

(ii) Life consolidated net capital gain is computed under §§1.1502-41A or 1.1502-22T (as appropriate), applied in a manner consistent with paragraph (l)(4) of this section, except that it may not exceed consolidated partial LICTI (as determined under paragraph (j) of this section).

(iii) *Setoffs.* Setoffs are determined under paragraphs (m) or (n) of this section (as the case may be).

(p) *Transitional rule for credit carryovers.* For limitations on credits arising in taxable years ending before January 1, 1981, that may be carried over to taxable years beginning on or after that date, section 1507(c)(2)(A) of the Tax Reform Act of 1976 and the principles in paragraph (h)(3) of this section (relating to limitations on loss carryovers) apply.

(q) *Preemption.* The rules in this section preempt any inconsistent rules in other sections (§1.1502-1 through 1.1502-80) of the consolidated return regulations. For example, the rules in paragraph (m)(3)(vi) apply notwithstanding §§1.1502-21A(b)(3) and 1.1502-79A(a)(3) (or §1.1502-21, as appropriate).

(r) *Other consolidation principles.* The fact that this section treats the life and nonlife members as separate groups in computing, respectively, consolidated partial LICTI (or LO) and nonlife consolidated taxable income (or loss) does not affect the usual rules in §§1.1502-0—1.1502-80 unless this section provides otherwise. Thus, the usual rules in §1.1502-13 (relating to inter-company transactions) apply to both the life and nonlife members by treating them as members of one affiliated group.

(s) *Filing requirements.* Nonlife consolidated taxable income or loss under paragraph (h) of this section shall be determined on a separate Form 1120 or 1120 M and consolidated partial LICTI under paragraph (j) of this section shall be determined on a separate Form 1120 L. The consolidated return shall be made on a separate Form 1120, 1120 M, or 1120 L by the common parent (if the group includes a life company), which shows the set-offs under paragraphs (g), (m), and (n) of this section and clearly indicates by notation on the face of the return that it is a life-nonlife consolidated return (if the group includes a

life company). See also §1.1502-75(j), relating to statements and schedules for subsidiaries.

(Secs. 1502 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 637, 917; 26 U.S.C. 1502, 7805))

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

(a)-(h)(3) [Reserved]

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

[T.D. 8884, 65 FR 33759, May 25, 2000]

ADMINISTRATIVE PROVISIONS AND OTHER
RULES

§ 1.1502-75 Filing of consolidated returns.

(a) *Privilege of filing consolidated returns—(1) Exercise of privilege for first consolidated return year.* A group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents (in the manner provided in paragraph (b) of this section) to the regulations under section 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return. Such consolidated return may not be withdrawn after such last day (but the group may change the basis of its return at any time prior to such last day).

(2) *Continued filing requirement.* A group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year unless it has an election to discontinue filing consolidated returns under paragraph (c) of this section.

(b) *How consent for first consolidated year exercised—(1) General rule.* The consent of a corporation referred to in paragraph (a)(1) of this section shall be

made by such corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in paragraph (h)(2) of this section.

(2) *Consent under facts and circumstances.* If a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member has joined in the making of a consolidated return by such group. The following circumstances, among others, will be taken into account in making this determination:

(i) Whether or not the income and deductions of the member were included in the consolidated return;

(ii) Whether or not a separate return was filed by the member for that taxable year; and

(iii) Whether or not the member was included in the affiliations schedule, Form 851.

If the Commissioner determines that the member has joined in the making of the consolidated return, such member shall be treated as if it had filed a Form 1122 for such year for purposes of paragraph (h)(2) of this section.

(3) *Failure to consent due to mistake.* If any member has failed to join in the making of a consolidated return under either subparagraph (1) or (2) of this paragraph, then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the satisfaction of the Commissioner that the failure of such member to join in the making of the consolidated return was due to a mistake of law or fact, or to inadvertence. In such case, such member shall be treated as if it had filed a Form 1122 for such year for purposes of paragraph (h)(2) of this section, and thus joined in the making of the consolidated return for such year.

(c) *Election to discontinue filing consolidated returns—(1) Good cause—(i) In general.* Notwithstanding that a consolidated return is required for a taxable year, the Commissioner, upon application by the common parent, may for good cause shown grant permission