Designation of ACE Truck Manifest System as the Approved Data Interchange System

In a notice published October 27, 2006 (71 FR 62922), CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved EDI for the transmission of required data and announced that the requirement that advance electronic cargo information be transmitted through ACE would be phased in by groups of ports of entry.

ACE will be phased in as the required transmission system at some ports even while it is still being tested at other ports. However, the use of ACE to transmit advance electronic truck cargo information will not be required in any port in which CBP has not first conducted the test.

The October 27, 2006, document identified all land border ports in the states of Washington and Arizona and the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles, and Hansboro in North Dakota as the first group of ports where use of the ACE Truck Manifest System is mandated. Subsequently, CBP announced on January 19, 2007 (72 FR 2435) that, after 90 days notice, the use of the ACE Truck Manifest System will be mandatory at all land border ports in the states of California, Texas and New Mexico. On February 23, 2007 (72 FR 8109), CBP announced that, after 90 days notice, the ACE Truck Manifest System will be mandatory at all land border ports in Michigan and New York. On April 13, 2007 (72 FR 18574), CBP announced that, after 90 days notice, the ACE Truck Manifest System will be mandatory at all land border ports in Vermont and New Hampshire, and at the land border ports in North Dakota at which ACE had not been required by any previous notice. On May 8, 2007 (72 FR 25965), CBP announced that, again after 90 days notice, the ACE Truck Manifest System will be mandatory at all land border ports in the states of Idaho and Montana, as well.

ACE Mandated at Land Border Ports of Entry in Maine and Minnesota

Applicable regulations (19 CFR 123.92(e)) require CBP, 90 days prior to mandating advance electronic information at a port of entry, to publish notice in the **Federal Register** informing affected carriers that the EDI system is in place and fully operational. Accordingly, CBP is announcing in this document that, effective 90 days from the date of publication of this notice, truck carriers entering the United States through land border ports of entry in the states of Maine and Minnesota will be required to present advance electronic cargo information regarding truck cargo through the ACE Truck Manifest System.

Although other systems that have been deemed acceptable by CBP for transmitting advance truck manifest data will continue to operate and may still be used in the normal course of business for purposes other than transmitting advance truck manifest data, use of systems other than ACE will no longer satisfy advance electronic cargo information requirements at the ports of entry announced in this document as of October 16, 2007.

Compliance Sequence

CBP has now either required the use of ACE for the transmission of advance electronic truck cargo information, or provided 90 days notice that it intends to do so, at every land border port in which CBP originally planned to require the use of ACE, with the exception of the land border ports in the state of Alaska.

Following the testing of the ACE truck manifest system at the land border ports in Alaska, CBP expects to announce in a **Federal Register** notice that it is providing 90 days' notice before ACE will be the mandatory transmission system for those ports as well.

Dated: July 12, 2007.

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

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BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9341]

RIN 1545–BE87

Treatment of Excess Loss Accounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 1502. Section 1.1502–19(d) governs basis determinations and adjustments of subsidiary stock in certain transactions involving members of a consolidated group. Section 1.1502–80(c) governs the determination of when subsidiary stock is treated as worthless under section 165. These final regulations affect affiliated groups of corporations filing consolidated returns.

DATES: *Effective Date:* These final regulations are effective on July 18, 2007.

Applicability Dates: Section 1.1502–19(d) applies to transactions occurring on or after July 18, 2007. Section 1.1502–80(c) applies to taxable years for which the original consolidated Federal income tax return is due (without extensions) after July 18, 2007.

FOR FURTHER INFORMATION CONTACT: For questions regarding § 1.1502–19(d), contact Theresa M. Kolish, (202) 622–7530 (not a toll-free number). For questions regarding § 1.1502–80(c), contact Theresa Abell, (202) 622–7700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 26, 2006, the IRS and Treasury Department published a notice of proposed rulemaking (REG–138879–05, 71 FR 4319) by cross-reference to a temporary regulation under § 1.1502–19 (TD 9244, 71 FR 4264). Prior to the publication of the proposed and temporary regulations, the direction of a transaction determined whether an excess loss account would be reduced or eliminated. For example, if P had owned all the stock of S with an excess loss account of $100 and all of the stock of T with a basis of $150, and T had merged into S in a reorganization described in section 368(a)(1)(D) in which P received additional shares of S stock, under § 1.1502–19(d), P's excess loss account in its original shares of S stock was first eliminated. Therefore, P's original S shares would have had an aggregate basis of $0 and P's new S shares would have had an aggregate basis of $50. However, if S instead had merged into T in a reorganization described in section 368(a)(1)(D) in which P received additional shares of T stock, § 1.1502–19(d) would not have applied because P did not already have T shares with an excess loss account. Therefore, P's original T shares would have had a basis of $150 and P's new T shares would have had an excess loss account of $100.

