

Notice of Proposed Rulemaking

Carryback of Consolidated Net Operating Losses to Separate Return Years

REG-122564-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains proposed regulations under section 1502 that affect corporations filing consolidated returns. In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations permitting certain acquiring consolidated groups to elect to waive all or a portion of the pre-acquisition portion of the 5-year carryback period under section 172(b)(1)(H) for certain losses attributable to certain acquired members. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by July 30, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU, room 5226 (REG-122564-02), 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-122564-02), 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 www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, Marie C. Milnes-Vasquez (202) 622-7770; concerning submissions and/or requests for a public hearing, Guy Traynor (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 the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by July 30, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, 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 collections 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 service to provide information.

The collection of information in this proposed regulation is in § 1.1502-21(b)(3)(ii)(C). This information is required to document the taxpayer's election to relinquish portions of its carryback period for 2001 and 2002 losses attributable to acquired members. The data will be used by the Internal Revenue Service to ensure that taxpayers are preparing their returns in accordance with their elections. The collection of information is required to obtain a benefit. The likely respondents are businesses.

Estimated total annual reporting burden: 1,000 hours.

Estimated average annual burden hours per respondent: 15 minutes.

Estimated number of respondents: 4,000.

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

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 1502. The temporary regulations provide rules permitting certain acquiring consolidated groups to elect to waive all or a portion of the pre-acquisition portion of the 5-year carryback period under section 172(b)(1)(H) for certain losses attributable to certain acquired members. 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 do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect persons filing consolidated Federal income tax returns. Available data indicates that most consolidated return filers are large companies (not small 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, 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 to read 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 1.1502-21 is amended by adding paragraph (b)(3)(ii)(C) to read as follows:

§ 1.1502-21 Net operating losses.

[The text of proposed § 1.1502-21(b)(3)(ii)(C) is the same as the text of § 1.1502-21T(b)(3)(ii)(C) published elsewhere in this issue of the **Federal Register**].

David A. Mader,
*Acting Deputy Commissioner
of Internal Revenue.*

(Filed by the Office of the Federal Register on May 30, 2002, 8:45 a.m., and published in the issue of the Federal Register for May 31, 2002, 67 F.R. 38039)