

Part III - Administrative, Procedural, and Miscellaneous

Effective Date Relief for Unified Rule for Loss on Subsidiary Stock

Notice 2008-9

On January 23, 2007, the IRS and Treasury Department issued a notice of proposed rulemaking (REG-157711-02, 2007-8 IRB 537 [72 FR 2964]) under §1.1502-36. The proposed regulations set forth rules applicable to transfers of loss shares of subsidiary stock by members of a consolidated group. The IRS and Treasury Department have received, and are considering, comments on the proposed regulations.

While most comments will be addressed in the final regulations, there is one concern that the IRS and Treasury Department believe appropriate to address immediately. The concern relates to the proposed effective date, which would make the regulations applicable to all transfers on or after the date such regulations are published as final regulations in the Federal Register.

Practitioners have observed that the proposed effective date presents a significant burden on taxpayers attempting to negotiate transactions prior to the publication of the final regulations. The IRS and Treasury Department recognize that it is inappropriate to impose this level of uncertainty on taxpayers negotiating these transactions.

Accordingly, the IRS and Treasury Department have concluded that the regulations will generally apply to transfers on or after the date they are published as final regulations in the Federal Register, but will not apply to a transfer to an unrelated person if the transfer is pursuant to an agreement that is binding before the date the regulations are so published and at all times thereafter. The IRS and Treasury Department expect that the rule will incorporate the provisions of section 267(b) in determining whether persons are related for this purpose.

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