

is not evidenced by a written instrument. Both the \$16,000 advance and the \$22,000 advance are open account debt and remain outstanding at those amounts during 2009. There is no net increase under paragraph (c) of this section in year 2009.

(ii) At the close of the 2009 taxable year, A's open account debt does not exceed \$25,000. A therefore carries forward to the beginning of the 2010 taxable year the \$16,000 as open account debt.

(iii) At the close of the 2009 taxable year, B's open account debt does not exceed \$25,000. B therefore carries forward to the beginning of the 2010 taxable year the \$22,000 as open account debt.

Example 7. Treatment of open account debt. (i) The facts are the same as in Example 6, in addition to which, on December 31, 2009, A's basis in the open account debt is reduced under paragraph (b) of this section to \$8,000. On April 1, 2010, S repays A \$4,000 of the open account indebtedness. On September 1, 2010, A advances S an additional \$1,000, which is not evidenced by a written instrument. There is no net increase under paragraph (c) of this section in year 2010.

(ii) The \$4,000 April repayment S makes to A and A's \$1,000 September advance are netted to result in a net repayment of \$3,000 for the taxable year on A's \$16,000 open account debt carried forward from 2009. Because there is no net increase in 2010, no basis of indebtedness is restored for the 2010 taxable year, and A realizes \$1,500 of income on the \$3,000 net repayment at the close of the 2010 taxable year.

(iii) At close of the 2010 taxable year, A's open account debt does not exceed \$25,000. The net repayment of \$3,000 for the taxable year on A's \$16,000 open account debt carried forward from 2009, leaves A with an open account debt of \$13,000 to carry forward as open account debt to the beginning of the 2011 taxable year.

Example 8. Treatment of shareholder indebtedness not evidenced by a written instrument which exceeds \$25,000. (i) The facts are the same as in Example 7, in addition to which, on February 1, 2011, S repays \$5,000 of the open account debt and on March 1, 2011, A advances S \$20,000, which is not evidenced by a written instrument.

(ii) At the close of the 2010 taxable year, A has an open account debt of \$13,000 to carry forward as open account debt to the beginning of the 2011 taxable year.

(iii) The 2011 advances and repayments are netted to result in a net advance of \$15,000 on A's \$13,000 open account debt carried forward from 2010, increasing A's open account debt to \$28,000 as of the close of the 2011 taxable year. Because A's open account debt exceeds \$25,000, for any subsequent taxable year the \$28,000 indebtedness will be treated in the same manner as indebtedness evidenced by a separate written instrument for the purposes of this section. Because there is no net increase in 2011, no basis of indebtedness is restored for the 2011 taxable year.

■ **Par. 3.** Section 1.1367-3 is revised to read as follows:

§ 1.1367-3 Effective/Applicability date.

Section 1.1367-2(a), (c)(2), (d)(2), and (e) *Example 6*, *Example 7*, and *Example 8* apply to any shareholder advances to the S corporation made on or after October 20, 2008 and repayments on those advances by the S corporation. The rules that apply with respect to shareholder advances to the S corporation made before October 20, 2008, are contained in § 1.1367-3 in effect prior to October 20, 2008. (See 26 CFR part 1 revised as of April 1, 2007.) Shareholders have the option to apply these rules to shareholder advances to the S corporation made before October 20, 2008, and repayments on those advances by the S corporation.

Approved: September 25, 2008.

Linda E. Stuff,

Deputy Commissioner for Services and Enforcement.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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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: Final regulations; Correction.

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: 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 subject 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.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9424), which were the subject of FR Doc. E8-21006, is corrected as follows:

1. On page 53937, column 3, in the preamble, under the paragraph heading "vii. Adjustments for Section 362(e)(2) Transactions", first paragraph, line 9, the language "not elect to apply the rule in the final" is corrected to read "not apply the rule in the final".

2. On page 53938, column 3, in the preamble, under the paragraph heading "B. Section 1.1502-36(b): Basis Redetermination Rule", first paragraph of the column, line 1, the language "have no correlation to unrecognized loss" is corrected to read "have no correlation to unrecognized gain or loss".

3. On page 53938, column 3, in the preamble, under the paragraph heading "B. Section 1.1502-36(b): Basis Redetermination Rule", first paragraph of the column, line 17, the language "contributions of assets in exchanged for" is corrected to read "contributions of assets in exchange for".

4. On page 53938, column 3, in the preamble, under the paragraph heading "i. Exceptions to Basis Redetermination Rule", last paragraph of the column, line 7, the language "to a nonmember in a one or more fully" is corrected to read "to a nonmember in one or more fully".

5. On page 53939, column 3, in the preamble, under the paragraph heading "i. Treatment of Intercompany Debt", first paragraph, line 7, the language "more like to capital transactions than" is corrected to read "more like capital transactions than".

6. On page 53940, column 3, in the preamble, under the paragraph heading "i. Lower-Tier Subsidiary Rules", second paragraph, line 7, the language

“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,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

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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