

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. 2003-25, page 642.

Fringe benefits aircraft valuation formula. For purposes of section 1.61-21(g) of the regulations, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the first half of 2003 are set forth for determining the value of non-commercial flights on employer-provided aircraft.

Rev. Rul. 2003-30, page 659.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning April 1, 2003, will be 5 percent for overpayments (4 percent in the case of a corporation), 5 percent for underpayments, and 7 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 2.5 percent.

Rev. Rul. 2003-31, page 643.

Constructive sales, short sales, transition rule. This ruling provides guidance on whether changes made to a margin account through which a short sale was effectuated will (1) cause the short sale to be deemed consummated under section 1.1233-1(a)(4) of the regulations, and (2) cause the short-against-the-box transaction to cease to be covered by the transition rule in the Taxpayer Relief Act of 1997.

Rev. Rul. 2003-33, page 642.

LIFO; price indexes; department stores. The January 2003 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, January 31, 2003.

T.D. 9048, page 644.

REG-131478-02, page 669.

Final, temporary, and proposed regulations under section 1502 of the Code redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member. In addition, the temporary regulations suspend certain losses recognized on the disposition of stock of a subsidiary member. A public hearing on the proposed regulations is scheduled for June 20, 2003.

Rev. Proc. 2003-26, page 666.

Guidance is provided to individuals who fail to meet the eligibility requirements of section 911(d)(1) of the Code because adverse conditions in a foreign country preclude the individual from meeting those requirements. A current list of countries and the dates those countries are subject to the section 911(d)(4) waiver is provided. Rev. Proc. 2002-20 supplemented.

Rev. Proc. 2003-27, page 667.

This procedure provides guidance on the information reporting requirements under section 6050I of the Code for small cash transactions that involve the rental of taxicabs on a daily shift basis.

ADMINISTRATIVE

Announcement 2003-18, page 675.

This document extends the relief from interest and penalties under section 7508A of the Code granted by Notice 2002-40, 2002-24 I.R.B. 1152, to certain decedents' estates that were affected by the September 11, 2001, terrorist attack.

Announcements of Disbarments and Suspensions begin on page 671.

Finding Lists begin on page ii.



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 procedures 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 Other Related Items, 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.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

Section 61.—Gross Income Defined

26 CFR 1.61-21: Taxation of fringe benefits.

Fringe benefits aircraft valuation formula. For purposes of section 61 of the Code, relating to the rule for valuing noncommercial flights on employer-provided aircraft, the Standard Industry Fare Level (SIFL) cents-per-mile rates and terminal charge in effect for the first half of 2003 are set forth.

Rev. Rul. 2003-25

For purposes of the taxation of fringe benefits under section 61 of the Internal Revenue Code, section 1.61-21(g) of the Income Tax Regulations provides a rule for valuing noncommercial flights on employer-provided aircraft. Section 1.61-21(g)(5) provides an aircraft valuation formula to determine the value of such flights. The value of a flight is determined under the base aircraft valuation formula (also known as the Standard Industry Fare Level for-

mula or SIFL) by multiplying the SIFL cents-per-mile rates applicable for the period during which the flight was taken by the appropriate aircraft multiple provided in section 1.61-21(g)(7) and then adding the applicable terminal charge. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation and are reviewed semi-annually.

The following chart sets forth the terminal charges and SIFL mileage rates:

<i>Period During Which the Flight Is Taken</i>	<i>Terminal Charge</i>	<i>SIFL Mileage Rates</i>
1/1/03 – 6/30/03	\$37.76	Up to 500 miles = \$.2065 per mile 501–1500 miles = \$.1575 per mile Over 1500 miles = \$.1514 per mile

DRAFTING INFORMATION

The principal author of this revenue ruling is Kathleen Edmondson of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this revenue ruling, contact Ms. Edmondson at (202) 622-6040 (not a toll-free call).

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

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

LIFO; price indexes; department stores. The January 2003 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, January 31, 2003.

Rev. Rul. 2003-33

The following Department Store Inventory Price Indexes for January 2003 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, January 31, 2003.

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	Jan. 2002	Jan. 2003	Percent Change from Jan. 2002 to Jan. 2003 ¹
1. Piece Goods	479.8	465.2	-3.0
2. Domestic and Draperies	588.3	566.8	-3.7
3. Women's and Children's Shoes	607.3	648.4	6.8
4. Men's Shoes	875.0	876.7	0.2
5. Infants' Wear	602.2	593.8	-1.4
6. Women's Underwear	556.8	524.0	-5.9
7. Women's Hosiery	350.3	339.8	-3.0
8. Women's and Girls' Accessories	559.0	549.7	-1.7
9. Women's Outerwear and Girls' Wear	350.2	338.3	-3.4
10. Men's Clothing	565.6	550.9	-2.6
11. Men's Furnishings	586.5	567.3	-3.3
12. Boys' Clothing and Furnishings	467.1	427.1	-8.6
13. Jewelry	918.2	866.4	-5.6
14. Notions	770.1	782.8	1.6
15. Toilet Articles and Drugs	969.1	971.1	0.2
16. Furniture and Bedding	625.9	626.3	0.1
17. Floor Coverings	630.4	593.0	-5.9
18. Housewares	757.8	736.4	-2.8
19. Major Appliances	227.0	220.0	-3.1
20. Radio and Television	51.9	47.1	-9.2
21. Recreation and Education ²	88.1	84.2	-4.4
22. Home Improvements ²	124.6	125.5	0.7
23. Auto Accessories ²	110.5	112.0	1.4
Groups 1-15: Soft Goods	566.2	552.0	-2.5
Groups 16-20: Durable Goods	417.1	403.0	-3.4
Groups 21-23: Misc. Goods ²	97.5	95.3	-2.3
Store Total ³	511.5	497.8	-2.7

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

²Indexes on a January 1986 = 100 base

³The 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 Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622-7718 (not a toll-free call).

Section 1259.—Constructive Sales Treatment for Appreciated Financial Positions

(Also § 1233; 26 CFR 1.1233-1.)

Constructive sales, short sales, transition rule. This ruling provides guidance on whether changes made to a margin ac-

count through which a short sale was effectuated will (1) cause the short sale to be deemed consummated under section 1.1233-1(a)(4) of the regulations, and (2) cause the short-against-the-box transaction to cease to be covered by the transition rule in the Taxpayer Relief Act of 1997.

Rev. Rul. 2003-31

ISSUES

(1) Will changes to the terms of a margin account through which a short sale was effectuated cause the short sale to be consummated for purposes of § 1.1233-1(a)(4) of the Income Tax Regulations?

(2) If a taxpayer's pre-June 9, 1997, appreciated financial position and short-against-the-box transaction are not taken into account for purposes of applying § 1259 of the Internal Revenue Code to post-June 8, 1997, transactions, as provided by the transition rule in § 1001(d)(2) of the Taxpayer Relief Act of 1997, 1997-4 (Vol. 1) C.B. 1, 121, will changes to the terms of the margin account through which the short sale was effectuated cause the transition rule to cease to apply?

FACTS

In January 1997, Taxpayer *TP* owned 100 shares of *XYZ* stock (the *XYZ* stock). *TP* established a securities trading account (the Margin Account) with Broker, who charged interest and fees with respect to the Margin Account. In May 1997, at a time when the *XYZ* stock was appreciated, *TP* effected a short sale (the Short Sale) of 100 shares of *XYZ* stock through Broker, who borrowed the 100 shares of *XYZ* stock to make delivery. Before September 4, 1997, *TP* clearly identified the *XYZ* stock and the Short Sale in its books and records as offsetting positions.

In January 2002, Broker and *TP* negotiated changes to the interest rates and fees associated with the Margin Account.

TP continues to hold the *XYZ* stock and has not delivered any other shares to Broker to close the Short Sale.

LAW

Section 1.1233-1(a)(1) provides that, for income tax purposes, a short sale is not deemed to be consummated until delivery of property to close the short sale. Pursuant to § 1.1233-1(a)(4), if a taxpayer makes a short sale through a broker and the broker borrows property to make the delivery on the short sale, the short sale is not deemed to be consummated until the ob-

ligation of the selling taxpayer that is created by the short sale is finally discharged by delivery of property to the broker to replace the property that the broker borrowed.

Section 1259(a)(1) provides that if there is a constructive sale of an appreciated financial position, the taxpayer shall recognize gain as if such position were sold, assigned, or otherwise terminated at its fair market value on the date of such constructive sale. Appreciated financial position is defined in § 1259(b)(1) as including a position with respect to stock if there would be gain were such position sold, assigned, or otherwise terminated at its fair market value. Pursuant to § 1259(c)(1)(A), a taxpayer is treated as having made a constructive sale of an appreciated financial position if the taxpayer enters into a short sale of the same or substantially identical property.

Under § 1001(d)(2) of the Taxpayer Relief Act of 1997 (the transition rule), if "before June 9, 1997, the taxpayer entered into any transaction which is a constructive sale of any appreciated financial position, and . . . before the close of the 30-day period beginning on the date of the enactment of this Act [August 5, 1997] or before such later date as may be specified by the Secretary of the Treasury, such transaction and position are clearly identified in the taxpayer's records as offsetting, such transaction and position shall not be taken into account in determining whether any other constructive sale after June 8, 1997, has occurred." The transition rule ceases to apply as of the date such transaction is closed or the taxpayer ceases to hold the position. § 1001(d)(2) of the Taxpayer Relief Act of 1997, 1997-4 (Vol. 1) C.B. 1, 121.

ANALYSIS

(1) Section 1233

At the time of the changes to the Margin Account, *TP* had not delivered stock to Broker to close the Short Sale, and no such stock was delivered in connection with the changes. The Short Sale, therefore, is not consummated for purposes of § 1.1233-1(a)(4).

(2) Section 1259 Transition Rule

In May 1997, when the *XYZ* stock was appreciated, *TP* entered into the Short Sale.

Thus, *TP* entered into a transaction that is described in § 1259(c)(1). Because the Short Sale was entered into before June 9, 1997, however, no gain was recognized under § 1259(a)(1).

Furthermore, before the close of the 30-day period beginning on August 5, 1997, *TP* clearly identified the *XYZ* stock and the Short Sale in its books and records as offsetting positions. Thus, the *XYZ* stock and the Short Sale fell within the transition rule, and, until *TP* either ceases to hold the *XYZ* stock or closes the Short Sale, neither the *XYZ* stock nor the Short Sale is taken into account in determining whether some new transaction has caused a constructive sale under § 1259(a)(1).

At the time of the changes to the Margin Account, *TP* continued to hold the *XYZ* stock and the Short Sale had not been consummated for purposes of § 1.1233-1(a)(4). Accordingly, the transition rule continues to apply to the Short Sale and the *XYZ* stock.

HOLDINGS

(1) Because the changes made to the terms of the Margin Account do not constitute a delivery of the *XYZ* stock, the changes do not cause the Short Sale to be consummated for purposes of § 1.1233-1(a)(4).

(2) Because the changes made to the terms of the Margin Account do not constitute a delivery of the *XYZ* stock, the changes do not cause the transition rule to cease to apply to either the Short Sale or the *XYZ* stock.

DRAFTING INFORMATION

The principal author of this revenue ruling is Kate Sleeth of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact Ms. Sleeth at (202) 622-3920 (not a toll-free call)

Section 1502.—Regulations

26 CFR 1.1502-21: Net operating losses.

T.D. 9048

DEPARTMENT OF THE TREASURY

Internal Revenue Service 26 CFR Parts 1 and 602

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions

AGENCY: Internal Revenue Service (IRS),
Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 1502 that redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock and certain deconsolidations of a subsidiary member. In addition, this document contains temporary regulations that suspend certain losses recognized on the disposition of stock of a subsidiary member. The regulations apply to corporations filing consolidated returns. The text of the temporary regulations serves as the text of the proposed regulations (REG-131478-02) on page 669 of this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective March 14, 2003.

Applicability Date: For dates of applicability, see §§ 1.1502-21T(h)(7), 1.1502-32T(h)(6), and 1.1502-35T(j).

FOR FURTHER INFORMATION CONTACT: Aimee K. Meacham, (202) 622-7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these temporary regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545-1828. Responses to this collection of information are voluntary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the cross-referencing notice of proposed rulemaking published in this issue of the Bulletin.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

On October 18, 2002, the IRS and Treasury Department issued a notice of proposed rulemaking (REG-131478-02, 2002-47 I.R.B. 892 [67 F.R. 65060]) that included proposed regulations reflecting the principle set forth in Notice 2002-18, 2002-12 I.R.B. 644, that a consolidated group should not be able to obtain more than one tax benefit from a single economic loss. The rules in the proposed regulations were intended to address at least two situations in which a group may obtain more than one tax benefit from a single economic loss. In one situation, a group first recognizes and absorbs a subsidiary member's inside loss (*e.g.*, a loss carryforward, a deferred deduction, or a loss inherent in an asset) and a member of the group later recognizes a loss on the subsidiary member's stock that is duplicative of the previously recognized and absorbed inside loss. In the second situation, a member of the group recognizes a loss on a non-deconsolidating disposition of the subsidiary member's stock, the stock loss duplicates an unrecognized or unabsorbed loss of the subsidiary member, and the group later recognizes and absorbs the subsidiary's inside loss.

The proposed regulations consist primarily of two rules: a basis redetermination rule and a loss suspension rule. The proposed regulations also include a basis reduction rule that addresses certain cases of

loss duplication that are not within the scope of the loss suspension rule, such as losses arising from the worthlessness of subsidiary member stock.

No public hearing regarding the proposed regulations was requested or held. Comments, however, were submitted.

The IRS and Treasury Department have studied, and are continuing to study, the comments received. The IRS and Treasury Department believe that the comments received, as well as the issues more generally raised by Notice 2002-18 and the proposed regulations, require significant further consideration. Accordingly, the IRS and Treasury Department will continue to study these issues and, as more fully set forth below, request comments on, and suggestions for possible alternative approaches to, the issues addressed in the regulations. Nonetheless, the IRS and Treasury Department believe that immediately effective rules are necessary to address the duplication of loss within a consolidated group so as to clearly reflect the income tax liability of the group. Accordingly, the IRS and Treasury Department are promulgating the proposed regulations as temporary regulations in this Treasury decision. The temporary regulations are substantially similar to the proposed regulations, but reflect certain revisions that were made based on comments received. The following sections describe these revisions.

A. Application of Basis Redetermination Rule Upon Deconsolidation of a Subsidiary Member

The proposed regulations require the reallocation of the basis of subsidiary member stock held by members of the group upon certain dispositions and deconsolidations of subsidiary member stock. The rule applies differently when the subsidiary remains a member of the group from when the subsidiary does not remain a member of the group. The IRS and Treasury Department received several technical comments regarding the basis redetermination rule applicable when a subsidiary member leaves the group. The temporary regulations revise that rule in a manner that addresses these comments and clarifies its application.

In particular, under the temporary regulations, subject to certain exceptions, the rule applies upon a deconsolidation of a sub-

subsidiary member when any stock of the subsidiary member owned by a member of the group has a basis in excess of value. The revised rule generally applies regardless of whether the subsidiary member is deconsolidated as a result of a transfer of a gain share, a transfer of a loss share, or a stock issuance because, in each case, the effect is the same, *i.e.*, each share of subsidiary member stock owned by group members is deconsolidated. Further, in computing the basis that is reallocated, the revised rule takes into account all loss on members' shares of the subsidiary's stock and all prior negative basis adjustments to members' shares of the subsidiary stock that are not loss shares. The revised rule reflects that, unless all deconsolidations and all deconsolidated shares are treated similarly, opportunities to duplicate losses will continue to exist.

