

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 Such consolidated return may not be withdrawn after such last day (but the group may change the basis of its return at any time prior to such last day).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

to a group to discontinue filing consolidated returns. Any such application shall be made to the Commissioner of Internal Revenue, Washington, DC 20224, and shall be made not later than the 90th day before the due date for the filing of the consolidated return (including extensions of time). In addition, if an amendment of the Code, or other law affecting the computation of tax liability, is enacted and the enactment is effective for a taxable year ending before or within 90 days after the date of enactment, then application for such a taxable year may be made not later than the 180th day after the date of enactment, and if the application is approved the permission to discontinue filing consolidated returns will apply to such taxable year notwithstanding that a consolidated return has already been filed for such year.

(ii) *Substantial adverse change in law affecting tax liability.* Ordinarily, the Commissioner will grant a group permission to discontinue filing consolidated returns if the net result of all amendments to the Code or regulations with effective dates commencing within the taxable year has a substantial adverse effect on the consolidated tax liability of the group for such year relative to what the aggregate tax liability would be if the members of the group filed separate returns for such year. Thus, for example, assume P and S filed a consolidated return for the calendar year 1966 and that the provisions of the Code have been amended by a bill which was enacted by Congress in 1966, but which is first effective for taxable years beginning on or after January 1, 1967. Assume further that P makes a timely application to discontinue filing consolidated returns. In order to determine whether the amendments have a substantial adverse effect on the consolidated tax liability for 1967, relative to what the aggregate tax liability would be if the members of the group filed separate returns for 1967, the difference between the tax liability of the group computed on a consolidated basis and taking into account the changes in the law effective for 1967 and the aggregate tax liability of the members of the group computed as if each such member filed

separate returns for such year (also taking into account such changes) shall be compared with the difference between the tax liability of such group for 1967 computed on a consolidated basis without regard to the changes in the law effective in such year and the aggregate tax liability of the members of the group computed as if separate returns had been filed by such members for such year without regard to the changes in the law effective in such year.

(iii) *Other factors.* In addition, the Commissioner will take into account other factors in determining whether good cause exists for granting permission to discontinue filing consolidated returns beginning with the taxable year, including:

(a) Changes in law or circumstances, including changes which do not affect Federal income tax liability,

(b) Changes in law which are first effective in the taxable year and which result in a substantial reduction in the consolidated net operating loss (or consolidated unused investment credit) for such year relative to what the aggregate net operating losses (or investment credits) would be if the members of the group filed separate returns for such year, and

(c) Changes in the Code or regulations which are effective prior to the taxable year but which first have a substantial adverse effect on the filing of a consolidated return relative to the filing of separate returns by members of the group in such year.

(2) *Discretion of Commissioner to grant blanket permission—*(i) *Permission to all groups.* The Commissioner, in his discretion, may grant all groups permission to discontinue filing consolidated returns if any provision of the Code or regulations has been amended and such amendment is of the type which could have a substantial adverse effect on the filing of consolidated returns by substantially all groups, relative to the filing of separate returns. Ordinarily, the permission to discontinue shall apply with respect to the taxable year of each group which includes the effective date of such an amendment.

(ii) *Permission to a class of groups.* The Commissioner, in his discretion, may

grant a particular class of groups permission to discontinue filing consolidated returns if any provision of the Code or regulations has been amended and such amendment is of the type which could have a substantial adverse effect on the filing of consolidated returns by substantially all such groups relative to the filing of separate returns. Ordinarily, the permission to discontinue shall apply with respect to the taxable year of each group within the class which includes the effective date of such an amendment.

(3) *Time and manner for exercising election.* If, under subparagraph (1) or (2) of this paragraph, a group has an election to discontinue filing consolidated returns for any taxable year and such group wishes to exercise such election, then the common parent must file a separate return for such year on or before the last day prescribed by law (including extensions of time) for the filing of the consolidated return for such year. See section 6081 (relating to extensions of time for filing returns).

