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taxable year. On December 31, 1982, Y has a balance of \$400 in its section 904(d)(1)(A-C) overall foreign loss account. Y does not have a balance in a FORI overall foreign loss account. For 1983, Y has a general limitation overall foreign loss of \$200. For 1984, Y has general limitation income of \$1,200, all of which is foreign oil related income. In 1984, Y is required to recapture a total of \$300 computed as follows:

Amount of pre-1983 overall foreign loss
recaptured under paragraph (b)(2)
of this section\$100

The amount of the pre-1983 section 904(d)(1)(A-C) overall foreign loss account attributable to a general limitation loss recaptured from foreign oil related income is the lesser of \$400 (the loss) or 50 percent of \$1,200 (the separately determined foreign oil related income), but as limited by paragraph (b)(2)(ii) of this section to (12½ percent of \$400×2) – \$0, which is \$100.

Amount of post-1982 overall foreign
loss recaptured under paragraph
(c) of this section\$200

The amount of post-1982 general limitation overall foreign loss recaptured is the amount computed under § 1.904(f)-2(c)(1), which is the lesser of \$200 (the post-1982 loss) or 50 percent of \$1,200 (the income), but only to the extent that the amount of pre-1983 loss recaptured under paragraph (b) of this section is less than 50 percent of such income ((50 percent of \$1,200) – \$100 recaptured under paragraph (b)) = \$500).

Total amount recaptured in 1984\$300

At the end of 1984, Y has a balance in its pre-1983 section 904(d)(1)(A-C) overall foreign loss account of \$300, and has reduced its post-1982 general limitation overall foreign loss account to zero.

Example 4. Z is a domestic corporation which has the calendar year as its taxable year. On December 31, 1982, Z has a balance of \$400 in its section 904(d)(1)(A-C) overall foreign loss account, and a balance of \$1,000 in its FORI limitation overall foreign loss account. For 1983, Z has general limitation income of \$2,000, which includes foreign oil related income of \$1,000 and other general limitation income of \$1,000. Keeping these amounts separate for purposes of this section, Z is required to recapture a total of \$1,000 in 1983, computed as follows:

Amount recaptured under paragraph
(b)(1) of this section\$900

The amount of pre-1983 section 904(d)(1)(A-C) overall foreign loss account recaptured from general limitation income exclusive of foreign oil related income, in accordance with § 1.904(f)-2(c)(1), is the lesser of \$400 (the section 904(d)(1)(A-C) overall foreign loss) or 50 percent of \$1,000, the general limitation income exclusive of foreign oil related income, which is \$400.

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The amount of pre-1983 FORI overall foreign loss recaptured from foreign oil related income, in accordance with § 1.904(f)-2(c)(1), is the lesser of \$1,000 (the FORI overall foreign loss) or 50 percent of \$1,000 (the foreign oil related income), which is \$500.

Amount recaptured under paragraph

(b)(2) of this section\$100

The amount of pre-1983 FORI 907(b) overall foreign loss recaptured from section general limitation income exclusive of foreign oil related income is the lesser of \$500 (the remaining balance in that loss account) or 50 percent of \$1,000 (the general limitation income exclusive of foreign oil related income), but only to the extent that the amount recaptured from such income under paragraph (b)(1) of this section is less than 50 percent of such income, or \$100 (50 percent of \$1,000) – \$400 recaptured due to section 904(d)(1)(A-C) overall foreign loss account, and only up to the amount permitted by paragraph (b)(2)(ii) of this section, which is (12½ percent of \$1,000×1) – \$0, or \$125.

Total amount recaptured in 1983\$1,000

At the end of 1983, Z has reduced its pre-1983 section 904(d)(1)(A-C) overall foreign loss account to zero, and has a balance in its pre-1983 FORI overall foreign loss account of \$400.

[T.D. 8153, 52 FR 32003, Aug. 25, 1987; 52 FR 43434, Nov. 12, 1987]

§ 1.904(f)-7 Separate limitation loss and the separate limitation loss account.