The IRS and Treasury Department found the electivity of the rule based on the direction of the transaction to be undesirable. Accordingly, the IRS and Treasury Department added § 1.1502–19T(d), which provides that, if a member would otherwise determine shares of a class of S's stock (a new share) to have an excess loss account and such member owns one or more other shares of the same class of S's stock, the basis of such other shares is

allocated to eliminate and equalize any excess loss account that would otherwise be in the new shares.

No public hearing regarding the proposed regulation was requested or held. However, a few informal comments regarding the proposed and temporary regulations were received. In particular, the commentators noted that § 1.1502–19T(d) would appear to apply in the earlier example if P had excess loss accounts in its shares of both S and T. For example, assume that P owned S and T (which were of equal value), P had a $50 excess loss account in its S stock and a $100 excess loss account in its T stock, and T merged into S in a reorganization described in section 368(a)(1)(D) in which additional shares were issued. Under § 1.1502–19T(d), the excess loss accounts in the two blocks of S stock would be equalized so that P would have a $75 excess loss account in each block. The commentators asked whether this outcome was intended. The IRS and Treasury Department believe that the excess loss accounts in this example should be equalized and affirm that § 1.1502–19 does apply under the facts of presented. This application eliminates the disparity between excess loss accounts in order to better reflect P's investment in its subsidiary stock. The proposed regulation under § 1.1502–19 is adopted by this Treasury decision and the temporary regulation is removed.

Additionally, on January 23, 2007, the IRS and Treasury Department published a notice of proposed rulemaking (REG–157711–02, 72 FR 2964) under § 1.1502–80(c) regarding when the stock of a member is treated as worthless under section 165. The proposed regulation is adopted without substantive modification by this Treasury Decision, and is applicable to tax years for which the original consolidated Federal income tax return is due (without extensions) after July 18, 2007. Section 1.1502–80T is removed.

Consistent with the prior final regulations, these regulations provide that subsidiary stock is not treated as worthless before the earlier of the time that the subsidiary ceases to be a member of the group or the time that the stock of the subsidiary is worthless within the meaning of § 1.1502–19(c)(1)(iii). Section 1.1502–19(c)(1)(iii) identifies three separate events that cause a share of subsidiary stock to be treated as worthless and therefore disposed of for purposes of taking into account an excess loss account in the share. Section 1.1502–19(c)(1)(iii)(A) applies when the subsidiary disposes of substantially all of its assets, and the deferral of any worthless securities deduction until that time implements single-entity principles. While an event identified in either § 1.1502–19(c)(1)(iii)(B) or (C) (generally dealing with debt cancellations) will likely occur in connection with an event identified in § 1.1502–19(c)(1)(iii)(A), either may occur independently. In light of the single-entity purpose of the regulations, the IRS and Treasury Department are requesting comments regarding whether these regulations should refer only to the time stock is treated as worthless within the meaning of § 1.1502–19(c)(1)(iii)(A).

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to 5 U.S.C. 553(d)(3) it has been determined that that a delayed effective date is unnecessary because this rule finalizes currently effective temporary rules regarding the treatment of excess loss accounts without substantive change. It is hereby certified that these final 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 will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Accordingly, 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, the notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of § 1.1502–19 is Theresa M. Kolish of the Office of the Associate Chief Counsel (Corporate), IRS. The principal author of § 1.1502–80(c) is Theresa Abell of the Office of the Associate Chief Counsel (Corporate), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for §§ 1.1502–19T and 1.1502–80T to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–19 and § 1.1502–80 are also issued under 26 U.S.C. 1502. * * *

■ **Par. 2.** Section 1.1502–19 is amended by revising paragraphs (d), (g) Example 2, and (h)(2)(iv) to read as follows:

§ 1.1502–19. Excess loss accounts.

