

ending [insert date short taxable year ended]. Under the Alternative Carryback Term and Condition, any net operating loss arising in this short taxable year must be carried back to each of the 2 taxable years preceding the short taxable year (and any remaining net operating loss must be carried over in accordance with the provisions of section 172 of the Code) and any capital loss arising in this short taxable year must be carried back or carried over in accordance with section 1212.”

(iii) *Special elections for consolidated groups.* A consolidated group that wishes to make one of the elections under section 5.04 of this revenue procedure (acquiring group) must attach one of the following statements to the election to apply the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition:

“SPECIAL ELECTION TO WAIVE PRE-ACQUISITION EXTENDED CARRYBACK PERIOD. This is an election under section 5.04 of Rev. Proc. 2003–34 to waive the pre[insert the first day of the first taxable year for which the acquired member (or members) was a member of the taxpayer’s consolidated group (acquiring group)] extended carryback period for the consolidated NOLs attributable to [insert name and employer identification number of acquired member (or members)] for the [short period].”; or

“SPECIAL ELECTION TO WAIVE ENTIRE PRE-ACQUISITION CARRYBACK PERIOD. This is an election under section 5.04 of Rev. Proc. 2003–34 to waive the pre[insert the first day of the first taxable year for which the acquired member (or members) was a member of the taxpayer’s consolidated group (acquiring group)] carryback period for the consolidated NOLs attributable to [insert name and employer identification number of acquired member (or members)] for the [short period].”

(b) *Where to file.* A taxpayer electing to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition must file the appropriate statement(s) with the Director, Internal Revenue Service Center, Attention: ENTITY CONTROL, where the taxpayer files its federal income tax return. No copies of any statements are required to be sent to the National Office.

(c) *Statements not claims for refunds.* The statements described in section 6.01(3)(a) do not constitute claims for refund or applications for tentative refunds. A taxpayer electing to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition by filing a statement in compliance with the procedures of this section 6.01 must additionally file a claim for refund or application for tentative refund within the periods prescribed by statute to carry back any short period NOL or CL. The taxpayer must attach a copy of the statement filed under these procedures to any claim for refund or application for tentative refund filed as a result of the making of an election under this revenue procedure.

.02 *Election Constitutes Taxpayer’s Agreement.* An election made in accordance with this section constitutes an agreement between the taxpayer and the Service to modify the terms and conditions for the Commissioner’s approval of the taxpayer’s change in annual accounting period. An election to apply either the Modified Carryback Term and Condition or the Alternative Carryback Term and Condition does not revoke a valid election described in § 172(b)(3), Reg. § 1.1502–21(b)(3)(ii)(B) or Reg. § 1.1502–21T.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–37 and Rev. Proc. 2002–39 are modified.

SECTION 8. EFFECTIVE DATES AND TRANSITION RULE

.01 *Applications Filed Under Rev. Proc. 2002–37.* For a taxpayer within the scope of Rev. Proc. 2002–37:

(1) *In general.* This revenue procedure is effective for all changes in annual accounting periods for which the first effective year (as defined in section 5.07 of Rev. Proc. 2002–37) ends on or after April 8, 2003; and

(2) *Transition rule.* If the first effective year (as defined in section 5.07 of Rev. Proc. 2002–37) ends before April 8, 2003, and the time for filing Form 1128 with respect to that first effective year expires on or after April 8, 2003, (whether or not a Form 1128 was filed before that date with the Service Center), a taxpayer may elect to use one of the optional carryback terms

and conditions of section 5 of this revenue procedure by following the procedures of section 6 of this revenue procedure.

.02 *Applications Filed Under Rev. Proc. 2002–39.* For a taxpayer within the scope of Rev. Proc. 2002–39:

(1) *In general.* This revenue procedure is effective for applications filed on or after April 8, 2003; and

(2) *Transition rule.* If a taxpayer filed an application to change the taxpayer’s annual accounting period before April 8, 2003, and the application is pending with the national office on April 8, 2003, the taxpayer may request that the application be processed in accordance with this revenue procedure. However, the national office will process applications filed before April 8, 2003, in accordance with prior authority unless, prior to the later of June 9, 2003, or the issuance of the letter ruling granting or denying consent to the adoption, change, or retention, the taxpayer notifies the national office that the taxpayer desires that the taxpayer’s application be processed in accordance with this revenue procedure.

