

# Internal Revenue bulletin

Bulletin No. 2000-24  
June 12, 2000

## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

#### **Rev. Rul. 2000-29, page 1249.**

**LIFO; price indexes; department stores.** The April 2000 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, April 30, 2000.

#### **T.D. 8884, page 1250.**

Final regulations under section 1502 of the Code relate to certain credits of corporations that become members of a consolidated group.

### ADMINISTRATIVE

#### **Rev. Proc. 2000-26, page 1257.**

**Interest netting for interest accruing on or after October 1, 1998.** This procedure provides guidance regarding the application of section 6621(d) of the Code to interest accruing on or after October 1, 1998. Section 6621(d) provides for a net interest rate of zero to the extent of overlapping tax underpayments and tax overpayments, and generally applies to interest for periods beginning after July 22, 1998 (interest accruing on or after October 1, 1998).

Finding Lists begin on page ii.



Department of the Treasury  
Internal Revenue Service

# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities

and by applying the tax law with integrity and fairness to all.

## Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

### **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

### **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

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# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 472.—Last-in, First-out Inventories

26 CFR 1.472-1: Last-in, first-out inventories.

**LIFO; price indexes; department stores.** The April 2000 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, April 30, 2000.

## Rev. Rul. 2000-29

The following Department Store Inventory Price Indexes for April 2000 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc. 86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years

ended on, or with reference to, April 30, 2000.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups - soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

### BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS (January 1941 = 100, unless otherwise noted)

Groups	Apr. 1999	Apr. 2000	Percent Change from Apr. 1999 to Apr. 2000 <sup>1</sup>
1. Piece Goods -----	553.1	516.8	-6.6
2. Domestics and Draperies -----	633.8	631.1	-0.4
3. Women's and Children's Shoes -----	669.4	646.0	-3.5
4. Men's Shoes -----	894.6	919.2	2.7
5. Infants' Wear -----	617.2	642.5	4.1
6. Women's Underwear -----	576.0	576.2	0.0
7. Women's Hosiery -----	321.9	334.2	3.8
8. Women's and Girls' Accessories -----	568.9	553.3	-2.7
9. Women's Outerwear and Girls' Wear -----	415.5	413.3	-0.5
10. Men's Clothing -----	629.3	615.3	-2.2
11. Men's Furnishings -----	629.2	631.7	0.4
12. Boys' Clothing and Furnishings -----	495.7	497.5	0.4
13. Jewelry -----	984.0	971.9	-1.2
14. Notions -----	778.7	757.6	-2.7
15. Toilet Articles and Drugs -----	956.1	971.5	1.6
16. Furniture and Bedding -----	699.4	680.8	-2.7
17. Floor Coverings -----	602.8	607.4	0.8
18. Housewares -----	802.1	782.1	-2.5
19. Major Appliances -----	232.8	234.8	0.9
20. Radio and Television -----	67.5	60.0	-11.1
21. Recreation and Education <sup>2</sup> -----	99.4	94.9	-4.5
22. Home Improvements <sup>2</sup> -----	128.1	128.0	-0.1
23. Auto Accessories <sup>2</sup> -----	106.8	106.5	-0.3
Groups 1 - 15: Soft Goods -----	612.3	610.5	-0.3
Groups 16 - 20: Durable Goods -----	454.4	440.3	-3.1
Groups 21 - 23: Misc. Goods <sup>2</sup> -----	104.7	101.5	-3.1
Store Total <sup>3</sup> -----	553.5	547.0	-1.2

<sup>1</sup> Absence of a minus sign before the percentage change in this column signifies a price increase.

<sup>2</sup> Indexes on a January 1986=100 base.

<sup>3</sup> The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

## DRAFTING INFORMATION

The principal author of this revenue ruling is Alan J. Tomsic of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Tomsic on (202) 622-4970 (not a toll-free call).

## Section 1502.—Regulations

26 CFR 1.1502-3: Consolidated tax credits.

### T.D. 8884

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Consolidated Returns— Limitations on the Use of Certain Credits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding certain credits of corporations that become members of a consolidated group. The regulations provide rules for computing the limitation with respect to certain credits earned in a separate return limitation year (SRLY) and the carryover and carryback of those credits to consolidated and separate return years. The regulations also eliminate the application of the SRLY rules in certain circumstances in which the rules of section 383 also apply.

DATES: *Effective Date:* These regulations are effective May 25, 2000.

*Applicability Dates:* For dates of applicability, see the “Dates of Applicability” portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Marie C. Milnes-Vasquez, (202) 622-7770 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### Background and Explanation of Provisions

#### A. In General

On January 12, 1998, the IRS and Treasury published in the **Federal Register** a

Treasury decision (T.D. 8751, 1998-1 C.B. 655 [63 F.R. 1740]) containing temporary regulations concerning the use of certain tax attributes by a consolidated group. In part, these regulations provided rules governing the absorption of general business credits and minimum tax credits carried from separate return limitation years (SRLYs), and eliminated SRLY restrictions with respect to recapture of overall foreign losses (OFLs) and on the use of foreign tax credits of corporations joining a group. Further, this Treasury decision contained a final regulation eliminating the limitation on credit carryovers following a consolidated return change of ownership (CRCO).

A notice of proposed rulemaking cross-referencing the temporary regulations was published in the **Federal Register** on the same day (63 F.R. 1803). On March 16, 1998, the IRS and Treasury published temporary amendments to those consolidated return regulations (T.D. 8766, 1998-1 C.B. 888 [63 F.R. 12641]) and the corresponding notice of proposed rulemaking (63 F.R. 12717) modifying the general date of applicability contained in the January 12, 1998, temporary regulations. Per the amendment, the January 12, 1998, temporary regulations, as amended, are generally applicable for consolidated return years for which the due date of the return is after March 13, 1998. The amendments provided further guidance with respect to consolidated return years beginning on or after January 1, 1997, for which the income tax return is due on or before March 13, 1998.

On August 11, 1999, the IRS and Treasury issued final regulations relating to the recapture of OFLs (including elimination of any SRLY limitation on such recapture). (T.D. 8833, 1999-36 I.R.B. 338 [64 F.R. 43613]).

