

(3) The corporation is a member of a regulated transportation system for the taxable year. For purposes of this section, a member of a regulated transportation system for a taxable year means a member of an affiliated group of corporations making a consolidated return for such year, if 80 percent or more of the sum of the gross incomes of the members of the affiliated group for such year (computed without regard to dividends, capital gains and losses, or eliminations for intercompany transactions) is derived from transportation sources described in paragraph (c) of this section. For purposes of this subparagraph, income derived by a corporation described in subparagraph (2) of this paragraph from leases described in section 7701(a)(33)(G) shall be considered as income from transportation sources described in paragraph (c) of this section.

(c) *Transportation sources.* For purposes of this section, income from "transportation sources" means income received directly in consideration for transportation services, and income from the furnishing or sale of essential facilities, products, and other services which are directly necessary and incidental to the furnishing of transportation services. For purposes of the preceding sentence, the term *transportation services* means:

(1) Transportation by railroad as a common carrier subject to the jurisdiction of the Interstate Commerce Commission;

(2)(i) Transportation, which is not included in subparagraph (1) of this paragraph:

(a) On an intrastate, suburban, municipal, or interurban electric railroad,

(b) On an intrastate, municipal, or suburban trackless trolley system,

(c) On a municipal or suburban bus system, or

(d) By motor vehicle not otherwise included in this subparagraph, if the rates for the furnishing or sale of such transportation are established or approved by a regulatory body described in section 7701(a)(33)(A);

(ii) In the case of a corporation which establishes to the satisfaction of the district director that:

(a) Its revenue from regulated rates from transportation services described

in subdivision (i) of this subparagraph and its revenue derived from unregulated rates are derived from its operation of a single interconnected and coordinated system or from the operation of more than one such system, and

(b) The unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, transportation, which is not included in subparagraph (1) of this paragraph, from which such revenue from unregulated rates is derived.

(3) Transportation by air as a common carrier subject to the jurisdiction of the Civil Aeronautics Board; and

(4) Transportation by water by common carrier subject to the jurisdiction of either the Interstate Commerce Commission under Part III of the Interstate Commerce Act (54 Stat. 929), or the Federal Maritime Board under the Intercoastal Shipping Act, 1933 (52 Stat. 965).

(d) *Corporate acquisitions.* This section shall apply to a carryover of a net operating loss sustained by a regulated transportation corporation (as defined in paragraph (b) of this section) to which an acquiring corporation succeeds under section 381(a) only if the acquiring corporation is a regulated transportation corporation (as defined in paragraph (b) of this section):

(1) For the sixth succeeding taxable year in the case of a carryover to the sixth succeeding taxable year, and

(2) For the sixth and seventh succeeding taxable years in the case of a carryover to the seventh succeeding taxable year.

[T.D. 6862, 30 FR 14430, Nov. 18, 1965, as amended by T.D. 8107, 51 FR 43346, Dec. 2, 1986]

**§ 1.172-9 Election with respect to portion of net operating loss attributable to foreign expropriation loss.**

(a) *In general.* If a taxpayer has a net operating loss for a taxable year ending after December 31, 1958, and if the foreign expropriation loss for such year (as defined in paragraph (b)(1) of this section) equals or exceeds 50 percent of the net operating loss for such year, then the taxpayer may elect (at the time and in the manner provided in paragraph (c) (1) or (2) of this section, whichever is applicable) to have the

provisions of this section apply. If the taxpayer so elects, the portion of the net operating loss for such taxable year attributable (under paragraph (b)(2) of this section) to such foreign expropriation loss shall not be a net operating loss carryback to any taxable year preceding the taxable year of such loss and shall be a net operating loss carryover to each of the ten taxable years following the taxable year of such loss. In such case, the portion, if any, of the net operating loss not attributable to a foreign expropriation loss shall be carried back or carried over as provided in paragraph (a)(1)(ii) of § 1.172-4.

(b) *Determination of "foreign expropriation loss"*—(1) *Definition of "foreign expropriation loss"*. The term *foreign expropriation loss* means, for any taxable year, the sum of the losses allowable as deductions under section 165 (other than losses from, or which under section 165(g) or 1231(a) are treated or considered as losses from, sales or exchanges of capital assets and other than losses described in section 165(i)(1)) sustained by reason of the expropriation, intervention, seizure, or similar taking of property by the government or any foreign country, any political subdivision thereof, or any agency or instrumentality of the foregoing. For purposes of the preceding sentence, a debt which becomes worthless in whole or in part, shall, to the extent of any deduction allowed under section 166(a), be treated as a loss allowable as a deduction under section 165.

(2) *Portion of the net operating loss attributable to a foreign expropriation loss.*

(i) Except as provided in subdivision (ii) of this subparagraph, the portion of the net operating loss for any taxable year attributable to a foreign expropriation loss is the amount of the foreign expropriation loss for such taxable year (determined under subparagraph (1) of this paragraph).

(ii) The portion of the net operating loss for a taxable year attributable to a foreign expropriation loss shall not exceed the amount of the net operating loss, computed under section 172(c), for such year.