B. Application of Loss Suspension Rule

Under the loss suspension rule, if, after application of the basis redetermination rule, a member of a consolidated group recognizes a loss on the disposition of stock of a subsidiary member of the same group, and the subsidiary member is a member of the same group immediately after the disposition, then the selling member's stock loss is suspended to the extent of the duplicated loss with respect to such stock. Because a suspended stock loss reflects the subsidiary member's unrecognized or unabsorbed deductions and losses, under the proposed regulations, the suspended loss is reduced, with the result that it will not later be allowed, as the subsidiary member's deductions and losses are taken into account (*i.e.*, absorbed) in determining the group's consolidated taxable income (or loss). One comment received regarding the proposed regulations was that, in certain cases, the loss suspension rule could disallow a tax loss for an economic loss. This result was not intended. Accordingly, these temporary regulations include two changes from the proposed regulations that are intended to prevent this result.

First, the temporary regulations provide that the amount by which a suspended stock loss is reduced cannot exceed the excess of the amount of the subsidiary member's items of loss and deduction over the amount of such items that are taken into account in determining the basis adjustments made to stock of the subsidiary member (or

any successor) owned by members of the group under the investment adjustment rules.

Second, they also include a provision stating that the loss suspension rule is not to be applied in a manner that permanently disallows an otherwise allowable deduction for an economic loss. Whether the loss suspension rule has resulted in such a disallowance is determined on the earlier of the date of the deconsolidation of the subsidiary (or any successor) the stock of which gave rise to the suspended stock loss and the date on which the stock of such subsidiary is determined to be worthless. When it is determined that the application of the loss suspension rule has permanently disallowed a deduction for an economic loss, the taxpayer will be permitted to treat the suspended stock loss as restored to the extent of such disallowance. The restoration of the suspended loss is deemed to occur immediately prior to the deconsolidation of the subsidiary or the determination of worthlessness.

C. Basis Reduction Rule For Worthless Stock and Stock of a Subsidiary With No Separate Return Year

The proposed regulations include a basis reduction rule intended to prevent the duplication of unabsorbed losses generated by a subsidiary member and loss with respect to the stock of that member if either (i) the stock of the subsidiary member becomes worthless or (ii) the stock of the subsidiary is disposed of and, immediately after the disposition, the subsidiary is no longer a member of the group and does not have a separate return year. Under this rule, immediately before a determination of worthlessness, or immediately before a disposition of a subsidiary that is not followed by a separate return year, the basis of the subsidiary's stock is reduced by the amount of any loss carryforwards that would be treated as attributable to the subsidiary under the principles of §1.1502-21. This provision was included because neither situation was subject to the loss suspension rule and, without such a rule, taxpayers might take the position that a group is entitled to a subsidiary member's loss carryforwards even after the group has enjoyed full basis recovery through a worthless stock or other deduction. Such a result, however, would be in contravention of the principles of Notice 2002-18.

The proposed provision raised questions about the operation of the existing rules governing this situation. Commentators contended that the basis reduction rule could deny the group a single tax loss for its economic loss. As stated above, the proposed regulations, including the basis reduction rule, were not intended to disallow a tax loss for an economic loss, but rather were intended only to ensure that a group obtains no more than a single tax loss for an economic loss.

The temporary regulations address this situation by providing that the unabsorbed losses generated by the subsidiary do not remain available to the group. Specifically, the temporary regulations provide that, if stock of a subsidiary member is treated as worthless under section 165 (taking into account the provisions of §1.1502-80(c)), or if a member of a group disposes of subsidiary member stock and on the following day the subsidiary is not a member of the group and does not have a separate return year, then all losses treated as attributable to the subsidiary member under the principles of §1.1502-21, after computing the taxable income of the group, the subsidiary member, or a group of which the subsidiary member was previously a member for the taxable year that includes the determination of worthlessness or the disposition and any prior taxable year, shall be treated as expired, but not as absorbed by the group, as of the beginning of the group's taxable year that follows the taxable year that includes the determination of worthlessness or the disposition. Under this rule, the stock loss (or reduced stock gain), unreduced by any loss carryforwards attributable to the subsidiary member, is allowed. Moreover, because the losses are treated as expired, there is no possibility of a later, duplicative use of the loss carryforwards. This approach is consistent with the nature of a loss realized upon such a determination or disposition, *i.e.*, a loss on an investment in the subsidiary member.

Because the provisions of the proposed regulations raised questions about the operation of the existing rules, the temporary regulations include a special election for determinations of worthlessness and dispositions that occurred on or after March 7, 2002, and before March 14, 2003. In such cases, as an alternative to the treatment described above, the common parent of the group may make an irrevocable

election to reattribute to itself all or a portion of the losses attributable to the subsidiary member under the principles of §1.1502-21. For purposes of applying the investment adjustment rules to stock of the subsidiary member owned by the group, the reattributed losses are treated as absorbed by the group immediately prior to the allowance of any loss or inclusion of any income or gain with respect to the determination of worthlessness or the disposition. The common parent, however, is treated as succeeding to the subsidiary's losses in a transaction described in section 381.

The IRS and Treasury Department request comments regarding whether a subsidiary member the stock of which is determined to be worthless (under the standards of §1.1502-80(c)) should be treated as a new corporation for purposes of the Internal Revenue Code as of the date of the determination of worthlessness. In addition, the IRS and Treasury Department request comments regarding the desirability of further clarification or changes regarding the standards that govern determinations of worthlessness and the deductibility of losses (or the inclusion of excess loss accounts) when stock of a subsidiary member is determined to be worthless.

D. Deferral and Elimination of Gain

One comment noted that the basis redetermination rule of the proposed regulations could be used to shift the location of gain and loss within a consolidated group and even to eliminate gain in a manner that is unintended and contrary to the purposes underlying section 337(d). The following example illustrates this concern.

P, the common parent of a consolidated group, owns all of the stock of S1 and S2. The S2 stock has a basis of \$400 and a value of \$500. S1 owns 50% of the stock of the S3 common stock with a basis of \$150 and value equal to such amount. S2 owns the remaining 50% of the S3 common stock with a basis of \$100 and a value of \$200 and one share of S3 preferred stock with a basis of \$10 and a value of \$9. P intends to sell all of its S2 stock to an unrelated buyer that does not want to acquire S3. P, therefore, engages in the following steps to dispose of S2 without recognizing

ing a substantial portion of the built-in gain in S2. First, P causes a recapitalization of S3 in which S2's S3 common stock is exchanged for new S3 preferred shares. P then sells all of its S2 stock. Although the sale does not deconsolidate S3 (because all the S3 common stock is still held by S1), it does deconsolidate the S3 preferred shares held by S2, including the one share with a built-in loss. Accordingly, under the proposed regulations, the bases of all shares of S3 stock must be redetermined immediately before P's sale of S2. Under the basis redetermination rule, the total basis of S3 stock held by members of the P group is allocated first to the S3 preferred shares, up to their value of \$209, and then to the remaining shares of S3 common held by S1. S2's aggregate basis in the S3 preferred stock is increased from \$110 to \$209. This increase tiers up and increases P's basis in the S2 stock from \$400 to \$499. Accordingly, P will recognize only \$1 of gain on the sale of its S2 stock. Afterwards, P can cause S3 to redeem its preferred stock for \$209. S2 will recognize no gain or loss from the redemption. Although the unrecognized gain is preserved in P's basis in S1, and S1's basis in S3, the group can defer or avoid recognizing that gain.

In this case, there is no significant duplication of loss. Moreover, the steps were structured with a view to avoiding the recognition of gain on a disposition of stock. The IRS and Treasury Department do not intend that the basis redetermination rule be applied to defer or eliminate gain in such cases. The IRS and Treasury Department considered adopting a mechanical test to prevent the application of the basis redetermination rule in such cases. They concluded that such a rule would not provide the flexibility necessary to obtain an appropriate balancing of the concerns underlying this regulation and those underlying section 337(d). Therefore, these temporary regulations include an anti-abuse rule that provides that, if a transaction is structured with a view to, and has the effect of, deferring or avoiding the recognition of gain on a disposition of stock by invoking application of the basis redetermination rule, and the stock loss attributable to the transferred shares or the duplicated loss of the subsidiary member that is reflected in subsidiary member stock owned by members

of the group is not significant, the basis redetermination and loss suspension rules will not apply.

E. Request For Comments

As described above, the IRS and Treasury Department are continuing to study the comments received regarding the proposed regulations. In addition, the IRS and Treasury Department are considering alternative regimes that would prevent the duplication of loss within the group.

In particular, the IRS and Treasury Department are studying a comment that suggested applying the principles of section 704(c) to allocate negative investment adjustments arising from loss items at the subsidiary member level where there have been transfers of loss property to the subsidiary member. The comment asserts that this approach would address the case where the recognition and absorption of the inside loss precedes the recognition of the stock loss. The IRS and Treasury Department are concerned that this alternative approach addresses only duplicative losses that arise as a result of contributions of loss property, not duplicative losses that arise as a result of a loss incurred by a subsidiary member. In addition, the IRS and Treasury Department are concerned that the application of the principles of section 704(c) may be complex, especially in cases where there have been issuances of subsidiary member stock at different times. The IRS and Treasury Department request comments regarding how the principles of section 704(c) should be applied in the consolidated return context to prevent the duplication of loss.

The IRS and Treasury Department are also studying a suggestion that the type of transaction in which the stock loss is recognized prior to the absorption of the inside loss be addressed by a rule that allows the stock loss but limits the use of the subsidiary member's items of loss and deduction if there have been contributions of loss property with respect to the subsidiary member and there is any loss duplication at the subsidiary member level at the time the stock loss is recognized. That rule would not permit the use of the subsidiary's items of loss and deduction that are duplicative of the stock loss to offset income of an-

other member of the group, but would permit such items to offset income of the subsidiary.

This rule effectively would permit the acceleration of stock loss. The IRS and Treasury Department request comments regarding whether permitting such acceleration would clearly reflect the income of the group.

In addition, because this rule would permit the subsidiary's losses to offset its items of income and gain, it would not prevent the duplication of losses within the group to that extent. The IRS and Treasury Department request comments regarding whether this duplication is appropriate given that the benefits associated with the subsidiary and its shareholder being members of the group (e.g., positive basis adjustments to the shareholder member's stock of the subsidiary member that reflect income of the subsidiary member and the group's ability to use the loss recognized by another member to offset income of the subsidiary member of the group) have been enjoyed by the group.

Finally, this rule would address only cases of duplication where there have been contributions of loss property. As described above, the IRS and Treasury Department are concerned that contributions of loss property are not the only types of transactions in which a group can obtain more than one tax benefit from a single economic loss.

The IRS and Treasury Department are considering a variation of this suggested rule to address the situation where the stock loss is recognized prior to the absorption of the inside loss. This variation would allow the stock loss when recognized, but would disallow the inside losses of the subsidiary to the extent that such losses reflect losses that were duplicate losses at the time of the recognition of the stock loss. Such losses may be attributable to contributed property or losses that arose in the subsidiary member. The IRS and Treasury Department request comments regarding this variation.

Finally, the IRS and Treasury Department continue to request comments regarding any other approaches that could be implemented to address the duplication of loss within a consolidated group.

Special Analyses

In *Rite Aid Corp. v. United States*, 255 F.3d 1357 (Fed. Cir. 2001), the United States Court of Appeals for the Federal Circuit held that the duplicated loss component of §1.1502-20 was an invalid exercise of regulatory authority. In response to the *Rite Aid* decision, the IRS and Treasury Department issued Notice 2002-11, 2002-7 I.R.B. 526, stating that the interests of sound tax administration would not be served by the continued litigation of the validity of the duplicated loss component of §1.1502-20. Notice 2002-11 also announced that because of the interrelationship in the operation of all of the loss disallowance factors, new rules governing loss disallowance on sales of subsidiary stock by members of consolidated groups should be implemented.

In Notice 2002-18, 2002-12 I.R.B. 644, the IRS and Treasury Department stated that regulations would be promulgated that would defer or otherwise limit the utilization of a loss on stock (or another asset that reflects the basis of stock) in transactions that facilitate the group's utilization of a single economic loss more than once. Notice 2002-18 further stated that such regulations would apply to dispositions occurring on or after March 7, 2002. These temporary regulations implement Notice 2002-18 and are necessary to provide taxpayers with immediate guidance regarding stock basis and allowable loss in connection with transfers of subsidiary member stock. Accordingly, good cause is found for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

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 impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principle author of these regulations is Aimee K. Meacham of the Office of Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.1502-21T(b)(1) and (b)(3)(v) also issued under 26 U.S.C. 1502. * * *

Section 1.1502-32T(a)(2), (b)(3)(iii)(C), (b)(3)(iii)(D), and (b)(4)(vi) also issued under 26 U.S.C. 1502. * * *

Section 1.1502-35T also issued under 26 U.S.C. 1502. * * *

Par. 2. In the list below, for each section indicated in the left column, remove the wording indicated in the middle column, and add the wording indicated in the right column.

<i>Affected Section</i>	<i>Remove</i>	<i>Add</i>
§1.267(f)-1(k)	§§1.337(d)-1, 1.337(d)-2, 1.1502-13(f)(6), and 1.1502-20	§§1.337(d)-2T, 1.1502-13(f)(6), and 1.1502-35T

<i>Affected Section</i>	<i>Remove</i>	<i>Add</i>
§1.597-3(e)	<i>Loss disallowance.</i> For purposes of §1.1502-20, FFA and the amount described in §1.597-4(g)(3) are treated as an extraordinary gain disposition within the meaning of §1.1502-20(c)(2)(i) and a Taxable Transfer is treated as an applicable asset acquisition under section 1060(c) within the meaning of §1.1502-20(c)(2)(i)(A)(4).	[Reserved].
§1.597-4(g)(2)(v), second sentence	(See §§1.337(d)-1 and 1.1502-20 for potential limitations on the group's worthless stock deduction.)	(See §§1.337(d)-2T and 1.1502-35T(f) for rules applicable when a member of a consolidated group is entitled to a worthless stock deduction with respect to stock of another member of the group.)
§1.1502-11(b)(3)(ii) Example (c), third sentence.	See also §1.1502-20 for rules applicable to losses from the sale of stock of subsidiaries.	See also §§1.337(d)-2T and 1.1502-35T for rules relating to basis adjustments and allowance of stock loss on dispositions of stock of a subsidiary member.
§1.1502-12(r)	For rulings relating to loss disallowance or basis reduction on the disposition or deconsolidation of stock of a subsidiary, see §§1.337(d)-1, 1.337(d)-2 and 1.1502-20.	See §§1.337(d)-2T and 1.1502-35T(f) for rules relating to basis adjustments and allowance of stock loss on dispositions of stock of a subsidiary member.
§1.1502-13(f)(7), Example 1(e), sixth sentence	See also §1.1502-20(b) (additional stock basis reductions applicable to certain deconsolidations).	
§1.1502-15(b)(2)(iii), first sentence	(e.g., under §1.1502-20 or section 267)	(e.g., under §§1.337(d)-2T, 1.1502-35T, or section 267)
§1.1502-21(b)(2)(i), third sentence	For rules permitting the reattribution of losses of a subsidiary to the common parent when loss is disallowed on the disposition of subsidiary stock, see §1.1502-20(g).	
§1.1502-32(b)(3)(iii)(B), third sentence	§1.1502-20(b), or §1.1502-20(g)	§1.1502-35T(b) or (f)(2)
§1.1502-32(b)(5)(ii), Example 2(b), last sentence	See also §1.1502-20(b) (possible stock basis reduction on the deconsolidation of S).	
§1.1502-32(e)(2), Example 4(a), fourth sentence	(Section §1.1502-20(b) does not reduce P's basis in the S stock as a result of S's deconsolidation.)	
§1.1502-80(c), last sentence	See §1.1502-11(c) and 1.1502-20 for additional rules relating to stock loss.	See §1.1502-11(c) and 1.1502-35T for additional rules relating to stock loss.
§1.1502-91(h)(2), first sentence	(unless disallowed under §1.1502-20 or otherwise)	(unless disallowed under §1.337(d)-2T, 1.1502-35T, or otherwise)

Par. 3. Section 1.1502-21 is amended by:
1. Revising paragraph (b)(1).
2. Adding paragraphs (b)(3)(v) and (h)(7).

