DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–118761–09]

RIN 1545–BI92

Controlled Groups; Deferral of Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance concerning the time for taking into account deferred losses on the sale or exchange of property between members of a controlled group. These proposed regulations affect members of a controlled group and their shareholders.

DATES: Written and electronic comments and requests for a public hearing must be received by July 20, 2011.

ADDRESSES: Send submissions to: CC: PA: LPD: PR (REG–118761–09), Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–118761–09), 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–118761–09).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Bruce A. Decker (202) 622–7790; concerning submissions of comments and/or requests for a public hearing, *Richard.A.Hurst@irscounsel.treas.gov,* or (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Background

This document provides guidance concerning the Federal income tax treatment of deferred losses on the sale or exchange of property between members of a controlled group, including transactions in which the member acquiring the property subsequently recognizes a corresponding gain with respect to the property.

Section 267(a)(1) provides that no deduction shall be allowed for any loss on the sale or exchange of property between certain related persons. Section 267(f)(2) contains an exception for a loss on the sale or exchange of property between members of a controlled group. For this purpose, "controlled group" has the meaning defined in section 1563(a) except that "more than 50 percent" is substituted for "at least 80 percent" each place it appears. In the case of a sale or exchange of loss property between members of a controlled group, the loss is deferred rather than disallowed. Under section 267(f)(2)(B), the loss is deferred until the property is transferred outside of the controlled group and there would be recognition of loss under consolidated return principles or until such other time as may be prescribed in regulations.

The regulations under section 267(f) provide that the timing principles for intercompany sales or exchanges between members of a consolidated group (see generally § 1.1502–13(c)(2)) apply to sales or exchanges of property at a loss between members of controlled group. See § 1.267(f)–1(a)(2). The attribute redetermination rules applicable to transactions between members of a consolidated group (see § 1.1502–13(c)(1)), however, do not apply to sales or exchanges between members of a controlled group. See § 1.267(f)–1(a)(2)(i)(B)). For example, if a member of a consolidated group (S) holds land for investment and sells the land at a loss to another member of its consolidated group (B), and B develops the land and sells developed lots to unrelated customers, S's intercompany loss will be taken into account when B sells the property to the unrelated person. Furthermore, S's loss will be recharacterized as an ordinary loss, even though S's loss would otherwise be a capital loss given its separate-entity status as holding the property for investment. See § 1.1502–13(c)(4)(i), (c)(7)(ii), Example 2. If B and S were members of a controlled group but not a consolidated group, S's loss would also be taken into account when B sells the parcel to an unrelated person, but S's loss would retain its character as a capital loss.

The attribute redetermination rule applicable to intercompany transactions between consolidated group members may have the effect of eliminating an intercompany loss with respect to a corporation's stock. For example, assume that S, a subsidiary in a consolidated group, owns 100 percent of the stock of T, a solvent corporation. S sells 30 percent of T's stock at a loss to B, the common parent of the consolidated group that includes S. In a subsequent, unrelated transaction (and before any change in the value of the T stock), T liquidates. The attribute redetermination rule of § 1.1502–13(c)(1) recharacterizes S's intercompany loss to produce the same results to the consolidated group as a whole as if S and B were divisions of a single corporation. Under these facts, the subsequent liquidation of T, tax-free under section 332, would cause S's intercompany loss to be treated as a noncapital nondeductible amount. See § 1.1502–13(f)(7), *Example 5(c).*

Although the attribute redetermination rule generally does not apply to sales or exchanges between members of a controlled group, § 1.267(f)–1(c)(1)(iv) contains a special rule with respect to losses that would have been redetermined to be a noncapital, nondeductible amount if the consolidated return attribute redetermination rule did apply. Under § 1.267(f)–1(c)(1)(iv), if an intercompany loss between members of a consolidated group would have been redetermined to be a noncapital, nondeductible amount as a result of the attribute redetermination rule applicable to consolidated groups, but is not redetermined because the sale or exchange occurred between members of a controlled group (to which the attribute redetermination rule does not apply), then the loss will be deferred until S and B are no longer in a controlled group relationship. Thus, if the facts in the example in the preceding paragraph were the same, except that B was the parent of a controlled group that included S, rather than a consolidated group, under the principles of section 267(f), the IRS and Treasury Department believe that S's loss on the sale or exchange of T stock should be deferred until S and B (and their successors) are no longer in a controlled group relationship.

