

Rev. Proc. 2003-34

SECTION 1. PURPOSE

.01 This revenue procedure modifies one of the terms and conditions under which the Internal Revenue Service grants approval of requests for changes in annual accounting periods filed under Rev. Proc. 2002-37, 2002-22 I.R.B. 1030, and Rev. Proc. 2002-39, 2002-22 I.R.B. 1046. Specifically, this revenue procedure modifies the term and condition pursuant to which taxpayers generally are prohibited from carrying back net operating losses (NOLs) and capital losses (CLs) generated in the short period necessary to effect the change. *See* section 6.08 of Rev. Proc. 2002-37, and section 5.04(6) of Rev. Proc. 2002-39.

.02 The Modified Carryback Term and Condition of section 4.01 of this revenue procedure generally applies, in the case of taxpayers within the scope of Rev. Proc. 2002-37, to taxable years ending on or after April 8, 2003, and, in the case of certain taxpayers within the scope of Rev. Proc. 2002-39, to applications filed on or after that date. In addition, section 5 of this revenue procedure allows certain qualifying taxpayers that previously changed their annual accounting period (either automatically or with prior approval) to elect to apply either (1) the Modified Carryback Term and Condition, under which the loss is carried back to the applicable number of years prescribed by § 172 or 1212 of the Internal Revenue Code as it would have applied to the short period; or (2) in the case of taxpayers with certain NOLs arising in short periods ending during 2001 or 2002, an Alternative Carryback Term and Condition under which the NOL is carried back to each of the 2 taxable years preceding the short period.

SECTION 2. BACKGROUND

.01 Section 442 and § 1.442-1(a) of the Income Tax Regulations generally provide that a taxpayer that wants to change its annual accounting period and use a new taxable year must obtain the approval of the Commissioner.

.02 Section 1.442-1(b)(2) provides, in relevant part, that a change in annual accounting period will be approved only where the taxpayer agrees to the Commissioner's prescribed terms, conditions, and adjustments for effecting the change.

.03 Section 1.442-1(b)(3) provides that such terms, conditions, and adjustments may include adjustments necessary to neutralize the tax effects of a substantial distortion of income that would otherwise result from the requested annual accounting period, including, for example, the creation of a short period in which there is a substantial NOL, CL, or credit (including a general business credit).

.04 Section 172(b)(1)(A)(i) generally provides that an NOL for any taxable year must be carried back to each of the 2 taxable years preceding the taxable year of such NOL, unless the taxpayer elects to forgo the carryback period by attaching a statement to the taxpayer's timely filed original federal income tax return for the loss year. *See* § 172(b)(3). Section 172(b)(1)(H) provides that NOLs arising in a taxable year ending during 2001 and 2002 must be carried back to each of the 5 taxable years preceding the taxable year of such NOL, unless the taxpayer elects to forgo the carryback period entirely under § 172(b)(3), or elects under § 172(j) to forgo the 5-year carryback period in favor of a 2-year carryback period. In addition, § 172 provides special rules (including different carryback periods) for certain net operating losses, such as specified liability losses, casualty losses, and net operating losses incurred by real estate investment trusts and farming businesses.

.05 Section 1212 generally provides that if a corporation has a net CL for any taxable year, the net CL generally must be carried back to each of the 3 taxable years preceding the taxable year of the CL.

.06 Rev. Proc. 2002-37 provides the exclusive procedures for certain corporations to obtain automatic approval of the Commissioner to change their annual accounting periods. Rev. Proc. 2002-37 modi-

files, amplifies, and supersedes Rev. Proc. 2000–11, 2000–1 C.B. 309.

.07 Rev. Proc. 2002–39 provides the general procedures for establishing a business purpose and obtaining the approval of the Commissioner to adopt, change, or retain an annual accounting period in cases where the taxpayer does not meet the requirements for using an automatic approval revenue procedure.

.08 Section 6.08 of Rev. Proc. 2002–37 provides, as a term and condition for automatic approval, that a corporation generally is prohibited from carrying back an NOL or CL generated in the short period (the “Original Carryback Term and Condition”). The Original Carryback Term and Condition, however, is not imposed if the NOL or CL either (1) is \$50,000 or less; or (2) results from a short period of 9 months or longer and is less than the NOL or CL for the 12-month period beginning with the first day of the short period. Section 5.04(6) of Rev. Proc. 2002–39 also imposes the Original Carryback Term and Condition for prior approval of a change in annual accounting period. Moreover, the Service has imposed a similar term and condition in consent letters issued prior to Rev. Proc. 2002–39. The purpose of the Original Carryback Term and Condition is to prevent artificial distortions of income from NOLs and CLs that are generated in the short period.

.09 The Service has determined that the purpose of the Original Carryback Term and Condition would not be frustrated if the exception to that term were expanded to include short periods of less than 9 months, provided that the NOL or CL generated in such short period were less than the NOL or CL for the 12-month period beginning with the first day of the short period.