(d) *When group remains in existence—*

(1) *General rule.* A group remains in existence for a tax year if the common parent remains as the common parent and at least one subsidiary that was affiliated with it at the end of the prior year remains affiliated with it at the beginning of the year, whether or not one or more corporations have ceased to be subsidiaries at any time after the group was formed. Thus, for example, assume that individual A forms corporation P. P acquires 100 percent of the stock of corporation S on January 1, 1965, and P and S file a consolidated return for the calendar year 1965. On May 1, 1966, P acquires 100 percent of the stock of S-1, and on July 1, 1966, P sells the stock of S. The group (consisting originally of P and S) remains in existence in 1966 since P has remained as the common parent and at least one subsidiary (now S-1) remains affiliated with it.

(2) *Common parent no longer in existence—*(i) *Mere change in identity.* For purposes of this paragraph, the common parent corporation shall remain as the common parent irrespective of a mere change in identity, form, or place of organization of such common parent corporation (see section 368(a)(1)(F)).

(ii) *Transfer of assets to subsidiary.* The group shall be considered as remaining in existence notwithstanding that the common parent is no longer in existence if the members of the affiliated group succeed to and become the owners of substantially all of the assets of such former parent and there remains one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation and which was a member of the group prior to the date such former parent ceases to exist. For purposes of applying paragraph (f)(2)(i) of § 1.1502-1 to separate return years ending on or before the date on which the former parent ceases to exist, such former parent, and not the new common parent, shall be considered to be the corporation described in such paragraph.

(iii) *Taxable years.* If a transfer of assets described in subdivision (ii) of this subparagraph is an acquisition to which section 381(a) applies and if the group files a consolidated return for the taxable year in which the acquisition occurs, then for purposes of section 381:

(a) The former common parent shall not close its taxable year merely because of the acquisition, and all taxable years of such former parent ending on or before the date of acquisition shall be treated as taxable years of the acquiring corporation, and

(b) The corporation acquiring the assets shall close its taxable year as of the date of acquisition, and all taxable years of such corporation ending on or before the date of acquisition shall be treated as taxable years of the transferor corporation.

(iv) *Exception.* With respect to acquisitions occurring before January 1, 1971, subdivision (iii) of this subparagraph shall not apply if the group, in its income tax return, treats the taxable year of the former common parent as having closed as of the date of acquisition.

(3) *Reverse acquisitions—*(i) *In general.* If a corporation (hereinafter referred to as the “first corporation”) or any member of a group of which the first corporation is the common parent acquires after October 1, 1965:

(a) Stock of another corporation (hereinafter referred to as the second corporation), and as a result the second corporation becomes (or would become but for the application of this subparagraph) a member of a group of which the first corporation is the common parent, or

(b) Substantially all the assets of the second corporation,

in exchange (in whole or in part) for stock of the first corporation, and the stockholders (immediately before the acquisition) of the second corporation, as a result of owning stock of the second corporation, own (immediately after the acquisition) more than 50 percent of the fair market value of the outstanding stock of the first corporation, then any group of which the first corporation was the common parent immediately before the acquisition shall cease to exist as of the date of acquisition, and any group of which the second corporation was the common parent immediately before the acquisition shall be treated as remaining in existence (with the first corporation becoming the common parent of the group). Thus, assume that corporations P and S comprised group PS (P being the common parent), that P was merged into corporation T (the common parent of a group composed of T and corporation U), and that the shareholders of P immediately before the merger, as a result of owning stock in P, own 90 percent of the fair market value of T's stock immediately after the merger. The group of which P was the common parent is treated as continuing in existence with T and U being added as members of the group, and T taking the place of P as the common parent.

For purposes of determining under (a) of this subdivision whether the second corporation becomes (or would become) a member of the group of which the first corporation is the common parent, and for purposes of determining whether the former stockholders of the second corporation own more than 50 percent of the outstanding stock of the first corporation, there shall be taken into account any acquisitions or redemptions of the stock of either corporation which are pursuant to a plan

of acquisition described in (a) or (b) of this subdivision.