[Reserved] For further guidance, see § 1.904(f)-7T.

[T.D. 9371, 72 FR 72598, Dec. 21, 2007]

§ 1.904(f)-7T Separate limitation loss and the separate limitation loss account (temporary).

(a) *Overview of regulations.* This section provides rules for determining a taxpayer's separate limitation losses, for establishing separate limitation loss accounts, and for making additions to and reductions from such accounts for purposes of section 904(f). Section 1.904(f)-8T provides rules for recharacterizing the balance in any separate limitation loss account under the general recharacterization rule of section 904(f)(5)(C).

(b) *Definitions.* The definitions in paragraphs (b)(1) through (4) of this section apply for purposes of this section and §§ 1.904(f)-8T and 1.904(g)-3T.

(1) *Separate category* means each separate category of income described in

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section 904(d) and any other category of income described in § 1.904-4(m). For example, income subject to section 901(j) or 904(h)(10) is income in a separate category.

(2) *Separate limitation income* means, with respect to any separate category, the taxable income from sources outside the United States, separately computed for that category for the taxable year. Separate limitation income shall be determined by taking into account any adjustments for capital gains and losses under section 904(b)(2) and § 1.904(b)-1. See § 1.904(b)-1(h)(1)(i).

(3) *Separate limitation loss* means, with respect to any separate category, the amount by which the foreign source gross income in that category is exceeded by the sum of expenses, losses and other deductions (not including any net operating loss deduction under section 172(a) or any expropriation loss or casualty loss described in section 907(c)(4)(B)(iii)) properly allocated and apportioned thereto for the taxable year. Separate limitation losses are determined separately for each separate category. Accordingly, income and deductions attributable to a separate category are not netted with income and deductions attributable to another separate category for purposes of determining the amount of a separate limitation loss. Separate limitation losses shall be determined by taking into account any adjustments for capital gains and losses under section 904(b)(2) and § 1.904(b)-1. See § 1.904(b)-1(h)(1)(i).

(c) *Separate limitation loss account.* Any taxpayer that sustains a separate limitation loss that is allocated to reduce separate limitation income of the taxpayer under the rules of § 1.904(g)-3T must establish a separate limitation loss account for the loss. The taxpayer must establish separate loss accounts for each separate category in which a separate limitation loss is incurred that is allocated to reduce other separate limitation income. A separate account must then be established for each separate category to which a portion of the loss is allocated. The balance in any separate limitation loss account represents the amount of separate limitation income that is subject to recharacterization (as income in another separate category) in a subsequent

year pursuant to § 1.904(f)-8T and section 904(f)(5)(F). From year to year, amounts may be added to or subtracted from the balance in such loss accounts, as provided in paragraphs (d) and (e) of this section.

(d) *Additions to separate limitation loss accounts—(1) General rule.* A taxpayer's separate limitation loss as defined in paragraph (b)(3) of this section shall be added to the applicable separate limitation loss accounts at the end of the taxable year to the extent that the separate limitation loss has reduced separate limitation income in one or more other separate categories of the taxpayer during the taxable year. For rules with respect to net operating loss carryovers, see paragraph (d)(3) of this section and § 1.904(g)-3T.

(2) *Separate limitation losses of another taxpayer.* If any portion of any separate limitation loss account of another taxpayer is allocated to the taxpayer in accordance with § 1.1502-9T (relating to consolidated separate limitation losses) the taxpayer shall add such amount to its applicable separate limitation loss account.

(3) *Additions to separate limitation loss account created by loss carryovers.* The taxpayer shall add to each separate limitation loss account all net operating loss carryovers to the current taxable year to the extent that separate limitation losses included in the net operating loss carryovers reduced foreign source income in other separate categories for the taxable year.

