ID: CCA-316142-09

Number: **200942044**

Office:

Release Date: 10/16/2009

UILC: 246.05-03

From:
Sent: March 16, 2009
To:
Cc:
Subject: F886-A position – Treas. Regs. 1.246-5(c)(1)(v)

Your conclusion is absolutely correct except that there is no legal basis for "disregarding" the derivative portfolio. I am not quite sure what you mean by that, but the law is clear that the taxpayer can "create" a portfolio representing 20 or more independent stocks (the collar). The collar includes positions offsetting the stocks underlying the derivative portfolio. We cannot take those stocks out of the collar, and thus the demoninator in the overlap calculation. The other alternative is to include the value of the stocks underlying the derivative portfolio in the numerator of the calculation. We have no authority to do that either because the taxpayer technically does not own those stocks and, according to the regulation, does not "hold" those stocks for purposes of the DRD. [redacted] I hope this is helpful.