(ii) *Prior ownership of stock.* For purposes of subdivision (i) of this subparagraph, if the first corporation, and any members of a group of which the first corporation is the common parent, have continuously owned for a period of at least 5 years ending on the date of the acquisition an aggregate of at least 25 percent of the fair market value of the outstanding stock of the second corporation, then the first corporation (and any subsidiary which owns stock of the second corporation immediately before the acquisition) shall, as a result of owning such stock, be treated as owning (immediately after the acquisition) a percentage of the fair market value of the first corporation's outstanding stock which bears the same ratio to (a) the percentage of the fair market value of all the stock of the second corporation owned immediately before the acquisition by the first corporation and its subsidiaries as (b) the fair market value of the total outstanding stock of the second corporation immediately before the acquisition bears to (c) the sum of (1) the fair market value, immediately before the acquisition, of the total outstanding stock of the first corporation, and (2) the fair market value, immediately before the acquisition, of the total outstanding stock of the second corporation (other than any such stock owned by the first corporation and any of its subsidiaries). For example, assume that corporation P owns stock in corporation T having a fair market value of \$100,000, that P acquires the remaining stock of T from individuals in exchange for stock of P, that immediately before the acquisition the total outstanding stock of T had a fair market value of \$150,000, and that immediately before the acquisition the total outstanding stock of P had a fair market value of \$200,000. Assuming P owned at least 25 percent of the fair market value of T's stock for 5 years, then for purposes of this subparagraph, P is treated as owning (immediately after the acquisition) 40 percent of the fair market value of its own outstanding stock, determined as follows:

$[\$150,000/(\$200,000+\$50,000)]\times 662/3\%=40\%$ .

Thus, if the former individual stockholders of T own, immediately after the acquisition more than 10 percent of the fair market value of the outstanding stock of P as a result of owning stock of T, the group of which T was the common parent is treated as continuing in existence with P as the common parent, and the group of which P was the common parent before the acquisition ceases to exist.

(iii) *Election.* The provisions of subdivision (ii) of this subparagraph shall not apply to any acquisition occurring in a taxable year ending after October 7, 1969, unless the first corporation elects to have such subdivision apply. The election shall be made by means of a statement, signed by any officer who is duly authorized to act on behalf of the first corporation, stating that the corporation elects to have the provisions of § 1.1502-75(d)(3)(ii) apply and identifying the acquisition to which such provisions will apply. The statement shall be filed, on or before the due date (including extensions of time) of the return for the group's first consolidated return year ending after the date of the acquisition, with the internal revenue officer with whom such return is required to be filed.

(iv) *Transfer of assets to subsidiary.* This subparagraph shall not apply to a transaction to which subparagraph (2)(ii) of this paragraph applies.

(v) *Taxable years.* If, in a transaction described in subdivision (i) of this subparagraph, the first corporation files a consolidated return for the first taxable year ending after the date of acquisition, then:

(a) The first corporation, and each corporation which, immediately before the acquisition, is a member of the group of which the first corporation is the common parent, shall close its taxable year as of the date of acquisition, and each such corporation shall, immediately after the acquisition, change to the taxable year of the second corporation, and

(b) If the acquisition is a transaction described in section 381(a)(2), then for purposes of section 381:

(1) All taxable years ending on or before the date of acquisition, of the first

corporation and each corporation which, immediately before the acquisition, is a member of the group of which the first corporation is the common parent, shall be treated as taxable years of the transferor corporation, and

(2) The second corporation shall not close its taxable year merely because of such acquisition, and all taxable years ending on or before the date of acquisition, of the second corporation and each corporation which, immediately before the acquisition, is a member of any group of which the second corporation is the common parent, shall be treated as taxable years of the acquiring corporation.