.10 In an effort to provide relief to taxpayers who may have been economically disadvantaged by the events of September 11, 2001, the Service is also permitting certain taxpayers who received approval to change an annual accounting period for which the short period began on or after February 1, 2000, and whose short period loss would have qualified for the expanded exception, to carry back an NOL or CL generated in the short period.

SECTION 3. SCOPE

.01 *In General.* This revenue procedure generally applies to any taxpayer that requests to change the taxpayer’s annual ac-

counting period under Rev. Proc. 2002–37 or Rev. Proc. 2002–39.

.02 *Prior Accounting Period Changes.* This revenue procedure also applies to any taxpayer if:

(1) prior to April 8, 2003, the taxpayer either filed an application for automatic approval to change the taxpayer’s annual accounting period under Rev. Proc. 2002–37 (or any predecessor), or received prior approval to change its annual accounting period by a letter issued by the national office (whether or not issued under Rev. Proc. 2002–39);

(2) the administrative procedure, letter ruling, or consent letter under which the taxpayer made the change, as a term and condition of the change, prohibited the taxpayer from carrying back an NOL or CL generated in the short period because the short period was less than 9 months;

(3) the NOL or CL generated in the short period is less than the NOL or CL for the full 12-month period beginning with the first day of the short period; and

(4) the short period necessary to effect the change began on or after February 1, 2000.

SECTION 4. MODIFIED CARRYBACK TERM AND CONDITION

.01 Section 6.08 of Rev. Proc. 2002–37 and section 5.04(6) of Rev. Proc. 2002–39 are modified to read as follows:

“If the taxpayer generates a net operating loss (NOL) or capital loss (CL) in the short period required to effect a change in annual accounting period, the taxpayer may not carry the NOL or CL back, but must carry it over in accordance with the provisions of §§ 172 and 1212, respectively, beginning with the first taxable year after the short period. However, except as otherwise provided in the Code or regulations, the short period NOL or CL must be carried back or carried over in accordance with § 172 or 1212, respectively, if it is either: (a) \$50,000 or less; or (b) less than the NOL or CL, respectively, generated for the full 12-month period beginning with the first day of the short period. The taxpayer must wait until this 12-month period has expired to determine whether the taxpayer qualifies for the exception in (b) above.”

.02 A taxpayer that is eligible to carry back an NOL and wishes to forego the carryback of such NOL must do so by mak-

ing a timely election to waive the entire carryback period under § 172(b)(3), or have in place an election under § 1502–21(b)(3)(ii)(B).

SECTION 5. OPTIONAL TERMS AND CONDITIONS FOR TAXPAYERS WITH PRIOR ACCOUNTING PERIOD CHANGES

.01 *In General.* Pursuant to the Commissioner’s authority under § 442 to prescribe terms and conditions necessary to effect a change in annual accounting period, this section provides that a taxpayer described in section 3.02 of this revenue procedure may elect to apply to all NOLs and CLs attributable to the short period, in lieu of the Original Carryback Term and Condition, either: (a) the Modified Carryback Term and Condition of section 4.01 of this revenue procedure (see section 5.02 of this revenue procedure); or (b) if the short period ends during 2001 or 2002, the Alternative Carryback Term and Condition (see section 5.03 of this revenue procedure). Unless such a taxpayer satisfies the applicable requirements of section 6 of this revenue procedure for timely electing one of the optional carryback terms and conditions described in this section 5, the Original Carryback Term and Condition will continue to apply. A taxpayer with both an NOL and a CL for the short period must apply the same term and condition (Original, Modified, or Alternative) to both the NOL and CL.

.02 *Modified Carryback Term and Condition.* A taxpayer described in section 3.02 of this revenue procedure may elect to apply the Modified Carryback Term and Condition of section 4.01 of this revenue procedure by following the procedures set forth in section 6 of this revenue procedure. Thus, if a taxpayer elects to apply the Modified Carryback Term and Condition, NOLs and CLs generated in the short period must be carried back in accordance with § 172 or 1212, whichever applies, except as otherwise provided in the Code or regulations. For example, an NOL generated in a short period ending in 2001 generally must be carried back 5 taxable years under § 172(b)(1)(H), and an NOL generated in a short period ending in 2000 generally must be carried back 2 taxable years under § 172(b)(1)(A)(i) (unless one of the special carryback periods or limitations of § 172 applies).

.03 *Alternative Carryback Term and Condition.*

(1) *In general.* If a taxpayer described in section 3.02 of this revenue procedure has a short period that ends in 2001 or 2002, the taxpayer may elect to apply the Alternative Carryback Term and Condition of this section 5.03, in lieu of either the Original Carryback Term and Condition or the Modified Term and Condition, by following the procedures set forth in section 6 of this revenue procedure.

