

(iii) The provisions of this subparagraph may be illustrated by the following example:

Example. P, S, and T file a consolidated return for the calendar year 1969, reflecting a consolidated net operating loss attributable in part to each member. P owns 80 percent of S's stock and S owns 80 percent of T's stock. On January 1, 1970, A purchases 50 percent of P's stock. During 1970 T's business is discontinued. Since there has been a 50 percentage point increase in ownership of P, the common parent of the group, and since T has not continued to carry on the same trade or business after such increase, the portion of the 1969 consolidated net operating loss attributable to T shall not be included in any net operating loss deduction for 1970 or for any subsequent taxable years, whether consolidated or separate.

(2) *Section 382(b).* If a net operating loss carryover from a separate return year of a predecessor of a member of the group to the taxable year is reduced under the provisions of section 382(b), the amount included under paragraph (b) of this section with respect to such predecessor shall be so reduced.

(3) *Effective date.* This paragraph (e) disallows or reduces the net operating loss carryovers of a member as a result of a transaction to which old section 382 (as defined in §1.382-2T(f)(21)) applies. See §1.1502-21T(d)(2) for the rule that applies the principles of this paragraph (e) in consolidated return years beginning on or after January 1, 1997, with respect to such a transaction.

(f) *Consolidated net operating loss.* The consolidated net operating loss shall be determined by taking into account the following:

(1) The separate taxable income (as determined under §1.1502-12) of each member of the group, computed without regard to any deduction under section 242;

(2) Any consolidated capital gain net income (net capital gain for taxable years beginning before January 1, 1977);

(3) Any consolidated section 1231 net loss;

(4) Any consolidated charitable contributions deduction;

(5) Any consolidated dividends received deduction (determined under §1.1502-26 without regard to paragraph (a)(2) of that section); and

(6) Any consolidated section 247 deduction (determined under §1.1502-27

without regard to paragraph (a)(1)(ii) of that section).

(g) *Groups that include insolvent financial institutions.* For rules applicable to relinquishing the entire carryback period with respect to losses attributable to insolvent financial institutions, see §301.6402-7 of this chapter.

(h) *Effective date.* Except as provided in §1.1502-21T (d)(1), (d)(2), and (g)(3), this section applies to consolidated return years beginning before January 1, 1997.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980; T.D. 8387, 56 FR 67489, Dec. 31, 1991; T.D. 8446, 57 FR 53034, Nov. 6, 1992; T.D. 8677, 61 FR 33323, June 27, 1996. Redesignated and amended by T.D. 8677, 61 FR 33328, June 27, 1996]

§ 1.1502-22A Consolidated net capital gain or loss generally applicable for consolidated return years beginning before January 1, 1997.

(a) *Computation—(1) Consolidated capital gain net income.* The consolidated capital gain net income (net capital gain for taxable years beginning before January 1, 1977) for the taxable year shall be determined by taking into account:

(i) The aggregate of the capital gains and losses (determined without regard to gains or losses to which section 1231 applies or net capital loss carryovers or carrybacks) of the members of the group for the consolidated return year,

(ii) The consolidated section 1231 net gain for such year (computed in accordance with §§1.1502-23A or 1.1502-23T), and

(iii) The consolidated net capital loss carryovers or carrybacks to such year (as determined under paragraph (b) of this section).

(2) *Consolidated net capital loss.* The consolidated net capital loss shall be determined under subparagraph (1) of this paragraph but without regard to subdivision (iii) thereof.

(3) *Special rules.* For purposes of this section, capital gains and losses on intercompany transactions and transactions with respect to stock, bonds, and other obligations of a member of the group shall be reflected as provided in §§1.1502-13, and 1.1502-19, and capital losses shall be limited as provided in §§1.1502-15A and 1.1502-11(c).

(4) [Reserved]

(5) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. (i) Corporations P, S, and T file consolidated returns on a calendar year basis for 1966 and 1967. The members had the following transactions involving capital assets during 1967: P sold an asset with a \$10,000 basis to S for \$17,000 and none of the circumstances of restoration described in § 1.1502-13 occurred by the end of the consolidated return year; S sold an asset to individual A for \$7,000 which S had purchased during 1966 from P for \$10,000, and with respect to which P had deferred a gain of \$2,000; T sold an asset with a basis of \$10,000 to individual B for \$25,000. The group has a consolidated net capital loss carryover to the taxable year of \$10,000.

(ii) The consolidated net capital gain of the group is \$4,000, determined as follows: P's net capital gain of \$2,000, representing the deferred gain on the sale to S during the taxable year 1966, restored into income during taxable year 1967 (the \$7,000 gain on P's deferred intercompany transaction is not taken into account for the current year), plus T's net capital gain of \$15,000, minus S's net capital loss of \$3,000 and the consolidated net capital loss carryover of \$10,000.

(b) *Consolidated net capital loss carryovers and carrybacks—(1) In general.* The consolidated net capital loss carryovers and carrybacks to the taxable year shall consist of any consolidated net capital losses of the group, plus any net capital losses of members of the group arising in separate return years of such members, which may be carried to the taxable year under the principles of section 1212(a). However, such consolidated carryovers and carrybacks shall not include any consolidated net capital loss apportioned to a corporation for a separate return year pursuant to § 1.1502-79A(b) (or § 1.1502-22T(b), as appropriate) and shall be subject to the limitations contained in paragraphs (c) and (d) of this section. For purposes of section 1212(a)(1), the portion of any consolidated net capital loss for any taxable year attributable to a foreign expropriation capital loss is the amount of the foreign expropriation capital losses of all the members for such year (but not in excess of the consolidated net capital loss for such year).

