

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG-102740-02

RIN 1545-BA52

Loss Limitation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations under sections 337(d) and 1502 of the Internal Revenue Code. These regulations permit certain losses recognized on sales of subsidiary stock by members of a consolidated group. The regulations apply to corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group. The text of the temporary regulations published in this issue of the **Federal Register** also 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 July 10, 2002. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for July 17, 2002, at 10 a.m., must be received by June 26, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-102740-02), 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 6 p.m. to CC:ITA:RU (REG-102740-02), 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](http://www.irs.gov/regs). The public hearing will be held in the Internal Revenue Service Auditorium, in the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sean P. Duffley, (202) 622-7530, or Lola L. Johnson, (202) 622-7550; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Paperwork Reduction Act**

The collection of information 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:FP:S, Washington, DC 20224. Comments on the collection of information should be received by May 6, 2002. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, 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 the costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§1.337(d)-2T, 1.1502-20T, and 1.1502-32T. The collection of information is required to allow the taxpayer to make certain elections to determine the amount of allowable loss under §1.337(d)-2T, §1.1502-20 as currently in effect, or under §1.1502-20 modified so that the amount of allowable loss determined pursuant to §1.1502-20(c)(1) is computed by taking into account only the amounts computed under §1.1502-20(c)(1)(i) and (ii); to allow the taxpayer to reapportion a section 382 limitation in certain cases; to allow the taxpayer to waive certain loss carryovers; and to ensure that loss is not disallowed under §1.337(d)-2T and basis is not reduced under §1.337(d)-2T to the extent the taxpayer establishes that the loss or basis is not attributable to the

recognition of built-in gain on the disposition of an asset. The collection of information is required to obtain a benefit. The likely respondents are corporations that file consolidated income tax returns.

Estimated total annual reporting burden: 30,000 hours.

Estimated average annual burden hours per respondent: 2 hours.

Estimated number of respondents: 15,000.

Estimated annual frequency of responses: once.

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 the 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 the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 337(d) and 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 Treasury decision is not a significant regulatory

action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses, and, moreover, that any burden on taxpayers is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Comments and Public Hearing**

The IRS and Treasury are undertaking a study of the various approaches that could be implemented to give full effect to section 337(d) and to reflect the single entity principles of the consolidated return rules. Among the approaches the IRS and Treasury are studying is one that would deny positive investment adjustments for gain recognized and income attributable to the disposition or consumption of built-in gain assets held by the subsidiary at the time it joined the consolidated group. In addition, the IRS and Treasury are considering allowing selling groups to deduct subsidiary stock losses that would otherwise reflect duplicated loss, if the subsidiary reduces its attributes (including net operating loss carryovers and asset basis) immediately prior to the disposition. Comments are requested concerning any approaches that may be employed to allow appropriate losses in a manner that is administrable for both

taxpayers and the government.

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing has been scheduled for July 17, 2002, at 10 a.m., in the IRS Auditorium, IRS Building, 1111 Constitution, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

#### **Drafting Information**

The principal authors of these regulations are Sean P. Duffley and Lola L. Johnson, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury participated in their development.

#### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are 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 \* \* \*

Par. 2. Section 1.337(d)-2 is added to read as follows:

##### **§1.337(d)-2 Loss limitation window period.**

[The text of this proposed section is the same as the text of §1.337(d)-2T published elsewhere in this issue of the **Federal Register**].

Par. 3. In §1.1502-20, paragraph (i) is added to read as follows:

§1.1502-20 Disposition or deconsolidation of subsidiary stock.

[The text of this proposed section is the same as the text of §1.1502-20T(i) published elsewhere in this issue of the **Federal Register**].

Par. 4. In §1.1502-32, paragraph (b)(4)(v) is added to read as follows:

§1.1502-32 Investment adjustment.

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

/s/ Robert E. Wenzel

Deputy Commissioner of Internal Revenue.