* * * * *

(d) *Special allocation of basis in connection with an adjustment or determination*—(1) *Excess loss account in original shares.* If a member has an excess loss account in shares of a class of S's stock at the time of a basis adjustment or determination under the Internal Revenue Code with respect to shares of the same class of S's stock owned by the member, the adjustment or determination is allocated first to equalize and eliminate that member's excess loss account. See § 1.1502–32(c) for similar allocations of investment adjustments to prevent or eliminate excess loss accounts.

(2) *Excess loss account in new S shares.* If a member would otherwise determine shares of a class of S's stock (new shares) to have an excess loss account and such member owns one or more other shares of the same class of S's stock, the basis of such other shares is allocated to eliminate and equalize any excess loss account that would otherwise be in the new shares.

* * * * *

(g) * * *

Example 2. Basis determinations under the Internal Revenue Code in intercompany reorganizations—transfer of shares without an excess loss account. (i) *Facts.* P owns all of the sole class of stock of each of S and T. P has 150 shares of S stock that it acquired on Date 1. Each S share has a $1 basis and a fair market value of $1. P has 100 shares of T stock that it acquired on Date 2. Each T share has a $1.20 excess loss account and a fair market value of $1. P transfers S's stock to T without receiving additional T stock. The transfer is an exchange described in both section 351 and section 354.

(ii) *Analysis.* Under sections 351 and 354, P does not recognize gain in connection with the transfer. Under § 1.358–2(a)(2)(iii), P is deemed to receive 150 shares of T stock of the same class. Without regard to the application of paragraph (d) of this section, under section 358 and § 1.358–2(a)(2)(i), P would have a $1 basis in each such share.

However, because the basis of the additional shares of T stock will be determined when P has an excess loss account in its original shares of T stock, under paragraph (d)(1) of this section, the basis that P would otherwise have in such additional shares will eliminate the excess loss account in P's original shares of T stock such that each original share of T stock will have a basis of $0 and each share of T stock deemed received will have a basis of $0.20. Then, under § 1.358–2(a)(2)(iii), the T stock is deemed to be recapitalized in a reorganization under section 368(a)(1)(E) in which P receives 100 shares of T stock (those shares P actually owns immediately after the transfer) in exchange for those 100 shares of T stock that P held immediately prior to the transfer and those 150 shares of T stock P is deemed to receive in the transfer. Under § 1.358–2(a)(2)(i), immediately after the transfer, P holds 100 shares of T stock, 60 of which take a basis of $0.50 each and 40 of which take a basis of $0 each. In addition, T takes a $1 basis in each share of S stock under section 362. (If P had actually received an additional 150 shares of T stock of the same class, paragraph (d)(1) of this section would apply to shift basis from such additional T shares to P's original T shares because the basis of the additional T stock would be determined when P had an excess loss account in its original T shares. P would have a basis of $0 in each of the original T shares and a basis of $0.20 in each of the additional T shares.)

(iii) *Transfer of shares with an excess loss account.* The facts are the same as in paragraph (i) of this *Example 2*, except that P transfers T's stock to S without receiving additional S stock. The transfer is an exchange described in both section 351 and section 354. Under paragraph (c) of this section, P's transfer is treated as a disposition of T's stock. Under sections 351 and 354 and paragraph (b)(2) of this section, P does not recognize gain from the disposition. Under § 1.358–2(a)(2)(iii), P is deemed to have received 100 shares of S stock of the same class. Without regard to the application of paragraph (d) of this section, P would have a $1.20 excess loss account in each such share. However, because P will have an excess loss account in such shares and P owns other shares of S stock of the same class, under paragraph (d)(2) of this section, the excess loss account that P would otherwise have in such shares will decrease P's basis in its original shares of S's stock such that each such original share will have a basis of $0.20 and each share deemed received will have a basis of $0. Then, under § 1.358–2(a)(2)(iii), the S stock is deemed to be recapitalized in a reorganization under section 368(a)(1)(E) in which P receives 150 shares of S stock (those shares P actually owns immediately after the transfer) in exchange for those 150 shares of S stock that P held immediately prior to the transfer and those 100 shares of S stock that P is deemed to receive in connection with the transfer. Under § 1.358–2(a)(2)(i), immediately after the transfer, P holds 150 shares of S stock, 90 of which take a basis of $0.33 each and 60 of which take a basis of $0 each. In addition, S takes an excess loss account of $1.20 in each share of T stock under section 362. (If P had actually received 100 additional shares of S stock of the same class, paragraph (d)(2) of this section would apply to shift basis from P's original S stock because P would have otherwise had an excess loss account in such additional shares and P owned other shares of S stock of the same class. The excess loss account that P would have otherwise had in such additional shares would have decreased P's basis in its original shares of S's stock. P would have had a basis of $0.20 in each of the original shares and a basis of $0 in each of the additional shares.)

