

other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on October 18, 2011.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy, Efficiency Energy Efficiency and Renewable Energy.*

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## DEPARTMENT OF ENERGY

### 10 CFR Part 810

#### RIN 1994-AA02

#### Assistance to Foreign Atomic Energy Activities

**AGENCY:** National Nuclear Security Administration, Department of Energy (DOE).

**ACTION:** Notice of a public meeting and extension of deadline for public comment.

**SUMMARY:** On September 7, 2011, DOE published its proposal to amend its regulations concerning unclassified assistance to foreign atomic energy activities. Today, DOE announces its intention to hold one informational Webinar on the proposed amendment to the regulations. Additionally, by this notice DOE is extending by 30 days the deadline for public comment.

**DATES:** The Webinar will take place on Wednesday, November 2, 2011 from 10 a.m. to 11:30 a.m. EST. Public comments are due not later than December 7, 2011.

**ADDRESSES:** U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

To participate in the Webinar, please register by sending an e-mail to [NISPublications@battelle.org](mailto:NISPublications@battelle.org). Please include in the subject line of the e-mail "DOE Webinar November 2". In the body of the e-mail, please provide the registrant's name, affiliation, e-mail address, mailing address, and telephone number. Please submit your e-mail registration by noon EST on November 1, 2011. Registration will open at 9 a.m. EST on Friday, October 28, 2011.

You may submit written comments, identified by RIN 1994-AA02, by any of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. *E-mail:* [Port810.NOPR@hq.doe.gov](mailto:Port810.NOPR@hq.doe.gov). Include RIN 1994-AA02 in the subject line of the message.

3. *Mail:* Richard Goorevich, Senior Policy Advisor, Office of Nonproliferation and International Security, NA-24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages responders to submit comments electronically to ensure timely receipt.

All submissions must include the RIN for this rulemaking, RIN 1994-AA02. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of the September 7, 2011, Notice of Proposed Rulemaking (76 FR 55278).

#### FOR FURTHER INFORMATION CONTACT:

Richard Goorevich, National Nuclear Security Administration, U.S. Department of Energy, Office of Defense Nuclear Nonproliferation (NA-20), Office of Nonproliferation and International Security (NA-24), 1000 Independence Avenue, Washington, DC 20585. *Telephone:* (202) 586-0589. *E-mail:* [Richard.Goorevich@nnsa.doe.gov](mailto:Richard.Goorevich@nnsa.doe.gov).

#### SUPPLEMENTARY INFORMATION:

*Background:* On September 7, 2011, DOE published its proposal to amend its regulation concerning unclassified assistance to foreign atomic energy activities (76 FR 55278). This regulation provides that persons subject to the jurisdiction of the United States who engage directly or indirectly in the production of special nuclear material outside the United States must be authorized to do so by the Secretary of Energy pursuant to section 57 b.(2) of the Atomic Energy Act of 1954, as amended. The proposed revisions update and clarify several provisions in the current regulation, and identify information that applicants are required to submit in support of applications for an authorization under this Part. The revisions are intended to reduce uncertainties for industry users concerning which foreign nuclear-related activities by U.S. persons are "generally authorized" under the regulation and which activities require a "specific authorization" from the Secretary.

*Purpose of the Meeting:* To provide an overview of proposed changes and to conduct Q&A session with industry with respect to the proposed rulemaking.

*Tentative Agenda:* The Webinar will be conducted on November 2, 2011, from 10 am to 11:30 am EST. All prospective registrants will be notified by the agency via e-mail with respect to Webinar logon information. Webinar materials will be transmitted to registrants via e-mail.

*Public Participation:* To participate in the Webinar, please register by sending an e-mail to [NISPublications@battelle.org](mailto:NISPublications@battelle.org). Please include in the subject line of the e-mail "DOE Webinar November 2". In the body of the e-mail, please provide the registrant's name, affiliation, e-mail address, mailing address, and telephone number. Please submit your e-mail registration by noon EST on November 1, 2011. Registration will open at 9 a.m. EST on Friday, October 28, 2011. Registration is limited to 125 registrants.

Please note that comments on the proposed rulemaking will not be accepted during the Webinar. Instead, the public has an opportunity to comment formally on the proposed rulemaking as provided in the **Federal Register** on September 7, 2011 (76 FR 55278). By this notice, DOE is extending by 30 days the deadline for comments, with the final deadline for DOE receiving comments now being December 7, 2011. Participation in the Webinar is not a prerequisite for submission of written comments.

Registrants are responsible for ensuring their systems are compatible with Webinar software.

Issued in Washington, DC on October 18, 2011.

