

respect to such share before the application of this paragraph (b)(4).

* * * * *

Par. 3. Section 1.1502-20T is amended by revising paragraphs (i)(3)(v) and (i)(4) to read as follows:

§ 1.1502-20T Disposition or deconsolidation of subsidiary stock (temporary).

* * * * *

(i) * * *

(3) * * *

(v) *Items taken into account in open years*—(A) *General rule.* An election under paragraph (i)(2) of this section affects a taxpayer's items of income, gain, deduction, or loss only to the extent that the election gives rise, directly or indirectly, to items or amounts that would properly be taken into account in a year for which an assessment of deficiency or a refund of overpayment, as the case may be, is not prevented by any law or rule of law. Under this paragraph, if the election increases the loss allowed with respect to a disposition of subsidiary stock, but the year of the disposition (or the year to which such loss would have been carried back or carried forward) is a year for which a refund of overpayment is prevented by law, to the extent that the absorption of such excess loss in such year would have affected the tax treatment of another item (e.g., another loss that was absorbed in such year) that has an effect in a year for which a refund of overpayment is not prevented by any law or rule of law, the election will affect the treatment of such other item. Therefore, if the absorption of the excess loss in the year of the disposition (which is a year for which a refund of overpayment is prevented by law) would have prevented the absorption of another loss (the second loss) in such year and such loss would have been carried to and used in a year for which a refund of overpayment is not prevented by any law or rule of law (the other year), the election makes the second loss available for use in the other year.

(B) *Special rule.* If a member's basis in stock of a subsidiary was reduced pursuant to § 1.1502-32 because a loss with respect to stock of a lower-tier subsidiary was treated as disallowed under § 1.1502-20, then, to the extent such disallowed loss is allowed as a result of an election under paragraph (i) of the section but would have been properly absorbed or expired in a year for which a refund of overpayment is prevented by law or rule of law, the member's basis in the subsidiary stock may be increased for purposes of determining the group's or the

shareholder-member's Federal income tax liability in all years for which a refund of overpayment is not prevented by law or rule of law.

* * * * *

(4) *Time and manner of making the election.* An election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii) of this section is made by including the statement required by this paragraph with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before March 7, 2002, or, if the date of the disposition or deconsolidation of the stock of the subsidiary is after March 7, 2002, then such date, or with or as part of an amended return filed before the date the original return for the taxable year that includes March 7, 2002, is due (including any extensions). Filing a statement in accordance with the provisions of this paragraph satisfies the requirement to file a "statement of allowed loss" otherwise imposed under § 1.1502-20(c)(3) or § 1.337(d)-2T(c)(3). The statement required by this paragraph satisfies the requirement that a statement be filed in order to claim allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii). The statement filed under this paragraph shall be entitled "Allowed Loss under Section [Specify Section under Which Allowed Loss Is Determined] Pursuant to Section 1.1502-20T(i)" and must include the following information—

(i) The name and employer identification number (E.I.N.) of the subsidiary and of the member(s) that disposed of the subsidiary stock;

(ii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(ii) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iv) If an election described in § 1.1502-20(g) was made with respect to the disposition of the stock of the subsidiary, the amount of losses originally treated as reattributed pursuant to such election and the amount of losses treated as reattributed pursuant to paragraph (i)(3)(i) or (ii) of this section;

(v) If an apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation is adjusted pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section, the original and redetermined apportionment of such limitation; and

(vi) If the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction of the amount of losses treated as reattributed pursuant to an election described in § 1.1502-20(g), a statement that the notification described in paragraph (i)(3)(iv) of this section was sent to the subsidiary and, if the acquirer was a member of a consolidated group at the time of the stock sale, to the person that was the common parent of such group at such time, as required by paragraph (i)(3)(iv) of this section.

* * * * *

Approved: May 20, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: May 20, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02-13574 Filed 5-30-02; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8997]

RIN 1545-BA76

Carryback of Consolidated Net Operating Losses to Separate Return Years

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains regulations under section 1502 that affect corporations filing consolidated returns. These regulations permit certain acquiring consolidated groups to elect to waive all or a portion of the pre-acquisition portion of the 5-year carryback period under section 172(b)(1)(H) for certain losses attributable to certain acquired members. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These temporary regulations are effective May 31, 2002.

