

Notice of Proposed Rulemaking and Notice of Public Hearing

Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following an Ownership Change of a Consolidated Group

CO-25-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of prior proposed rule, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

SUMMARY: On February 4, 1991, proposed rules under section 1502 were published in the **Federal Register** (CO-132-87; see 56 FR 4194; 1991-1 C.B. 728). A public hearing was held on April 8, 1991. The IRS and Treasury published Notice 91-27 (1991-2 C.B. 629) to advise of intended modifications to the proposed regulations. The February, 1991, proposed rules are withdrawn and these proposed regulations are issued in their place.

In TD 8678, page 11 in this issue of the Bulletin, the IRS is issuing temporary regulations regarding the operation of sections 382 and 383 of the Internal Revenue Code of 1986 (relating to limitations on net operating loss carryforwards and certain built-in losses and credits following an ownership change) with respect to consolidated groups. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by Wednesday, September 25, 1996. Outlines of topics to be discussed at the public hearing scheduled for Thursday, October 17, 1996, at 10 a.m. must be received by Thursday, September 26, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (CO-25-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (CO-25-96), Couri-

er's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, David B. Friedel, (202) 622-7550; concerning submissions and the hearing, Evangelista Lee, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under the control number 1545-1218. The collection requires a response from certain consolidated groups. The IRS requires the information described in Proposed § 1.1502-95(e) to assure that a section 382 limitation is properly determined in cases of corporations that cease to be members of a group.

Comments concerning 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, T:FP. Washington, DC, 20224. Comments on the collection of information should be received by Monday, August 26, 1996.

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

The collection of information is in Proposed § 1.1502-95(e). That section permits an election with respect to the apportionment of a group section 382 limitation to a departing member. A statement evidencing the apportionment must be filed by the group and the departing member indicating relevant information regarding the apportionment. The likely respondents and/or recordkeepers are corporations that are members of certain consolidated groups. Responses to this collection of informa-

tion are required to obtain a benefit (relating to the section 382 limitation applicable to the departing member(s)).

Books or records relating to this 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.

Estimated total annual reporting burden: 380 hours. The estimated annual burden per respondent varies from ten to thirty minutes, depending on individual circumstances, with an estimated average of fifteen minutes. Estimated number of respondents: 9,125. Estimated frequency of responses: once every six years.

Background

Temporary regulations in TD 8678, page 11 amend the Income Tax Regulations (26 CFR Part 1) under section 1502, relating to limitations on net operating loss carryforwards and certain built-in losses and credits following an ownership change with respect to consolidated groups. The final regulations that are proposed to be based on these proposed regulations would be added to part 1 of title 26 of the Code of Federal Regulations. Those final regulations would provide rules relating to limitations on net operating loss carryforwards and certain built-in losses following an ownership change.

For the text of these new temporary regulations, see TD 8678. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do 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. Therefore, 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 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) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, October 17, 1996, at 10 a.m. in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by Wednesday, September 25, 1996, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Thursday, September 26, 1996.

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 the temporary regulations is David B. Friedel of the Office of Assistant Chief Counsel (Corporate), IRS. Other personnel from the IRS and Treasury participated in their development.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking that was published on January 29, 1991 (56 FR 4194) is withdrawn.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

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

Section 1.1502-91 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-92 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-93 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-94 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-95 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-96 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-98 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.

Section 1.1502-99 also issued under 26 U.S.C. 382(m) and 26 U.S.C. 1502.
* * *

Par. 2. Sections 1.1502-90 through 1.1502-99 are added to read as follows:

§ 1.1502-90 Table of contents.

§ 1.1502-91 Application of section 382 with respect to a consolidated group.

§ 1.1502-92 Ownership change of a loss group or a loss subgroup.

§ 1.1502-93 Consolidated section 382 limitation (or subgroup section 382 limitation).

§ 1.1502-94 Coordination with section 382 and the regulations thereunder when a corporation becomes a member of a consolidated group.

§ 1.1502-95 Rules on ceasing to be a member of a consolidated group (or loss subgroup).

§ 1.1502-96 Miscellaneous rules.

§ 1.1502-97 Special rules under section 382 for members under the jurisdiction of a court in a title 11 or similar case.

§ 1.1502-98 Coordination with section 383.

§ 1.1502-99 Effective dates.

[The text of the above proposed sections is the same as the text of §§ 1.1502-90T through 1.1502-99T published elsewhere in this issue of the Bulletin.]

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on June 26, 1996, 8:45 a.m., and published in the issue of the Federal Register for June 27, 1996, 61 F.R. 33395)