The revisions and addition read as follows:

§1.1502-21 Net operating losses.

* * * * *

(b) * * *

(1) [Reserved]. For further guidance, see §1.1502-21T(b)(1).

* * * * *

(3) * * *

(v) [Reserved]. For further guidance, see §1.1502-21T(b)(3)(v).

* * * * *

(h) * * *

(7) [Reserved]. For further guidance, see §1.1502-21T(h)(7).

Par. 4. Section 1.1502-21T is revised to read as follows:

§1.1502-21T Net operating losses (temporary).

(a) [Reserved]. For further guidance, see §1.1502-21(a).

(b) [Reserved]. For further guidance, see §1.1502-21(b).

(1) *Carryovers and carrybacks generally.* The net operating loss carryovers and carrybacks to a taxable year are determined under the principles of section 172 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a *pro rata* basis. Additional rules under the Internal Revenue Code or regulations also apply. See, e.g., section 382(l)(2)(B) (if losses are carried from the same taxable year, losses subject to limitation under section 382 are absorbed before losses that are not subject to limitation under section 382). See *Example 2* of paragraph (c)(1)(iii) of this section for an illustration of *pro rata* absorption of losses subject to a SRLY limitation. See paragraph (b)(3)(v) of this section regarding the treatment of any loss that is treated as expired under §1.1502-35T(f)(1).

(b)(2) through (b)(3)(iv) [Reserved]. For further guidance, see §1.1502-21(b)(2) through (b)(3)(iv).

(b)(3)(v) *Losses treated as expired under §1.1502-35T(f)(1).* No loss treated as expired by §1.1502-35T(f)(1) may be carried over to any consolidated return year of the group.

(c) through (h)(6) [Reserved]. For further guidance, see §1.1502-21(c) through (h)(6).

(h)(7) *Losses treated as expired under §1.1502-35T(f)(1).* Paragraph (b)(3)(v) of this section is effective for losses treated as expired under §1.1502-35T(f)(1) on and after March 7, 2002, and no later than March 11, 2006.

Par. 5. Section 1.1502-32 is amended by:

1. Revising paragraph (a)(2).

2. Adding paragraphs (b)(3)(iii)(C), (b)(3)(iii)(D), (b)(4)(vi), and (h)(6).

The revision and additions read as follows:

§1.1502-32 Investment adjustments.

* * * * *

(a)(2) [Reserved]. For further guidance, see §1.1502-32T(a)(2).

(b)(3)(iii)(C) and (D) [Reserved]. For further guidance, see §1.1502-32T(b)(3)(iii)(C) and (D).

* * * * *

(b)(4)(vi) [Reserved]. For further guidance, see §1.1502-32T(b)(4)(vi).

* * * * *

(h)(6) [Reserved]. For further guidance, see §1.1502-32T(h)(6).

Par. 6. Section 1.1502-32T is revised to read as follows:

§1.1502-32T Investment adjustments (temporary).

(a) and (a)(1) [Reserved]. For further guidance, see §1.1502-32(a) and (a)(1).

(a)(2) *Application of other rules of law.* The rules of this section are in addition to other rules of law. See, e.g., section 358 (basis determinations for distributees), section 1016 (adjustments to basis), §1.1502-11(b) (limitations on the use of losses), §1.1502-19 (treatment of excess loss accounts), §1.1502-31 (basis after a group structure change), and §1.1502-35T (additional rules relating to stock loss, including losses attributable to worthlessness and certain dispositions not followed by a separate return year). P's basis in S's stock must not be adjusted under this section and other rules of law in a manner that has the effect of duplicating an adjustment. For example, if pursuant to §1.1502-35T(c)(3) and paragraph (b)(3)(iii)(C) of this section the basis in stock is reduced to take into account a loss suspended under §1.1502-35T(c)(1), such basis shall not be further reduced to take into account such loss, or a portion of such loss, if any, that is later allowed pursuant to §1.1502-35T(c)(5). See also paragraph (h)(5) of this section for basis reductions applicable to certain former subsidiaries.

(b) through (b)(3)(iii)(B) [Reserved]. For further guidance, see §1.1502-32(b) through (b)(3)(iii)(B).

(b)(3)(iii)(C) *Loss suspended under §1.1502-35T(c).* Any loss suspended pursuant to §1.1502-35T(c) is treated as a non-capital, nondeductible expense incurred during the taxable year that includes the date of the disposition to which such section applies. See §1.1502-35T(c)(3). Consequently, the basis of a higher-tier member's stock of P is reduced by the suspended loss in the year it is suspended.

(D) *Loss disallowed under §1.1502-35T(g)(3)(iii).* Any loss or deduction the use of which is disallowed pursuant to §1.1502-35T(g)(3)(iii) (other than a loss or deduction described in §1.1502-35T(g)(3)(i)(B)(II)), and with respect to

which no waiver described in paragraph (b)(4) of this section is filed, is treated as a noncapital, nondeductible expense incurred during the taxable year that such loss would otherwise be absorbed. See §1.1502-35T(g)(3)(iv).

(b)(4) through (b)(4)(v) [Reserved]. For further guidance, see §1.1502-32(b)(4) through (b)(4)(v).

(b)(4)(vi) *Special rules in the case of certain transactions subject to §1.1502-35T.* If a member of a consolidated group transfers stock of a subsidiary member and such stock has a basis that exceeds its value immediately before such transfer or a subsidiary member is deconsolidated and any stock of such subsidiary member owned by members of the group immediately before such deconsolidation has a basis that exceeds its value, all members of the group are subject to the provisions of §1.1502-35T(b), which generally require a redetermination of members' basis in all shares of subsidiary stock. In addition, if stock of a subsidiary member is treated as worthless under section 165 (taking into account the provisions of §1.1502-80(c)), or if a member of a group disposes of subsidiary member stock and on the following day the subsidiary is not a member of the group and does not have a separate return year, and the common parent makes an election under §1.1502-35T(f)(2) to reattribute to itself the losses treated as attributable to such subsidiary member, §1.1502-35T(f)(2) requires a reduction of members' basis in shares of subsidiary stock.

(c) through (h)(5)(ii) [Reserved]. For further guidance, see §1.1502-32(c) through (h)(5)(ii).

(h)(6) *Loss suspended under §1.1502-35T(c) or disallowed under §1.1502-35T(g)(3)(iii).* Paragraphs (a)(2), (b)(3)(iii)(C), (b)(3)(iii)(D), and (b)(4)(vi) of this section are effective on and after March 7, 2002, and expire on March 11, 2006.

Par. 7. Section 1.1502-35T is added to read as follows:

§1.1502-35T Transfers of subsidiary member stock and deconsolidations of subsidiary members (temporary).

(a) *Purpose.* The purpose of this section is to prevent a group from obtaining more than one tax benefit from a single economic loss. The provisions of this section shall be construed in a manner consistent

with that purpose and in a manner that reasonably carries out that purpose.

(b) *Redetermination of basis on certain nondeconsolidating transfers of subsidiary member stock and on certain deconsolidations of subsidiary members—*

(1) *Redetermination of basis on certain nondeconsolidating transfers of subsidiary member stock.* Except as provided in paragraph (b)(3)(i) of this section, if, immediately after a transfer of stock of a subsidiary member that has a basis that exceeds its value, the subsidiary member remains a member of the group, then the basis in each share of subsidiary member stock owned by each member of the group shall be redetermined in accordance with the provisions of this paragraph (b)(1) immediately before such transfer. All of the members' bases in the shares of subsidiary member stock immediately before such transfer shall be aggregated. Such aggregated basis shall be allocated first to the shares of the subsidiary member's preferred stock that are owned by the members of the group immediately before such transfer, in proportion to, but not in excess of, the value of those shares at such time. After allocation of the aggregated basis to all shares of the preferred stock of the subsidiary member pursuant to the preceding sentence, any remaining basis shall be allocated among all common shares of subsidiary member stock held by members of the group immediately before the transfer, in proportion to the value of such shares at such time.

(2) *Redetermination of basis on certain deconsolidations of subsidiary members.—*(i) *Allocation of reallocable basis amount.* Except as provided in paragraph (b)(3)(ii) of this section, if, immediately before a deconsolidation of a subsidiary member, any share of stock of such subsidiary owned by a member of the group has a basis that exceeds its value, then the basis in each share of the subsidiary member's stock owned by each member of the group shall be redetermined in accordance with the provisions of this paragraph (b)(2) immediately before such deconsolidation. The basis in each share of the subsidiary member's stock held by members of the group immediately before the deconsolidation that has a basis in excess of value at such time shall be reduced, but not below such share's value, in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of

each such share to be the same; provided, however, that the aggregate amount of such reduction shall not exceed the reallocable basis amount (as computed pursuant to paragraph (b)(2)(ii) of this section). Then, to the extent of the reallocable basis amount, the basis of each share of the preferred stock of the subsidiary member that are held by members of the group immediately before the deconsolidation shall be increased, but not above such share's value, in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such share to be the same. Then, to the extent that the reallocable basis amount does not increase the basis of shares of preferred stock of the subsidiary member pursuant to the third sentence of this paragraph (b)(2)(i), such amount shall increase the basis of all common shares of the subsidiary member's stock held by members of the group immediately before the deconsolidation in a manner that, to the greatest extent possible, causes the ratio of the basis to the value of each such share to be the same.

(ii) *Calculation of reallocable basis amount.* The reallocable basis amount shall equal the lesser of—

(A) The aggregate of all amounts by which, immediately before the deconsolidation, the basis exceeds the value of a share of subsidiary member stock owned by any member of the group at such time; and

(B) The total of the subsidiary member's (and any predecessor's) items of deduction and loss, and the subsidiary member's (and any predecessor's) allocable share of items of deduction and loss of all lower-tier subsidiary members, that were taken into account in computing the adjustment under §1.1502-32 to the bases of shares of stock of the subsidiary member (and any predecessor) held by members of the group immediately before the deconsolidation, other than shares that have bases in excess of value immediately before the deconsolidation.

(3) *Exceptions to application of redetermination rules.* (i) Paragraph (b)(1) of this section shall not apply to a transfer of subsidiary member stock if —

(A) during the taxable year of such transfer, in one or more fully taxable transactions, the members of the group dispose of all of the shares of the subsidiary member stock that they own immediately before the transfer, other than the shares the

transfer of which would otherwise trigger the application of paragraph (b)(1) of this section, to a person or persons that are not members of the group;

(B) during the taxable year of such transfer, the members of the group are allowed a worthless stock loss under section 165(g) (taking into account the provisions of §1.1502-80(c)) with respect to all of the shares of subsidiary member stock that they own immediately before the transfer, other than the shares the transfer of which would otherwise trigger the application of paragraph (b)(1) of this section; or

(C) such transfer is to a member of the group and section 332 (provided the stock is transferred to an 80-percent distributee), section 351, or section 361 applies to such transfer.

(ii) Paragraph (b)(2) of this section shall not apply to a deconsolidation of a subsidiary member if —

(A) during the taxable year of such deconsolidation, in one or more fully taxable transactions, the members of the group dispose of all of the shares of the subsidiary member stock that they own immediately before the deconsolidation to a person or persons that are not members of the group;

(B) such deconsolidation results from a fully taxable disposition, to a person or persons that are not members of the group, of some of the shares of the subsidiary member, and, during the taxable year of such deconsolidation, the members of the group are allowed a worthless stock loss under section 165(g) with respect to all of the shares of subsidiary member stock that they own immediately after the deconsolidation; or

(C) the deconsolidation of the subsidiary member results from the deconsolidation of a higher-tier subsidiary member and, immediately after the deconsolidation of the subsidiary member, none of the stock of the subsidiary member is owned by a group member.

(4) *Special rule for lower-tier subsidiaries.* If, immediately after a transfer of subsidiary member stock or a deconsolidation of a subsidiary member, a lower-tier subsidiary member some of the stock of which is owned by the subsidiary member is a member of the group, then, for purposes of applying paragraph (b) of this section, the subsidiary member shall be treated as having transferred its stock of the lower-tier subsidiary member. This prin-

principle shall apply to stock of subsidiary members that are owned by such lower-tier subsidiary member.

(5) *Stock basis adjustments for higher-tier stock.* The basis adjustments required under this paragraph (b) result in basis adjustments to higher-tier member stock. The adjustments are applied in the order of the tiers, from the lowest to highest. For example, if a common parent owns stock of a subsidiary member that owns stock of a lower-tier subsidiary member and the subsidiary member recognizes a loss on the disposition of a portion of its shares of the lower-tier subsidiary member stock, the common parent must adjust its basis in its subsidiary member stock under the principles of §1.1502-32 to reflect the adjustments that the subsidiary member must make to its basis in its stock of the lower-tier subsidiary member.

(6) *Ordering rules.* (i) The rules of this paragraph (b) apply after the rules of §1.1502-32 are applied.

(ii) The rules of this paragraph (b) apply before the rules of §1.337(d)-2T and paragraph (c) of this section are applied.

(iii) Paragraph (b) of this section (and any resulting basis adjustments to higher-tier member stock made pursuant to paragraph (b)(5) of this section) applies to redetermine the basis of stock of a lower-tier subsidiary member before paragraph (b) of this section applies to a higher-tier member of such lower-tier subsidiary member.

(c) *Loss suspension*—(1) *General rule.* Any loss recognized by a member of a consolidated group with respect to the disposition of a share of subsidiary member stock shall be suspended to the extent of the duplicated loss with respect to such share of stock if, immediately after the disposition, the subsidiary is a member of the consolidated group of which it was a member immediately prior to the disposition (or any successor group).

(2) *Special rule for lower-tier subsidiaries.* This paragraph (c)(2) applies if neither paragraph (c)(1) nor (f) of this section applies to a member's disposition of a share of stock of a subsidiary member (the departing member), a loss is recognized on the disposition of such share, and the departing member owns stock of one or more other subsidiary members (a remaining member) that is a member of such group immediately after the disposition. In that case, such loss shall be suspended to the ex-

tent the duplicated loss with respect to the departing member stock disposed of is attributable to the remaining member or members.

