

# Notice of Proposed Rulemaking by Cross Reference to Temporary Regulations

## Guidance Under Section 1502; Treatment of Loss Carryovers From Separate Return Limitation Years

### REG-129274-04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the Treasury Department and the IRS are issuing temporary regulations (T.D. 9155) providing guidance regarding the treatment of certain losses available to acquired subsidiaries as a result of an election made under the section 1502 regulations. The text of these proposed regulations also serves as the text of the temporary regulations set forth in this issue of the Bulletin. These regulations apply to corporations filing consolidated returns.

DATES: Written and electronic comments and requests for a public hearing must be received by November 16, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-129274-04), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. Submissions may be delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:PA:LPD:PR (REG-129274-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at: [www.irs.gov/reg](http://www.irs.gov/reg) or via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-129274-04 or RIN 1545-BD57).

FOR FURTHER INFORMATION CONTACT: Concerning submission of

comments or requesting a hearing, Treena Garrett, (202) 622-7180; concerning the proposed regulations, Sean McKeever, (202) 622-7750 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 1502 of the Internal Revenue Code (Code). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

#### 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. Further, it is hereby certified that these regulations will not have a significant economic 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 that have elected to file consolidated returns, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Accordingly, 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 Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, the IRS will consider any electronic or written comments (a signed original and eight (8) copies) that the IRS timely receives. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to

understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is Sean McKeever, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department 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 part 1 continues to read in part as follows:

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

Par. 2. Section 1.1502-32 is amended by revising paragraph (b)(4)(v)(A) and (C).

#### *§1.1502-32 Investment adjustments.*

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(v) [The text of this proposed paragraph is the same as the text of §1.1502-32T(b)(4)(v)(A) and (C) published elsewhere in this issue of the Bulletin].

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Mark E. Matthews,  
*Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on August 17, 2004, 8:45 a.m., and published in the issue of the Federal Register for August 18, 2004, 69 F.R. 51208)