



manner and time for consolidated groups to make the retroactive single-entity election under § 1.1221-2(g)(5)(i) of the Income Tax Regulations for purposes of the definition of a hedging transaction. This revenue procedure provides alternative procedures for making the election depending on whether the group has any taxable years before the Service on January 8, 1996.

SECTION 2. BACKGROUND

Under § 1.1221-2(b), a transaction is a hedging transaction only if (among other things) the transaction is entered into primarily to reduce the taxpayer's risk. In general, under § 1.1221-2(d)(1), if the taxpayer is a member of a consolidated group, the risk of all of the members of the group is considered in determining whether a transaction reduces the taxpayer's risk (the single-entity approach). Under § 1.1221-2(d)(2), however, a consolidated group can elect out of single-entity treatment by making a separate-entity election.

Although § 1.1221-2 is generally retroactive, the single-entity approach of § 1.1221-2(d)(1) applies only to transactions entered into on or after March 8, 1996. A consolidated group, however, may elect to apply the single-entity approach of the regulations retroactively. If the group does so, the single-entity approach applies to all transactions entered into in the election year and in all subsequent consolidated return years until the effective date of any separate-entity election made by the group under § 1.1221-2(d)(2). Section 1.1221-2(g)(5)(i).

SECTION 3. SCOPE

This revenue procedure applies to a consolidated group making the retroactive single-entity election under § 1.1221-2(g)(5)(i).

SECTION 4. DEFINITIONS

.01 *Election year.* As provided by § 1.1221-2(g)(5)(i), the election year is the earliest taxable year subject to the single-entity election. The election year must begin prior to March 8, 1996. A group may use a particular taxable year as the election year only if that year and each subsequent taxable year are still open for assessment under section

6501 on July 1, 1996 (or such earlier date as the Commissioner may allow). (Section 9, below, provides an earlier date in some situations.) Section 1.1221-2(g)(5)(i).

.02 *Affected years.* Affected years are the election year and all subsequent consolidated return years beginning before March 8, 1996.

.03 *Before the Service.* A taxable year is before the Service from the time the consolidated group has been contacted in any manner by a representative of the Service for the purpose of scheduling any type of examination of its federal income tax return for that year until the receipt of a "no-change" letter for that year, the execution of a waiver of restrictions on assessment and collection of deficiency in tax and acceptance of overassessment, the expiration of the period for filing a petition with the Tax Court for that year, or the filing of a petition with the Tax Court.

SECTION 5. STATEMENT OF ELECTION

A consolidated group makes the retroactive single-entity election by filing a separate statement by the time, and in the manner, prescribed in Section 6 or 7, as applicable. The statement must be signed by the common parent and must say, "[INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF COMMON PARENT] hereby elects the retroactive application of section 1.1221-2(d)(1) (the single-entity approach) beginning with [IDENTIFY THE ELECTION YEAR]." The statement of election must also contain a list of the affected years for which the federal income tax returns are inconsistent with the single-entity election or must state that the federal income tax returns for all affected years are consistent with the single-entity election.

SECTION 6. GROUPS WITH ONE OR MORE YEARS BEFORE THE SERVICE ON JANUARY 8, 1996

If the consolidated group has one or more affected years before the Service on January 8, 1996, then, except as provided in Section 6.04, the group must satisfy the requirements in Section 6.01 and, as applicable, Sections 6.02 and 6.03.

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, §§ 1221, 1502; 1.1221-2(g)(5)(i), 1.1502-13.)

SECTION 1. PURPOSE

This revenue procedure describes the

.01 Filing the statement of election and delivering copies of the statement of election.

The group must file the statement of election with the Service personnel handling the earliest affected year before the Service. If other affected years are before the Service on the date the group files the statement of election, the group must also deliver copies of the statement to the Service personnel handling those years. In addition, if an affected year is before a federal court on the date the group files the statement of election, the group must deliver a copy of the statement to the lawyer representing the Government with respect to the year. The requirements in this Section 6.01 must be satisfied no later than March 8, 1996.

.02 Furnishing computations.

In the case of any affected year that is before the Service on the date the group files the statement of election, if the federal income tax return for the year is inconsistent with the single-entity election, then computations necessary to support any adjustment in tax must be delivered to the Service personnel handling the year.

If the year is before the Service on January 8, 1996, the computations must be delivered no later than March 8, 1996.

If the year is not before the Service on January 8, 1996, but becomes a year before the Service prior to the filing of the statement of election, then the computations must be delivered no later than July 1, 1996.

.03 Filing amended returns.