**Anne Harrington,**

*Deputy Administrator for Defense Nuclear Nonproliferation, National Nuclear Security Administration, U.S. Department of Energy.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-133002-10]

#### RIN 1545-BJ79

#### Redetermination of the Consolidated Net Unrealized Built-In Gain and Loss

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations under section 1502 of the Internal Revenue Code. The regulations will apply to corporations filing consolidated returns. The regulations will require a loss group or loss subgroup to redetermine its consolidated net unrealized built-in gain and loss in certain circumstances. This document also invites comments from the public regarding these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by January 23, 2012.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-133002-10), room 5205, Internal Revenue Service, PO Box 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-133002-10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-133002-10).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Grid Glycer (202) 622-7930; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor (202) 622-7180 (not toll-free numbers).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

To prevent loss trafficking, section 382 imposes a limitation (the section 382 limitation) on a loss corporation's ability to use net operating losses that arose prior to an ownership change. Section 382(b)(1). In addition, if a loss corporation has a net unrealized built-in loss (NUBIL) at the time of an ownership change, built-in losses will be subject to the section 382 limitation as if they were pre-change losses of the loss corporation if they are recognized during the five-year period following the ownership change (the recognition period). Section 382(h)(1)(B). If a corporation has a net unrealized built-in gain (NUBIG) at the time of its ownership change, recognized built-in gains will increase the section 382 limitation if they are recognized during the recognition period. Section 382(h)(1)(A). Rules for determining whether a loss corporation has a NUBIG or NUBIL are found in section 382(h)(3).

Sections 1.1502-90 through 1.1502-99 provide guidance for applying section 382 with respect to a consolidated loss group or loss

subgroup. In this preamble, the term loss group refers to both loss groups and loss subgroups. See §§ 1.1502-91(c)(1) and 1.1502-91(d).

Section 1.1502-91(g) provides rules for determining whether a loss group has a NUBIG or NUBIL. Section 1.1502-91(g)(1) provides that the determination of whether a loss group has a consolidated NUBIG or NUBIL is based on the aggregate amount of the separately determined NUBIGs and NUBILs of each member included in the loss group. Under this rule, unrealized gain or loss with respect to the stock of a member of the loss group (an included subsidiary) is disregarded in determining the separately determined NUBIG or NUBIL.

##### **Explanation of Provisions**

The current regulations under § 1.1502-91(g) are premised upon the observation that unrecognized gain or loss on included subsidiary stock generally reflects the same economic gain or loss reflected in the subsidiary's assets and that the consolidated return regulations generally prevent the group from taking that duplicative gain or loss into account more than once. This is the case because, if the subsidiary first recognizes the duplicated gain or loss on its assets, § 1.1502-32 eliminates the duplicative gain or loss reflected in stock basis. Conversely, if a member first recognizes duplicated loss on the subsidiary stock, § 1.1502-36 eliminates the duplicative asset loss. Although the regulations do not specifically address the recognition of duplicated gain on subsidiary stock, taxpayers generally avoid duplicative gain recognition, for example, through actual and section 338 deemed asset sales and through stock elimination transactions, such as section 332 liquidations. Because duplicative gain and loss is expected to be taken into account only once, the determination of NUBIG and NUBIL would be distorted if it included such amounts more than once.

To illustrate, assume P, the common parent of a consolidated group, contributes \$100 to S in exchange for S's sole share of stock. S uses the \$100 to purchase a truck. The value of the truck then declines to \$70. At this point, the stock has a basis of \$100 and a value of \$70, reflecting a \$30 loss. In addition, the truck has a basis of \$100 and value of \$70, also reflecting a \$30 loss. Thus, it would appear the group has \$60 of loss available. However, if S sells the truck and the group absorbs the \$30 loss, P will reduce its basis in the S stock by \$30 under § 1.1502-32, and the duplicative stock loss will be eliminated. On the other hand, if P sells

its S share before the loss on the truck is recognized and absorbed, the duplicated loss (on either the truck or the stock, as P chooses) will be eliminated by § 1.1502-36. As a result, the group takes into account a single \$30 economic loss, and the inclusion of both the unrecognized stock loss and the unrecognized asset loss in the NUBIL determination would overstate the amount of loss actually available to the group.

However, if an unrecognized gain or loss on subsidiary stock exceeds the included subsidiary's gain or loss on its assets, disregarding this unduplicated gain or loss on the stock understates the amount that the group may take into account.

To illustrate, assume the same facts as in the previous example except that P originally purchased the S stock for \$150 (S's basis in the truck is still \$100). In this case, there is \$80 of loss available to the group, the \$30 loss that is duplicated (reflected in the bases of both the stock and the truck), as well as the \$50 unduplicated stock loss. Disregarding P's loss in its S stock causes the group's NUBIL to be understated by \$50. These proposed regulations are intended to prevent such understatement.