Applicability Date: These regulations apply to consolidated net operating losses arising in taxable years ending during 2001 and 2002.

FOR FURTHER INFORMATION CONTACT: Marie Milnes-Vasquez of the Office of Associate Chief Counsel (Corporate), (202) 622-7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1790. Responses to this collection of information are required to obtain a benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On July 2, 1999, the IRS and Treasury published in the **Federal Register** (64 FR 36092 (1999-2 C.B. 34)) final regulations regarding certain deductions and losses of members that join a consolidated group. These regulations added § 1.1502-21(b)(3)(ii)(B), which permits an acquiring consolidated group to elect to waive, with respect to all consolidated net operating losses attributable to certain acquired members, the portion of the carryback period for which the corporation was a member of another group.

Section 172(b)(1) provides, in part, that a net operating loss for any taxable year must generally be carried back to

each of the 2 taxable years preceding the taxable year of the loss. Section 172(b)(3) provides that any taxpayer entitled to a carryback period under section 172(b)(1) may elect to relinquish the carryback period with respect to a loss for any taxable year. An election to relinquish the carryback period under section 172(b)(3) must be made by the due date (including extensions) of the taxpayer's return for the taxable year of the loss and in the manner prescribed by the Secretary. Normally, this election is irrevocable.

Section 172(b)(1)(H), which was enacted as part of the Job Creation and Worker Assistance Act of 2002 (the Act), extended the 2-year carryback period to 5 years for losses arising in taxable years ending during 2001 and 2002 (hereafter, 2001 and 2002). Section 172(j), which was also enacted as part of the Act, allows a taxpayer entitled to the 5-year carryback period under section 172(b)(1)(H) to elect to relinquish that carryback period with respect to a loss for any taxable year. A taxpayer making this election generally must apply the 2-year carryback period set forth in section 172(b)(1), unless the taxpayer also elects to relinquish that carryback period under section 172(b)(3).

As described in Revenue Procedure 2002-40 (2002-23 I.R.B.), in order to give effect to the intent of Congress to allow taxpayers a 5-year carryback period to the maximum extent possible, the Service is permitting any taxpayer that previously elected under section 172(b)(3) to forgo the carryback period for losses arising in 2001 or 2002 to revoke such election in order to take advantage of the 5-year carryback period, provided the taxpayer revokes the election no later than October 31, 2002. Revenue Procedure 2002-40 also permits a taxpayer that filed an application for a tentative carryback adjustment or an amended return using the 2-year carryback period for a net operating loss arising in 2001 or 2002 to file certain forms to claim the 5-year carryback period provided under section 172(b)(1)(H).

Given the enactment of section 172(b)(1)(H) and taxpayers' ability to revoke prior elections under section 172(b)(3) and to make certain other filings in order to take advantage of the 5-year carryback period, the IRS and Treasury believe that it is appropriate to afford certain acquiring consolidated groups that did not make an election described in § 1.1502-21(b)(3)(ii)(B) with respect to certain acquired members an opportunity to waive the portion of the entire carryback period or the portion of the extended carryback period for 2001 and 2002 losses

attributable to the acquired members, for pre-acquisition years. In this regard, the regulations in this Treasury decision add § 1.1502-21T(b)(3)(ii)(C), which sets forth two elections.

Pursuant to the first election, an acquiring group may waive the portion of the 5-year carryback period for 2001 and 2002 losses attributable to a member acquired from another group after June 25, 1999, for which the member was a member of another group. While this election effectively permits a waiver of the entire 5-year carryback period to the extent that it is prior to the acquisition with respect to a consolidated net operating loss arising in a particular taxable year, it is only available where none of such losses have previously been carried back to a taxable year of a group of which the acquired member was previously a member.

