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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8950]

RIN 1545-AY58

Guidance on Filing an Application for a Tentative Carryback Adjustment in a Consolidated Return Context

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the filing of an application for a tentative carryback adjustment. These regulations provide guidance as to the time for filing such application by a consolidated group and by certain corporations for the separate return year created by their becoming a member of a consolidated group. These final regulations may affect all consolidated groups.

DATES: Effective Date: June 22, 2001.

Applicability Date: For dates of applicability, see §1.1502-78(e)(2)(v) of these regulations.

FOR FURTHER INFORMATION CONTACT: Christopher M. Bass or Frances L. Kelly, (202) 622-7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR

Part 1) under section 1502 of the Internal Revenue Code of 1986 (Code), relating to the filing of an application for a tentative carryback adjustment. The amendments provide guidance as to the time for filing an application for a tentative carryback adjustment by a consolidated group. The amendments also extend the time for filing an application for a tentative carryback adjustment by certain corporations for the separate return year created by their becoming new members of a consolidated group.

On January 4, 2001, a temporary regulation (TD 8919, 2001-6 I.R.B. 505) was published in the **Federal Register** (66 FR 713). On this same day, a notice of proposed rulemaking (REG-119352-00, 2001-6 I.R.B. 525) cross-referencing the temporary regulation and a notice of public hearing were published in the **Federal Register** (66 FR 747). No comments or requests to speak were received from the public in response to the notice of proposed rulemaking. Accordingly, the public hearing scheduled for April 26, 2001 was canceled in the **Federal Register** (66 FR 19104) on April 13, 2001. The proposed regulation is adopted as amended by this Treasury Decision, and the corresponding temporary regulation is removed.

Explanation of Provisions

The amendments adopted by this Treasury Decision provide a general rule for all corporations filing consolidated returns stating that the provisions of section 6411(a) shall apply to determine the time for filing an application for a tentative carryback adjustment by a consolidated group. In addition, the amendments provide a special rule for applications filed by certain corporations that become new members of a consolidated group, extending the period of time for filing an application for a tentative

carryback adjustment resulting from losses or credits arising in the new member's last separate return year. For these purposes, the separate return year is treated as ending on the same date as the end of the current taxable year of the consolidated group.

Until Form 1139 (Application for a Tentative Carryback Adjustment) is modified to reflect the changes made by this regulation, an application for a tentative carryback adjustment filed under the special rule must include additional information in the form of a statement, "Filed pursuant to Treas. Reg. section 1.1502-78(e)(2)," in red, at the top of the current Form 1139. In addition, the Form 1139 must state, in red, the "year end" of the consolidated group that the new member joins. In response to the changes made by this regulation, IRS Service Centers developed a procedure to assist in processing applications filed under §1.1502-78(e)(2). This procedure requires that the additional information, as set forth above, be included on the Form 1139. This procedure supplements existing guidelines for filing and processing Form 1139.

The proposed regulation (66 FR 747) was issued as §1.1502-78T(g). This final regulation adopts the substance of the proposed regulation and renumbers such provision as §1.1502-78(e).

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 this regulation will not impose a significant economic impact on a substantial number of small entities because it affects a relatively small

number of corporations and few, if any, of those corporations are likely to be 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 Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Christopher M. Bass and Frances L. Kelly, Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1 -- INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for sections 1.1502-78(b) and 1.1502-78T and by adding an entry in numerical order to read in part as follows:

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

Section 1.1502-78 also issued under 26 U.S.C. 1502, 6402(k), and 6411(c). * * *

Par. 2. Section 1.1502-78 is amended by adding paragraph (e) to read as follows:

§1.1502-78 Tentative carryback adjustments.

* * * * *

(e) Time for filing application--(1) General rule. The provisions of section 6411(a) apply to the filing of an application for a tentative carryback adjustment by a consolidated group.

(2) Special rule for new members--(i) New member. A new member is a corporation that, in the preceding taxable year, did not qualify as a member, as defined in §1.1502-1(b), of the consolidated group that it now joins.

(ii) End of taxable year. Solely for the purpose of complying with the twelve-month requirement for making an application for a tentative carryback adjustment under section 6411(a), the separate return year of a qualified new member shall be treated as ending on the same date as the end of the current taxable year of the consolidated group that the qualified new member joins.

(iii) Qualified new member. A new member of a consolidated group qualifies for purposes of the provisions of this paragraph (e)(2) if, immediately prior to becoming a new member, either--

(A) It was the common parent of a consolidated group; or

(B) It was not required to join in the filing of a consolidated return.

(iv) Examples. The provisions of this paragraph (e)(2) may be illustrated by the following examples:

Example 1. Individual A owns 100 percent of the stock of X, a corporation that is not a member of a consolidated group and files separate tax returns on a calendar year basis. On January 31 of year 1, X becomes a member of the Y consolidated group,

which also files returns on a calendar year basis. X is a qualified new member as defined in paragraph (e)(2)(iii)(B) of this section because, immediately prior to becoming a new member of the Y consolidated group, X was not required to join in the filing of a consolidated return. As a result of its becoming a new member of Group Y, X's separate return for the short taxable year (January 1 of year 1 through January 31 of year 1) is due September 15 of year 2 (with extensions). See §1.1502-76(c). Group Y's consolidated return is also due September 15 of year 2 (with extensions). See §1.1502-76(c). Solely for the purpose of complying with the twelve-month requirement for making an application for a tentative carryback adjustment under section 6411(a), X's taxable year for the separate return year is treated as ending on December 31 of year 1. X's application for a tentative carryback adjustment is therefore due on or before December 31 of year 2.

Example 2. Assume the same facts as in Example 1 except that immediately prior to becoming a new member of Group Y, X was a member of the Z consolidated group. Because X was required to join in the filing of the consolidated return for Group Z, X is not a qualified new member as defined in paragraph (e)(2)(iii) of this section. X's items for the one-month period will be included in the consolidated return for Group Z. Group Z's application for a tentative carryback adjustment, if any, continues to be due within 12 months of the end of its taxable year, which is not affected by X's change in status as a new member of Group Y.

(v) Effective date. The provisions of this paragraph (e)(2) apply for applications by new members of consolidated groups for tentative carryback adjustments resulting from net operating losses, net capital losses, or unused business credits arising in separate return years of new members that begin on or after January 1, 2001.

§1.1502-78T [Removed]

Par. 3. Section 1.1502-78T is removed.

Robert E. Wenzel

Deputy Commissioner of Internal Revenue

Approved: June 13, 2001

Mark A. Weinberger

Assistant Secretary of the Treasury