(2) *Absorption rules.* For purposes of determining the amount, if any, of a net capital loss (whether consolidated

or separate) which can be carried to a taxable year (consolidated or separate), the amount of such net capital loss which is absorbed in a prior consolidated return year under section 1212(a)(1) shall be determined by:

(i) Applying all net capital losses which can be carried to such prior year in the order of the taxable years in which such losses were sustained, beginning with the taxable year which ends earliest, and

(ii) Applying all such losses which can be carried to such prior year from taxable years ending on the same date on a prorata basis, except that any portion of a net capital loss attributable to a foreign expropriation capital loss to which section 1212(a)(1)(B) applies shall be applied last.

(c) *Limitation on net capital loss carryovers and carrybacks from separate return limitation years—(1) General rule.* In the case of a net capital loss of a member of the group arising in a separate return limitation year (as defined in paragraph (f) of § 1.1502-1) of such member (and in a separate return limitation year of any predecessor of such member), the amount that may be included under paragraph (b) of this section (computed without regard to the limitation contained in paragraph (d) of this section) shall not exceed the amount determined under subparagraph (2) of this paragraph.

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

(i) The consolidated capital gain net income (net capital gain for taxable years beginning before January 1, 1977) for the taxable year (computed without regard to any net capital loss carryovers and carrybacks), minus such consolidated capital gain net income (net capital gain for taxable years beginning before January 1, 1977) for the taxable year recomputed by excluding the capital gains and losses and the gains and losses to which section 1231 applies of such member, over

(ii) The net capital losses attributable to such member which can be carried to the taxable year arising in taxable years ending prior to the particular separate return limitation year.

(d) *Limitation on capital loss carryovers where there has been a consolidated return change of ownership*—(1) *General rule.* If a consolidated return change of ownership (as defined in paragraph (g) of § 1.1502-1) occurs during the taxable year or an earlier taxable year, the amount which may be included under paragraph (b) of this section in the consolidated net capital loss carryovers to the taxable year with respect to the aggregate of the net capital losses attributable to old members of the group (as defined in paragraph (g)(3) of § 1.1502-1) arising in taxable years (consolidated or separate) ending on the same day and before the taxable year in which the consolidated return change of ownership occurred shall not exceed the amount determined under subparagraph (2) of this paragraph.

(2) *Computation of limitation.* The amount referred to in subparagraph (1) of this paragraph shall be the excess of:

(i) The consolidated capital gain net income (net capital gain for taxable years beginning before January 1, 1977) (determined without regard to any net capital loss carryovers for the taxable year) recomputed by including only capital gains and losses and gains and losses to which section 1231 applies of the old members of the group, over

(ii) The aggregate net capital losses attributable to the old members of the group which may be carried to the taxable year arising in taxable years ending prior to the particular loss year or years.

(3) *Cross-reference.* See § 1.1502-22T(d) for the rule that applies the principles of this paragraph (d) in consolidated return years beginning on or after January 1, 1997, with respect to a consolidated return change of ownership occurring before January 1, 1997.

(e) *Effective date.* This section applies to any consolidated return years to which § 1.1502-21T(g) does not apply. See § 1.1502-21T(g) for effective dates of that section.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980; T.D. 8597, 60 FR 36679, July 18, 1995; T.D. 8677, 33323, June 27, 1996. Redesignated and amended by T.D. 8677, 61 FR 33333, June 27, 1996]

§ 1.1502-23A Consolidated net section 1231 gain or loss generally applicable for consolidated return years beginning before January 1, 1997.

(a) The consolidated section 1231 net gain or loss for the taxable year shall be determined by taking into account the aggregate of the gains and losses to which section 1231 applies of the members of the group for the consolidated return year. Section 1231 gains and losses on intercompany transactions shall be reflected as provided in § 1.1502-13. Section 1231 losses that are “built-in deductions” shall be subject to the limitations of §§ 1.1502-21A(c) and 1.1502-22A(c), as provided in § 1.1502-15A(a) (or § 1.1502-21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, and 1.1502-22T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as provided in 1.1502-15T(a) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999) or (1.1502-21(c) and 1.1502-22(c), as provided in 1.1502-15(a), as applicable), as appropriate).

(b) *Effective date.* This section applies to any consolidated return years to which § 1.1502-21(h) or 1.1502-21T(g) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable does not apply. See § 1.1502-21(h) or 1.1502-21T(g) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable for effective dates of these sections.

[T.D. 7246, 38 FR 763, Jan. 4, 1973, as amended by T.D. 8677, 33323, June 27, 1996. Redesignated and amended by T.D. 8677, 61 FR 33334, June 27, 1996; T.D. 8823, 64 FR 36099, July 2, 1999]

§ 1.1502-41A Determination of consolidated net long-term capital gain and consolidated net short-term capital loss generally applicable for consolidated return years beginning before January 1, 1997.

(a) *Consolidated net long-term capital gain.* The consolidated net long-term capital gain shall be determined by taking into account (1) those gains and losses to which § 1.1502-22A(a) applies which are treated as long term under section 1222, and (2) the consolidated section 1231 net gain (computed in accordance with § 1.1502-23A).