

§ 1.1502-91A Application of section 382 with respect to a consolidated group generally applicable for testing dates before June 25, 1999.

(a) *Determination and effect of an ownership change—(1) In general.* This section and §§1.1502-92A and 1.1502-93A set forth the rules for determining an ownership change under section 382 for members of consolidated groups and the section 382 limitations with respect to attributes described in paragraphs (e) and (f) of this section. These rules generally provide that an ownership change and the section 382 limitation are determined with respect to these attributes for the group (or loss subgroup) on a single entity basis and not for its members separately. Following an ownership change of a loss group (or a loss subgroup) under §1.1502-92A, the amount of consolidated taxable income for any post-change year which may be offset by pre-change consolidated attributes (or pre-change subgroup attributes) shall not exceed the consolidated section 382 limitation (or subgroup section 382 limitation) for such year as determined under §1.1502-93A.

(2) *Special rule for post-change year that includes the change date.* If the post-change year includes the change date, section 382(b)(3)(A) is applied so that the consolidated section 382 limitation (or subgroup section 382 limitation) does not apply to the portion of consolidated taxable income that is allocable to the period in the year on or before the change date. See generally §1.382-6 (relating to the allocation of income and loss). The allocation of consolidated taxable income for the post-change year that includes the change date must be made before taking into account any consolidated net operating loss deduction (as defined in §1.1502-21(a) or 1.1502-21T(a) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable).

(3) *Cross reference.* See §§1.1502-94A and 1.1502-95A for rules that apply section 382 to a corporation that becomes or ceases to be a member of a group or loss subgroup.

(b) *Definitions and nomenclature.* For purposes of this section and §§1.1502-92A through 1.1502-99A, unless otherwise stated:

(1) The definitions and nomenclature contained in section 382 and the regulations thereunder (including the nomenclature and assumptions relating to the examples in §1.382-2T(b)) and this section and §§1.1502-92A through 1.1502-99A apply; and

(2) In all examples, all groups file consolidated returns, all corporations file their income tax returns on a calendar year basis, the only 5-percent shareholder of a corporation is a public group, the facts set forth the only owner shifts during the testing period, and each asset of a corporation has a value equal to its adjusted basis.

(c) *Loss group—(1) Defined.* A loss group is a consolidated group that:

(i) Is entitled to use a net operating loss carryover to the taxable year that did not arise (and is not treated under §1.1502-21T(c) as arising) in a SRLY;

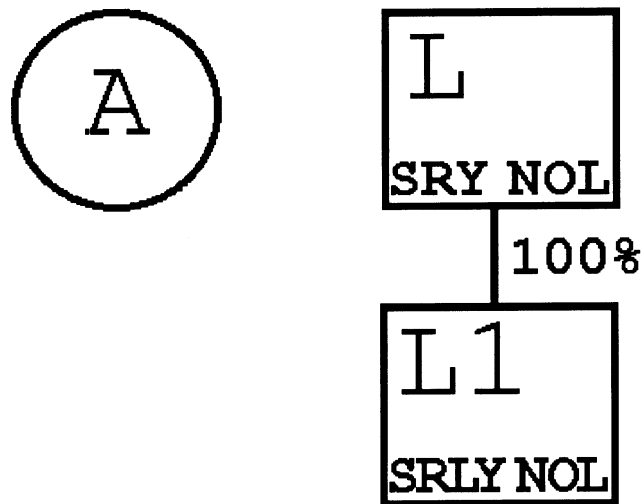
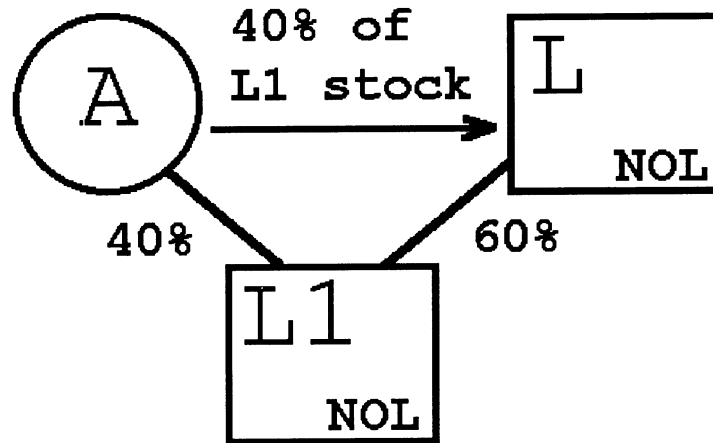
(ii) Has a consolidated net operating loss for the taxable year in which a testing date of the common parent occurs (determined by treating the common parent as a loss corporation); or

(iii) Has a net unrealized built-in loss (determined under paragraph (g) of this section by treating the date on which the determination is made as though it were a change date).