(3) *Examples.* The application of this paragraph may be illustrated by the following examples:

*Example 1.* M Corporation, a domestic calendar year corporation manufacturing cigars in the United States, owns, in country X, a tobacco plantation having an adjusted basis of \$400,000 and farm equipment having an adjusted basis of \$300,000. On January 15, 1961, country X expropriates the plantation and equipment without any allowance for compensation. For the taxable year 1961, M Corporation sustains a loss from the operation of its business (not including losses from the seizure of its plantation and equipment in country X) of \$200,000, which loss would not have been sustained in the absence of the seizure. Accordingly, M has a net operating loss of \$900,000 (the sum of \$400,000, \$300,000, and \$200,000). For purposes of section 172(k)(1), M Corporation has a foreign expropriation loss for 1961 of \$700,000 (the sum of \$400,000 and \$300,000, the losses directly sustained by reason of the seizure of its property by country X). Since the foreign expropriation loss for 1961, \$700,000, equals or exceeds 50 percent of the net operating loss for such year, or \$450,000 (i.e., 50 percent of \$900,000), M Corporation may make the election under paragraph (c)(2) of this section with respect to \$700,000, the portion of the net operating loss attributable to the foreign expropriation loss.

*Example 2.* Assume the same facts as in *Example 1* except that for 1961, M Corporation has operating profits of \$300,000 (not including losses from the seizure of its plantation and equipment in country X) so that its net operating loss (as defined in section 172(c)) is only \$400,000. Under the provisions of section 172(k)(2) and paragraph (b)(2) of this section, the portion of the net operating loss for 1961 attributable to a foreign expropriation loss is limited to \$400,000, the amount of the net operating loss.

(c) *Time and manner of making election*—(1) *Taxable years ending after December 31, 1963.* In the case of a taxpayer who has a foreign expropriation loss for a taxable year ending after December 31, 1963, the election referred to in paragraph (a) of this section shall be made by attaching to the taxpayer's income tax return (filed within the time prescribed by law, including extensions of time) for the taxable year of such foreign expropriation loss a statement containing the information required by subparagraph (3) of this paragraph. Such election shall be irrevocable after the due date (including extensions of time) of such return.

(2) *Information required.* The statement referred to in subparagraph (1) of this paragraph shall contain the following information:

(i) The name, address, and taxpayer account number of the taxpayer;

(ii) A statement that the taxpayer elects under section 172(b)(3)(A)(ii) or (iii), whichever is applicable, to have section 172(b)(1)(D) of the Code apply;

(iii) The amount of the net operating loss for the taxable year; and

(iv) The amount of the foreign expropriation loss for the taxable year, including a schedule showing the computation of such foreign expropriation loss.

(d) *Amount of foreign expropriation loss which is a carryover to the taxable year in issue—(1) General.* If a portion of a net operating loss for the taxable year is attributable to a foreign expropriation loss and if an election under paragraph (a) of this section has been made with respect to such portion of the net operating loss, then such portion shall be considered to be a separate net operating loss for such year, and, for the purpose of determining the amount of such separate loss which may be carried over to other taxable years, such portion shall be applied after the other portion (if any) of such net operating loss. Such separate loss shall be carried to the earliest of the several taxable years to which such separate loss is allowable as a carryover under the provisions of paragraph (a)(1)(iv) of § 1.172-4, and the amount of such separate loss which shall be carried over to any taxable year subsequent to such earliest year is an amount (not exceeding such separate loss) equal to the excess of:

(i) The sum of (a) such separate loss and (b) the other portion (if any) of the net operating loss (i.e., that portion not attributable to a foreign expropriation loss) to the extent such other portion is a carryover to such earliest taxable year, over

(ii) The sum of the aggregate of the taxable incomes (computed as provided in § 1.172-5) for all of such several taxable years preceding such subsequent taxable year.

(2) *Cross reference.* The portion of a net operating loss which is not attributable to a foreign expropriation loss shall be carried back or carried over, in accordance with the rules provided in paragraph (b)(1) of § 1.172-4, as if such portion were the only net operating loss for such year.

(3) *Examples.* The application of this paragraph may be illustrated by the following examples:

*Example 1.* Corporation A, organized in 1960 and whose return is made on the basis of the calendar year, incurs for 1960 a net operating loss of \$10,000, of which \$7,500 is attributable to a foreign expropriation loss. With respect to such \$7,500, A makes the election described in paragraph (a) of this section. In each of the years 1961, 1962, 1963, 1964, and 1965, A has taxable income in the amount of \$600 (computed without any net operating loss deduction). The assumption is made that none of the other modifications prescribed in § 1.172-5 apply. The portion of the net operating loss attributable to the foreign expropriation loss which is a carryover to the year 1966 is \$7,000, which is the sum of \$7,500 (the portion of the net operating loss attributable to the foreign expropriation loss) and \$2,500 (the other portion of the net operating loss available as a carryover to 1961), minus \$3,000 (the aggregate of the taxable incomes for taxable years 1961 through 1965).

