

Practical Tax Strategies

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Return to PTAXST TOC

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SUBJECT: WASH-SALE RULES

TITLE: HOLD ONTO LOSS DEDUCTIONS BY AVOIDING WASH-SALE RULES

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HIGHLIGHT:

Triggering capital losses is a common year-end strategy to reduce taxable income, but certain purchases of substantially identical securities can result in the disallowance of those losses.

TEXT:

With the downward trend in the stock market, many investors have sustained losses on their investments in stocks and securities. There are times when the investor may want to declare a loss for tax purposes but wants to maintain a position in the company despite having a loss on the company's stock. One way to take the loss yet maintain ownership is to sell the stock, recognize a loss, and repurchase stock in the same company. However, Congress has foreseen this maneuver and enacted the wash-sale rules, which prohibit taxpayers from recognizing tax losses when they reestablish their equity positions by repurchasing identical securities within a short period after the sale date. The wash-sale rules do not eliminate the loss, but only defer recognition of any loss until the equity position in the particular company is eliminated through a sale.

The initial wash-sale rules were enacted in 1921. The current Section 1091 contains similar language, but has been expanded to cover more types of securities than were encompassed by the original rules. For example, in 1988, TAMRA extended the wash-sale rules to include stock options.

General rule

Section 1091(a) disallows the deduction for any loss claimed from the sale or other disposition of shares of stock or securities if the taxpayer acquires by purchase or exchange, or has entered into a contract or option to acquire, substantially identical stock or securities within a period beginning 30 days before such sale or disposition and ending 30 days afterwards (i.e., a 61-day period).

The wash-sale rules do not apply to Section 165 losses if a taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business. *<1> The Service also has periodically issued rulings excluding certain items from the definition of stock or securities such as commodity futures *<2> or foreign currency. *<3>

----- FOOTNOTE:-----
*<1> Section 1091(a). *<2> Rev. Rul. 71-568, 1971-2 CB 312. *<3> Rev. Rul. 74-218, 1974-1 CB 202.

----- END FOOTNOTE:-----

When determining the 30-day periods, the trade date of the purchase and sale is used rather than the settlement date. Assuming a taxpayer sells stock at a loss on 12/31/02, the taxpayer should not repurchase substantially identical stock in the same company until after 1/30/03.

Substantially identical--stocks

In Rev. Rul. 56-406, *<4> the taxpayer sold common stock at a loss and simultaneously purchased warrants for common stock of the same corporation. The Service ruled that the loss is disallowed because the stock warrants were contracts or options to purchase the stock. The Ruling stated, however, that a loss would be allowable if the transactions were reversed. That is, the wash-sale rules would not apply to loss on the sale of stock warrants by the taxpayer with the simultaneous purchase of common stock of the same corporation. In this case, for the loss to be allowable, the relative values and price changes must not be so similar as to allow the warrants to be fully convertible and therefore substantially identical to the common stock.

----- FOOTNOTE:-----
*<4> 1956-2 CB 523.

----- END FOOTNOTE:-----

In explaining its position, the Service stated that where a warrant may be exercised only with the payment of substantial consideration, it will generally not be substantially identical with the stock. If the warrant may be traded at a price substantially equal to the value of the related stock, it may be considered fully convertible and therefore substantially identical.

In Rev. Rul. 77-201 *<5> the taxpayer sold common stock at a loss and on the same day purchased convertible preferred stock in the same corporation. Each share of the preferred stock was convertible into 2.2 shares of the corporation's common stock. The preferred stock had the same voting rights and was subject to the same dividend restrictions as the common stock. Also, the preferred and common stock traded at prices similar to the conversion ratio with the price of the preferred stock fluctuating with the price of the common stock. The Ruling determined that with these similar price adjustments, the preferred stock was acting as a common stock equivalent and, therefore, substantially identical to the common stock under Section 1091. The loss on the sale of the common stock was, therefore, disallowed.

----- FOOTNOTE:-----
*<5> 1977-1 CB 250.

