

SUPPORTING STATEMENT
(REG-152524-02, REG-123305-02 (formerly
REG-102305- 02), REG-102740-02, and REG-135898-04)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Proposed and temporary regulations are issued to amend final regulations §§1.337(d)-2 and 1.1502-20. Under the regulations, consolidated groups are required to determine the allowable loss on a sale or disposition of subsidiary stock under §1.337(d)-2T (amending §1.337(d)-2 to remove a requirement that a group must dispose of its entire equity interest in a member in order to be allowed a loss) instead of under §1.1502-20. To claim the loss, §1.337(d)-2T(c)(1) requires taxpayers to file a statement of allowed loss in accordance with procedures under §1.337(d)-2T(c)(3).

For transactions (including those for which a return has been filed) completed before the effective date of the regulations, or for which there is a binding contract on that date, §1.1502-20T(i) will allow groups certain choices with respect to a disposition of subsidiary stock, including a choice to apply §1.337(d)-2T, 1.1502-20 as currently in effect, or §1.1502-20T(i)(2)(i) (modifying current §1.1502-20 so that allowable loss under §1.1502-20(c)(1) is computed by taking into account only amounts computed under §1.1502-20(c)(1)(i) and (ii)). Section 1.1502-20T(i)(3) sets forth procedures for making the election, and further requires that the statement must be delivered to the buyer.

Section 1.1502-32(b)(4)(v) provides that an election is made under §1.1502-20T(i)(2) to apply the provisions of §1.1502-20T(i)(2)(i) or §1.337(d)-2T, and the subsidiary had a loss carryover from a separate return limitation year when it became a member of the group and that loss carryover was subject to an election under §1.1502-20(g) (to reattribute losses to the common parent of the selling group) at the time the subsidiary became a member of the group, then an election may be made to waive such carryover in an amount not to exceed the amount for which the §1.1502-20(g) election was made. The election authorized under §1.1502-32(b)(4)(v) must be filed with the consolidated group's return for the tax year in which they receive notice as provided for under §1.1502-20T(i)(3).

An acquiring group may amend its §1.1502-32(b)(4) election if the selling group determines the selling member's allowable loss under either §1.1502-20T(i)(2)(i) or §1.337(d)-2T. To amend an election under §1.1502-32(b)(4), the acquiring group must comply with §1.1502-32T(b)(4)(vii)(C). If the acquiring group amends its §1.1502-32(b)(4) election, the common parent of the selling group may reapportion a separate, subgroup or consolidated section 382 limitation. To reapportion a section 382 limitation, the selling group must comply with §1.1502-20T(i)(3)(viii).

In addition, proposed and temporary regulations amend regulations §§1.1502-20T(i) and 1.1502-32T(b)(4)(vii) to extend the time to make an election, or to allow a prior election to be amended or revoked.

2. USE OF DATA

The information with respect to §1.337(d)-2T(c)(1) and (3) is necessary to ensure that loss is not disallowed under §1.337(d)-2T(a) and basis is not reduced under §1.337(d)-2T(b) 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 information with respect to §1.1502-20T(i)(3) is necessary to allow the taxpayer to make certain elections that would benefit the taxpayer; i.e., to determine the amount of allowable loss by applying either §1.337(d)-2T, §1.1502-20, or §1.1502-20T(i)(2)(i).

The information with respect to §1.1502-32(b)(4)(v) is necessary to allow the taxpayer to make an election that would benefit the taxpayer; i.e., to waive loss carryovers up to the amount of the §1.1502-20(g) election (election to reattribute losses to the common parent of the selling group).

The information with respect to §1.1502-20T(i)(3)(viii) is necessary to allow the taxpayer to reapportion a separate, subgroup, or consolidated section 382 limitation when an acquiring group amends its §1.1502-32(b)(4) election.

The information with respect to §1.1502-32T(b)(4)(vii)(C) is necessary to allow the taxpayer to amend an election that would benefit the taxpayer, i.e., to amend its waiver under §1.1502-32(b)(4), so that it may use its acquired subsidiary's losses.

3. USED OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans to offer electronic filing. IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESS OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(D)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

A notice of proposed rulemaking (67 FR 11070) was published simultaneously with temporary regulations (67 FR 11034) in the **Federal Register** on March 12, 2002. Another notice of proposed rulemaking (67 FR 38040) was published simultaneously with temporary regulations (67 FR 37988) on May 31, 2002, to amend the previous regulations in the **Federal Register**. Another notice of proposed rulemaking (68 FR 24404) was published simultaneously with temporary regulations (68 FR 24351) on May 7, 2003, to amend the previous regulations in the **Federal Register**. Another notice of proposed rulemaking (69 FR 52462) was published simultaneously with temporary regulations (69 FR 52419) on August 26, 2004, to amend the previous regulation in the **Federal Register**.

