

Section 1212.—Capital loss carrybacks and carryovers
(Also Section 4982.)

Rev. Rul. 2012-29

ISSUE

How does the effective date provision of section 101(c) of the Regulated Investment Company Modernization Act of 2010, Pub. L. 111-325 (2010) (“Act”), pertaining to the Act’s amendments to section 1212(a) of the Internal Revenue Code, apply for purposes of the excise tax imposed by section 4982?

FACTS

Corporation R is taxed as a regulated investment company (“RIC”) under part I of subchapter M of the Code and uses a taxable year ending on June 30 for income tax purposes. R recognized long-term capital losses on November 1, 2010, January 3, 2011, and July 1, 2011, but recognized no other capital gains or losses from July 1, 2010, through June 30, 2012.

LAW AND ANALYSIS

Section 4982(a) of the Code imposes “on every regulated investment company for each calendar year” an excise tax equal to 4 percent of the excess, if any, of (1) the

required distribution for the calendar year, over (2) the distributed amount for that same calendar year. Section 4982(b)(1) defines “required distribution” to mean, with respect to any calendar year, the sum of (A) 98 percent of the RIC’s ordinary income for that calendar year, plus (B) 98.2 percent of the RIC’s “capital gain net income for the 1-year period ending on October 31 of such calendar year.” Section 4982(e)(2)(A) defines “capital gain net income” as having the same meaning given to that term by section 1222(9), “determined by treating the one-year period ending on October 31 of any calendar year as the company’s taxable year.” Section 1222(9) provides that “[t]he term ‘capital gain net income’ means the excess of the gains from sales or exchanges of capital assets over the losses from such sales or exchanges.”

Section 101 of the Act amended section 1212(a) to allow RICs to carry forward net capital losses indefinitely and to preserve the treatment of components of those losses as long-term or short-term. Section 101(c) of the Act provides that “[t]he amendments made by [section 101 of the Act] shall apply to net capital losses for taxable years beginning after the date of the enactment of [the] Act.” The date of enactment was December 22, 2010. Before the Act, RICs could carry net capital losses forward only for eight years, with any losses carried forward being treated as short-term capital losses in the year of use. This previous rule continues to apply to net capital losses recognized by RICs in taxable years beginning on or before December 22, 2010. Thus, for Federal income tax purposes, R’s July 1, 2011, net capital loss carries forward indefinitely, but R’s net capital losses recognized before that date are subject to prior

law and can only be carried forward for eight years (treated as short-term capital losses).

Section 101(c) of the Act does not specify how its effective date rule applies for purposes of the excise tax under section 4982. The section 4982 excise tax is imposed on the basis of whether sufficient dividends are paid during a calendar year. Thus, for any RIC, the taxable year for purposes of the excise tax is the calendar year. The calendar year beginning on January 1, 2011, is the first excise tax period that begins after the December 22, 2010, date of enactment.

The sufficiency of dividends paid during a calendar year for excise tax purposes is measured by taking into account both a RIC's ordinary income for that calendar year and (absent an election under section 4982(e)(4) for a RIC eligible to make such an election) the RIC's capital gain net income, determined with regard to any carried-forward capital losses, for the November 1–October 31 period that ends within that calendar year. Thus, the excise tax distribution requirements for calendar year 2011 (the first excise tax period beginning after the date of enactment of the Act) are determined based in part on capital gains and losses that are recognized for the period that runs from November 1, 2010, to October 31, 2011. Accordingly, to the extent that the capital gains and losses recognized for the November 1, 2010 – October 31, 2011, period result in a net capital loss, the net capital loss is carried forward indefinitely for purposes of section 4982. The carryforward is effected in a manner consistent with section 1212(a), as amended by Section 101 of the Act.

As applied to R, all three of R's capital losses (including the November 1, 2010, loss) are taken into account for the first excise tax period that begins after the date of enactment (calendar year 2011). Accordingly, the net capital loss composed of those three capital losses is carried forward indefinitely for excise tax purposes.

HOLDING

For purposes of the excise tax imposed by section 4982, the Act's amendments to the loss carryover rules in section 1212(a) apply beginning with any net capital loss recognized in the period that determines a RIC's required distribution for calendar year 2011. Accordingly, the amendments apply to net capital losses recognized during the one year period that (absent an election under section 4982(e)(4)) begins on November 1, 2010.

DRAFTING INFORMATION

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