

By direction of the Commission.

**Donald S. Clark**

Secretary.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 1

#### General Enforcement Regulations

##### CFR Correction

- In Title 21 of the Code of Federal Regulations, Parts 1 to 199, revised as of April 1, 2013, on page 7, in § 1.20, the introductory text is corrected to read as follows:

##### § 1.20 Presence of mandatory label information.

Except as otherwise provided by section 900(13) of the Family Smoking Prevention and Tobacco Control Act (21 U.S.C. 387(13)) defining “package,” the term *package* means any container or wrapping in which any food, drug, device, or cosmetic is enclosed for use in the delivery or display of such commodities to retail purchasers, but does not include:

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## DEPARTMENT OF TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9635]

RIN 1545-BK89

##### Debt That Is a Position in Personal Property That Is Part of a Straddle

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations relating to the application of the straddle rules to a debt instrument. The temporary regulations clarify that a taxpayer's obligation under a debt instrument can be a position in personal property that is part of a straddle. The temporary regulations primarily affect taxpayers that issue debt instruments that provide for one or more payments that reference

the value of personal property or a position in personal property. The text of these temporary regulations also serves as the text of the proposed regulations (REG-111753-12) set forth in the Proposed Rules section in this issue of the **Federal Register**.

**DATES: Effective Date:** These regulations are effective on September 5, 2013.

**Applicability Dates:** For date of applicability, see § 1.1092(d)-1T(e).

**FOR FURTHER INFORMATION CONTACT:** Mary Brewer, (202) 622-4695 (not a toll-free number).

##### SUPPLEMENTARY INFORMATION:

##### Background and Explanation of Provisions

###### 1. Summary of Prior Notice of Proposed Rule Making

This document contains amendments to 26 CFR part 1. On January 18, 2001, a notice of proposed rulemaking (REG-105801-00; RIN 1545-AX92) (the 2001 NPRM) was published in the **Federal Register** (66 FR 4746). The 2001 NPRM addresses the definition of personal property for purposes of section 263(g) of the Internal Revenue Code (Code), the types of expenses subject to capitalization, and the operation of the capitalization rules. Another portion of the 2001 NPRM (proposed regulation § 1.1092(d)-1(d)) would clarify the circumstances under which an issuer's position under a debt instrument is treated as a position in personal property that is part of a straddle.

No public hearing was requested or held. Written and electronic comments responding to the 2001 NPRM were received, and the only commenter that substantively addressed proposed § 1.1092(d)-1(d) urged its adoption. This Treasury Decision adopts proposed § 1.1092(d)-1(d) (REG-105801-00) in the form proposed. As so adopted, this provision is designated as § 1.1092(d)-1T(d). This Treasury Decision also adopts the 2001 NPRM's proposed amendment to the effective/applicability dates (proposed § 1.1092(d)-1(e)). As so adopted, this effective/applicability date is designated as § 1.1092(d)-1T(e)(2). The amendments are discussed in section 2 of this preamble. The remainder of the 2001 NPRM remains proposed.

###### 2. Overview of the Temporary Regulations

The temporary regulations provide guidance under section 1092 regarding when an issuer's obligation under a debt instrument may be a position in actively traded personal property and, therefore, may be part of a straddle.

##### Definition of Personal Property for Purposes of Section 1092

Section 1092(d)(1) defines “personal property” to mean “personal property of a type that is actively traded.” A debt or obligation generally is not property of the debtor or obligor. Nevertheless, if a debt instrument provides for payments that are (or are reasonably expected to be) linked to the value of personal property as so defined, then the obligor on the instrument has a position in the personal property referenced by the debt instrument.

Section 1092(d)(7) provides that if a debt instrument is denominated in a nonfunctional currency, the obligor's position under the debt obligation is a position in the nonfunctional currency. Some maintain that section 1092(d)(7) evidences an intent by Congress to limit the circumstances in which an obligor's interest in a debt instrument may be a position in a straddle, and that such treatment is proper only with respect to debt obligations denominated in nonfunctional currency. The IRS and the Treasury Department do not believe that section 1092(d)(7) describes the only circumstance in which an obligor's interest in a debt instrument may be treated as part of a straddle. The statute and the legislative history do not contain any indication that Congress intended to limit section 1092 in this manner; rather, the legislative history characterizes section 1092(d)(7) as a clarification of prior law:

The Senate amendment clarifies that an obligor's interest in a foreign currency denominated obligation is a “position” for purposes of the loss deferral rule. The rationale for this treatment is that a foreign currency borrowing is economically similar to a short position in the foreign currency.

H.R. Rep. No. 99-841, pt. 2, at 670 (1986) (Conf. Rep.); 1986-3 (Vol. 4) CB 670. Moreover, it is clear that an economic exposure associated with an obligation that is not a debt instrument (such as a written option or the obligation created by a short sale) may be a straddle position. Similarly, a debt instrument may be a position in personal property, and accordingly subject to the straddle rules, if the obligation is linked to personal property. Therefore, § 1.1092(d)-1T(d) of the temporary regulations expressly provides that an obligation under a debt instrument may be a position in personal property that is part of a straddle.

##### Dates of Applicability of the Regulations

The temporary regulations adopt the effective/applicability date set forth in the 2001 NPRM by providing that