(vi) *Exception.* With respect to acquisitions occurring before April 17, 1968, subdivision (v) of this subparagraph shall not apply if the parties to the transaction, in their income tax returns, treat subdivision (i) as not affecting the closing of taxable years or the operation of section 381.

(4) [Reserved]

(5) *Coordination with section 833—(i) Election to continue old group.* If, solely by reason of the enactment of section 833 (relating to certain Blue Cross or Blue Shield organizations and certain other health insurers), an organization to which section 833 applies (a "section 833 organization") became the new common parent of an old group on January 1, 1987, the old group may elect to continue in existence with that section 833 organization as its new common parent, provided all the old groups having the same section 833 organization as their new common parent elect to continue in existence. To revoke this election, see paragraph (d)(5)(x) of this section. To file as a new group, see paragraph (d)(5)(v) of this section.

(ii) *Old group.* For purposes of this paragraph (d)(5), an old group is a group which, for its last taxable year ending in 1986, either filed a consolidated return or was eligible to (but did not) file a consolidated return.

(iii) *Manner of electing to continue—(A) Deemed election.* If all the members of all the old groups having the same section 833 organization as their new common parent are included for the

first taxable year beginning after December 31, 1986, on the same consolidated (or amended consolidated) return and a Form 1122 was not filed, the old groups are deemed to have elected under paragraph (d)(5)(i) of this section to continue in existence.

(B) *Delayed election.* If a deemed election to continue in existence was not made under paragraph (d)(5)(iii)(A) of this section, all the members of all the old groups having the same section 833 organization as their new common parent may make a delayed election under paragraph (d)(5)(i) of this section to continue in existence by:

(1) Filing an appropriate consolidated (or amended consolidated) return or returns for each taxable year beginning after December 31, 1986, (notwithstanding § 1.1502-75(a)(1)) on or before January 3, 1991, and

(2) On the top of any such return prominently affixing a statement containing the following declaration: "THIS RETURN" (or, if applicable, "AMENDED RETURN") "REFLECTS A DELAYED ELECTION TO CONTINUE UNDER § 1.1502-75T(d)(5)(iii)(B)". A delayed election to continue in existence automatically revokes a deemed election to file as a new group which was made under paragraph (d)(5)(vi) of this section.

(iv) *Effects of election to continue in existence.* If an old group or groups elect to continue in existence under paragraph (d)(5)(i) of this section, the following rules apply:

(A) *Taxable years.* Each member that filed returns other than on a calendar year basis shall close its taxable year on December 31, 1986, and change to a calendar year beginning on January 1, 1987. See section 843 and § 1.1502-76(a)(1).

(B) *Carryovers from separate return limitation years.* For purposes of applying the separate return limitation year rules to carryovers from taxable years beginning before 1987 to taxable years beginning after 1986, the following rules apply:

(1) Any taxable year beginning before 1987 of a corporation that was not a member of an old group (including a section 833 organization) will be treated as a separate return limitation year;

(2) Any taxable year beginning before 1987 of a corporation that was a member of an old group that, without regard to this section and the enactment of section 833, was a separate return limitation year will continue to be treated as a separate return limitation year;

(3) Any taxable year beginning before 1987 of a member of an old group (other than a separate return limitation year described in paragraph (d)(5)(iv)(B)(2) of this section) will not be treated as a separate return limitation year with respect to any corporation that was a member of such group for each day of that taxable year; and

(4) Any taxable year beginning before 1987 of a member of an old group will be treated as a separate return limitation year with respect to any corporation that was not a member of such group for each day of that taxable year (e.g., a corporation that was not a member of an old group, including a section 833 organization, or a corporation that was a member of another old group).

(C) *Five-year rules for life-nonlife groups.* Any life-nonlife election under section 1504(c)(2) in effect for an old group remains in effect. Any old group which was eligible to make a life-nonlife election will remain eligible to make the election. For purposes of section 1503(c), a nonlife member is treated as ineligible under § 1.1502-47(d)(13) with respect to a life member, unless both were members of the same affiliated group (determined without regard to the exclusions in section 1504(b)(1) and (2)) for five taxable years immediately preceding the taxable year in which the loss arose. See paragraph (d)(5)(ix) of this section for a tacking rule.

