

Internal Revenue Service, Treasury

§ 1.1504-4

(iii) Transactions increasing likelihood of exercise.

(iv) Measurement date for options issued pursuant to a plan.

(v) Measurement date for related or sequential options.

(vi) Example.

(5) In-the-money.

(d) Options.

(1) Instruments treated as options.

(2) Instruments generally not treated as options.

(i) Options on section 1504(a)(4) stock.

(ii) Certain publicly traded options.

(A) General rule.

(B) Exception.

(iii) Stock purchase agreements.

(iv) Escrow, pledge, or other security agreements.

(v) Compensatory options.

(A) General rule.

(B) Exceptions.

(vi) Options granted in connection with a loan.

(vii) Options created pursuant to a title 11 or similar case.

(viii) Convertible preferred stock.

(ix) Other enumerated instruments.

(e) Elimination of federal income tax liability.

(f) Substantial amount of federal income tax liability.

(g) Reasonable certainty of exercise.

(1) Generally.

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(ii) In-the-money option.

(iii) Not in-the-money option.

(iv) Exercise price.

(v) Time of exercise.

(vi) Related or sequential options.

(vii) Stockholder rights.

(viii) Restrictive covenants.

(ix) Intention to alter value.

(x) Contingencies.

(2) Cash settlement options, phantom stock, stock appreciation rights, or similar interests.

(3) Safe harbors.

(i) Options to acquire stock.

(ii) Options to sell stock.

(iii) Options exercisable at fair market value.

(iv) Exceptions.

(v) Failure to satisfy safe harbor.

(h) Examples.

(i) Effective date.

[T.D. 8462, 57 FR 61800, Dec. 29, 1992]

§ 1.1504-1 Definitions.

The privilege of filing consolidated returns is extended to all includible corporations constituting affiliated groups as defined in section 1504. See the regulations under § 1.1502 for a description of an affiliated group and the

corporations which may be considered as includible corporations.

[T.D. 6500, 25 FR 12106, Nov. 26, 1960]

§§ 1.1504-2—1.1504-3 [Reserved]

§ 1.1504-4 Treatment of warrants, options, convertible obligations, and other similar interests.

(a) *Introduction*—(1) *General rule*. This section provides regulations under section 1504(a)(5) (A) and (B) regarding the circumstances in which warrants, options, obligations convertible into stock, and other similar interests are treated as exercised for purposes of determining whether a corporation is a member of an affiliated group. The fact that an instrument may be treated as an option under these regulations does not prevent such instrument from being treated as stock under general principles of law. Except as provided in paragraph (a)(2) of this section, this section applies to all provisions under the Internal Revenue Code and the regulations to which affiliation within the meaning of section 1504(a) (with or without the exceptions in section 1504(b)) is relevant, including those provisions that refer to section 1504(a)(2) (with or without the exceptions in section 1504(b)) without referring to affiliation, provided that the 80 percent voting power and 80 percent value requirements of section 1504(a)(2) are not modified therein.

(2) *Exceptions*. This section does not apply to sections 163(j), 864(e), or 904(i) or to the regulations thereunder. This section also does not apply to any other provision specified by the Internal Revenue Service in regulations, a revenue ruling, or revenue procedure. See § 601.601(d)(2)(ii)(b) of this chapter.

(b) *Options not treated as stock or as exercised*—(1) *General rule*. Except as provided in paragraph (b)(2) of this section, an option is not considered either as stock or as exercised. Thus, options are disregarded in determining whether a corporation is a member of an affiliated group unless they are described in paragraph (b)(2) of this section.

(2) *Options treated as exercised*—(i) *In general*. Solely for purposes of determining whether a corporation is a member of an affiliated group, an option is treated as exercised if, on a