

such consolidated unused credit multiplied by a fraction, the numerator of which is the credit earned with respect to any section 38 property placed in service in the consolidated unused credit year and owned by such member (whether or not placed in service by such member) at the close of the last day as of which the taxable income of such member is included in a consolidated return filed by the group, and the denominator of which is the consolidated credit earned for such unused credit year.

(d) *Carryover and carryback of consolidated unused foreign tax*—(1) *In general.* If a consolidated unused foreign tax can be carried under the principles of section 904(d) and paragraph (e) of § 1.1502-4 to a separate return year of a corporation (or could have been so carried if such corporation were in existence) which was a member of the group in the year in which such unused foreign tax arose, then the portion of such consolidated unused foreign tax attributable to such corporation (as determined under subparagraph (2) of this paragraph) shall be apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) under the principles of § 1.1502-21(b) (or §§ 1.1502-79A(a)(1) and (2), as appropriate) and shall be deemed paid or accrued in such separate return year to the extent provided in section 904(d).

(2) *Portion of consolidated unused foreign tax attributable to a member.* The portion of a consolidated unused foreign tax for any year attributable to a member of a group is an amount equal to such consolidated unused foreign tax multiplied by a fraction, the numerator of which is the foreign taxes paid or accrued for such year (including those taxes deemed paid or accrued, other than by reason of section 904(d)) to each foreign country or possession (or to all foreign countries or possessions if the overall limitation is effective) by such member, and the denominator of which is the aggregate of all such taxes paid or accrued for such year (including those taxes deemed paid or accrued, other than by reason of section 904(d)) to each such foreign country or possession (or to all foreign countries or possessions if the overall limitation is ef-

fective) by all the members of the group.

(e) *Carryover of consolidated excess charitable contributions to separate return years*—(1) *In general.* If the consolidated excess charitable contributions for any taxable year can be carried under the principles of section 170(b)(2) and paragraph (b) of § 1.1502-24 to a separate return year of a corporation (or could have been so carried if such corporation were in existence) which was a member of the group in the year in which such excess contributions arose, then the portion of such consolidated excess charitable contributions attributable to such corporation (as determined under subparagraph (2) of this paragraph) shall be apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) under the principles of § 1.1502-21(b) (or §§ 1.1502-79A(a)(1) and (2), as appropriate) and shall be a charitable contribution carryover to such separate return year.

(2) *Portion of consolidated excess charitable contributions attributable to a member.* The portion of the consolidated excess charitable contributions attributable to a member of a group is an amount equal to such consolidated excess contributions multiplied by a fraction, the numerator of which is the charitable contributions paid by such member for the taxable year, and the denominator of which is the aggregate of all such charitable contributions paid for such year by all the members of the group.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980; T.D. 8294, 55 FR 9438, Mar. 14, 1990; T.D. 8319, 55 FR 49038, Nov. 26, 1990; T.D. 8364, 56 FR 47402, Sept. 19, 1991; T.D. 8597, 60 FR 36710, July 18, 1995; T.D. 8677, 61 FR 33324, 33325, 33334, June 27, 1996; T.D. 8823, 64 FR 36100, July 2, 1999]

**§ 1.1502-80 Applicability of other provisions of law.**

(a) *In general.* The Internal Revenue Code, or other law, shall be applicable to the group to the extent the regulations do not exclude its application. Thus, for example, in a transaction to which section 381(a) applies, the acquiring corporation will succeed to the tax attributes described in section 381(c). Furthermore, sections 269 and 482 apply

for any consolidated year. Section 304 applies except as provided in paragraph (b) of this section.

(b) *Non-applicability of section 304.* Section 304 does not apply to any acquisition of stock of a corporation in an intercompany transaction or to any intercompany item from such transaction occurring on or after July 24, 1991.