(2) *Coordination with rule that ends separate tracking.* A consolidated group may be a loss group because a member's losses that arose in (or are treated as arising in) a SRLY are treated as described in paragraph (c)(1)(i) of this section. See §1.1502-96A(a).

(3) *Example.* The following example illustrates the principles of this paragraph (c).

Example. Loss group. (a) L and L1 file separate returns and each has a net operating loss carryover arising in Year 1 that is carried over to Year 2. A owns 40 shares and L owns 60 shares of the 100 outstanding shares of L1 stock. At the close of Year 1, L buys the 40 shares of L1 stock from A. For Year 2, L and L1 file a consolidated return. The following is a graphic illustration of these facts:



(b) L and L1 become a loss group at the beginning of Year 2 because the group is entitled to use the Year 1 net operating loss carryover of L, the common parent, which did not arise (and is not treated under §1.1502-21(c) or 1.1502-21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable as arising) in a SRLY. See §1.1502-94A for rules relating to

the application of section 382 with respect to L1's net operating loss carryover from Year 1 which did arise in a SRLY.

(d) *Loss subgroup*—(1) *Net operating loss carryovers*. Two or more corporations that become members of a consolidated group (the current group) compose a loss subgroup if:

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(i) They were affiliated with each other in another group (the former group), whether or not the group was a consolidated group;

(ii) They bear the relationship described in section 1504(a)(1) to each other through a loss subgroup parent immediately after they become members of the current group; and

(iii) At least one of the members carries over a net operating loss that did not arise (and is not treated under §1.1502-21(c) or 1.1502-21T(c) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable as arising) in a SRLY with respect to the former group.

(2) *Net unrealized built-in loss.* Two or more corporations that become members of a consolidated group compose a loss subgroup if they:

(i) Have been continuously affiliated with each other for the 5 consecutive year period ending immediately before they become members of the group;

(ii) Bear the relationship described in section 1504(a)(1) to each other through a loss subgroup parent immediately after they become members of the current group; and

(iii) Have a net unrealized built-in loss (determined under paragraph (g) of this section on the day they become members of the group by treating that day as though it were a change date).

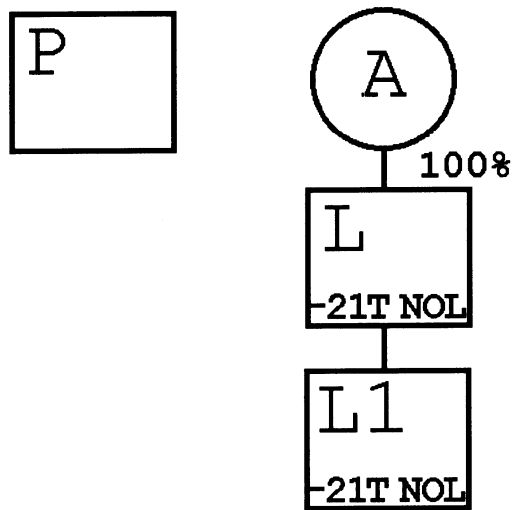
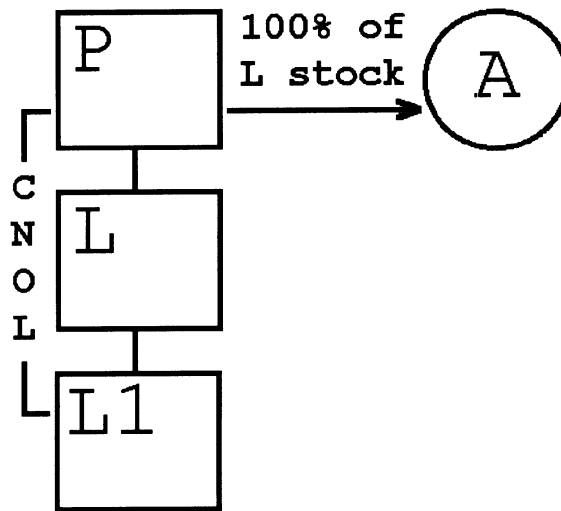
(3) *Loss subgroup parent.* A loss subgroup parent is the corporation that bears the same relationship to the other members of the loss subgroup as a common parent bears to the members of a group.