.03 *Taxpayers With Prior Accounting Period Changes.* For a taxpayer described in section 3.02 of this revenue procedure, this revenue procedure is effective for changes in the taxpayer’s annual accounting period if the short period necessary to effect the change began on or after February 1, 2000.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Roy A. Hirschhorn and Michael Schmit of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Hirschhorn or Mr. Schmit at (202) 622–4960 (not a toll-free call).

Industry Issue Resolution Program

Rev. Proc. 2003–36

SECTION 1. PURPOSE

This revenue procedure describes procedures for business taxpayers, industry associations, and other interested parties to submit issues for consideration under the Internal Revenue Service’s Industry Issue Resolution (IIR) Program. The objective of

the IIR Program is to identify frequently disputed or burdensome tax issues that are common to a significant number of business taxpayers that may be resolved through published or other administrative guidance. Resolving issues through prefiling guidance rather than postfiling examination is a goal of the Internal Revenue Service and the Office of Chief Counsel. The Large and Mid-Size Business Division and the Small Business and Self Employed Division of the Service share operational responsibility for the IIR Program.

SECTION 2. BACKGROUND

In Notice 2000–65, 2000–2 C.B. 599, the Service announced the Industry Issue Resolution Pilot Program. The objective of the pilot program was to establish a procedure to address frequently disputed tax issues that are common to a significant number of large or mid-size business taxpayers through prefiling guidance rather than postfiling examination. After evaluating the success of the pilot program, the Service announced in Notice 2002–20, 2002–1 C.B. 796, that the IIR Program would be made permanent. In addition, Notice 2002–20 expanded the IIR Program to address issues common to small businesses, as well as large and mid-size businesses, and to address opportunities to reduce burden for all business taxpayers.

SECTION 3. SCOPE

.01 Issues appropriate for the program.

The issues most appropriate for consideration under the IIR Program generally will have two or more of the following characteristics:

- (1) The proper tax treatment of a common factual situation is uncertain.
- (2) The uncertainty results in frequent, and often repetitive, examinations of the same issue.
- (3) The uncertainty results in taxpayer burden.
- (4) The issue is significant and impacts a large number of taxpayers, either within an industry or across industry lines.
- (5) The issue requires extensive factual development, and an understanding of industry practices and views concerning the issue would assist the Service in determining the proper tax treatment.

.02 Issues not appropriate for the program.

The following issues are not appropriate for consideration under the IIR Program:

- (1) Issues that are unique to one or a small number of taxpayers.
- (2) Issues that are primarily under the jurisdiction of Operating Divisions of the Service other than the LMSB and SB/SE Divisions.
- (3) Issues that involve transactions that lack a *bona fide* business purpose, or transactions with a significant purpose of improperly reducing or avoiding federal taxes.
- (4) Issues that involve transfer pricing or international tax treaties.

SECTION 4. RECOMMENDATION AND SELECTION PROCESS

.01 Recommendation process.

The LMSB and SB/SE Divisions will review and evaluate the issues submitted under the IIR Program and, if appropriate, may recommend that an issue be included on the Treasury Department's and the Service's Guidance Priority List for the upcoming year or on periodic updates to the Guidance Priority List. The Guidance Priority List sets forth the published guidance that the Service expects to issue during the plan year. Inclusion of an IIR item on the Guidance Priority List does not, however, guarantee that the Service will issue published guidance on the item.

Interested parties may submit issues at any time during the year. The LMSB and SB/SE Divisions will review and evaluate the issues submitted under the IIR Program at least semi-annually, generally after March 31 and August 31 of each year. Additionally, the LMSB and SB/SE Divisions will review issues submitted by May 15, 2003, to determine whether to recommend those issues for inclusion on the 2003–2004 Guidance Priority List.

.02 Selection process.

A recommendation under this revenue procedure does not guarantee that the issue will be selected for inclusion on the Guidance Priority List or included on a periodic update of the Guidance Priority List. In deciding whether to include issues recommended by the LMSB Division or SB/SE Division under this revenue procedure for inclusion on the Guidance Priority List, the Office of Chief Counsel and the Treasury Department will consider, among

other things, recommendations from other sources, and whether the requested guidance promotes sound tax administration.