----- END FOOTNOTE:-----

In Rev. Rul. 85-87, *<6> a taxpayer sold stock at a loss and the next day sold an "in-the-money" put option (i.e., the market price of the stock was less

than the exercise price of the put). The Service disallowed the loss on the stock sale under the wash-sale rules. The Ruling stated that a loss would not be allowed when there is an in-the-money put and "based on the objective factors at the time the put was sold, there was no substantial likelihood that the put would not be exercised."

----- FOOTNOTE:-----
*<6> 1985-1 CB 268.

----- END FOOTNOTE:-----

In the 1988 Tax Court case of *Gantner*, *<7> the taxpayer bought and sold call options on a stock without ever actually purchasing the stock. The court held that the wash-sale provisions of Section 1091 did not apply to stock option losses as stock options were not stock or securities within the meaning of Section 1091. Therefore, the court did not apply the wash-sale rules to the sale of call options followed immediately by a purchase of call options on the same stock with identical terms regarding exercise price and expiration date.

----- FOOTNOTE:-----
*<7> 91 TC 713 (1988), *aff'd* 905 F.2d 241, 66 AFTR2d 90-5163 (CA-8, 1990).

----- END FOOTNOTE:-----

Shortly after the *Gantner* opinion was issued, Congress enacted section 5075 of TAMRA to specifically include options under the wash-sale rules. TAMRA amended Section 1091 to provide that "the term 'stock or securities' shall, except as provided in the regulations, include contracts or options to acquire or sell stock or securities." The amendment to Section 1091, however, did not clarify the meaning of "substantially identical" in relation to stock option transactions.

Substantially identical--bonds

An important case for determining whether two bonds are substantially identical is *Hanlin*. *<8> The taxpayer had three bond transactions.

- The first transaction involved the sale in 1932 of 4.5% coupon bonds maturing in approximately 16 years. On the same date as the sale, the taxpayer purchased bonds in the same principal amount, same interest rate, and issued by the same issuer. The purchased bonds had a maturity date approximately six months later than bonds sold. Therefore, the purchased bonds had a slightly lower yield than the bonds sold. The court concluded that the differences in the bonds were insignificant and held the bonds to be substantially identical.

- The second transaction also involved bonds that differed in terms of maturity. The bonds sold had a maturity of 20 1/2 years. The purchased bonds had a maturity of 23 years. The bonds were otherwise identical, with both being callable after 7/1/33. The court held these bonds to be substantially identical as the callable date superceded any difference in maturity.

- The third transaction involved bonds that were secured by collateral of different banks although otherwise identical. The taxpayer sold Federal Land Bank of Louisville bonds at the same time the taxpayer purchased identical bonds issued by the Federal Land Banks of St. Louis and Wichita. The court determined that statutes did not allow for recovery from a non-issuing land bank for a bond issued by another land bank. Therefore, the court determined that the risk level

of the bonds was not similar. Thus, even though the bonds were identical in other respects, the court held these bonds not to be substantially identical.

----- FOOTNOTE:-----
*<8> 108 F.2d 429, 24 AFTR 36 (CA-3, 1939), aff'g 38 BTA 811 (1938).
----- END FOOTNOTE:-----

In its decision, the court stated that substantially identical means "something less than precise correspondence will suffice to make the transaction a wash sale." The court also noted the legislative history of the wash-sale rules does not define the "something less." The court concluded that a "change in [economic] position" is the determining factor in deciding if the loss is "fictitious" and, therefore, disallowed under the wash-sale rules. Basically, if two investments have different characteristics that would affect the investment decision of an investor, the investments would not be considered substantially identical.

Rev. Rul. 58-211 *<9> considered the application of the wash-sale rules to two U.S. Treasury coupon (bearer) bonds with the same interest rate. The Ruling states that bonds are substantially identical if they are "not substantially different in any material feature . . . or because of differences in several material features considered together." Conversely, the Ruling states that bonds are not substantially identical if they are "substantially different in any material feature . . . or because of differences in several material features considered together (i.e., even though each of such differences considered alone might not be regarded as substantial)."