The current rule is administratively less burdensome to taxpayers and the government than a rule that would require taxpayers to identify and take into account all unduplicated gain and loss on stock of included subsidiaries when determining NUBIG and NUBIL. Nevertheless, the IRS and the Treasury Department believe that the purpose of section 382(h) would be better served by a rule that does not wholly disregard such gain and loss. A rule that takes into account unduplicated gain or loss on stock would avoid both the understating of loss available to the group (when there is unduplicated stock loss) and the overstating of loss trafficking potential (when there is unduplicated stock gain).

The IRS and the Treasury Department are concerned, however, that requiring all consolidated NUBIG and NUBIL determinations to include all unduplicated stock gains and losses would significantly increase the administrative burden on both taxpayers and the government.

Accordingly, the IRS and the Treasury Department propose to modify the current regulations to take into account the unduplicated gain or loss on stock of included subsidiaries, but only to the extent that such gain or loss is taken into account by the group during the recognition period. This will generally be the case only if, within the recognition period, such stock is sold to

a nonmember or becomes worthless, or a member takes an intercompany item into account with respect to such stock.

More specifically, the proposed regulations would revise § 1.1502–91(g) by adding a rule that would apply when any member of the consolidated group directly or indirectly (for example, through a partnership) takes any amount of gain or loss into account with respect to a share of stock of an included subsidiary (S), whether or not such amount is absorbed. When the rule applies, the loss group would be required to redetermine NUBIG or NUBIL to include any unduplicated built-in gain or loss with respect to the share. As used in these proposed regulations, the term unduplicated built-in stock gain or loss refers to the portion of the built-in stock gain or loss that was not originally reflected in the loss group's NUBIG or NUBIL as unrealized gain or loss on the assets of a lower-tier included subsidiary. The proposed regulations identify unduplicated built-in stock gain or loss by treating the separate NUBIG or NUBIL of each included subsidiary that is lower-tier to S as having been taken into account and absorbed immediately before the change date. These amounts are then deemed to tier-up to tentatively adjust the basis in the S shares under the principles of § 1.1502–32. The difference between the tentatively adjusted change-date basis in a share of S stock and the fair market value of the share (as of the change date) is the unduplicated gain or loss in the S share. However, if, immediately before the change date, a member of the loss group has a deferred gain or loss on S stock and that gain or loss is taken into account during the recognition period, the unduplicated portion of such gain or loss is determined as of the date of the transaction in which the deferred gain or loss was recognized, notwithstanding that such date would be prior to the change date.

The loss group then redetermines its NUBIG or NUBIL by including its unduplicated gain or loss on the S share (or shares) with respect to which an amount is taken into account. Under the proposed regulations, the redetermined NUBIG or NUBIL is given effect only immediately before the gain or loss on the stock is taken into account. It has no effect on the treatment of built-in gain or loss that is recognized and taken into account prior to the time that built-in stock gain or loss is taken into account. Thus, for example, the fact that a NUBIL group was redetermined to be a NUBIG group, or that a NUBIL that exceeded the 15 percent threshold amount in section 382(h)(3)(B) no longer exceeds

such amount, has no effect on the tax treatment of amounts taken into account prior to the redetermination of NUBIG or NUBIL.

The proposed regulations also reorganize § 1.1502–91(g) and revise § 1.1502–91(h)(2) and (h)(4) without substantive change.

#### Effective/Applicability Date

These proposed regulations will apply to amounts taken into account with respect to a share of stock of an included subsidiary on or after the date that final regulations are published in the **Federal Register**, but only with respect to ownership changes occurring on or after October 24, 2011.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13565. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations would primarily affect 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, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Comments and Requests for a 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. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of these regulations is Grid Glycer of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS

and the Treasury Department participated in its development.

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

Income taxes, Reporting and recordkeeping requirements.

#### 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 for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.1502–91 also issued under 26 U.S.C. 1502.

**Par. 2.** Section 1.1502–91 is amended by:

1. Revising paragraph (g)(1).
2. Adding paragraphs (g)(7) and (g)(8).
3. Revising paragraph (h)(2) and the heading of paragraph (h)(4).
4. Adding paragraph (k).