(2) *Alternative Carryback Term and Condition.* If the taxpayer generates an NOL or CL in the short period required to effect a change in annual accounting period, and the short period ends in 2001 or 2002, the taxpayer may not carry the NOL or CL back, but must carry it over in accordance with the provisions of §§ 172 and 1212, respectively, beginning with the first taxable year after the short period. However, if the short period NOL or CL is either: (a) \$50,000 or less; or (b) less than the NOL or CL, respectively, generated for the full 12-month period beginning with the first day of the short period, such short period NOL must be carried back to each of the 2 taxable years preceding the short period (and any remaining NOL must be carried over in accordance with the provisions of § 172) and any short period CL must be carried back or carried over in accordance with § 1212. The taxpayer must wait until the 12-month period has expired to determine whether the taxpayer qualifies for the exception in (b) above.

(3) *Other limitations.* The Alternative Carryback Term and Condition is not available to a taxpayer whose NOL for the short period is subject to the provisions of:

- (a) § 172(b)(1)(B) (regarding NOLs of real estate investment trusts);
- (b) § 172(b)(1)(C) (regarding specified liability losses);
- (c) § 172(b)(1)(E) (regarding certain excess interest losses);
- (d) § 172(b)(1)(F) (regarding a certain 3-year carryback in certain cases); or
- (e) § 172(b)(1)(G) (regarding farming losses).

.04 *Special Elections for Consolidated Groups.* This paragraph 5.04 applies to a taxpayer that is a consolidated group that:

(1) is described in section 3.02 of this revenue procedure;

(2) includes a member that was a member of another group immediately before it

became a member of the consolidated group (acquired member); and

(3) elects either the Modified Carryback Term and Condition of section 4.01 of this revenue procedure, or the Alternative Carryback Term and Condition of section 5.03 of this revenue procedure.

A consolidated group to which this paragraph applies may make an irrevocable election to relinquish, with respect to all consolidated net operating losses for the short period attributable to the acquired member, the portion of the carryback period for such loss for which the acquired member was a member of another group to the extent such portion of the carryback period includes one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss. Additionally, if an acquired member became a member of the consolidated group to which this paragraph applies after June 25, 1999, the consolidated group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses for the short period attributable to the acquired member, the entire portion of the carryback period for which the acquired member was a member of another group. The elections described in the prior 2 sentences may be made only if any other corporation joining the consolidated group that was affiliated with the acquired member immediately before it joined the consolidated group is also included in the election. The elections are made by following the procedures set forth in section 6 of this revenue procedure.

SECTION 6. PROCEDURES FOR ELECTING OPTIONAL TERMS AND CONDITIONS OF SECTION 5.

.01 *Time and Manner for Making Elections*

(1) *In general.* The election to apply either the Modified Carryback Term and Condition of section 4.01 of this revenue procedure, or the Alternative Carryback Term and Condition of section 5.03 of this revenue procedure, must be made on a statement filed with the appropriate Internal Revenue Service Center in accordance with the procedures described in this section 6.01. A taxpayer wishing to make one of the Special Elections for Consolidated Groups under section 5.04 of this revenue procedure must make such election with the election to apply either the Modified Car-

ryback Term and Condition of section 4.01 of this revenue procedure or the Alternative Carryback Term and Condition of section 5.03.

(2) *Time for making election.* An election to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition in lieu of the Original Carryback Term and Condition must be made no later than September 30, 2003. The Special Elections for Consolidated Groups of section 5.04 of this revenue procedure must be made concurrently with the election to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition.

(3) *Manner of making elections.*

(a) *What to file.* A taxpayer may elect to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition, and may make one of the Special Elections for Consolidated Groups, by filing with the appropriate Internal Revenue Service Center on or before September 30, 2003, whichever of the following statements applies. The statements must be signed and dated by the taxpayer, the taxpayer's authorized representative, or other person authorized to bind the taxpayer with respect to federal income tax matters.

(i) *Election to apply Modified Carryback Term and Condition of section 4.01:*

“ELECTION UNDER REVENUE PROCEDURE 2003–34. By this statement, [insert taxpayer name and EIN or SSN] elects to apply the Modified Carryback Term and Condition of section 4.01 of Rev. Proc. 2003–34 to any net operating loss and capital loss arising in a short taxable year ending [insert date short taxable year ended]. Under the Modified Carryback Term and Condition, net operating losses and capital losses arising in the short taxable year must be carried back and carried over in accordance with the applicable provisions of sections 172 and 1212 of the Code.”; or

(ii) *Election to apply Alternative Carryback Term and Condition of section 5.03:*

“ELECTION UNDER REVENUE PROCEDURE 2003–34. By this statement, [insert taxpayer name and EIN or SSN] elects to apply the Alternative Carryback Term and Condition of section 5.03 of Rev. Proc. 2003–34 to any net operating loss and capital loss arising in a short taxable year

ending [insert date short taxable year ended]. Under the Alternative Carryback Term and Condition, any net operating loss arising in this short taxable year must be carried back to each of the 2 taxable years preceding the short taxable year (and any remaining net operating loss must be carried over in accordance with the provisions of section 172 of the Code) and any capital loss arising in this short taxable year must be carried back or carried over in accordance with section 1212.”