(3) *Treatment of suspended loss.* For purposes of the rules of §1.1502-32, any loss suspended pursuant to paragraph (c)(1) or (c)(2) of this section is treated as a non-capital, nondeductible expense of the member that disposes of subsidiary member stock, incurred during the taxable year that includes the date of the disposition of stock to which paragraph (c)(1) or (c)(2) of this section applies. See §1.1502-32T(b)(3)(iii)(C). Consequently, the basis of a higher-tier member's stock of the member that disposes of subsidiary member stock is reduced by the suspended loss in the year it is suspended.

(4) *Reduction of suspended loss*—(i) *General rule.* The amount of any loss suspended pursuant to paragraphs (c)(1) and (c)(2) of this section shall be reduced, but not below zero, by the subsidiary member's (and any successor's) items of deduction and loss, and the subsidiary member's (and any successor's) allocable share of items of deduction and loss of all lower-tier subsidiary members, that are allocable to the period beginning on the date of the disposition that gave rise to the suspended loss and ending on the day before the first date on which the subsidiary member (or any successor) is not a member of the group of which it was a member immediately prior to the disposition (or any successor group), and that are taken into account in determining consolidated taxable income (or loss) of such group for any taxable year that includes any date on or after the date of the disposition and before the first date on which the subsidiary member (or any successor) is not a member of such group; provided, however, that such reduction shall not exceed the excess of the amount of such items over the amount of such items that are taken into account in determining the basis adjustments made under §1.1502-32 to stock of the subsidiary member (or any successor) owned by members of the group. The preceding sentence shall not apply to items of deduction and loss to the extent that the group can establish that all or a portion of such items was not reflected in the computation of the duplicated loss with respect to the subsidiary member on the date of the disposition of stock that gave rise to the suspended loss.

(ii) *Operating rules*—(A) *Year in which deduction or loss is taken into account.* For purposes of paragraph (c)(4)(i) of this section, a subsidiary member's (or any successor's) deductions and losses are treated as taken into account when and to the extent they are absorbed by the subsidiary member (or any successor) or any other member. To the extent that the subsidiary member's (or any successor's) deduction or loss is absorbed in the year it arises or is carried forward and absorbed in a subsequent year (e.g., under section 172, 465, or 1212), the deduction is treated as taken into account in the year in which it is absorbed. To the extent that a subsidiary member's (or any successor's) deduction or loss is carried back and absorbed in a prior year (whether consolidated or separate), the deduction or loss is treated as taken into account in the year in which it arises and not in the year in which it is absorbed.

(B) *Determination of items that are allocable to the post-disposition, pre-deconsolidation period.* For purposes of paragraph (c)(4)(i) of this section, the determination of whether a subsidiary member's (or any successor's) items of deduction and loss and allocable share of items of deduction and loss of all lower-tier subsidiary members are allocable to the period beginning on the date of the disposition of subsidiary stock that gave rise to the suspended loss and ending on the day before the first date on which the subsidiary member (or any successor) is not a member of the consolidated group of which it was a member immediately prior to the disposition (or any successor group) is determined pursuant to the rules of §1.1502-76(b)(2), without regard to §1.1502-76(b)(2)(ii)(D), as if the subsidiary member ceased to be a member of the group at the end of the day before the disposition and filed separate returns for the period beginning on the date of the disposition and ending on the day before the first date on which it is not a member of such group.

(5) *Allowable loss*—(i) *General rule.* To the extent not reduced under paragraph (c)(4) of this section, any loss suspended pursuant to paragraph (c)(1) or (c)(2) of this section shall be allowed, to the extent otherwise allowable under applicable provisions of the Internal Revenue Code and regulations thereunder, on a return filed by the group of which the subsidiary was a member on the date of the disposition of

subsidiary stock that gave rise to the suspended loss (or any successor group) for the taxable year that includes the day before the first date on which the subsidiary (or any successor) is not a member of such group or the date the group is allowed a worthless stock loss under section 165(g) (taking into account the provisions of §1.1502-80(c)) with respect to all of the subsidiary member stock owned by members.

(ii) *No tiering up of certain adjustments.* No adjustments shall be made to a member's basis of stock of a subsidiary member (or any successor) for a suspended loss that is taken into account under paragraph (c)(5)(i) of this section. See §1.1502-32T(a)(2).

(iii) *Statement of allowed loss.* Paragraph (c)(5)(i) of this section applies only if the separate statement required under this paragraph (c)(5)(iii) is filed with, or as part of, the taxpayer's return for the year in which the loss is allowable. The statement must be entitled "ALLOWED LOSS UNDER §1.1502-35T(c)(5)" and must contain the name and employer identification number of the subsidiary the stock of which gave rise to the loss.

(6) *Special rule for dispositions of certain carryover basis assets.* If—

(i) A member of a group recognizes a loss on the disposition of an asset other than stock of a subsidiary member;

(ii) Such member's basis in the asset disposed of was determined, directly or indirectly, in whole or in part, by reference to the basis of stock of a subsidiary member and, at the time of the determination of the member's basis in the asset disposed of, there was a duplicated loss with respect to such stock of the subsidiary member; and

(iii) Immediately after the disposition, the subsidiary member is a member of such group, then such loss shall be suspended pursuant to the principles of paragraphs (c)(1) and (c)(2) of this section to the extent of the duplicated loss with respect to such stock at the time of the determination of basis of the asset disposed of. Principles similar to those set forth in paragraphs (c)(3), (c)(4), and (c)(5) of this section shall apply to a loss suspended pursuant to this paragraph (c)(6).

(7) *Coordination with loss deferral, loss disallowance, and other rules—(i) In general.* Loss recognized on the disposition of subsidiary member stock or another asset is subject to redetermination, deferral, or

disallowance under other applicable provisions of the Internal Revenue Code and regulations thereunder, including sections 267(f) and 482. Paragraphs (c)(1), (c)(2), and (c)(6) of this section do not apply to a loss that is disallowed under any other provision. If loss is deferred under any other provision, paragraphs (c)(1), (c)(2), and (c)(6) of this section apply when the loss would otherwise be taken into account under such other provision. However, if an overriding event described in paragraph (c)(7)(ii) of this section occurs before the deferred loss is taken into account, paragraphs (c)(1), (c)(2), and (c)(6) of this section apply to the loss immediately before the event occurs, even though the loss may not be taken into account until a later time.

(ii) *Overriding events.* For purposes of paragraph (c)(7)(i) of this section, the following are overriding events—

(A) The stock ceases to be owned by a member of the consolidated group;

(B) The stock is canceled or redeemed (regardless of whether it is retired or held as treasury stock); or

(C) The stock is treated as disposed of under §1.1502-19(c)(1)(ii)(B) or (c)(1)(iii).

(8) *Application.* This paragraph (c) shall not be applied in a manner that permanently disallows a deduction for an economic loss, provided that such deduction is otherwise allowable. If the application of any provision of this paragraph (c) results in such a disallowance, proper adjustment may be made to prevent such a disallowance. Whether a provision of this paragraph (c) has resulted in such a disallowance is determined on the date on which the subsidiary (or any successor) the disposition of the stock of which gave rise to a suspended stock loss is not a member of the group or the date the group is allowed a worthless stock loss under section 165(g) (taking into account the provisions of §1.1502-80(c)) with respect to all of such subsidiary member stock owned by members. Proper adjustment in such cases shall be made by restoring the suspended stock loss immediately before the subsidiary ceases to be a member of the group or the group is allowed a worthless stock loss under section 165(g) (taking into account the provisions of §1.1502-80(c)) with respect to all of such subsidiary member stock owned by members, to the extent that its reduction pursuant to paragraph (c)(4) of

this section had the result of permanently disallowing a deduction for an economic loss.

(9) *Ordering rule.* The rules of this paragraph (c) apply after the rules of paragraph (b) of this section and §1.337(d)-2T are applied.

(d) *Definitions—(1) Disposition.* *Disposition* means any event in which gain or loss is recognized, in whole or in part.

(2) *Deconsolidation.* *Deconsolidation* means any event that causes a subsidiary member to no longer be a member of the consolidated group.

(3) *Value.* *Value* means fair market value.

(4) *Duplicated loss—(i) In general.* Duplicated loss is determined immediately after a disposition and equals the excess, if any, of—

(A) The sum of—

(1) The aggregate adjusted basis of the subsidiary member's assets other than any stock that subsidiary member owns in another subsidiary member; and

(2) Any losses attributable to the subsidiary member and carried to the subsidiary member's first taxable year following the disposition; and

(3) Any deductions of the subsidiary member that have been recognized but are deferred under a provision of the Internal Revenue Code (such as deductions deferred under section 469); over

(B) The sum of—

(1) The value of the subsidiary member's stock; and

(2) Any liabilities of the subsidiary member that have been taken account for tax purposes.

(ii) *Special rules.* (A) The amounts determined under paragraph (d)(4)(i) (other than amounts described in paragraph (d)(4)(i)(B)(1)) of this section with respect to a subsidiary member include its allocable share of corresponding amounts with respect to all lower-tier subsidiary members. If 80 percent or more in value of the stock of a subsidiary member is acquired by purchase in a single transaction (or in a series of related transactions during any 12-month period), the value of the subsidiary member's stock may not exceed the purchase price of the stock divided by the percentage of the stock (by value) so purchased. For this purpose, stock is acquired by purchase if the transferee is not related to the transferor within the meaning of sections 267(b) and 707(b)(1), using the

language “10 percent” instead of “50 percent” each place that it appears, and the transferee’s basis in the stock is determined wholly by reference to the consideration paid for such stock.

(B) The amounts determined under paragraph (d)(4)(i) of this section are not applied more than once to suspend a loss under this section.

(5) *Predecessor and Successor.* A predecessor is a transferor of assets to a transferee (the successor) in a transaction—

(i) To which section 381(a) applies;

(ii) In which substantially all of the assets of the transferor are transferred to members in a complete liquidation;

(iii) In which the successor’s basis in assets is determined (directly or indirectly, in whole or in part) by reference to the transferor’s basis in such assets, but the transferee is a successor only with respect to the assets the basis of which is so determined; or

(iv) Which is an intercompany transaction, but only with respect to assets that are being accounted for by the transferor in a prior intercompany transaction.

(6) *Successor group.* A surviving group is treated as a successor group of a consolidated group (the terminating group) that ceases to exist as a result of—

(i) The acquisition by a member of another consolidated group of either the assets of the common parent of the terminating group in a reorganization described in section 381(a)(2), or the stock of the common parent of the terminating group; or

(ii) The application of the principles of §1.1502-75(d)(2) or (3).

(7) *Preferred stock, common stock.* Preferred stock and common stock shall have the meanings set forth in §1.1502-32(d)(2) and (3), respectively.

(8) *Higher-tier.* A subsidiary member is higher-tier with respect to a member if or to the extent investment basis adjustments under §1.1502-32 with respect to the stock of the latter member would affect investment basis adjustments with respect to the stock of the former member.

(9) *Lower-tier.* A subsidiary member is lower-tier with respect to a member if or to the extent investment basis adjustments under §1.1502-32 with respect to the stock of the former member would affect investment basis adjustments with respect to the stock of the latter member.

(e) *Examples.* For purposes of the examples in this section, all groups file consolidated returns on a calendar-year basis, the facts set forth the only corporate activity, all transactions are between unrelated persons unless otherwise specified, and tax liabilities are disregarded. The principles of paragraphs (a) through (d) of this section are illustrated by the following examples:

Example 1. Nondeconsolidating sale of preferred stock of lower-tier subsidiary member. (i) *Facts.* P owns 100 percent of the common stock of each of S1 and S2. S1 and S2 each have only one class of stock outstanding. P’s basis in the stock of S1 is \$100 and the value of such stock is \$130. P’s basis in the stock of S2 is \$120 and the value of such stock is \$90. P, S1, and S2 are all members of the P group. S1 and S2 form S3. In Year 1, in transfers to which section 351 applies, S1 contributes \$100 to S3 in exchange for all of the common stock of S3 and S2 contributes an asset with a basis of \$50 and a value of \$20 to S3 in exchange for all of the preferred stock of S3. S3 becomes a member of the P group. In Year 3, in a transaction that is not part of the plan that includes the contributions to S3, S2 sells the preferred stock of S3 for \$20. Immediately after the sale, S3 is a member of the P group.

(ii) *Application of basis redetermination rule.* Because S2’s basis in the preferred stock of S3 exceeds its value immediately prior to the sale and S3 is a member of the P group immediately after the sale, all of the P group members’ bases in the stock of S3 is redetermined pursuant to paragraph (b)(1) of this section. Of the group members’ total basis of \$150 in the S3 stock, \$20 is allocated to the preferred stock, the fair market value of the preferred stock on the date of the sale, and \$130 is allocated to the common stock. S2’s sale of the preferred stock results in the recognition of \$0 of gain/loss. Pursuant to paragraph (b)(5) of this section, the redetermination of S1’s and S2’s bases in the stock of S3 results in adjustments to P’s basis in the stock of S1 and S2. In particular, P’s basis in the stock of S1 is increased by \$30 to \$130 and its basis in the stock of S2 is decreased by \$30 to \$90.

Example 2. Deconsolidating sale of common stock. (i) *Facts.* In Year 1, in a transfer to which section 351 applies, P contributes Asset A with a basis of \$900 and a value of \$200 to S in exchange for one share of S common stock (CS1). In Years 2 and 3, in successive but unrelated transfers to which section 351 applies, P transfers \$200 to S in exchange for one share of S common stock (CS2), Asset B with a basis of \$300 and a value of \$200 in exchange for one share of S common stock (CS3), and Asset C with a basis of \$1000 and a value of \$200 in exchange for one share of S common stock (CS4). In Year 4, S sells Asset A for \$200, recognizing \$700 of loss that is used to offset income of P recognized during Year 4. As a result of the sale of Asset A, the basis of each of P’s four shares of S common stock is reduced by \$175. Therefore, the basis of CS1 is \$725. The basis of CS2 is \$25. The basis of CS3 is \$125, and the basis of CS4 is \$825. In Year 5 in a transaction that is not part of a plan that includes the Year 1 contribution, P sells CS4 for \$200. Immediately after the sale of CS4, S is not a member of the P group.

(ii) *Application of basis redetermination rule.* Because P’s basis in each of CS1 and CS4 exceeds its value immediately prior to the deconsolidation of S, P’s basis in its shares of S common stock is redetermined pursuant to paragraph (b)(2) of this section. Pursuant to paragraph (b)(2)(ii) of this section, the reallocable basis amount is \$350 (the lesser of \$1150, the gross loss inherent in the stock of S owned by P immediately before the sale, and \$350, the aggregate amount of S’s items of deduction and loss that were previously taken into account in the computation of the adjustment to the basis of the stock of S that P did not hold at a loss immediately before the deconsolidation). Pursuant to paragraph (b)(2)(i) of this section, first, P’s basis in CS1 is reduced from \$725 to \$600 and P’s basis in CS4 is reduced from \$825 to \$600. Then, the reallocable basis amount increases P’s basis in CS2 from \$25 to \$250 and P’s basis in CS3 from \$125 to \$250. P recognizes \$400 of loss on the sale of CS4. The loss suspension rule does not apply because S is no longer a member of the P group. Thus, the loss is allowable at that time.

