

Notice of Proposed Rulemaking and Notice of Public Hearing

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

REG-104062-97

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In T.D. 8751, page 23 of this Bulletin, the IRS is issuing temporary regulations that will govern the use of certain tax credits and losses of a consolidated group and its members. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for May 7, 1998, must be received by April 13, 1998.

ADDRESSES: Send submissions to: CC:DOM:CORP:R [REG-104062-97], room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R [REG-104062-97], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the Home Page or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing has been scheduled for May 7, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, in general, Roy Hirschhorn (202) 622-7770; concerning amendments re-

lated to foreign tax credits and foreign losses, Seth Goldstein (202) 622-3850; concerning submissions and the hearing, Mike Slaughter (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in T.D. 8751 amend the Income Tax Regulations (26 CFR part 1) relating to section 1502. The temporary regulations provide rules that will govern the use of certain tax credits and losses of a consolidated group and its members. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

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 principally affect persons filing consolidated federal income tax returns that have carryover or carryback of credits from separate return limitation years. Available data indicates that many consolidated return filers are large companies (not small businesses). In addition, the data indicates that an insubstantial number of consolidated return filers that are smaller companies have credit carryovers or carrybacks, and thus even fewer of these filers have credit carryovers or carrybacks that are subject to the separate return limitation year rules. 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 made available for public inspection and copying.

A public hearing has been scheduled for May 7, 1998, at 10 a.m., in room 2615. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

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

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics (signed original and eight (8) copies) to be discussed by April 13, 1998.

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 Roy A. Hirschhorn of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury 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 26 CFR part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.1502-3 also issued under 26 U.S.C. 1502.

Section 1.1502-4 also issued under 26 U.S.C. 1502.

Section 1.1502-9 also issued under 26 U.S.C. 1502. * * *

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

Section 1.1502-55 also issued under 26 U.S.C. 1502. * * *

Par. 2. In §1.1502-3, paragraph (c) is revised to read as follows:

§1.1502-3 Consolidated investment credit.

* * * * *

(c) [The text of the proposed paragraph (c) of this section is the same as the text of §1.1502-3T(c) published in T.D. 8751.]

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Par. 3. In §1.1502-4, paragraphs (f)(3) and (g)(3) are added to read as follows:

§1.1502-4 Consolidated foreign tax credit.

* * * * *

(f) * * *

(3) [The text of the proposed paragraph (f)(3) of this section is the same as the text of §1.1502-4T(f)(3) published in T.D. 8751.]

(g) * * *

(3) [The text of the proposed paragraph (g)(3) of this section is the same as the text of §1.1502-4T(g)(3) published in T.D. 8751.]

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Par. 4. In §1.1502-9, paragraph (b)(1)(v) is added to read as follows:

§1.1502-9 Application of overall foreign losses recapture rules to corporations filing consolidated returns.

* * * * *

(b) * * *

(1) * * *

(v) [The text of the proposed paragraph (b)(1)(v) of this section is the same as the text of §1.1502-9T(b)(1)(v) published in T.D. 8751.]

Par. 5. Section 1.1502-21, as proposed to be added at 61 F.R. 33394, June 27, 1996, is amended in paragraph (c)(1)(iii) by adding *Example 5.* to read as follows:

§1.1502-21 Net operating losses.

* * * * *

(c) * * *

(1) * * *

(iii) [The text of the proposed paragraph (c)(1)(iii) *Example 5* of this section is the same as the text of §1.1502-21T(c)(1)(iii) *Example 5* published in T.D. 8751.]

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Par. 6. Section 1.1502-23, as proposed to be added at 61 F.R. 33395, June 27, 1996, is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and adding a new paragraph (b) to read as follows:

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

* * * * *

(b) [The text of the proposed paragraph (b) of this section is the same as the text of §1.1502-23T(b) published in T.D. 8751.]

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Par. 7. Section 1.1502-55, as proposed to be added at 57 F.R. 62257, December 30, 1992, is amended by adding paragraph (h)(4)(iii) to read as follows:

§1.1502-55 Computation of alternative minimum tax of consolidated groups.

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(h) * * *

(4) * * *

(iii) [The text of the proposed paragraph (h)(4)(iii) of this section is the same as the text of §1.1502-55T(h)(4)(iii) published in T.D. 8751.]

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Michael P. Dolan,
Deputy Commissioner of
Internal Revenue.

(Filed by the Office of the Federal Register on January 9, 1998, 8:45 a.m., and published in the issue of the Federal Register for January 12, 1998, 63 F.R. 1803)