----- FOOTNOTE:-----
*<9> 1958-1 CB 529.
----- END FOOTNOTE:-----

The Ruling noted that the fact that bonds of one series have the same or approximately the same market value on a particular day or days as bonds of another series of the same obligor with the same interest rate and security, does not necessarily establish that the bonds are substantially identical. Also, the Ruling stated that bonds purchased must be compared as they existed when purchased with the bonds sold as they existed when sold.

Rev. Rul. 58-211 suggests a comparison of the finding of substantially identical bonds with the opposite conclusion for two U.S. Treasury bond issues in Rev. Rul. 58-210. *<10> Interestingly Rev. Rul. 58-210 cites Rev. Rul. 58-211 in its discussion of the wash-sale rules. The bonds in Rev. Rul. 58-210 were not substantially identical as the bonds had differences in their "material features." The bonds sold were redeemable at par and accrued interest for payment of estate taxes due from a deceased owner's estate; the bonds purchased did not have this redemption feature. Also, the bonds sold were not eligible for unrestricted investment by commercial banks until a specified date in the future; the bonds purchased were already so eligible. Thus, in order to determine if bonds are substantially identical, the investor should compare the material features. These include:

- Issuer.
- Maturity.
- Interest rate and yield.

- Any redemption restrictions.

----- FOOTNOTE:-----
*<10> 1958-1 CB 523.
----- END FOOTNOTE:-----

Regulations under Section 1233 discussing substantially identical capital gains and losses note that bonds of a corporation are not ordinarily considered substantially identical to the common stock of the same corporation. The regulations mention, however, that in certain situations where bonds are convertible into common stock of the same corporation, the relative values, price changes, and other circumstances may make the bonds substantially identical to the common stock. *<11>

----- FOOTNOTE:-----
*<11> Reg. 1.1233-1(d)(3).
----- END FOOTNOTE:-----

Subsequent acquisition of stock

Section 1091(a) is not applicable to a loss on the sale of stock or securities unless substantially identical stock or securities are acquired by purchase or exchange on which the entire gain or loss was recognized. *Rev. Rul. 56-452* *<12> discusses a taxpayer who was granted a stock option to purchase stock in the corporation. The Service ruled that a taxpayer who is granted an option to purchase stock of a corporation will be held to have entered into an option agreement under Section 1091 to acquire stock on the date the option was granted. The taxpayer will be held to have acquired the stock as a result of exercising the option on the date on which the stock certificates are issued.

----- FOOTNOTE:-----
*<12> 1956-2 CB 525.
----- END FOOTNOTE:-----

The Revenue Ruling does not discuss the situation of a stock option expiring unexercised. The disallowed loss would, in that situation, appear to be allowed on the date the stock option expires unexercised.

The disallowance also applies where within the 61-day period the taxpayer has entered into an arrangement with another party to acquire such substantially identical stock or securities. In the *Estate of Estroff*, *<13> the taxpayer had a friend purchase the stock at a loss with the agreement that the stock would be resold to the taxpayer at the same price after the 30-day period had passed. The court disallowed the loss under Section 1091.

----- FOOTNOTE:-----
*<13> TCM 1983-666.
----- END FOOTNOTE:-----

In *Rev. Rul. 73-329*, *<14> the Service ruled that acquisitions include the receipt of stock as compensation and the purchase of stock pursuant to a stock subscription.

----- FOOTNOTE:-----
*<14> 1973-2 CB 302. See also *Rev. Rul. 71-520*, 1971-2 CB 311.
----- END FOOTNOTE:-----

In *Rev. Rul. 77-201* (discussed above), the IRS indicated that convertible preferred stock would be considered an option to acquire common stock in the corporation. The reasoning was that the conversion was at the shareholder's election with no restrictions on the election.