Pursuant to the second election, an acquiring group may waive the portion of the pre-acquisition carryback period for 2001 and 2002 losses attributable to a member acquired from another group to the extent that the Act increased the carryback period for such losses. This second election effectively permits a waiver of the third, fourth, and fifth carryback years to the extent that such years are prior to the acquisition and is available even where 2001 or 2002 losses have been carried back to the first or second carryback years of the acquired member that are pre-acquisition years. This second election, however, is only available with respect to consolidated net operating losses arising in a particular taxable year where none of such losses have been carried back to a taxable year of a group of which the acquired member was previously a member that is prior to the second taxable year preceding the taxable year of the loss.

Unlike the election under § 1.1502-21(b)(3)(ii)(B), the elections provided in these regulations apply only to losses for 2001 and 2002. In addition, the elections are made on a year-by-basis. That is, one election may be made for 2001 losses while another election, or no election, may be made for 2002 losses. An election that relates to consolidated net operating losses attributable to a taxable year ending during 2001 must be filed with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001, provided that such original or amended return is filed on or before October 31, 2002. An election that relates to consolidated net operating losses attributable to a taxable year ending during 2002 must be filed

with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001 or 2002, provided that such original or amended return is filed on or before September 15, 2003.

If the acquiring consolidated group files or filed a valid election described in § 1.1502-21(b)(3)(ii)(B) with respect to the acquisition of a member, no election under § 1.1502-21T(b)(3)(ii)(C) needs to be (or should be) filed to ensure that 2001 or 2002 losses are not carried back to pre-acquisition years of the acquired member.

Special Analyses

These temporary regulations are necessary to provide taxpayers with immediate elective relief from section 172(b)(1)(H), which was enacted as the part of the Job Creation and Worker Assistance Act of 2002. These regulations permit certain acquiring consolidated groups to elect to waive the 5-year carryback period with respect to certain acquired members. The regulations apply to losses arising in taxable years ending in 2001 and 2002. Based on these considerations, it is determined that this temporary regulation will provide taxpayers with the necessary guidance and authority to ensure equitable administration of the tax laws. Because of the need for immediate guidance, notice and public procedure are impracticable and contrary to the public interest pursuant to 5 USC 553(b)(B) and delayed effective date is not required pursuant to 5 USC 553(d)(1) and (3).

Further, 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 section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Marie Milnes-Vasquez. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

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 adding an entry in numerical order to read in part as follows:

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

Section 1.1502-21T also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502-21 is amended by adding paragraph (b)(3)(ii)(C) to read as follows:

§ 1.1502-21 Net operating losses.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) [Reserved]. For further guidance, see § 1.1502-21T(b)(3)(ii)(C).

* * * * *

Par. 3. Section 1.1502-21T is added to read as follows:

§ 1.1502-21T Net operating losses (temporary).

(a) through (b)(3)(ii)(B) [Reserved]. For further guidance, see § 1.1502-21(a) through (b)(3)(ii)(B).

(C) *Partial waiver of carryback period for 2001 and 2002 losses—(1)*

Application. The acquiring group may make the elections described in paragraphs (b)(3)(ii)(C)(2) and (3) of this section with respect to an acquired member or members only if it did not file a valid election described in § 1.1502-21(b)(3)(ii)(B) with respect to such acquired member or members on or before May 31, 2002.

(2) *Partial waiver of entire pre-acquisition carryback period.* If one or more members of a consolidated group become members of another consolidated group after June 25, 1999, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the carryback period for such losses for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any

consolidated net operating losses arising in a particular taxable year if any carryback is claimed, as provided in paragraph (b)(3)(ii)(C)(4) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502-21T(b)(3)(ii)(C)(2) TO WAIVE THE PRE-[insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]." Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(5) of this section.

(3) *Partial waiver of pre-acquisition extended carryback period.* If one or more members of a consolidated group become members of another consolidated group, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the carryback period for such losses for which the corporation was a member of another group to the extent that such carryback period includes one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating losses arising in a particular taxable year if a carryback to one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss is claimed, as provided in paragraph (b)(3)(ii)(C)(4) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502-

21T(b)(3)(ii)(C)(3) TO WAIVE THE PRE-[insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members].” Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(5) of this section.

