

(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).

(b) *Consolidated net short-term capital loss.* The consolidated net short-term capital loss shall be determined by taking into account (1) those gains and losses to which § 1.1502-22A(a) applies which are treated as short term under section 1222, and (2) the consolidated net capital loss carryovers and carrybacks to the taxable year (as determined under § 1.1502-22A(b)).

(c) *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. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 8677, 61 FR 33323, June 27, 1996. Redesignated and amended by T.D. 8677, 61 FR 33334, June 27, 1996; T.D. 8823, 64 FR 36099, 36100, July 2, 1999]

REGULATIONS APPLICABLE TO TAXABLE YEARS BEGINNING BEFORE JUNE 28, 2002

§ 1.1502-77A Common parent agent for subsidiaries applicable for consolidated return years beginning before June 28, 2002.

(a) *Scope of agency of common parent corporation.* The common parent, for all purposes (other than the making of the consent required by paragraph (a)(1) of § 1.1502-75, the making of an election under section 936(e), the making of an election to be treated as a DISC under § 1.992-2, and a change of the annual accounting period pursuant to paragraph (b)(3)(ii) of § 1.991-1) shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Except as provided in the preceding sentence, no subsidiary shall have authority to act for or to represent itself in any such matter. For example, any election available to a subsidiary corporation in the computation of its separate taxable income must be made by the common parent, as must any change in an election previously made by the subsidiary corporation; all correspondence will be carried on directly

with the common parent; the common parent shall file for all extensions of time including extensions of time for payment of tax under section 6164; notices of deficiencies will be mailed only to the common parent, and the mailing to the common parent shall be considered as a mailing to each subsidiary in the group; notice and demand for payment of taxes will be given only to the common parent and such notice and demand will be considered as a notice and demand to each subsidiary; the common parent will file petitions and conduct proceedings before the Tax Court of the United States, and any such petition shall be considered as also having been filed by each such subsidiary. The common parent will file claims for refund or credit, and any refund will be made directly to and in the name of the common parent and will discharge any liability of the Government in respect thereof to any such subsidiary; and the common parent in its name will give waivers, give bonds, and execute closing agreements, offers in compromise, and all other documents, and any waiver or bond so given, or agreement, offer in compromise, or any other document so executed, shall be considered as having also been given or executed by each such subsidiary. Notwithstanding the provisions of this paragraph, any notice of deficiency, in respect of the tax for a consolidated return year, will name each corporation which was a member of the group during any part of such period (but a failure to include the name of any such member will not affect the validity of the notice of deficiency as to the other members); any notice and demand for payment will name each corporation which was a member of the group during any part of such period (but a failure to include the name of any such member will not affect the validity of the notice and demand as to the other members); and any levy, any notice of a lien, or any other proceeding to collect the amount of any assessment, after the assessment has been made, will name the corporation from which such collection is to be made. The provisions of this paragraph shall apply whether or not a consolidated return is made for any subsequent year, and