



441 G St. N.W.
Washington, DC 20548

B-332657

November 12, 2020

The Honorable Chuck Grassley
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Department of the Treasury, Internal Revenue Service: Consolidated Net Operating Losses*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of the Treasury, Internal Revenue Service (IRS) entitled "Consolidated Net Operating Losses" (RIN: 1545-BP27). We received the rule on October 28, 2020. It was published in the *Federal Register* as final regulations on October 27, 2020. 85 Fed. Reg. 67966. The rule has an effective date of December 28, 2020.

IRS stated that this final rule amends income tax regulations under sections 1502 and 1503 of the Internal Revenue Code (Code) in order to implement recent statutory amendments to section 172 of the Code relating to the absorption of consolidated net operating loss carryovers and carrybacks. Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017); Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020). IRS also stated that the rule updates regulations applicable to consolidated groups that include both life insurance companies and other companies to reflect statutory changes. IRS noted that the rule affects corporations that file consolidated returns.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was published on October 27, 2020. 85 Fed. Reg. 67966. The Senate received the rule on November 2, 2020. 166 Cong. Rec. S6652 (daily ed. Nov. 10, 2020). To date, the *Congressional Record* does not reflect the date of receipt by the House of Representatives. The rule has a stated effective date of December 28, 2020. Therefore the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of IRS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Carrie Mudd
Director, Legal Processing Division
Department of the Treasury

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE
ENTITLED
“CONSOLIDATED NET OPERATING LOSSES”
(RIN: 1545-BP27)

(i) Cost-benefit analysis

The Internal Revenue Service (IRS) assessed the benefits and costs of this final rule relative to a no-action baseline reflecting anticipated federal income tax-related behavior in the absence of the rule. According to IRS, the rule provides certainty and clarity to taxpayers regarding the treatment of net operating losses (NOLs) under section 172 of the Internal Revenue Code (Code) and the regulations under section 1502 of the Code. IRS stated that the rule significantly mitigates the chance for differential or inaccurate interpretations and thereby increases economic efficiency. Further, IRS stated that it projected that the rule will have annual effects below \$100 million (in 2020 dollars) relative to the baseline. According to IRS, it did not estimate more precisely the economic effects of the rule because the effects are expected to be small and data or models that would address the effects of the rule are not readily available.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

IRS certified that this final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

IRS stated that section 202 of the Act requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately \$156 million, according to IRS. IRS stated that this final rule does not include any federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector, in excess of that threshold.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On July 8, 2020, IRS published a proposed rule. 85 Fed. Reg. 40927. IRS received seven comments in response to the proposed rule. IRS responded to comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

This final rule does not discuss the PRA. In its submission to us, IRS indicated that the rule does not contain a collection of information requiring Office of Management and Budget (OMB) approval under PRA.

Statutory authorization for the rule

IRS promulgated this final rule under the authority of section 7805 of title 26, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

IRS stated that this final rule has been designated as subject to review under the Order pursuant to the Memorandum of Agreement (MOA) dated April 11, 2018, between the Treasury Department and OMB regarding review of tax regulations. IRS further stated that the Office of Information and Regulatory Affairs within OMB has designated the rule as economically significant under section 1(c) of the MOA and, accordingly, OMB has reviewed the rule.

Executive Order No. 13132 (Federalism)

IRS stated that this final rule does not have federalism implications, does not impose substantial direct compliance costs on state and local governments, and does not preempt state law within the meaning of the Order.