

Section 1502.—Regulations

26 CFR 1.1502–3: Consolidated tax credits.

T.D. 8884

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Consolidated Returns— Limitations on the Use of Certain Credits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding certain credits of corporations that become members of a consolidated group. The regulations provide rules for computing the limitation with respect to certain credits earned in a separate return limitation year (SRLY) and the carryover and carryback of those credits to consolidated and separate return years. The regulations also eliminate the application of the SRLY rules in certain circumstances in which the rules of section 383 also apply.

DATES: *Effective Date:* These regulations are effective May 25, 2000.

Applicability Dates: For dates of applicability, see the “Dates of Applicability” portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Marie C. Milnes-Vasquez, (202) 622-7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

A. In General

On January 12, 1998, the IRS and Treasury published in the **Federal Register** a

Treasury decision (T.D. 8751, 1998–1 C.B. 655 [63 F.R. 1740]) containing temporary regulations concerning the use of certain tax attributes by a consolidated group. In part, these regulations provided rules governing the absorption of general business credits and minimum tax credits carried from separate return limitation years (SRLYs), and eliminated SRLY restrictions with respect to recapture of overall foreign losses (OFLs) and on the use of foreign tax credits of corporations joining a group. Further, this Treasury decision contained a final regulation eliminating the limitation on credit carryovers following a consolidated return change of ownership (CRCO).

A notice of proposed rulemaking cross-referencing the temporary regulations was published in the **Federal Register** on the same day (63 F.R. 1803). On March 16, 1998, the IRS and Treasury published temporary amendments to those consolidated return regulations (T.D. 8766, 1998–1 C.B. 888 [63 F.R. 12641]) and the corresponding notice of proposed rulemaking (63 F.R. 12717) modifying the general date of applicability contained in the January 12, 1998, temporary regulations. Per the amendment, the January 12, 1998, temporary regulations, as amended, are generally applicable for consolidated return years for which the due date of the return is after March 13, 1998. The amendments provided further guidance with respect to consolidated return years beginning on or after January 1, 1997, for which the income tax return is due on or before March 13, 1998.

On August 11, 1999, the IRS and Treasury issued final regulations relating to the recapture of OFLs (including elimination of any SRLY limitation on such recapture). (T.D. 8833, 1999–36 I.R.B. 338 [64 F.R. 43613]).

This Treasury decision adopts without substantive change the portions of the temporary regulations that were issued in 1998, relating to general business credits and minimum tax credits, with the addition of the “overlap rule”, discussed in *Extension of 1999 Principles* of this preamble. This Treasury decision also makes final the rules eliminating SRLY restrictions on the use of foreign tax credits, and the rules repealing the consolidated return change of ownership provisions pertaining to those credits.

B. Extension of 1999 Principles

On July 2, 1999, the IRS and Treasury published in the **Federal Register** a Treasury decision (T.D. 8823, 1999–29 I.R.B. 34 [64 F.R. 36092]) containing final regulations providing rules governing the absorption of certain tax attribute carryovers and carrybacks from separate return limitation years (SRLYs). These tax attributes included net operating losses and net capital losses. The rules also governed the absorption of recognized built-in losses. These regulations, in part, eliminated the application of the SRLY rules in certain circumstances in which the rules of section 382 also apply (overlap rule).

The IRS and Treasury believe that it is appropriate to apply a single set of SRLY principles to all attributes that are subject to SRLY limitations. Unnecessary complexity would result from applying different principles to different attributes. Accordingly, this document extends the principles of the overlap rule of the 1999 final regulations to the general business credit and the minimum tax credit. These final regulations adopt the mechanism of subgrouping and the overlap rule set forth in §1.1502–21 (including the requirements of coextensive subgroups and contemporaneity).

C. Dates of Applicability

The final regulations generally are applicable to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. However, there are some special effective dates. The rules contained in these final regulations (except the overlap rule) may be applied optionally to years beginning on or after January 1, 1997. Application of the overlap principles of §1.1502–21(g) is generally effective for consolidated return years for which the return (without extensions) is due after May 25, 2000.