An LMSB or SB/SE representative will notify the submitter when a decision has been made whether to include an issue on the Guidance Priority List or on a periodic update. A public announcement on the issues reviewed under the IIR Program and selected for the Guidance Priority List or a periodic update will be issued at least annually. The announcement will include the name of the officials to contact for information regarding the selected issues.

SECTION 5. GUIDANCE FOR SELECTED ISSUES

Guidance on selected issues may be in the form of published guidance, such as a regulation, revenue ruling, revenue procedure, or notice, prepared by the appropriate Office of the Associate Chief Counsel. In some situations, the guidance may require taxpayers to file a request for a change in method of accounting before changing the manner in which they treat the issue. Published guidance issued under the IIR Program is available on the Digital Daily at www.irs.gov. Selected issues also may be addressed in administrative guidance, such as an Internal Revenue Manual provision.

SECTION 6. ADDITIONAL INFORMATION ABOUT THE IIR PROGRAM

.01 IIR team.

If an issue submitted under the IIR Program is selected as a published guidance project, the Service will establish a team (the IIR team) to provide assistance in analyzing the issue. IIR team members will include appropriate personnel from the LMSB and SB/SE Divisions, Appeals, the Office of Chief Counsel, and the Treasury Department.

.02 Requests for information or meeting.

An IIR team may request that the submitter or other business taxpayers voluntarily meet with the Service, provide information, or provide an opportunity for the Service to review books and records to assist in the development of the issue. These activities are not for the purpose of examination or inspection within the meaning of section 7605(b).

.03 Disclosure of information.

The Service encourages interested parties to submit information that will assist the Service and the Treasury Department in reaching an appropriate resolution of the issue. Submissions and any additional information provided may be subject to disclosure under the Freedom of Information Act. All submissions made under the IIR Program will be made available for public inspection and copying in their entirety. Therefore, submissions should not include confidential or taxpayer specific information.

SECTION 7. SUBMITTING ISSUES UNDER THE PROGRAM

.01 *No required format.*

An issue submitted for consideration under the IIR Program is not required to be submitted in a particular format. The submission should, however, include an issue statement, a description of why the issue is appropriate for the IIR Program, an explanation of the need for guidance, the estimated number of taxpayers affected by the issue, and the name and telephone number of a person to contact if additional information is needed. The submission may also include a recommendation as to how the issue may be resolved.

.02 *Where to submit issues.*

Interested parties should submit issues by e-mail to *IIR@irs.gov*. Alternatively, submissions may be mailed or faxed to:

Internal Revenue Service
Office of Prefiling and Technical Services
Large and Mid-Size Business Division
LM:PFT
Mint Building 3rd Floor M3-420
1111 Constitution Avenue, NW
Washington, DC 20224
Fax: 202-283-8406

SECTION 8. EFFECT ON OTHER DOCUMENTS

This revenue procedure supersedes Notice 2002-20.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective April 17, 2003.

SECTION 10. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1837.

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.

The collections of information in this revenue procedure are in Sections 6 and 7. This information is required to submit a request for the Service to consider an issue under the IIR Program. This information will be used to enable the Service to determine whether the issue is suitable for determination under the IIR Program. The collections of information are voluntary to obtain a benefit. The likely respondents are business or other for profit institutions.

The estimated total annual reporting burden is 2,000 hours.

The estimated annual burden per respondent varies from 4 hours to 200 hours, depending on individual circumstances, with an estimated average of 40 hours. The estimated number of respondents is 50.

The estimated annual frequency of responses is on occasion.

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.

SECTION 11. CONTACT INFORMATION

The principal author of this revenue procedure is Donna Welch of the Office of Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division. Ms. Welch may be contacted at (202) 622-4910 (not a toll-free number). For information regarding the IIR Program, please contact Susan Blake, Senior Program Analyst, of the LMSB Prefiling and Technical Services Office at (202) 283-8414 (not a toll-free number) between the hours of 9:00 AM – 5:00 PM, Eastern Time, Monday through Friday.