

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which it relates, but not applicable with respect to any transaction ordered in compliance with the Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) before that Act's repeal, see section 402(m) of Pub. L. 109-135, set out as an Effective and Termination Dates of 2005 Amendments note under section 23 of this title.

PART VII—WASH SALES; STRADDLES

Sec.

1091. Loss from wash sales of stock or securities.
1092. Straddles.

AMENDMENTS

1981—Pub. L. 97-34, title V, §501(d)(1), (2), Aug. 13, 1981, 95 Stat. 326, 327, substituted as part heading “WASH SALES; STRADDLES” for “WASH SALES OF STOCK OR SECURITIES” and added item 1092.

§ 1091. Loss from wash sales of stock or securities**(a) Disallowance of loss deduction**

In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or 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, then no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business. For purposes of this section, the term “stock or securities” shall, except as provided in regulations, include contracts or options to acquire or sell stock or securities.

(b) Stock acquired less than stock sold

If the amount of stock or securities acquired (or covered by the contract or option to acquire) 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 determined under regulations prescribed by the Secretary.

(c) Stock acquired not less than stock sold

If the amount of stock or securities acquired (or covered by the contract or option to acquire) 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 (or the contract or option to acquire which) resulted in the nondeductibility of the loss shall be determined under regulations prescribed by the Secretary.

(d) Unadjusted basis in case of wash sale of stock

If the property consists of stock or securities the acquisition of which (or the contract or option to acquire which) resulted in the nondeductibility (under this section or corresponding provisions of prior internal revenue laws) of the loss from the sale or other disposition of substantially identical stock or securities, then the basis shall be the basis of the stock or secu-

rities so sold or disposed of, increased or decreased, as the case may be, by the difference, if any, between the price at which the property was acquired and the price at which such substantially identical stock or securities were sold or otherwise disposed of.

(e) Certain short sales of stock or securities and securities futures contracts to sell

Rules similar to the rules of subsection (a) shall apply to any loss realized on the closing of a short sale of (or the sale, exchange, or termination of a securities futures contract to sell) stock or securities if, within a period beginning 30 days before the date of such closing and ending 30 days after such date—

(1) substantially identical stock or securities were sold, or

(2) another short sale of (or securities futures contracts to sell) substantially identical stock or securities was entered into.

For purposes of this subsection, the term “securities futures contract” has the meaning provided by section 1234B(c).

(f) Cash settlement

This section shall not fail to apply to a contract or option to acquire or sell stock or securities solely by reason of the fact that the contract or option settles in (or could be settled in) cash or property other than such stock or securities.

(Aug. 16, 1954, ch. 736, 68A Stat. 319; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, §106(a), (b), July 18, 1984, 98 Stat. 629; Pub. L. 100-647, title V, §5075(a), Nov. 10, 1988, 102 Stat. 3682; Pub. L. 106-554, §1(a)(7) [title IV, §401(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-649; Pub. L. 107-147, title IV, §412(d)(2), Mar. 9, 2002, 116 Stat. 53.)

AMENDMENTS

2002—Subsec. (e). Pub. L. 107-147 substituted “securities and securities futures contracts to sell” for “securities” in heading, inserted “(or the sale, exchange, or termination of a securities futures contract to sell)” after “closing of a short sale of” in introductory provisions and “(or securities futures contracts to sell)” after “short sale of” in par. (2), and inserted concluding provisions.

2000—Subsec. (f). Pub. L. 106-554 added subsec. (f).

1988—Subsec. (a). Pub. L. 100-647 inserted sentence at end defining “stock or securities”.

1984—Subsec. (a). Pub. L. 98-369, §106(b), substituted “no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business” for “no deduction for the loss shall be allowed under section 165(c)(2); nor shall such deduction be allowed a corporation under section 165(a) unless it is a dealer in stocks or securities, and the loss is sustained in a transaction made in the ordinary course of business”.

Subsec. (e). Pub. L. 98-369, §106(a), added subsec. (e).

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Community Renewal Tax Relief Act of 2000 [H.R. 5662, as enacted by Pub. L. 106-554], to which such amendment relates, see section 412(e) of Pub. L. 107-147, set out as a note under section 151 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title V, §5075(b), Nov. 10, 1988, 102 Stat. 3682, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to any sale after the date of enactment of this Act [Nov. 10, 1988], in taxable years ending after such date."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §106(c), July 18, 1984, 98 Stat. 629, provided that:

"(1) SUBSECTION (a).—The amendment made by subsection (a) [amending this section] shall apply to short sales of stock or securities after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending this section] shall apply to sales after December 31, 1984, in taxable years ending after such date."

§ 1092. Straddles**(a) Recognition of loss in case of straddles, etc.****(1) Limitation on recognition of loss****(A) In general**

Any loss with respect to 1 or more positions shall be taken into account for any taxable year only to the extent that the amount of such loss exceeds the unrecognized gain (if any) with respect to 1 or more positions which were offsetting positions with respect to 1 or more positions from which the loss arose.

(B) Carryover of loss

Any loss which may not be taken into account under subparagraph (A) for any taxable year shall, subject to the limitations under subparagraph (A), be treated as sustained in the succeeding taxable year.

(2) Special rule for identified straddles**(A) In general**

In the case of any straddle which is an identified straddle—

(i) paragraph (1) shall not apply with respect to positions comprising the identified straddle,

(ii) if there is any loss with respect to any position of the identified straddle, the basis of each of the offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions,

(iii) if the application of clause (ii) does not result in an increase in the basis of any offsetting position in the identified straddle, the basis of each of the offsetting positions in the identified straddle shall be increased in a manner which—

(I) is reasonable, consistent with the purposes of this paragraph, and consistently applied by the taxpayer, and

(II) results in an aggregate increase in the basis of such offsetting positions which is equal to the loss described in clause (ii), and

(iv) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.

(B) Identified straddle

The term "identified straddle" means any straddle—

(i) which is clearly identified on the taxpayer's records as an identified straddle before the earlier of—

(I) the close of the day on which the straddle is acquired, or

(II) such time as the Secretary may prescribe by regulations.

(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and

(iii) which is not part of a larger straddle.

A straddle shall be treated as clearly identified for purposes of clause (i) only if such identification includes an identification of the positions in the straddle which are offsetting with respect¹ other positions in the straddle.

(C) Application to liabilities and obligations

Except as otherwise provided by the Secretary, rules similar to the rules of clauses (ii) and (iii) of subparagraph (A) shall apply for purposes of this paragraph with respect to any position which is, or has been, a liability or obligation.

(D) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this paragraph. Such regulations or other guidance may specify the proper methods for clearly identifying a straddle as an identified straddle (and for identifying the positions comprising such straddle), the rules for the application of this section to a taxpayer which fails to comply with those identification requirements, the rules for the application of this section to a position which is or has been a liability or obligation, methods of loss allocation which satisfy the requirements of subparagraph (A)(iii), and the ordering rules in cases where a taxpayer disposes (or otherwise ceases to be the holder) of any part of any position which is part of an identified straddle.

(3) Unrecognized gain

For purposes of this subsection—

(A) In general

The term "unrecognized gain" means—

(i) in the case of any position held by the taxpayer as of the close of the taxable year, the amount of gain which would be taken into account with respect to such position if such position were sold on the last business day of such taxable year at its fair market value, and

(ii) in the case of any position with respect to which, as of the close of the tax-

¹ So in original. Probably should be followed by "to".