The revisions and additions read as follows:

#### § 1.1502–91 Application of section 382 with respect to a consolidated group.

\* \* \* \* \*

(g) *Net unrealized built-in gain and loss*—(1) *In general.* The determination of whether a loss group or loss subgroup has a net unrealized built-in gain (NUBIG) or loss (NUBIL) under section 382(h)(3) is based on the aggregate amount of the separately determined NUBIGs or NUBILs (including items of built-in income and deduction described in section 382(h)(6)) of each member that is included in the loss group or loss subgroup, as the case may be, under paragraph (g)(2) of this section. The threshold requirement under section 382(h)(3)(B) applies on an aggregate basis.

(i) *Members included in group.* If a member is not included in the determination of whether a loss group or loss subgroup has a NUBIL under paragraph (g)(2)(ii) or (g)(2)(iv) of this section, that member is not included in the loss group or loss subgroup. See § 1.1502–94(c) (relating to built-in gain or loss of a new loss member) and § 1.1502–96(a) (relating to the end of separate tracking of certain losses).

(ii) *Determination of separate NUBIG or NUBIL.* For purposes of determining a member's separate NUBIG or NUBIL—

(A) Stock of a subsidiary that is a member of the loss group or loss subgroup (an included subsidiary) is disregarded, except as provided for in paragraph (g)(7) of this section. For this purpose, the term stock includes stock described in section 1504(a)(4) and § 1.382–2T(f)(18)(ii) and (f)(18)(iii);

(B) Intercompany obligations are disregarded; and

(C) Deferred amounts, such as amounts deferred under section 267 or § 1.1502–13, are built-in items unless they are deferred with respect to—

(1) An intercompany obligation; or

(2) A share of stock of an included subsidiary; however, if an amount deferred with respect to a share of such stock is taken into account at any time during the recognition period (whether or not any such loss amount is absorbed), NUBIG or NUBIL must be redetermined in accordance with paragraph (g)(7) of this section.

\* \* \* \* \*

(7) *Redetermination of NUBIG or NUBIL of a loss group or loss subgroup to reflect unduplicated built-in gain or loss with respect to stock of an included subsidiary—*

(i) *In general.* This paragraph (g)(7) applies if, during the recognition period, any member of the consolidated group directly or indirectly takes into account any gain or loss with respect to a share of stock of an included subsidiary (S) that was held by another member of the loss group or loss subgroup immediately before the change date, regardless of whether any such loss is absorbed. If this paragraph (g)(7) applies, the loss group or loss subgroup must redetermine its NUBIG or NUBIL to include any unduplicated built-in gain or loss with respect to the S share in accordance with the provisions of paragraphs (g)(7)(ii) and (g)(7)(iii) of this section. The redetermination is given effect immediately before the time the gain or loss on stock of an included subsidiary is taken into account. The redetermined NUBIG or NUBIL does not affect the tax treatment of transactions taken into account prior to the event that causes a redetermination of NUBIG or NUBIL under this paragraph (g)(7). However, the redetermined NUBIG or NUBIL is effective for all purposes immediately before the gain or loss on stock of an included subsidiary is taken into account. Thus, for example, the redetermined NUBIG or NUBIL is used to determine whether the loss group or subgroup is a NUBIG or NUBIL group, as well as whether the group meets the threshold requirement of section 382(h)(3)(B), at the time of the redetermination.

(ii) *Computation of unduplicated built-in gain or loss with respect to shares of S stock that are subject to this paragraph (g)(7).* The loss group or loss subgroup computes its unduplicated built-in gain or loss with respect to each share of S stock that is subject to this paragraph (g)(7) by first treating the

basis in the share as tentatively adjusted immediately before the change date or, in the case of an amount with respect to S stock that was deferred on the change date, as of the date of the transaction that gave rise to the amount, as though the following occurred immediately before the ownership change or the transaction that gave rise to the deferred amount—

(A) *Deemed recognition of built-in gain or loss of lower-tier included subsidiaries.* The separate NUBIG and NUBIL of S and all included subsidiaries that are lower-tier to S are treated as recognized, taken into account, and absorbed.

(B) *Tiering up of recognized amounts.* All amounts deemed recognized, taken into account, and absorbed under paragraph (g)(7)(ii)(A) of this section are then deemed to tier up under the principles of § 1.1502–32 to tentatively adjust the basis in all of the S shares that are subject to this paragraph (g)(7).

(C) *Unduplicated gain or loss with respect to S stock.* If the aggregate tentatively adjusted basis in the S shares subject to this paragraph (g)(7) exceeds the aggregate fair market value of those shares immediately before the change date or, in the case of a deferred amount, on the date of the transaction that gave rise to the item, the excess is the unduplicated loss with respect to those shares. Alternatively, if the aggregate fair market value of the S shares subject to this paragraph (g)(7) exceeds the aggregate tentatively adjusted basis in those shares on such date, the excess is the unduplicated gain with respect to those shares.