This Treasury decision adopts without substantive change the portions of the temporary regulations that were issued in 1998, relating to general business credits and minimum tax credits, with the addition of the “overlap rule”, discussed in *Extension of 1999 Principles* of this preamble. This Treasury decision also makes final the rules eliminating SRLY restrictions on the use of foreign tax credits, and the rules repealing the consolidated return change of ownership provisions pertaining to those credits.

#### B. Extension of 1999 Principles

On July 2, 1999, the IRS and Treasury published in the **Federal Register** a Treasury decision (T.D. 8823, 1999-29 I.R.B. 34 [64 F.R. 36092]) containing final regulations providing rules governing the absorption of certain tax attribute carryovers and carrybacks from separate return limitation years (SRLYs). These tax attributes included net operating losses and net capital losses. The rules also governed the absorption of recognized built-in losses. These regulations, in part, eliminated the application of the SRLY rules in certain circumstances in which the rules of section 382 also apply (overlap rule).

The IRS and Treasury believe that it is appropriate to apply a single set of SRLY principles to all attributes that are subject to SRLY limitations. Unnecessary complexity would result from applying different principles to different attributes. Accordingly, this document extends the principles of the overlap rule of the 1999 final regulations to the general business credit and the minimum tax credit. These final regulations adopt the mechanism of subgrouping and the overlap rule set forth in §1.1502-21 (including the requirements of coextensive subgroups and contemporaneity).

#### C. Dates of Applicability

The final regulations generally are applicable to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. However, there are some special effective dates. The rules contained in these final regulations (except the overlap rule) may be applied optionally to years beginning on or after January 1, 1997. Application of the overlap principles of §1.1502-21(g) is generally effective for consolidated return years for which the return (without extensions) is due after May 25, 2000.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 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, the notice of proposed rulemaking accompanying these regulations was sent to the Small Business Administration for comment on their impact on small businesses.

### Drafting Information

The principal author of these regulations is Marie C. Milnes-Vasquez of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury participated in their development.

\* \* \* \* \*

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

Paragraph . The authority citation for part 1 is amended by removing the entries for sections 1.1502-3T and 1.1502-55T and 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 1.1502-55 also issued under 26 U.S.C. 1502. \* \* \*

Par. 2. Section 1.1502-3 is amended as follows:

1. The section heading is revised.
2. Paragraph (b)(3) is added.
3. Paragraphs (c), (d), and (e)(3) are revised.

The addition and revisions read as follows:

#### *§1.1502-3 Consolidated tax credits.*

\* \* \* \* \*

(b) \* \* \*

(3) *Example.* The provisions of paragraphs (a) and (b) of this section may be illustrated by the following example:

*Example.* (i) Corporation P is incorporated on January 1, 1966. On that same day P incorporates corporation S, a wholly owned subsidiary. P and S file consolidated returns for calendar years 1966 and 1967. P's and S's credit earned, the consolidated credit earned, and the consolidated limitation based on amount of tax for 1966 and 1967 are as follows:

	Credit earned	Consolidated credit earned	Consolidated limitation based on amount of tax
1966:			
P	\$ 60,000		
S	\$ 30,000	\$ 90,000	\$ 100,000
1967:			
P	\$ 40,000		
S	\$ 25,000	\$ 65,000	\$ 50,000

(ii) P's and S's credit earned for 1966 are aggregated, and the group's consolidated credit earned, \$90,000, is allowable in full to the group as a credit under section 38 for 1966 since such amount is less than the consolidated limitation based on amount of tax for 1966, \$100,000.

(iii) Since the consolidated limitation based on amount of tax for 1967 is \$50,000, only \$50,000 of the \$65,000 consolidated credit earned for such year

is allowable to the group under section 38 as a credit for 1967. The consolidated unused credit for 1967 of \$15,000 (\$65,000 less \$50,000) is a consolidated investment credit carryback and carryover to the years prescribed in section 46(b). In this case the consolidated unused credit is a consolidated investment credit carryback to 1966 (since P and S were not in existence in 1964 and 1965) and a consolidated investment credit carryover to 1968 and sub-

sequent years. The portion of the consolidated unused credit for 1967 which is allowable as a credit for 1966 is \$10,000. This amount shall be added to the amount allowable as a credit to the group for 1966. The balance of the consolidated unused credit for 1967 to be carried to 1968 is \$5,000. These amounts are computed as follows:

Consolidated carryback to 1966		\$ 15,000
1966 consolidated limitation based on tax		\$ 100,000
Less: Consolidated credit earned for 1966	\$ 90,000	
Consolidated unused credits attributable to years preceding 1967	----- 0	\$ 90,000
Limit on amount of 1967 consolidated unused credit which may be added as a credit for 1966		<u>\$ 10,000</u>
Balance of 1967 consolidated unused credit to be carried to 1968		\$ 5,000

(c) *Limitation on investment credit carryovers and carrybacks from separate return limitation years applicable for consolidated return years for which the due date of the return is on or before March 13, 1998*—(1) *General rule.* In the case of an unused credit of a member of the group arising in a separate return limitation year (as defined in §1.1502-1(f)) of such member (and in a separate return limitation year of any predecessor of such member), the amount which may be included under paragraph (b) of this section (computed without regard to the limitation contained in paragraph (e) of this section) shall not exceed the amount determined under paragraph (c)(2) of this section.

(2) *Computation of limitation.* The amount referred to in paragraph (c)(1) of this section with respect to a member of the group is the excess, if any, of—

(i) The limitation based on amount of tax of the group, minus such limitation recomputed by excluding the items of income, deduction, and foreign tax credit of such member; over

(ii) The sum of the investment credit earned by such member for such consolidated return year, and the unused credits attributable to such member which may be carried to such consolidated return year arising in unused credit years ending

prior to the particular separate return limitation year.

