

**§ 1.544-1**

part of the loss on commodity futures transactions is to be taken into account in determining personal holding company income and gross income for personal holding company tax purposes for the taxable year. The full amount of the \$200,000 in gains from the sales of stocks and securities is to be included in personal holding company income and in gross income for personal holding company tax purposes for the taxable year.

**§ 1.544-1 Constructive ownership.**

(a) Rules relating to the constructive ownership of stock are provided by section 544 for the purpose of determining whether the stock ownership requirements of the following sections are satisfied:

- (1) Section 542(a)(2), relating to ownership of stock by five or fewer individuals.
- (2) Section 543(a)(5), relating to personal holding company income derived from personal service contracts.
- (3) Section 543(a)(6), relating to personal holding company income derived from property used by shareholders.
- (4) Section 543(a)(9), relating to personal holding company income derived from copyright royalties.

(b) Section 544 provides four general rules with respect to constructive ownership. These rules are:

- (1) Constructive ownership by reason of indirect ownership. See section 544(a)(1) and § 1.544-2.
- (2) Constructive ownership by reason of family and partnership ownership. See section 544(a) (2), (4), (5), and (6), and §§ 1.544-3, 1.544-6, and 1.544-7.
- (3) Constructive ownership by reason of ownership of options. See section 544(a) (3), (4), (5), and (6), and §§ 1.544-4, 1.544-6, and 1.544-7.
- (4) Constructive ownership by reason of ownership of convertible securities. See section 544(b) and § 1.544-5.

Each of the rules referred to in subparagraphs (2), (3), and (4) of this paragraph is applicable only if it has the effect of satisfying the stock ownership requirement of the section to which applicable; that is, when applied to section 542(a)(2), its effect is to make the corporation a personal holding company, or when applied to section

543(a)(5), section 543(a)(6), or section 543(a)(9), its effect is to make the amounts described in such provisions includible as personal holding company income.

(c) All forms and classes of stock, however denominated, which represent the interests of shareholders, members, or beneficiaries in the corporation shall be taken into consideration in applying the constructive ownership rules of section 544.

(d) For rules applicable in treating constructive ownership, determined by one application of section 544, as actual ownership for purposes of a second application of section 544, see section 544(a)(5) and § 1.544-6.

[T.D. 6500, 25 FR 11737, Nov. 26, 1960, as amended by T.D. 6739, 29 FR 7715, June 17, 1964]

**§ 1.544-2 Constructive ownership by reason of indirect ownership.**

The following example illustrates the application of section 544(a)(1), relating to constructive ownership by reason of indirect ownership:

*Example.* A and B, two individuals, are the exclusive and equal beneficiaries of a trust or estate which owns the entire capital stock of the M Corporation. The M Corporation in turn owns the entire capital stock of the N Corporation. Under such circumstances the entire capital stock of both the M Corporation and the N Corporation shall be considered as being owned equally by A and B as the individuals owning the beneficial interest therein.

**§ 1.544-3 Constructive ownership by reason of family and partnership ownership.**

(a) The following example illustrates the application of section 544(a)(2), relating to constructive ownership by reason of family and partnership ownership.

*Example.* The M Corporation at some time during the last half of the taxable year, had 1,800 shares of outstanding stock, 450 of which were held by various individuals having no relationship to one another and none of whom were partners, and the remaining 1,350 were held by 51 shareholders as follows:

Relationships	Shares	Shares	Shares	Shares	Shares
An individual .....	(A)100	(B)20	(C)20	(D)20	(E)20
His father .....	(AF)10	(BF)10	(CF)10	(DF)10	(EF)10