

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions; Correction

Announcement 2003-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Corrections to final and temporary regulations.

SUMMARY: This document corrects final and temporary regulations (T.D. 9048, 2003-13 I.R.B. 644 [68 FR 12287]) published in the **Federal Register** on March 14, 2003. The final and temporary regulations redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member and also suspend certain losses recognized on the disposition of stock of a subsidiary member.

DATES: This document is effective on March 14, 2003.

FOR FURTHER INFORMATION CONTACT: Aimee K. Meacham, (202) 622-7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of these corrections are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations contain errors that may prove

to be misleading and are in need of clarification. In particular, this document supplies text omitted from §1.1502-35T(b)(3)(i)(C) and (b)(3)(ii)(C), and clarifies §1.1502-35T(f)(1). In addition, the final and temporary regulations inadvertently removed the text for §§1.1502-21T(b)(3)(ii)(C) and 1.1502-32T(b)(4)(v). The missing text is supplied.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (T.D. 9048) that were the subject of FR Doc. 03-6119, is corrected as follows:

1. On page 12288, column 3, second full paragraph, in the preamble under the paragraph heading “*Basis Reduction Rule for Worthless Stock and Stock of a Subsidiary With No Separate Return Year*”, second full paragraph, lines 17 and 18 from the bottom of the paragraph, the language “as expired, but not as absorbed by the group, as of the beginning of the group’s” is corrected to read “as expired, but not as a noncapital, nondeductible expense for purposes of §1.1502-32,” .

2. On page 12291, column 2, §1.1502-21T, paragraphs (b)(2) through (b)(3)(iv) is corrected to read as follows:

§1.1502-21T Net operating losses (temporary).

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(b)(2) through (b)(3)(ii)(B) [Reserved]. For further guidance, see §1.1502-21(b)(2) through (b)(3)(ii)(B).

(b)(3)(ii)(C) *Partial waiver of carryback period for 2001 and 2002 losses—(1) Application.* The acquiring group may make the elections described in paragraphs (b)(3)(ii)(C)(2) and (3) of this section with respect to an acquired member or members only if it did not file a valid election described in §1.1502-21(b)(3)(ii)(B) with respect to such acquired member or members on or before May 31, 2002.

(2) *Partial waiver of entire pre-acquisition carryback period.* If one or more members of a consolidated group become members of another consolidated group after June 25, 1999, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the car-

ryback period for such losses for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating losses arising in a particular taxable year if any carryback is claimed, as provided in paragraph (b)(3)(ii)(C)(4) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled “THIS IS AN ELECTION UNDER SECTION 1.1502-21T (b)(3)(ii)(C)(2) TO WAIVE THE PRE- [insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members].” Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(5) of this section.

(3) *Partial waiver of pre-acquisition extended carryback period.* If one or more members of a consolidated group become members of another consolidated group, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the carryback period for such losses for which the corporation was a member of another group to the extent that such carryback period includes one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating

losses arising in a particular taxable year if a carryback to one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss is claimed, as provided in paragraph (b)(3)(ii)(C)(4) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502-21T (b)(3)(ii)(C)(3) TO WAIVE THE PRE-[insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]." Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(5) of this section.

(4) *Claim for a carryback.* For purposes of paragraphs (b)(3)(ii)(C)(2) and (3) of this section, a carryback is claimed with respect to a consolidated net operating loss if there is a claim for refund, an amended return, an application for a tentative carryback adjustment, or any other filing that claims the benefit of the net operating loss in a taxable year prior to the taxable year of the loss, whether or not subsequently revoked in favor of a claim based on a 5-year carryback period.

(5) *Time and manner for filing statement.* A statement described in paragraph (b)(3)(ii)(C)(2) or (3) of this section that relates to consolidated net operating losses attributable to a taxable year ending during 2001 must be filed with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001, provided that such original or amended return is filed on or before October 31, 2002. A statement described in paragraph (b)(3)(ii)(C)(2) or (3) of this section that relates to consolidated net operating losses attributable to a taxable year ending during 2002 must be filed with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001 or 2002, pro-

vided that such original or amended return is filed on or before September 15, 2003.

