

Notice of Proposed Rulemaking and Notice of Public Hearing

Consolidated Returns—Limitations on the Use of Certain Losses and Deductions

CO-24-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of prior proposed rule, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

SUMMARY: On January 29, 1991, proposed rules under section 1502 were filed with the Office of the **Federal Register** (CO-78-90; see 56 FR 4228; 1991-1 C.B. 757). A public hearing was held on April 8, 1991. The IRS and Treasury published Notice 91-27 (1991-2 C.B. 629) to advise of intended modifications to the proposed regulations. The January, 1991, proposed rules are withdrawn, and these proposed rules are issued in their place.

In TD 8677 on page 7 of this issue of the Bulletin, the IRS is issuing temporary regulations relating to the carryover and carryback of losses to consolidated and separate return years. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by Wednesday, September 25, 1996. Outlines of topics to be discussed at the public hearing scheduled for Thursday, October 17, 1996, at 10 a.m. must be received by Thursday, September 26, 1996.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (CO-24-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (CO-24-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, David B. Friedel, (202) 622-7550; concerning submissions and the hearing, Evangelista Lee, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under the control number 1545-1237. Section 1.1502-21(b)(3) requires a response from certain consolidated groups. The IRS requires the information to assure that an election to relinquish a carryback period is properly documented.

Comments concerning 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, T:FP. Washington, DC, 20224. Comments on the collection of information should be received by Monday, August 26, 1996.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information is in Proposed § 1.1502-21(b)(3). That section permits an election to relinquish a carryback period with respect to a consolidated net operating loss. The common parent of the group files the statement evidencing the election with the income tax return of the group. This information is required by the IRS to assure that an election to relinquish a carryback period is properly documented. The likely respondents and/or recordkeepers are certain consolidated groups of corporations. Responses to this collection of information are required to obtain a benefit (relating to the carryover of losses which would otherwise be carried back).

Books or records relating to this 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.

Estimated total annual reporting burden: 1,000 hours. The estimated annual burden per respondent varies from five to thirty minutes, depending on individual circumstances, with an estimated average of ten minutes. Estimated number of respondents: 6,000. Estimated annual frequency of responses: 1.

Background

Temporary regulations in TD 8677 of this issue of the Bulletin amend the Income Tax Regulations (26 CFR par 1) relating to deductions and losses of members. The temporary amendments concern the method for computing the limitations with respect to separate return limitation year (SRLY) losses. They also concern the rules relating to carryover and carryback of losses to consolidated and separate return years and to the built-in deductions rules. The final regulations that are proposed to be based on these proposed regulations would be added to part 1 of title 26 of the Code of Federal Regulations. Those final regulations would provide rules for computing the limitations with respect to separate return limitation year (SRLY) losses. They also concern the rules relating to carryover and carryback of losses to consolidated and separate return years and to the built-in deductions rules.

For the text of these new temporary regulations, see TD 8677. The preamble to the temporary regulations explains the regulations.

Proposed Effective Date

For dates of application and special transition rules, see the discussion of Effective Dates under SUPPLEMENTARY INFORMATION relating to the temporary regulations, published elsewhere in this issue of the Bulletin.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 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 will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its 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) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Monday, September 16, 1996, at 10 a.m. in the NYU Classroom, Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by Wednesday, September 25, 1996, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Thursday, September 26, 1996.

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 David B. Friedel, Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed

rulemaking that was published on January 29, 1991 (56 FR 4228) is withdrawn.

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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 is amended in part by adding citations in numerical order to read as follows:

Authority: 26 U.S.C. 7805

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Section 1.1502-15 also issued under 26 U.S.C. 1502.

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Section 1.1502-21 also issued under 26 U.S.C. 1502.

Section 1.1502-22 also issued under 26 U.S.C. 1502.

Section 1.1502-23 also issued under 26 U.S.C. 1502.

Section 1.1502-79 also issued under 26 U.S.C. 1502.

Section 1.1502-15A also issued under 26 U.S.C. 1502.

Section 1.1502-21A also issued under 26 U.S.C. 1502.

Section 1.1502-22A also issued under 26 U.S.C. 1502.

Section 1.1502-23A also issued under 26 U.S.C. 1502.

Section 1.1502-41A also issued under 26 U.S.C. 1502.

Section 1.1502-79A also issued under 26 U.S.C. 1502.

* * *

Par. 2. Section 1.1502-15 is added to read as follows:

§ 1.1502-15 SRLY limitation on built-in losses.

[The text of this proposed section is the same as the text of § 1.1502-15T published elsewhere in this issue of the Bulletin.]

Par. 3. Section 1.1502-21 is added to read as follows:

§ 1.1502-21 Net operating losses.

[The text of this proposed section is the same as the text of § 1.1502-21T published elsewhere in this issue of the Bulletin.]

Par. 4. Section 1.1502-22 is added to read as follows:

§ 1.1502-22 Consolidated capital gain and loss.

[The text of this proposed section is the same as the text of § 1.1502-22T published elsewhere in this issue of the Bulletin.]

Par. 5. Section 1.1502-23 is added to read as follows:

§ 1.1502-23 Consolidated net section 1231 gain or loss.

[The text of this proposed section is the same as the text of § 1.1502-23T published elsewhere in this issue of the Bulletin.]

Margaret Milner Richardson,
Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on June 26, 1996, 8:45 a.m., and published in the issue of the Federal Register for June 27, 1996, 61 F.R. 33393)