(3) *Special effective date.* This paragraph (c) applies to consolidated return years for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See paragraph (d) of this section for the rule that limits the group's use of a section 38 credit carryover or carryback from a SRLY for a consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998. See also paragraph (d)(4) of this section for an optional effective date rule (generally making the rules of this paragraph (c) inapplicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(4) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

*Example 1.* (i) Assume the same facts as in the example contained in paragraph (b)(3) of this section, except that all the stock of corporation T, also a calendar year taxpayer, is acquired by P on January 1, 1968, and that P, S, and T file a consolidated return for 1968. In 1966, T had an unused credit of \$10,000 which has not been absorbed and is available as an investment credit carryover to 1968. Such carryover is from a separate return limitation year. P's and S's credit earned for 1968 is \$10,000 each, and T's credit earned is \$8,000; the consolidated

credit earned is therefore \$28,000. The group's consolidated limitation based on amount of tax for 1968 is \$50,000. Such limitation recomputed by excluding the items of income, deduction, and foreign tax credit of T is \$30,000. Thus, the amount determined under paragraph (c)(2)(i) of this section is \$20,000 (\$50,000 minus \$30,000). Accordingly, the limitation on the carryover of T's unused credit is \$12,000, the excess of \$20,000 over \$8,000 (the sum of T's credit earned for the taxable year and any carryovers from prior unused credit years (none in this case)). Therefore T's \$10,000 unused credit from 1966 may be carried over to the consolidated return year without limitation.

(ii) The group's consolidated credit earned for 1968, \$28,000, is allowable in full as a credit under section 38 since such amount is less than the consolidated limitation based on amount of tax, \$50,000.

(iii) The group's consolidated investment credit carryover to 1968 is \$15,000, consisting of the consolidated unused credits of the group (\$5,000) plus T's separate return year unused credit (\$10,000). The entire \$15,000 consolidated carryover shall be added to the amount allowable to the group as a credit under section 38 for 1968, since such amount is less than \$22,000 (the excess of the consolidated limitation based on tax, \$50,000, over the sum of the consolidated credit earned for 1968, \$28,000, and unused credits arising in prior unused credit years, zero).

*Example 2.* Assume the same facts as in *Example 1*, except that the amount determined under paragraph (c)(2)(i) of this section is \$12,000. Therefore, the limitation on the carryover of T's unused credit is \$4,000. Accordingly, the consolidated investment credit carryover is only \$9,000 since the amount of T's separate return year unused credit which may be added to the group's \$ 5,000 consolidated unused credit is \$4,000. These amounts are computed as follows:

T's carryover to 1968	\$ 10,000
Consolidated limitation based on amount of tax minus recomputed limitation	\$12,000
Less: T's credit earned for 1968	\$ 8,000
Unused credits attributable to T arising in unused credit years preceding 1966	0 \$ 8,000
Limit on amount of 1966 unused credit of T which may be added to consolidated investment credit carryover	\$ 4,000
Balance of 1966 unused credit of T to be carried to 1969 (subject to the limitation contained in paragraph (c) of this section)	\$ 6,000

(d) *Limitation on tax credit carryovers and carrybacks from separate return limitation years applicable for consolidated return years for which the due date of the return is after March 13, 1998*—(1) *General rule.* The aggregate of a member's unused section 38 credits arising in SRLYs that are included in the consolidated section 38 credits for all consolidated return years of the group may not exceed—

(i) The aggregate for all consolidated return years of the member's contributions to the consolidated section 38(c) limitation for each consolidated return year; reduced by

(ii) The aggregate of the member's section 38 credits arising and absorbed in all consolidated return years (whether or not absorbed by the member).

(2) *Computational rules*—(i) *Member's contribution to the consolidated section 38(c) limitation.* If the consolidated section 38(c) limitation for a consolidated return year is determined by reference to the consolidated tentative minimum tax (see section 38(c)(1)(A)), then a member's contribution to the consolidated section 38(c) limitation for such year equals the member's share of the consolidated net income tax minus the member's share

of the consolidated tentative minimum tax. If the consolidated section 38(c) limitation for a consolidated return year is determined by reference to the consolidated net regular tax liability (see section 38(c)(1)(B)), then a member's contribution to the consolidated section 38(c) limitation for such year equals the member's share of the consolidated net income tax minus 25 percent of the quantity which is equal to so much of the member's share of the consolidated net regular tax liability less its portion of the \$25,000 amount specified in section 38(c)(1)(B). The group computes the member's shares by

applying to the respective consolidated amounts the principles of section 1552 and the percentage method under §1.1502-33(d)(3), assuming a 100% allocation of any decreased tax liability. The group must make proper adjustments so that taxes and credits not taken into account in computing the limitation under section 38(c) are not taken into account in computing the member's share of the consolidated net income tax, etc. (See, for example, the taxes described in section 26(b) that are disregarded in computing regular tax liability.) Also, the group may apportion all or a part of the \$25,000 amount (or lesser amount if reduced by section 38(c)(3)) for any year to one or more members.

(ii) *Years included in computation.* For purposes of computing the limitation under this paragraph (d), the consolidated return years of the group include only those years, including the year to which a credit is carried, that the member has been continuously included in the group's consolidated return, but exclude—

(A) For carryovers, any years ending after the year to which the credit is carried; and

(B) For carrybacks, any years ending after the year in which the credit arose.

(iii) *Subgroups and successors.* The SRLY subgroup principles under §1.1502-21(c)(2) apply for purposes of this paragraph (d). The predecessor and successor principles under §1.1502-21(f) also apply for purposes of this paragraph (d).

(iv) *Overlap with section 383.* The principles under §1.1502-21(g) apply for purposes of this paragraph (d). For example, an overlap of paragraph (d) of this section and the application of section 383 with respect to a credit carryover occurs if a corporation becomes a member of a consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 383 credit limitation with respect to that carryover (the section 383 event), with the result that the limitation of this paragraph (d) does not apply. See §§1.1502-21(g)(2)(ii)(A) and 1.383-1; see also §1.1502-21(g)(4) (subgroup rules).

(3) *Effective date—(i) In general.* This paragraph (d) generally applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998.

(A) *Contribution years.* Except as provided in paragraph (d)(4)(ii) of this section, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in determining a member's (or subgroup's) contributions to the consolidated section 38(c) limitation under this paragraph (d).