(v) *Election to file as a new group.* If, solely by reason of the enactment of section 833, a section 833 organization became the new common parent of an old group on January 1, 1987, the application of the five-year prohibition on reconsolidation in section 1504(a)(3)(A) to the old group is waived and the old group together with the new section 833 organization common parent may elect to file as a new group provided that all includible corporations elect to file a consolidated (or amended consolidated) return as a new group for the

first taxable year beginning after December 31, 1986. To revoke this election, see paragraph (d)(5)(x) of this section.

(vi) *Manner of electing to file as a new group*—(A) *Deemed election.* The old group or groups and the section 833 organization are deemed to have elected under paragraph (d)(5)(v) of this section to file as a new group by filing, for the first taxable year beginning after December 31, 1986, a Form 1122 and a consolidated (or amended consolidated) tax return.

(B) *Delayed election.* If a deemed election to file as a new group was not made pursuant to paragraph (d)(5)(vi)(A) of this section, the old group or groups and the section 833 organization may make a delayed election under paragraph (d)(5)(v) of this section to file as a new group by

(1) Filing an appropriate consolidated (or amended consolidated) return or returns for each taxable year beginning after December 31, 1986 (notwithstanding § 1.1502-75(a)(1)) on or before January 3, 1991, and

(2) On the top of any such return prominently affixing a statement containing the following declaration: “THIS RETURN” (or, if applicable, “AMENDED RETURN”) “REFLECTS A DELAYED ELECTION TO FILE AS A NEW GROUP UNDER § 1.1502-75T (d)(5)(vi)(B)”. A delayed election to file as a new group automatically revokes any deemed election to continue in existence which was made under paragraph (d)(5)(iii) of this section.

(vii) *Effects of election to file as a new group.* If an old group or groups elect to file as a new group under paragraph (d)(5)(v) of this section, the following rules apply:

(A) *Termination.* Each old group is treated as if it terminated on January 1, 1987, and the termination is not treated as resulting from the acquisition by a nonmember of all of the stock of the common parent.

(B) *Taxable years.* Each member that filed returns other than on a calendar year basis shall close its taxable year on December 31, 1986, and change to a calendar year beginning on January 1, 1987. See section 843 and § 1.1502-76(a)(1).

(C) *Separate return limitation year and life-nonlife groups.* For purposes of § 1.1502-1(f), sections 1503(c) and 1504(c), and § 1.1502-47, the group is treated as coming into existence as a new group on January 1, 1987. Thus, for example, paragraphs (d)(5)(iv) (B) and (C) of this section do not apply.

(viii) *Earnings and profits.* All distributions after January 1, 1987 by a corporation, whether or not such corporation was a member of an old group, to an existing Blue Cross or Blue Shield organization (as defined in section 833(c)(2)) out of earnings and profits accumulated before 1987 are deemed made out of earnings and profits accumulated in pre-affiliation years. See § 1.1502-32(h)(5).

(ix) *Five-year tacking rules for certain life-nonlife groups.* For purposes of applying § 1.1502-47(d) (5) and (12) to any taxable year ending after 1986 to a corporation, whether or not the corporation was a member of an old group,

(A) The determination of whether the corporation was in existence and a member or tentatively treated as a member of a group, for taxable years ending before 1987, is made without regard to the exclusions under section 1504(b) (1) and (2) of any section 833 organization or life insurance company (as the case may be) and

(B) A section 833 organization is not treated as having a change in tax character solely by reason of the loss of its tax-exempt status due to the enactment of section 833.

This paragraph (d)(5)(ix) does not apply if an election to file as a new group under paragraph (d)(5)(v) of this section is made.

