

“reason for this concern was that loss” is corrected to read “reasons for this concern were that loss”.

7. On page 53943, column 1, in the preamble, under the paragraph heading “vi. Election to Reduce Stock Basis and/or Reattribute Attributes”, first paragraph of the column, line 19, the language “to be attributed. Similar to the rule” is corrected to read “to be attributed. As in the rule”.

8. On page 53943, column 2, in the preamble, under the paragraph heading “vii. The Conforming Limitation”, last paragraph of the column, line 5, the language “rule would then either reduce lower-tier” is corrected to read “rule could then either reduce lower-tier”.

9. On page 53946, column 3, in the preamble, under the paragraph heading “B. Amendments to § 1.1502-33(e) “Whole-Group” Exception”, first paragraph of the column, line 7, the language “elect to apply each of these modified” is corrected to read “apply each of these modified”.

**LaNita Van Dyke,**

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9424]

RIN 1545-BB61

**Unified Rule for Loss on Subsidiary Stock; Correction**

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

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to final regulations (TD 9424) that were published in the **Federal Register** on Wednesday, September 17, 2008 (73 FR 53934) under sections 358, 362(e)(2), and 1502 of the Internal Revenue Code. The final regulations apply to corporations filing consolidated returns, and corporations that enter into certain tax-free reorganizations. The final regulations provide rules for determining the tax consequences of a member’s transfer (including by deconsolidation and worthlessness) of loss shares of subsidiary stock. In addition, the final regulations provide that section 362(e)(2) generally does not apply to transactions between members of a

consolidated group. Finally, the final regulations conform or clarify various provisions of the consolidated return regulations, including those relating to adjustments to subsidiary stock basis.

**DATES: Effective Date:** This correction is effective October 20, 2008 and is applicable on September 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** Marcie P. Barese, (202) 622-7790, Sean P. Duffley, (202) 622-7770, or Theresa Abell (202) 622-7700 (none of the numbers are toll-free).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subjects of this document are under sections 337, 358, 362, 1502 of the Internal Revenue Code.

**Need for Correction**

As published, final regulations (TD 9424) contain errors that may prove to be misleading and are in need of clarification.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

**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 1.358-6(f)(3) is amended by revising the last sentence to read as follows:

**§ 1.358-6 Stock basis in certain triangular reorganizations.**

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \* However, taxpayers may apply paragraph (b)(2)(v) of this section to triangular reorganizations occurring before September 17, 2008 and on or after December 23, 1994.

■ **Par. 3.** Section 1.1502-13(l)(1) is amended by revising the last sentence to read as follows:

**§ 1.1502-13 Intercompany transactions.**

\* \* \* \* \*

(l) \* \* \*

(1) \* \* \* However, taxpayers may apply paragraph (j)(5)(i)(A) of this section to transactions that occurred prior to September 17, 2008.  
\* \* \* \* \*

■ **Par. 4.** Section 1.1502-19(h)(1) is amended by revising the second sentence to read as follows:

**§ 1.1502-19 Excess loss accounts.**

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \* However, taxpayers may apply paragraph (c)(3)(i)(A) of this section to transactions that occurred prior to September 17, 2008. \* \* \*  
\* \* \* \* \*

■ **Par. 5.** Section 1.1502-33(j)(1) is amended by revising the last sentence to read as follows:

**§ 1.1502-33 Earnings and profits.**

\* \* \* \* \*

(j) \* \* \*

(1) \* \* \* However, taxpayers may apply paragraph (e)(2)(i)(A) of this section with respect to determinations of the earnings and profits of a member in consolidated return years beginning prior to September 17, 2008.  
\* \* \* \* \*

■ **Par. 6.** Section 1.1502-36 is amended by revising the last sentence of the paragraph (b)(3) *Example 3*.(i)(D); the fourth sentence of the paragraph (c)(8) *Example 6*.(iii)(A); (d)(3)(i)(B); the third through fifth sentences of the paragraph (d)(5)(ii); the third sentence of the paragraph (d)(8) *Example 6*.(ii)(B); the second sentence of the paragraph (d)(8) *Example 6*.(ii)(D)(3); the fifth sentence of the paragraph (d)(8) *Example 8*.(i)(F); the first sentence of the paragraph (d)(8) *Example 8*.(ii)(E); the first sentence of the paragraph (d)(8) *Example 8*.(ii)(F); the first sentence of the paragraph (d)(8) *Example 9*.(ii); the second sentence of the paragraph (g)(2) *Example 5*.(i); and the third sentence of the paragraph (g)(2) *Example 5*.(iii) to read as follows:

**§ 1.1502-36 Unified loss rule.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

*Example 3.* \* \* \*

(i) \* \* \*

(D) \* \* \* The results would be the same if, in addition to the facts in paragraph (i)(A) of this *Example 3*, M transferred its S share to X in a fully taxable transaction and, as permitted under paragraph (b)(1)(ii)(B) of this section, P elected to redetermine basis under this paragraph (b).  
\* \* \* \* \*

(c) \* \* \*

(8) \* \* \*

*Example 6.* \* \* \*

(iii) \* \* \*

(A) \* \* \* After taking into account the effects of all applicable rules of law, M’s basis in the S share at the end of year 5 is \$100 (M’s original \$100 basis decreased under § 1.1502-32 by \$40 at the end of the year 1 and then increased under § 1.1502-32

by \$40 at end of the year 5 (the net of the \$100 tax exempt income from the excluded COD applied to reduce attributes and the \$60 noncapital, nondeductible expense from the reduction of S's portion of the CNOL)). \* \* \*

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) \* \* \*

(B) S's aggregate inside loss (as defined in paragraph (d)(3)(iii) of this section).