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 is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This

certification is based on the fact that these regulations principally affect persons filing consolidated federal income tax returns that have carryover or carry-back of credits from separate return limitation years. Available data indicates that many consolidated return filers are large companies (not small businesses). In addition, the data indicates that an insubstantial number of consolidated return filers that are smaller companies have credit carryovers or carrybacks, and thus even fewer of these filers have credit carryovers or carrybacks that are subject to the separate return limitation year rules. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking accompanying these regulations was sent to the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Marie C. Milnes-Vasquez of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph . The authority citation for part 1 is amended by removing the entries for sections 1.1502-3T and 1.1502-55T and adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
 Section 1.1502-3 also issued under 26 U.S.C. 1502.
 Section 1.1502-4 also issued under 26

U.S.C. 1502. * * *
 Section 1.1502-55 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502-3 is amended as follows:

1. The section heading is revised.
2. Paragraph (b)(3) is added.
3. Paragraphs (c), (d), and (e)(3) are revised.

The addition and revisions read as follows:

§1.1502-3 Consolidated tax credits.

* * * * *
 (b) * * *

(3) *Example.* The provisions of paragraphs (a) and (b) of this section may be illustrated by the following example:

Example. (i) Corporation P is incorporated on January 1, 1966. On that same day P incorporates corporation S, a wholly owned subsidiary. P and S file consolidated returns for calendar years 1966 and 1967. P's and S's credit earned, the consolidated credit earned, and the consolidated limitation based on amount of tax for 1966 and 1967 are as follows:

	Credit earned	Consolidated credit earned	Consolidated limitation based on amount of tax
1966:			
P	\$ 60,000		
S	\$ 30,000	\$ 90,000	\$ 100,000
1967:			
P	\$ 40,000		
S	\$ 25,000	\$ 65,000	\$ 50,000

(ii) P's and S's credit earned for 1966 are aggregated, and the group's consolidated credit earned, \$90,000, is allowable in full to the group as a credit under section 38 for 1966 since such amount is less than the consolidated limitation based on amount of tax for 1966, \$100,000.

(iii) Since the consolidated limitation based on amount of tax for 1967 is \$50,000, only \$50,000 of the \$65,000 consolidated credit earned for such year

is allowable to the group under section 38 as a credit for 1967. The consolidated unused credit for 1967 of \$15,000 (\$65,000 less \$50,000) is a consolidated investment credit carryback and carryover to the years prescribed in section 46(b). In this case the consolidated unused credit is a consolidated investment credit carryback to 1966 (since P and S were not in existence in 1964 and 1965) and a consolidated investment credit carryover to 1968 and sub-

sequent years. The portion of the consolidated unused credit for 1967 which is allowable as a credit for 1966 is \$10,000. This amount shall be added to the amount allowable as a credit to the group for 1966. The balance of the consolidated unused credit for 1967 to be carried to 1968 is \$5,000. These amounts are computed as follows:

Consolidated carryback to 1966	\$ 15,000
1966 consolidated limitation based on tax	\$ 100,000
Less: Consolidated credit earned for 1966	\$ 90,000
Consolidated unused credits attributable to years preceding 1967	----- 0 <u>\$ 90,000</u>
Limit on amount of 1967 consolidated unused credit which may be added as a credit for 1966	\$ <u>10,000</u>
Balance of 1967 consolidated unused credit to be carried to 1968	\$ 5,000

(c) *Limitation on investment credit carryovers and carrybacks from separate return limitation years applicable for consolidated return years for which the due date of the return is on or before March 13, 1998*—(1) *General rule.* In the case of an unused credit of a member of the group arising in a separate return limitation year (as defined in §1.1502-1(f)) of such member (and in a separate return limitation year of any predecessor of such member), the amount which may be included under paragraph (b) of this section (computed without regard to the limitation contained in paragraph (e) of this section) shall not exceed the amount determined under paragraph (c)(2) of this section.

(2) *Computation of limitation.* The amount referred to in paragraph (c)(1) of this section with respect to a member of the group is the excess, if any, of—

(i) The limitation based on amount of tax of the group, minus such limitation recomputed by excluding the items of income, deduction, and foreign tax credit of such member; over

(ii) The sum of the investment credit earned by such member for such consolidated return year, and the unused credits attributable to such member which may be carried to such consolidated return year arising in unused credit years ending

prior to the particular separate return limitation year.