Example 3. Nondeconsolidating sale of common stock. (i) *Facts.* In Year 1, P forms S with a contribution of \$80 in exchange for 80 shares of the common stock of S, which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes Asset A with a basis of \$50 and a value of \$20 in exchange for 20 shares of the common stock of S in a transfer to which section 351 applies. In Year 3, in a transaction that is not part of the plan that includes the Year 2 contribution, P sells the 20 shares of the common stock of S that it acquired in Year 2 for \$20. Immediately after the Year 3 stock sale, S is a member of the P group. At the time of the Year 3 stock sale, S has \$80 and Asset A. In Year 4, S sells Asset A, the basis and value of which have not changed since its contribution to S. On the sale of Asset A for \$20, S recognizes a \$30 loss. The P group cannot establish that all or a portion of the \$30 loss was not reflected in the calculation of the duplicated loss of S on the date of the Year 3 stock sale. The \$30 loss is used on the P group return to offset income of P. In Year 5, P sells its remaining S common stock for \$80.

(ii) *Application of basis redetermination and loss suspension rules.* Because P’s basis in the common stock sold exceeds its value immediately prior to the sale and S is a member of the P group immediately after the sale, P’s basis in all of the stock of S is redetermined pursuant to paragraph (b)(1) of this section. Of P’s total basis of \$130 in the S common stock, a proportionate amount is allocated to each of the 100 shares of S common stock. Accordingly, \$26 is allocated to the common stock of S that is sold and \$104 is allocated to the common stock of S that is retained. On P’s sale of the 20 shares of the common stock of S for \$20, P recognizes a loss of \$6. Because the sale of the 20 shares of common stock of S does not result in the deconsolidation of S, under paragraph (c)(1) of this section, that loss is suspended to the extent of the duplicated loss with respect to the shares sold. The duplicated loss with respect to the shares sold is \$6. Therefore, the entire \$6 loss is suspended.

(iii) *Effect of subsequent asset sale on stock basis.* Of the \$30 loss recognized on the sale of Asset A, \$24 is taken into account in determining the basis adjustments made under §1.1502-32 to the stock

of S owned by P. Accordingly, P's basis in its S stock is reduced by \$24 from \$104 to \$80.

(iv) *Effect of subsequent asset sale on suspended loss.* Because P cannot establish that all or a portion of the loss recognized on the sale of Asset A was not reflected in the calculation of the duplicated loss of S on the date of the Year 3 stock sale and such loss is allocable to the period beginning on the date of the Year 3 disposition of the S stock and ending on the day before the first date on which S is not a member of the P group and is taken into account in determining consolidated taxable income (or loss) of the P group for a taxable year that includes a date on or after the date of the Year 3 disposition and before the first date on which S is not a member of the P group, such asset loss reduces the suspended loss pursuant to paragraph (c)(4) of this section. The amount of such reduction, however, cannot exceed \$6, the excess of the amount of such loss, \$30, over the amount of such loss that is taken into account in determining the basis adjustment made to the stock of S owned by P, \$24. Therefore, the suspended loss is reduced to zero.

(v) *Effect of subsequent stock sale.* P recognizes \$0 gain/loss on the Year 5 sale of its remaining S common stock. No amount of suspended loss remains to be allowed under paragraph (c)(5) of this section.

Example 4. Nondeconsolidating sale of common stock of lower-tier subsidiary. (i) *Facts.* In Year 1, P forms S1 with a contribution of \$200 in exchange for all of the common stock of S1, which represents all of the outstanding stock of S1. In the same year, S1 forms S2 with a contribution of \$80 in exchange for 80 shares of the common stock of S2, which at that time represents all of the outstanding stock of S2. S1 and S2 become members of the P group. In the same year, S2 purchases Asset A for \$80. In Year 2, S1 contributes Asset B with a basis of \$50 and a value of \$20 in exchange for 20 shares of the common stock of S2 in a transfer to which section 351 applies. In Year 3, S1 sells the 20 shares of the common stock of S2 that it acquired in Year 2 for \$20. Immediately after the Year 3 stock sale, S2 is a member of the P group. At the time of the Year 3 stock sale, the bases and values of Asset A and Asset B are unchanged. In Year 4, S2 sells Asset B for \$45, recognizing a \$5 loss. The P group cannot establish that all or a portion of the \$5 loss was not reflected in the calculation of the duplicated loss of S2 on the date of the Year 3 stock sale. The \$5 loss is used on the P group return to offset income of P. In Year 5, S1 sells its remaining S2 common stock for \$100.

(ii) *Application of basis redetermination and loss suspension rules.* Because S1's basis in the S2 common stock sold exceeds its value immediately prior to the sale and S2 is a member of the P group immediately after the sale, S1's basis in all of the stock of S2 is redetermined pursuant to paragraph (b)(1) of this section. Of S1's total basis of \$130 in the S2 common stock, a proportionate amount is allocated to each of the 100 shares of S2 common stock. Accordingly, a total of \$26 is allocated to the common stock of S2 that is sold and \$104 is allocated to the common stock of S2 that is retained. On S1's sale of the 20 shares of the common stock of S2 for \$20, S1 recognizes a loss of \$6. Because the sale of the 20 shares of common stock of S2 does not result in the deconsolidation of S2, under paragraph (c)(1) of this section, that loss is suspended to the extent of the duplicated loss with respect to the shares sold. The duplicated loss with respect to the shares sold is \$6. Therefore, the

entire \$6 loss is suspended. Pursuant to paragraph (c)(3) of this section and §1.1502-32T(b)(3)(iii)(C), the suspended loss is treated as a noncapital, nondeductible expense incurred by S1 during the tax year that includes the date of the disposition of stock to which paragraph (c)(1) of this section applies. Accordingly, P's basis in its S1 stock is reduced from \$200 to \$194.

(iii) *Effect of subsequent asset sale on stock basis.* Of the \$5 loss recognized on the sale of Asset B, \$4 is taken into account in determining the basis adjustments made under §1.1502-32 to the stock of S2 owned by S1. Accordingly, S1's basis in its S2 stock is reduced by \$4 from \$104 to \$100 and P's basis in its S1 stock is reduced by \$4 from \$194 to \$190.

(iv) *Effect of subsequent asset sale on suspended loss.* Because P cannot establish that all or a portion of the loss recognized on the sale of Asset B was not reflected in the calculation of the duplicated loss of S2 on the date of the Year 3 stock sale and such loss is allocable to the period beginning on the date of the Year 3 disposition of the S2 stock and ending on the day before the first date on which S2 is not a member of the P group and is taken into account in determining consolidated taxable income (or loss) of the P group for a taxable year that includes a date on or after the date of the Year 3 disposition and before the first date on which S2 is not a member of the P group, such asset loss reduces the suspended loss pursuant to paragraph (c)(4) of this section. The amount of such reduction, however, cannot exceed \$1, the excess of the amount of such loss, \$5, over the amount of such loss that is taken into account in determining the basis adjustment made to the stock of S2 owned by members of the P group, \$4. Therefore, the suspended loss is reduced to \$5.

(v) *Effect of subsequent stock sale.* In Year 5, when S1 sells its remaining S2 stock for \$100, it recognizes \$0 gain/loss. Pursuant to paragraph (c)(5) of this section, the remaining \$5 of the suspended loss is allowed on the P group's return for Year 5 when S1 sells its remaining S2 stock.

Example 5. Deconsolidating sale of subsidiary member owning stock of another subsidiary member that remains in group. (i) *Facts.* In Year 1, P forms S1 with a contribution of Asset A with a basis of \$50 and a value of \$20 in exchange for 100 shares of common stock of S1 in a transfer to which section 351 applies. Also in Year 1, P and S1 form S2. P contributes \$80 to S2 in exchange for 80 shares of common stock of S2. S1 contributes Asset A to S2 in exchange for 20 shares of common stock of S2 in a transfer to which section 351 applies. In Year 3, in a transaction that is not part of a plan that includes the Year 1 contributions, P sells its 100 shares of S1 common stock for \$20. Immediately after the Year 3 stock sale, S2 is a member of the P group. At the time of the Year 3 stock sale, S1 owns 20 shares of common stock of S2, and S2 has \$80 and Asset A. In Year 4, S2 sells Asset A, the basis and value of which have not changed since its contribution to S2. On the sale of Asset A for \$20, S2 recognizes a \$30 loss. That \$30 loss is used on the P group return to offset income of P. In Year 5, P sells its S2 common stock for \$80.

(ii) *Application of basis redetermination and loss suspension rules.* Pursuant to paragraph (b)(4) of this section, because immediately before P's transfer of S1 stock S1 owns stock of S2 (another subsidiary member of the same group) that has a basis that exceeds its value, paragraph (b) of this section applies as if S1

had transferred its stock of S2. Because S2 is a member of the group immediately after the transfer of the S1 stock, the group member's basis in the S2 stock is redetermined pursuant to paragraph (b)(1) of this section immediately prior to the sale of the S1 stock. Of the group members' total basis of \$130 in the S2 stock, \$26 is allocated to S1's 20 shares of S2 common stock and \$104 is allocated to P's 80 shares of S2 common stock. Pursuant to paragraph (b)(5) of this section, the redetermination of S1's basis in the stock of S2 results in an adjustment to P's basis in the stock of S1. In particular, P's basis in the stock of S1 is decreased by \$24 to \$26. On P's sale of its 100 shares of S1 common stock for \$20, P recognizes a loss of \$6. Because S1 is not a member of the P group immediately after P's sale of the S1 stock, paragraph (c)(1) of this section does not apply to suspend such loss. However, because P recognizes a loss with respect to the disposition of the S1 stock and S1 owns stock of S2 (which is a member of the P group immediately after the disposition), paragraph (c)(2) of this section does apply to suspend up to \$6 of that loss, an amount equal to the amount by which the duplicated loss with respect to the stock of S1 sold is attributable to S2's adjusted basis in its assets, loss carryforwards, and deferred deductions.

(iii) *Effect of subsequent asset sale on stock basis.* Of the \$30 loss recognized on the sale of Asset A, \$24 is taken into account in determining the basis adjustments made under §1.1502-32 to the stock of S2 owned by P. Accordingly, P's basis in its S2 stock is reduced by \$24 from \$104 to \$80.

(iv) *Effect of subsequent asset sale on suspended loss.* Because P cannot establish that all or a portion of the loss recognized on the sale of Asset A was not reflected in the calculation of the duplicated loss of S2 on the date of the Year 3 stock sale and such loss is allocable to the period beginning on the date of the Year 3 deemed disposition of the S2 stock and ending on the day before the first date on which S2 is not a member of the P group and is taken into account in determining consolidated taxable income (or loss) of the P group for a taxable year that includes a date on or after the date of the Year 3 deemed disposition and before the first date on which S2 is not a member of the P group, such asset loss reduces the suspended loss pursuant to paragraph (c)(4) of this section. The amount of such reduction, however, cannot exceed \$6, the excess of the amount of such loss, \$30, over the amount of such loss that is taken into account in determining the basis adjustment made to the stock of S2 owned by P, \$24. Therefore, the suspended loss is reduced to zero.

(v) *Effect of subsequent stock sale.* P recognizes \$0 gain/loss on the Year 5 sale of its remaining S2 common stock. No amount of suspended loss remains to be allowed under paragraph (c)(5) of this section.

Example 6. Loss recognized on asset with basis determined by reference to stock basis of subsidiary member. (i) *Facts.* In Year 1, P forms S with a contribution of \$80 in exchange for 80 shares of common stock of S which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes Asset A with a basis of \$50 and a value of \$20 in exchange for 20 shares of common stock of S in a transfer to which section 351 applies. In Year 3, in a transaction that is not part of a plan that includes the Year 1 and Year 2 contributions, P contributes the 20 shares of S com-

mon stock it acquired in Year 2 to PS, a partnership, in exchange for a 20 percent capital and profits interest in a transaction described in section 721. Immediately after the contribution to PS, S is a member of the P group. In Year 4, P sells its interest in PS for \$20, recognizing a \$30 loss.

(ii) *Application of basis redetermination rule upon nonrecognition transfer.* Because P's basis in the S common stock contributed to PS exceeds its value immediately prior to the transfer and S is a member of the P group immediately after the transfer, P's basis in all of the S stock is redetermined pursuant to paragraph (b)(1) of this section. Of P's total basis of \$130 in the common stock of S, a proportionate amount is allocated to each share of S common stock. Accordingly, \$26 is allocated to the S common stock that is contributed to PS and, under section 722, P's basis in its interest in PS is \$26.

(iii) *Application of loss suspension rule on disposition of asset with basis determined by reference to stock basis of subsidiary member.* P recognizes a \$6 loss on its disposition of its interest in PS. Because P's basis in its interest in PS was determined by reference to the basis of S stock and at the time of the determination of P's basis in its interest in PS such S stock had a duplicated loss of \$6, and, immediately after the disposition, S is a member of the P group, such loss is suspended to the extent of such duplicated loss. Principles similar to those of paragraphs (c)(3), (c)(4), and (c)(5) of this section shall apply to such suspended loss.

(f) *Worthlessness and certain dispositions not followed by separate return years—(1) General rule.* Notwithstanding any other provision in the regulations under section 1502, if stock of a subsidiary member is treated as worthless under section 165 (taking into account the provisions of §1.1502-80(c)), or if a member of a group disposes of subsidiary member stock and on the following day the subsidiary is not a member of the group and does not have a separate return year, then all losses treated as attributable to the subsidiary member under the principles of §1.1502-21(b)(2)(iv), after computing the taxable income of the group, the subsidiary member, or a group of which the subsidiary member was previously a member for the taxable year that includes the determination of worthlessness or the disposition and any prior taxable year, shall be treated as expired, but not as absorbed by the group, as of the beginning of the group's taxable year that follows the taxable year that includes the determination of worthlessness or the disposition.

(2) *Election in the case of determinations of worthlessness and dispositions not followed by a separate return that occurred prior to March 14, 2003.* If stock of a subsidiary member is treated as worthless under section 165 (taking into account the provisions of §1.1502-80(c)) on or after

March 7, 2002, and prior to March 14, 2003, or if a member of a group disposes of subsidiary member stock on or after March 7, 2002, and prior to March 14, 2003, and on the following day the subsidiary is not a member of the group and does not have a separate return year, then, notwithstanding paragraph (f)(1) of this section, the common parent may make an irrevocable election to reattribute to itself all or any portion of the losses treated as attributable to such subsidiary member under the principles of §1.1502-21(b)(2)(iv). The election shall be in the form of a statement filed with or as part of the group's return for the taxable year in which the worthlessness is established or the disposition occurs. The statement shall be entitled "Election under Section 1.1502-35T(f)(2)" and must state that the common parent is making an irrevocable election under this paragraph (f)(2) to reattribute to itself the losses of the subsidiary member the stock of which is worthless or disposed of. In addition, it must identify the subsidiary to which the election relates and the portion of losses subject to the election. If the election provided in this paragraph is made, the common parent shall be treated as succeeding to the reattributed losses as if the losses were succeeded to in a transaction described in section 381(a). For purposes of applying the provisions of §1.1502-32, the reattributed losses shall be treated as absorbed by the group immediately prior to the allowance of any loss or inclusion of any income or gain with respect to the determination of worthlessness or the disposition. In the case of an election to reattribute less than all of the losses otherwise treated as attributable to such subsidiary member under the principles of §1.1502-21(b)(2)(iv), paragraph (f)(1) of this section shall apply to that portion of the losses for which an election under this paragraph (f)(2) is not made.

