

# Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

## Loss Limitation Rules

### REG-153172-03

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 IRS is issuing temporary regulations (T.D. 9118) under sections 337(d) and 1502 of the Internal Revenue Code relating to the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group, the consequences of treating subsidiary stock as worthless, and when stock of a member of a consolidated group may be treated as worthless. The temporary regulations apply to corporations filing consolidated returns. The text of the temporary regulations published in this issue of the Bulletin also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by June 16, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-153172-03), room 5203, 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:LPD:PR (REG-153172-03), 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).

FOR FURTHER INFORMATION CONTACT: Regarding the regulations under section 337(d), Mark Weiss (202-622-7790) of the Office of Associate Chief Counsel (Corporate), and regarding the regulations under section 1502, Lola

L. Johnson (202-622-7550) of the Office of Associate Chief Counsel (Corporate); regarding submission of comments and/or requests for a hearing, Sonya M. Cruse (202-622-4693) of the Office of Procedure and Administration (not toll-free numbers).

#### 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 337(d) and section 1502. The text of those 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. 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, which tend to be larger businesses. Therefore a Regulatory Flexibility Analysis 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 Requests for a Public Hearing

Before these 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 the 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 may be scheduled if requested by any person who timely submits 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 the regulations under section 337(d) is Mark Weiss, Office of Associate Chief Counsel (Corporate). The principal author of the regulations under section 1502 is Lola L. Johnson, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury participated in their development.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

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

Par. 2. Section 1.337(d)-2(c)(2) is added to read as follows:

*§1.337(d)-2 Loss limitation window period.*

[The text of this proposed section is the same as the text of §1.337(d)-2T published elsewhere in this issue of the Bulletin].

Par. 3. Section 1.1502-35(f)(1) is added to read as follows:

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

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

Par. 4. In §1.1502-80, paragraph (c) is revised to read as follows:

*§1.1502-80 Applicability of other provisions of law.*

(c) [The text of this proposed §1.1502-80(c) is the same as the text

of §1.1502–80T(c) published elsewhere in this issue of the Bulletin].

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

(Filed by the Office of the Federal Register on March 17, 2004, 8:45 a.m., and published in the issue of the Federal Register for March 18, 2004, 69 F.R. 12811)