(3) *Special effective date.* This paragraph (c) applies to consolidated return years for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See paragraph (d) of this section for the rule that limits the group's use of a section 38 credit carryover or carryback from a SRLY for a consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998. See also paragraph (d)(4) of this section for an optional effective date rule (generally making the rules of this paragraph (c) inapplicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(4) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example 1. (i) Assume the same facts as in the example contained in paragraph (b)(3) of this section, except that all the stock of corporation T, also a calendar year taxpayer, is acquired by P on January 1, 1968, and that P, S, and T file a consolidated return for 1968. In 1966, T had an unused credit of \$10,000 which has not been absorbed and is available as an investment credit carryover to 1968. Such carryover is from a separate return limitation year. P's and S's credit earned for 1968 is \$10,000 each, and T's credit earned is \$8,000; the consolidated

credit earned is therefore \$28,000. The group's consolidated limitation based on amount of tax for 1968 is \$50,000. Such limitation recomputed by excluding the items of income, deduction, and foreign tax credit of T is \$30,000. Thus, the amount determined under paragraph (c)(2)(i) of this section is \$20,000 (\$50,000 minus \$30,000). Accordingly, the limitation on the carryover of T's unused credit is \$12,000, the excess of \$20,000 over \$8,000 (the sum of T's credit earned for the taxable year and any carryovers from prior unused credit years (none in this case)). Therefore T's \$10,000 unused credit from 1966 may be carried over to the consolidated return year without limitation.

(ii) The group's consolidated credit earned for 1968, \$28,000, is allowable in full as a credit under section 38 since such amount is less than the consolidated limitation based on amount of tax, \$50,000.

(iii) The group's consolidated investment credit carryover to 1968 is \$15,000, consisting of the consolidated unused credits of the group (\$5,000) plus T's separate return year unused credit (\$10,000). The entire \$15,000 consolidated carryover shall be added to the amount allowable to the group as a credit under section 38 for 1968, since such amount is less than \$22,000 (the excess of the consolidated limitation based on tax, \$50,000, over the sum of the consolidated credit earned for 1968, \$28,000, and unused credits arising in prior unused credit years, zero).

Example 2. Assume the same facts as in *Example 1*, except that the amount determined under paragraph (c)(2)(i) of this section is \$12,000. Therefore, the limitation on the carryover of T's unused credit is \$4,000. Accordingly, the consolidated investment credit carryover is only \$9,000 since the amount of T's separate return year unused credit which may be added to the group's \$5,000 consolidated unused credit is \$4,000. These amounts are computed as follows:

T's carryover to 1968	\$ 10,000
Consolidated limitation based on amount of tax minus recomputed limitation	\$12,000
Less: T's credit earned for 1968	\$ 8,000
Unused credits attributable to T arising in unused credit years preceding 1966	0
	\$ 8,000
Limit on amount of 1966 unused credit of T which may be added to consolidated investment credit carryover	\$ 4,000
Balance of 1966 unused credit of T to be carried to 1969 (subject to the limitation contained in paragraph (c) of this section)	\$ 6,000

(d) *Limitation on tax credit carryovers and carrybacks from separate return limitation years applicable for consolidated return years for which the due date of the return is after March 13, 1998*—(1) *General rule.* The aggregate of a member's unused section 38 credits arising in SRLYs that are included in the consolidated section 38 credits for all consolidated return years of the group may not exceed—

(i) The aggregate for all consolidated return years of the member's contributions to the consolidated section 38(c) limitation for each consolidated return year; reduced by

(ii) The aggregate of the member's section 38 credits arising and absorbed in all consolidated return years (whether or not absorbed by the member).

(2) *Computational rules*—(i) *Member's contribution to the consolidated section 38(c) limitation.* If the consolidated section 38(c) limitation for a consolidated return year is determined by reference to the consolidated tentative minimum tax (see section 38(c)(1)(A)), then a member's contribution to the consolidated section 38(c) limitation for such year equals the member's share of the consolidated net income tax minus the member's share

of the consolidated tentative minimum tax. If the consolidated section 38(c) limitation for a consolidated return year is determined by reference to the consolidated net regular tax liability (see section 38(c)(1)(B)), then a member's contribution to the consolidated section 38(c) limitation for such year equals the member's share of the consolidated net income tax minus 25 percent of the quantity which is equal to so much of the member's share of the consolidated net regular tax liability less its portion of the \$25,000 amount specified in section 38(c)(1)(B). The group computes the member's shares by

applying to the respective consolidated amounts the principles of section 1552 and the percentage method under §1.1502-33(d)(3), assuming a 100% allocation of any decreased tax liability. The group must make proper adjustments so that taxes and credits not taken into account in computing the limitation under section 38(c) are not taken into account in computing the member's share of the consolidated net income tax, etc. (See, for example, the taxes described in section 26(b) that are disregarded in computing regular tax liability.) Also, the group may apportion all or a part of the \$25,000 amount (or lesser amount if reduced by section 38(c)(3)) for any year to one or more members.

