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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9627]

RIN 1545-BL04

Mixed Straddles; Straddle-by-Straddle Identification Under Section 1092(b)(2)(A)(i)(I); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations; correcting amendments.

SUMMARY: This document contains amendments to temporary regulations relating to guidance for taxpayers electing to establish a mixed straddle using straddle-by-straddle identification. These amendments include a change to the applicability date of the temporary regulations pursuant to which the temporary regulations apply to transactions established after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. The amendments to the temporary regulations will affect taxpayers who elect to establish a mixed straddle using straddle-by-straddle identification.

DATES: Effective Date: These amendments are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Date: As corrected, §1.1092(b)-6T applies to identified mixed straddles established after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Pamela Lew or Robert B. Williams at (202) 622-3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these amendments are under section 1092 of the Internal Revenue Code (Code). The temporary regulations (TD 9627) were published in the **Federal Register** on Friday, August 2, 2013 (78 FR 46807). The temporary regulations applied to all identified mixed straddles established after the date of filing, August 1, 2013.

Need for amendments

The Treasury Department and the IRS received comments raising concerns about the immediate applicability date of the temporary regulations. In response to those comments, this document amends the temporary regulations to limit the application of the identified mixed straddle transaction rules in §1.1092(b)-6T to section 1092(b)(2) identified mixed straddles established after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. This document also amends the examples in the temporary regulations to reflect the change in the applicability date and to clarify the determination of a holding period. The Treasury Department and the IRS anticipate finalizing the regulations no later than the end of the current Priority Guidance Plan year on June 30, 2014, and will as part of that process consider all comments received.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805* * *

Section 1.1092(b)-6T also issued under 26 U.S.C. 1092(b)(1).

Section 1.1092(b)-6T also issued under 26 U.S.C. 1092(b)(2).* * *

Par. 2. Section 1.1092(b)-3T is amended by:

1. Revising the heading of paragraph (b)(6).2. Revising the first sentence of paragraph (b)(6).

The amendments read as follows:

§1.1092(b)-3T Mixed straddles; straddle-by-straddle identification under section 1092(b)(2)(A)(i)(I) (Temporary).

* * * * *

(b)(6) Accrued gain and loss with respect to positions of a section 1092(b)(2) identified mixed straddle established on or before the applicability date of §1.1092(b)-6T. The rules of this paragraph (b)(6) apply to all section 1092(b)(2) identified mixed straddles established on or before the applicability date of §1.1092(b)-6T; see §1.1092(b)-6T for section 1092(b)(2) identified mixed straddles established after the applicability date of §1.1092(b)-6T.* * *

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Par. 3. Section 1.1092(b)-6T is amended as follows:

1. Revising the heading of §1.1092(b)-6T.
2. Adding a sentence at the end of the introductory text of paragraph (b)

and revising Example 1 and Example 2 of paragraph (b).

3. Revising paragraph (c).

The amendments read as follows:

§1.1092(b)-6T Mixed straddles; accrued gain and loss associated with a position that becomes part of a section 1092(b)(2) identified mixed straddle.

* * *

(b) * * * The following examples assume that this section applies to identified mixed straddles established after August 1, Year 2.

Example 1. On August 13, Year 2, A enters into a section 1256 contract. As of the close of the day on August 15, Year 2, there is \$500 of unrealized loss on the section 1256 contract. On August 16, Year 2, A enters into an offsetting non-section 1256 position and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. A continues to hold both positions of the section 1092(b)(2) identified mixed straddle on January 1, Year 3. Under these circumstances, A will recognize the \$500 loss on the section 1256 contract that existed prior to establishing the section 1092(b)(2) identified mixed straddle on the last business day of Year 2 because the section 1256 contract would be treated as sold on December 31, Year 2, (the last business day of the taxable year) under section 1256(a). The loss recognized in Year 2 will be treated as 60% long-term capital loss and 40% short-term capital loss. All gains and losses occurring after the section 1092(b)(2) identified mixed straddle is established are accounted for under the applicable provisions in §1.1092(b)-3T.

Example 2. On September 3, Year 1, A enters into a non-section 1256 position. As of the close of the day on August 22, Year 2, there is \$400 of unrealized short-term capital gain on the non-section 1256 position. On August 23, Year 2, A enters into an offsetting section 1256 contract and makes a valid election to treat the straddle as a section 1092(b)(2) identified mixed straddle. On September 10, Year 2, A closes out the section 1256 contract at a \$500 loss and disposes of the non-section 1256 position, realizing an \$875 gain. Under these circumstances, A has \$400 of short-term capital gain attributable to the non-section 1256 position prior to the day the section 1092(b)(2) identified mixed straddle was established. The \$400 unrealized gain earned on the non-section 1256 position will be recognized on September 10, Year 2, when the non-section 1256 position is disposed of. The gain will be short-term capital gain. See

§1.1092(b)-2T for rules concerning holding period. On September 10, Year 2, the gain of \$875 on the non-section 1256 position will be reduced to \$475 to take into account the \$400 of unrealized gain when the section 1092(b)(2) identified mixed straddle was established. The \$475 gain on the non-section 1256 position will be offset by the \$500 loss on the section 1256 contract. The net loss of \$25 from the straddle will be treated as 60% long-term capital loss and 40% short-term capital loss because it is attributable to the section 1256 contract.

(c) Effective/applicability date. The rules of this section apply to all section 1092(b)(2) identified mixed straddles established after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

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