(g) *Anti-avoidance rules—(1) Transfer of share without a loss in avoidance.* If a share of subsidiary member stock has a basis that does not exceed its value and the share is transferred with a view to avoiding application of the rules of paragraph (b) of this section prior to the transfer of a share of subsidiary member stock that has a basis that does exceed its value or a deconsolidation of a subsidiary member, the rules of paragraph (b) of this section shall ap-

ply immediately prior to the transfer of stock that has a basis that does not exceed its value.

(2) *Transfers of loss property in avoidance.* If a member of a consolidated group contributes an asset with a basis that exceeds its value to a partnership in a transaction described in section 721 or a corporation that is not a member of such group in a transfer described in section 351, such partnership or corporation contributes such asset to a subsidiary member in a transfer described in section 351, and such contributions are undertaken with a view to avoiding the rules of paragraph (b) or (c) of this section, adjustments must be made to carry out the purposes of this section.

(3) *Anti-loss reimportation—(i) Application.* This paragraph (g)(3) applies if—

(A) A member of a group recognizes and is allowed a loss on the disposition of a share of stock of a subsidiary member with respect to which there is a duplicated loss; and

(B) Within the 10-year period beginning on the date the subsidiary member (or any successor) ceases to be a member of such group—

(I) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) owns any asset that has a basis in excess of value at such time and that was owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in excess of value on such date;

(2) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) owns any asset that has a basis in excess of value at such time and that has a basis that reflects, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in excess of value on such date;

(3) In a transaction described in section 381 or section 351, any member of such group (or any successor group) acquires any asset of the subsidiary member (or any successor) that was owned by the subsidiary member (or any successor) on the date of a disposition of stock of such

subsidiary member (or any successor) and that had a basis in excess of its value on such date, or any asset that has a basis that reflects, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in excess of its value on such date, and, immediately after the acquisition of such asset, such asset has a basis in excess of its value;

(4) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) has a liability (within the meaning of section 358(h)(3)) that it had on the date of a disposition of stock of such subsidiary member (or any successor) and such liability will give rise to a deduction;

(5) In a transaction described in section 381 or section 351, any member of such group (or any successor group) assumes a liability (within the meaning of section 358(h)(3)) that was a liability of the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor);

(6) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) has any losses or deferred deductions that were losses or deferred deductions of the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor);

(7) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) has any losses or deferred deductions that are attributable to any asset that was owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in excess of value on such date;

(8) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) has any losses or deferred deductions that are attributable to any asset that had a basis that reflected, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member (or any

successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in excess of value on such date;

(9) The subsidiary member (or any successor) again becomes a member of such group (or any successor group) when the subsidiary member (or any successor) has any losses or deferred deductions that are attributable to a liability (within the meaning of section 358(h)(3)) that it had on the date of a disposition of stock of such subsidiary member (or any successor);

(10) Any member of such group (or any successor group) succeeds to any losses or deferred deductions of the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor), that are attributable to any asset that was owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in excess of value on such date, that are attributable to any asset that had a basis that reflected, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in excess of value on such date, or that are attributable to a liability (within the meaning of section 358(h)(3)) of the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor); or

(11) Any losses or deferred deductions of the subsidiary member (or any successor) that were losses or deferred deductions of the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor), that are attributable to any asset that was owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in excess of value on such date, that are attributable to any asset that had a basis that reflected, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in ex-

cess of value on such date, or that are attributable to a liability (within the meaning of section 358(h)(3)) of the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) are carried back to a pre-disposition taxable year of the subsidiary member.

(ii) *Operating rules.* (A) For purposes of paragraph (g)(3)(i)(B) of this section, assets shall include stock and securities and the subsidiary member (or any successor) shall be treated as having its allocable share of losses and deferred deductions of all lower-tier subsidiary members and as owning its allocable share of each asset of all lower-tier subsidiary members.

(B) For purposes of paragraphs (g)(3)(i)(B)(6), (7), (8), and (9) of this section, unless the group can establish otherwise, if the subsidiary member (or any successor) again becomes a member of such group (or any successor group) at a time when the subsidiary member (or any successor) has any losses or deferred deductions, such losses and deferred deductions shall be treated as losses or deferred deductions that were losses or deferred deductions of the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor), losses or deferred deductions that are attributable to assets that were owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had bases in excess of value on such date, losses or deferred deductions that are attributable to assets that had bases that reflected, directly or indirectly, in whole or in part, the bases of assets that were owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had bases in excess of value on such date, or losses or deferred deductions attributable to a liability (within the meaning of section 358(h)(3)) of the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor).

(C) For purposes of paragraph (g)(3)(i)(B)(10) of this section, unless the group can establish otherwise, if a member of such group (or any successor group) succeeds to any losses or deferred deductions of the subsidiary member (or any suc-

cessor), such losses and deferred deductions shall be treated as losses or deferred deductions that were losses or deferred deductions of the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor), losses or deferred deductions that are attributable to assets that were owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had bases in excess of value on such date, losses or deferred deductions that are attributable to assets that had bases that reflected, directly or indirectly, in whole or in part, the bases of assets that were owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had bases in excess of value on such date, or losses or deferred deductions attributable to a liability (within the meaning of section 358(h)(3)) of the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor).

(D) For purposes of paragraph (g)(3)(i)(B)(II) of this section, unless the group can establish otherwise, if any losses or deferred deductions of the subsidiary member (or any successor) are carried back to a pre-disposition taxable year of the subsidiary member, such losses and deferred deductions shall be treated as losses or deferred deductions of the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in excess of value on such date, losses or deferred deductions that are attributable to assets that had bases that reflected, directly or indirectly, in whole or in part, the bases of assets that were owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in excess of value on such date, or losses or deferred deductions that are attributable to a liability (within the meaning of section 358(h)(3)) of the subsidiary member (or any successor) on the date of

a disposition of stock of such subsidiary member (or any successor).

(iii) *Loss disallowance.* If this paragraph (g)(3) applies, then, to the extent that the aggregate amount of loss recognized by members of the group (and any successor group) on dispositions of the subsidiary member stock was attributable to a duplicated loss of such subsidiary member that was allowed, such group (or any successor group) will be denied the use of—

(A) Any loss recognized that is attributable to, directly or indirectly, an asset that was owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in excess of value on such date, to the extent of the lesser of the loss inherent in such asset on the date of a disposition of the stock of the subsidiary member (or any successor) and the loss inherent in such asset on the date of the event described in paragraph (g)(3)(i)(B) of this section that gives rise to the application of this paragraph (g)(3);

(B) Any loss recognized that is attributable to, directly or indirectly, an asset that has a basis that reflects, directly or indirectly, in whole or in part, the basis of any asset that was owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) and that had a basis in excess of its value on such date, to the extent of the lesser of the loss inherent in the asset that was owned by the subsidiary member (or any successor) on the date of a disposition of stock of such subsidiary member (or any successor) the basis of which is reflected, directly or indirectly, in whole or in part, in the basis of such asset on the date of the disposition and the loss inherent in such asset on the date of the event described in paragraph (g)(3)(i)(B) of this section that gives rise to the application of this paragraph (g)(3);

(C) Any loss or deduction that is attributable to a liability described in paragraph (g)(3)(i)(B)(4) or (5) of this section; and

(D) Any loss or deduction described in paragraph (g)(3)(i)(B)(6), (7), (8), (9), (10), or (11) of this section, provided that a loss or deferred deduction described in paragraph (g)(3)(i)(B)(II) of this section shall be allowed to be carried forward to a post-disposition taxable year of the subsidiary member.

(iv) *Treatment of disallowed loss.* For purposes of §1.1502–32(b)(3)(iii), any loss or deduction the use of which is disallowed pursuant to paragraph (g)(3)(iii) of this section (other than a loss or deduction described in paragraph (g)(3)(i)(B)(II) of this section), and with respect to which no waiver described in §1.1502–32(b)(4) is filed, is treated as a noncapital, nondeductible expense incurred during the taxable year that such loss would otherwise be absorbed.

(4) *Avoidance of recognition of gain.* (i) If a transaction is structured with a view to, and has the effect of, deferring or avoiding the recognition of gain on a disposition of stock by invoking the application of paragraph (b)(1) of this section to redetermine the basis of stock of a subsidiary member, and the stock loss that gives rise to the application of paragraph (b)(1) of this section is not significant, paragraphs (b) and (c) of this section shall not apply.

(ii) If a transaction is structured with a view to, and has the effect of, deferring or avoiding the recognition of gain on a disposition of stock by invoking the application of paragraph (b)(2) of this section to redetermine the basis of stock of a subsidiary member, and the duplicated loss of the subsidiary member that is reflected in stock of the subsidiary member owned by members of the group immediately before the deconsolidation is not significant, paragraphs (b) and (c) of this section shall not apply.

(5) *Examples.* The principles of this paragraph (g) are illustrated by the following examples:

Example 1. Transfers of property in avoidance of basis redetermination rule. (i) *Facts.* In Year 1, P forms S with a contribution of \$100 in exchange for 100 shares of common stock of S which at that time represents all of the outstanding stock of S. S becomes a member of the P group. In Year 2, P contributes 20 shares of common stock of S to PS, a partnership, in exchange for a 20 percent capital and profits interest in a transaction described in section 721. In Year 3, P contributes Asset A with a basis of \$50 and a value of \$20 to PS in exchange for an additional capital and profits interest in PS in a transaction described in section 721. Also in Year 3, PS contributes Asset A to S and P contributes an additional \$80 to S in transfers to which section 351 applies. In Year 4, S sells Asset A for \$20, recognizing a loss of \$30. The P group uses that loss to offset income of P. Also in Year 4, P sells its entire interest in PS for \$40, recognizing a loss of \$30.

(ii) *Analysis.* Pursuant to paragraph (g)(2) of this section, if P's contributions of S stock and Asset A to PS were undertaken with a view to avoiding the application of the basis redetermination or the loss sus-

pension rule, adjustments must be made such that the group does not obtain more than one tax benefit from the \$30 loss inherent in Asset A.

Example 2. Transfers effecting a reimportation of loss. (i) *Facts.* In Year 1, P forms S with a contribution of Asset A with a value of \$100 and a basis of \$120, Asset B with a value of \$50 and a basis of \$70, Asset C with a value of \$90 and a basis of \$100 in exchange for all of the common stock of S and S becomes a member of the P group. In Year 2, in a transaction that is not part of a plan that includes the contribution, P sells the stock of S for \$240, recognizing a loss of \$50. At such time, the bases and values of Assets A, B, and C have not changed since their contribution to S. In Year 3, S sells Asset A, recognizing a \$20 loss. In Year 3, S merges into M in a reorganization described in section 368(a)(1)(A). In Year 8, P purchases all of the stock of M for \$300. At that time, M has a \$10 net operating loss. In addition, M owns Asset D, which was acquired in an exchange described in section 1031 in connection with the surrender of Asset B. Asset C has a value of \$80 and a basis of \$100. Asset D has a value of \$60 and a basis of \$70. In Year 9, P has operating income of \$100 and M recognizes \$20 of loss on the sale of Asset C. In Year 10, P has operating income of \$50 and M recognizes \$50 of loss on the sale of Asset D.

(ii) *Analysis.* P's \$50 loss on the sale of S stock is entirely attributable to duplicated loss. Therefore, pursuant to paragraph (g)(3) of this section, assuming the P group cannot establish otherwise, M's \$10 net operating loss is treated as attributable to assets that were owned by S on the date of the disposition and that had bases in excess of value on such date. Without regard to any other limitations on the group's use of M's net operating loss, the P group cannot use M's \$10 net operating loss pursuant to paragraph (g)(3)(iii)(D) of this section. Pursuant to paragraph (g)(3)(iv) of this section and §1.1502-32T(b)(3)(iii)(D), such loss is treated as a noncapital, nondeductible expense of M incurred during the taxable year that includes the day after the reorganization. In addition, the P group is denied the use of \$10 of the loss recognized on the sale of Asset C. Finally, the P group is denied the use of \$10 of the loss recognized on the sale of Asset D. Pursuant to paragraph (g)(3)(iv) of

this section and §1.1502-32T(b)(3)(iii)(D), each such disallowed loss is treated as a noncapital, nondeductible expense of M incurred during the taxable year that includes the date of the disposition of the asset with respect to which such loss was recognized.

Example 3. Transfers to avoid recognition of gain. (i) *Facts.* P owns all of the stock of S1 and S2. The S2 stock has a basis of \$400 and a value of \$500. S1 owns 50% of the stock of the S3 common stock with a basis of \$150. S2 owns the remaining 50% of the S3 common stock with a basis of \$100 and a value of \$200 and one share of S3 preferred stock with a basis of \$10 and a value of \$9. P intends to sell all of its S2 stock to an unrelated buyer. P, therefore, engages in the following steps to dispose of S2 without recognizing a substantial portion of the built-in gain in S2. First, P causes a recapitalization of S3 in which S2's S3 common stock is exchanged for new S3 preferred shares. P then sells all of its S2 stock. Immediately after the sale of the S2 stock, S3 is a member of the P group.

(ii) *Analysis.* Pursuant to paragraph (b)(4) of this section, because S2 owns stock of S3 (another subsidiary member of the same group) and, immediately after the sale of the S2 stock, S3 is a member of the group, then for purposes of applying paragraph (b) of this section, S2 is deemed to have transferred its S3 stock. Because S3 is a member of the group immediately after the transfer of the S2 stock and the S3 stock deemed transferred has a basis in excess of value, the group member's basis in the S3 stock is redetermined pursuant to paragraph (b)(1) of this section immediately prior to the sale of the S2 stock. Pursuant to paragraph (b)(1) of this section, the total basis of S3 stock held by members of the P group is allocated first to the S3 preferred shares, up to their value of \$209, and then to the remaining shares of S3 common held by S1. S2's aggregate basis in the S3 preferred stock is increased from \$110 to \$209. This increase tiers up and increases P's basis in the S2 stock from \$400 to \$499. Accordingly, P will recognize only \$1 of gain on the sale of its S2 stock. However, because the recapitalization of S3 was structured with a view to, and has the effect of, avoiding the recognition of gain on a disposition of stock by invoking the application of paragraph (b) of this section, para-

graph (g)(4)(i) of this section applies. Accordingly, paragraph (b) of this section does not apply upon P's disposition of the S2 stock and P recognizes \$100 of gain on the disposition of the S2 stock.

(h) *Application of other anti-abuse rules.* The rules of this section do not preclude the application of anti-abuse rules under other provisions of the Internal Revenue Code and regulations thereunder.

(i) [Reserved].

(j) *Effective date.* This section, except for paragraph (g)(3) of this section, applies with respect to stock transfers, deconsolidations of subsidiary members, determinations of worthlessness, and stock dispositions on or after March 7, 2002, and no later than March 11, 2006, but only if such events occur during a taxable year the original return for which is due (without regard to extensions) after March 14, 2003. Paragraph (g)(3) of this section applies to events described in paragraph (g)(3)(iii) of this section occurring on or after October 18, 2002, and no later than March 11, 2006, but only if such events occur during a taxable year the original return for which is due (without regard to extensions) after March 14, 2003.

Par. 8. The authority citation for part 602 continues to read as follows:

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

Par. 9. In §602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described

Current OMB control No.