(x) *Time to revoke elections made before September 5, 1990.* An election by an old group to continue in existence or to file as a new group that was made (or deemed made) before September 5, 1990, may be revoked by filing an appropriate return (or returns) on or before January 3, 1991. For purposes of this paragraph (d)(5)(x), appropriate returns include separate returns filed by each member of the group or consolidated returns filed in accordance with a delayed election either under paragraph (d)(5)(iii)(B) or (vi)(B) of this section.

(xi) *Examples.* The following examples illustrate this paragraph (d)(5). In

these examples, each corporation uses the calendar year as its taxable year.

*Example 1.* B is a section 833 organization. For several years, B has owned all of the outstanding stock of X, Y, and Z. X has owned all the outstanding stock of X<sub>1</sub> throughout X<sub>1</sub>'s existence and Y has owned all of the outstanding stock of Y<sub>1</sub> throughout Y<sub>1</sub>'s existence. For 1986 X and X<sub>1</sub> filed a consolidated federal income tax return but Y and Y<sub>1</sub> filed separate returns. Under paragraph (d)(5)(ii) of this section, X and X<sub>1</sub> and Y and Y<sub>1</sub> each constitute an old group because they either filed a consolidated return or were eligible to file a consolidated return for 1986. The X and Y groups may elect under paragraph (d)(5)(i) of this section to continue in existence. If they elect to continue, under paragraph (d)(5)(iv)(B) of this section, the separate return limitation year rules apply as follows: any taxable year of B or Z beginning before 1987 is treated as a separate return limitation year with respect to each other and to all other members of the group; any taxable year of X or X<sub>1</sub> beginning before 1987 is treated as a separate return limitation year with respect to B, Z, Y and Y<sub>1</sub>, but not with respect to each other; and any taxable year of Y or Y<sub>1</sub> beginning before 1987 is treated as a separate return limitation year with respect to B, Z, X and X<sub>1</sub>, but not with respect to each other.

*Example 2.* The facts are the same as in Example 1 except that B is owned by C, another section 833 organization. If the X and Y groups elect to continue, the results are the same as in Example 1, except that, under paragraph (d)(5)(iv)(B)(i) of this section, for purposes of applying the separate return limitation year rules, any taxable year of C beginning before 1987 is also treated as a separate return limitation year with respect to all other members of the group.

*Example 3.* The facts are the same as in Example 1 except that Y purchased Y<sub>1</sub> on January 1, 1985. If the X and Y groups elect to continue, the results are the same as in Example 1, except that, under paragraph (d)(5)(iv)(B)(2) of this section, for purposes of applying the separate return limitation year rules, any taxable year of Y<sub>1</sub> beginning before 1985 is treated as a separate return limitation year with respect to Y as well as with respect to all other members of the group.

*Example 4.* B, a section 833 organization, has owned all the stock of X since November 1984. X has owned all the stock of L, a life insurance company, throughout L's existence. In 1986, X and L properly filed a life-nonlife consolidated return. Under paragraph (d)(5)(i) of this section, the X group elects to continue in existence. Under paragraph (d)(5)(iv)(C) of this section, the life-nonlife election will remain in effect. However, losses of B which arise before 1990 cannot be used to offset the income of L. See section

1503(c)(2) and § 1.1502-47(d)(13) and paragraph (d)(5)(iv)(C) of this section. Under paragraph (d)(5)(iv)(B) of this section, the separate return limitation year rules apply as follows: any taxable year of B beginning before 1987 is treated as a separate return limitation year with respect to all other members of the group; and any taxable year of X or L beginning before 1987 is treated as a separate return limitation year with respect to B, but not with respect to each other.

*Example 5.* The facts are the same as Example 4 except that, on January 1, 1984, B formed L<sub>1</sub>, a life insurance company. Under paragraph (d)(5)(ix) of this section and section 1504(c), the first year L<sub>1</sub> is eligible to join in B's life-nonlife election is 1989.

