

SUPPORTING STATEMENT
OMB No. 1545-1083
INTL-399-88 (TD 8434) Treatment of Dual Consolidated Losses

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1503(d) denies to an affiliate the use of the loss of a domestic corporation that is subject to an income tax of a foreign country without regard to whether such income is from sources in or outside such foreign country, or is subject to such tax on a residence basis ("dual resident corporation").

The regulation provides an exception to the general rule where there currently is no person, corporation, or entity which, under foreign law, can use the loss to offset income, but the loss can be carried forward and used to reduce income of another corporation. An affiliate may use the loss under those circumstances if the affiliated group with which the loss corporation files a consolidated return files an agreement to take the loss into income upon future use of such loss by a person, corporation, or entity (other than the loss corporation) under the income tax laws of the foreign country.

The regulation also imposes a requirement in those instances in which the dual resident corporation is a member of an affiliated group that files a consolidated return. In order to prevent the dual consolidated loss of a dual resident corporation that is a member of a consolidated return group from being used to offset the income of another member, a separate accounting is required for the losses incurred by the dual resident corporation.

2. USE OF DATA

The collection of information is necessary so that a narrow exception may be provided to the general rule while still preventing the abuse that the statute was intended to eliminate.

Without the information, it would be impossible to provide taxpayers with the option of an exception to the general disallowance rule, and the statute would necessarily impact on taxpayers that are not engaged in the abuse the statute was intended to curtail.

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**

We have been unable to reduce the burden for small businesses.

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**

The notice of proposed rulemaking (54 FR 37346) was published in the **Federal Register** simultaneously with the temporary regulation (54 FR 37314) on September 8, 1989. A public hearing was held on March 2, 1990. The final regulation was published in the **Federal Register** on September 9, 1992 (57 FR 41079).

We received no comments during the comment period in response to the **Federal Register** notice dated January 15, 2014 (79 FR 2751).

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**

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Burden estimation:

Under §1.1503-2(e)(1), a dual consolidated loss of a dual resident corporation that ceases to be a dual resident corporation cannot be used to offset the income of such corporation to the extent the income is "tainted income," as defined in §1.1503-2(e)(3). In the absence of evidence showing the actual amount of income, the portion of a corporation's income in a particular year that is attributable to tainted assets is based on the formula described in §1.1503-2(e)(2). Section 1.1503-2(e)(2) also allows taxpayers to submit documentation establishing the actual amount of income that is attributable to tainted assets. We estimate that 20 taxpayers will submit the information described in §1.1503-2(e)(2), and that it will take approximately .5 hours to prepare the documentation. The total reporting burden is estimated to be 10 hours.

Section 1.1503-2(g)(2) provides that certain dual resident corporations may file with their income tax returns an agreement described in section 1.1503-2(g)(2)(i), under which the dual resident corporation, or the affiliated group with which the dual resident corporation files a consolidated income tax return, may elect to use the losses of the dual resident corporation against the income of a domestic affiliate. We estimate that approximately 400 taxpayers will file 10 or fewer of such elections. Each of those 400 taxpayers would take an average of two hours to prepare its §1.1503-2(g)(2)(i) elections, for a total burden of 800 hours. We believe that 75 taxpayers will file between 11 and 30 of such elections. For those 75 taxpayers we estimate an average of 5 hours per taxpayer to prepare its §1.1503-2(g)(2)(i) elections, for a total burden of 375 hours. We believe that 25 taxpayers will file over 30 of such elections. For those 25 taxpayers we estimate an average of 10 hours per taxpayer to prepare its §1.1503-2(g)(2)(i) elections, for a total burden of 250 hours. The total reporting burden is estimated to be 1,425 hours.

Section 1.1503-2(g)(2)(vi)(B) requires certain taxpayers who have made an election and filed an agreement under § 1.1503-2(g)(2) to file an annual certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country. We estimate that approximately 300 taxpayers will be required to file the annual certification, and that it will take between .25 and .5 hours, with an average of approximately .4 hours to prepare the documentation. The total reporting burden is estimated to be 120 hours.