Based on the above, the exercise of an option or warrant would appear to be an acquisition and would result in the application of Section 1091. However, Section 1091 would probably not apply when convertible preferred stock is exchanged for common stock unless the relative values and price changes along with other facts and circumstances indicate that the preferred stock and common stock are substantially identical.

Application of the wash-sale rules to call and put options presents complications. Determining whether one call or put option is substantially identical to another call or put option, even if related to the same type of stock in the same corporation, may be difficult. Options with minimal differences regarding the exercise price or time until expiration, however, appear to be considered substantially identical for Section 1091.

Other rules

Where the wash-sale rules apply, adjustments are made to the basis and holding period of the property acquired in the transaction that triggered the rules.

Basis. Section 1091(d) provides that the basis of stock or securities acquired in a wash sale is the basis of the stock or securities sold, increased or decreased by the difference, if any, between the sales price and the acquisition price of the substantially identical securities.

Holding period. In determining the holding period of stock or securities whose acquisition (or contract or option to acquire) triggered the wash-sale rules, the holding period of the stock or securities sold or disposed of is added to that of the acquired stock or securities. *15

----- FOOTNOTE:-----
*15 Section 1223(4).
----- END FOOTNOTE:-----

Multiple lots of stock. A loss deferred under the wash-sale rules from the sale of one lot of stock cannot be used to reduce the gain on identical lots sold the same day when the taxpayer purchased the identical stock within the 61-day period. *16

----- FOOTNOTE:-----
*16 *Rev. Rul. 70-231, 1970-1 CB 171.*
----- END FOOTNOTE:-----

Reg. 1.1091-1(b) addresses the situation where there is more than one loss subject to the wash-sale rules sustained for a tax year. This regulation provides that the wash-sale rules apply to losses in the order in which the stock or securities were sold. Where the order in which the stock or securities were sold cannot be determined, the stock or securities are considered to have been sold in the order they were purchased.

Reg. 1.1091-1(c) addresses the situation of acquiring within the 61-day period less stock or securities than the amount sold. In this situation, the stock or securities acquired are matched with an equal number of the shares of stock or securities sold in the order of their purchase beginning with the

earliest purchase. Reg. 1.1091-1(d) addresses the situation when at least as much stock or securities are acquired as were sold, the stock or securities sold are matched with the stock or securities acquired in the order of acquisition, beginning with the earliest acquisition. *<17>

----- FOOTNOTE:-----
*<17> Sections 1091(b) and (c).
----- END FOOTNOTE:-----

Options. When a Section 1091 loss is disallowed through the granting of an option, the subsequent acquisition of stock through exercise of the option will not cause disallowance of another loss under Section 1091. *<18>

----- FOOTNOTE:-----
*<18> Rev. Rul. 56-452, 1956-2 CB 525.
----- END FOOTNOTE:-----

Application of rules

The below examples illustrate the application of the wash-sale rules.

Example. General rule. Charles purchased and sold the following stock in XYZ, Inc.:

| Date | Number of shares acquired | Number of shares sold | Purchase/sales price |
|----------|---------------------------|-----------------------|----------------------|
| 12/1/02 | 100 | | \$ 10,000 |
| 12/15/02 | 100 | | 9,000 |
| 1/3/03 | | 100 | 9,000 |

The \$ 1,000 loss on the stock purchased on 12/1/02 and sold on 1/3/03 is disallowed under Section 1091 as substantially identical stock was purchased on 12/15/02. *<19>

----- FOOTNOTE:-----
*<19> Reg. 1.1091-1(h), Example 1.
----- END FOOTNOTE:-----

Example. Basis computation. Alicia purchased and sold the following stock in XYZ, Inc.:

| Date | Number of shares acquired | Number of shares sold | Purchase/sales price |
|---------|---------------------------|-----------------------|----------------------|
| 1/2/01 | 1 | | \$ 100 |
| 1/15/02 | | 1 | 80 |
| 2/1/02 | 1 | | 90 |

No loss is recognized under the wash-sale rules. The basis of the share purchased on 2/1/02 is \$ 110, which is the basis of the share purchased in 2001 (\$ 100) increased by the excess of the purchase price of the share bought in 2002 over the sales price of the stock acquired in 2001 and sold in 2002 (\$ 90 - \$ 80). *<20>

----- FOOTNOTE:-----
*<20> Reg. 1.1091-2(a), Example 1.

