

**SUPPORTING STATEMENT**  
**REG-131478-02 (T.D. 9048; 9254)**

**CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Regulations are being issued under §1.1502-35 to prevent consolidated groups from obtaining more than one tax benefit from a single economic loss. Under the loss suspension rule of §1.1502-35(c), if P recognizes a loss on the disposition of S stock and, immediately after the disposition, S is a member of the group of which it was a member immediately prior to the disposition, then the loss is suspended to the extent of duplicated loss attributable to such stock.

The amount of a suspended loss is reduced, but not below zero, by S's items of deduction and loss, and S's allocable share of items of deduction and loss of all lower-tier subsidiaries, that are properly allocable to the period beginning on the date of the disposition of S stock that gave rise to such suspended loss and ending on the day before the first date on which S is not a member of the group of which it was a member immediately prior to the disposition, and that are taken into account in determining consolidated taxable income (or loss) of such group for any taxable year that includes any date on or after the date of the disposition and before the first date on which S is not a member of such group.

The suspended loss, however, is not reduced by such items to the extent that the group can clearly establish that all or a portion of such items were not included in the calculation of the duplicated loss of S on the date of the disposition.

Under §1.1502-35(c)(5), a suspended loss, to the extent not reduced, is allowed on a return filed for the taxable year that includes the day before the first date on which S is not a member of the group. To claim the loss, the group must file a "Statement of Allowed Loss" in accordance with §1.1502-35(c)(5)(iii). The statement must specify the amount of the suspended loss that is taken into account on such return and identify the name and employer identification number of the subsidiary to which such amounts relate.

Section 1.1502-35(f)(2) contains a special election for determinations of worthlessness and dispositions not followed by a separate return year that occurred prior to the issuance of the temporary regulations. In such cases, the common parent of the group may make an irrevocable election to reattribute to itself the losses attributable to such subsidiary member, determined under the principles of §1.1502-21. Solely for purposes of applying the investment adjustment rules to stock of the subsidiary member owned by the group, the reattributed losses are treated as absorbed by the group immediately prior to the allowance of any loss or inclusion of any income or gain with respect to the determination of worthlessness or the disposition. The common parent, however, is treated as succeeding to the subsidiary's losses in a transaction described in section 381.

The anti-loss reimportation rule of §1.1502-35(g)(3) is designed to prevent consolidated groups from avoiding the loss suspension rule by disposing of a sufficient amount of stock of S to deconsolidate S and then re-importing to the group losses of S. Under §1.1502-35(g)(3)(i), the rule applies when a loss of S is reimported to the group within the 10-year period beginning on the date S ceases to be a member of such group. Under §1.1502-35(g)(3)(iii), if the anti-loss reimportation rule applies, then the temporary regulations disallow the use of the reimported loss to the extent that the aggregate amount of loss recognized by member of the group on dispositions of S stock was attributable to a duplicated loss of S, and such loss was allowed. The anti-loss reimportation rule requires taxpayers to maintain records of all losses recognized on the disposition of subsidiary stock with respect to which there is duplicated loss, which losses were allowable after application of the rules in §1.1502-35.

#### **USE OF DATA**

This information with respect to §1.1502-35(c) is necessary to ensure that a consolidated group does not obtain more than one tax benefit from both the utilization of a loss from the disposition of stock and the utilization of a loss or deduction with respect to another asset that reflects the same economic loss.

The information with respect to §1.1502-35(c)(5) is necessary to allow the taxpayer to make an election that would benefit the taxpayer; *i.e.*, to ensure that any loss suspended under §1.1502-35T(c), to the extent not reduced, is allowed in the taxable year that includes the day before the first date on which S is not a member of the group.

The information with respect to §1.1502-35(f) is necessary to allow taxpayers to make an election that would benefit the taxpayer; *i.e.* to provide them with the alternative of taking either a worthless stock deduction or the ability to absorb the inside losses of the subsidiary for years prior to the publication of the temporary regulations.

The information with respect to §1.1502-35(g)(3) is necessary to ensure that taxpayers do not circumvent the loss suspension rule by disposing of a sufficient amount of stock of S to deconsolidate S and then re-importing to the group losses of S.

#### **USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission.

#### **EFFORTS TO IDENTIFY DUPLICATION**

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

. **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, was published in the *Federal Register* on October 23, 2002 (67 FR 65060). A public hearing was neither requested nor held with respect to the notice of proposed rulemaking; however, the public submitted written comments regarding the proposed regulation. Another notice of proposed rulemaking (68 FR 12324) was published simultaneously with final and temporary regulations (68 FR 12287), TD 9048, in the *Federal Register* on March 14, 2003. A final rule and removal of temporary regulations was published March 14, 2006 (71 FR 13008) as TD 9254.

In response to the *Federal Register* notice dated April 6, (77 FR 20885), we received no comments during the comment period regarding REG-131478 (T.D. 9048).

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 U.S.C. 6103.

11. **JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

The burden estimate for §1.1502-35(c) is as follow:

- It is estimated that 1,000 taxpayers annually will dispose of stock in a subsidiary where that subsidiary remains a member of the consolidated group to which §1.1502-35(c) applies. It is estimated that the average recordkeeping burden will be 2 hours. Accordingly, the estimated annual recordkeeping burden is 2,000 hours.

The burden estimate for §1.1502-35(c)(5) is as follows:

- It is estimated that 500 taxpayers annually will dispose of subsidiary stock to which the loss suspension rule of §1.1502-35(c) applied with the result that the subsidiary is no longer a member of a group, and claim a deduction for losses recognized on these dispositions under §1.1502-35(c)(5)(iii)). It is estimated that the average reporting burden will be 2 hours for the statement. The estimated annual reporting burden is 1,000 hours.

The burden estimate for §1.1502-35(f) is as follows:

- It is estimated that for years that apply to this election, 2,250 taxpayers annually will claim a worthless stock deduction for stock in a subsidiary where that subsidiary meets the definition of worthlessness under §1.1502-80(c). The estimated annual reporting burden is 4,500 hours.

The burden estimate for §1.1502-35(g)(3) is as follows:

- It is estimated that 3,750 taxpayers annually will dispose of subsidiary stock with respect to which there is duplicated loss, which loss is allowable after application of the rules in §1.1502-35, and be required to maintain records of such dispositions in order to track the reimportation into the group of built-in loss assets within the ten-year period. It is estimated that the average annual recordkeeping burden will be 2 hours. The estimated recordkeeping burden is 7,500 hours.

The burden associated with this information collection is 7,500 responses and 15,000 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 April 6, 2012 (77 FR 20885), 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 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.