(e) *Reductions of separate limitation loss accounts.* The taxpayer shall subtract the following amounts from its separate limitation loss accounts at the end of its taxable year in the following order as applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* A separate limitation loss account is reduced by the amount of any separate limitation loss account which is allocated to another taxpayer in accordance with § 1.1502-9T (relating to consolidated separate limitation losses).

(2) *Reduction for offsetting loss accounts.* A separate limitation account is reduced to take into account any netting of separate limitation loss accounts under § 1.904(g)-3T(c).

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(3) *Reduction for amounts recaptured.* A separate limitation loss account is reduced by the amount of any separate limitation income that is earned in the same separate category as the separate limitation loss that resulted in the account and that is recharacterized in accordance with § 1.904(f)-8T (relating to recapture of separate limitation losses) or section 904(f)(5)(F) (relating to recapture of separate limitation loss accounts out of gain realized from dispositions).

(f) *Effective/applicability date.* This section applies to taxpayers that sustain separate limitation losses in taxable years beginning after December 21, 2007. For taxable years beginning after December 31, 1986, and on or before December 21, 2007, see section 904(f)(5).

(g) *Expiration date.* The applicability of this section expires on December 20, 2010.

[T.D. 9371, 72 FR 72598, Dec. 21, 2007]

§ 1.904(f)-8 Recapture of separate limitation loss accounts.

[Reserved] For further guidance, see § 1.904(f)-8T.

[T.D. 9371, 72 FR 72598, Dec. 21, 2007]

§ 1.904(f)-8T Recapture of separate limitation loss accounts (temporary).

(a) *In general.* A taxpayer shall recapture a separate limitation loss account as provided in this section. If the taxpayer has a separate limitation loss account or accounts in any separate category (the "loss category") and the loss category has income in a subsequent taxable year, the income shall be recharacterized as income in that other category or categories. The amount of income recharacterized shall not exceed the separate limitation loss accounts for the loss category as determined under § 1.904(f)-7T, including the aggregate separate limitation loss accounts from the loss category not previously recaptured under this paragraph (a). If the taxpayer has more than one separate limitation loss account in a loss category, and there is not enough income in the loss category to recapture the entire amount in all the loss accounts, then separate limitation income in the loss category shall

be recharacterized as separate limitation income in the separate limitation loss categories on a proportionate basis. This is determined by multiplying the total separate limitation income subject to recapture by a fraction, the numerator of which is the amount in a particular loss account and the denominator of which is the total amount in all loss accounts for the separate category.

(b) *Effect of recapture of separate limitation income on associated taxes.* Recharacterization of income under paragraph (a) of this section shall not result in the recharacterization of any tax. The rules of § 1.904-6, including the rules that the taxes are allocated on an annual basis and that foreign taxes paid on U.S. source income shall be allocated to the separate category that includes that U.S. source income (see § 1.904-6(a)), shall apply for purposes of allocating taxes to separate categories. Allocation of taxes pursuant to § 1.904-6 shall be made before the recapture of any separate limitation loss accounts of the taxpayer pursuant to the rules of this section.

(c) *Effective/applicability date.* This section applies to taxpayers that sustain separate limitation losses in taxable years beginning after December 21, 2007. For taxable years beginning after December 31, 1986, and on or before December 21, 2007, see section 904(f)(5).

(d) *Expiration date.* The applicability of this section expires on December 20, 2010.

[T.D. 9371, 72 FR 72598, Dec. 21, 2007]

§§ 1.904(f)-9—1.904(f)-11 [Reserved]

§ 1.904(f)-12 Transition rules.

(a) *Recapture in years beginning after December 31, 1986, of overall foreign losses incurred in taxable years beginning before January 1, 1987—(1) In general.* If a taxpayer has a balance in an overall foreign loss account at the end of its last taxable year beginning before January 1, 1987 (pre-effective date years), the amount of that balance shall be recaptured in subsequent years by recharacterizing income received in the income category described in section 904(d) as in effect for taxable years beginning after December 31, 1986 (post-effective date years), that is analogous