----- END FOOTNOTE:-----

Example. Basis computation. Bonnie purchased and sold the following stock in XYZ, Inc.:

| Date | Number of shares acquired | Number of shares sold | Purchase/sales price |
|---------|---------------------------|-----------------------|----------------------|
| 1/2/01 | 1 | | \$ 100 |
| 1/15/02 | | 1 | 80 |
| 2/1/02 | 1 | | 70 |

No loss is recognized under the wash-sale rules. The basis of the share purchased on 2/1/02 is \$ 90. This is the basis of the share purchased in 2001 (\$ 100) decreased by the excess of the sales price of the share bought in 2001 and sold in 2002 over the purchase price of the stock acquired in 2002 (\$ 80 - \$ 70). *<21>

----- FOOTNOTE:-----

*<21> Reg. 1.1091-2(a), Example 2.

----- END FOOTNOTE:-----

Example. Basis computation. David purchased and sold the following stock in XYZ, Inc.:

| Date | Number of shares acquired | Number of shares sold | Purchase/sales price |
|----------|---------------------------|-----------------------|----------------------|
| 9/21/02 | 100 | | \$ 5,000 |
| 12/21/02 | 50 | | 2,750 |
| 12/27/02 | 25 | | 1,125 |
| 1/3/03 | | 100 | 4,000 |

A portion of the \$ 1,000 loss on the 100 shares of stock purchased on 9/21/02 is disallowed under Section 1091 as a lesser number of shares (75) of substantially identical stock was purchased on 12/21/02 and 12/27/02. The \$ 750 loss (\$ 3,000 sales price - \$ 3,750 cost) on 75 shares is not allowable. The \$ 250 loss (\$ 1,000 sales price - \$ 1,250 cost) on the remaining 25 shares is deductible.

For basis purposes, the 50 shares purchased on 12/21/02 have a basis of \$ 3,250. This amount is the cost of 50 shares purchased on 9/21/02 (\$ 2,500) plus the difference between the purchase price of the 50 shares acquired on 12/21/02 and the selling price of 50 shares sold on 1/3/03 (\$ 2,750 - \$ 2,000).

The basis of the 25 shares purchased on 12/27/02 is \$ 1,375. This amount is the cost of 25 shares acquired on 9/21/02 (\$ 1,250) plus the difference between the purchase price of the 25 shares purchased on 12/27/02 and the selling price of 25 shares sold on 1/3/03 (\$ 1,125 - \$ 1,000). *<22>

----- FOOTNOTE:-----

*<22> Reg. 1.1091-1(h), Example 2.

----- END FOOTNOTE:-----

Example. Holding period. Ellen purchased and sold the following stock in XYZ, Inc.:

| | Number of shares | Number of shares | Purchase/sales |
|--|------------------|------------------|----------------|
|--|------------------|------------------|----------------|

| Date | acquired | sold | price |
|---------|----------|------|----------|
| 9/15/02 | 100 | | \$ 5,000 |
| 2/1/03 | | 100 | 4,000 |
| 2/15/03 | 50 | | 2,000 |
| 2/16/03 | 50 | | 2,000 |
| 2/17/03 | 50 | | 2,000 |
| 2/18/03 | 50 | | 2,000 |

The \$ 1,000 loss on the stock purchased on 9/15/02 and sold on 2/1/03 is disallowed under Section 1091 as a total of 100 shares of substantially identical stock was purchased on 2/15/03 and 2/16/03. Because of the disallowed loss, the shares purchased on 2/15/03 and 2/16/03 have a holding period that includes the time the stock purchased on 9/15/02 was held until the stock was sold on 2/1/03. *<23>

