

SUPPORTING STATEMENT
(TD 9057, TD 9154, and TD 9187)

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This document contains final regulations under sections 337(d) and 1502 of the Internal Revenue Code (Code). These regulations disallow certain losses recognized on sales of subsidiary stock by members of a consolidated group. These 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.

2. USE OF DATA

The information with respect to §1.337(d)-2(c)(1) and (3) is necessary to ensure that loss is not disallowed under §1.337(d)-2(a) and basis is not reduced under §1.337(d)-2(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 §1.1502-20(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)-2, §1.1502-20, or §1.1502-20(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 §1.1502-20(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 §1.1502-32(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 I.R.B. 560 on October 4, 2004 with TD 9154. Final and temporary regulations were published in the 2005-12 I.R.B. 778 on March 28, 2005 with TD 9187.

In response to the **Federal Register Notice** dated **September 16, 2010 (75 FR 56659)**, 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 collection of information in these final regulations is in §§ 1.337(d)–2(c), 1.1502–20(i), and 1.1502–32(b)(4). The information is required to allow the taxpayer to make certain elections to determine the amount of allowable loss under § 1.337(d)–2, § 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; to allow acquiring groups to reduce the amount of certain loss carryovers deemed to expire; and to ensure that loss is not disallowed and basis is not reduced under § 1.337(d)–2 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. The estimated burden is as follows:

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.

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 **September 16, 2010**, 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.