

(b)(5)(ii), *Example 4*, paragraphs (a), (b), and (c), of this section apply with respect to determinations of the basis of the stock of a subsidiary in consolidated return years the original return for which is due (without extensions) after August 29, 2003. For determinations in consolidated return years the original return for which is due (without extensions) on or before August 29, 2003, groups may apply paragraphs (b)(3)(ii)(C)(1), (b)(3)(iii)(A), and (b)(5)(ii), *Example 4*, paragraphs (a), (b), and (c), of this section without regard to the references to § 1.1502-28T or, alternatively, apply paragraphs (b)(3)(ii)(C)(1), (b)(3)(iii)(A), and (b)(5)(ii), *Example 4*, paragraphs (a), (b), and (c), of § 1.1502-32 as contained in 26 CFR part 1 edition revised as of April 1, 2003.

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*Deputy Commissioner for Services and Enforcement.*

Approved: August 28, 2003.

**Gregory F. Jenner,**

*Deputy Assistant Secretary of the Treasury.*  
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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 602

[TD 9090]

RIN 1545-BC31

#### Limitation on Use of the Nonaccrual-Experience Method of Accounting Under Section 448(d)(5)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document revises temporary income tax regulations to provide guidance regarding the use of a nonaccrual-experience method of accounting by taxpayers using an accrual method of accounting and performing services. The revisions reflect changes to section 448(d)(5) of the Internal Revenue Code by the Job Creation and Worker Assistance Act of 2002. The revised temporary regulations will affect taxpayers that no longer qualify to use a nonaccrual-experience method of accounting, and qualifying taxpayers that wish to adopt or change a nonaccrual-experience method of accounting. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section of this issue of the **Federal Register**.

**Effective Date:** These regulations are effective September 4, 2003.

**Applicability Date:** These regulations are applicable for taxable years ending after March 9, 2002.

**FOR FURTHER INFORMATION CONTACT:** Terrance McWhorter, (202) 622-4970 (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 1545-1855. Responses to this collection of information are mandatory.

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

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 and records relating to a 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

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 448(d)(5). Section 448(d)(5) was added to the Code by section 801 of the Tax Reform Act of 1986 (Public Law 99-514, 100 Stat. 2085) and was amended by section 403 of the Job Creation and Worker Assistance Act of 2002 (Public Law 107-147, 116 Stat. 21) (the 2002 Act), effective for taxable years ending after March 9, 2002. These regulations pertain to the nonaccrual of certain amounts by taxpayers using an accrual method of accounting and performing services.

##### Explanation of Provisions

###### Background

Prior to being amended by the 2002 Act, pursuant to section 448(d)(5) taxpayers using an accrual method of accounting and performing services

were not required to accrue any portion of their service-related income that, on the basis of their experience, would not be collected. Temporary regulations under section 448(d)(5) (former temporary regulations) provided rules for the nonaccrual of certain amounts by service providers, including the use of experience to estimate uncollectible amounts and the mechanics of the nonaccrual-experience method.

Section 448(d)(5) was amended by section 403 of the 2002 Act, effective for taxable years ending after March 9, 2002. Section 448(d)(5) now provides that a nonaccrual-experience method is available only for taxpayers using an accrual method who either provide services in fields described in section 448(d)(2)(A) (*i.e.*, health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting), or that meet the \$5 million annual gross receipts test of section 448(c) for all prior taxable years.

The legislative history of the 2002 Act states that Congress believed that for many qualified service providers the formula contained in the former temporary regulations under section 448(d)(5) may not clearly reflect the amount of income that, based on experience, will not be collected. *See* H.R. Rep. No. 107-251. Congress noted that service providers were particularly disadvantaged by the formula contained in the former temporary regulations if significant time elapsed between the time the services were rendered and the time a final determination was made that the account would not be collected. Additionally, Congress noted that taxpayers qualified to use the nonaccrual-experience method of accounting should not be subject to a formula that required the payment of taxes on receivables that would not be collected.

The amendments to section 448(d)(5) made by the 2002 Act require the Secretary to promulgate regulations. Specifically, the Secretary is required to prescribe regulations to permit a taxpayer to use computations or formulas that, based on experience, accurately reflect the amount of income that will not be collected. Section 448(d)(5), as amended, also permits a taxpayer to adopt, or request consent of the Secretary to change to, a computation or formula that clearly reflects the taxpayer's experience. Section 448(d)(5) further requires the Secretary to approve a request to change to a computation or formula that clearly reflects the taxpayer's experience. Lastly, the legislative history to the 2002 Act states that Congress anticipated that the Secretary would consider providing