----- FOOTNOTE:-----
 *<23> Reg. 1.1091-1(h), Example 3.
 ----- END FOOTNOTE:-----

Example. *Simultaneous gain and loss.* Fran purchased and sold the following stock in XYZ, Inc.:

| Date | Number of shares acquired | Number of shares sold | Price per share | Total purchase/sales price |
|----------|---------------------------|-----------------------|-----------------|----------------------------|
| 1/2/00 | 100 | | \$ 158 | \$ 15,800 |
| 7/2/00 | 100 | | 100 | 10,000 |
| 12/2/00 | 100 | | 95 | 9,500 |
| 12/22/02 | | 300 | 125 | 37,500 |
| 1/8/03 | 250 | | 125 | 31,250 |

The \$ 3,300 loss [100 shares x (\$ 125-158)] on the stock purchased on 1/2/00 and sold on 12/22/02 is disallowed under Section 1091 as shares of substantially identical stock were purchased on 1/8/03. The \$ 3,300 loss may not reduce the gains recognized from the sale of the stock purchased on 7/2/00 or 12/2/00. *<24>

----- FOOTNOTE:-----
 *<24> See Rev. Rul. 70-231, 1970-1 CB 171.
 ----- END FOOTNOTE:-----

Example. *Stock options.* Gregory purchased, sold, received, and exercised stock options on stock in XYZ, Inc., as shown in Table A of Exhibit 1.

The \$ 3,000 loss [200 shares x (\$ 105-120)] on 200 shares of the stock purchased on 1/1/01 and sold on 1/15/02 is disallowed under Section 1091 as stock options on substantially identical stock were granted on 1/1/02. The \$ 500 loss [100 shares x (\$ 115-120)] on the 100 shares purchased on 1/1/01 and sold on 1/15/03 is also disallowed due to the exercise of the options on 1/1/03. *<25>

----- FOOTNOTE:-----
 *<25> See Rev. Rul. 56-452, 1956-2 CB 525.
 ----- END FOOTNOTE:-----

Example. Stock options. Heidi purchased, sold, received, and exercised stock options on stock in XYZ, Inc., as shown in Table B of Exhibit 1.

The \$ 4,500 loss [300 shares x (\$ 105-120)] on 300 shares of the stock purchased on 1/1/01 and sold on 1/1/02 is disallowed under Section 1091 as stock options on substantially identical stock were granted on 1/15/02. However, the \$ 500 loss [100 shares x (\$ 115-120)] on the 100 shares of the stock purchased on 1/1/01 and sold on 1/15/03 is allowed since the all of the shares represented by the stock option resulted in the nondeductibility of a prior loss under Section 1091. *<26>

----- FOOTNOTE:-----
*<26> *Id.*
----- END FOOTNOTE:-----

Reporting a wash sale

Wash sales are reported on Schedule D, Capital Gains and Losses, of Form 1040. The full loss is listed in column (f) in either Part I or Part II. On the next line, the words "wash sale" should be entered in column (a). The amount of the loss disallowed under Section 1091 is entered as a positive amount in column (f).

Conclusion

It is not uncommon for taxpayers to be unaware of the loss deferral implications of the wash-sale rules when stock or securities are sold and subsequently repurchased within the prohibited time periods. Practitioners should inform clients who engage in stock transactions of these rules.

Also, the discovery of the repurchase of identical stock can be difficult for the tax return preparer, especially at year end, as most clients only submit information regarding stock sales rather than stock purchases. Thus, practitioners should inquire as to stock purchases as well as stock sales to avoid overlooking a wash sale. Otherwise, the client may receive a deficiency notice for the tax attributable to the disallowed loss.

PLANNING TIP

One of the two major conditions for disallowing a loss under the wash-sale rules of Section 1091 is the 61-day rule. Any loss from the sale of stock or securities is not deductible if the taxpayer purchases substantially identical stock or securities within a period beginning 30 days before and ending 30 days after the date of sale. Investors can bypass this restriction by purchasing substantially identical stock or securities outside of this restricted period.