\* \* \* \* \*

(5) \* \* \*

(ii) \* \* \* S's attribute reduction amount is allocated proportionately (by basis) between (among) the non-stock Category D asset and S's deemed single share(s) of subsidiary stock. (See paragraphs (d)(4)(ii)(B)(2) and (d)(4)(ii)(C) of this section regarding the portion of S's attribute reduction amount allocated to the Category D assets other than lower-tier subsidiary stock.) For allocation purposes, S's basis in each deemed single share of S1 stock is its deemed basis (determined under paragraphs (d)(5)(i)(B) and (d)(5)(i)(C) of this section), reduced by—

\* \* \* \* \*

(8) \* \* \*

*Example 6.* \* \* \*

(ii) \* \* \*

(B) \* \* \* However, S's gain recognized on the transfer of Share E is computed and immediately adjusts members' bases in subsidiary stock under § 1.1502-32 (because M and S are not members of the same group immediately after the transaction, the sale is not an intercompany transaction subject to § 1.1502-13).

\* \* \* \* \*

(D) \* \* \*

(3) \* \* \* See paragraph (d)(5)(v)(A) of this section. \* \* \*

\* \* \* \* \*

*Example 8.* \* \* \*

(F) \* \* \* Under § 1.1502-32(c)(1)(ii)(A)(1) this \$90 expense is allocated to the transferred loss shares of S stock in proportion to the loss in the shares, or \$90 per share. \* \* \*

\* \* \* \* \*

(ii) \* \* \*

(E) \* \* \* The facts are the same as in paragraph (ii)(A) of this *Example 8*, except that P elects under paragraph (d)(6) of this section to reduce M's basis in the S shares by the full attribute reduction amount of \$22, in lieu of S reducing its attributes. \* \* \*

(F) \* \* \* The facts are the same as in paragraph (ii)(A) of this *Example 8*. \* \* \*

*Example 9.* \* \* \*

(ii) \* \* \* However, S1's gain recognized on the transfer of the S2 share is computed and immediately adjusts members' bases in subsidiary stock under § 1.1502-32.

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

*Example 5.* \* \* \*

(i) \* \* \* S owns Asset 1 with a basis of \$100 and a value of \$20. \* \* \*

(iii) \* \* \* However, because all the shares are transferred, the group's income is clearly reflected. \* \* \*

\* \* \* \* \*

**LaNita Van Dyke,**

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## DEPARTMENT OF THE TREASURY

### 31 CFR Part 30

#### Tarp Capital Purchase Program

**AGENCY:** Domestic Finance, Treasury.

**ACTION:** Interim final rule.

**SUMMARY:** This interim rule, promulgated pursuant to sections 101(a)(1), 101(c)(5), and 111(b) of the Emergency Economic Stabilization Act of 2008, Division A of Public Law 110-343 (EESA), provides guidance on the executive compensation provisions applicable to participants in the Troubled Assets Relief Program (TARP) Capital Purchase Program (CPP). Section 111(b) of EESA requires financial institutions from which the Department of the Treasury (Treasury) is purchasing troubled assets through direct purchases to meet appropriate standards for executive compensation and corporate governance. This interim final rule includes the following standards for purposes of the CPP: (a) Limits on compensation that exclude incentives for senior executive officers (SEOs) of financial institutions to take unnecessary and excessive risks that threaten the value of the financial institution; (b) required recovery of any bonus or incentive compensation paid to a CEO based on statements of earnings, gains, or other criteria that are later proven to be materially inaccurate; (c) prohibition on the financial institution from making any golden parachute payment to any SEO; and (d) agreement to limit a claim to a federal income tax deduction for certain executive remuneration. These rules generally affect financial institutions that participate in the CPP, certain employers related to those financial institutions, and their officers.

**DATES:** *Effective Date:* These regulations are effective on October 20, 2008.

*Comment due date:* November 19, 2008.

**ADDRESSES:** The Treasury requests comments on the topics addressed in this interim rule. Comments may be submitted to the Treasury by any of the following methods: Submit electronic comments through the federal

government e-rulemaking portal, <http://www.regulations.gov> or by e-mail to [executivecompensationcomments@do.treas.gov](mailto:executivecompensationcomments@do.treas.gov) or send paper comments in triplicate to Executive Compensation Comments, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Treasury will post all comments to <http://www.regulations.gov> without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Treasury will also make such comments available for public inspection and copying in the Treasury's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622-0990. All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this interim rule, contact the Office of Domestic Finance, the Treasury, at (202) 927-6618.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This document adds 31 CFR Part 30 under section 111(b) of the Emergency Economic Stabilization Act of 2008, Div. A of Public Law No. 110-343 (EESA) with respect to the Troubled Assets Relief Program (TARP) Capital Purchase Program (CPP) established by the Department of the Treasury (Treasury) under EESA. Section 101(a) of EESA authorizes the Secretary of the Treasury to establish a TARP to "purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and policies and procedures developed and published by the Secretary." Section 120 of EESA provides that the TARP authorities generally terminate on December 31, 2009, unless extended upon certification by the Secretary of the Treasury to Congress, but in no event later than two years from the date of enactment of EESA (October 3, 2008)