(c) *Deferral of section 165.* For consolidated return years beginning on or after January 1, 1995, stock of a member is not treated as worthless under section 165 before the stock is treated as disposed of under the principles of § 1.1502-19(c)(1)(iii). See §§ 1.1502-11(d) and 1.1502-35T for additional rules relating to stock loss. For further guidance, see § 1.1502-80T(c).

(d) *Non-applicability of section 357(c)—*  
 (1) *In general.* Section 357(c) does not apply to any transaction to which § 1.1502-13, § 1.1502-13T, § 1.1502-14, or § 1.1502-14T applies, if it occurs in a consolidated return year beginning on or after January 1, 1995. For example, P, S, and T are members of a consolidated group, P owns all of the stock of S and T with bases of \$30 and \$20, respectively, S has a \$30 basis in its assets and \$40 of liabilities, and S merges into T in a transaction described in section 368(a)(1)(A) (and in section 368(a)(1)(D)); section 357(c) does not apply to the merger, P's basis in T's stock increases to \$50 (\$30 plus \$20), and T succeeds to S's \$30 basis in the assets transferred subject to the \$40 liability. Similarly, if S instead transferred its assets and liabilities to a newly formed subsidiary in a transaction to which section 351 applies, section 357(c) does not apply and S's basis in the subsidiary's stock is a \$10 excess loss account. This paragraph (d) does not apply to a transaction if the transferor or transferee becomes a nonmember as part of the same plan or arrangement. The transferor (or transferee) is treated as becoming a nonmember once it is no longer a member of a consolidated group that includes the transferee (or transferor). For purposes of this paragraph (d), any reference to a transferor or transferee includes, as the context may require, a reference to a successor or predecessor.

(2) *Prior period transactions.* If, in a tax year beginning before January 1, 1995, a member's stock with an excess loss account is transferred in a transaction to which § 1.1502-13, § 1.1502-13T, § 1.1502-14, or § 1.1502-14T applies, paragraph (d)(1) of this section applies to the stock transfer to the extent that the income, gain, deduction, or loss (if any) is not taken into account in a tax year beginning before January 1, 1995. For example, if P, S, and T, are members of a consolidated group, T's stock has an excess loss account, and P transfers the T stock to S in 1993 in a transaction to which section 351 and § 1.1502-13 apply, section 357(c) applies to the transfer only to the extent P's gain is taken into account in tax years beginning before January 1, 1995.

(e) *Non-applicability of section 163(e)(5).* Section 163(e)(5) does not apply to any intercompany obligation (within the meaning of § 1.1502-13(g)) issued in a consolidated return year beginning on or after July 12, 1995.

(f) *Non-applicability of section 1031.* Section 1031 does not apply to any intercompany transaction occurring in consolidated return years beginning on or after July 12, 1995.

[T.D. 8402, 57 FR 9385, Mar. 18, 1992, as amended by T.D. 8560, 59 FR 41703, Aug. 15, 1994; T.D. 8597, 60 FR 36710, July 18, 1995; T.D. 8677, 61 FR 33325, June 27, 1996; T.D. 8597, 62 FR 12098, Mar. 14, 1997; T.D. 9048, 68 FR 12291, Mar. 14, 2003; T.D. 9118, 69 FR 12801, Mar. 18, 2004; T.D. 9192, 70 FR 14411, Mar. 22, 2005]

**§ 1.1502-80T Applicability of other provisions of law (temporary).**

(a) and (b) [Reserved]. For further guidance, see § 1.1502-80(a) and (b).

(c) *Deferral of section 165.* Stock of a member is not treated as worthless under section 165 before the stock is treated as disposed of under the principles of § 1.1502-19(c)(1)(iii). If stock of a member would otherwise be treated as worthless under the principles of section 165, then, notwithstanding the previous sentence, such stock may be treated as worthless under section 165 immediately prior to the time such member ceases to be a member of the group. See §§ 1.1502-11(d) and 1.1502-35T for additional rules relating to stock loss. This paragraph (c) applies to taxable years beginning after March 18,