* * * * *

1.1502-35T..... 1545-1828

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David A. Mader,
Assistant Deputy Commissioner
of Internal Revenue.

Section 6621.—Determination of Interest Rate

26 CFR 301.6621-1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code

for the calendar quarter beginning April 1, 2003, will be 5 percent for overpayments (4 percent in the case of a corporation), 5 percent for underpayments, and 7 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 2.5 percent.

Approved March 7, 2003.

Pamela F. Olson,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on March 11, 2003, 1:04 p.m., and published in the issue of the Federal Register for March 14, 2003, 68 F.R. 12287)

Rev. Rul. 2003-30

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under § 6621(a)(1), the overpayment rate beginning April 1, 2003, is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under § 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under § 6601 on any large corporate underpayment, the underpayment rate under § 6621(a)(2) is determined by substituting "5 percentage points" for "3 percentage points." See § 6621(c) and § 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and § 301.6621-3 are generally effective for periods after December 31, 1990.

Section 6621(b)(1) provides that the Secretary will determine the federal short-term rate for the first month in each calendar quarter.

Section 6621(b)(2)(A) provides that the federal short-term rate determined under § 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(2)(B) provides that in determining the addition to tax under § 6654 for failure to pay estimated tax for any taxable year, the federal short-term rate that applies during the third month following such taxable year also applies during the first 15 days of the fourth month following such taxable year.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments and underpayments of tax under § 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with § 6621 which, pursuant to § 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of January 2003 is 2 percent. Accordingly, an overpayment rate of 5 percent (4 percent in the case of a corporation) and an under-

payment rate of 5 percent are established for the calendar quarter beginning April 1, 2003. The overpayment rate for the portion of a corporate overpayment exceeding \$10,000 for the calendar quarter beginning April 1, 2003, is 2.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning April 1, 2003, is 7 percent. These rates apply to amounts bearing interest during that calendar quarter.

The 5 percent rate also applies to estimated tax underpayments for the first calendar quarter in 2003 and for the first 15 days in April 2003.

Interest factors for daily compound interest for annual rates of 2.5 percent, 4 percent, 5 percent, and 7 percent are published in Tables 10, 13, 15, and 19 of Rev. Proc. 95-17, 1995-1 C.B. 556, 564, 567, 569, and 573.

Annual interest rates to be compounded daily pursuant to § 6622 that apply for prior periods are set forth in the tables accompanying this revenue ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Raymond Bailey of the Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions & Judicial Practice Division. For further information regarding this revenue ruling, contact Mr. Bailey at (202) 622-6226 (not a toll-free call).

TABLE OF INTEREST RATES
PERIODS BEFORE JUL. 1, 1975 – PERIODS ENDING DEC. 31, 1986
OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995-1 C.B. DAILY RATE TABLE
Before Jul. 1, 1975	6%	Table 2, pg. 557
Jul. 1, 1975—Jan. 31, 1976	9%	Table 4, pg. 559
Feb. 1, 1976—Jan. 31, 1978	7%	Table 3, pg. 558
Feb. 1, 1978—Jan. 31, 1980	6%	Table 2, pg. 557
Feb. 1, 1980—Jan. 31, 1982	12%	Table 5, pg. 560
Feb. 1, 1982—Dec. 31, 1982	20%	Table 6, pg. 560
Jan. 1, 1983—Jun. 30, 1983	16%	Table 37, pg. 591
Jul. 1, 1983—Dec. 31, 1983	11%	Table 27, pg. 581
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585

TABLE OF INTEREST RATES
PERIODS BEFORE JUL. 1, 1975 – PERIODS ENDING DEC. 31, 1986
OVERPAYMENTS AND UNDERPAYMENTS—Continued

PERIOD	RATE	In 1995–1 C.B. DAILY RATE TABLE
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – DEC. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577

TABLE OF INTEREST RATES
FROM JAN. 1, 1987 – DEC. 31, 1998—Continued

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
NONCORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	1995-1 C.B.		
	RATE	TABLE	PAGE
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan 1, 2003—Mar. 31, 2003	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	5%	15	569

TABLE OF INTEREST RATES
FROM JANUARY 1, 1999 – PRESENT
CORPORATE OVERPAYMENTS AND UNDERPAYMENTS

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	4%	13	567	5%	15	569

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT

	1995-1 C.B.		
	RATE	TABLE	PG
Jan. 1, 1991—Mar. 31, 1991	13%	31	585
Apr. 1, 1991—Jun. 30, 1991	12%	29	583
Jul. 1, 1991—Sep. 30, 1991	12%	29	583
Oct. 1, 1991—Dec. 31, 1991	12%	29	583
Jan. 1, 1992—Mar. 31, 1992	11%	75	629
Apr. 1, 1992—Jun. 30, 1992	10%	73	627
Jul. 1, 1992—Sep. 30, 1992	10%	73	627
Oct. 1, 1992—Dec. 31, 1992	9%	71	625
Jan. 1, 1993—Mar. 31, 1993	9%	23	577
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS
FROM JANUARY 1, 1991 – PRESENT—Continued

	RATE	1995-1 C.B.	
		TABLE	PG
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 30, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573
Apr. 1, 2003—Jun. 30, 2003	7%	19	573

TABLE OF INTEREST RATES FOR
CORPORATE OVERPAYMENTS EXCEEDING \$10,000
FROM JANUARY 1, 1995 – PRESENT

	RATE	1995-1 C.B.	
		TABLE	PG
Jan. 1, 1995—Mar. 31, 1995	6.5%	18	572
Apr. 1, 1995—Jun. 30, 1995	7.5%	20	574
Jul. 1, 1995—Sep. 30, 1995	6.5%	18	572
Oct. 1, 1995—Dec. 31, 1995	6.5%	18	572
Jan. 1, 1996—Mar. 31, 1996	6.5%	66	620
Apr. 1, 1996—Jun. 30, 1996	5.5%	64	618
Jul. 1, 1996—Sep. 30, 1996	6.5%	66	620

TABLE OF INTEREST RATES FOR
CORPORATE OVERPAYMENTS EXCEEDING \$10,000
FROM JANUARY 1, 1995 – PRESENT—Continued

	RATE	1995-1 C.B. TABLE	PG
Oct. 1, 1996—Dec. 31, 1996	6.5%	66	620
Jan. 1, 1997—Mar. 31, 1997	6.5%	18	572
Apr. 1, 1997—Jun. 30, 1997	6.5%	18	572
Jul. 1, 1997—Sep. 30, 1997	6.5%	18	572
Oct. 1, 1997—Dec. 31, 1997	6.5%	18	572
Jan. 1, 1998—Mar. 31, 1998	6.5%	18	572
Apr. 1, 1998—Jun. 30, 1998	5.5%	16	570
Jul. 1, 1998—Sep. 30, 1998	5.5%	16	570
Oct. 1, 1998—Dec. 31, 1998	5.5%	16	570
Jan. 1, 1999—Mar. 31, 1999	4.5%	14	568
Apr. 1, 1999—Jun. 30, 1999	5.5%	16	570
Jul. 1, 1999—Sep. 30, 1999	5.5%	16	570
Oct. 1, 1999—Dec. 31, 1999	5.5%	16	570
Jan. 1, 2000—Mar. 31, 2000	5.5%	64	618
Apr. 1, 2000—Jun. 30, 2000	6.5%	66	620
Jul. 1, 2000—Sep. 30, 2000	6.5%	66	620
Oct. 1, 2000—Dec. 31, 2000	6.5%	66	620
Jan. 1, 2001—Mar. 31, 2001	6.5%	18	572
Apr. 1, 2001—Jun. 30, 2001	5.5%	16	570
Jul. 1, 2001—Sep. 30, 2001	4.5%	14	568
Oct. 1, 2001—Dec. 31, 2001	4.5%	14	568
Jan. 1, 2002—Mar. 31, 2002	3.5%	12	566
Apr. 1, 2002—Jun. 30, 2002	3.5%	12	566
Jul. 1, 2002—Sep. 30, 2002	3.5%	12	566
Oct. 1, 2002—Dec. 31, 2002	3.5%	12	566
Jan. 1, 2003—Mar. 31, 2003	2.5%	10	564
Apr. 1, 2003—Jun. 30, 2003	2.5%	10	564

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, § 911, 1.911-1.)

Rev. Proc. 2003-26

SECTION 1. PURPOSE

.01 This revenue procedure provides information to any individual who failed to meet the eligibility requirements of § 911(d)(1) of the Internal Revenue Code because adverse conditions in a foreign country precluded the individual from meeting those requirements for taxable year 2002.

.02 The Internal Revenue Service has previously listed countries for which the eligibility requirements of § 911(d)(1) of the Code are waived under § 911(d)(4) because of adverse conditions in those countries on and after the date stated. See Rev. Proc. 2002-20, 2002-14 I.R.B. 732, Rev. Proc. 2001-27, 2001-1 C.B. 1155, and Rev. Proc. 2000-14, 2000-1 C.B. 960. This revenue procedure lists countries added to the list in 2002, for which the eligibility re-

quirements of § 911(d)(1) are waived. Rev. Proc. 2002-20, Rev. Proc. 2001-27, and Rev. Proc. 2000-14 remain in full force and effect.

SECTION 2. BACKGROUND

.01 Section 911(a) of the Code allows a “qualified individual,” as defined in § 911(d)(1), to exclude foreign earned income and housing cost amounts from gross income. Section 911(c)(3) of the Code allows a qualified individual to deduct housing cost amounts from gross income.

.02 Section 911(d)(1) of the Code defines the term “qualified individual” as an individual whose tax home is in a foreign country and who is (A) a citizen of the United States and establishes to the satisfaction of the Secretary of the Treasury that the individual has been a *bona fide* resident of a foreign country or countries for an uninterrupted period that includes an entire taxable year, or (B) a citizen or resident of the United States who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days.

.03 Section 911(d)(4) of the Code provides an exception to the eligibility requirements of § 911(d)(1). An individual will be treated as a qualified individual with respect to a period in which the individual was a *bona fide* resident of, or was present in, a foreign country if the individual left the country during a period for which the Secretary of the Treasury, after consultation with the Secretary of State, determines that individuals were required to leave because of war, civil unrest, or similar adverse conditions that precluded the normal conduct of business. An individual must establish that but for those conditions the individual could reasonably have been expected to meet the eligibility requirements.

.04 For 2002, the Secretary of the Treasury in consultation with the Secretary of State has determined that war, civil unrest, or similar adverse conditions that precluded the normal conduct of business existed in the following countries beginning on the specified date:

<i>Country</i>	<i>Date of Departure</i>	<i>On or after</i>
Central African Republic		10/31/02
Côte d’Ivoire		10/18/02
Indonesia		10/13/02
Madagascar		04/13/02
Pakistan		03/22/02
Venezuela		12/20/02

.05 Accordingly, for purposes of § 911 of the Code, an individual who left one of the foregoing countries on or after the specified departure date shall be treated as a qualified individual with respect to the period during which that individual was present in, or was a *bona fide* resident of, such foreign country, if the individual establishes a reasonable expectation of meeting the requirements of § 911(d) but for those conditions.

.06 To qualify for relief under § 911(d)(4) of the Code, an individual must

have established residency, or have been physically present, in the foreign country on or prior to the date that the Secretary of the Treasury determines that individuals were required to leave the foreign country. Individuals who establish residency, or are first physically present, in the foreign country after the date that the Secretary prescribes shall not be treated as qualified individuals under § 911(d)(4) of the Code. For example, individuals who are first physically present in the Central African Republic after October 31, 2002, are not

eligible to qualify for the exception provided in § 911(d)(4) of the Code for taxable year 2002.

.07 In order to assist those individuals who are filing prior year or amended tax returns, the Internal Revenue Service is republishing the countries listed for tax years 1999, 2000, and 2001, for which the eligibility requirements of § 911(d)(1) of the Code are waived under § 911(d)(4):

Tax Year 1999—

Date of Departure

Country

Eritrea
Ethiopia
Serbia-Montenegro

On or after

February 12, 1999
February 12, 1999
March 20, 1999

Tax Year 2000—

Date of Departure

Country

Eritrea

On or after

May 19, 2000

Tax Year 2001—

Date of Departure

Country

Macedonia

On or after

July 27, 2001

SECTION 3. INQUIRIES

A taxpayer who needs assistance on how to claim this exclusion, or on how to file an amended return, should contact a local IRS Office or, for a taxpayer residing or traveling outside the United States, the nearest overseas IRS office.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002-20, 2002-14 I.R.B. 732, is supplemented.

DRAFTING INFORMATION

The principal author of this revenue procedure is Kate Y. Hwa of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Ms. Hwa at (202) 622-3840 (not a toll-free call).

26 CFR 601.105: Examination of returns and claim for refund, credit, or abatement; determination of correct tax liability. (Also §§ 6050I, 1.605I-1.)

Rev. Proc. 2003-27

SECTION 1. PURPOSE

This revenue procedure provides guidance on the information reporting requirements under § 6050I of the Internal Revenue Code for small cash transactions that involve the rental of taxicabs on a daily shift basis.

SECTION 2. BACKGROUND

.01 Taxi fleet owners rent their taxicabs to taxi drivers under a variety of leasing practices. In some cases, taxi fleet owners and taxi drivers enter into formal lease agreements in which the taxi fleet owner grants the taxi driver the right to use a taxicab on a daily shift basis for an agreed payment per daily shift and for a fixed period of time. In other cases, the rental is based on the business practices and the ongoing business relationship between the taxi fleet owner and the taxi driver for the regular use of a taxicab on a daily shift basis. These situations may involve leases without a fixed period of time, or an arrangement in which there is no formal lease. Under these situations, the taxi fleet owner grants the taxi driver the right to use the taxicab on a recurring, daily shift basis pursuant to agreed terms that the taxi fleet owner or the taxi driver can alter or terminate at the end of each daily shift. Neither the taxi fleet owner nor the taxi driver has an obligation to continue the rental arrangement. Taxi fleet owners have questioned whether their leasing practices make the rentals of taxicabs on a daily shift basis “related transactions” within the meaning of § 6050I and § 1.6050I-1(c)(7)(ii) of the Income Tax Regulations.

.02 Section 6050I(a) provides that any person who is engaged in a trade or business, and who, in the course of such trade or business, receives more than \$10,000 in cash in one transaction (or two or more related transactions), shall make the return described in § 6050I(b) with respect to such

transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

.03 Section 1.6050I-1(b) provides that the receipt of multiple cash deposits or cash installment payments (or other similar payments or prepayments) on or after January 1, 1990, relating to a single transaction (or two or more related transactions), is reported as set forth in § 1.6050I-1(b)(1) through (b)(3).

.04 Section 1.6050I-1(b)(1) provides that if the initial payment is in excess of \$10,000, the recipient must report the initial payment within 15 days of its receipt.

.05 Section 1.6050I-1(b)(2) provides that if the initial payment does not exceed \$10,000 then the recipient must aggregate the initial payment and subsequent payments made within one year of the initial payment until the aggregate amount exceeds \$10,000, and report the aggregate amount within 15 days after receiving the payment that causes the aggregate amount to exceed \$10,000.

.06 Section 1.6050I-1(b)(3) provides that, in addition to any other required report, a report must be made each time that previously unreportable payments made within a 12-month period with respect to a single transaction (or two or more related transactions), individually or in the aggregate, exceed \$10,000.

