

# **Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing**

## **Guidance Under Section 1502; Amendment of Waiver of Loss Carryovers from Separate Return Limitation Years**

### **REG-152524-02**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9057) under section 1502 that permit the amendment of certain elections to waive the loss carryovers of an acquired subsidiary. The text of the temporary regulations published in this issue of the Bulletin also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by August 5, 2003. Outlines of topics to be discussed at the public hearing scheduled for August 6, 2003, at 10 a.m., must be received by July 16, 2003.

**ADDRESSES:** Send submissions to: CC:ITA:RU (REG-152524-02), room 5226, 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 5 p.m. to CC:ITA:RU (REG-

152524-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs). The public hearing will be held in room 6718, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Alison G. Burns or Jeffrey B. Fienberg, (202) 622-7930; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, (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, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 7, 2003. 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 §1.337(d)-2T, §1.1502-20 as currently in effect, or under §1.1502-20 modified so that the amount of allowable loss determined pursuant to §1.1502-20(c)(1) is computed by taking into account only the amounts computed under §1.1502-20(c)(1)(i) and (ii); 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: 30,400 hours.

Estimated average annual burden per respondent: 2 hours.

Estimated number of respondents: 15,200.

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 (T.D. 9057) on page 964 of this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 1502. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issues of the proposed regulations.

##### **Proposed Effective Date**

These proposed regulations will be effective on the date they are published as final regulations in the **Federal Register**.

##### **Special Analyses**

It has been determined that this Treasury decision 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 primarily will affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses, and, moreover, that any burden on taxpayers is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to §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 (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS.

All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 6, 2003, beginning at 10 a.m. in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by July 16, 2003. 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 these regulations is Jeffrey B. Fienberg, 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 redesignating paragraph (i)(5) as (i)(6) and by adding paragraphs (i)(3)(viii) and (i)(5) to read as follows:

*§1.1502–20 — Disposition or deconsolidation of subsidiary stock.*

[The text of this proposed section is the same as the text of §1.1502–20T(i)(3)(viii) and (i)(5) published elsewhere in this issue of the Bulletin].

Par. 3. Section 1.1502–32 is amended by adding paragraph (b)(4)(vii) to read as follows:

*§1.1502–32 — Investment adjustments.*

[The text of this proposed section is the same as the text of §1.1502–32T(b)(4)(vii) published elsewhere in this issue of the Bulletin].

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David A. Mader,

*Assistant Deputy Commissioner  
of Internal Revenue.*

(Filed by the Office of the Federal Register on May 6, 2003, 8:45 a.m., and published in the issue of the Federal Register for May 7, 2003, 68 F.R. 24404)