In the case of any affected year that is not before the Service on the date the group files the statement of election, if the federal income tax return for the year is inconsistent with the single-entity election, then an amended return containing a copy of the statement of election must be filed on or before July 1, 1996. If the year becomes a year before the Service between the filing of the statement of election and July 1, 1996, then, in lieu of filing an amended return, the group may satisfy the requirement in the preceding sentence by, not later than July 1, 1996, delivering to the Service

personnel handling the year a copy of the statement and the computations necessary to support any adjustment in tax.

.04 Years that cease to be before the Service on or before the date the group files the statement of election.

If an affected year is before the Service on January 8, 1996, but ceases to be before the Service by the earlier of March 8, 1996, or the date the group files the statement of election, then, for purposes of this revenue procedure, the year is treated as not being before the Service on that date, the group must follow the procedures in Section 7 in lieu of those in this Section 6; and, if other affected years are before the Service on that date, the group must follow the procedures in this Section 6.

SECTION 7. GROUPS WITH NO YEARS BEFORE THE SERVICE ON JANUARY 8, 1996

If the consolidated group is not governed by Section 6, then it must satisfy the requirements in Section 7.01 and, as applicable, Sections 7.02 and 7.03.

.01 Filing the statement of election and delivering copies of the statement of election.

(1) In general.

If the due date (including extensions) of the federal income tax return for the election year is later than July 1, 1996, the group must file the statement of election by attaching it to the timely filed federal income tax return for the election year. If the due date (including extensions) of the federal income tax return for the election year is on or before July 1, 1996, then, except as provided in Section 7.01(2) of this revenue procedure, the group must file the statement by attaching it to either the federal income tax return for the election year or an amended return for the election year, and the return or amended return must be filed on or before July 1, 1996.

(2) Groups with one or more affected years that have become years before the Service.

If one or more affected years have become years before the Service when the group files the statement of election, then, in lieu of attaching the statement to an original or amended return for the election year, the group must file the statement of election by delivering it to the Service personnel handling the earliest affected year that is then before the Service and by delivering copies of the statement to the Service personnel handling any other affected years that are then before the Service.

(3) Year before a federal court.

In addition to the requirements stated in Sections 7.01(1) and 7.01(2), if an affected year is before a federal court when the group files the statement of election, then, on the date the statement is filed, the group must deliver a copy of the statement to the lawyer representing the Government with respect to the year.

.02 Furnishing computations.

If the federal income tax return for an affected year is inconsistent with the single-entity election and if the affected year is before the Service when the group files the statement of election, computations necessary to support any adjustment in tax for the year must be delivered with the statement of election (or the copy of the statement) that is required under Section 7.01(2) of this revenue procedure.

.03 Filing other amended returns.

If the federal income tax return for an affected year is inconsistent with the single-entity election and if the affected year is not before the Service when the group files the statement of election, an amended return for the year containing a copy of the statement must be filed on or before July 1, 1996. If, on or before July 1, 1996, the year becomes a year before the Service, then, in lieu of filing an amended return, the group may satisfy the requirement in the preceding sentence by, not later than July 1, 1996, delivering to the Service

personnel handling that year a copy of the statement of election and computations necessary to support any adjustment in tax.

SECTION 8. HOW TO FILE OR DELIVER MATERIAL TO SERVICE PERSONNEL HANDLING A YEAR BEFORE THE SERVICE

If, under Section 6 or 7, a group is required to file or deliver material to the Service personnel handling a particular affected year that, on the date of filing or delivery, is before the Service, the group must file or deliver the material as follows —

.01 Year under examination. If the affected year is under examination and not under consideration by an Appeals office of the Service, the group must deliver the material to the District Director with jurisdiction over that year and, at the same time, must deliver a copy of the material to the principal

examining agent or team coordinator with jurisdiction over that year.

.02 Year under Appeals consideration. If the affected year is under consideration by an Appeals office of the Service, the group must deliver the material to the Chief of the Appeals office with jurisdiction over the year and, at the same time, must deliver a copy of the material to the principal Appeals officer or team chief with jurisdiction over that year.

SECTION 9. MAKING THE ELECTION FOR AFFECTED YEARS THAT CLOSE BEFORE JULY 1, 1996

The Commissioner hereby allows a group to select a particular year as the election year even if the resulting affected years will include one or more years that are not still open for assessment under section 6501 on July 1, 1996. This permission is granted

only if, in addition to meeting the other requirements and filing deadlines of this revenue procedure, the group files the statement of election before the statute of limitations expires for any affected year and, for each affected year that is not still open for assessment on July 1, 1996, the group meets all requirements with respect to that year before the statute of limitations expires for that year.

SECTION 10. EFFECTIVE DATE

This revenue procedure is effective January 8, 1996.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jo Lynn Ricks of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure contact Ms. Ricks on (202) 622-3920 (not a toll-free call).