.07 Section 1.6050I-1(c)(7)(i) defines the term “transaction” as the underlying event precipitating the payer’s transfer of cash to the recipient. The term “transaction” includes a rental of real or personal property. A transaction may not be divided into

multiple transactions in order to avoid reporting under § 6050I.

.08 Section 1.6050I-1(c)(7)(ii) defines “related transactions” as any transaction conducted between a payer (or its agent) and a recipient of cash in a 24-hour period. Additionally, transactions conducted between a payer (or its agent) and a cash recipient during a period of more than 24 hours are related if the recipient knows or has reason to know that each transaction is one of a series of connected transactions.

SECTION 3. SCOPE

This revenue procedure describes how the Internal Revenue Service (Service) will treat certain rentals of taxicabs for a daily shift for purposes of the information re-

porting requirements under § 6050I of the Code and the regulations.

SECTION 4. APPLICATION

If a taxi fleet owner rents a taxicab on a daily shift basis to a taxi driver under a formal lease or a daily shift arrangement based on the ongoing business relationship between the taxi fleet owner and the taxi driver, the Service will not treat the rental for a daily shift as part of a series of connected transactions under § 1.6050I-1(c)(7)(ii) if—

(1) The rent for the shift does not exceed \$150 and is not paid during a 24-hour period within which the payments made by, or on behalf of, the driver exceed \$150; and

(2) Neither the taxi fleet owner nor the taxi driver has an obligation to continue the daily shift rental arrangement.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective March 31, 2003.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Tiffany P. Smith of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue procedure, contact Tiffany P. Smith at (202) 622-4910 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulation; Withdrawal of Notice of Proposed Rulemaking; and Notice of Public Hearing

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions

REG-131478-02

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In T.D. 9048 on page 644 of this issue of the Bulletin, the IRS is issuing temporary regulations under section 1502 that redetermine the basis of stock of a subsidiary member of a consolidated group immediately prior to certain transfers of such stock. In addition, temporary regulations suspend certain losses recognized on the disposition of such stock. The regulations apply to corporations filing consolidated returns. The text of the temporary regulations serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by June 12, 2003. Outlines of topics to be discussed at the public hearing scheduled for June 20, 2003, at 10 a.m., must be received by May 30, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG-131478-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG-131478-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at www.irs.gov/regs. The public hearing will be held in the IRS Auditorium, Internal

Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Aimee K. Meacham, (202) 622-7530; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya M. Cruse, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by May 13, 2003.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in §§1.1502-35T(c), 1.1502-35T(c)(5)(iii), 1.1502-35T(f)(2) and

1.1502-35T(g)(3). This information is required by the IRS to verify compliance with section 1502. This information will be used to determine whether the amount of tax has been calculated correctly. The collection of information is required to properly determine the amount permitted to be taken into account as a loss. The respondents are corporations filing consolidated returns. The collection of information is required to obtain a benefit.

Estimated total annual reporting and/or recordkeeping burden: 15,000 hours.

Estimated average annual burden per respondent and/or recordkeeper: 2 hours.

Estimated number of respondents and/or recordkeepers: 7,475.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 1502. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issuance of the proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking 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 impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations, which tend to be larger businesses.

Moreover, the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 20, 2003, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by May 30, 2000. 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 Aimee K. Meacham of the Office of Associate Chief Counsel (Corporate),

IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, proposed regulations published on October 23, 2002 (REG-131478-02, 2002-47 I.R.B. 892 [67 FR 65066]) are withdrawn, and 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
26 U.S.C. 1502 * * *

Par. 2. Section 1.1502-21 is amended by:

1. Revising paragraph (b)(1).
2. Adding paragraph (b)(3)(v) and (h)(7).

The revision and addition read as follows:

§1.1502-21 Net operating losses.

* * * * *

(b) * * *

(1) [The text of the proposed amendment to §1.1502-21(b)(1) is the same as the text of §1.1502-21T(b)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) * * *

(v) [The text of the proposed amendment to §1.1502-21(b)(3)(v) is the same as the text of §1.1502-21T(b)(3)(v) published elsewhere in this issue of the **Federal Register**].

* * * * *

(h) * * *

(7) [The text of the proposed amendment to §1.1502-21(h)(7) is the same as the text of §1.1502-21T(h)(7) published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.1502-32 is amended by:

1. Revising paragraphs (a)(2) and (h).
2. Adding paragraphs (b)(3)(iii)(C), (b)(3)(iii)(D), (b)(3)(vi), and (h)(6).

The revision and additions read as follows:

§1.1502-32 Investment adjustments.

* * * * *

(a)(2) [The proposed amendment to §1.1502-32(a)(2) is the same as §1.1502-32T(a)(2) published elsewhere in this issue of the **Federal Register**].

* * * * *

(b) * * * (1) * * *

(3) * * *

(iii) * * *

(C) and (D) [The proposed amendment to §1.1502-32(b)(3)(iii)(C) and (b)(3)(iii)(D) are the same as §1.1502-32T(b)(3)(iii)(C) and (b)(3)(iii)(D) published elsewhere in this issue of the **Federal Register**].

* * * * *

(4)(i) * * *

(vi) [The proposed amendment to §1.1502-32(b)(4)(vi) is the same as §1.1502-32T(b)(4)(vi) published elsewhere in this issue of the **Federal Register**].

* * * * *

(h)(6) [The proposed amendment to §1.1502-32(h)(6) is the same as §1.1502-32T(h)(6) published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.1502-35 is added to read as follows:

§1.1502-35 Transfers and issuances of subsidiary member stock.

[The text of proposed §1.1502-35 is the same as the text of §1.1502-35T published elsewhere in this issue of the **Federal Register**].

* * * * *

David A. Mader,
Assistant Deputy Commissioner
of Internal Revenue.

(Filed by the Office of the Federal Register on March 11, 2003, 1:04 p.m., and published in the issue of the Federal Register for March 14, 2003, 68 F.R. 12324)

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries—Suspensions, Censures, Disbarments, and Resignations

Announcement 2003–15

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may

not knowingly aid or abet another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility will announce

in the Internal Revenue Bulletin their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an

administrative law judge, the following individuals have been placed under suspen-

sion from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Cramer, George	Chicago, IL	CPA	January 18, 2003 to January 17, 2005

Disbarments From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an oppor-

tunity for a proceeding before an administrative law judge, the following in-

dividuals have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Whalley, Christopher J.	Ellsworth, ME	Attorney	July 28, 2002
Chapin, Frank L.	Sandpoint, ID	Enrolled Agent	August 13, 2002
Engstrand Jr., Edward E.	Minneapolis, MN	CPA	November 2, 2002
Fisher, Joanna	Portland, OR	Enrolled Agent	November 15, 2002

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified pub-

lic accountant, enrolled agent, or enrolled actuary, in order to avoid institution or con-

clusion of a proceeding for his or her disbarment or suspension from practice before

the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may

suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Kuhajda, Ben	Plainfield, IL	CPA	August 26, 2002 to August 24, 2005
Vaughn, James A.	Albuquerque, NM	CPA	October 1, 2002 to September 29, 2004
McBroom, Byron	Manteca, CA	CPA	October 21, 2002 to October 19, 2006
Jacobs, Robert	Philadelphia, PA	Attorney	October 21, 2002 to April 20, 2006
Kwak, Jong	Beverly Hills, CA	Attorney	October 22, 2002 to October 20, 2003
Smith, Frank L.	Brooksville, FL	Attorney	November 1, 2002 to October 30, 2005
Schwartz, Kenneth J.	Woodland Hills, CA	Attorney	November 1, 2002 to February 27, 2006
Agulnick, Barry W.	New York, NY	Attorney	November 1, 2002 to April 29, 2004
O'Connor, Thomas P.	Palos Park, IL	CPA	November 1, 2002 to October 20, 2003
Brand, Joe A.	Dundee, OH	CPA	November 18, 2002 to November 16, 2004
Battino, Steven	Plainview, NY	CPA	November 25, 2002 to May 23, 2004
Chipman, Ken	Farmington, NM	Enrolled Agent	December 1, 2002 to November 29, 2003

Name	Address	Designation	Date of Suspension
Kirgis, Grant A.	Rochester, MN	CPA	December 1, 2002 to May 30, 2003
Welch, Frank	Stamford, CT	CPA	Indefinite from January 31, 2003
Pickens, Valerie	Seattle, WA	CPA	January 1, 2003 to December 30, 2004
Kidd, Roger F.	Philadelphia, PA	Attorney	January 20, 2003 to April 18, 2003
Sullivan, Raymond	Sonoma, CA	Attorney	March 15, 2003 to November 14, 2003

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date

the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Pirro, Anthony G.	South Salem, NY	CPA	Indefinite from June 26, 2002
Scott, Roger	Buffalo, NY	Attorney	Indefinite from August 12, 2002
Patrick, George	Cheshire, CT	CPA	Indefinite from September 9, 2002
Rochon, Jason B.	Lafayette, LA	Attorney	Indefinite from September 9, 2002
Voccola, Edward	Hingham, MA	Attorney	Indefinite from October 18, 2002

Name	Address	Designation	Date of Suspension
Linn, Charles B.	Croton-on-Hudson, NY	Attorney	Indefinite from October 18, 2002
Lum, Eugene K.H.	Long Beach, CA	Attorney	Indefinite from October 18, 2002
Gwilliam, Peter	Lynn, MA	CPA	Indefinite from October 28, 2002
Herlehy, Jon L.	McHenry, IL	CPA	Indefinite from October 28, 2002
Herndon, Henry	Pikeville, NC	CPA	Indefinite from November 1, 2002
McCurry, Todd	Durham, NC	Attorney	Indefinite from November 25, 2002
Adams, James L.	Breckenridge, CO	Attorney	Indefinite from November 25, 2002
Cloer, Stewart	Plano, TX	Attorney	Indefinite from December 13, 2002
Caruso, Robert	Saddle River, NJ	CPA	Indefinite from December 16, 2002
Duru, Ike E.	Atlanta, GA	Attorney	Indefinite from January 10, 2003
Pelletier, Richard A.	Bolton, CT	CPA	Indefinite from January 10, 2003
Austin, Jack	Steamboat Springs, CO	CPA	Indefinite from January 10, 2003
Gibson, Brian M.	Monroe, NY	Attorney	Indefinite from January 10, 2003
Jackson, Robert	Mt. Juliet, TN	Attorney	Indefinite from January 10, 2003

Name	Address	Designation	Date of Suspension
Tenzer, James L.	East Meadow, NY	Attorney	Indefinite from February 4, 2003

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Inter-

nal Revenue Service, may offer his or her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Resignation
Korman, Linda	Las Vegas, NV	January 23, 2003

Additional Relief for Certain Estates Affected by the September 11, 2001, Terrorist Attack

Announcement 2003-18

This announcement supplements and expands the relief granted under section 7508A of the Internal Revenue Code in Notice 2001-61, 2001-2 C.B. 305, Notice 2001-68, 2001-2 C.B. 504, and Notice 2002-40, 2002-24 I.R.B. 1152, for certain taxpayers affected by the September 11, 2001, Terrorist Attack. In Notice 2002-40, the Department of the Treasury and the Internal Revenue Service (IRS) granted relief from the running of interest and the failure to pay penalty relating to certain payments for which Notice 2001-61 or Notice 2001-68 had extended or postponed the due dates. Notice 2002-40 applies only to income taxes and certain excise and employment taxes. The Department of the Treasury and the IRS now extend the relief from the running of interest and the fail-

ure to pay penalty described in Notice 2002-40 to estate tax payments associated with Form 706, the *United States Estate (and Generation-Skipping Transfer) Tax Return* (estate tax return), for which Notice 2001-61 or Notice 2001-68 extended or postponed the due dates, for the period of the extension or postponement provided in Notice 2001-61 or Notice 2001-68.

Relief under this announcement applies to all affected taxpayers described in Notice 2001-61 who were required to file an estate tax return for which Notice 2001-61 or Notice 2001-68 extended or postponed the due date. This generally will include any such affected taxpayer filing an estate tax return: (i) for which tax records necessary to meet the filing or payment deadline were located in the covered disaster area (as defined in Notice 2001-61); (ii) signed and filed by a person whose principal residence, was located in the covered disaster area; or (iii) signed and filed by a corporate fiduciary whose place of business from which the corporate fidu-

ciary primarily administered estate matters was located in the covered disaster area.

The IRS already may have assessed interest and penalties eligible for relief under this announcement, and the affected taxpayers may have already paid these amounts. The IRS is not able to identify the affected taxpayers who are eligible for relief under this announcement. If an affected taxpayer believes that the affected taxpayer is eligible for relief under this announcement, that affected taxpayer will need to contact the IRS. Such affected taxpayers should call the Estate and Gift Tax Department's toll-free number at (866) 699-4083, Monday through Friday, 7:00 a.m. to 7:00 p.m., based on the caller's local time. Alternatively, such affected taxpayers may write to the Cincinnati Compliance Service Center, Estate and Gift Tax Department, Attn: Stop 824, 201 W. River Center Blvd., Covington, KY 41011.

This announcement was drafted by the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

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

applies 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 Contributions 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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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2002–26 through 2002–52 is in Internal Revenue Bulletin 2003–1, dated January 6, 2003.

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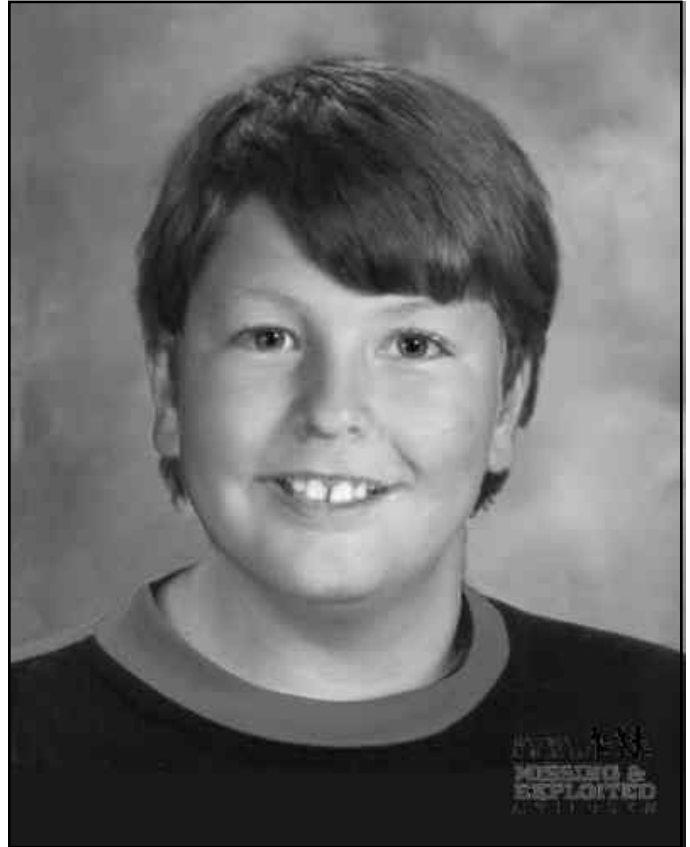
² A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2002–26 through 2002–52 is in Internal Revenue Bulletin 2003–1, dated January 6, 2003.

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