

Part III. Administrative, Procedural, and Miscellaneous

IRS Announces New Position With Regard to Consolidated Return Loss Disallowance Rule

Notice 2002-11

This Notice sets forth the Internal Revenue Service's position with respect to the opinion of the U.S. Court of Appeals for the Federal Circuit in *Rite Aid Corp. v. United States*, 255 F.3d 1357 (Fed. Cir. 2001), and the loss disallowance rules that apply to sales of stock of a member of a consolidated group.

In *Rite Aid*, the Federal Circuit held that the duplicated loss component of § 1.1502-20 of the Income Tax Regulations, which disallows certain losses on sales of stock of a member of a consolidated group, was an invalid exercise of regulatory authority. The Internal Revenue Service believes that the court's analysis and holding were incorrect.

Nevertheless, the Service has decided that the interests of sound tax administration will not be served by continuing to litigate the validity of the loss duplication factor of § 1.1502-20. Moreover, because of the interrelationship in the operation of all of the loss disallowance factors, the Service has decided that new rules governing loss disallowance on sales of stock of a member of a consolidated group should be implemented.

Accordingly, the Service intends to promulgate interim regulations that, prospectively from the date of their issuance, will require consolidated groups to determine the allowable loss on a sale or disposition of subsidiary stock under an amended § 1.337(d)-2 instead of under § 1.1502-20. For transactions (including those for which a return has been filed) completed before the date of issuance of interim regulations, or for which there is a binding contract before that date, groups will be allowed certain choices with respect to a disposition of subsidiary stock, including a choice to apply § 1.337(d)-2 as amended. The Service and Treasury are undertaking a broader study of the regulatory provisions necessary to implement § 337(d) in the context of affiliated groups filing consolidated

returns and will request comments in conjunction with the issuance of the interim regulations.

It is the Service's position that the *Rite Aid* opinion implicates only the loss duplication aspect of the loss disallowance regulation and that the authority to prescribe consolidated return regulations conferred on the Secretary is limited only by the requirement that the Secretary, in his discretion, has determined such rules necessary clearly to reflect consolidated tax liability.

Patriots' Day

Notice 2002-12

This notice provides guidance regarding the impact of Patriots' Day on the April 15, 2002, due date for filing Federal tax returns (whether paper or electronic) and making Federal tax payments. If a filing or payment due date falls on a Saturday, Sunday or legal holiday (including Statewide legal holidays), individual income taxpayers have until the next business day to file and pay. See I.R.C. § 7503. Patriots' Day, which in 2002 falls on April 15, is a legal holiday in Massachusetts and Maine and, therefore, constitutes a Statewide legal holiday, under section 7503, for IRS offices located in Massachusetts and Maine.

Individual income taxpayers who otherwise are required to file returns at the Internal Revenue Service Center in Andover, Massachusetts (Andover Service Center) on April 15, 2002, are given an additional day, until April 16, 2002, to file and make their Federal tax payments (including the Form 1040 series, automatic extensions of time to file, and the payment of the first installment of estimated tax). The IRS, however, may direct certain taxpayers, who otherwise would be required to file at the Andover Service Center, to send their Federal tax returns elsewhere if they are making a payment with Form 1040-V. To avoid confusion, these taxpayers also are given until April 16, 2002, to file and make their Federal tax payments. Finally, because individual income taxpayers residing in Maine may elect to file their returns by hand at an

IRS office located in Maine, these taxpayers also are given until April 16, 2002, to file and make their Federal tax payments.

Accordingly, for filing season 2002 (tax year 2001) individual income taxpayers in Massachusetts, Michigan, New York (all counties except for Nassau, Rockland, Suffolk, Westchester, and New York City), Rhode Island, and Maine have until Tuesday, April 16, 2002, to file their Federal income tax returns and make their payments. This includes the payment of the first installment of estimated tax for 2002.

The principal author of this notice is Marcy W. Mendelsohn of the Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). For further information regarding this notice contact Ms. Mendelsohn at 202-622-4940 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters
(Also Part I, § 1256(g)(9))

Rev. Proc. 2002-11

SECTION 1. PURPOSE

This Revenue Procedure contains procedures that an exchange may follow to enable the Internal Revenue Service to determine whether certain persons trading on that exchange qualify as "dealers" under section 1256(g)(9) of the Internal Revenue Code (the "Code"). It is expected that, after the issuance of a letter ruling to a specific exchange determining whether a specific category of persons trading securities futures contracts (and options on such contracts) on that exchange qualifies for dealer status under section 1256(g)(9), the Service will publish the same conclusion in a revenue ruling.

SECTION 2. BACKGROUND

The Commodity Futures Modernization Act of 2000, enacted as part of the Consolidated Appropriations Act, 2001 (Public Law 106-554, 114 Stat. 2763), authorizes the trading of securities futures