(b)(3)(iii) and (b)(3)(iv) [Reserved]. For further guidance, see §1.1502-21(b)(3)(iii) and (b)(3)(iv).

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3. On page 12292, column 1, §1.1502-32T, paragraphs (b)(4) through (b)(4)(v) is corrected to read as follows:

§1.1502-32T Investment adjustments (temporary).

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(b)(4) through (b)(4)(iv) [Reserved]. For further guidance, see §1.1502-32(b)(4) through (b)(4)(iv).

(b)(4)(v) *Special rule for loss carryovers of a subsidiary acquired in a transaction for which an election under §1.1502-20T(i)(2) is made—(A) Expired losses.* Notwithstanding §1.1502-32(b)(4)(iv), to the extent that S's loss carryovers are increased by reason of an election under §1.1502-20T(i)(2) and such loss carryovers expire or would have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in §1.1502-20T(i)(3)(iv) and at all times thereafter, the group will be deemed to have made an election under §1.1502-32(b)(4) to treat all of such expired loss carryovers as expiring for all federal income tax purposes immediately before S became a member of the consolidated group.

(B) *Available losses.* Notwithstanding §1.1502-32(b)(4)(iv), to the extent that S's loss carryovers are increased by reason of an election under §1.1502-20T(i)(2) and such loss carryovers have not expired and would not have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in §1.1502-20T(i)(3)(iv) and at all times thereafter, the group may make an election under §1.1502-32(b)(4) to treat all or a portion of such loss carryovers as expiring for all federal income tax purposes immediately before S became a member of the consolidated group. Such election

must be filed with the group's original return for the taxable year in which S receives the notification described in §1.1502-20T(i)(3)(iv).

(C) *Effective date.* This paragraph (b)(4)(v) is applicable on and after March 7, 2002.

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§1.1502-35T [Corrected]

4. On page 12293, column 1, §1.1502-35T, paragraph (b)(3)(i)(C), line 2 from the bottom of the paragraph, the language "distributee), section 351, or section 361" is corrected to read "distributee), section 351, section 354, or section 361".

5. On page 12293, column 1, §1.1502-35T, paragraph (b)(3)(ii)(B), line 3 from the bottom of the paragraph, the language "of subsidiary member stock that they" is corrected to read "of the subsidiary member stock that they".

6. On page 12293, column 1, §1.1502-35T, paragraph (b)(3)(ii)(C) is correctly designated paragraph (b)(3)(ii)(D).

7. On page 12293, column 1, §1.1502-35T, new paragraph (b)(3)(ii)(C) is added to read as follows.

8. On page 12293, column 2, §1.1502-35T, paragraph (b)(6)(ii), line 2 from the bottom of the paragraph, the language "and paragraph (c) of this section are" is corrected to read "and paragraphs (c) and (f) of this section are".

9. On page 12295, column 2, §1.1502-35T, paragraph (e), the first sentence is revised to read as follows.

10. On page 12297, column 2, §1.1502-35T, paragraph (f)(1), lines 4 and 5 from the bottom of the paragraph, the language "as expired, but not as absorbed by the group, as of the beginning of the group's" is corrected to read "as expired, but shall not be treated as a noncapital, nondeductible expense for purposes of §1.1502-32(b)(3)(iii), as of the beginning of the group's".

§1.1502-35T Transfers of subsidiary member stock and deconsolidations of subsidiary members (temporary).

* * * * *

(b) * * *

(3) * * * (ii) * * *

(C) The members of the group are allowed a worthless stock loss under section 165(g) with respect to all of the shares of the subsidiary member stock that they own immediately before the deconsolidation; or

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(e) *Examples.* For purposes of the examples in this section, unless otherwise stated, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, all transactions are between unrelated persons, and tax liabilities are disregarded. * * *

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