

# **SRLY Election**

## **Notice 2000-53**

This notice announces that the Treasury Department and the Internal Revenue Service intend to issue regulations permitting certain taxpayers to elect not to apply certain provisions of Treas. Reg. §§ 1.1502-15, -21, and -22 issued on June 25, 1999, and published in the Federal Register on July 2, 1999 (64 F.R. 36091). The notice also provides taxpayers a mechanism for making the election before the regulations are issued.

Treasury Regulations §§ 1.1502-15, -21, and -22 provide rules for computing the limitation with respect to separate return limitation year (SRLY) losses, and the carryover or carryback of losses to consolidated and separate return years. In §§ 1.1502-15(g), -21(g), and -22(g), the “overlap rule” eliminates the application of the SRLY rules in certain circumstances in which the rules of §§ 382 or 383 of the Internal Revenue Code also apply. The overlap rule, and consequently the elimination of the SRLY rules, is effective for tax years for which the due date of the return is after June 25, 1999. The elimination of SRLY could increase the amount of net operating loss carryovers that a consolidated group could absorb.

Treasury and the Service have been made aware that the application of the overlap rule has resulted in adverse tax consequences with respect to certain acquisitions of corporations from consolidated groups that occurred during a taxable year of the consolidated group to which the June 1999 regulations applied but prior to the actual issuance of those regulations (the “interim period”). Treasury and the Service believe that certain of these adverse tax consequences are inappropriate.

Accordingly, this notice announces that Treasury and the Service intend to issue regulations that provide an election to allow a corporation that ceased to be a member of a consolidated group as a result of a qualified stock purchase (as defined in § 338(d)(3)) in the interim period

(the “departing member”) to avoid the application of the overlap rule of §§ 1.1502–15(g), –21(g), and –22(g) while it was in the former group. The election will be available to a departing member of a consolidated group that would otherwise be affected by the application of the overlap rule and that ceased to be a member of the consolidated group before June 26, 1999, or pursuant to a binding contract that was in effect before June 26, 1999.

The election will allow a departing member to determine the amount of its net operating loss and capital loss carryovers (including the amount of net operating loss carryovers treated as arising under § 1.1502–15(a)) to taxable years beginning after it ceases to be a member of the

group by treating §§ 1.1502–15(g), –21(g), and –22 (g) as not applying with respect to that corporation (or to a subgroup in which it was included) while it was a member of the group. The election will be made solely by the departing member (or, under § 1.1502–77, its new common parent if it joins another consolidated group). The election will not require any action by the departing member’s former consolidated group and will have no effect on the consolidated return filed by that group for the taxable year for which the due date of the return was after June 25, 1999, or any subsequent taxable year.

To make the election under this notice, a corporation must write “Election Pursuant to Notice 2000–53” across the top of page 1 of its original or amended tax

return for the first taxable year (whether separate or consolidated) after it ceases to be a member of the group and file the return in accordance with the election as if §§ 1.1502–15(g), –21(g), and –22(g) did not apply while it was a member of the former group.

Treasury and the Service intend to amend the regulations under § 1502 to incorporate the guidance set forth in this notice. Until the regulations are amended, taxpayers may rely on the guidance set forth in this notice.

For further information regarding this notice contact David Kessler or Christopher M. Bass of the Office of Associate Chief Counsel (Corporate) at (202) 622-7770 (not a toll-free call).