Furthermore, assume S1 and S2, both members of a consolidated group, each own 50 percent of the stock of T. If the basis of the T stock is greater than its value, a liquidation of T would generally result in non-recognition of the loss through the application of § 1.1502–34 and section 332. In an attempt to avoid the non-recognition of the loss, either S1 or S2 may sell more than 20 percent of T's stock to a nonconsolidated, controlled group member in a transaction that is treated as a sale or exchange for Federal income tax purposes. Thereafter, T is liquidated in an attempt to recognize a loss on 100 percent of the subsidiary's stock. The IRS and Treasury Department believe that in these situations, the loss should similarly be deferred until the buying and selling members are no longer in a controlled group relationship.

In a controlled group setting, taxpayers have noted that the current regulations do not allow S to take into

account any amount of the intercompany loss when B recognizes a corresponding gain. For example, if S sells 30 percent of T's stock to B at a loss (in a transaction that is treated as a sale or exchange for federal income tax purposes) and T's stock appreciates between the time of the intercompany sale and a subsequent event that results in B's recognition of gain (that is T's liquidation), B would recognize a gain under section 331 at that time, but S's loss would remain deferred in its entirety. Accordingly, the IRS and the Treasury Department propose to modify the current regulations and allow S's intercompany loss to be taken into account to the extent that B recognizes a corresponding gain, in addition to the other events that result in acceleration.

Explanation of Provisions

These proposed regulations provide that, for purposes of determining whether a loss would be determined to be a noncapital, nondeductible amount under the principles of § 1.1502–13, stock held by the selling member, stock held by the buying member, and stock held by all members of the seller's consolidated group as well as stock held by any member of a controlled group of which the seller is a member that was acquired from a member of the seller's consolidated group must be taken into account. In addition, certain losses on the sale or exchange of property between members of a controlled group, which have been deferred, are taken into account upon the occurrence of either of two events. The deferred loss is taken into account to the extent of any corresponding gain that the member acquiring the property recognizes with respect to the property. Alternatively, the deferred loss is taken into account when the parties to the transaction cease to be in a controlled group relationship. In the example, under the proposed regulations, S's loss will be recognized to the extent of the amount of corresponding gain recognized by B upon the event that results in recognition of that gain (that is T's liquidation).

Proposed Effective/Applicability Date

These proposed regulations will apply to loss redetermination events that occur after the date the regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect controlled groups of corporations which tend to be larger businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Small Business Administration for comment on its impact on small governmental jurisdictions.

Comments and Requests for 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. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments are available at *http://www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written 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 Bruce A. Decker, Office of Associate Chief Counsel (Corporate), IRS. However, other personnel from the Treasury Department and the IRS participated in their 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 * * *

Par. 2. Section 1.267(f)–1 is amended as follows:

1. Paragraph (c)(1)(iv) is revised.

2. Paragraph (l)(3) is redesignated as paragraph (l)(4) and paragraph (l)(3) is added.

The addition and revision read as follows:

§ 1.267(f)–1 Controlled groups.

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(c) * * *

(1) * * *

(iv) *B's item is excluded from gross income or noncapital and nondeductible.* To the extent S's loss would be redetermined to be a noncapital, nondeductible amount under the principles of § 1.1502–13, but is not redetermined because of paragraph (c)(2) of this section (which generally renders the attribute redetermination rule inapplicable to sales between members of a controlled group), S's loss continues to be deferred. The preceding sentence does not apply, however, to the extent paragraph (c)(1)(iii) of this section applies as a result of a transfer of the property to certain related persons. If the loss is deferred, it is taken into account when S and B (including their successors) are no longer in a controlled group relationship or to the extent of any corresponding income or gain recognized by B with respect to the property, whichever occurs first. For example, if S sells all of the stock of corporation T to B at a loss (in a transaction that is treated as a sale or exchange for Federal income tax purposes), and T subsequently liquidates in an unrelated transaction that qualifies under section 332, S's loss is deferred until S and B are no longer in a controlled group relationship. Similarly, if S owns all of the T stock, sells 30 percent of T's stock to B at a loss (in a transaction that is treated as a sale or exchange for Federal income tax purposes), and T subsequently liquidates into S and B, S's loss on the sale is deferred until S and B (including their successors) are no longer in a controlled group relationship. If B recognizes any income or gain on amounts received in a distribution in complete liquidation of T, S will take into account its deferred loss on its sale of T stock to the extent of B's gain. For purposes of this paragraph, stock held by S, stock held by B, and stock held by all members of S's consolidated group as well as stock held by any member of a controlled group of which S is a member that was acquired from a member of S's consolidated group must be taken into account in determining whether a loss would be determined to be a noncapital, nondeductible amount under the principles of § 1.1502–13.