(ii) *Years included in computation.* For purposes of computing the limitation under this paragraph (d), the consolidated return years of the group include only those years, including the year to which a credit is carried, that the member has been continuously included in the group's consolidated return, but exclude—

(A) For carryovers, any years ending after the year to which the credit is carried; and

(B) For carrybacks, any years ending after the year in which the credit arose.

(iii) *Subgroups and successors.* The SRLY subgroup principles under §1.1502-21(c)(2) apply for purposes of this paragraph (d). The predecessor and successor principles under §1.1502-21(f) also apply for purposes of this paragraph (d).

(iv) *Overlap with section 383.* The principles under §1.1502-21(g) apply for purposes of this paragraph (d). For example, an overlap of paragraph (d) of this section and the application of section 383 with respect to a credit carryover occurs if a corporation becomes a member of a consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 383 credit limitation with respect to that carryover (the section 383 event), with the result that the limitation of this paragraph (d) does not apply. See §§1.1502-21(g)(2)(ii)(A) and 1.383-1; see also §1.1502-21(g)(4) (subgroup rules).

(3) *Effective date—(i) In general.* This paragraph (d) generally applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998.

(A) *Contribution years.* Except as provided in paragraph (d)(4)(ii) of this section, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in determining a member's (or subgroup's) contributions to the consolidated section 38(c) limitation under this paragraph (d).

(B) *Special subgroup rule.* In the event that the principles of §1.1502-21(g)(1) do not apply to a particular credit carryover in the current group, then solely for purposes of applying paragraph (d) of this section to determine the limitation with respect to that carryover and with respect to which the SRLY register (the aggregate of the member's or subgroup's contribution to consolidated section 38(c) limitation reduced by the aggregate of the member's or subgroup's section 38 credits arising and absorbed in all consolidated return years) began in a taxable year for which the due date of the return is on or before May 25, 2000, the principles of §1.1502-21(c)(2) shall be applied without regard to the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or §1.1502-15(g) with respect to another group (the former group)."

(ii) *Overlap rule.* Paragraph (d)(2)(iv) of this section (relating to overlap with section 383) applies to taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000. For purposes of paragraph (d)(2)(iv) of this section, only an ownership change to which section 383, as amended by the Tax Reform Act of 1986 (100 Stat. 2085), applies and which results in a section 383 credit limitation shall constitute a section 383 event.

(4) *Optional effective date of January 1, 1997.* (i) For consolidated taxable years beginning on or after January 1, 1997, for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in lieu of paragraphs (c) and (e)(3) of this section (relating to the general business credit), §1.1502-4(f)(3) and (g)(3) (relating to the foreign tax credit), the next to last sentence of §1.1502-9A(a)(2), §1.1502-9A(b)(1)(v) (relating to overall foreign losses), and §1.1502-55(h)(4)(iii) (relating to the alternative minimum tax credit), a consoli-

dated group may apply the corresponding provisions as they appear in 1998-1 C.B. 655 through 661 (see §601.601(d)(2) of this chapter) (treating references in such corresponding provisions to §§1.1502-9(b)(1)(ii), (iii), and (iv) as references to §§1.1502-9A(b)(1)(ii), (iii), and (iv)). Also, in the case of a consolidated return change of ownership that occurs on or after January 1, 1997, in a taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, a consolidated group may choose not to apply paragraph (e) of this section and §1.1502-4(g) to taxable years ending after December 31, 1996. A consolidated group making the choices described in the two preceding sentences generally must apply all such corresponding provisions (including not applying paragraph (e) of this section and §1.1502-4(g)) for all relevant years. However, a consolidated group making the election provided in §1.1502-9A(b)(1)(vi) (electing not to apply §1.1502-9A(b)(1)(v) to years beginning before January 1, 1998) may nevertheless choose to apply all such corresponding provisions referred to in this paragraph (d)(4)(i) other than the provision corresponding to §1.1502-9A(b)(1)(v) for all relevant years.

