Example 4.* Assume the facts are the same as in example (3), except that interest and carrying charges in the amount of \$4,000 are allocable to the second mixed straddle account and are capitalized under paragraph (c)(3) of this section. Under these circumstances, \$2,800  $((\$14,000/\$20,000) \times \$4,000)$  of the interest and carrying charges will increase the \$14,000 long-term capital loss to \$16,800 of long-term capital loss and \$1,200  $((\$6,000/\$20,000) \times \$4,000)$  of the interest and carrying charges will increase the \$6,000 short-term capital loss to \$7,200 short-term capital loss. The total annual account net gain is \$1,200 of long-term capital gain  $(\$18,000 - \$16,800)$  and \$4,800  $(\$12,000 - \$7,200)$  of short-term capital gain. Because not more than 50 percent of the total annual account net gain is long-term capital gain, none of the \$1,200 long-term capital gain will be treated as short-term capital gain.

*Example 5.* Assume the facts are the same as in example (1), except that A has a second mixed straddle account, which has an annual account net loss of \$20,000 of long-term capital loss and \$15,000 of short-term capital loss. Under these circumstances, the total annual account net loss is \$2,000 (\$20,000 - \$18,000) of long-term capital loss and \$3,000 (\$15,000 - \$12,000) of short-term capital loss. Because more than 40 percent of the total annual account net loss is short-term capital loss, \$1,000 of the short-term capital loss will be treated as long-term capital loss.

*Example 6.* A establishes two mixed straddle accounts. Account 1 has an annual account net gain of \$5,000 short-term capital gain, which results from netting \$5,000 of long-term capital loss and \$10,000 of short-term capital gain. Account 2 has an annual account net loss of \$2,000 long-term capital loss, which results from netting \$3,000 of long-term capital loss against \$1,000 of short-term capital gain. The total annual account net gain is \$3,000 short-term capital gain, which results from netting the annual account net gain of \$5,000 short-term capital gain from Account 1 against the annual account net loss of \$2,000 long-term capital loss from Account 2.

(d) *Treatment of gains and losses from positions in a mixed straddle account established on or before December 31, 1984, in taxable years ending after December 31, 1984; pre-1985 account net gain or loss.* For mixed straddle accounts established on or before December 31, 1984, in taxable years ending after December 31, 1984, the taxpayer on December 31, 1984, shall determine gain or loss for each position in the mixed straddle account that has been disposed of on any day during the period beginning on the first day of the taxpayer's taxable year that includes December 31, 1984, and ending on December 31, 1984. Positions in the mixed straddle account that have not been disposed of as of the close of December 31, 1984, shall be treated as if sold for their fair market value as of the close of December 31, 1984. Gains and losses for such period from non-section 1256 positions in each mixed straddle account shall be netted to determine *pre-1985 net non-section 1256 position gain or loss* and gains and losses for such period from section 1256 contracts in each mixed straddle account shall be netted to determine *pre-1985 net section 1256 contract gain or loss*. Pre-1985 net non-section 1256 position gain or loss is then offset against pre-1985 net section 1256 contract gain or

loss from the same mixed straddle account to determine the *pre-1985 account net gain or loss* for the period. If the pre-1985 account net gain or loss is attributable to pre-1985 net non-section 1256 position gain or loss, the pre-1985 account net gain or loss from such account shall be treated as short-term capital gain or loss. If the pre-1985 account net gain or loss is attributable to pre-1985 net section 1256 contract gain or loss, the pre-1985 account net gain or loss from such account shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. If pre-1985 net non-section 1256 position gain or loss and pre-1985 net section 1256 contract gain or loss are either both gains or losses, that portion of the pre-1985 account net gain or loss attributable to pre-1985 net non-section 1256 position gain or loss shall be treated as short-term capital gain or loss and that portion of the pre-1985 account net gain or loss attributable to pre-1985 net section 1256 contract gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss realized with respect to such positions for any gain or loss recognized under this paragraph (d). To determine the annual account net gain or loss for such account, the pre-1985 account net gain or loss shall be treated as daily account net gain or loss for purposes of paragraph (c)(2) of this section. See paragraph (c)(5) of this section for treatment of accrued gain or loss with respect to positions includible in a mixed straddle account.

(e) *Treatment of gains and losses from positions in a mixed straddle account for taxable years ending on or before December 31, 1984—(1) In general.* For mixed straddle accounts established on or before December 31, 1984, in taxable years ending on or before December 31, 1984, the taxpayer at the close of the taxable year shall determine gain or loss for each position in the mixed straddle account that has been disposed of on any day during the period beginning on the later of the first day of the taxable year or January 1, 1984, and ending on

the last day of the taxable year. Positions in the mixed straddle account that have not been disposed of as of the close of the last business day of the taxable year shall be treated as if sold for their fair market value at the close of such day. Gains and losses from non-section 1256 positions in each mixed straddle account shall be netted to determine *1984 net non-section 1256 position gain or loss* for the account and gains and losses from section 1256 contracts shall be netted to determine *1984 net section 1256 contract gain or loss* for the account. The 1984 net non-section 1256 position gain or loss is then offset against 1984 net section 1256 contract gain or loss from the same mixed straddle account to determine *annual account net gain or loss* for the account. If annual account net gain or loss is attributable to 1984 net non-section 1256 position gain or loss, annual account net gain or loss shall be treated as short-term capital gain or loss. If annual account net gain or loss is attributable to 1984 net section 1256 contract gain or loss, annual account net 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 1984 net non-section 1256 position gain or loss and 1984 net section 1256 contract gain or loss are either both gains or both losses, that portion of annual account net gain or loss attributable to 1984 net non-section 1256 position gain or loss shall be treated as short-term capital gain or loss and that portion of annual account net gain or loss attributable to 1984 net section 1256 contract gain or loss shall be treated as 60 percent long-term capital gain or loss and 40 percent short-term capital gain or loss. An adjustment (through an adjustment to basis or otherwise) shall be made to any subsequent gain or loss realized with respect to such positions for any gain or loss recognized under this paragraph (e). See paragraph (c) (2) through (5) of this section relating to determining the total annual account net gain or loss, application of section 263(g) to mixed straddle accounts, the limitation on the total annual account net gain or loss, and treatment of accrued gain or loss with respect to positions includible in a mixed straddle account.

(2) *Pre-1984 accrued gain.* If the last business day referred to in paragraph (c)(5) of this section is contained in a period to which such paragraph (c)(5) does not apply, the gains and losses from the deemed sale shall be included in the first period to which paragraph (c)(5) applies.

(f) *Election—(1) Time for making the election.* Except as otherwise provided, the election under this section to establish one or more mixed straddle accounts for a taxable year must be made by the due date (without regard to automatic and discretionary extensions) of the taxpayer's income tax return for the immediately preceding taxable year (or part thereof). For example, an individual taxpayer on a calendar year basis must make the election by April 15, 1986, to establish one or more mixed straddle accounts for taxable year 1986. Similarly, a calendar year corporate taxpayer must make its election by March 15, 1986, to establish one or more mixed straddle accounts for 1986. If a taxpayer begins trading or investing in positions in a new class of activities during a taxable year, the election under this section with respect to the new class of activities must be made by the taxpayer by the later of the due date of the taxpayer's income tax return for the immediately preceding taxable year (without regard to automatic and discretionary extensions), or 60 days after the first mixed straddle in the new class of activities is entered into. Similarly, if on or after the date the election is made with respect to an account, the taxpayer begins trading or investing in positions that are includible in such account but were not specified in the original election, the taxpayer must make an amended election as prescribed in paragraph (f)(2)(ii) of this section by the later of the due date of the taxpayer's income tax return for the immediately preceding taxable year (without regard to automatic and discretionary extensions), or 60 days after the acquisition of the first of the positions. If an election is made after the times specified in this paragraph (f)(1), the election will be permitted only if the Commissioner concludes that the taxpayer had reasonable cause for failing to make a

timely election. For example, if a calendar year taxpayer holds few positions in one class of activities prior to April 15 of a taxable year, and the taxpayer greatly increases trading activity with respect to positions in the class of activities after April 15, then the Commissioner may conclude that the taxpayer had reasonable cause for failing to make a timely election and allow the taxpayer to make a mixed straddle account election for the taxable year. See paragraph (f)(2) of this section for rules relating to the manner for making these elections.

(2) *Manner for making the election*—(i) *In general.* A taxpayer must make the election on Form 6781 in the manner prescribed by such Form, and by attaching the Form to the taxpayer's income tax return for the immediately preceding taxable year (or request for an automatic extension). In addition, the taxpayer must attach a statement to Form 6781 designating with specificity the class of activities for which a mixed straddle account is established. The designation must describe the class of activities in sufficient detail so that the Commissioner may determine, on the basis of the designation, whether specific positions are includible in the mixed straddle account. In the case of a taxpayer who elects to establish more than one mixed straddle account, the Commissioner must be able to determine, on the basis of the designations, that specific positions are placed in the appropriate account. The election applies to all positions in the designated class of activities held by the taxpayer during the taxable year.

(ii) *Elections for new classes of activities and expanded elections.* Amended elections and elections made with respect to a new class of activities that the taxpayer has begun trading or investing in during a taxable year, shall be made on Form 6781 within the times prescribed in paragraph (f)(1) of this section. A statement must be attached to the Form containing the information required in paragraph (f)(2)(i) of this section, with respect to the new or expanded designated class of activities.

(iii) *Special rule.* The Commissioner may disregard a mixed straddle account election if the Commissioner determines, on the basis of all the facts

and circumstances, that the principal purpose for making the mixed straddle account election with respect to a class of activities was to avoid the rules of § 1.1092(b)-1T (a). For example, if a taxpayer holds stock that is not part of a straddle and that would generate a loss if sold or otherwise disposed of, and the taxpayer both acquires offsetting option positions with respect to the stock and makes a mixed straddle account election with respect to the stock and stock options near the end of a taxable year, the Commissioner may disregard the mixed straddle account election.

(3) *Special rule for taxable years ending after 1983 and before September 1, 1986.* An election under this section to establish one or more mixed straddle accounts for any taxable year that includes July 17, 1984, and any taxable year that ends before September 1, 1986 (or, in the case of a corporation, October 1, 1986), must be made by the later of—

(i) December 31, 1985, or

(ii) The due date (without regard to automatic and discretionary extensions) of the return for the taxpayer's taxable year that begins in 1984 if the due date of the taxpayer's return for such year (without regard to automatic and discretionary extensions) is after December 31, 1985.

The election shall be made by attaching Form 6781 together with a statement to the taxpayer's income tax return, amended return, or other appropriate form that is filed on or before the deadline determined in the preceding sentence. The attached statement must designate with specificity, in accordance with paragraph (f)(2)(i) of this section, the class of activities for which a mixed straddle account is established. For example, if a fiscal year taxpayer's return (for its taxable year ending September 30, 1985) is due (without regard to extensions) on January 15, 1986, and the taxpayer intends to obtain an automatic extension to file the return, the election under this section for any or all of the fiscal years ending in 1984, 1985 or 1986 must be made on or before January 15, 1986, with the request for an automatic extension. Similarly, a calendar year taxpayer (whether or not such taxpayer has obtained an automatic extension of



time to file) who has filed its 1984 income tax return before October 15, 1985, without making a mixed straddle account election for either 1984 or 1985, or both, may make the mixed straddle account election under this section for either or for both of such years with an amended return filed on or before December 31, 1985. The mixed straddle account elected on this amended return will be effective for all positions in the designated class of activities even if the taxpayer had elected straddle-by-straddle identification as provided under § 1.1092(b)-3T for purposes of the previously filed 1984 income tax return. For taxable years beginning in 1984 and 1985, the election under this paragraph (f)(3) is effective for the entire taxable year. For taxable years beginning in 1983, an election shall be effective for that part of the year beginning after December 31, 1983, for which the election under § 1.1256(h)-1T or 1.1256(h)-2T is made. See § 1.6081-1T regarding an extension of time to file certain individual income tax returns.

(4) *Period for which election is effective.* For taxable years beginning on or after January 1, 1984, an election under this section, including an amendment to the election pursuant to paragraph (f)(1) of this section, shall be effective only for the taxable year for which the election is made. This election may be revoked during the taxable year for the remainder of the taxable year only with the consent of the Commissioner. An application for consent to revoke the election shall be filed with the service center with which the election was filed and shall—

(i) Contain the name, address, and taxpayer identification number of the taxpayer;

(ii) Show that the volume or nature of the taxpayer's activities has changed substantially since the election was made, and that the taxpayer's activities no longer warrant the use of such mixed straddle account; and

(iii) Any other relevant information.

If a taxpayer's election for a taxable year is revoked, the taxpayer may not make a new election for the same class of activities under paragraph (f)(1) of this section during the same taxable year.

(g) *Effective date.* The provisions of this section apply to positions held on or after January 1, 1984.

(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 3329, Jan. 24, 1985; 50 FR 12243, Mar. 28, 1985, as amended by T.D. 8058, 50 FR 42013, Oct. 17, 1985]

#### § 1.1092(b)-5T Definitions (temporary).

The following definitions apply for purposes of §§ 1.1092(b)-1T through 1.1092(b)-4T.

(a) *Disposing, disposes, or disposed.* The term *disposing, disposes, or disposed* includes the sale, exchange, cancellation, lapse, expiration, or other termination of a right or obligation with respect to personal property (as defined in section 1092(d)(1)).

(b) *Hedging transaction.* The term *hedging transaction* means a hedging transaction as defined in section 1256(e).

(c) *Identified straddle.* The term *identified straddle* means an identified straddle as defined in section 1092(a)(2)(B).

(d) *Loss.* The term *loss* means a loss otherwise allowable under section 165(a) (without regard to the limitation contained in section 165(f)) and includes a write-down in inventory.

(e) *Mixed straddle.* The term *mixed straddle* means a straddle—

(1) All of the positions of which are held as capital assets;

(2) At least one (but not all) of the positions of which is a section 1256 contract;

(3) For which an election under section 1256(d) has not been made; and

(4) Which is not part of a larger straddle.

(f) *Non-section 1256 position.* The term *non-section 1256 position* means a position that is not a section 1256 contract.

(g) *Offsetting position.* The term *offsetting position* means an offsetting position as defined in section 1092(c)(2).

(h) *Position.* The term *position* means a position as defined in section 1092(d)(2).

(i) [Reserved]

(j) *Related person or flowthrough entity.* The term *related person or flowthrough entity* means a related person or flowthrough entity as defined in