Section 1.1503-2(g)(2)(iii) requires taxpayers who have made an election and filed an agreement under §1.1503-2(g)(2)(i) to recapture and report the dual consolidated loss as income in the year of a "triggering event" described in §1.1503-2(g)(2)(iii)(A). Taxpayers can rebut the presumption of a triggering event described in §1.1503-2(g)(2)(iii)(A)(2) through (7) by demonstrating that the losses, expenses, or deductions of the dual resident corporation cannot be carried over or otherwise used under the laws of a foreign country. A taxpayer wishing to rebut the presumption of a triggering event must attach documents demonstrating such facts to its U.S. income tax return for the year in which the presumed triggering event occurred. We estimate that approximately 50

taxpayers will wish to rebut the presumption of a triggering event, and that it will take approximately .5 hours to prepare the documentation. The total reporting burden is estimated to be 25 hours.

Section 1.1503-2(g)(2)(iv)(B) provides that certain events do not constitute triggering events if the taxpayer enters into a closing agreement, as described in §1.1503-2(g)(2)(iv)(B)(2). We estimate that approximately 6 taxpayers will wish to enter into a closing agreement, and that it will take approximately 5 hours to prepare the documentation. The total reporting burden is estimated to be 30 hours.

Section 1.1503-2(g)(2)(vii)(A) provides that when a triggering event occurs, the taxpayer must generally recapture the total amount of the dual consolidated loss (plus an interest charge) on the taxpayer's return for the year of the triggering event. Under §1.1503-2(g)(2)(vii)(B), the amount that must be recaptured (and the interest charge) can be reduced if the taxpayer demonstrates on its return for the year of the triggering event that the dual consolidated loss would have offset taxable income of the dual resident corporation in subsequent years. We estimate that approximately 10 taxpayers will wish to rebut the presumption of the amount of recapture, and that it will take approximately .5 hours to prepare the documentation. The total reporting burden is estimated to be 5 hours.

Section 1.1503-2(g)(2)(vii)(C)(1) provides that the recapture amount generally cannot be offset by the dual resident corporation's current, carryover or carryback losses. Under §1.1503-2(g)(2)(vii)(C)(2), if the taxpayer demonstrates that the loss carryovers are attributable to the dual consolidated loss being recaptured, the recapture amount can be offset by that portion of the carryovers. We estimate that approximately 10 taxpayers will wish to demonstrate that loss carryovers are attributable to the dual consolidated loss being recaptured, and that it will take approximately .5 hours to prepare the documentation. The total reporting burden is estimated to be 5 hours.

26 CFR		# Respondents	# Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Burden
1.1503-2(e)(2)	Documentation establishing the actual amount of income that is attributable to tainted assets	20	1	20	0.5	10
1.1503-2(g)(2)(i)	Dual resident corporation files a consolidated return may elect to use losses of the dual resident corporation against the income of a domestic affiliate	400	1	400	2	800
		75	1	75	5	375
		25	1	25	10	250
1.1503-2 (g)(2)(vi) (B)	Annual certification that the losses, expenses, or deductions that make up the dual consolidated loss have not been used to offset the income of another person under the tax laws of a foreign country.	300	1	300	0.4	120
1.1503-2 (g)(2)(iii) (A)(2)	Rebut the presumption of a triggering event	50	1	50	0.5	25
1.1503-2 (g)(2)(iv) (B)(3)(i)	Closing Agreement (certain events do not constitute triggering events)	6	1	6	5	30
1.1503-2 (g)(2)(vii) (B)	Rebut presumption of recapture amount	10	1	10	0.5	5
1.1503-2 (g)(2)(vii) (C)(2)	Demonstrate that loss carryovers are attributable to the dual consolidated loss being recaptured	10	1	10	0.5	5
		500	1.79	896	1.81	1,620

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 January 15, 2014 (79 FR 2751), 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 an increase in the number of responses to correct the total number provided in previous submission. The additional 396 responses is an adjustment in the estimate. We are also 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

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.