



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9594]

RIN 1545-BI31

Modification to Consolidated Return Regulation Permitting an Election to Treat a Liquidation of a Target, Followed by a Recontribution to a New Target, as a Cross-Chain Reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 1502 of the Internal Revenue Code (Code). These final regulations modify the election under which a consolidated group can avoid immediately taking into account an intercompany item after the liquidation of a target corporation. These regulations apply to corporations filing consolidated income tax returns.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS FINAL REGULATION IN THE FEDERAL REGISTER]**.

Applicability Date: The changes reflected in these final regulations (§1.1502-13(f)(5)(ii)(B)(1) and (2)) generally apply to transactions in which T's liquidation into B occurs on or after October 25, 2007. For transactions in which T's liquidation into B occurs before October 25, 2007, §1.1502-13(f)(5)(ii)(B)(1) and (2) in effect prior to October 25, 2007 as contained in 26 CFR part 1, revised April 1, 2009, continue to apply.

FOR FURTHER INFORMATION CONTACT: Michael R. Gould, (202) 622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1433. The collection of information in these final regulations is required in order for the parent of a consolidated group to make the election found in §1.1502-13(f)(5)(ii)(B).

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 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.

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 1. On September 4, 2009, the IRS and Treasury Department published temporary (TD 9458, 2009-43 IRB 547) and proposed (REG-139068-08, 2009-43 IRB 558) regulations in the **Federal Register** (74 FR 45757 and 74 FR 45789, respectively). The regulations modify the election under which a consolidated group can avoid immediately taking into account an intercompany item after the liquidation of a target corporation. On March 4, 2011, the

IRS and Treasury Department published final regulations in the **Federal Register** (TD 9515, 76 FR 11956), which republished the 2009 temporary regulations without substantive change, to make a minor correction to the ordering of the regulations as they appeared in the **Federal Register**. The IRS and the Treasury Department received no comments responding to the proposed and temporary regulations. No public hearing was requested or held. Therefore, this document adopts the provisions of the proposed regulations with no substantive change and the corresponding temporary regulations are removed. See §601.601(d)(2).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866 as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this regulation primarily affects members of consolidated groups which tend to be large corporations. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received.

Drafting Information

The principal authors of these final regulations are Mary W. Lyons, formerly of the Office of Associate Chief Counsel (Corporate), and Michael R. Gould of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.1502-13T to read in part as follows:

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

Section 1.1502-13 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502-13 is amended by revising paragraphs (f)(5)(ii)(B)(1) and (2) and adding new paragraph (f)(5)(ii)(F) to read as follows:

§1.1502-13 Intercompany transactions.

* * * * *

(f) * * *

(5) * * *

(ii) * * *

(B) Section 332--(1) In general. If section 332 would otherwise apply to T's (old T's) liquidation into B, and B transfers substantially all of old T's assets to a new member (new T), and if a direct transfer of substantially all of old T's assets to new T would qualify as a reorganization described in section 368(a), then, for all Federal income tax purposes, T's liquidation into B and B's transfer of substantially all of old T's assets to new T will be disregarded and instead, the transaction will be treated as if old T transferred substantially all of its assets to new T in exchange for new T stock and the assumption of T's liabilities in a reorganization described in section 368(a). (Under paragraph (j)(1) of this section, B's stock in new T would be a successor asset to B's stock in old T, and S's gain would be taken into account based on the new T stock.)

(2) Time limitation and adjustments. The transfer of old T's assets to new T qualifies under paragraph (f)(5)(ii)(B)(1) of this section only if B has entered into a written plan, on or before the due date of the group's consolidated income tax return (including extensions) for the tax year that includes the date of old T's liquidation, to transfer the old T assets to new T, and the statement described in paragraph (f)(5)(ii)(E) of this section is included on or with a timely filed consolidated income tax return (including extensions) for the tax year that includes the date of the liquidation. However, in the case of a liquidation of old T on or after October 25, 2007, by a taxpayer whose original tax return for the year of liquidation was filed on or before November 3, 2009, see §1.1502-13T(f)(5)(ii)(F)(3) as contained in 26 CFR part 1, revised April 1, 2012. In either case, the transfer of substantially all of T's assets to new T must be completed within 12 months of the filing of the return. Appropriate

adjustments are made to reflect any events occurring before the formation of new T and to reflect any assets not transferred to new T, or liabilities not assumed by new T. For example, if B retains an asset of old T, the asset is treated under paragraph (f)(3) of this section as acquired by new T but distributed to B immediately after the reorganization.

* * * * *

(F) Effective/applicability date--(1) General rule. Paragraphs (f)(5)(ii)(B)(1) and (2) of this section apply to transactions in which old T's liquidation into B occurs on or after October 25, 2007.

(2) Prior periods. For transactions in which old T's liquidation into B occurs before October 25, 2007, see paragraphs (f)(5)(ii)(B)(1) and (2) of this section in effect prior to October 25, 2007, as contained in 26 CFR part 1, revised April 1, 2009.

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§1.1502-13T [Removed]

Par. 3. Section §1.1502-13T is removed.

Part 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers

* * * * *

(b) * * *

CFR part or section where
Identified and described

Current OMB
control number

* * * * *

1.1502-13 1545-1433

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Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved: June 11, 2012.

Emily S. McMahon,
(Acting) Assistant Secretary of the Treasury (Tax Policy).

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