Temporary regulations were published in the 2004-40 IRB 560 on October 4, 2004 with TD 9154. Final and temporary regulations were published in the 2005-12 IRB 778 on March 28, 2005 with TD 9187.

In response to the **Federal Register Notice** dated **August 7, 2007 (72 FR 44225)**, we received no comments during the comment period regarding these regulations.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The burden estimate for §§1.337(d)-2T(c)(1) and (3) is as follows:

It is estimated that 3,750 taxpayers annually will dispose of stock of a subsidiary to which §1.337(d)-2T(a)(1) will apply and claim a deduction for losses recognized on these dispositions under §1.337(d)-2T(c)(1) and (3). It is estimated that the average reporting burden will be 2 hours. The estimated frequency of responses is 1 time. Accordingly, the estimated annual reporting burden is 7,500 hours.

The burden estimate for §1.1502-20T(i)(3) is as follows:

With respect to transactions completed before the effective date of §1.337(d)-2T or for which a binding contract before such date, it is estimated that 3,750 taxpayers will make a one-time election to determine the amount of allowable loss by applying the provisions of either §1.1502-20T(i)(2)(i) or §1.337(d)-2T. For taxpayers making such an election, it is estimated that 3,750 taxpayers will also provide the buyer notification that is required by § 1.1502-20T(i)(3). It is estimated that the average reporting burden will be 2 hours for the election and 2 hours for the notification. The estimated frequency of responses is 1 time. Accordingly, the estimated reporting burden is 15,000 hours.

The burden estimate for §1.1502-32T(b)(4)(v) is as follows:

It is estimated that 3,750 taxpayers will elect to use the special rule for loss carryovers for which an election under §1.1502-20(g) was filed. It is estimated that the average reporting burden will be 2 hours. The estimated frequency of response is 1 time. The estimated reporting burden is 7,500 hours.

The burden estimate for §1.1502-20T(i)(3)(viii) is as follows:

It is estimated that 100 taxpayers will reapportion a separate, subgroup or consolidated section 382 limitation. It is estimated that the average annual reporting burden will be 2 hours. The estimated frequency of responses is 1 time. The estimated reporting burden is 200 hours.

The burden estimate for §1.1502-32T(b)(4)(vii)(C) is as follows:

It is estimated that 100 taxpayers will elect to amend their §1.1502-32(b)(4) election. It is estimated that the average reporting burden will be 2 hours. The estimated frequency of responses is 1 time. The estimated reporting burden is 200 hours.

The burden estimate for §1.1502-20T(i)(4) is as follows:

It is estimated that a total of 2,000 taxpayers will make an election, amendment to election, or revocation of election, to determine the amount of allowable loss by applying the provisions of either §1.1502-20 without regard to §1.1502-20(c)(1)(iii) or §1.337(d)-2T. For taxpayers making such an election, it is estimated that 1,000 taxpayers will also provide the buyer notification that is required by § 1.1502-20T(i)(3). It is estimated that the average reporting burden will be 2 hours for the election and 2 hours for the notification. The estimated frequency of responses is 1 time. Accordingly, the estimated reporting burden is 6,000 hours.

The burden estimate for §1.1502-32T(b)(4)(v) is as follows:

It is estimated that 150 taxpayers will elect to use the special rule for loss carryovers for which an election under §1.1502-20(g) was filed. It is estimated that the average reporting burden will be 2 hours. The estimated frequency of response is 1 time. The estimated reporting burden is 300 hours.

The burden estimate for §1.1502-20T(i)(3)(viii) is as follows:

It is estimated that 5 taxpayers will reapportion a separate, subgroup or consolidated section 382 limitation. It is estimated that the average annual reporting burden will be 2 hours. The estimated frequency of responses is 1 time. The estimated reporting burden is 10 hours.

The burden estimate for §1.1502-32T(b)(4)(vii)(C) is as follows:

It is estimated that 5 taxpayers will elect to amend their §1.1502-32(b)(4) election. It is estimated that the average reporting burden will be 2 hours. The estimated frequency of responses is 1 time. The estimated reporting burden is 10 hours.

The total burden is 36,720 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENT

As suggested by OMB, our **Federal Register Notice** dated **August 7, 2007 (72 FR 44225)**, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is not appropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one

expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-1

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

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. 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.