

# Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulation; Withdrawal of Notice of Proposed Rulemaking; and Notice of Public Hearing

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

### REG-131478-02

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In T.D. 9048 on page 644 of this issue of the Bulletin, the IRS is issuing temporary regulations under section 1502 that redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock. In addition, temporary regulations suspend certain losses recognized on the disposition of such stock. The regulations apply to corporations filing consolidated returns. The text of the temporary regulations serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by June 12, 2003. Outlines of topics to be discussed at the public hearing scheduled for June 20, 2003, at 10 a.m., must be received by May 30, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG-131478-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG-131478-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs). The public hearing will be held in the IRS Auditorium, Internal

Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Aimee K. Meacham, (202) 622-7530; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya M. Cruse, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by May 13, 2003.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in §§1.1502-35T(c), 1.1502-35T(c)(5)(iii), 1.1502-35T(f)(2) and

1.1502-35T(g)(3). This information is required by the IRS to verify compliance with section 1502. This information will be used to determine whether the amount of tax has been calculated correctly. The collection of information is required to properly determine the amount permitted to be taken into account as a loss. The respondents are corporations filing consolidated returns. The collection of information is required to obtain a benefit.

Estimated total annual reporting and/or recordkeeping burden: 15,000 hours.

Estimated average annual burden per respondent and/or recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 7,475.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

##### Background

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 1502. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issuance of the proposed regulations.

##### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations, which tend to be larger businesses.

Moreover, the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 20, 2003, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by May 30, 2000. 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 Aimee K. Meacham of the Office of Associate Chief Counsel (Corporate),

IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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### Proposed Amendments to the Regulations

Accordingly, proposed regulations published on October 23, 2002 (REG-131478-02, 2002-47 I.R.B. 892 [67 FR 65066]) are withdrawn, and 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:  
Authority: 26 U.S.C. 7805 \* \* \*

26 U.S.C. 1502 \* \* \*

Par. 2. Section 1.1502-21 is amended by:

1. Revising paragraph (b)(1).
2. Adding paragraph (b)(3)(v) and (h)(7).

The revision and addition read as follows:

*§1.1502-21 Net operating losses.*

\* \* \* \* \*

(b) \* \* \*

(1) [The text of the proposed amendment to §1.1502-21(b)(1) is the same as the text of §1.1502-21T(b)(1) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(3) \* \* \*

(v) [The text of the proposed amendment to §1.1502-21(b)(3)(v) is the same as the text of §1.1502-21T(b)(3)(v) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(h) \* \* \*

(7) [The text of the proposed amendment to §1.1502-21(h)(7) is the same as the text of §1.1502-21T(h)(7) published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.1502-32 is amended by:

1. Revising paragraphs (a)(2) and (h).
2. Adding paragraphs (b)(3)(iii)(C), (b)(3)(iii)(D), (b)(3)(vi), and (h)(6).

The revision and additions read as follows:

*§1.1502-32 Investment adjustments.*

\* \* \* \* \*

(a)(2) [The proposed amendment to §1.1502-32(a)(2) is the same as §1.1502-32T(a)(2) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(b) \* \* \* (1) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(C) and (D) [The proposed amendment to §1.1502-32(b)(3)(iii)(C) and (b)(3)(iii)(D) are the same as §1.1502-32T(b)(3)(iii)(C) and (b)(3)(iii)(D) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(4)(i) \* \* \*

(vi) [The proposed amendment to §1.1502-32(b)(4)(vi) is the same as §1.1502-32T(b)(4)(vi) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(h)(6) [The proposed amendment to §1.1502-32(h)(6) is the same as §1.1502-32T(h)(6) published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.1502-35 is added to read as follows:

*§1.1502-35 Transfers and issuances of subsidiary member stock.*

[The text of proposed §1.1502-35 is the same as the text of §1.1502-35T published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

David A. Mader,  
Assistant Deputy Commissioner  
of Internal Revenue.

(Filed by the Office of the Federal Register on March 11, 2003, 1:04 p.m., and published in the issue of the Federal Register for March 14, 2003, 68 FR 12324)