

---

# Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

## Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group

### REG-132760-03

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9089) that govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income. The text of those regulations also serves as the text of these proposed regulations.

**DATES:** Written or electronic comments must be received by December 3, 2003.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-132760-03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-132760-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at [www.irs.gov/regs](http://www.irs.gov/regs).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Amber Renee Cook or Marie C. Milnes-Vasquez at (202) 622-7530; concerning submission of comments, Treena Garrett at (202) 622-3401 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

**Background and Explanation of Provisions**

Temporary regulations (T.D. 9089) in this issue of the Bulletin amend the Income Tax Regulations (26 CFR 1) relating to section 1502. The temporary regulations govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

**Special Analysis**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written

comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

Various personnel from the IRS and Treasury Department participated in the development of these regulations.

\* \* \* \* \*

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**PART 1—INCOME TAXES**

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

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

Section 1.1502–28 also issued under 26 U.S.C. 1502. \* \* \*

Par. 2. Section 1.1502–19 is amended as follows:

- 1. Paragraph (b)(1) is revised.
- 2. The headings for paragraphs (h)(2) and (h)(2)(i) are revised.
- 3. Paragraph (h)(2)(ii) is redesignated as paragraph (h)(2)(iii).
- 4. New paragraph (h)(2)(ii) is added.

The revisions and addition read as follows:

*§1.1502–19 Excess loss accounts.*

[The text of this proposed section is the same as the text of §1.1502–19T published elsewhere in this issue of the Bulletin].

Par. 3. Section 1.1502–21 is amended as follows:

- 1. Paragraphs (b)(2)(iv) and (c)(2)(vii) are revised.
- 2. Paragraph (h)(6) is redesignated as paragraph (h)(7).
- 3. New paragraph (h)(6) is added.
- 4. New paragraph (h)(8) is added.

The revision and additions read as follows:

*§1.1502–21 Net operating losses.*

[The text of this proposed section is the same as the text of §1.1502–21T published elsewhere in this issue of the Bulletin].

Par. 4. Section 1.1502–28 is added to read as follows:

*§1.1502–28 Consolidated section 108.*

[The text of this proposed section is the same as the text of §1.1502–28T published elsewhere in this issue of the Bulletin].

Par. 5. Section 1.1502–32 is amended as follows:

- 1. Paragraphs (b)(3)(ii)(C)(1) and (b)(3)(iii)(A) are revised.
- 2. Paragraph (b)(4)(vii) is added.
- 3. Paragraph (b)(5)(ii), *Example 4*, paragraphs (a), (b), and (c) are revised.
- 4. Paragraph (h)(7) is added.

The revisions and additions read as follows:

*§1.1502–32 Investment adjustments.*

[The text of this proposed section is the same as the text of §1.1502–32T published elsewhere in this issue of the Bulletin].

Robert E. Wenzel,  
*Deputy Commissioner for Services and Enforcement.*

(Filed by the Office of the Federal Register on August 29, 2003, 3:14 p.m., and published in the issue of the Federal Register for September 4, 2003, 68 F.R. 52542)