

Notice of Proposed Rulemaking and Notice of Public Hearing

Consolidated Returns— Limitations on the Use of Certain Credits and Related Tax Attributes

REG-104062-97

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In T.D. 8766 on page 17 of this Bulletin, the IRS is issuing temporary regulations that relate to the use of certain tax credits and losses of a consolidated group and its members. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for May 7, 1998, at 10 a.m., must be received by April 13, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R [REG-104062-97], room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R [REG-104005-98], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the Home Page or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing has been scheduled for May 7, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, in general, Roy A. Hirschhorn (202) 622-7770; concerning submissions and

the hearing, Mike Slaughter (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

T.D. 8766 amends the Income Tax Regulations (26 CFR part 1) relating to section 1502. The temporary regulations provide rules that relate to the use of certain tax credits and related tax attributes of a consolidated group and its members. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect corporations filing consolidated federal income tax returns that have carryover or carryback of credits from separate return limitation years. Available data indicates that many consolidated return filers are large companies (not small businesses). In addition, the data indicates that an insubstantial number of consolidated return filers that are smaller companies have credit carryovers or carrybacks, and thus even fewer of these filers have credit carryovers or carrybacks that are subject to the separate return limitation year rules. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration

will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for May 7, 1998, at 10 a.m., in room 2615. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics (signed original and eight (8) copies) to be discussed by April 13, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Roy A. Hirschhorn of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502-3 also issued under 26 U.S.C. 1502.

Section 1.1502-4 also issued under 26 U.S.C. 1502.

Section 1.1502-9 also issued under 26 U.S.C. 1502. * * *

Section 1.1502-55 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502-3, as proposed to be amended at 63 F.R. 1804, January

12, 1998, is amended by revising paragraphs (c)(3) and (d)(2) and adding paragraph (c)(4) to read as follows:

§1.1502-3 Consolidated investment credit.

* * * * *

(c) * * *

(3) and (4) [The text of proposed paragraphs (c)(3) and (4) of this section is the same as the text of §1.1502-3T(c)(3) and (4) published in T.D. 8766.]

(d) * * *

(2) [The text of proposed paragraph (d)(2) of this section is the same as the text of §1.1502-3T(d)(2) published in T.D. 8766.]

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Par. 3. Section 1.1502-4, as proposed to be amended at 63 F.R. 1804, January 12, 1998, is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§1.1502-4 Consolidated foreign tax credit.

* * * * *

(f) * * *

(3) [The text of proposed paragraph (f)(3) of this section is the same as the text of §1.1502-4T(f)(3) published in T.D. 8766.]

(g) * * *

(3) [The text of proposed paragraph (g)(3) of this section is the same as the text of §1.1502-4T and (g)(3) published in T.D. 8766.]

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Par. 4. Section 1.1502-9, as proposed to be amended at 63 F.R. 1804, January 12, 1998, is amended by revising paragraph (b)(1)(v) to read as follows:

§1.1502-9 Application of overall foreign losses recapture rules to corporations filing consolidated returns.

* * * * *

(b) * * *

(1) * * *

(v) [The text of proposed paragraph (b)(1)(v) of this section is the same as the text of §1.1502-9T(b)(1)(v) published in T.D. 8766.]

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Par. 5. Section 1.1502-55, as proposed to be added at 57 F.R. 62257, December 30, 1992, and amended at 63 F.R. 1804, January 12, 1998, is further amended by revising paragraph (h)(4)(iii)(C) to read as follows as follows:

§1.1502-55 Computation of alternative minimum tax of consolidated groups.

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(h) * * *

(4) * * *

(iii) * * *

(C) [The text of proposed paragraph (h)(4)(iii)(C) of this section is the same as the text of §1.1502-55T(h)(4)(iii)(C) published in T.D. 8766.]

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Michael P. Dolan,
*Deputy Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on March 13, 1998, at 8:45 a.m., and published in the Federal Register for March 16, 1998, 63 F.R. 12717)