(B) *Special subgroup rule.* In the event that the principles of §1.1502-21(g)(1) do not apply to a particular credit carryover in the current group, then solely for purposes of applying paragraph (d) of this section to determine the limitation with respect to that carryover and with respect to which the SRLY register (the aggregate of the member's or subgroup's contribution to consolidated section 38(c) limitation reduced by the aggregate of the member's or subgroup's section 38 credits arising and absorbed in all consolidated return years) began in a taxable year for which the due date of the return is on or before May 25, 2000, the principles of §1.1502-21(c)(2) shall be applied without regard to the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or §1.1502-15(g) with respect to another group (the former group)."

(ii) *Overlap rule.* Paragraph (d)(2)(iv) of this section (relating to overlap with section 383) applies to taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000. For purposes of paragraph (d)(2)(iv) of this section, only an ownership change to which section 383, as amended by the Tax Reform Act of 1986 (100 Stat. 2085), applies and which results in a section 383 credit limitation shall constitute a section 383 event.

(4) *Optional effective date of January 1, 1997.* (i) For consolidated taxable years beginning on or after January 1, 1997, for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in lieu of paragraphs (c) and (e)(3) of this section (relating to the general business credit), §1.1502-4(f)(3) and (g)(3) (relating to the foreign tax credit), the next to last sentence of §1.1502-9A(a)(2), §1.1502-9A(b)(1)(v) (relating to overall foreign losses), and §1.1502-55(h)(4)(iii) (relating to the alternative minimum tax credit), a consoli-

dated group may apply the corresponding provisions as they appear in 1998-1 C.B. 655 through 661 (see §601.601(d)(2) of this chapter) (treating references in such corresponding provisions to §§1.1502-9(b)(1)(ii), (iii), and (iv) as references to §§1.1502-9A(b)(1)(ii), (iii), and (iv)). Also, in the case of a consolidated return change of ownership that occurs on or after January 1, 1997, in a taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, a consolidated group may choose not to apply paragraph (e) of this section and §1.1502-4(g) to taxable years ending after December 31, 1996. A consolidated group making the choices described in the two preceding sentences generally must apply all such corresponding provisions (including not applying paragraph (e) of this section and §1.1502-4(g)) for all relevant years. However, a consolidated group making the election provided in §1.1502-9A(b)(1)(vi) (electing not to apply §1.1502-9A(b)(1)(v) to years beginning before January 1, 1998) may nevertheless choose to apply all such corresponding provisions referred to in this paragraph (d)(4)(i) other than the provision corresponding to §1.1502-9A(b)(1)(v) for all relevant years.

(ii) If a consolidated group chooses to apply the corresponding provisions referred to in paragraph (d)(4)(i) of this section, the consolidated group shall not take into account a consolidated taxable year beginning before January 1, 1997, in determining a member's (or subgroup's) contributions to the consolidated section 38(c) limitation under this paragraph (d).

(5) *Example.* The following example illustrates the provisions of this paragraph (d):

*Example.* (i) Individual A owns all of the stock of P and T. P is the common parent of the P group. P acquires all the stock of T at the beginning of Year 2. T carries over an unused section 38 general business credit from Year 1 of \$100,000. The table in paragraph (i) of this *Example* shows the group's net consolidated income tax, consolidated tentative minimum tax, and consolidated net regular tax liabilities, and T's share of such taxes computed under the principles of section 1552 and the percentage method under §1.1502-33(d)(3), assuming a 100% allocation of any decreased tax liability, for Year 2. (The effects of the lower section 11 brackets are ignored, there are no other tax credits affecting a group amount or member's share, and \$1,000s are omitted.)

Year 2	Group	P's share of col. 1	T's share of col. 1
1. consolidated taxable income	\$2,000	\$1,200	\$800
2. consolidated net regular tax	\$700	\$420	\$280
3. consolidated alternative minimum taxable income	\$4,000	\$3,200	\$800
4. consolidated tentative minimum tax	\$800	\$640	\$160
5. consolidated net income tax	\$800	\$520	\$280
6. greater of line 4 or 25% of (line 2 minus \$25,000) <u>for the group</u>	\$800		
7. consolidated §38(c) limitation (line 5 minus line 6)	\$0		

(ii) T's Year 1 is a SRLY with respect to the P group. See §1.1502-1(f)(2)(ii). T did not undergo an ownership change giving rise to a section 383 credit limitation within 6 months of joining the P group. Thus, T's \$100,000 general business credit arising in Year 1 is subject to a SRLY limitation in the P group. The amount of T's unused section 38 credits from Year 1 that are included in the consoli-

dated section 38 credits for Year 2 may not exceed T's contribution to the consolidated section 38(c) limitation. For Year 2, the group determines the consolidated section 38(c) limitation by reference to consolidated tentative minimum tax for Year 2. Therefore, T's contribution to the consolidated section 38(c) limitation for Year 2 equals its share of consolidated net income tax minus its share of con-

solidated tentative minimum tax. T's contribution is \$280,000 minus \$160,000, or \$120,000. However, because the group has a consolidated section 38 limitation of zero, it may not include any of T's unused section 38 credits in the consolidated section 38 credits for Year 2.

(iii) The following table shows similar information for the group for Year 3:

Year 3	Group	P's share of col. 1	T's share of col. 1
1. consolidated taxable income	\$1,200	\$1,500	\$(300)
2. consolidated net regular tax	\$420	\$525	\$(105)
3. consolidated alternative minimum taxable income	\$1,500	\$1,700	\$(200)
4. consolidated tentative minimum tax	\$300	\$340	\$(40)
5. consolidated net income tax	\$420	\$525	\$(105)
6. greater of line 4 or 25% of (line 2 minus \$25,000) <u>for the group</u>	\$300		
7. consolidated §38(c) limitation (line 5 minus line 6)	\$120		

(iv) The amount of T's unused section 38 credits from Year 1 that are included in the consolidated section 38 credits for Year 3 may not exceed T's aggregate contribution to the consolidated section 38(c) limitation for Years 2 and 3. For Year 3, the group determines the consolidated section 38(c) limitation by reference to the consolidated tentative minimum tax for Year 3. Therefore, T's contribution to the consolidated section 38(c) limitation for Year 3 equals its share of consolidated net income tax minus its share of consolidated tentative minimum

tax. Applying the principles of section 1552 and §1.1502-33(d) (taking into account, for example, that T's positive earnings and profits adjustment under §1.1502-33(d) reflects its losses actually absorbed by the group), T's contribution is \$(105,000) minus \$(40,000), or \$(65,000). T's aggregate contributions to the consolidated section 38(c) limitation for Years 2 and 3 is \$120,000 + \$(65,000), or \$55,000. The group may include \$55,000 of T's Year 1 unused section 38 credits in its consolidated section 38 tax credit in Year 3.