The second major condition for disallowing a loss under Section 1091 is that the sale and purchase be of substantially identical stock or securities. The loss disallowance does not apply if the stock or securities are not substantially identical. Therefore, a taxpayer may preserve his or her eligibility to deduct a loss realized on a sale by purchasing stock or securities that are not substantially identical to the stock or securities sold. With this condition in mind, the taxpayer can select stock or securities of another company with similar characteristics and still have a reportable loss. Remember that stock or securities are not substantially identical if they are substantially different in any material feature.

PLANNING TIP

The Section 1091 disallowance rule applies to sales and purchases of shares in mutual funds. This includes reinvestment of dividends. Therefore, taxpayers

should be aware that the purchase of additional shares through automatic reinvestment of dividends can result in the disallowance of a loss if a redemption of fund shares and purchase of fund shares occur within the 61-day window. (See White, "Wash-Sale Rules Muddy Mutual Fund Loss Deductions," 62 PTS 132 (March 1999).)

PLANNING TIP

Section 1091 applies to a taxpayer entering into a contract or option to acquire substantially identical stock or securities during the 61-day period. In part, the provision was added so taxpayers would not be able to bypass the 61-day rule by not actually purchasing the substantially identical stock or securities within the 61-day period but, nonetheless, having a contract or option to purchase the stock or securities within that time period.

There is little authoritative guidance regarding put and call options. *Rev. Rul. 85-87*, however, discusses the situation where the taxpayer sold an in-the-money put option within the 61-day period. To be in-the-money, the market price of the stock must be less than the exercise price of the put. The Service ruled that based on the spread at the time the put was sold between the value of the underlying stock and the exercise price of the put, the term of the put, the premium paid, the historic volatility in the value of the stock, and other objective factors, there was no substantial likelihood that the put would not be exercised. Therefore, the key to determining if a call or put option is a "contract" to purchase stock appears to be whether there is a substantial likelihood that that call or put will be exercised. Section 1091 defines contracts and options as stock and securities.

Call and put options themselves can be sold and purchased. The determination of whether call or put options are substantially identical is problematical. The four characteristics of an option are:

1. Put or call.
2. Identity of underlying stock.
3. Expiration date.
4. Price at which underlying stock can be purchased or sold (strike price).

Options of the same type (call or put), underlying stock, expiration date, and strike price are substantially identical. Using the guidance for bonds, if options are substantially different in any material feature, they should not be considered substantially identical. For options, the material factors would include the four characteristics noted above with special emphasis given to the expiration dates and strike price of the options.

Stock option example

Table A:

| | Number of shares acquired | Number of options granted | Number of options exercised | Number of shares sold | Price per share | Purchase/ sales price | Excercise price | FMV at grant date |
|---------|------------------------------------|------------------------------------|--------------------------------------|--------------------------------|-----------------------|-----------------------------|--------------------|-------------------------|
| 1/1/01 | 400 | | | | \$ 120 | \$ 48,000 | | |
| 1/1/02 | | 300 | | | 85 | | | \$ 30,000 |
| 1/15/02 | | | | 200 | 105 | 21,000 | | |
| 1/1/03 | | | 300 | | 85 | | \$ 25,500 | |

1/15/03 100 115 11,500

Table B:

| | Number | Number | Number | Number | Price | Purchase/ | Excercise | FMV at |
|---------|----------|---------|-----------|--------|--------|-----------|-----------|-----------|
| | of | of | of | of | per | sales | price | grant |
| | shares | options | options | shares | share | price | | date |
| | acquired | granted | exercised | sold | | | | |
| 1/1/01 | 400 | | | | \$ 120 | \$ 48,000 | | |
| 1/1/02 | | | | 300 | 105 | 31,500 | | |
| 1/15/02 | | 300 | | | 85 | | | \$ 30,000 |
| 1/1/03 | | | 300 | | 85 | | \$ 25,500 | |
| 1/15/03 | | | | 100 | 115 | 11,500 | | |