(ii) If a consolidated group chooses to apply the corresponding provisions referred to in paragraph (d)(4)(i) of this section, the consolidated group shall not take into account a consolidated taxable year beginning before January 1, 1997, in determining a member's (or subgroup's) contributions to the consolidated section 38(c) limitation under this paragraph (d).

(5) *Example.* The following example illustrates the provisions of this paragraph (d):

Example. (i) Individual A owns all of the stock of P and T. P is the common parent of the P group. P acquires all the stock of T at the beginning of Year 2. T carries over an unused section 38 general business credit from Year 1 of \$100,000. The table in paragraph (i) of this *Example* shows the group's net consolidated income tax, consolidated tentative minimum tax, and consolidated net regular tax liabilities, and T's share of such taxes computed under the principles of section 1552 and the percentage method under §1.1502-33(d)(3), assuming a 100% allocation of any decreased tax liability, for Year 2. (The effects of the lower section 11 brackets are ignored, there are no other tax credits affecting a group amount or member's share, and \$1,000s are omitted.)

Year 2	Group	P's share of col. 1	T's share of col. 1
1. consolidated taxable income	\$2,000	\$1,200	\$800
2. consolidated net regular tax	\$700	\$420	\$280
3. consolidated alternative minimum taxable income	\$4,000	\$3,200	\$800
4. consolidated tentative minimum tax	\$800	\$640	\$160
5. consolidated net income tax	\$800	\$520	\$280
6. greater of line 4 or 25% of (line 2 minus \$25,000) for the group	\$800		
7. consolidated §38(c) limitation (line 5 minus line 6)	\$0		

(ii) T's Year 1 is a SRLY with respect to the P group. See §1.1502-1(f)(2)(ii). T did not undergo an ownership change giving rise to a section 383 credit limitation within 6 months of joining the P group. Thus, T's \$100,000 general business credit arising in Year 1 is subject to a SRLY limitation in the P group. The amount of T's unused section 38 credits from Year 1 that are included in the consoli-

dated section 38 credits for Year 2 may not exceed T's contribution to the consolidated section 38(c) limitation. For Year 2, the group determines the consolidated section 38(c) limitation by reference to consolidated tentative minimum tax for Year 2. Therefore, T's contribution to the consolidated section 38(c) limitation for Year 2 equals its share of consolidated net income tax minus its share of con-

solidated tentative minimum tax. T's contribution is \$280,000 minus \$160,000, or \$120,000. However, because the group has a consolidated section 38 limitation of zero, it may not include any of T's unused section 38 credits in the consolidated section 38 credits for Year 2.

(iii) The following table shows similar information for the group for Year 3:

Year 3	Group	P's share of col. 1	T's share of col. 1
1. consolidated taxable income	\$1,200	\$1,500	\$(300)
2. consolidated net regular tax	\$420	\$525	\$(105)
3. consolidated alternative minimum taxable income	\$1,500	\$1,700	\$(200)
4. consolidated tentative minimum tax	\$300	\$340	\$(40)
5. consolidated net income tax	\$420	\$525	\$(105)
6. greater of line 4 or 25% of (line 2 minus \$25,000) for the group	\$300		
7. consolidated §38(c) limitation (line 5 minus line 6)	\$120		

(iv) The amount of T's unused section 38 credits from Year 1 that are included in the consolidated section 38 credits for Year 3 may not exceed T's aggregate contribution to the consolidated section 38(c) limitation for Years 2 and 3. For Year 3, the group determines the consolidated section 38(c) limitation by reference to the consolidated tentative minimum tax for Year 3. Therefore, T's contribution to the consolidated section 38(c) limitation for Year 3 equals its share of consolidated net income tax minus its share of consolidated tentative minimum

tax. Applying the principles of section 1552 and §1.1502-33(d) (taking into account, for example, that T's positive earnings and profits adjustment under §1.1502-33(d) reflects its losses actually absorbed by the group), T's contribution is \$(105,000) minus \$(40,000), or \$(65,000). T's aggregate contributions to the consolidated section 38(c) limitation for Years 2 and 3 is \$120,000 + \$(65,000), or \$55,000. The group may include \$55,000 of T's Year 1 unused section 38 credits in its consolidated section 38 tax credit in Year 3.