(4) *Claim for a carryback.* For purposes of paragraphs (b)(3)(ii)(C)(2) and (3) of this section, a carryback is claimed with respect to a consolidated net operating loss if there is a claim for refund, an amended return, an application for a tentative carryback adjustment, or any other filing that claims the benefit of the net operating loss in a taxable year prior to the taxable year of the loss, whether or not subsequently revoked in favor of a claim based on a 5-year carryback period.

(5) *Time and manner for filing statement.* A statement described in paragraph (b)(3)(ii)(C)(2) or (3) of this section that relates to consolidated net operating losses attributable to a taxable year ending during 2001 must be filed with the acquiring consolidated group’s timely filed (including extensions) original or amended return for the taxable year ending during 2001, provided that such original or amended return is filed on or before October 31, 2002. A statement described in paragraph (b)(3)(ii)(C)(2) or (3) of this section that relates to consolidated net operating losses attributable to a taxable year ending during 2002 must be filed with the acquiring consolidated group’s timely filed (including extensions) original or amended return for the taxable year ending during 2001 or 2002, provided that such original or amended return is filed on or before September 15, 2003.

(iii) through (h) [Reserved]. For further guidance, see § 1.1502-21(b)(3)(iii) through (h).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

*	*	*	*	*
(b)	*	*	*	*

CFR part or section where identified and described	Current OMB control No.
* * *	* * *
1.1502-21T	1545-1790
* * *	* * *

David A. Mader,
Acting Deputy Commissioner of Internal Revenue.

Approved: May 20, 2002.

Pamela F. Olson,
Acting Assistant Secretary of the Treasury.
[FR Doc. 02-13576 Filed 5-30-02; 8:45 am]
BILLING CODE 4830-01-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

RIN 1212-AA82

PBGC Benefit Payments; Correction

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: The Pension Benefit Guaranty Corporation’s final rule on PBGC Benefit Payments, published on April 8, 2002 (at 67 FR 16950), contains an inadvertent error relating to the PBGC’s regulation on Allocation of Assets in Single-Employer Plans. This document corrects that error.

EFFECTIVE DATE: June 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: On April 8, 2002 (at 67 FR 16950), the PBGC published a final rule on PBGC Benefit Payments. That final rule inadvertently (1) drops existing regulatory text from § 4044.13(b) of the PBGC’s regulation on Allocation of Assets in Single-Employer Plans; and (2) omits two conforming amendments in the text that was dropped from that regulation. The conforming amendments that were omitted were included in the PBGC’s proposed rule on PBGC Benefit Payments published December 26, 2000 (at 65 FR 81456). This document corrects that error.

In rule document 02-8340, make the following corrections:

PART 4044—[CORRECTED]

§ 4044.13 [Corrected].

1. On page 16959, in the second column, correct amendatory instruction 17 to read as follows:

- 17. Amend § 4044.13 as follows:
 - a. Revise paragraphs (a), (b) introductory text, and (b)(1);
 - b. In paragraph (b)(2)(i), revise the second sentence; and
 - c. In paragraph (b)(5), remove “before the beginning” and add “on or before the first day” in their place.

The revisions read as follows:

2. On page 16959, in the third column, following paragraph (b)(1)(iii), add the following text:

§ 4044.13 Priority category 3 benefits.

- * * * * *
- (b) * * *
- (2) * * *
- (i) * * * Benefit increases that were effective throughout the 5-year period ending on the termination date, including automatic benefit increases during that period to the extent provided in paragraph (b)(5) of this section, shall be included in determining the priority category 3 benefit. * * *

* * * * *

Issued in Washington, DC, this 24th day of May, 2002.

Steven A. Kandarian,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02-13656 Filed 5-30-02; 8:45 am]

BILLING CODE 7708-01-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201 and 212

[Docket No. RM 2002-3]

Fees

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office of the Library of Congress is publishing a final rule establishing adjusted fees for certain of its services. The basic fee for registration of an original work of authorship is not affected; however, related registration and recordation fees will be adjusted. These adjustments include a number of increased fees, the elimination of one fee, and the lowering of another. Adjusted fees will be effective July 1, 2002. This final rule assumes that no legislative action will take place before July 1, 2002.