(4) *Principal purpose of avoiding a limitation.* The corporations described in paragraph (d)(1) or (2) of this section do not compose a loss subgroup if any one of them is formed, acquired, or availed of with a principal purpose of avoiding the application of, or increasing any limitation under, section 382. Instead, §1.1502-94A applies with respect to the attributes of each such corporation. This paragraph (d)(4) does not apply solely because, in connection with becoming members of the group, the members of a group (or loss subgroup) are rearranged to bear a relationship to the other members described in section 1504(a)(1).

(5) *Special rules.* See § 1.1502-95A(d) for rules concerning when a corporation ceases to be a member of a loss subgroup. See also §1.1502-96A(a) for a special rule regarding the end of separate tracking of SRLY losses of a member that has an ownership change or that has been a member of a group for at least 5 consecutive years.

(6) *Examples.* The following examples illustrate the principles of this paragraph (d).

Example 1. Loss subgroup. (a) P owns all the L stock and L owns all the L1 stock. The P group has a consolidated net operating loss arising in Year 1 that is carried to Year 2. On May 2, Year 2, P sells all the stock of L to A, and L and L1 thereafter file consolidated returns. A portion of the Year 1 consolidated net operating loss is apportioned under §1.1502-21(b) or 1.1502-21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable to each of L and L1, which they carry over to Year 2. The following is a graphic illustration of these facts:



(b) (1) L and L1 compose a loss subgroup within the meaning of paragraph (d)(1) of this section because—

(i) They were affiliated with each other in the P group (the former group);

(ii) They bear a relationship described in section 1504(a)(1) to each other through a loss subgroup parent (L) immediately after they became members of the L group; and

(iii) At least one of the members (here, both L and L1) carries over a net operating loss to the L group (the current group) that did not arise in a SRLY with respect to the P group.

(2) Under paragraph (d)(3) of this section, L is the loss subgroup parent of the L loss subgroup.

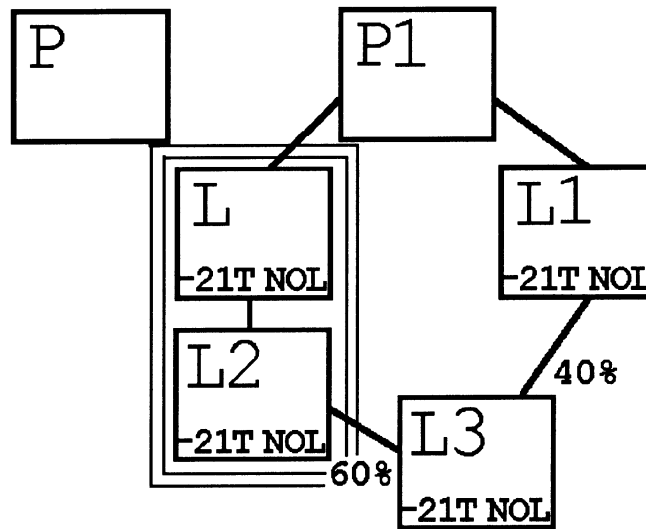
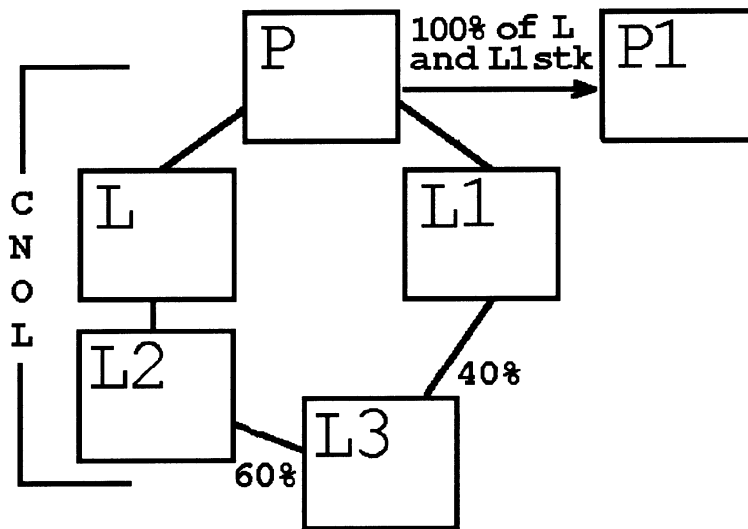
Example 2. Loss subgroup—section 1504(a)(1) relationship.