(e) * * *

(3) *Special effective date.* This paragraph (e) applies only to a consolidated return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See paragraph (d)(4) of this section for an optional effective date

rule (generally making the rules of this paragraph (e) also inapplicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

§1.1502-3T [Removed]

Par. 3. Section 1.1502-3T is removed.

Par. 4. Section 1.1502-4 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§1.1502-4 *Consolidated foreign tax credit.*

(f)***

(3) *Limitation on unused foreign tax credit carryover or carryback from separate return limitation years.* Paragraphs (f)(1) and (2) of this section do not apply for consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, a group shall include an unused foreign tax of a member arising in a SRLY without regard to the contribution of the member to consolidated tax liability for the consolidated return year. See also §1.1502-3(d)(4) for an optional effective date rule (generally making the rules of paragraphs (f)(1) and (2) of this section also inapplicable to a consolidated return year beginning on or after January 1, 1997, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(g)***

(3) *Special effective date for CRCO limitation.* Paragraphs (g)(1) and (2) of this section apply only to a consolidated return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See also §1.1502-3(d)(4) for an optional effective date rule (generally making the rules of paragraph (g)(1) and (2) of this section also inapplicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due

date of the income tax return (without extensions) is on or before March 13, 1998).

§1.1502-4T [Removed]

Par. 5. Section 1.1502-4T is removed.

Par. 6. Section 1.1502-21 is amended by revising paragraph (c)(2)(ix) to read as follows:

§1.1502-21 *Net operating losses.*

(c)***

(2)***

(ix) *Application to other than loss carryovers.* Paragraph (g) of this section and the phrase “or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or §1.1502-15(g) with respect to another group (the former group)” in this paragraph (c)(2) apply only to carryovers of net operating losses, net capital losses, and for taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000, to carryovers of credits described in section 383(a)(2). Accordingly, as the context may require, if another regulation references this section and such other regulation does not concern a carryover of net operating losses, net capital losses, or for taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000, carryovers of credits described in section 383(a)(2), then such reference does not include a reference to such paragraph or phrase.

Par. 7. Section 1.1502-55 is added to read as follows:

§1.1502-55 *Computation of alternative minimum tax of consolidated groups.*

(a) through (h)(3) [Reserved].

(h)(4) *Separate return year minimum tax credit.*

(i) and (ii) [Reserved].

(iii)(A) *Limitation on portion of separate return year minimum tax credit arising in separate return limitation years.* The aggregate of a member’s minimum tax credits arising in SRLYs that are included in the consolidated minimum tax credits for all consolidated return years of the group may not exceed—

(1) The aggregate for all consolidated return years of the member’s contributions to the consolidated section 53(c) limitation for each consolidated return

year; reduced by

(2) The aggregate of the member’s minimum tax credits arising and absorbed in all consolidated return years (whether or not absorbed by the member).

(B) *Computational rules—(1) Member’s contribution to the consolidated section 53(c) limitation.* Except as provided in the special rule of paragraph (h)(4)(iii)(B)(2) of this section, a member’s contribution to the consolidated section 53(c) limitation for a consolidated return year equals the member’s share of the consolidated net regular tax liability minus its share of consolidated tentative minimum tax. The group computes the member’s shares by applying to the respective consolidated amounts the principles of section 1552 and the percentage method under §1.1502-33(d)(3), assuming a 100% allocation of any decreased tax liability. The group makes proper adjustments so that taxes and credits not taken into account in computing the limitation under section 53(c) are not taken into account in computing the member’s share of the consolidated net regular tax, etc. (See, for example, the taxes described in section 26(b) that are disregarded in computing regular tax liability.)

(2) *Adjustment for year in which alternative minimum tax is paid.* For a consolidated return year for which consolidated tentative minimum tax is greater than consolidated regular tax liability, the group reduces the member’s share of the consolidated tentative minimum tax by the member’s share of the consolidated alternative minimum tax for the year. The group determines the member’s share of consolidated alternative minimum tax for a year using the same method it uses to determine the member’s share of the consolidated minimum tax credits for the year.