(e) \* \* \*

(3) *Special effective date.* This paragraph (e) applies only to a consolidated return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See paragraph (d)(4) of this section for an optional effective date



rule (generally making the rules of this paragraph (e) also inapplicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

\*\*\*\*\*

### §1.1502-3T [Removed]

Par. 3. Section 1.1502-3T is removed.

Par. 4. Section 1.1502-4 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

*§1.1502-4 Consolidated foreign tax credit.*

\*\*\*\*\*

(f)\*\*\*

(3) *Limitation on unused foreign tax credit carryover or carryback from separate return limitation years.* Paragraphs (f)(1) and (2) of this section do not apply for consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, a group shall include an unused foreign tax of a member arising in a SRLY without regard to the contribution of the member to consolidated tax liability for the consolidated return year. See also §1.1502-3(d)(4) for an optional effective date rule (generally making the rules of paragraphs (f)(1) and (2) of this section also inapplicable to a consolidated return year beginning on or after January 1, 1997, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(g)\*\*\*

(3) *Special effective date for CRCO limitation.* Paragraphs (g)(1) and (2) of this section apply only to a consolidated return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See also §1.1502-3(d)(4) for an optional effective date rule (generally making the rules of paragraph (g)(1) and (2) of this section also inapplicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due

date of the income tax return (without extensions) is on or before March 13, 1998).

\*\*\*\*\*

### §1.1502-4T [Removed]

Par. 5. Section 1.1502-4T is removed.

Par. 6. Section 1.1502-21 is amended by revising paragraph (c)(2)(ix) to read as follows:

*§1.1502-21 Net operating losses.*

\*\*\*\*\*

(c)\*\*\*

(2)\*\*\*

(ix) *Application to other than loss carryovers.* Paragraph (g) of this section and the phrase “or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or §1.1502-15(g) with respect to another group (the former group)” in this paragraph (c)(2) apply only to carryovers of net operating losses, net capital losses, and for taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000, to carryovers of credits described in section 383(a)(2). Accordingly, as the context may require, if another regulation references this section and such other regulation does not concern a carryover of net operating losses, net capital losses, or for taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000, carryovers of credits described in section 383(a)(2), then such reference does not include a reference to such paragraph or phrase.

\*\*\*\*\*

Par. 7. Section 1.1502-55 is added to read as follows:

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

(a) through (h)(3) [Reserved].

(h)(4) *Separate return year minimum tax credit.*

(i) and (ii) [Reserved].

(iii)(A) *Limitation on portion of separate return year minimum tax credit arising in separate return limitation years.* The aggregate of a member’s minimum tax credits arising in SRLYs that are included in the consolidated minimum tax credits for all consolidated return years of the group may not exceed—

(I) The aggregate for all consolidated return years of the member’s contributions to the consolidated section 53(c) limitation for each consolidated return

year; reduced by

(2) The aggregate of the member’s minimum tax credits arising and absorbed in all consolidated return years (whether or not absorbed by the member).

(B) *Computational rules—(1) Member’s contribution to the consolidated section 53(c) limitation.* Except as provided in the special rule of paragraph (h)(4)(iii)(B)(2) of this section, a member’s contribution to the consolidated section 53(c) limitation for a consolidated return year equals the member’s share of the consolidated net regular tax liability minus its share of consolidated tentative minimum tax. The group computes the member’s shares by applying to the respective consolidated amounts the principles of section 1552 and the percentage method under §1.1502-33(d)(3), assuming a 100% allocation of any decreased tax liability. The group makes proper adjustments so that taxes and credits not taken into account in computing the limitation under section 53(c) are not taken into account in computing the member’s share of the consolidated net regular tax, etc. (See, for example, the taxes described in section 26(b) that are disregarded in computing regular tax liability.)

(2) *Adjustment for year in which alternative minimum tax is paid.* For a consolidated return year for which consolidated tentative minimum tax is greater than consolidated regular tax liability, the group reduces the member’s share of the consolidated tentative minimum tax by the member’s share of the consolidated alternative minimum tax for the year. The group determines the member’s share of consolidated alternative minimum tax for a year using the same method it uses to determine the member’s share of the consolidated minimum tax credits for the year.

(3) *Years included in computation.* For purposes of computing the limitation under this paragraph (h)(4)(iii), the consolidated return years of the group include only those years, including the year to which a credit is carried, that the member has been continuously included in the group’s consolidated return, but exclude any years after the year to which the credit is carried.

(4) *Subgroup principles.* The SRLY subgroup principles under §1.1502-21(c)(2) apply for purposes of

this paragraph (h)(4)(iii). The predecessor and successor principles under §1.1502-21(f) also apply for purposes of this paragraph (h)(4)(iii).

(5) *Overlap with section 383.* The principles under §1.1502-21(g) apply for purposes of this paragraph (h)(4)(iii). For example, an overlap of this paragraph (h)(4)(iii) and the application of section 383 with respect to a credit carryover occurs if a corporation becomes a member of a consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 383 credit limitation with respect to that carryover (the section 383 event), with the result that the limitation of this paragraph (h)(4)(iii) does not apply. See §§1.1502-21(g)(2)(ii)(A) and 1.383-1; see also §1.1502-21(g)(4) (subgroup rules).

(C) *Effective date—(1) In general.* This paragraph (h)(4)(iii) generally applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. See §1.1502-3(d)(4) for an optional effective date rule (generally making this paragraph (h)(4)(iii) also applicable to a consolidated return year beginning on or after January 1, 1997, if the due date of the income tax return (without extensions) was on or before March 13, 1998).

