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(c) Because S1 and S2 are members of a subgroup, a claim for refund under paragraph (e) of this section must be based on the aggregate consolidated net operating loss of both S1 and S2. Under paragraph (e)(5) of this section, P may not elect under section 172(b)(3) to relinquish the entire carryback period with respect to the $300 of consolidated net operating loss arising in Year 2 that is attributable to S1 and S2. Any refund payable under paragraph (g)(1) of this section with respect to the $300 loss of S1 and S2 may be paid by the Internal Revenue Service directly to the fiduciary.

Example 2. Income of other subgroup members. (a) The facts are the same as in *Example 1,* except that S2 has $100 of income in Year 2 rather than $100 of loss. Any refund payable under paragraph (g) of this section with respect to the loss of S1 in Year 2 must take into account the income of S2, and therefore the refund will be based on a $100 loss of the subgroup.

(b) Although P and S3 are not members included in the subgroup, the loss year return and the claim for refund filed by the fiduciary under paragraph (e) of this section must be completed based on all information to which the fiduciary has reasonable access. Under paragraph (e)(3) of this section, if P does not file a loss year return that is accepted by S1, and S1 has reasonable access to information indicating that P and S3 have income in Year 2, S1 must take that income into account in filing the P group's return for Year 2 and reduce the amount of S1's loss that may be carried to Year 1 accordingly. However, if P or S3 has a loss in Year 2, any refund attributable to that loss will not be paid to the fiduciary.

(i) [Reserved]

(j) *Determination of ownership.* This section determines the party to whom a refund or tentative carryback adjustment will be paid but is not determinative of ownership of any such amount among current or former members of a consolidated group (including the institution).

(k) *Liability of the Government.* Any refund or tentative carryback adjustment paid to the fiduciary discharges any liability of the Government to the same extent as payment to the common parent under § 1.1502–77 or § 1.1502–78 of this chapter. Furthermore, any refund or tentative carryback adjustment paid to the fiduciary is considered a payment to all members of the carryback year group. Any determination made by the Internal Revenue Service under this section to pay a refund or tentative carryback adjustment to a fiduciary or the common parent may not be challenged by the common parent, any member of the group, or the fiduciary.

(l) *Effective dates.* This section applies to refunds and tentative carryback adjustments paid after December 30, 1991.

[T.D. 8387, 56 FR 67487, Dec. 31, 1991; 57 FR 6073, Feb. 20, 1992. Redesignated and amended by T.D. 8446, 57 FR 53034, Nov. 6, 1992; T.D. 8677, 61 FR 33325, June 27, 1996; T.D. 8823, 64 FR 36101, July 2, 1999]

§ 301.6403–1 Overpayment of installment.

If any installment of tax is overpaid, the overpayment shall first be applied against any outstanding installments of such tax. If the overpayment exceeds the correct amount of tax due, the overpayment shall be credited or refunded as provided in section 6402 and §§ 301.6402–1 to 301.6402–4, inclusive.

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[T.D. 8299, 55 FR 14245, Apr. 17, 1990]

§ 301.6404–1 Abatements.

(a) The district director or the director of the regional service center may abate any assessment, or unpaid portion thereof, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the