(3) *Years included in computation.* For purposes of computing the limitation under this paragraph (h)(4)(iii), the consolidated return years of the group include only those years, including the year to which a credit is carried, that the member has been continuously included in the group’s consolidated return, but exclude any years after the year to which the credit is carried.

(4) *Subgroup principles.* The SRLY subgroup principles under §1.1502-21(c)(2) apply for purposes of

this paragraph (h)(4)(iii). The predecessor and successor principles under §1.1502–21(f) also apply for purposes of this paragraph (h)(4)(iii).

(5) *Overlap with section 383.* The principles under §1.1502–21(g) apply for purposes of this paragraph (h)(4)(iii). For example, an overlap of this paragraph (h)(4)(iii) and the application of section 383 with respect to a credit carryover occurs if a corporation becomes a member of a consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 383 credit limitation with respect to that carryover (the section 383 event), with the result that the limitation of this paragraph (h)(4)(iii) does not apply. See §§1.1502–21(g)(2)(ii)(A) and 1.383–1; see also §1.1502–21(g)(4) (subgroup rules).

(C) *Effective date—(1) In general.* This paragraph (h)(4)(iii) generally applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. See §1.1502–3(d)(4) for an optional effective date rule (generally making this paragraph (h)(4)(iii) also applicable to a consolidated return year beginning on or after January 1, 1997, if the due date of the income tax return (without extensions) was on or before March 13, 1998).

(i) *Contribution years.* In general, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in determining a member’s (or subgroup’s) contributions to the consolidated section 53(c) limitation under this paragraph (h)(4)(iii). However, if a consolidated group chooses to apply the optional effective date rule, the consolidated group shall not take into account a consolidated taxable year beginning before January 1, 1997 in determining a member’s (or subgroup’s) contributions to the consolidated section 53(c) limitation under this paragraph (h)(4)(iii).

(ii) *Special subgroup rule.* In the event that the principles of §1.1502–21(g)(1) do not apply to a particular credit carryover in the current group, then solely for purposes of applying this paragraph (h)(4)(iii) to determine the limitation with

respect to that carryover and with respect to which the SRLY register (the aggregate of the member’s or subgroup’s contribution to consolidated section 53(c) limitation reduced by the aggregate of the member’s or subgroup’s minimum tax credits arising and absorbed in all consolidated return years) began in a taxable year for which the due date of the return is on or before May 25, 2000, the principles of §1.1502–21(c)(2) shall be applied without regard to the phrase “or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or §1.1502–15(g) with respect to another group (the former group).”

(2) *Overlap rule.* Paragraph (h)(4)(iii)(B)(5) of this section (relating to overlap with section 383) applies to taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000. For purposes of paragraph (h)(4)(iii)(B)(5) of this section, only an ownership change to which section 383, as amended by the Tax Reform Act of 1986 (100 Stat. 2095), applies and which results in a section 383 credit limitation shall constitute a section 383 event. The optional effective date rule of §1.1502–3(d)(4) (generally making this paragraph (h)(4)(iii) also applicable to a consolidated return year beginning on or after January 1, 1997, if the due date of the income tax return (without extensions) was on or before March 13, 1998) does not apply with respect to paragraph (h)(4)(iii)(B)(5) of this section (relating to the overlap rule).

§1.1502–55T [Removed]

Par. 8. Section 1.1502–55T is removed.

Par. 9. Section 1.1502–98 is amended by adding a sentence immediately following the first sentence to read as follows:

§1.1502–98 Coordination with section 383.

* * * For example, subgroups with respect to the carryover of general business credits, minimum tax credits, unused foreign tax, and net capital loss are determined by applying the principles of §1.1502–91(d)(1). * * *

§1.1502–9A [Amended]

Par. 10. Section 1.1502–9A is amended as follows:

1. In paragraph (a)(2), the last sentence is amended by removing the language “1.1502–3T(c)(4)” and adding “1.1502–3(d)(4)” in its place.

2. In paragraph (b)(1)(v), the last sentence is amended by removing the language “1.1502–3T(c)(4)” and adding “1.1502–3(d)(4)” in its place.

Robert E. Wenzel,
*Deputy Commissioner
of Internal Revenue.*

Approved May 8, 2000.

Jonathan Talisman,
*Deputy Assistant Secretary
of the Treasury.*

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