*Example 6.* The facts are the same as in Example 4 except that B and the X group elect under paragraph (d)(5)(v) of this section to file as a new group. The X group will be considered to have terminated under § 1.1502-75(d)(1) on December 31, 1986. X and L are each separately subject to the separate return limitation year rules of § 1.1502-1(f). The first year L and L<sub>1</sub> are eligible to join the new group in a life-nonlife election is 1992 (five years after the new group is formed). See section 1504(c)(2) and paragraphs (d)(5)(vii)(C) and (ix) of this section.

The provisions contained in this Treasury decision are needed to immediately amend the consolidated return regulations in response to changes made by section 1012 of the Tax Reform Act of 1986. It is therefore found impracticable and contrary to the public interest to issue this Treasury decision with notice and public procedure under section 553(b) of title 5 of the United States Code or subject to the effective date limitations of section 553(d) of title 5, United States Code.

(e) *Failure to include subsidiary.* If a consolidated return is required for the taxable year under the provisions of paragraph (a)(2) of this section, the tax liability of all members of the group for such year shall be computed on a consolidated basis even though:

- (1) Separate returns are filed by one or more members of the group, or
- (2) There has been a failure to include in the consolidated return the income of any member of the group.

If subparagraph (1) of this paragraph applies, the amounts assessed or paid upon the basis of separate returns shall be considered as having been assessed or paid upon the basis of a consolidated return.

(f) *Inclusion of one or more corporations not members of the group*—(1) *Method of determining tax liability.* If a consolidated return includes the income of a corporation which was not a member of the group at any time during the consolidated return year, the tax liability of such corporation will be determined upon the basis of a separate return (or a consolidated return of another group, if paragraph (a)(2) or (b)(3) of this section applies), and the consolidated return will be considered as including only the income of the corporations which were members of the group during that taxable year. If a consolidated return includes the income of two or more corporations which were not members of the group but which constitute another group, the tax liability of such corporations will be computed in the same manner as if separate returns had been made by such corporations unless the Commissioner upon application approves the making of a consolidated return for the other group or unless under paragraph (a)(2) of this section a consolidated return is required for the other group.

(2) *Allocation of tax liability.* In any case in which amounts have been assessed and paid upon the basis of a consolidated return and the tax liability of one or more of the corporations included in the consolidated return is to be computed in the manner described in subparagraph (1) of this paragraph, the amounts so paid shall be allocated between the group composed of the corporations properly included in the consolidated return and each of the corporations the tax liability of which is to be computed on a separate basis (or on the basis of a consolidated return of another group) in such manner as the corporations which were included in the consolidated return may, subject to the approval of the Commissioner, agree upon or in the absence of an agreement upon the method used in allocating the tax liability of the members of the group under the provisions of section 1552(a).

(g) *Computing periods of limitation*—(1) *Income incorrectly included in consolidated return.* If:

(i) A consolidated return is filed by a group for the taxable year, and

(ii) The tax liability of a corporation whose income is included in such return must be computed on the basis of a separate return (or on the basis of a consolidated return with another group), then for the purpose of computing any period of limitation with respect to such separate return (or such other consolidated return), the filing of such consolidated return by the group shall be considered as the making of a return by such corporation.

(2) *Income incorrectly included in separate returns.* If a consolidated return is required for the taxable year under the provisions of paragraph (a)(2) of this section, the filing of separate returns by the members of the group for such year shall not be considered as the making of a return for the purpose of computing any period of limitation with respect to such consolidated return unless there is attached to each such separate return a statement setting forth:

(i) The most recent taxable year of the member for which its income was included in a consolidated return, and

(ii) The reasons for the group's belief that a consolidated return is not required for the taxable year.

(h) *Method of filing return and forms*—

(1) *Consolidated return made by common parent corporation.* The consolidated return shall be made on Form 1120 for the group by the common parent corporation. The consolidated return, with Form 851 (affiliations schedule) attached, shall be filed with the district director with whom the common parent would have filed a separate return.