*Example 2.* Assume the same facts as in *Example 1* except that taxable income for each of the years 1961 through 1965 is \$400 (computed without any net operating loss deduction). The carryover to the year 1966 is \$7,500, that is, the sum of \$7,500 (the portion of the net operating loss attributable to the foreign expropriation loss) and \$2,500 (the other portion of the net operating loss available as a carryover to 1961), minus \$2,000 (the aggregate of the taxable incomes for taxable years 1961 through 1965), but limited to \$7,500 (the portion of the net operating loss attributable to the foreign expropriation loss).

(e) *Taxable income which is subtracted from net operating loss to determine carryback or carryover.* In computing taxable income for a taxable year (hereinafter called a “prior taxable year”) for the purpose of determining the portion of a net operating loss for another taxable year which shall be carried to each of the several taxable years subsequent to the earliest taxable year to which such loss may be carried, the net operating loss deduction for any such prior taxable year shall be determined without regard to that portion, if any, of a net operating loss for a taxable year attributable to a foreign expropriation loss, if such portion may not, under the provisions of section 172(b)(1)(D) and paragraph (a)(1)(iv) of § 1.172-4, be carried back to such prior taxable year. Thus, if the taxpayer has a foreign expropriation

loss for 1962 and elects the 10-year carryover with respect to the portion of his net operating loss for 1962 attributable to the foreign expropriation loss, then in computing taxable income for the year 1960 for the purpose of determining the portion of a net operating loss for 1963 which is carried to years subsequent to 1960, the net operating loss deduction for 1960 is determined without regard to the portion of the net operating loss for 1962 attributable to the foreign expropriation loss, since under the provisions of section 172(b)(1)(D) and paragraph (a)(1)(iv) of § 1.172-4 such portion of the net operating loss for 1962 may not be carried back to 1960.

[T.D. 6862, 30 FR 14431, Nov. 18, 1965, as amended by T.D. 8107, 51 FR 43346, Dec. 2, 1986]

**§ 1.172-10 Net operating losses of real estate investment trusts.**

(a) *Taxable years to which a loss may be carried.* (1) A net operating loss sustained by a qualified real estate investment trust (as defined in paragraph (b)(1) of this section) in a qualified taxable year (as defined in paragraph (b)(2) of this section) ending after October 4, 1976, shall not be carried back to a preceding taxable year.

(2) A net operating loss sustained by a qualified real estate investment trust in a qualified taxable year ending before October 5, 1976, shall be carried back to the 3 preceding taxable years. However, see § 1.857-2(a)(5), which does not allow the net operating loss deduction in computing real estate investment trust taxable income for taxable years ending before October 5, 1976.

(3) A net operating loss sustained by a qualified real estate investment trust in a qualified taxable year ending after December 31, 1972, shall be carried over to the 15 succeeding taxable years. However, see § 1.857-2(a)(5).

(4) A net operating loss sustained by a qualified real estate investment trust in a qualified taxable year ending before January 1, 1973, shall be carried over to 8 succeeding taxable years. However, see § 1.857-2(a)(5).

(5) A net operating loss sustained in a taxable year for which the taxpayer is not a qualified real estate investment trust generally may be carried

back to the 3 preceding taxable years; however, a net operating loss sustained in a taxable year ending after December 31, 1975, shall not be carried back to any qualified taxable year. However, see § 1.857-2(a)(5), with respect to a net operating loss sustained in a taxable year ending before January 1, 1976.

(6) A net operating loss sustained in a taxable year ending after December 31, 1975, for which the taxpayer is not a qualified real estate investment trust generally may be carried over to the 15 succeeding taxable years.

(7)(i) A net operating loss sustained in a taxable year ending before January 1, 1986, for which the taxpayer is not a qualified real estate investment trust generally may be a net operating loss carryover to each of the 5 succeeding taxable years. However, where the loss was a net operating loss carryback to one or more qualified taxable years, the net operating loss, in accordance with paragraph (a)(7)(ii) of this section shall be—

(A) Carried over to the 15 succeeding taxable years if the loss could be a net operating loss carryover to a taxable year ending in 1981, or

(B) Carried over to the 5, 6, 7, or 8 succeeding taxable years if paragraph (a)(7)(i)(A) of this section does not apply.

(ii) For purposes of determining whether a net operating loss could be a carryover to a taxable year ending in 1981 under paragraph (a)(7)(i)(A) of this section or, where paragraph (a)(7)(i)(A) of this section does not apply, to determine the actual carryover period under paragraph (a)(7)(i)(B) of this section, the net operating loss shall have a carryover period of 5 years, and such period shall be increased (to a number not greater than 8) by the number of qualified taxable years to which such loss was a net operating loss carryback; however, where the taxpayer acted so as to cause itself to cease to be a qualified real estate investment trust and the principal purpose for such action was to secure the benefit of the allowance of a net operating loss carryover under section 172(b)(1)(B), the net operating loss carryover period shall be limited to 5 years. However, see § 1.857-2(a)(5).