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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9025]

RIN 1545-BA05

Intercompany Transactions: Conforming Amendments to Section 446

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: On July 18, 1995, the Treasury Department and the IRS published final regulations governing the intercompany transaction system of the consolidated return regulations. Those regulations state that the timing rules of the intercompany transaction system are a method of accounting. At the time of the publication of those regulations, no amendment was made to the regulations promulgated under section 446 to coordinate with that statement. This document contains final regulations confirming that the timing rules of the intercompany transaction regulations are a method of accounting. These regulations apply to all taxpayers filing consolidated returns.

DATES: Effective Date: These regulations are effective on December 16, 2002.

Applicability Date: These regulations apply to consolidated return years beginning on or after November 7, 2001.

FOR FURTHER INFORMATION CONTACT: Vincent Daly, (202) 622-7770, or Jeffery G. Mitchell (202) 622-4930 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On July 18, 1995, the Treasury Department and the IRS published in the **Federal Register** (60 FR 36671 [1995-2 C.B. 147]) final regulations under §1.1502-13 governing the intercompany transaction system of the consolidated return regulations. Included in such regulations was an express statement that “[t]he timing rules of [the intercompany transaction regulations] are a method of accounting for intercompany transactions, to be applied by each member in addition to the member’s other methods of accounting.” §1.1502-13(a)(3)(i). At the time of the publication of those final regulations, no amendment was made to the regulations promulgated under section 446 to coordinate with the statement in §1.1502-13(a)(3)(i) that the timing rules of §1.1502-13 are a method of accounting.

In General Motors v. Commissioner, 112 T.C. 270 (1999), the Tax Court determined that the timing rule of former §1.1502-13(b)(2) was not a method of accounting for purposes of section 446(e). On November 7, 2001, the Treasury and the IRS published in the **Federal Register** a notice of proposed rulemaking (REG-125161-01, 66 FR 56262 [2001-48 I.R.B. 538]) proposing amendments to CFR part 1 under section 446 of the Internal Revenue Code to confirm that the timing rules of §1.1502-13 are a method of accounting. No written comments responding to the notice of proposed rulemaking were received, and no public hearing was requested or held. Therefore, the proposed regulations are adopted by this Treasury decision without change.

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. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was 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 these regulations is Vincent Daly, Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and 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 continues to read in part as follows:

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

Par. 2. Section 1.446-1 is amended by adding paragraph (c)(2)(iii) to read as follows:

§1.446-1 General rule for methods of accounting.

* * * * *

(c) * * *

(2) * * * (i) * * *

(iii) The timing rules of §1.1502-13 are a method of accounting for intercompany transactions (as defined in §1.1502-13(b)(1)(i)), to be applied by each member of a consolidated group in addition to the member's other methods of accounting. See §1.1502-13(a)(3)(i). This paragraph (c)(2)(iii) is applicable to consolidated return years beginning on or after November 7, 2001.

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Par. 3. In §1.1502-13, the second sentence of paragraph (a)(3)(i) is revised to read as follows:

§1.1502-13 Intercompany transactions.

(a) * * *

(3)*** (i)*** See §1.1502-17 and, with regard to consolidated return years beginning on or after November 7, 2001, §1.446-1(c)(2)(iii).***

/s/ David A. Mader

Assistant Deputy Commissioner of Internal Revenue

Approved: December 9, 2002

/s/ Pamela F. Olson

Assistant Secretary of the Treasury