

Notice of Proposed Rulemaking

Conforming Amendments to Section 446

REG-125161-01

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: On July 18, 1995, the Treasury and the IRS published final regulations governing the intercompany transaction system of the consolidated return regulations. Those regulations state that the timing rules of the intercompany transaction system are a method of accounting. At the time of the publication of those regulations, no amendment was made to the regulations promulgated under section 446 to coordinate with that statement. This document contains proposed regulations confirming that the timing rules of the intercompany transaction regulations are a method of accounting.

DATES: Written or electronic comments and requests for a public hearing must be received by January 7, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU, room 5226 (REG-125161-01), Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU, room 5226 (REG-125161-01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS internet site at <http://www.irs.gov/taxregs/regslst.html>.

FOR FURTHER INFORMATION

CONTACT: Concerning the regulation, Marie C. Milnes-Vasquez or Frances Kelly (202) 622-7770, or Jeffery G. Mitchell (202) 622-4930; concerning submissions and/or requests for a public

hearing, Guy Traynor (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation

On July 18, 1995, the Treasury and the IRS published in the **Federal Register** (60 FR 36671 [1995-2 C.B. 147]) final regulations under §1.1502-13 governing the intercompany transaction system of the consolidated return regulations. Included in such regulations was an express statement that “[t]he timing rules of [the intercompany transaction regulations] are a method of accounting for intercompany transactions, to be applied by each member in addition to the member’s other methods of accounting.” § 1.1502-13(a)(3)(i). At the time of the publication of those final regulations, no amendment was made to the regulations promulgated under section 446 to coordinate with the statement in § 1.1502-13(a)(3)(i) that the timing rules of § 1.1502-13 are a method of accounting.

In *General Motors v. Commissioner*, 112 T.C. 270 (1999), the Tax Court determined that the timing rule of former § 1.1502-13(b)(2) was not a method of accounting for purposes of section 446(e). The proposed regulations included in this document amend § 1.446-1 to confirm the IRS’s position that the timing rules of current §1.1502-13 are a method of accounting.

Proposed Effective Date

The regulations in this section are proposed to apply to consolidated return years beginning on or after November 7, 2001.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6)

do not apply to these regulations, and, because the proposed rule does not impose a collection of information on small entities, 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 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) or electronic comments that are timely submitted to the IRS. All comments will be made available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that 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 proposed regulations is Marie C. Milnes-Vasquez, Office of the 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 1.446-1 is amended by adding paragraph (c)(2)(iii) to read as follows:

§ 1.446-1 *General rule for methods of accounting.*

(c) ***

(2) ***

(iii) The timing rules of §1.1502-13 are a method of accounting for intercompany transactions (as defined in § 1.1502-13(b)(1)(i)), to be applied by each member of a consolidated group in addition to the member's other methods of accounting. See §1.1502-13(a)(3)(i). This paragraph is applicable to consolidated return years beginning on or after November 7, 2001.

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Par. 3. In §1.1502-13, the second sentence of paragraph (a)(3)(i) is revised to read as follows:

§1.1502-13 Intercompany transactions.

(a) * * *

(3) * * *

(i) * * * See §1.1502-17 and, with regard to consolidated return years beginning on or after November 7, 2001, §1.446-1(c)(2)(iii). * * *

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Robert E. Wenzel,
*Deputy Commissioner
of Internal Revenue.*

(Filed by the Office of the Federal Register on November 6, 2001, 8:45 a.m., and published in the issue of the Federal Register for November 7, 2001, 66 F.R. 56262)