(iii) *Redetermination of the group's NUBIG or NUBIL.* The loss group or loss subgroup's redetermined NUBIG or NUBIL is the sum of—

(A) The loss group or loss subgroup's NUBIG or NUBIL as originally determined without regard to the stock of any included subsidiary;

(B) Any unduplicated gain or loss with respect to a share of stock of an included subsidiary that was previously included in the loss group or loss subgroup's NUBIG or NUBIL under this paragraph (g)(7); and

(C) The unduplicated gain or loss on shares of S stock computed under paragraph (g)(7)(ii) of this section.

(iv) *Anti-avoidance rule.* If any person acts with a principal purpose contrary to the purposes of this paragraph (g), to avoid the effect of the rules of this paragraph (g), or to apply the rules of this paragraph (g) to avoid the effect of any other provision of the consolidated return regulations, adjustments must be made as necessary to carry out the purposes of this paragraph (g).

(8) *Examples.* The following examples illustrate the application of the provisions of paragraph (g) of this section. Unless otherwise stated, P is the common parent of a consolidated group that is a loss group and all members of the P group are included subsidiaries with respect to the loss group. P can establish that its gains are recognized built-in gains; P cannot establish that its losses are not recognized built-in losses. In addition, the threshold requirement of section 382(h)(3)(B) is satisfied. All other relevant facts are set forth in the examples.

*Example 1. Basic application of provision.*

(i) *Facts.* On January 1, Year 1, P owns the sole outstanding share of S stock (basis \$210, value \$160) and the sole outstanding share of M stock. S owns the sole outstanding share of S1 stock (basis \$100, value \$80) and Truck (basis \$70, value \$80). S1 owns three of the five outstanding shares of S2 common stock (basis \$40, value \$20 for each share; thus, basis \$120, value \$60 in the aggregate). S2 owns Truck 2 (basis \$70, value \$40) and Truck 3 (basis \$30, value \$40). M owns the fourth of the five outstanding shares of S2 stock. X, a nonmember of the P group, owns the fifth outstanding share of S2 stock. January 1, Year 1, is a change date for the P group.

(ii) *Determination of the separate NUBIG or NUBIL of each member of the P loss group.*  
(A) *S2's separate NUBIG or NUBIL.* S2's assets are Truck 2 (with a built-in loss of \$30) and Truck 3 (with a built-in gain of \$10); therefore, S2 has a NUBIL of \$20.

(B) *S1's separate NUBIG or NUBIL.* S1's only assets are the shares of S2 stock, which are disregarded under paragraph (g)(1)(ii)(A) of this section; therefore, S1 has a NUBIG or NUBIL of zero.

(C) *S's separate NUBIG or NUBIL.* S's assets are Truck (with a built-in gain of \$10) and the share of S1 stock (which is disregarded); therefore, S has a NUBIG of \$10.

(D) *M's separate NUBIG or NUBIL.* M's only asset is the share of S2 stock, which is disregarded under paragraph (g)(1)(ii)(A) of this section; therefore, M has a NUBIG or NUBIL of zero.

(E) *P's separate NUBIG or NUBIL.* P's only assets are the shares of M and S stock, which are disregarded; therefore, P has a NUBIG or NUBIL of zero.

(iii) *Determination of the P group's NUBIG or NUBIL.* The P group has a NUBIL of \$10, reflecting the sum of S2's \$20 NUBIL and S's \$10 NUBIG.

*Example 2. Transfer of shares of stock of an included subsidiary during recognition period.* (i) *Sale to nonmember.* (A) *Facts.* The facts are the same as in *Example 1*. In addition, in Year 4, S sells its share of S1 stock for \$65 to an unrelated party. At the time of the sale, S's basis in the share had been reduced to \$90 due to adjustments for depreciation on S2's assets that tiered up under § 1.1502–32. (No adjustments are made to S's basis in the S1 share under § 1.1502–36, including by reason of an election to

waive stock loss or reattribute losses.) As a result of the sale of the S1 share during the recognition period, the P group must redetermine its NUBIL under paragraph (g)(7) of this section.

