

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8766]

RIN 1545-AV98

Consolidated returns--Limitations on the use of certain credits;
overall foreign loss accounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary amendments to the consolidated return regulations. The temporary amendments modify the date temporary regulations apply as published in the **Federal Register** on January 12, 1998, relating to the use of tax credits of a consolidated group and its members. The amendments provide guidance to consolidated groups that have a taxable year beginning on or after January 1, 1997, for which the income tax return is due on or before March 13, 1998. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective dates: These amendments are effective March 13, 1998.

Applicability dates: For dates of application, see the **Effective Dates** portion of the preamble under SUPPLEMENTARY

INFORMATION.

FOR FURTHER INFORMATION CONTACT: Roy A. Hirschhorn, (202) 622-7770.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On January 12, 1998, the IRS and Treasury published in the **Federal Register** final, temporary and proposed regulations (the January 12, 1998, regulations) relating to limitations on the use of certain tax credits and related attributes by corporations filing consolidated income tax returns. In general, the January 12, 1998, regulations relate to the separate return limitation year provisions (and certain consolidated return changes in ownership) for general business credits, alternative minimum tax credits, foreign tax credits and overall foreign loss accounts. The January 12, 1998, regulations were generally applicable to consolidated return years beginning on or after January 1, 1997. IRS and Treasury have determined that the appropriate effective date of those regulations should be for consolidated return years for which the due date (without extensions) of the income tax return is after March 13, 1998. In lieu of applying this effective date, a consolidated group may choose to apply the effective date provisions as published in the January 12, 1998, regulations. Taxpayers making this choice must apply all of those effective date provisions for all relevant years. Thus, such taxpayers may not choose to apply one provision of the

January 12, 1998, regulations and not another.

Effective Dates

The temporary amendments are applicable to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. As explained in the Background portion of this preamble, taxpayers may instead choose to apply the effective date provisions of the January 12, 1998, regulations (i.e., generally taxable years beginning on or after January 1, 1997).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect corporations filing consolidated federal income tax returns that have carryover or carryback of credits from separate return limitation years. Available data indicates that many consolidated return filers are large companies (not small businesses). In addition, the data indicates that an insubstantial number of consolidated return filers that are smaller companies have credit carryovers or carrybacks, and thus even fewer of these filers have credit carryovers or carrybacks that are subject to the separate return limitation year rules.

Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. It has also been determined that under section 553(d) of the Administrative Procedure Act (5 U.S.C. chapter 5) these regulations should be effective immediately because they involve the applicability of regulations that modify the limitations on the use of certain tax attributes for taxable years beginning on or after January 1, 1997. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking accompanying these regulations is being sent to the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Roy A. Hirschhorn of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1502-3 is amended by revising paragraphs (c)(3), (d)(2) and (e)(3) to read as follows:

§1.1502-3 Consolidated investment credit.

* * * * *

(c) * * *

(3) Special effective date. This paragraph (c) applies to consolidated return years for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See §1.1502-3T(c) for the rule that limits the group's use of a section 38 credit carryover or carryback from a SRLY for a consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998. For taxable years not subject to §1.1502-3T(c), prior law applies. See §1.1502-3(c) in effect prior to January 12, 1998 (§1.1502-3(c) as contained in the 26 CFR part 1 edition revised April 1, 1997) for prior law. See also §1.1502-3T(c)(4) for an optional effective date rule (generally making the rules of this paragraph (c) inapplicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(d) Examples. * * *

(2) Example (2) and Example (3) of this paragraph (d) do not apply to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, see §1.1502-3T(d).

(e) * * *

(3) Special effective date. This paragraph (e) applies only to a consolidated return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See §1.1502-3T(c)(4) for an optional effective date rule (generally making the rules of this paragraph (e) inapplicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

* * * * *

Par. 3. Section 1.1502-3T is amended by revising paragraphs (c)(3) and (d)(2) and adding a new paragraph (c)(4) to read as follows:

§1.1502-3T Consolidated investment credit (temporary).

* * * * *

(c) * * *

(3) Effective date. This paragraph (c) applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. However, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in determining a member's (or subgroup's) contributions to the consolidated section 38(c) limitation under this paragraph (c). See also §1.1502-3(c).

(4) Optional effective date of January 1, 1997. In lieu of paragraphs (c)(3) and (d)(2) of this section and §§1.1502-3(c)(3), (d)(2) and (e)(3) (relating to the general business credit), 1.1502-4(f)(3) and (g)(3), 1.1502-4T(f) and (g)(3) (relating to the foreign tax credit), 1.1502-9(a) (the next to last sentence), 1.1502-9T(b)(1)(v) (relating to overall foreign losses), and 1.1502-55T(h)(4)(iii)(C) (relating to the alternative minimum tax credit), a consolidated group may apply such paragraphs as they appear in 1998-10 I.R.B. 23 (see §601.601(d)(2) of this chapter). A consolidated group making this choice must apply all such paragraphs for all relevant years.

