

This is the text from Section 1259 of the U.S. Tax Code.

§1259: Constructive sales treatment for appreciated financial positions.

(a) In general. —If there is a constructive sale of an appreciated financial position—

(1) the taxpayer shall recognize gain as if such position were sold, assigned, or otherwise terminated at its fair market value on the date of such constructive sale (and any gain shall be taken into account for the taxable year which includes such date), and

(2) for purposes of applying this title for periods after the constructive sale—

(A) proper adjustment shall be made in the amount of any gain or loss subsequently realized with respect to such position for any gain taken into account by reason of paragraph (1), and

(B) the holding period of such position shall be determined as if such position were originally acquired on the date of such constructive sale.

(b) Appreciated financial position. —For purposes of this section—

(1) **In general.** —Except as provided in paragraph (2), the term "appreciated financial position means any position with respect to any stock, debt instrument, or partnership interest if there would be gain were such position sold, assigned, or otherwise terminated at its fair market value.

(2) **Exceptions.** —The term "appreciated financial position" shall not include—

(A) any position with respect to debt if—

(i) the debt unconditionally entitles the holder to receive a specified principal amount,

(ii) the interest payments (or other similar amounts) with respect to such debt meet the requirements of clause (i) of section 860G(a)(1)(B), and

(iii) such debt is not convertible (directly or indirectly) into stock of the issuer or any related person, and

(B) any position which is marked to market under any provision of this title or the regulations thereunder.

(3) **Position.** —The term "position" means an interest, including a futures or forward

contract, short sale, or option.

(c) Constructive sale. —For purposes of this section—

(1) In general. —A taxpayer shall be treated as having made a constructive sale of an appreciated financial position if the taxpayer (or a related person:

(A) enters into a short sale of the same or substantially identical property,

(B) enters into an offsetting notional principal contract with respect to the same or substantially identical property,

(C) enters into a futures or forward contract to deliver the same or substantially identical property,

(D) in the case of an appreciated financial position that is a short sale or a contract described in subparagraph (B) or (C) with respect to any property, acquires the same or substantially identical property, or

(E) to the extent prescribed by the Secretary in regulations, enters into 1 or more other transactions (or acquires 1 or more positions) that have substantially the same effect as a transaction described in any of the preceding subparagraphs.

(2) Exception for sales of nonpublicly traded property. —The term "constructive sale" shall not include any contract for sale of any stock, debt instrument, or partnership interest which is not a marketable security (as defined in section 453(f)) if the contract settles within 1 year after the date such contract is entered into.

(3) Exception for certain closed transactions. —

(A) In general. —In applying this section, there shall be disregarded any (which would otherwise be treated as a constructive sale) during the taxable year if—

(i) such transaction is closed before the end of the 90th day after the close of such taxable year,

(ii) the taxpayer holds the appreciated financial position throughout the 60-day period beginning on the date such transaction is closed, and

(iii) at no time during such 60-day period is the taxpayer's risk of loss with respect to such position reduced by reason of a circumstance which would be described in section 246(c)(4) if references to stock included references to such position.

(B) Treatment of positions which are reestablished. —If—

(i) a transaction, which would otherwise be treated as a constructive sale of an appreciated financial position, is closed during the taxable year or during the 30 days thereafter, and

(ii) another substantially similar transaction is entered into during the 60-day period beginning on the date the transaction referred to in clause (i) is closed—

(I) which also would otherwise be treated as a constructive sale of such position,

(II) which is closed before the 30th day after the close of the taxable year in which the transaction referred to in clause (i) occurs, and

(III) which meets the requirements of clauses (ii) and (in) of subparagraph (A), the transaction referred to in clause (ii) shall be disregarded for purposes of determining whether the requirements of subparagraph (A)(iii) are met with respect to the transaction described in clause (i).

(4) Related person. —A person is related to another person with respect to a transaction if—

(A) the relationship is described in section 267(b) or 707(b), and

(B) such transaction is entered into with a view toward avoiding the purposes of this section.

(d) Other definitions. —For purposes of this section—

(1) Forward contract. —The term "Forward contract" means a contract to deliver a substantially fixed amount of property for a substantially fixed price.

(2) Offsetting notional principal contract. —The term "offsetting notional principal contract" means, with respect to any property, an agreement which includes—

(A) a requirement to pay (or provide credit for) all or substantially all of the investment yield (including appreciation) on such property for a specified period, and

(B) a right to be reimbursed for (or receive credit for) all or substantially all of any decline in the value of such property.

(e) Special rules. —

(1) Treatment of subsequent sale of position which was deemed sold. —If—

(A) there is a constructive sale of any appreciated financial position,

(B) such position is subsequently disposed of, and

(C) at the time of such disposition, the transaction resulting in the constructive sale of such position is open with respect to the taxpayer or any related person, solely for purposes of determining whether the taxpayer has entered into a constructive sale of any other appreciated financial position held by the taxpayer, the taxpayer shall be treated as entering into such transaction immediately after such disposition. For purposes of the preceding sentence, an assignment or other termination shall be treated as a disposition.

(2) Certain trust instruments treated as stock. —For purposes of this section, an interest in a trust which is actively traded (within the meaning of section 1092(d)(1)) shall be treated as stock unless substantially all (by value) of the property held by the trust is debt described in subsection (b)(2)(A).

(3) Multiple positions in property. —If a taxpayer holds multiple positions in property, the determination of whether a specific transaction is a constructive sale and, if so, which appreciated financial position is deemed sold shall be made in the same manner as actual sales.

(f) Regulations. — The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.