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(3) *Loss redetermination events.* Paragraph (c)(1)(iv) of this section applies to loss redetermination events occurring after the date these regulations are published as final regulations in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–9606 Filed 4–20–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2011–0004; Notice No. 117; Re: Notice Nos. 34 and 42]

RIN 1513–AB44

Proposed Fort Ross-Seaview Viticultural Area; Comment Period Reopening

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; comment period reopening.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau is reopening the comment period for Notice No. 34, which concerned the proposed establishment of the Fort Ross-Seaview viticultural area in western Sonoma County, California. Through this notice, TTB is soliciting comments on the establishment of the Fort Ross-Seaview viticultural area as proposed in Notice No. 34 and the issues raised in the public comments received in response to that notice, including a request to expand the proposed viticultural area. Given the conflicting evidence provided by the petitioner and by some commenters with respect to the distinguishing features and boundary of the proposed viticultural area, and the length of time that has passed since Notice No. 34 was published in 2005, TTB believes that the rulemaking record regarding the proposed Fort Ross-Seaview viticultural area should be reopened for public comment to ensure full public participation prior to any final regulatory action.

DATES: Written comments on the proposed Fort Ross-Seaview viticultural area are due on or before June 6, 2011.

ADDRESSES: You may send comments on Notice No. 34 to one of the following addresses:

- *http://www.regulations.gov:* Use the comment form for Notice No. 34 as posted within Docket No. TTB–2011–0004 on "Regulations.gov," the Federal e-rulemaking portal, to submit comments via the Internet;
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier in Lieu of Mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of the petitions, supporting materials, published notices, and all public comments associated with this proposal within Docket No. TTB–2011–0004 at *http://www.regulations.gov.* You also may view copies of the petitions, supporting materials, published notices, and all public comments associated with this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20220; phone 202–453–2002.

SUPPLEMENTARY INFORMATION:

Fort Ross-Seaview Rulemaking History

Original 2003 Petition and Notice No. 34

In 2003, Patrick Shabram, on his own behalf and on behalf of David Hirsch of Hirsch Vineyards, submitted a petition to establish the 27,500-acre "Fort Ross-Seaview" American viticultural area in western Sonoma County, California (hereinafter the "2003 petition"). The proposed Fort Ross-Seaview viticultural area is completely within the existing North Coast (27 CFR 9.30) and Sonoma Coast (27 CFR 9.116) viticultural areas. At the time of the 2003 petition, the Fort Ross-Seaview viticultural area contained 18 commercial vineyards, which covered approximately 506 acres.

In response to the 2003 petition, TTB published Notice No. 34, a notice of proposed rulemaking regarding the establishment of the Fort Ross-Seaview viticultural area, in the **Federal Register** of March 8, 2005 (70 FR 11174). In that notice, TTB requested comments by May 9, 2005, from all interested persons. In response to a request from a local wine industry member, TTB subsequently extended the comment period for Notice No. 34 until June 8, 2005 (see Notice No. 42, 70 FR 25000, May 12, 2005).

Comments Received in Response to Notice No. 34; Proposed Expansion Request

In response to Notice No. 34, TTB received seven comments concerning the proposed establishment of the Fort Ross-Seaview viticultural area. Two local wine industry members supported the petition without qualification; a third industry member supported the viticultural area's establishment while expressing concern about the potential effect of the proposed viticultural area on his "Fort Ross" brand names if "Fort Ross" alone were determined to be a term of viticultural significance.

Four commenters, all owners or operators of Sonoma County wineries and vineyards, opposed the establishment of the Fort Ross-Seaview viticultural area as outlined in Notice No. 34. Stating that their vineyards, all located to the north of the proposed Fort Ross-Seaview viticultural area, have the same viticultural characteristics as those found within the proposed area, these four commenters requested that TTB delay a final decision on the establishment of the Fort Ross-Seaview viticultural area so that they could gather additional evidence to support their contention that the proposed viticultural area should be expanded to include their properties.

In response, TTB advised the opposing commenters that evidence in support of a northern expansion of the proposed Fort Ross-Seaview viticultural area must be submitted to TTB in order for the agency to consider their request.

Subsequently, three of the opposing commenters submitted documentation to TTB in support of a 15,726-acre northern expansion of the Fort Ross-Seaview viticultural area proposed in Notice No. 34.

After submission of the commenters' documentation in support of a northern addition, TTB shared the documentation with the petitioner for the Fort Ross-Seaview viticultural area. In response, Patrick Shabram, the author of the 2003 Fort Ross-Seaview viticultural area petition and a professional geographer specializing in Sonoma County viticulture, submitted additional documentation to support the originally petitioned proposed Fort Ross-Seaview viticultural area name and boundary line.

Revision of Viticultural Area Regulations

On January 20, 2011, TTB issued a final rule revising certain sections of its