(iv) *Intercompany merger—shares with excess loss account retained.* The facts are the same as in paragraph (i) of this *Example 2*, except that S merges into T in a reorganization described in section 368(a)(1)(A) (and in section 368(a)(1)(D)), and P receives 150 additional shares of T stock of the same class in the reorganization. Under section 354, P does not recognize gain. Without regard to the application of paragraph (d) of this section, under section 358 and § 1.358–2(a)(2)(i), P would have a $1 basis in each such share. However, because the basis of the additional shares of T stock will be determined when P has an excess loss account in its original shares of T stock, under paragraph (d)(1) of this section, the basis that P would otherwise have in such additional shares eliminates the excess loss account in P's original shares of T stock such that each original share of T stock has a basis of $0 and each additional share of T stock has a basis of $0.20.

(v) *Intercompany merger—shares with excess loss account surrendered.* The facts are the same as in paragraph (i) of this *Example 2*, except that T merges into S in a reorganization described in section 368(a)(1)(A) (and in section 368(a)(1)(D)), and P receives 100 additional shares of S stock of the same class in the reorganization. Under section 354 and paragraph (b)(2) of this section, P does not recognize gain from the disposition. Without regard to the application of paragraph (d) of this section, under section 358 and § 1.358–2(a)(2)(i), P would have a $1.20 excess loss account in each additional share of S stock received. However, because P would have an excess loss account in such shares and P owns other shares of S stock of the same class, under paragraph (d)(2) of this section, the excess loss account that P would otherwise have in such shares decreases P's basis in its original shares of S's stock such that each original share of S stock has a basis of $0.20 and each additional share of S stock has a basis of $0.

* * * * *

(h) * * *

(2) * * *

(iv) *Intercompany reorganizations.* Paragraphs (d) and (g) *Example 2* of this section apply to transactions occurring on or after July 18, 2007. For transactions occurring on or after January 23, 2006, and before July 18, 2007, see § 1.1502–19T as contained in 26 CFR part 1 in effect April 1, 2007. For transactions occurring before January 23, 2006, see § 1.1502–19 as contained in 26 CFR part 1 in effect April 1, 2005.

* * * * *

§ 1.1502–19T [Removed]

■ **Par. 3.** Section 1.1502–19T is removed.

■ **Par. 4.** Section 1.1502–80 is amended by revising paragraph (c) to read as follows:

§ 1.1502–80 Applicability of other provisions of law.

* * * * *

(c) *Deferral of section 165*—(1) *General rule.* Subsidiary stock is not treated as worthless under section 165 until immediately before the earlier of the time—

(i) The stock is worthless within the meaning of § 1.1502–19(c)(1)(iii); or

(ii) The subsidiary for any reason ceases to be a member of the group.

(2) *Cross reference.* See §§ 1.337(d)–2 and 1.1502–35 for additional rules relating to loss on subsidiary stock.

(3) *Effective/applicability date.* This paragraph (c) applies to taxable years for which the original consolidated Federal income tax return is due (without extensions) after July 18, 2007. However, taxpayers may apply this paragraph (c) to taxable years beginning on or after January 1, 1995.

* * * * *

§ 1.1502–80T [Removed]

■ **Par. 5.** Section 1.1502–80T is removed.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: July 10, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–13839 Filed 7–17–07; 8:45 am]

BILLING CODE 4830–01–P

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1900

FOIA Processing Fees

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: On January 8, 2007, the Central Intelligence Agency submitted a proposed rule for public comment on Freedom of Information Act processing fees to the **Federal Register**. The CIA has reviewed and carefully considered all of the comments that were submitted in response to our proposal. As a result of that review, the CIA hereby issues its final rule on FOIA processing fees.