



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Deborah A. Butler
Assistant Chief Counsel (Field Service)
CC:DOM:FS

SUBJECT:

This Field Service Advice responds to your memorandum dated March 12, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND:

Target Corporation	=
Acquiring Corporation	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Year A	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=

ISSUE:

Whether a Form 1120X, filed on Date 8, claiming a refund for the year ended on Date 9, is timely where such claim for refund is based on a specified liability net operating loss carryback from the short Year A.

CONCLUSION:

Pursuant to I.R.C. § 6511(d)(2)(A), which provides that claims for refund based on net operating loss carrybacks must be filed within the 3 year period ending on the date prescribed by law for filing the return (including extensions thereof) for the taxable year of the net operating loss, the refund claim was timely filed.

FACTS:

The Target Corporation was acquired by the Acquiring Corporation on Date 1. The Target Corporation was on a fiscal year ending Date 2. The original due date of what would have been the Target Corporation's separate return for the year ended on Date 3 was Date 4. The Target Corporation filed a separate return for the short Year A on Date 5. To the best of our knowledge, it did not file an application for extension of time to file its separate return.

The Parent Corporation filed a consolidated return for its fiscal year ended on Date 3 on Date 6. The due date for the consolidated return, including extensions, was Date 7. The consolidated return included the income and expenses of Target for the period beginning on Date 1 and ending on Date 3.

On Date 8, the Target Corporation filed a Form 1120X for the year ended on Date 9, claiming a specified liability net operating loss carryback from the short Year A.

LAW AND ANALYSIS

If an acquiring group includes a subsidiary acquired during a taxable year in its consolidated return for that year, then the subsidiary must file a short period return for the period of the taxable year during which its income was not included in the consolidated return. Treas. Reg. § 1.1502-76(b).

I.R.C. § 6511(a) provides, in relevant part, that a claim for refund shall be filed within 3 years from the time the return was filed. I.R.C. § 6511(d)(2)(A) provides that in the case of net operating loss carrybacks, instead of the 3-year period

prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the net operating loss.

I.R.C. § 6513 provides that for purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day.

I.R.C. § 6072 prescribes the time for filing returns. In general, income tax returns of corporations shall be filed on or before the 15th day of the third month following the close of the fiscal year. The regulations under I.R.C. § 6072 refer to the consolidated return regulations, Treas. Regs. § 1.1502-75 and 1.1502-76, for provisions relating to time for filing consolidated returns and separate returns for short periods not included in consolidated returns. Treas. Reg. § 1.6072-2(f).

Treas. Reg. § 1.1502-76(c)(1) provides that if the group has filed a consolidated return on or before the due date for the filing of a subsidiary's separate return (including extensions of time and determined without regard to any change of its taxable year required by reason of acquisition), then the separate return for any portion of the subsidiary's taxable year for which its income is not included in the consolidated return of the group must be filed no later than the due date of such consolidated return (including extensions).

Treas. Reg. § 1.1502-76(c)(2) provides that if the group has not filed a consolidated return on or before the due date for the filing of a subsidiary corporation's separate return (including extensions of time and determined without regard to any change of its taxable year required by reason of the acquisition) then on or before such due date such subsidiary shall file a separate return either for the portion of its taxable year for which its income would not be included in a consolidated return, or for its complete taxable year.

The due date for filing the Target Corporation's separate short Year A return was Date 4, the original due date of the return for the Target Corporation's fiscal year ended on Date 3. Treas. Reg. § 1.1502-76(c)(2) applies here to prescribe the due date of the Target Corporation's short year return. As of Date 4, the Acquiring Corporation had not filed a consolidated return including the income of the Target Corporation. Although the Acquiring Corporation had filed an application for extension of time to file, that event does not constitute the filing of a consolidated return, so as to trigger the provisions of Treas. Reg. § 1.1502-76(c)(1). Neither does it serve to extend the due date for the Target Corporation's return. Under the provisions of Treas. Reg. § 1.1502-76(c)(2), the Target Corporation was required to

file a separate return either for its short year or for its full year, on or before the due date for its separate return for the complete fiscal year without regard to the acquisition.

Pursuant to I.R.C. § 6513, which establishes that returns filed before the last day prescribed for filing are deemed filed on the due date, the Target Corporation's short Year A return, filed on Date 5, is deemed to have been filed as of the original due date of the Target Corporation's separate fiscal year return for the year ended on Date 3. Thus, the short Year A return is deemed to have been filed on Date 4.

The three-year period for filing a claim for refund with respect to a year to which net operating losses were carried under I.R.C. § 6511(d)(2)(A) commenced on Date 4. Thus, any claim for refund with respect to a year to which net operating losses were to be carried from the Year A short year would be timely if filed on or before Date 4.

If you have any questions, please call.

By: NANCY B. ROMANO
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