

**Internal Revenue Service**  
**SUPPORTING STATEMENT**  
**OMB 1545-1218**  
**TD 8824**

**Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 382 of the Internal Revenue Code provides that, if an ownership change occurs with respect to a loss corporation, the amount of the loss corporation's taxable income for a post-change taxable year that may be offset by the losses and credits arising before the ownership change is limited by an amount known as the section 382 limitation. Generally, an ownership change occurs if there is a shift in the stock of the loss corporation of more than fifty percentage points during a three-year consecutive period.

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.

The previously approved final regulations modify the section 382 rules as necessary to adapt to the group context.

The parent of a consolidated group can elect to use net operating losses of a member whose stock is sold at a loss that the group is not allowed to deduct. If such member's net operating losses are limited under section 382, §1.1502-20(g)(4)(ii) permits the common parent to elect to apportion some or all of the section 382 limitation to itself so that those losses can offset the group's income.

Section 1.1502-91(d) may apply to treat two or more corporations that become members of a consolidated group as a single unit that is referred to as a loss subgroup. A loss subgroup is required to have a loss subgroup parent. Section 1.1502-91(d)(4) permits taxpayers to elect to treat the loss subgroup parent requirement as satisfied.

Section 1.1502-95 provides rules for the treatment of a member (or members) when a member leaves a consolidated group. Paragraph (c) of this section permits the common parent to apportion some or all of the section 382 limitation to the departing member, and also permits the common parent to apportion some or all of the group's net unrealized built-in gain to a departing member. Paragraph (e) of this section applies if a member leaves a consolidated group that has a net unrealized built-in loss that is limited under section 382. In such a case, paragraph (e) may require the common parent to allocate some or all of the net unrealized built-in loss to the departing member.

2. USE OF DATA

The data is used by the consolidated group, members joining a consolidated group, members leaving a consolidated group, and the Internal Revenue Service to ensure that a loss limitation is properly imposed.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS intends to offer electronic filing to the extent it is practicable however in this case it isn't practicable because of the evaluative nature of the determination.. IRS publication, 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

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

There is no burden on small businesses or entities by this collection due to the inapplicability of the authorizing statute to this type of entity.

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

The data is used by the consolidated group, members joining a consolidated group, members leaving a consolidated group, and the Internal Revenue Service to ensure that a loss limitation is properly imposed.

A less frequent collection would prevent the IRS from verifying a loss limitation is properly imposed and hinder the IRS from meeting its mission.

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

There are no special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

On February 4, 1991, a notice of proposed rulemaking , CO-132-87 (56 FR 4194) was published in the **Federal Register**, and on April 8, 1991, a public hearing was held. On June 27, 1996, the notice of proposed rulemaking (C0-132-87) was withdrawn and was reissued as a new notice of proposed rulemaking (CO-25-96) by cross-reference to temporary regulations (61 FR 33395). On July 2, 1999, the final regulations (64 FR 36116) were published in the **Federal Register**.

In response to the Federal Register notice (82 FR 58693), dated December 13, 2017, we received no comments during the comment period regarding the final regulations.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No gifts or payments are being provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and return information are confidential as required by 26 U.S.C. section 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

There is no sensitive personally identifiable information (PII) in this collection.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.1502-95(c) permits a consolidated group to apportion to a departing member a group section 382 limitation and/or a net unrealized built-in gain. Section 1.1502-95(f) provides the time and manner of making the apportionment. Section 1.1502-95(e) may require a group to allocate a net unrealized built-in loss to a departing member. Section 1.1502-95(e)(8) describes the reporting requirements for this allocation. Section 1.1502-96(d)(5) permits the common parent of a consolidated group to apportion to itself some or all of a section 382 limitation if the common parent elects to apportion to itself the net operating losses of a member subject to such a limitation. Section 1.1502-20(g)(4)(ii) provides the time and manner of making the apportionment. In each of these cases, a statement evidencing such allocation must be filed by the group and the departing member indicating relevant information regarding the allocation. If a consolidated group acquires two or more corporations from another group, section 1.1502-91(d)(4) permits the acquiring consolidated group to elect to treat one of the requirements for subgroup treatment, the loss subgroup parent requirement, as satisfied. The time and manner of making this election are specified in §1.1502-96(e). The election requires a statement by the acquiring consolidated group that lists the corporations for which the election is made. It is estimated that the number of persons subject to these reporting requirements

is 12,054, representing approximately thirty percent of the number of consolidated groups (which approximates the number of groups that, at any time, may be subject to a section 382 limitation.) It is estimated that the annual burden per respondent will be between fifteen and twenty five minutes, depending on particular circumstances, and depending on the number of reporting requirements that apply to the respondent. The estimated average burden is twenty minutes. It is estimated that the average frequency of preparing any of the elections is once every six years, representing the frequency of a member's departing a group that has had an ownership change. Thus, the total annual burden will be  $(12,054 \times .33 \text{ hours})/6 = 662 \text{ hours}$ .

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
1.1502-96(e)	Elect as consolidated group	12054	1	12054	.33	662
Totals				12054		662

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUAL COST TO THE FEDERAL GOVERNMENT

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

15. REASON 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

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes 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 REQUIREMENT

There are no exceptions to the certification requirements.

Note: The following paragraph applies to all of the collection of information in this submission:

An agency may not conduct or sponsor or 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 pertaining 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 return information are confidential as required by 26 U.S.C. §6103.