(i) *Contribution years.* In general, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in determining a member's (or subgroup's) contributions to the consolidated section 53(c) limitation under this paragraph (h)(4)(iii). However, if a consolidated group chooses to apply the optional effective date rule, the consolidated group shall not take into account a consolidated taxable year beginning before January 1, 1997 in determining a member's (or subgroup's) contributions to the consolidated section 53(c) limitation under this paragraph (h)(4)(iii).

(ii) *Special subgroup rule.* In the event that the principles of §1.1502-21(g)(1) do not apply to a particular credit carryover in the current group, then solely for purposes of applying this paragraph (h)(4)(iii) to determine the limitation with

respect to that carryover and with respect to which the SRLY register (the aggregate of the member's or subgroup's contribution to consolidated section 53(c) limitation reduced by the aggregate of the member's or subgroup's minimum tax credits arising and absorbed in all consolidated return years) began in a taxable year for which the due date of the return is on or before May 25, 2000, the principles of §1.1502-21(c)(2) shall be applied without regard to the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or §1.1502-15(g) with respect to another group (the former group)."

(2) *Overlap rule.* Paragraph (h)(4)(iii)(B)(5) of this section (relating to overlap with section 383) applies to taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000. For purposes of paragraph (h)(4)(iii)(B)(5) of this section, only an ownership change to which section 383, as amended by the Tax Reform Act of 1986 (100 Stat. 2095), applies and which results in a section 383 credit limitation shall constitute a section 383 event. The optional effective date rule of §1.1502-3(d)(4) (generally making this paragraph (h)(4)(iii) also applicable to a consolidated return year beginning on or after January 1, 1997, if the due date of the income tax return (without extensions) was on or before March 13, 1998) does not apply with respect to paragraph (h)(4)(iii)(B)(5) of this section (relating to the overlap rule).

#### §1.1502-55T [Removed]

Par. 8. Section 1.1502-55T is removed.

Par. 9. Section 1.1502-98 is amended by adding a sentence immediately following the first sentence to read as follows:

§1.1502-98 *Coordination with section 383.*

\* \* \* For example, subgroups with respect to the carryover of general business credits, minimum tax credits, unused foreign tax, and net capital loss are determined by applying the principles of §1.1502-91(d)(1). \* \* \*

#### §1.1502-9A [Amended]

Par. 10. Section 1.1502-9A is amended as follows:

1. In paragraph (a)(2), the last sentence is amended by removing the language "1.1502-3T(c)(4)" and adding "1.1502-3(d)(4)" in its place.

2. In paragraph (b)(1)(v), the last sentence is amended by removing the language "1.1502-3T(c)(4)" and adding "1.1502-3(d)(4)" in its place.

Robert E. Wenzel,  
Deputy Commissioner  
of Internal Revenue.

Approved May 8, 2000.

Jonathan Talisman,  
Deputy Assistant Secretary  
of the Treasury.

(Filed by the Office of the Federal Register on May 24, 2000, 8:45 a.m., and published in the issue of the Federal Register for May 25, 2000, 65 F.R. 12717)

### Section 6601.—Interest on Underpayment, Nonpayment, or Extensions of Time for Payment, of Tax

26 CFR 301.6601-1: Interest on underpayments.

What are the rules for applying the net interest rate of zero under § 6621(d) of the Code to interest accruing on or after October 1, 1998. See Rev. Proc. 2000-26, page 1257.

### Section 6611.—Interest on Overpayments

26 CFR 301.6611-1: Interest on overpayments.

What are the rules for applying the net interest rate of zero under § 6621(d) of the Code to interest accruing on or after October 1, 1998. See Rev. Proc. 2000-26, page 1257.

### Section 6621.—Determination of Rate of Interest

26 CFR 301.6621-1: Interest rate.

What are the rules for applying the net interest rate of zero under § 6621(d) of the Code to interest accruing on or after October 1, 1998. See Rev. Proc. 2000-26, page 1257.

## Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, sections 6601, 6611, 6621; 301.6601-1, 301.6611-1, 301.6621-1.)

### Rev. Proc. 2000-26

#### SECTION 1. PURPOSE

This revenue procedure provides guidance regarding the application of § 6621(d) of the Internal Revenue Code to interest accruing on or after October 1, 1998. Section 6621(d) was enacted by § 3301 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA), Pub. L. No. 105-206, 112 Stat. 741, and was amended by § 4002(d) of the Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277, 112 Stat. 2681. Section 6621(d) provides for a net interest rate of zero to the extent of overlapping tax underpayments and tax overpayments, and generally applies to interest for periods beginning after July 22, 1998 (i.e., interest accruing on or after October 1, 1998). The net interest rate of zero in § 6621(d) also applies to interest for periods beginning before July 22, 1998 (i.e., interest accruing before October 1, 1998), provided certain conditions are met. Rev. Proc. 99-43, 1999-47 I.R.B. 579, which modifies and supersedes Rev. Proc. 99-19, 1999-13 I.R.B. 10, provides guidance on the conditions applicable to requests for the application of a net interest rate of zero to interest accruing before October 1, 1998. Section 3.02(1) of Rev. Proc. 99-43 states that the Service intends to provide further guidance for interest accruing for periods on or after October 1, 1998. This revenue procedure provides guidance on the application of § 6621(d) for interest accruing on or after October 1, 1998.

#### SECTION 2. BACKGROUND

##### .01 Interest computations in general.

(1) Section 6601(a) provides, in general, that if any amount of tax imposed by the Code is not paid on or before the last date prescribed for payment, interest on such amount must be paid for the period from such last date to the date paid at the underpayment rate established under § 6621.

(2) Section 6611(a) provides that interest must be allowed and paid on any overpayment in respect of any internal revenue tax at the overpayment rate established under § 6621. Section 6611(b)(1) provides that, in the case of a credit, interest must be allowed and paid from the date of the overpayment to the due date of the amount against which the credit is taken. Section 6611(b)(2) provides that, in the case of a refund, interest must be allowed and paid from the date of the overpayment to a date preceding the date of the refund check by not more than 30 days.

##### .02 Interest rates in general.

(1) For interest accruing before January 1, 1999, § 6621(a)(1) provides that the overpayment rate is the federal short-term rate (determined under § 6621(b)) plus 2 percentage points. For interest accruing on or after January 1, 1999, § 6621(a)(1) provides that the overpayment rate is the federal short term rate (determined under § 6621(b)) plus 3 percentage points (2 percentage points in the case of a corporation). To the extent that an overpayment of tax by a corporation exceeds \$10,000, the overpayment rate is the federal short-term rate plus 0.5 percent.

(2) Section 6621(a)(2) provides that the underpayment rate is the federal short-term rate (determined under § 6621(b)) plus 3 percentage points. Special rules in § 6621(c) increase the underpayment rate on large corporate underpayments by an additional 2 percentage points.

##### .03 Interest for overlapping periods.

(1) Section 6621(d), as enacted by the RRA on July 22, 1998, provides that, to the extent that for any period interest is payable under subchapter A (§§ 6601 and 6602) and allowable under subchapter B (§ 6611) on equivalent underpayments and overpayments by the same taxpayer of tax imposed by the Code, the net rate of interest under § 6621 on such amounts is zero for such period.

(2) The Conference Report, H. R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 257 (1998), accompanying the RRA provides that the net interest rate of zero is applied without regard to whether the overpayment or underpayment is currently outstanding. Further, each overpayment or underpayment is considered only once in

determining whether equivalent amounts of overpayment and underpayment overlap for a particular period. That report also provides that the net interest rate of zero applies even when special rules increase the rate of interest for large corporate underpayments under § 6621(c), or decrease the rate of interest for large corporate overpayments under § 6621(a).

.04 Interest accruing on or after October 1, 1998.

(1) Section 3301(c)(1) of the RRA states that § 6621(d) generally applies to interest for periods beginning after July 22, 1998 (i.e., interest accruing on or after October 1, 1998).

(2) In enacting § 6621(d), Congress anticipated that in situations in which interest is both payable and allowable by the same taxpayer for the same period, the Secretary will make all reasonable efforts to offset the liabilities, rather than process them separately using the net interest rate of zero. See H. R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 257 (1998).

(3) Section 3301(c)(1) of the RRA does not impose preconditions to applying the net interest rate of zero in § 6621(d) to interest accruing on or after October 1, 1998. Thus, for interest accruing on or after October 1, 1998, there is no statutory requirement that the taxpayer request that the Service apply § 6621(d).

(4) The Service does not currently have the ability to automatically apply the net rate of zero in § 6621(d). Congress recognized this current limitation and intended that until such time as procedures are implemented that allow for the automatic application of § 6621(d) by the Service, the Service will promptly and carefully consider any taxpayer's request to have interest charges recalculated in accordance with § 6621(d). See H. R. Rep. No. 364 (Part 1), 105th Cong., 1st Sess. 64 (1998); S. Rep. No. 174, 105th Cong., 2d Sess. 62 (1998).

#### SECTION 3. SCOPE

.01 Applicability. This revenue procedure applies to the application of the net interest rate of zero in § 6621(d) to interest for periods beginning after July 22, 1998 (i.e., interest accruing on or after October 1, 1998).

.02 *Inapplicability.* This revenue procedure does not apply to:

(1) the application of the net interest rate of zero in § 6621(d) to interest for periods beginning before July 22, 1998 (*i.e.*, interest accruing before October 1, 1998) (see Rev. Proc. 99-43 for guidance regarding interest accruing before October 1, 1998);

(2) interest accruing on or after January 1, 1999, for taxpayers other than corporations (the interest rate on underpayments and overpayments is equal for such taxpayers on or after January 1, 1999);

(3) an overpayment or underpayment for any period during which interest on the overpayment or underpayment is not allowable or payable by law (e.g., the 45-day interest disallowance rule under § 6611(e)); or

(4) the extent of an offset made pursuant to §§ 6402(a) and 6601(f), regarding the crediting of an outstanding overpayment against an outstanding underpayment.

#### SECTION 4. IDENTIFYING PERIODS FOR WHICH THE NET RATE OF ZERO APPLIES

.01 *In general.* The Service will take reasonable steps to identify overlapping periods of tax overpayments and underpayments and apply the net interest rate of zero in § 6621(d) to interest accruing on or after October 1, 1998. In such instances, the Service will provide a copy of the interest computation to the taxpayer. However, because the Service is currently unable to automatically apply the net interest rate of zero in § 6621(d), there may be instances when the Service fails to identify periods of overlap and apply the net interest rate of zero. To ensure that taxpayers receive the benefit of the net interest rate of zero in all applicable situations, taxpayers should request the net interest rate of zero (or request the Service to recompute the net interest rate of zero if the taxpayer disagrees with a Service computation of the net interest rate of zero) on or before the date on which the last applicable period of limitation (as described in section 4.02 of this revenue procedure) closes and according to the procedures in section 5 of this revenue procedure. Requests will be required until such time as the Service can automatically apply the net interest rate of zero.

.02 *Applicable periods of limitation.* The applicable periods of limitation are as follows:

(1) *Underpayment interest.* A claim for credit or refund of interest paid on an underpayment pursuant to § 6601 or 6602 generally must be filed within 3 years from the time the tax return was filed or 2 years from the time the interest was paid, whichever period expires later, pursuant to § 6511.

(2) *Overpayment interest.* A claim for payment of additional interest allowable on an overpayment pursuant to § 6611 must be filed within the 6-year period in which a suit must be filed pursuant to 28 U.S.C. §§ 2401 and 2501. See Rev. Rul. 56-506, 1956-2 C.B. 959. A taxpayer's request for application of the net interest rate of zero under the procedures described in section 5 of this revenue procedure does not protect the taxpayer's rights with respect to suits against the government pursuant to 28 U.S.C. §§ 2401 and 2501. The only manner in which a taxpayer can fully protect its rights to additional overpayment interest is by filing a civil suit against the United States prior to the termination of the 6-year statutory period set forth in 28 U.S.C. §§ 2401 and 2501. See Rev. Rul. 57-242, 1957-1 C.B. 452.

