

**SUPPORTING STATEMENT  
TD 8823**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 172(b)(3)(C) of the Internal Revenue Code provides that any taxpayer entitled to carry back a net operating loss to a prior taxable year may relinquish the entire carryback period with respect to the net operating loss. The election must be made in such manner as prescribed by the Secretary of the Treasury and is made for the taxable year in which the loss arose.

Section 1501 of the Code permits an affiliated group to file a consolidated return with respect to income taxes, and section 1502 provides that the Secretary shall prescribe necessary regulations regarding such a consolidated return.

Generally the election to relinquish a carryback period must be made by the common parent of consolidated group and is binding on all the members of the group. The election is made by filing a statement with the group's income tax return. Section 1.1502-21(b)(3)(i) expressly states that the common parent makes the election by filing a statement with the consolidated group's income tax return.

Section 1.1502-21(b)(3)(ii)B provided that if a consolidated group acquires a corporation from another group, the acquiring group may make an election to relinquish, with respect to a consolidated net operating loss attributable to an acquired corporation, the portion of the carryback period for which the acquired corporation was a member of another group. The election must be made by the common parent of the group and the member to which the election applies, and is binding on all members that were affiliated with the member immediately before joining the group. The election is made by filing a statement with the group's income tax return for the year in which the member joined the group.

**2. USE OF DATA**

The data is used by the consolidated group and the Internal Revenue Service to ensure that the election to relinquish a carryback period is properly made.

**3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

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 BUSINESSES 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

Proposed regulations (C0-78-90) were published in the Federal Register on February 4, 1991 (56 FR 4228), and a public hearing was held on April 8, 1991. On January 27, 1996, the notice of proposed rulemaking (C0-78-90) was withdrawn and was reissued as a new notice of proposed rulemaking, C0-24-96 (61 FR 33311) by cross-reference to temporary regulations (61 FR 33321) identical to the proposed regulations issued in 1991. The final regulations (TD 8823), were published in the Federal Register on July 2, 1999 (64 FR 36091).

In response to the Federal Register Notice (73 FR 42653), dated July 22, 2008, we received no TD 8823.

**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**

Section 1.1502-21(b)(3)(i) permits a consolidated group to waive the carryback period under section 172 for consolidated net operating losses for any consolidated return year. Section 1.1502-21(b)(3)(ii)(B) permits a group to waive a portion of the carryback period under section 172 for consolidated net operating losses attributable to members acquired from another consolidated group. In each of these cases, a statement evidencing such waiver must be filed by the group. It is estimated that the number of respondents subject to these reporting requirements is 8,000, representing approximately fifteen percent of the number of consolidated groups (which approximates the number of groups that, at any time, may have net operating losses subject to a carryback.) It is estimated that the annual burden per respondent will be fifteen minutes. Thus, the total annual burden will be  $8000/4 = 2000$  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 RESPONDENTS**

As suggested by OMB, our Federal Register notice dated July 22, 2008, 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 THE 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 inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets 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-I

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.