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(a) P owns all the stock of L and L1. L owns all the stock of L2. L1 and L2 own 40 percent and 60 percent of the stock of L3, respectively. The P group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. On May 22, Year 2, P sells all the stock of L and L1 to P1, the common parent of another consolidated group. The Year 1 consolidated net operating

loss is apportioned under §1.1502-21(b) or 1.1502-21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable, and each of L, L1, L2, and L3 carries over a portion of such loss to the first consolidated return year of the P1 group ending after the acquisition. The following is a graphic illustration of these facts:



(b) L and L2 compose a loss subgroup within the meaning of paragraph (d)(1) of this section. Neither L1 nor L3 is included in a loss subgroup because neither bears a relationship described in section 1504(a)(1) through a loss subgroup parent to any other

member of the former group immediately after becoming members of the P1 group.

Example 3. Loss subgroup—section 1504(a)(1) relationship. The facts are the same as in *Example 2*, except that the stock of L1 is transferred to L in connection with the sale of the

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L stock to P1. L, L1, L2, and L3 compose a loss subgroup within the meaning of paragraph (d)(1) of this section because—

(1) They were affiliated with each other in the P group (the former group);

(2) They bear a relationship described in section 1504(a)(1) to each other through a loss subgroup parent (L) immediately after they become members of the P1 group; and

(3) At least one of the members (here, each of L, L1, L2, and L3) carries over to the P1 group (the current group) a net operating loss that did not arise in a SRLY with respect to the P group (the former group).

(e) *Pre-change consolidated attribute*—

(1) *Defined.* A pre-change consolidated attribute of a loss group is—

(i) Any loss described in paragraph (c)(1) (i) or (ii) of this section (relating to the definition of loss group) that is allocable to the period ending on or before the change date; and

(ii) Any recognized built-in loss of the loss group.

(2) *Example.* The following example illustrates the principle of this paragraph (e).

Example. Pre-change consolidated attribute.

(a) The L group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. The L loss group has an ownership change at the beginning of Year 2.

(b) The net operating loss carryover of the L loss group from Year 1 is a pre-change consolidated attribute because the L group was entitled to use the loss in Year 2, the loss did not arise in a SRLY with respect to the L group, and therefore the loss was described in paragraph (c)(1)(i) of this section. Under paragraph (a) of this section, the amount of consolidated taxable income of the L group for Year 2 that may be offset by this loss carryover may not exceed the consolidated section 382 limitation of the L group for that year. See § 1.1502-93A for rules relating to the computation of the consolidated section 382 limitation.

(f) *Pre-change subgroup attribute*—(1) *Defined.* A pre-change subgroup attribute of a loss subgroup is—

(i) Any net operating loss carryover described in paragraph (d)(1)(iii) of this section (relating to the definition of loss subgroup); and

(ii) Any recognized built-in loss of the loss subgroup.

(2) *Example.* The following example illustrates the principle of this paragraph (f).

Example. Pre-change subgroup attribute. (a) P is the common parent of a consolidated

group. P owns all the stock of L, and L owns all the stock of L1. L2 is not a member of an affiliated group, and has a net operating loss arising in Year 1 that is carried over to Year 2. On December 11, Year 2, L1 acquires all the stock of L2, causing an ownership change of L2. During Year 2, the P group has a consolidated net operating loss that is carried over to Year 3. On November 2, Year 3, M acquires all the L stock from P. M, L, L1, and L2 thereafter file consolidated returns. All of the P group Year 2 consolidated net operating loss is apportioned under § 1.1502-21(b) or 1.1502-21T(b) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable to L and L2, which they carry over to the M group.