(B) *Redetermination of the P group's NUBIG or NUBIL.* (1) *Unduplicated built-in gain or loss with respect to S1 share.* Under paragraph (g)(7)(ii)(A) of this section, the unduplicated built-in gain or loss with respect to the S1 share sold in Year 4 is computed by first treating the separate NUBIG or NUBIL of S1 and S2 (the only included subsidiary that is lower-tier to S1) as having been recognized, taken into account, and absorbed immediately before the change date. Under paragraph (g)(7)(ii)(B) of this section, those amounts are then treated as tiering up under the principles of § 1.1502-32 and tentatively adjusting S's basis in its S1 share, in order to identify the unduplicated gain or loss in the basis of the share under paragraph (g)(7)(ii)(C) of this section. S1 has no separate NUBIG or NUBIL to be treated as recognized, taken into account, and absorbed. S2 has a \$20 separate NUBIL that is treated as recognized, taken into account, and absorbed and that is then treated as tiering up to adjust S's basis in the S1 share under the principles of § 1.1502-32. As a result, \$12 of S2's \$20 NUBIL would be treated as tiering up to S1 through the three S2 shares (of the total five outstanding) held by S1, and that \$12 would then be treated as tiering up through S1 to tentatively adjust S's basis in the S1 share. S's tentatively reduced basis in the S1 share is therefore \$100 - \$12, or \$88. Because the tentatively reduced basis of the share exceeds the value of the share by \$8 (\$88 - \$80), S has an \$8 unduplicated loss in its basis in its S1 stock.

(2) *Redetermined NUBIG or NUBIL of the P group.* Immediately before S takes into account the \$25 loss on the sale of its share of S1 stock, the P group's NUBIL is redetermined to be \$18, the sum of S2's NUBIL of \$20, S1's NUBIL of \$0, S's NUBIG of \$10, P's NUBIG or NUBIL of \$0, M's NUBIG or NUBIL of \$0, and the \$8 unduplicated loss in the S1 stock.

(C) *Effect of redetermination.* Of the \$25 loss on the sale of the S1 share, \$20 is recognized built-in loss, but the group only has an \$18 NUBIL and so only \$18 of the recognized built-in loss is subject to limitation under section 382.

(i) *Nonrecognition transfer to member followed by sale to nonmember.* The facts are the same as in paragraph (i)(A) of this Example 2, except that, in Year 3, M1 joined the P group and S transferred its share of S1 stock to M1 in a transaction qualifying under section 351; as a result, it is M1, not S, that sells the S1 share to X in Year 4. The analysis and results are the same as in paragraphs (i)(B) and (i)(C) of this Example 2 because this section applies when any member of the group recognizes gain or loss with respect to stock of an included subsidiary that was held by a member of the loss group immediately before the change date.

*Example 3. Recognition of built-in loss prior to stock sale.* (i) *Facts.* The facts are the same as in paragraph (i)(A) of Example 2 except that, in addition, in Year 2, S2 sold Truck 2 and recognized the \$30 built-in loss

on Truck 2, and the P group absorbed the \$30 loss. The loss is a recognized built-in loss under section 382(h)(2)(B) and thus subject to limitation to the extent of the originally determined \$10 NUBIL.

(ii) *Redetermination of the P group's NUBIG or NUBIL.* (A) *Unduplicated built-in gain or loss with respect to the S1 share.* Because unduplicated stock gain or loss is computed immediately before the change date, the unduplicated stock loss is \$8 for the reasons set forth in paragraph (i)(B)(1) of Example 2.

(B) *Redetermined NUBIG or NUBIL of the P group.* The computation of the P group's redetermined NUBIG or NUBIL is the same as in paragraph (i)(B)(2) of Example 2, except that the \$30 of recognized built-in loss in Year 2 reduces the P group's \$10 NUBIL (before NUBIL is redetermined under paragraph (g)(7) of this section) to zero. As a result, immediately before the sale of the S1 share, the P group's NUBIL is redetermined to be \$8, which is the sum of zero and the \$8 unduplicated loss in the S1 stock.

(iii) *Effect of redetermination.* Of the \$25 loss on the sale of the S1 share, \$20 is recognized built-in loss, but the group only has an \$8 NUBIL and so only \$8 of the recognized built-in loss is subject to limitation under section 382. The treatment of the loss recognized on the Year 2 sale of Truck 2 is not affected by the Year 4 redetermination.

*Example 4. Sale of less than all shares of stock of an included subsidiary.* (i) *Facts.* The facts are the same as in paragraph (i)(A) of Example 2, except that S1 has ten shares of stock outstanding, designated Share 1 through Share 10, all of which are owned by S. S's basis in Share 1 is \$15.50, and S's basis in Share 2 is \$4.50. In addition, instead of selling its one share of S1 stock, on January 1, Year 4, S sells Share 1 and Share 2 to an unrelated party for \$16 (their aggregate fair market value).

(ii) *Redetermination of the P group's NUBIG or NUBIL.* (A) *Unduplicated built-in gain or loss with respect to S1 Share 1 and S1 Share 2.* The analysis is the same as in paragraph (i)(B)(1) of Example 2 except that the unduplicated loss is \$1.60, computed as the excess of \$17.60 (\$20 aggregate basis in the shares that are sold, tentatively reduced by \$2.40, the shares' portion (2/10) of the \$12 tentative adjustment that tiered-up from S2) over \$16 (the shares' aggregate value).