(iii) *Special elections for consolidated groups.* A consolidated group that wishes to make one of the elections under section 5.04 of this revenue procedure (acquiring group) must attach one of the following statements to the election to apply the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition:

“SPECIAL ELECTION TO WAIVE PRE-ACQUISITION EXTENDED CARRYBACK PERIOD. This is an election under section 5.04 of Rev. Proc. 2003–34 to waive the pre[insert the first day of the first taxable year for which the acquired member (or members) was a member of the taxpayer’s consolidated group (acquiring group)] extended carryback period for the consolidated NOLs attributable to [insert name and employer identification number of acquired member (or members)] for the [short period].”; or

“SPECIAL ELECTION TO WAIVE ENTIRE PRE-ACQUISITION CARRYBACK PERIOD. This is an election under section 5.04 of Rev. Proc. 2003–34 to waive the pre[insert the first day of the first taxable year for which the acquired member (or members) was a member of the taxpayer’s consolidated group (acquiring group)] carryback period for the consolidated NOLs attributable to [insert name and employer identification number of acquired member (or members)] for the [short period].”

(b) *Where to file.* A taxpayer electing to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition must file the appropriate statement(s) with the Director, Internal Revenue Service Center, Attention: ENTITY CONTROL, where the taxpayer files its federal income tax return. No copies of any statements are required to be sent to the National Office.

(c) *Statements not claims for refunds.* The statements described in section 6.01(3)(a) do not constitute claims for refund or applications for tentative refunds. A taxpayer electing to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition by filing a statement in compliance with the procedures of this section 6.01 must additionally file a claim for refund or application for tentative refund within the periods prescribed by statute to carry back any short period NOL or CL. The taxpayer must attach a copy of the statement filed under these procedures to any claim for refund or application for tentative refund filed as a result of the making of an election under this revenue procedure.

.02 *Election Constitutes Taxpayer’s Agreement.* An election made in accordance with this section constitutes an agreement between the taxpayer and the Service to modify the terms and conditions for the Commissioner’s approval of the taxpayer’s change in annual accounting period. An election to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition does not revoke a valid election described in § 172(b)(3), Reg. § 1.1502–21(b)(3)(ii)(B) or Reg. § 1.1502–21T.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–37 and Rev. Proc. 2002–39 are modified.

SECTION 8. EFFECTIVE DATES AND TRANSITION RULE

.01 *Applications Filed Under Rev. Proc. 2002–37.* For a taxpayer within the scope of Rev. Proc. 2002–37:

(1) *In general.* This revenue procedure is effective for all changes in annual accounting periods for which the first effective year (as defined in section 5.07 of Rev. Proc. 2002–37) ends on or after April 8, 2003; and

(2) *Transition rule.* If the first effective year (as defined in section 5.07 of Rev. Proc. 2002–37) ends before April 8, 2003, and the time for filing Form 1128 with respect to that first effective year expires on or after April 8, 2003, (whether or not a Form 1128 was filed before that date with the Service Center), a taxpayer may elect to use one of the optional carryback terms

and conditions of section 5 of this revenue procedure by following the procedures of section 6 of this revenue procedure.

.02 *Applications Filed Under Rev. Proc. 2002–39.* For a taxpayer within the scope of Rev. Proc. 2002–39:

(1) *In general.* This revenue procedure is effective for applications filed on or after April 8, 2003; and

(2) *Transition rule.* If a taxpayer filed an application to change the taxpayer’s annual accounting period before April 8, 2003, and the application is pending with the national office on April 8, 2003, the taxpayer may request that the application be processed in accordance with this revenue procedure. However, the national office will process applications filed before April 8, 2003, in accordance with prior authority unless, prior to the later of June 9, 2003, or the issuance of the letter ruling granting or denying consent to the adoption, change, or retention, the taxpayer notifies the national office that the taxpayer desires that the taxpayer’s application be processed in accordance with this revenue procedure.

.03 *Taxpayers With Prior Accounting Period Changes.* For a taxpayer described in section 3.02 of this revenue procedure, this revenue procedure is effective for changes in the taxpayer’s annual accounting period if the short period necessary to effect the change began on or after February 1, 2000.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Roy A. Hirschhorn and Michael Schmit of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Hirschhorn or Mr. Schmit at (202) 622–4960 (not a toll-free call).