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DEPARTMENT OF THE TREASURY

Internal Revenue Service (IRS)

26 CFR Part 1

TD 9154

RIN 1545-BD64

Extension of Time to Elect Method for Determining Allowable Loss

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 1502 of the Internal Revenue Code of 1986. The temporary regulations extend the time for consolidated groups to elect to apply a method for determining allowable loss on a disposition of subsidiary stock, and permit consolidated groups to revoke such elections. The temporary regulations affect 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 these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective August 26, 2004.

Applicability Date: For dates of applicability, see §1.1502-20T(i)(6)(v).

FOR FURTHER INFORMATION CONTACT: Theresa Abell (202) 622-7700 or Martin Huck (202) 622-7750 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been previously reviewed and approved by the Office of Management and Budget under control number 1545-1774. Responses to this collection of information are required to obtain a benefit. This collection of information is revised by these regulations. These amended 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 revised collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1774.

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.

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 preamble of the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

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 March 7, 2002, the IRS and Treasury Department issued regulations (the 2002 regulations) permitting consolidated groups to calculate allowable loss or the basis reduction required on certain dispositions and deconsolidations of subsidiary stock by applying §1.1502-20 in its entirety, §1.1502-20 without regard to the duplicated loss factor of the loss disallowance formula, or §1.337(d)-2T. If a consolidated group chose to apply either §1.1502-20 without regard to the duplicated loss factor of the loss disallowance formula, or §1.337(d)-2T, the 2002 regulations required the consolidated group to file an election under §1.1502-20T(i) to apply the chosen provision. The 2002 regulations also included several correlative rules to address cases in which, as a result of the election, additional losses became available to the subsidiary the stock of which was disposed of.

Concurrently with the publication of these temporary regulations, the IRS and Treasury Department are publishing Notice 2004-58 (2004-39 I.R.B.)(September 27, 2004). That Notice sets forth a method that the IRS will accept for determining whether subsidiary stock loss is disallowed and subsidiary stock basis is reduced under §1.337(d)-2T.

Given the availability of the method described in Notice 2004-58, the IRS and Treasury Department are publishing these temporary regulations to permit taxpayers to make, amend, or revoke elections under §1.1502-20T(i). These temporary regulations give taxpayers the ability to take the Notice into account in choosing a method for determining allowable loss. In general these regulations allow taxpayers to elect into, or out of, the application of §1.1502-20 in its entirety, §1.1502-20 without regard to the duplicated loss factor of the loss disallowance formula, or §1.337(d)-2T. Under these

regulations, a taxpayer that was permitted to make an election under §1.1502-20T(i), but did not previously make such an election, may make an election to apply either §1.1502-20 without regard to the duplicated loss factor, or §1.337(d)-2T. These regulations also permit a taxpayer that previously made an election to apply §1.1502-20 without regard to the duplicated loss factor to revoke the election and apply §1.1502-20 in its entirety, or to amend the election in order to apply §1.337(d)-2T. In addition, these regulations permit a taxpayer that previously made an election to apply §1.337(d)-2T to revoke the election and apply §1.1502-20 in its entirety or to amend the election in order to apply §1.1502-20 without regard to duplicated loss factor. Finally, these regulations extend relief to acquiring groups by amending §1.1502-32T(b)(4)(b)(vii)(C) to change its date of applicability from May 7, 2003, to August 26, 2004.

If a group revokes an election to apply either §1.1502-20 without regard to the duplicated loss factor, or §1.337(d)-2T, and applies §1.1502-20 in its entirety, no election under §1.1502-20(g) will be available, even if the group had previously made an election under §1.1502-20(g) to reattribute losses of the subsidiary the stock of which was disposed of.

Pursuant to these regulations, an election under §1.1502-20T(i) must be made, amended, or revoked by including the statement required with a timely filed (including extensions) original return for a taxable year that includes any date on or before August 26, 2004, or with or as part of an amended return filed before the date the original return for the taxable year that includes August 26, 2004 is due (including any extensions). The new election or the revocation or amendment of a prior election, however, only will affect open years.

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. These temporary regulations provide relief to consolidated groups by extending the time to elect a method for determining allowable loss. The extension of time allows taxpayers to take into account concurrent guidance in choosing a method for determining allowable loss. It is necessary to provide the extension of time immediately. Accordingly, good cause is found for dispensing with prior notice and comment pursuant to 5 U.S.C. 553(b) and for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d). For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), see the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**. The IRS and Treasury Department request comments from small entities that believe they might be adversely affected by these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for the Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal authors of these regulations are Theresa Abell and Martin Huck of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 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 1.1502-20T(i) is amended by:

1. Revising the first sentence of paragraph (i)(4).
2. Redesignating paragraph (i)(6) as (i)(7).
3. Adding new paragraph (i)(6).

The revision and addition read as follows:

§1.1502-20T Disposition or deconsolidation of subsidiary stock (temporary).

* * * * *

(i) * * *

(4) Time and manner of making the election. An election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii) of this section is made by including the statement required by this paragraph with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before August 26, 2004, or with or as part of an amended return filed before the date the original return for the taxable year that includes August 26, 2004 is due (including any extensions). * * *

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(6) Revocation or amendment of prior elections--(i) In general. Notwithstanding anything to the contrary in this paragraph (i), if a consolidated group made an election

under paragraph (i) of this section to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section, the consolidated group may revoke or amend that election as provided in this paragraph (i)(6).

(ii) Time and manner of revoking or amending an election. An election to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section is revoked or amended by including the statement required by paragraph (i)(6)(iii) of this section with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before August 26, 2004, or with or as part of an amended return filed before the date the original return for the taxable year that includes August 26, 2004 is due (including any extensions).

(iii) Required statement--(A) Revocation. To revoke an election to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section, the consolidated group must file a statement entitled "Revocation of Election Under Section 1.1502-20T(i)." The statement must include the name and employer identification number (E.I.N.) of the subsidiary and of the member(s) that disposed of the subsidiary stock.

(B) Amendment. To amend an election to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section, the consolidated group must file a statement entitled "Amendment of Election Under Section 1.1502-20T(i)." The statement must include the following information--

(1) The name and employer identification number (E.I.N.) of the subsidiary and of the member(s) that disposed of the subsidiary stock; and

(2) The provision the taxpayer elects to apply to determine allowable loss or basis reduction (described in paragraph (i)(2)(i) or (ii) of this section).

(iv) Special rule. If a consolidated group revokes an election made under paragraph (i) of this section, an election described in §1.1502-20(g) to reattribute losses will not be respected, even if such election was filed with the group's return for the year of the disposition.

(v) This paragraph (i)(6) is applicable on and after August 26, 2004.

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Par. 3. Section §1.1502-32T(b)(4)(vii)(C) is amended by removing the language

“May 7, 2003” and adding the language “August 26, 2004” each time it appears.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: August 19, 2004.

Gregory F. Jenner,
Acting Assistant Secretary of the Treasury (Tax Policy).