(b)(1) L, L1, and L2 compose a loss subgroup because—

(i) They were affiliated with each other in the P group (the former group);

(ii) They bore a relationship described in section 1504(a)(1) to each other through a loss subgroup parent (L) immediately after they became members of the L group; and

(iii) At least one of the members (here, both L and L2) carries over a net operating loss to the M group (the current group) that is described in paragraph (d)(1)(iii) of this section.

(2) For this purpose, L2's loss from Year 1 that was a SRLY loss with respect to the P group (the former group) is treated as described in paragraph (d)(1)(iii) of this section because of the application of the principles of § 1.1502-96A(a). See paragraph (d)(5) of this section. M's acquisition results in an ownership change of L, and therefore the L loss subgroup under § 1.1502-92A(a)(2). See § 1.1502-93A for rules governing the computation of the subgroup section 382 limitation.

(c) In the M group, L2's Year 1 loss continues to be subject to a section 382 limitation resulting from the ownership change that occurred on December 11, Year 2. See § 1.1502-96A(c).

(g) *Net unrealized built-in gain and loss*—(1) *In general.* The determination

whether a consolidated group (or loss subgroup) has a net unrealized built-in gain or loss under section 382(h)(3) is based on the aggregate amount of the separately computed net unrealized built-in gains or losses of each member that is included in the group (or loss subgroup) under paragraph (g)(2) of this section, including items of built-in income and deduction described in section 382(h)(6). Thus, for example, amounts deferred under section 267, or under § 1.1502-13 (other than amounts deferred with respect to the stock of a

member (or an intercompany obligation) included in the group (or loss subgroup) under paragraph (g)(2) of this section) are built-in items. The threshold requirement under section 382(h)(3)(B) applies on an aggregate basis and not on a member-by-member basis. The separately computed amount of a member included in a group or loss subgroup does not include any unrealized built-in gain or loss on stock (including stock described in section 1504(a)(4) and § 1.382-2T(f)(18)(ii) and (iii)) of another member included in the group or loss subgroup (or on an intercompany obligation). However, a member of a group or loss subgroup includes in its separately computed amount the unrealized built-in gain or loss on stock of another member (or on an intercompany obligation) not included in the group or loss subgroup. If a member is not included in a group (or loss subgroup) under paragraph (g)(2) of this section, the determination of whether the member has a net unrealized built-in gain or loss under section 382(h)(3) is made on a separate entity basis. See § 1.1502-94A(c) (relating to built-in gain or loss of a new loss member) and § 1.1502-96A(a) (relating to the end of separate tracking of certain losses).

(2) *Members included*—(i) *Consolidated group*. The members included in the determination whether a consolidated group has a net unrealized built-in gain or loss are all members of the group on the day that the determination is made other than—

(A) A new loss member with a net unrealized built-in loss described in § 1.1502-94A(a)(1)(ii); and

(B) Members included in a loss subgroup described in § 1.1502-91A(d)(2).

(ii) *Loss subgroup*. The members included in the determination whether a loss subgroup has a net unrealized built-in gain or loss are those members described in paragraphs (d)(2)(i) and (ii) of this section.

(3) *Acquisitions of built-in gain or loss assets*. A member of a consolidated group (or loss subgroup) may not, in determining its separately computed net unrealized built-in gain or loss, include any gain or loss with respect to assets acquired with a principal purpose to affect the amount of its net un-

realized built-in gain or loss. A group (or loss subgroup) may not, in determining its net unrealized built-in gain or loss, include any gain or loss of a member acquired with a principal purpose to affect the amount of its net unrealized built-in gain or loss.

(4) *Indirect ownership*. A member's separately computed net unrealized built-in gain or loss is adjusted to the extent necessary to prevent any duplication of unrealized gain or loss attributable to the member's indirect ownership interest in another member through a nonmember if the member has a 5-percent or greater ownership interest in the nonmember.