(B) *Redetermined NUBIG or NUBIL of the P group.* The P group's redetermined NUBIL is \$11.60, which is the sum of S2's NUBIL of \$20, S1's NUBIL of \$0, S's NUBIG of \$10, P's NUBIG or NUBIL of \$0, M's NUBIG or NUBIL of \$0, and the unduplicated stock loss of \$1.60.

(C) *Effect of redetermination.* Of the \$4 loss recognized on the Year 4 sale of Share 1 and Share 2, all \$4 is recognized built-in loss. The group's redetermined NUBIL is \$11.60, and thus all \$4 of the \$4 recognized built-in loss is subject to limitation under section 382.

*Example 5. NUBIL redetermined to be NUBIG.* (i) *Disposition of stock of included member.* (A) *Facts.* On January 1, Year 1, P owns the sole outstanding share of S stock

(basis \$10, value \$100). S owns Truck 1 (basis \$65, value \$50) and Truck 2 (basis \$45, value \$50). January 1, Year 1, is a change date for the P group. In Year 3, P sells its S share for \$100.

(B) *Determination of the P group's NUBIG or NUBIL on change date.* S's assets are Truck 1 (with a built-in loss of \$15) and Truck 2 (with a built-in gain of \$5); therefore S has a separate NUBIL of \$10. P's sole asset is the share of S stock, which is disregarded; therefore, P has a separate NUBIG or NUBIL of zero. Accordingly, on the change date, the P group has a NUBIL of \$10, reflecting the sum of S's \$10 NUBIL and P's \$0 NUBIG/NUBIL.

(C) *Redetermination of the P group's NUBIG or NUBIL on disposition of stock of included subsidiary.* (1) *Unduplicated built-in gain or loss with respect to the S share.* Under paragraph (g)(7)(ii)(A) of this section, the unduplicated built-in gain or loss with respect to the S share sold in Year 3 is computed by first treating S's \$10 NUBIL as having been recognized, taken into account, and absorbed immediately before the ownership change. Then, under paragraph (g)(7)(ii)(B) of this section, S's \$10 NUBIL is treated as tentatively adjusting P's basis in the S share under the principles of § 1.1502-32. Accordingly, P's tentatively reduced basis in the S share is \$10 - \$10, or \$0. Further, the value of the S share was \$100 immediately before the change date. The share's \$100 value exceeds the \$0 tentatively reduced basis in the share by \$100, and thus P has a \$100 unduplicated gain in its S stock.

(2) *Redetermined NUBIG or NUBIL of the P group.* Immediately before P takes into account the \$90 gain on the sale of its share of S stock, the P group's \$10 NUBIL is redetermined to be a \$90 NUBIG, the sum of S's NUBIL of \$10 and the unduplicated gain in the S stock of \$100.

(D) *Effect of redetermination.* Of the \$90 gain P recognized on the sale of the S share, all \$90 is recognized built-in gain and therefore, under section 382(h)(2)(A), the group's section 382 limitation is increased by \$90.

(ii) *Disposition of loss asset prior to disposition of stock of included subsidiary.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this Example 5, except that, in addition, in Year 2, S sells Truck 1 for \$50, recognizing a \$15 loss that is taken into account and absorbed. As a result of the \$15 loss absorption, P's basis in the S share is reduced to an excess loss account of \$5 in Year 2 and, thus, when P sells the S share in Year 3, P recognizes \$105 gain on the sale (\$100 sale proceeds + \$5 excess loss account recapture).

(B) *Determination of the P group's NUBIG or NUBIL on change date.* For the reasons set forth in paragraph (i)(B) of this Example 5, the P group has a NUBIL of \$10 on the change date. Accordingly, S's \$15 loss on Truck 1 is a recognized built-in loss under section 382(h)(2)(B), and therefore subject to limitation to the extent of the \$10 NUBIL.

(C) *Redetermination of the P group's NUBIG or NUBIL on disposition of stock of included subsidiary.* (1) *Unduplicated built-in gain or loss with respect to the S share.* For the reasons set forth in paragraph (i)(C)(1)

of this *Example 5*, the unduplicated built-in gain with respect to the S share is \$100.

(2) *Redetermined NUBIG or NUBIL of the P group.* For the reasons set forth in paragraph (i)(C)(2) of this *Example 5*, the P group's NUBIG is redetermined to be \$90. Immediately before P takes into account the \$100 gain on the sale of its share of S stock, the P group's \$10 NUBIL is redetermined to be a \$90 NUBIG, the sum of S's NUBIL of \$10 and P's NUBIG of \$100.

