

Section 1502.—Regulations

26 CFR 1.1502–20T: Disposition or deconsolidation of subsidiary stock (temporary).

T.D. 9154

DEPARTMENT OF THE TREASURY Internal Revenue Service (IRS) 26 CFR Part 1

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 (REG–135898–04) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

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 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 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. 520 (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 the 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 this issue of the Bulletin. 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.

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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). * * *

* * * * *

(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).

(Filed by the Office of the Federal Register on August 25, 2004, 8:45 a.m., and published in the issue of the Federal Register for August 26, 2004, 69 F.R. 52419)

26 CFR 1.1502–32T: Investment adjustments (temporary).

T.D. 9155

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Guidance Under Section 1502; Treatment of Loss Carryovers From Separate Return Limitation Years

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 1502 that provide guidance regarding the treatment of certain losses available to acquired subsidiaries as a result of an election made under the section 1502 regulations. The text of these temporary regulations also serves as the text of the proposed regulations (REG–129274–04) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin. These regulations apply to corporations filing consolidated returns.

DATES: *Effective Date:* These regulations are effective August 18, 2004.

Applicability Date: For dates of applicability, see §1.1502–32T(b)(4)(v)(C).

FOR FURTHER INFORMATION CONTACT: Sean McKeever at (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Under §1.1502–32(b)(4), if a subsidiary of a consolidated group has a loss

carryover from a separate return limitation year when it becomes a member of the group, the group may make an irrevocable election to treat all or any portion of the loss carryover as expiring for all Federal income tax purposes immediately before the subsidiary becomes a member of the group. If the subsidiary was a member of another group immediately before it became a member of the group, the expiration is also treated as occurring immediately after it ceases to be a member of the prior group. Waiving losses of an acquired subsidiary is desirable in cases in which it is anticipated that the losses of the subsidiary may expire unused in that it prevents a negative basis adjustment in the stock of the subsidiary.

In March of 2002, in response to the decision of the United States Court of Appeals for the Federal Circuit in *Rite Aid Corp. v. United States*, 255 F.3d 1357 (Fed. Cir. 2001), the Treasury Department and the IRS issued guidance regarding the treatment of certain losses realized on dispositions and deconsolidations of stock of a member of a consolidated group. Those rules permitted groups to calculate allowable loss on the sale 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 group that made an election described in §1.1502–20(g) to reattribute to the common parent losses of the subsidiary elected to determine allowable loss by applying either §1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or §1.337(d)–2T, the amount of loss treated as reattributed could be reduced. As a result, losses that were previously treated as reattributed would be treated as available for use by the subsidiary or any other group of which the subsidiary is a member, subject to any applicable limitations (e.g., section 382). To prevent a purchasing consolidated group from being unfairly disadvantaged in the event that the amount of losses treated as reattributed to the common parent of the selling group were decreased and the amount of losses treated as available to the subsidiary were increased (excess losses), §1.1502–32T(b)(4)(v) was added to provide that, to the extent that the subsidiary's loss carryovers are increased by reason of an election to apply one of the

alternative regimes and such loss carryovers expire, or would have been properly used to offset income, in a closed year, the purchasing group will be deemed to have made an election to treat all of such expired loss carryovers as expiring for all Federal income tax purposes immediately before the subsidiary became a member of the purchasing group (the deemed waiver rule). Accordingly, no basis reduction under §1.1502–32 would result from the expiration of, or failure to use, such losses.

The Treasury Department and the IRS have become aware that the deemed waiver rule may deny the use of excess losses in cases in which such denial was not intended, particularly in cases in which the excess losses would have been properly used to offset income in a closed year and the use of such losses in the closed year would make losses that were used in the closed year available to offset income in an open year. Accordingly, one commentator has asked that relief from the deemed waiver rule be afforded in these cases. These temporary regulations provide that relief by making the application of the deemed waiver rule optional. This relief is applicable on and after August 18, 2004. In addition, groups may apply this relief before August 18, 2004, and on and after March 7, 2002.

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 are necessary to provide taxpayers with immediate guidance regarding the treatment of certain subsidiary losses. Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(3). For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Sean McKeever, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

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Amendments to the Regulations

Accordingly, 26 CFR part 1 is 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 1.1502-32T is amended by revising paragraph (b)(4)(v)(A) and (C).

§1.1502-32T Investment adjustments (temporary).

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(b) * * *

(4) * * *

(v) *Special rule for loss carryovers of a subsidiary acquired in a transaction for which an election under §1.1502-20T(i)(2) is made—(A) Expired losses.* Notwithstanding §1.1502-32(b)(4)(iv), unless a group otherwise chooses, to the extent that S's loss carryovers are increased by reason of an election under §1.1502-20T(i)(2) and such loss carryovers expire or would have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in §1.1502-20T(i)(3)(iv) and at all times thereafter, the group will be deemed to have made an election under §1.1502-32(b)(4) to treat all of such loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group. A group may choose not to apply the rule of the previous sentence to all

of such loss carryovers of S by taking a position on an original or amended tax return for each relevant taxable year that is consistent with having made such choice.

* * *

(C) *Effective date.* Paragraph (b)(4)(v)(A) of this section is applicable on and after August 18, 2004. Groups, however, may apply paragraph (b)(4)(v)(A) of this section before August 18, 2004, and on and after March 7, 2002. Otherwise, see paragraph (b)(4)(v)(A) of §1.1502-32. Paragraph (b)(4)(v)(B) of this section is applicable on and after March 7, 2002.

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

Approved July 29, 2004.

Gregory F. Jenner,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on August 17, 2004, 8:45 a.m., and published in the issue of the Federal Register for August 18, 2004, 69 F.R. 51175)

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Extension of Time to Elect Method for Determining Allowable Loss

REG-135898-04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations under section 1502 of the Internal Revenue Code of 1986. The proposed 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 proposed 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 the temporary regulations (T.D. 9154) published in this issue of the Bulletin serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by November 24, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-135898-04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-135898-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at www.irs.gov/reg or via the Federal eRulemaking Portal at www.regulations.gov (IRS and REG-135898-04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Theresa Abell (202) 622-7700 or Martin Huck (202) 622-7750; concerning

submissions of comments, Robin Jones, (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 Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 25, 2004. 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 this proposed regulation was previously approved and reviewed by the Office of Management and Budget under control number 1545-1774. The collection of information is required to allow the taxpayer to make certain elections to determine the amount of allowable loss under §1.1502-20 in its entirety, §1.1502-20 without regard to the duplicated loss factor, or §1.337(d)-2T; 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 §1.337-2T and basis is not reduced under §1.337(d)-2T to the extent that the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset.

This collection of information is modified with respect to §§1.1502-20T and 1.1502-32T. Regarding §1.1502-20T, the collection of information also is necessary to allow the common parent of the selling group to reapportion a separate, subgroup or consolidated section 382 limitation when the acquiring group amends its §1.1502-32(b)(4) election. With respect to §1.1502-32T, the collection of information also is necessary to allow the acquiring group to amend its previous §1.1502-32(b)(4) election, so that it may use previously waived losses of its subsidiary.

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 and/or recordkeeping burden: 36,720 hours.

Estimated average annual burden per respondent: 2 hours.

Estimated number of respondents: 18,360.

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 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

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR Part 1) relating to section 1502. 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 those regulations serves as the text for these proposed regulations. The preamble to the temporary regulations explains the amendments and these 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 proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations provide relief to consolidated groups by extending the time in which a group may make, or allowing a group to revoke, certain elections of methods for determining allowable loss. In addition, members of consolidated groups are generally large corporations rather than small businesses. Therefore, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Nevertheless, 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, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of these regulations.

Comments and Public Hearing

Before the proposed regulations are adopted as final regulations, consideration will be given to any written comments (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 rules and how they can be made easier to understand. All comments will be made available for public inspection and copying. A public hearing may be scheduled. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

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 IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 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 * * *

Par. 2. Section 1.1502–20 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 revisions and addition read as follows:

§1.1502–20 Disposition or deconsolidation of subsidiary stock.

* * * * *

(i) * * *
(4) [The text of proposed §1.1502–20(i)(4) is the same as the text of §1.1502–20T(i)(4) published elsewhere in this issue of the Bulletin.]

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(6) [The text of proposed §1.1502–20(i)(6) is the same as the text of §1.1502–20T(i)(6) published elsewhere in this issue of the Bulletin.]

Par. 3. Section §1.1502–32(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.*

(Filed by the Office of the Federal Register on August 25, 2004, 8:45 a.m., and published in the issue of the Federal Register for August 26, 2004, 69 F.R. 52462)

Request for Comments on Revenue Procedure for the Staggered Remedial Amendment Period System Announcement 2004–71

This announcement includes as an Appendix a draft revenue procedure that contains the Service’s procedures for issuing determination letters under a staggered remedial amendment period system that establishes regular, five-year cycles under § 401(b) of the Internal Revenue Code (Code) for plan amendments and determination letter renewals for individually designed plans (that is, plans that have not been pre-approved) qualified under § 401(a). In addition, under this system, pre-approved plans (that is, master and prototype (M&P) and volume submitter plans) will generally have a regular, six-year remedial amendment cycle. The Service seeks public input before finalizing these procedures and invites interested persons to submit comments.

Background

The Service has maintained an Employee Plans determination letter program for many years, essentially in its present form. Under this program, the Employee Plans (EP) component of Tax Exempt and Government Entities (TE/GE) issues letters of determination regarding the qualified status of retirement plans under § 401(a) and the tax-exempt status of related trusts under § 501(a). Determination letters provide assurance to plan sponsors, participants and other interested parties that the terms of employer-sponsored retirement plans satisfy the qualification requirements of the Code. Qualified plans offer significant tax advantages to employers and participants.

In recent years, the Service has undertaken a comprehensive review of its policies and procedures for issuing determination letters on the qualified status of retirement plans. The impetus for this review was a need for the Service to strike a more effective balance in the application of its limited resources among the EP determinations, examinations, voluntary compliance and customer education and outreach programs. The current determination letter program has been subject to significant pe-