

§ 1.1502-2

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except a decrease resulting from a redemption to pay death taxes to which section 303 applies.

For purposes of subdivision (i) (a) and (b) of this subparagraph, the beginning of the taxable years specified therein shall be the beginning of such taxable years or October 1, 1965, whichever occurs later.

(2) *Operating rules.* For purposes of this paragraph:

(i) The term *stock* means all shares except nonvoting stock which is limited and preferred as to dividends, and

(ii) Section 318 (relating to constructive ownership of stock) shall apply in determining the ownership of stock, except that section 318(a) (2)(C) and (3)(C) shall be applied without regard to the 50-percent limitation contained therein.

(3) *Old members.* The term *old members* of a group means:

(i) Those corporations which were members of such group immediately preceding the first day of the taxable year in which the consolidated return change of ownership occurs, or

(ii) If the group was not in existence prior to the taxable year in which the consolidated return change of ownership occurs, the corporation which is the common parent for the taxable year to which the tax attribute is to be carried.

(4) *Reverse acquisitions.* If there has been a consolidated return change of ownership of a corporation under subparagraph (1) of this paragraph and the stock or assets of such corporation are subsequently acquired by another corporation in an acquisition to which § 1.1502-75(d)(3) applies so that the group of which the former corporation is the common parent is treated as continuing in existence, then the “old members”, as defined in subparagraph (3) of this paragraph, of such group immediately before the acquisition shall continue to be treated as “old members” immediately after the acquisition. For example, assume that corporations P and S comprise group PS, and PS undergoes a consolidated return change of ownership. Subsequently, the stock of P, the common parent, is acquired by corporation T, the common parent of group TU, in an acquisition to which section

368(a)(1)(B) and § 1.1502-75(d)(3) apply. The PS group is treated as continuing in existence with T as the common parent. P and S continue to be treated as old members, as defined in subparagraph (3) of this paragraph.

(h) *Consolidated group.* The term “consolidated group” means a group filing (or required to file) consolidated returns for the tax year.

(i) [Reserved]

(j) *Affiliated.* Corporations are affiliated if they are members of a group with each other.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7246, 38 FR 758, Jan. 4, 1973; T.D. 8294, 55 FR 9434, Mar. 14, 1990; T.D. 8319, 55 FR 49038, Nov. 26, 1990; T.D. 8560, 59 FR 41675, Aug. 15, 1994; T.D. 8677, 61 FR 33325, June 27, 1996; T.D. 8823, 64 FR 36101, July 2, 1999]

CONSOLIDATED TAX LIABILITY

§ 1.1502-2 Computation of tax liability.

The tax liability of a group for a consolidated return year shall be determined by adding together:

(a) The tax imposed by section 11 on the consolidated taxable income for such year (see § 1.1502-11 for the computation of consolidated taxable income);

(b) The tax imposed by section 541 on the consolidated undistributed personal holding company income;

(c) If paragraph (b) of this section does not apply, the aggregate of the taxes imposed by section 541 on the separate undistributed personal holding company income of the members which are personal holding companies;

(d) If paragraph (b) of this section does not apply, the tax imposed by section 531 on the consolidated accumulated taxable income (see § 1.1502-43);

(e) The tax imposed by section 594(a) in lieu of the taxes imposed by section 11 or 1201 on the taxable income of a life insurance department of the common parent of a group which is a mutual savings bank;

(f) The tax imposed by section 802(a) on consolidated life insurance company taxable income;

(g) The tax imposed by section 831(a) on the consolidated insurance company taxable income of the members which are subject to such tax;

(h) The tax imposed by section 1201, instead of the taxes computed under paragraphs (a) and (g) of this section, computed by reference to the net capital gain of the group (see § 1.1502-22) (or, for consolidated return years to which § 1.1502-22 does not apply, computed by reference to the excess of the consolidated net long-term capital gain over the consolidated net short-term capital loss (see § 1.1502-41A for the determination of the consolidated net long-term capital gain and the consolidated net short-term capital loss));

(i) [Reserved]

(j) The tax imposed by section 1333 on war loss recoveries; and

by allowing as a credit against such taxes the investment credit under section 38 (see § 1.1502-3), and the foreign tax credit under section 33 (see § 1.1502-4). For purposes of this section, the surtax exemption of the group for a consolidated return year is \$25,000, or if a lesser amount is allowed under section 1561, such lesser amount. See § 1.1561-2(a)(2). For increase in tax due to the application of section 47, see § 1.1502-3(f). For amount of tax surcharge, see section 51 and § 1.1502-7.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7093, 36 FR 4871, Mar. 13, 1971; T.D. 7937, 49 FR 3462, Jan. 27, 1984; T.D. 8677, 61 FR 33326, June 27, 1996; T.D. 8823, 64 FR 36099, July 2, 1999]

§ 1.1502-3 Consolidated tax credits.

(a) *Determination of amount of consolidated credit*—(1) *In general.* The credit allowed by section 38 for a consolidated return year of a group shall be equal to the consolidated credit earned. The consolidated credit earned is equal to the aggregate of the credit earned (as determined under subparagraph (2) of this paragraph) by all members of the group for the consolidated return year.

(2) *Determination of credit earned.* The credit earned of a member is an amount equal to 7 percent of such member's qualified investment (determined under section 46(c)). For purposes of computing a member's qualified investment, the basis of property shall not include any gain or loss realized with respect to such property by another member in an intercompany transaction (as defined in § 1.1502-13(b)), whether or not such gain or loss is de-

ferred. Thus, if section 38 property acquired in an intercompany transaction has a basis of \$100 to the purchasing member, and if the selling member has a \$20 gain with respect to such property, the basis of such property for purposes of computing the purchaser's qualified investment is only \$80. Such \$80 basis shall also be used for purposes of applying section 47 to such property. See paragraph (f) of this section.

(3) *Consolidated limitation based on amount of tax.* (i) Notwithstanding the amount of the consolidated credit earned for the taxable year, the consolidated credit allowed by section 38 to the group for the consolidated return year is limited to:

(a) So much of the consolidated liability for tax as does not exceed \$25,000, plus

(b) For taxable years ending on or before March 9, 1967, 25 percent of the consolidated liability for tax in excess of \$25,000, or

(c) For taxable years ending after March 9, 1967, 50 percent of the consolidated liability for tax in excess of \$25,000.

The \$25,000 amount referred to in the preceding sentence shall be reduced by any part of such \$25,000 amount apportioned under § 1.46-1 to component members of the controlled group (as defined in section 46(a)(5)) which do not join in the filing of the consolidated return. For further rules for computing the limitation based on amount of tax with respect to the suspension period (as defined in section 48(j)), see section 46(a)(2). The amount determined under this subparagraph is referred to in this section as the "consolidated limitation based on amount of tax."

(ii) If an organization to which section 593 applies or a cooperative organization described in section 1381(a) joins in the filing of the consolidated return, the \$25,000 amount referred to in subdivision (i) of this subparagraph (reduced as provided in such subdivision) shall be apportioned equally among the members of the group filing the consolidated return. The amount so apportioned equally to any such organization shall then be decreased in accordance with the provisions of section 46(d). Finally, the sum of all such equal portions (as decreased under section