(D) *Effect of redetermination.* Of the \$105 gain P recognized on the sale of the S share, \$90 is recognized built-in gain and therefore, under section 382(h)(2)(A), the group's section 382 limitation is increased by \$90. The redetermination of P's original \$10 NUBIL to a \$100 NUBIG in Year 4 has no effect on the treatment of the Year 2 recognized built-in loss from the sale of Truck 1.

(h) \* \* \*

(2) *Disposition of stock or an intercompany obligation of a member.* Built-in gain or loss recognized by a member on the disposition of stock (including stock described in section 1504(a)(4) and § 1.382-2T(f)(18)(ii) and (f)(18)(iii)) of another member is treated as a recognized gain or loss for purposes of section 382(h)(2) (unless disallowed) without regard to the extent to which such gain or loss was included in the determination of a net unrealized built-in gain or loss under paragraph (g) of this section. Built-in gain or loss recognized by a member with respect to an intercompany obligation is treated as recognized gain or loss only to the extent (if any) that the transaction gives rise to aggregate income or loss within the consolidated group.

\* \* \* \* \*

(4) *Successor assets.* \* \* \*

\* \* \* \* \*

(k) *Effective/Applicability date.* Paragraphs (g)(1), (g)(7), (g)(8), (h)(2) and (h)(4) of this section apply to amounts taken into account with respect to a share of stock of an included subsidiary on or after the date that final regulations are published in the **Federal Register**, but only with respect to ownership changes occurring on or after October 24, 2011. For amounts taken into account with respect to a share of stock of an included subsidiary not described in the preceding sentence, see §§ 1.1502-91(g) and 1.1502-91(h) as contained in 26 CFR part 1 in effect on April 1, 2011.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

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**BILLING CODE 4830-01-P**

## POSTAL SERVICE

### 39 CFR Part 20

#### International Mail: Proposed Product Rate and Fee Changes

**AGENCY:** Postal Service™.

**ACTION:** Proposed rule.

**SUMMARY:** In October 2011, the Postal Service filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective on January 22, 2012. This proposed rule contains the revisions to *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®) that would accompany the new prices.

**DATES:** We must receive your comments on or before November 23, 2011.

**ADDRESSES:** Mail or deliver comments to the Manager, Product Classification, U.S. Postal Service®, 475 L'Enfant Plaza, SW., RM 4446, Washington, DC 20260-5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday by calling 1-202-268-2906 in advance. Email comments, containing the name and address of the commenter, may be sent to: [MailingStandards@usps.gov](mailto:MailingStandards@usps.gov), with a subject line of "International Mailing Services Price Change." Faxed comments are not accepted.

**FOR FURTHER INFORMATION CONTACT:** Obataiye B. Akinwale at 202-268-2260, or Rick Klutts at 813-877-0372.

**SUPPLEMENTARY INFORMATION:** Proposed prices are or will be available under Docket Number R2012-3 on the Postal Regulatory Commission's Web site at <http://www.prc.gov>.

This proposed rule includes: Price changes for First-Class Mail International® and extra services.

#### First-Class Mail International

This proposed rule would increase prices for single-piece First-Class Mail International letters by approximately 6.6 percent, while the price for postcards is proposed to increase by approximately 7 percent.

#### International Extra Services

The Postal Service proposes to increase prices for market dominant extra services by approximately 2.2 percent, for the following:

- Certificate of Mailing
- Registered Mail™
- Return Receipt
- Restricted Delivery

- Customs Clearance and Delivery Fee
- International Reply Coupons
- International Business Reply Service

The prices and fees proposed in this notice, if adopted, would become effective concurrent with any domestic prices adopted as a result of the current proceedings before the Postal Regulatory Commission (Docket No. R2012-3). All regulatory changes necessary to implement this proposal are provided below.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

#### List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

Accordingly, 39 CFR part 20 is proposed to be amended as follows:

#### PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301-307; 18 U.S.C. 1692-1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of the *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM) as follows:

\* \* \* \* \*

#### Mailing Standards of the United States Postal Service, International Mail Manual (IMM)

\* \* \* \* \*

#### Individual Country Listings

\* \* \* \* \*

#### First-Class Mail International (240)

[For each country that offers First-Class Mail International service, retain the country's Price Group designation (which appears in the "First-Class Mail International" heading), but remove the three price tables for letters, large envelopes (flats), and packages (small packets), and insert text to read as follows:]

For the prices and maximum weights for postcards, letters, large envelopes