(d) * * *

(2) This paragraph (d) applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. See also §1.1502-3(d) for

years for which the due date of the income tax return (without extensions) is on or before March 13, 1998.

* * * * *

Par. 4. Section 1.1502-4 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§1.1502-4 Consolidated foreign tax credit.

* * * * *

(f) * * *

(3) Special effective date ending SRLY limitation. See §1.1502-4T(f) for the rule that ends the SRLY limitation with respect to foreign tax credits for consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. See also §1.1502-3T(c)(4) for an optional effective date rule (generally making the rules of this paragraph (f) inapplicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998.

(g) * * *

(3) Special effective date for CRCO limitation. See §1.1502-4T(g)(3) for the rule that ends the CRCO limitation with respect to a consolidated return change of ownership that occurs on or after the first day of a taxable year for which the due date of the income tax return (without extensions) is after March 13, 1998. See also §1.1502-3T(c)(4) for an optional effective

date rule (generally making the rules of this paragraph (g) inapplicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

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Par. 5. Section 1.1502-4T is amended by revising paragraphs (f) and (g)(3) to read as follows:

§1.1502-4T Consolidated foreign tax credit (temporary).

* * * * *

(f) Limitation on unused foreign tax carryover or carryback from separate return limitation years. Section 1.1502-4(f) does not apply for consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, a group shall include an unused foreign tax of a member arising in a SRLY without regard to the contribution of the member to consolidated tax liability for the consolidated return year. See also §1.1502-3T(c)(4) for an optional effective date rule (generally making the rules of this paragraph (f) applicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

* * * * *

(g)(3) Special effective date for CRCO limitation. Section 1.1502-4(g) applies only to a consolidated return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See also §1.1502-3T(c)(4) for an optional effective date rule (generally making the rules of this paragraph (g)(3) applicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

Par. 6. In §1.1502-9, paragraph (a) is amended by removing the last sentence and adding two sentences in its place to read as follows:

§1.1502-9 Application of overall foreign loss recapture rules to corporations filing consolidated returns.

(a) * * * See §1.1502-9T(b)(1)(v) for the rule that ends the separate return limitation year limitation for consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. See also §1.1502-3T(c)(4) for an optional effective date rule (generally making the rules of paragraphs (b)(1)(iii) and (iv) of this section inapplicable for a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

* * * * *

Par. 7. Section 1.1502-9T is amended by revising paragraph (b)(1)(v) to read as follows:

§1.1502-9T Application of overall foreign loss recapture rules to corporations filing consolidated returns (temporary).

* * * * *

(b)(1)(v) Special effective date for SRLY limitation.
Sections 1.1502-9(b)(1)(iii) and (iv) apply only to consolidated return years for which the due date of the income tax return (without extensions) is on or before March 13, 1998. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, the rules of §1.1502-9(b)(1)(ii) shall apply to overall foreign losses from separate return years that are separate return limitation years. For purposes of applying §1.1502-9(b)(1)(ii) in such years, the group treats a member with a balance in an overall foreign loss account from a separate return limitation year on the first day of the first consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998, as a corporation joining the group on such first day. An overall foreign loss that is part of a net operating loss or net capital loss carryover from a separate return limitation year of a member that is absorbed in a consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998, shall be

added to the appropriate consolidated overall foreign loss account in the year that it is absorbed. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, similar principles apply to overall foreign losses when there has been a consolidated return change of ownership (regardless of when the change of ownership occurred). See also §1.1502-3T(c)(4) for an optional effective date rule (generally making this paragraph (b)(1)(v) applicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

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Par. 8. Section 1.1502-55T is amended by revising paragraph (h)(4)(iii)(C) to read as follows:

§1.1502-55T Computation of alternative minimum tax of consolidated groups (temporary).

* * * * *

(h)(4) * * *

(iii) * * *

(C) Effective date. This paragraph (h)(4)(iii) applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. However, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in

determining a member's (or subgroup's) contributions to the consolidated section 53(c) limitation under paragraph (h)(4)(iii) of this section. See §1.1502-3T(c)(4) for an optional effective date rule (generally making this paragraph (h)(4)(iii) applicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

Michael P. Dolan

Deputy Commissioner of Internal Revenue

Approved: March 9, 1998

Donald C. Lubick

Assistant Secretary of the Treasury