(2) [Reserved]. For further guidance, see § 1.1502-75T(h)(2).

(3) *Persons qualified to execute returns and forms.* Each return or form required to be made or prepared by a corporation must be executed by the person authorized under section 6062 to execute returns of separate corporations.

(i) [Reserved]

(j) *Statements and schedules for subsidiaries.* The statement of gross income and deductions and the schedules required by the instructions on the return shall be prepared and filed in columnar form so that the details of the items of gross income, deductions, and credits for each member may be readily audited. Such statements and

schedules shall include in columnar form a reconciliation of surplus for each corporation, and a reconciliation of consolidated surplus. Consolidated balance sheets as of the beginning and close of the taxable year of the group, taken from the books of the members, shall accompany the consolidated return and shall be prepared in a form similar to that required for reconciliation of surplus.

(k) *Cross-reference.* See § 1.338(h)(10)-1(d)(7) for special rules regarding filing consolidated returns when a section 338(h)(10) election is made for a target acquired from a selling consolidated group.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7016, 34 FR 15556, Oct. 7, 1969; T.D. 7024, 35 FR 2774, Feb. 10, 1970; T.D. 7244, 37 FR 28897, Dec. 30, 1972; T.D. 7246, 38 FR 766, Jan. 4, 1973; T.D. 8438, 57 FR 44333, Sept. 25, 1992; T.D. 8515, 59 FR 2984, Jan. 20, 1994; T.D. 8560, 59 FR 41675, 41700, Aug. 15, 1994; T.D. 8858, 65 FR 1237, Jan. 7, 2000; 66 FR 9929, Feb. 13, 2001; T.D. 9100, 68 FR 70707, Dec. 19, 2003]

**§ 1.1502-75T Filing of consolidated returns (temporary).**

(a) through (h)(1) [Reserved]. For further guidance, see § 1.1502-75(a) through (h)(1).

(2) *Filing of Form 1122 for first year.* If, under the provisions of § 1.1502-75 (a)(1), a group wishes to file a consolidated return for a taxable year, then a Form 1122 ("Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return") must be executed by each subsidiary. For taxable years beginning before January 1, 2003, the executed Forms 1122 must be attached to the consolidated return for the taxable year. For taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by § 1.6001-1(e). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

(h)(3) through (k) [Reserved]. For further guidance, see § 1.1502-75(h)(3) through (k).

[T.D. 9100, 68 FR 70707, Dec. 19, 2003]

**§ 1.1502-76 Taxable year of members of group.**

(a) *Taxable year of members of group—*

(1) *Change to parent's taxable year.* The consolidated return of a group must be filed on the basis of the common parent's taxable year, and each subsidiary must adopt the common parent's annual accounting period for the first consolidated return year for which the subsidiary's income is includible in the consolidated return. If any member is on a 52-53-week taxable year, the rule of the preceding sentence shall, with the advance consent of the Commissioner, be deemed satisfied if the taxable years of all members of the group end within the same 7-day period. Any request for such consent shall be filed with the Commissioner of Internal Revenue, Washington, DC 20224, not later than the 30th day before the due date (not including extensions of time) for the filing of the consolidated return.

(2) *Includible insurance company as member of group.* If an includible insurance company required by section 843 to file its return on the basis of a calendar year is a member of the group and if the common parent of such group files its return on the basis of a fiscal year, then the first consolidated return which includes the income of such insurance company may be filed on the basis of the common parent's fiscal year, provided, however, that if such insurance company is a member of the group on the last day of the common parent's taxable year, all members other than such insurance company change to a calendar year or to a 52-53-week taxable year ending within a 7-day period which includes December 31, effective immediately after the close of the common parent's taxable year. If any member changes to a 52-53-week taxable year, the advance consent of the Commissioner shall be obtained in accordance with subparagraph (1) of this paragraph.

(b) *Items included in the consolidated return—*(1) *General rules—*(i) *In general.* A consolidated return must include the