.03 *Net Rate of Zero.* In general, the Service will apply the net rate of zero as follows:

(1) If the period of limitation for refunding underpayment interest (as described in section 4.02(1) of this revenue procedure) is open at the time a claim (as described in sections 5.01 through 5.04 of this revenue procedure) is filed or a written request (as described in section 5.06 of this revenue procedure) is made, the Service will apply the net rate of zero by decreasing underpayment interest owed by the taxpayer.

(2) If the period of limitation for refunding underpayment interest (as described in section 4.02(1) of this revenue procedure) is closed at the time a claim (as described in sections 5.01 through 5.04 of this revenue procedure) is filed or a written request (as described in section 5.06 of this revenue procedure) is made, but the period for paying additional overpayment interest (as described in section 4.02(2) of this revenue procedure) is open, the Service will apply the net rate of

zero by increasing overpayment interest owed to the taxpayer.

#### SECTION 5. PROCEDURES FOR REQUESTING THE NET RATE OF ZERO

.01 *Form to file.* Except as provided in section 5.06 of this revenue procedure, requests for the application of the net interest rate of zero in § 6621(d) with respect to interest accruing on or after October 1, 1998, should be made on Form 843, Claim for Refund and Request for Abatement.

.02 *Where to file.* A Form 843 requesting the net rate of zero solely with respect to interest accruing on or after October 1, 1998, should be sent to the Internal Revenue Service Center where the taxpayer filed its most recent federal income tax return.

.03 *Label.* The taxpayer should label the top of the Form 843: "Request for Net Interest Rate of Zero Under Rev. Proc. 2000-26."

.04 *Filing requirements for Form 843.*

(1) Line 1 should be left blank.

(2) The taxpayer may, but is not required to, place a dollar amount on Line 2.

(3) Line 3 should indicate the type of tax and type of return covered by the request. More than one box may be checked if more than one type of tax or return is covered by the request. In addition, any taxes imposed by the Code (or returns for those taxes) for which there is no box on Line 3 should be written in on that line.

(4) Line 4 should be left blank.

(5) Line 5 should:

(a) identify the taxable periods for which the taxpayer overpaid and underpaid its tax liability. A separate Form 843 is not required for each separate taxable period involved in the request;

(b) state when the taxpayer paid the tax if the underpayment is no longer outstanding;

(c) state when the taxpayer received a refund of tax if the overpayment is no longer outstanding;

(d) identify and establish the period(s) for which the taxpayer's overpayment and underpayment overlapped and the overlapping amount. For this purpose, the taxpayer should provide any background material (such as copies of

examination reports, notices, or prior interest computations provided by the Service) relating to the overpayments and underpayments. The background material is needed to assist the Service in determining the period(s) for which the overpayment and underpayment overlap, and the amount of such overlap;

(e) state that, to the extent of equivalent amounts of underpayment and overpayment for the period(s) identified and established under section 5.04(5)(d) of this revenue procedure, the period(s) has (have) been used only once in a request to obtain the net interest rate of zero under § 6621(d); however, if the full amount of the overpayment or underpayment is not used in a netting calculation, the remaining portion may be used in another netting calculation; and

(f) provide a computation, to the extent possible, of the amount of interest to be credited, refunded, or abated to provide a net interest rate of zero for the period(s) of overlap. This computation generally should be made by applying § 6621(d) to reduce the taxpayer's underpayment interest payable to the Service. However, if the Form 843 is filed after December 31, 1999, and only the period of limitation for claiming additional overpayment interest is open on that filing date, the computation should be made by applying § 6621(d) to increase the taxpayer's overpayment interest payable by the Service.

.05 *Verification*. The amounts used in a computation provided under section 5.04(5)(f) of this revenue procedure are subject to verification by the Service and may be subject to adjustment for purposes of computing the net interest rate of zero pursuant to § 6621(d).

.06 *Special procedure*. No Form 843 is required when a computation of interest using the net interest rate of zero under § 6621(d) for interest accruing on or after October 1, 1998, is requested by a taxpayer in connection with a return (or returns) of the taxpayer under consideration by any function of the Service (including Examination, Appeals, or a case before a federal court that requires a computation of interest by any function of the Service). Rather than filing a Form 843, the taxpayer should provide the contact representative of such function a letter or written statement that:

(1) states that the taxpayer is requesting the net interest rate of zero under § 6621(d);

(2) indicates the type of tax and type of return that affects the interest computation for the taxable period under consideration;

(3) states when and for what period(s) the refund or payment (that affects the interest computation for the taxable period under consideration) was made; and

(4) states that, to the extent of equivalent amounts of overpayment or underpayment, the period(s) set forth under section 5.06(3) of this revenue procedure has (have) not previously been applied to obtain a net interest rate of zero under § 6621(d).

.07 *Special procedure verification*. The refund or payment provided under section 5.06(3) of this revenue procedure is subject to verification by the Service and may be subject to adjustment for purposes of computing the net interest rate of zero pursuant to § 6621(d).

.08 *Coordination of requests*. If a taxpayer has made a request for the application of the net interest rate of zero for in-

terest accruing before October 1, 1998, pursuant to either Rev. Proc. 99-19 or Rev. Proc. 99-43, then that taxpayer does not have to make a separate request pursuant to this revenue procedure for the portion of the overlapping period identified in that request that affects interest accruing on or after October 1, 1998. The Service will apply the net interest rate of zero to interest accruing for the entire overlapping period identified in the previously filed request at the time such request is processed. Similarly, if a taxpayer anticipates that a request will be filed pursuant to Rev. Proc. 99-43, then the taxpayer may request the net interest rate of zero for the entire overlapping period and will not be required to make a separate request under this revenue procedure for the portion of the overlapping period that affects interest accruing on or after October 1, 1998. The Service will apply the net interest rate of zero to interest accruing for the entire overlapping period identified in the request at the time such request is processed.

## SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for the application of the net interest rate of zero in § 6621(d) to interest accruing on or after October 1, 1998.

## DRAFTING INFORMATION

The principal author of this revenue procedure is John J. McGreevy of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. McGreevy on (202) 622-4910 (not a toll-free call).

## Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it ap-

plies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C.—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.

E.O.—Executive Order.  
ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contribution Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign Corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.

PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statements of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

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