

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Extension of Time to Elect Method for Determining Allowable Loss

REG-135898-04

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations under section 1502 of the Internal Revenue Code of 1986. The proposed regulations extend the time for consolidated groups to elect to apply a method for determining allowable loss on a disposition of subsidiary stock, and permit consolidated groups to revoke such elections. The proposed regulations affect corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of the temporary regulations (T.D. 9154) published in this issue of the Bulletin serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by November 24, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-135898-04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-135898-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at www.irs.gov/reg or via the Federal eRulemaking Portal at www.regulations.gov (IRS and REG-135898-04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Theresa Abell (202) 622-7700 or Martin Huck (202) 622-7750; concerning

submissions of comments, Robin Jones, (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 Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 25, 2004. 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 this proposed regulation was previously approved and reviewed by the Office of Management and Budget under control number 1545-1774. The collection of information is required to allow the taxpayer to make certain elections to determine the amount of allowable loss under §1.1502-20 in its entirety, §1.1502-20 without regard to the duplicated loss factor, or §1.337(d)-2T; to allow the taxpayer to reapportion a section 382 limitation in certain cases; to allow the

taxpayer to waive certain loss carryovers; and to ensure that loss is not disallowed under §1.337-2T and basis is not reduced under §1.337(d)-2T to the extent that the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset.

This collection of information is modified with respect to §§1.1502-20T and 1.1502-32T. Regarding §1.1502-20T, the collection of information also is necessary to allow the common parent of the selling group to reapportion a separate, subgroup or consolidated section 382 limitation when the acquiring group amends its §1.1502-32(b)(4) election. With respect to §1.1502-32T, the collection of information also is necessary to allow the acquiring group to amend its previous §1.1502-32(b)(4) election, so that it may use previously waived losses of its subsidiary.

The collection of information is required to obtain a benefit. The likely respondents are corporations that file consolidated income tax returns.

Estimated total annual reporting and/or recordkeeping burden: 36,720 hours.

Estimated average annual burden per respondent: 2 hours.

Estimated number of respondents: 18,360.

Estimated annual frequency of responses: once.

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 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. The temporary regulations extend the time for consolidated groups to elect to apply a method for determining allowable loss on a disposition of subsidiary stock, and permit consolidated groups to revoke

such elections. The temporary regulations affect corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of those regulations serves as the text for these proposed regulations. The preamble to the temporary regulations explains the amendments and these 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 proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations provide relief to consolidated groups by extending the time in which a group may make, or allowing a group to revoke, certain elections of methods for determining allowable loss. In addition, members of consolidated groups are generally large corporations rather than small businesses. Therefore, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Nevertheless, the IRS and Treasury Department request comments from small entities that believe they might be adversely affected by these regulations. 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 the impact of these regulations.

Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written comments (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 rules and how they can be made easier to understand. All comments will be made available for public inspection and copying. A public hearing may be scheduled. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Theresa Abell and Martin Huck of the 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 1.1502–20 is amended by:

1. Revising the first sentence of paragraph (i)(4).
2. Redesignating paragraph (i)(6) as (i)(7).
3. Adding new paragraph (i)(6).

The revisions and addition read as follows:

§1.1502–20 Disposition or deconsolidation of subsidiary stock.

* * * * *

(i) * * *

(4) [The text of proposed §1.1502–20(i)(4) is the same as the text of §1.1502–20T(i)(4) published elsewhere in this issue of the Bulletin.]

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(6) [The text of proposed §1.1502–20(i)(6) is the same as the text of §1.1502–20T(i)(6) published elsewhere in this issue of the Bulletin.]

Par. 3. Section §1.1502–32(b)(4)(vii) (C) is amended by removing the language “May 7, 2003” and adding the language “August 26, 2004” each time it appears.

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

(Filed by the Office of the Federal Register on August 25, 2004, 8:45 a.m., and published in the issue of the Federal Register for August 26, 2004, 69 F.R. 52462)