(h) *Recognized built-in gain or loss*—(1) *In general*. [Reserved]

(2) *Disposition of stock or an intercompany obligation of a member*. Gain or loss recognized by a member on the disposition of stock (including stock described in section 1504(a)(4) and § 1.382-2T(f)(18)(ii) and (iii)) of another member or an intercompany obligation disposed of before June 25, 1999 is treated as a recognized built-in gain or loss under section 382(h)(2) (unless disallowed under § 1.1502-20 or otherwise), even though gain or loss on such stock or obligation was not included in the determination of a net unrealized built-in gain or loss under paragraph (g)(1) of this section.

(3) *Deferred gain or loss*. Gain or loss that is deferred under provisions such as section 267 and § 1.1502-13 is treated as recognized built-in gain or loss only to the extent taken into account by the group during the recognition period.

(4) *Exchanged basis property*. If the adjusted basis of any asset is determined, directly or indirectly, in whole or in part, by reference to the adjusted basis of another asset held by the member at the beginning of the recognition period, the asset is treated, with appropriate adjustments, as held by the member at the beginning of the recognition period.

(i) [Reserved]

(j) *Predecessor and successor corporations*. A reference in this section and §§ 1.1502-92A through 1.1502-99A to a corporation, member, common parent, loss subgroup parent, or subsidiary includes, as the context may require, a

reference to a predecessor or successor corporation. For example, the determination whether a successor satisfies the continuous affiliation requirement of paragraph (d)(2)(i) of this section is made by reference to its predecessor.

[T.D. 8678, 61 FR 33337, June 27, 1996, as amended by T.D. 8823, 64 FR 36100, July 2, 1999. Redesignated and amended by T.D. 8824, 64 FR 36125, 36127, July 2, 1999]

§ 1.1502-92A Ownership change of a loss group or a loss subgroup generally applicable for testing dates before June 25, 1999.

(a) *Scope.* This section provides rules for determining if there is an ownership change for purposes of section 382 with respect to a loss group or a loss subgroup. See § 1.1502-94A for special rules for determining if there is an ownership change with respect to a new loss member and § 1.1502-96A(b) for special rules for determining if there is an ownership change of a subsidiary.

(b) *Determination of an ownership change—(1) Parent change method—(i) Loss group.* A loss group has an ownership change if the loss group's common parent has an ownership change under section 382 and the regulations thereunder. Solely for purposes of determining whether the common parent has an ownership change—

(A) The losses described in § 1.1502-91A(c) are treated as net operating losses (or a net unrealized built-in loss) of the common parent; and

(B) The common parent determines the earliest day that its testing period can begin by reference to only the attributes that make the group a loss group under § 1.1502-91A(c).

(ii) *Loss subgroup.* A loss subgroup has an ownership change if the loss subgroup parent has an ownership change under section 382 and the regulations thereunder. The principles of § 1.1502-95A(b) (relating to ceasing to be a member of a consolidated group) apply in determining whether the loss subgroup parent has an ownership change. Solely for purposes of determining whether the loss subgroup parent has an ownership change—

(A) The losses described in § 1.1502-91A(d) are treated as net operating losses (or a net unrealized built-in loss) of the loss subgroup parent;

(B) The day that the members of the loss subgroup become members of the group (or a loss subgroup) is treated as a testing date within the meaning of § 1.382-2(a)(4); and

(C) The loss subgroup parent determines the earliest day that its testing period can begin under § 1.382-2T(d)(3) by reference to only the attributes that make the members a loss subgroup under § 1.1502-91A(d).

(2) *Examples.* The following examples illustrate the principles of this paragraph (b).

Example 1. Loss group—ownership change of the common parent. (a) A owns all the L stock. L owns 80 percent and B owns 20 percent of the L1 stock. For Year 1, the L group has a consolidated net operating loss that resulted from the operations of L1 and that is carried over to Year 2. The value of the L stock is \$1000. The total value of the L1 stock is \$600 and the value of the L1 stock held by B is \$120. The L group is a loss group under § 1.1502-91A(c)(1) because it is entitled to use its net operating loss carryover from Year 1. On August 15, Year 2, A sells 51 percent of the L stock to C. The following is a graphic illustration of these facts: