M in a reorganization described in section 368(a)(1)(A). In Year 8, P purchases all of the stock of M for $300. At that time, M has a $10 net operating loss. In addition, M owns Asset D, which was acquired in an exchange described in section 1031 in connection with the surrender of Asset B. Asset C has a value of $80 and a basis of $100. Asset D has a value of $60 and a basis of $70. In Year 9, P has operating income of $100 and M recognizes $20 of loss on the sale of Asset C. In Year 10, P has operating income of $50 and M recognizes $50 of loss on the sale of Asset D.

(ii) *Analysis.* P's $50 loss on the sale of S stock is entirely attributable to duplicated loss. Therefore, pursuant to paragraph (g)(3) of this section, assuming the P group cannot establish otherwise, M's $10 net operating loss is treated as attributable to assets that were owned by S on the date of the disposition and that had bases in excess of value on such date. Without regard to any other limitations on the group's use of M's net operating loss, the P group cannot use M's $10 net operating loss pursuant to paragraph (g)(3)(iii)(D) of this section. Pursuant to paragraph (g)(3)(iv) of this section and §1.1502–32(b)(3)(iii)(D), such loss is treated as a noncapital, nondeductible expense of M incurred during the taxable year that it would otherwise be absorbed, namely in Year 9. In addition, the P group is denied the use of $10 of the loss recognized on the sale of Asset C. Finally, the P group is denied the use of $10 of the loss recognized on the sale of Asset D. Pursuant to paragraph (g)(3)(iv) of this section and §1.1502–32(b)(3)(iii)(D), each such disallowed loss is treated as a noncapital, nondeductible expense of M incurred during the taxable year that includes the date of the disposition of the asset with respect to which such loss was recognized.

Example 3. Transfers to avoid recognition of gain. (i) *Facts.* P owns all of the stock of S1 and S2. The S2 stock has a basis of $400 and a value of $500. S1 owns 50% of the S3 common stock with a basis of $150. S2 owns the remaining 50% of the S3 common stock with a basis of $100 and a value of $200 and one share of S3 preferred stock with a basis of $10 and a value of $9. P intends to sell all of its S2 stock to an unrelated buyer. P, therefore, engages in the following steps to dispose of S2 without recognizing a substantial portion of the built-in gain in S2. First, P causes a recapitalization of S3 in which S2's S3 common stock is exchanged for new S3 preferred shares. P then sells all of its S2 stock. Immediately after the sale of the S2 stock, S3 is a member of the P group.

(ii) *Analysis.* Pursuant to paragraph (b)(4) of this section, because S2 owns stock of S3 (another subsidiary of the same group) and, immediately after the sale of the S2 stock, S3 is a member of the group, then for purposes of applying paragraph (b) of this section, S2 is deemed to have transferred its S3

stock. Because S3 is a member of the group immediately after the transfer of the S2 stock and the S3 stock deemed transferred has a basis in excess of value, the group in the S3 stock is redetermined pursuant to paragraph (b)(1) of this section immediately prior to the sale of the S2 stock. Accordingly, P would recognize only $1 of gain on the sale of its S2 stock. However, because the recapitalization of the S3 was structured with a view to, and has the effect of, avoiding the recognition of gain on a disposition of stock by invoking the application of paragraph (b) of this section, paragraph (g)(4)(i) of this section applies. Accordingly, paragraph (b) of this section does not apply upon P's disposition of the S2 stock and P recognizes $100 gain on the disposition of the S2 stock.

(6) *General anti-avoidance rule.* If a taxpayer acts with a view to avoid the purposes of this section, appropriate adjustments will be made to carry out the purposes of this section.

(h) *Application of other rules of law.* See §1.1502–80(a) regarding the general applicability of other rules of law.

(i) [Reserved]

(j) *Effective/applicability dates.* This section applies after September 16, 2008. For prior law, see §§1.1502–35 and 1.1502–35T as contained in 26 CFR part 1 in effect on April 1, 2008.

[T.D. 9254, 71 FR 13010, Mar. 14, 2006, as amended by T.D. 9264, 71 FR 30603, 30607, May 30, 2006; T.D. 9254, 71 FR 48473, Aug. 21, 2006; T.D. 9322, 72 FR 17805, Apr. 10, 2007; T.D. 9342, 72 FR 39736, July 20, 2007; T.D. 9424, 73 FR 53951, Sept. 17, 2008; 75 FR 10172, Mar. 5, 2010]

§ 1.1502–36 Unified loss rule.

(a) *In general*—(1) *Scope.* This section provides rules for adjusting members' bases in stock of a subsidiary (S) and for reducing S's attributes when a member (M) transfers a loss share of S stock. See paragraph (f) of this section for definitions of the terms used in this section, including *transfer* and *value*.

(2) *Purpose.* The rules in this section have two principal purposes. The first is to prevent the consolidated return provisions from reducing a group's consolidated taxable income through the creation and recognition of noneconomic loss on S stock. The second is to prevent members (including former members) of the group from collectively obtaining more than one tax benefit from a single economic loss. Additional purposes are set forth in

other paragraphs of this section. The rules of this section must be interpreted and applied in a manner that is consistent with and reasonably carries out the purposes of this section.

(3) *Overview*—(i) *General application of section.* This section applies when M transfers a share of S stock and, after taking into account the effects of all applicable rules of law (even if the adjustments required by such provisions are not deemed effective until after the transfer, such as certain adjustments required under sections 108 and 1017 and § 1.1502–28), the share is a loss share. When this section applies, paragraph (b) of this section applies first and may redetermine members' bases in their shares of S stock. If the transferred share is a loss share after any basis redetermination under paragraph (b) of this section, paragraph (c) of this section applies and may reduce M's basis in the transferred loss share. If the transferred share is a loss share after any basis reduction required by paragraph (c) of this section, paragraph (d) of this section applies and may reduce attributes of S and subsidiaries that are lower-tier to S. Although the determination of whether there is a transfer of a loss share is made as of the transfer, this section applies, and any adjustments it requires are given effect, immediately before the transfer. Paragraphs (e), (f), and (g) of this section provide general operating rules (including rules for transfers of S stock between members), definitions, and an anti-abuse rule, respectively.

(ii) *Stock of multiple subsidiaries transferred in the transaction*—(A) *Initial application of section to transferred shares in lowest tier.* If shares of stock of more than one subsidiary are transferred in a transaction, the application of this section begins at the lowest tier. If no transferred shares of stock of the lowest-tier subsidiary (S2) are loss shares, any gain recognized with respect to the S2 shares immediately tiers up and adjusts members' bases in subsidiary stock under § 1.1502–32. However, if any of the transferred S2 shares are loss shares, paragraph (b) of this section applies with respect to those shares. If, after the application of paragraph (b) of this section, any transferred S2 shares are still loss shares, paragraph

(c) of this section applies with respect to those shares. If, after the application of paragraph (c) of this section, any transferred S2 shares are still loss shares and P makes an election under paragraph (d)(6) of this section with respect to those S2 shares, then paragraph (d) of this section applies with respect to those shares, but only to the extent necessary to give effect to the election. After taking into account the effects of any adjustments required by this initial application of this section, recognized gain or loss is computed on all transferred S2 shares. Any adjustments under paragraph (b) or (c) of this section, the effect of any election under paragraph (d)(6) of this section, any gain or loss recognized on the transferred S2 shares (whether allowed or disallowed), and any other related or resulting adjustments then tier-up and apply to adjust members' bases in subsidiary stock under § 1.1502–32.

(B) *Initial application of section to transferred shares in higher tiers.* After taking into account the effects of any adjustments described in paragraph (a)(3)(ii)(A) of this section, transferred shares in the next higher tier, and then in each next higher tier successively, other than the transferred loss shares at the highest tier, are treated in the manner described in paragraph (a)(3)(ii)(A) of this section.

(C) *Application of section to transferred shares in highest tier.* After paragraphs (b) and (c) of this section, and, to the extent necessary to give effect to any election under paragraph (d)(6) of this section, paragraph (d) of this section, have been applied to or with respect to all lower-tier transferred loss shares, and after all lower-tier adjustments have been taken into account (whether resulting from the application of paragraph (b) or (c) of this section, an election under paragraph (d)(6) of this section, the recognition of gain or loss on a transfer, or otherwise), paragraphs (b), then (c), and then (d) of this section apply with respect to the highest-tier shares that are transferred loss shares.

(D) *Final application of section to transferred shares in lower tiers.* After paragraph (d) of this section has been applied with respect to transferred loss shares in the highest tier, it is applied

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with respect to transferred shares in each next lower tier, successively, to the extent such shares are loss shares after the application of paragraph (d) of this section.

(4) *Other rules of law and coordination with deferral and disallowance provisions.* In general, this section applies and has effect immediately upon the transfer of a loss share even if the loss is deferred, disallowed, or otherwise not taken into account under any other applicable rules of law. However, see paragraph (e)(3) of this section for special rules applicable to shares of S stock transferred in an intercompany transaction. See section §1.1502–80(a) for the general applicability of other rules of law and a limitation on duplicative adjustments.

(5) *Nomenclature, factual assumptions adopted in this section.* Unless otherwise stated, for purposes of this section, the following nomenclature and assumptions are adopted. P is the common parent of a consolidated group of which S, M, and M1 are members. X is not a member of the P group. If a corporation has preferred stock outstanding, it is stock described in section 1504(a)(4). The examples set forth the only facts, elections, and activities relevant to the example. All transactions are between unrelated persons and are independent of each other. Tax liabilities and their effect, and the application of any other loss disallowance or deferral provisions of the Internal Revenue Code (Code) or regulations, including but not limited to section 267, are disregarded. All persons report on a calendar year basis and use the accrual method of accounting. All parties comply with filing and other requirements of this section and all other provisions of the Code and regulations.

(b) *Basis redetermination to reduce disparity*—(1) *In general*—(i) *Purpose and scope.* The rules of this paragraph (b) reduce the extent to which there is disparity in members' bases in shares of S stock. These rules supplement the operation of the investment adjustment system; their purpose is to prevent the realization of noneconomic loss and facilitate the elimination of duplicated loss when members hold S shares with disparate bases. The rules of this paragraph (b) only reallocate investment adjustments previously applied to

members' bases in shares of S stock, thus they do not alter the aggregate amount of basis in shares of S stock held by members or the aggregate amount of investment adjustments applied to shares of S stock.

(ii) *Special rules for applicability of redetermination rule.* Notwithstanding the general rule in paragraph (b)(2) of this section, members' bases in shares of S stock are not redetermined under this paragraph (b) if—

(A) There is no disparity among members' bases in shares of S common stock and no member owns a share of S preferred stock with respect to which there is unrecognized gain or loss; or

(B) All the shares of S stock held by members are transferred to one or more nonmembers, become worthless under section 165 (taking into account the provisions of §1.1502–80(c)), or a combination thereof, in one fully taxable transaction. However, in such a case, P may elect to redetermine such bases under this paragraph (b). Such an election is made in the manner provided in paragraph (e)(5) of this section. If stock of more than one subsidiary is transferred in the transaction, the election may be made with respect to one or more of such subsidiaries.

(iii) *Investment adjustment.* For purposes of this paragraph (b), the term *investment adjustment* includes adjustments specially allocated under §1.1502–32(c)(1)(ii)(B) and remaining adjustments described in §1.1502–32(c)(1)(iii). In applying any provision of this section, the term includes all such adjustments reflected in the basis of the share as of the application of the provision, whether originally allocated under §1.1502–32 or otherwise. The term therefore includes adjustments previously reallocated to the share, and it does not include adjustments previously reallocated from the share, whether pursuant to this section or any other provision of law. It also includes the proportionate amount of adjustments reflected in the exchanged basis of a share, such as the basis determined under section 358 in connection with a reorganization or a transaction qualifying under section 355.

(2) *Basis redetermination rule.* If M transfers a loss share of S stock, all

members' bases in all their shares of S stock are subject to redetermination under this paragraph (b). The determination of whether a share is a loss share is made as of the transfer, taking into account the effects of all applicable rules of law. The redeterminations are made immediately before applying paragraph (c) of this section and in accordance with the following:

(i) *Decreasing the bases of transferred loss shares*—(A) *Removing positive investment adjustments from transferred loss shares of common stock.* M's basis in each of its transferred loss shares of S common stock is first reduced, but not below value, by removing positive investment adjustments previously applied to the basis of the share. The positive investment adjustments removed from transferred loss shares of S common stock are reallocated under paragraph (b)(2)(ii) of this section after negative investment adjustments are reallocated under paragraph (b)(2)(i)(B) of this section.

(B) *Reallocating negative investment adjustments from shares of S common stock.* If a transferred share is still a loss share after applying paragraph (b)(2)(i)(A) of this section, M's basis in the share is reduced, but not below value, by reallocating negative investment adjustments to the transferred loss share (whether common or preferred stock) from members' shares of S common stock that are not transferred loss shares. The adjustments reallocated under this paragraph (b)(2)(i)(B) are reallocated and applied first to M's bases in transferred loss shares of S preferred stock and then to M's bases in transferred loss shares of S common stock. Reallocations under this paragraph (b)(2)(i)(B) are made in a manner that, to the greatest extent possible, reduces the disparity among members' bases in all transferred loss shares of S preferred stock, and reduces the disparity among members' bases in all shares of S common stock.

(ii) *Increasing the bases of gain preferred and all common shares*—(A) *Preferred stock.* After the application of paragraph (b)(2)(i) of this section, the positive investment adjustments removed from transferred loss shares of S common stock under paragraph (b)(2)(i)(A) of this section are reallo-

cated and applied to increase, but not above value, members' bases in shares of S preferred stock (without regard to whether such shares are transferred in the transaction). Reallocations under this paragraph (b)(2)(ii)(A) are made in a manner that, to the greatest extent possible, reduces the disparity among members' bases in all shares of S preferred stock.

(B) *Common stock.* Any positive investment adjustments removed from transferred loss shares of S common stock under paragraph (b)(2)(i)(A) of this section and not reallocated and applied to S preferred shares are reallocated and applied to increase members' bases in shares of S common stock. Reallocations are made to shares of S common stock without regard to whether a particular share is a loss share or a transferred share, and without regard to the share's value. Reallocations under this paragraph (b)(2)(ii)(B) are made in a manner that, to the greatest extent possible, reduces the disparity among members' bases in all shares of S common stock.

(iii) *Operating rules*—(A) *Method.* In general, reallocations should be made first with respect to the earliest available adjustments. However, the overall application of this paragraph (b) to a transaction must be made in a manner that, to the greatest extent possible, reduces basis disparity (as provided in paragraphs (b)(2)(i)(B) and (b)(2)(ii) of this section). The specific reallocation of an investment adjustment under this paragraph (b) may be made using any reasonable method or formula that is consistent with the provisions of this paragraph (b)(2) and furthers the purposes of this section.

(B) *Limits on reallocation*—(*1*) *Restriction to members' outstanding shares.* Investment adjustments can only be reallocated to shares that were held by members at the time the adjustment was originally applied.

(*2*) *Limitation by prior use*—(*i*) *In general.* In order to prevent the reallocation of investment adjustments from either increasing or decreasing members' aggregate bases in subsidiary stock, no investment adjustment (positive or negative) may be reallocated under this paragraph (b)(2) to the extent that it was (or would have been)

used prior to the time that it would otherwise be reallocated under this paragraph (b)(2). For this purpose, an investment adjustment was used (or would have been used) to the extent that it was reflected in (or would have been reflected in) the basis of a share of subsidiary stock and the basis of that share has already been taken into account, directly or indirectly, in determining income, gain, deduction, or loss (including by affecting the application of this section to a prior transfer of subsidiary stock) or in determining the basis of any property that is not subject to §1.1502–32. However, if the prior use was in an intercompany transaction, an investment adjustment may be reallocated to the extent that §1.1502–13 has prevented the gain or loss on the transaction from being taken into account. (In that case, appropriate adjustments must be made to the intercompany item from the prior intercompany transaction that has not yet been taken into account.) Further, if an investment adjustment was reflected in (or would have been reflected in) the basis of a share that has been taken into account, the limitation on reallocation under this paragraph (b)(2)(iii)(B)(*2*) does not apply to the extent the basis of that share would not change as a result of the reallocation (for example, because the reallocation is between shares that are both lower-tier to the share with the previously used basis). See §1.1502–32(c)(1)(ii)(B) regarding special allocations applicable to the tier-up of the reallocated investment adjustment if the reallocation is limited under this paragraph (b)(2)(iii)(B)(*2*) due to prior use at a higher tier.

(*ii*) *Example.* The application of this paragraph (b)(2)(iii)(B)(*2*) is illustrated by the following example:

Example. (i) *Facts.* P owns all 20 shares of M stock, and 10 shares of S stock. M owns the remaining 10 shares of S stock. In year 1, S recognizes $200 of income that results in a $10 positive investment adjustment being allocated to each share of S stock. The group does not recognize any other items. The $100 positive adjustment to M's basis in the S stock tiers up, and results in a $5 positive adjustment to each share of M stock. In year 2, P sells one share of M stock and recognizes a gain. In year 3, M sells one loss share of S stock, and this paragraph (b) applies and re-

quires a reallocation of the year 1 positive investment adjustment applied to the basis of the transferred S share.

(ii) *Application of limitation by prior use.* M's basis in the transferred loss share of S stock reflects a $10 positive investment adjustment attributable to S's year 1 income. Under the general rule of this paragraph (b), that $10 would be subject to reallocation to reduce basis disparity. However, that $10 adjustment had originally tiered up to adjust P's basis in its M shares and, as a result, $.50 of that adjustment was reflected in P's basis in each share of M stock. When P sold the share of M stock, the basis of that share (which included the tiered-up $.50) was used in determining the gain on the sale. Thus, $.50 of the $10 investment adjustment originally allocated to the transferred S share that tiered-up to the sold M share was previously used and, as such, cannot be reallocated in a manner that would (if it were the original allocation) affect the basis of the sold M share. Accordingly, no more than $9.50 of the adjustment to M's transferred S share could be reallocated to P's shares of S stock. If so, under the special allocation rule in §1.1502–32(c)(1)(ii)(B), the tier-up of this $9.50 would only be allocated among P's remaining 19 shares of M stock. Alternatively, all $10 of the investment adjustment could be reallocated to M's other S shares (because the tier-up to P's M shares would have been the same regardless which of M's shares of S stock were adjusted).

(iii) *Application of limitation where adjustment would have been used.* The facts are the same as in paragraph (i) of this *Example* except that M does not sell any shares of S stock and, in year 3, P sells a loss share of S stock. As in paragraph (i) of this *Example*, when P sold the share of M stock, the basis of that share was used in determining the gain on the share. When P sells the loss share of S stock, the $10 positive investment adjustment from S's year 1 income cannot be reallocated in a manner that would (if it were the original adjustment) affect the basis of the sold M share. If this $10 positive investment adjustment had originally been allocated to the S shares held by M, $.50 of the $10 investment adjustment would have tiered up to the M share that P sold, would have been reflected in P's basis in that M share, and would have been used in determining P's gain or loss on the sale. Accordingly, up to $9.50 of the $10 investment adjustment applied to the basis of P's transferred S share could be reallocated to M's shares of S stock. If so, under the special allocation rule in §1.1502–32(c)(1)(ii)(B), the tier-up of this $9.50 would only be allocated among P's remaining 19 shares of M stock. Alternatively, all $10 of the investment adjustment could be reallocated to P's other S shares.

(3) *Examples.* The general application of this paragraph (b) is illustrated by the following examples:

Example 1. Transfer of stock received in section 351 exchange. (i) *Redetermination to prevent noneconomic loss.* (A) *Facts.* For many years, M has owned two assets, Asset 1 and Asset 2. On January 1, year 1, M receives the only four outstanding shares of S common stock (Block 1 shares) in exchange for Asset 1, which has a basis and value of $80. Section 351 applies to the exchange and, therefore, under section 358, M's aggregate basis in the Block 1 shares is $80 ($20 per share). On July 1, year 2, M receives another share of S common stock (Block 2 share) in exchange for Asset 2, which has a basis of $0 and value of $20. Section 351 applies to this exchange and, under section 358, M's basis in the Block 2 share is $0. On October 1, year 3, S sells Asset 2 for $20, recognizing a $20 gain. On December 31, year 3, M sells one of its Block 1 shares to X for $20. After taking into account the effects of all applicable rules of law, M's basis in each Block 1 share is $24 (M's original $20 basis increased under § 1.1502–32 by $4, the share's allocable portion of the $20 gain recognized on the sale of Asset 2). In addition, M's basis in its Block 2 share is $4 (M's original $0 basis increased under § 1.1502–32 by $4 (the share's allocable portion of the $20 gain recognized on the sale of Asset 2)). M's sale of the Block 1 share is a transfer of a loss share and therefore subject to this section.

(B) *Basis redetermination under this paragraph (b).* Under this paragraph (b), M's bases in all its shares of S stock are subject to redetermination. First, paragraph (b)(2)(i)(A) of this section applies to reduce M's basis in the transferred loss share, but not below value, by removing positive investment adjustments applied to the basis of the share. Accordingly, M's basis in the transferred Block 1 share is reduced by $4 (the amount of the positive investment adjustment applied to the share), from $24 to $20. Even if there were negative investment adjustments applied to adjust the bases of nontransferred common shares, no further reduction to the basis of the share would be required under this paragraph (b) because the basis of the transferred share is then equal to the share's value. Under paragraph (b)(2)(ii)(B) of this section, the positive investment adjustment removed from the transferred loss share is reallocated and applied to increase M's bases in its S common shares in a manner that reduces disparity in M's bases in all the S common shares, to the greatest extent possible. Accordingly, the $4 positive investment adjustment removed from the Block 1 share is reallocated and applied to the basis of the Block 2 share, increasing it from $4 to $8.

(C) *Application of paragraphs (c) and (d) of this section.* Because M's sale of the Block 1 share is not a transfer of a loss share after

the application of this paragraph (b), neither paragraph (c) of this section nor paragraph (d) of this section applies to the transfer.

(ii) *Redetermination to eliminate duplicated loss.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 1,* except that, at the time of the second contribution, the value of Asset 1 had declined to $20 and so, instead of contributing Asset 2, M contributed Asset 3 to S in exchange for the Block 2 share. At the time of that exchange, Asset 3 had a basis and value of $5. On October 1, year 3, S sells Asset 1 for $20, recognizing a $60 loss that is absorbed by the group. On December 31, year 3, M sells one of its Block 1 shares to X for $5. After taking into account the effects of all applicable rules of law, M's basis in each Block 1 share is $8 (M's original $20 basis decreased under § 1.1502–32 by $12 (the share's allocable portion of the $60 loss recognized on the sale of Asset 1)). M's basis in its Block 2 share is an excess loss account of $7 (M's original basis of $5 reduced under § 1.1502–32 by $12, the share's allocable portion of the loss recognized on the sale of Asset 1). M's sale of the Block 1 share is a transfer of a loss share and therefore subject to this section.

(B) *Basis redetermination under this paragraph (b).* Under this paragraph (b), M's bases in all its shares of S stock are subject to redetermination. There are no positive investment adjustments and so there is no adjustment under paragraph (b)(2)(i)(A) of this section. However, under paragraph (b)(2)(i)(B) of this section, M's basis in the transferred Block 1 share is reduced, but not below value, by reallocating negative investment adjustments from common shares that are not transferred loss shares. In total, there were $48 of negative investment adjustments applied to common shares that are not transferred loss shares. Accordingly, M's basis in the Block 1 share is reduced by $3, from $8 to its value of $5. Under paragraph (b)(2)(i)(B) of this section, the negative investment adjustments applied to the transferred share are reallocated from (and therefore cause an increase in the basis of) S common shares that are not transferred loss shares in a manner that reduces disparity among members' bases in all S common shares to the greatest extent possible. Accordingly, the $3 negative investment adjustment reallocated and applied to the transferred Block 1 share is reallocated entirely from the Block 2 share, increasing the basis in the Block 2 share from an excess loss account of $7 to an excess loss account of $4.

(C) *Application of paragraphs (c) and (d) of this section.* Because M's sale of the Block 1 share is not a transfer of a loss share after the application of this paragraph (b), neither paragraph (c) of this section nor paragraph (d) of this section applies to the transfer.

(iii) *Nonapplicability of redetermination rule to sale of entire interest.* The facts are the

same as in paragraph (ii)(A) of this *Example 1*, except that, on December 31, year 3, M sells all its shares of S stock to X for $25. M's sale of the S stock to X is a transfer of all of the shares of S stock held by members to one or more nonmembers in one fully taxable transaction and, therefore, basis is not redetermined under this paragraph (b). Accordingly, the sale of the Block 1 shares remains a transfer of loss shares and, as such, subject to paragraphs (c) and (d) of this section. However, paragraphs (c)(7) and (d)(3)(i)(A) of this section apply netting principles to prevent adjustments under either paragraph (c) or paragraph (d) of this section, respectively. Alternatively, the group could elect to apply this paragraph (b). In that case, the $12 negative adjustment applied to the Block 2 shares would be reallocated to the Block 1 shares with the result that there would be no loss (or gain) on any of the transferred shares following the application of this paragraph (b). In that case, there would be no further application of this section to the transfer.

(iv) *Transfer of entire interest, partially taxable.* The facts are the same as in paragraph (iii) of this *Example 1*, except that, instead of selling the Block 2 share to X, M contributes the share to a nonmember in a section 351 exchange that is part of the same transaction. Although all the S shares held by members are transferred in the transaction, not all the shares are transferred to one or more nonmembers in one fully taxable transaction. Therefore, paragraph (b)(1)(ii)(B) of this section does not apply and M must redetermine its bases in its shares of S stock under this paragraph (b). In total, there were $12 of negative investment adjustments applied to common shares that are not transferred loss shares (the Block 2 share, a gain share). Accordingly, M's basis in each of the Block 1 shares is reduced by $3, from $8 to its value of $5. Under paragraph (b)(2)(i)(B) of this section, the negative investment adjustments applied to the transferred shares are reallocated from (and therefore cause an increase in the basis of) S shares that are not transferred loss shares in a manner that reduces disparity among members' bases in all S common shares to the greatest extent possible. Accordingly, the $12 negative investment adjustment reallocated and applied to the transferred Block 1 shares is reallocated entirely from the Block 2 share, increasing the basis in the Block 2 share from an excess loss account of $7 to a basis of $5. Because M's transfer is not a transfer of loss shares after the application of this paragraph (b), neither paragraph (c) of this section nor paragraph (d) of this section applies to the transfer.

Example 2. Redetermination increases basis of transferred loss share. (i) *Facts.* On January 1, year 1, M owns all 10 outstanding shares of S common stock. Five of the shares have a basis of $20 per share (Block 1 shares) and

five of the shares have a basis of $10 per share (Block 2 shares). S's only asset, Asset 1, has a basis of $50. S has no other attributes. On October 1, year 1, S sells Asset 1 for $100, recognizing a $50 gain. On December 31, year 2, M sells one Block 1 share and one Block 2 share to X for $10 per share. After taking into account the effects of all applicable rules of law, M's basis in each Block 1 share is $25 (M's original $20 basis increased under § 1.1502–32 by $5, the share's allocable portion of the $50 gain recognized on the sale of Asset 1), and M's basis in each Block 2 share is $15 (M's original $10 basis increased under § 1.1502–32 by $5, the share's allocable portion of the $50 gain recognized on the sale of Asset 1). M's sale of the Block 1 and Block 2 shares is a transfer of loss shares and therefore subject to this section.

(ii) *Basis redetermination under this paragraph (b).* Under this paragraph (b), M's bases in all its shares of S stock are subject to redetermination. First, paragraph (b)(2)(i)(A) of this section applies to reduce M's basis in the transferred Block 1 and Block 2 shares, but not below value, by removing the positive investment adjustments applied to the bases of the transferred loss shares. Accordingly, the basis of the transferred Block 1 share is reduced by $5, from $25 to $20. The basis of the transferred Block 2 share is also reduced by $5, from $15 to $10. (Although the transferred Block 1 share is still a loss share, there is no reduction to its basis under paragraph (b)(2)(i)(B) of this section because there were no negative investment adjustments applied to the bases of the S common shares that are not transferred loss shares.) Next, paragraph (b)(2)(ii)(B) of this section applies to reallocate and apply the $10 of positive investment adjustments removed from the transferred loss shares to increase M's bases in its S common shares in a manner that reduces the disparity in its bases in all S common shares to the greatest extent possible. Accordingly, of the $10 of positive investment adjustments to be reallocated, $6 is reallocated and applied to the basis of the transferred Block 2 share (increasing it from $10 to $16) and $4 is reallocated and applied equally to the basis of each of the four retained Block 2 shares (increasing the basis of each from $15 to $16). After giving effect to the reallocations under this paragraph (b), M's basis in each retained Block 1 share is $25, M's basis in the transferred Block 1 share is $20, and M's basis in each Block 2 share is $16.

(iii) *Application of paragraph (c) of this section.* After the application of this paragraph (b), M's sale of the Block 1 and Block 2 shares is still a transfer of loss shares and, accordingly, subject to paragraph (c) of this section. No adjustment is required to the basis of the transferred Block 1 share under paragraph (c) of this section because, after

its basis is redetermined under this paragraph (b), the net positive adjustment to the basis of the share is $0. See paragraph (c)(3) of this section. However, under paragraph (c) of this section M's basis in the transferred Block 2 share is reduced by $6 (the lesser of its net positive adjustment, $6, and its disconformity amount, $6), from $16 to $10, its value. See paragraph (c)(2) of this section.

(iv) *Application of paragraph (d) of this section.* After the application of paragraph (c) of this section, M's sale of the Block 1 share is still a transfer of a loss share and, accordingly, subject to paragraph (d) of this section. No adjustment is required under paragraph (d) of this section because there is no aggregate inside loss. See paragraph (d)(3)(iii) of this section. Because M's sale of the Block 2 share is no longer a transfer of a loss share after the application of paragraph (c) of this section, paragraph (d) of this section does not apply to the transfer of the Block 2 share.

Example 3. Tiered subsidiaries. (i) *Transfer of all shares of common stock.* (A) *Facts.* P owns the sole outstanding share of S stock with a basis of $100, and the sole outstanding share of M stock with a basis of $300. M has $200 and owns an asset with a basis of $0. S owns one asset, Asset 1, with a basis of $100. At a time when Asset 1 has a value of $200, S issues a second share of common stock to M in exchange for $200. Later S sells Asset 1 for $200, recognizing a $100 gain. After taking into account the effects of all applicable rules of law, P's basis in its S stock is $150 (P's original $100 basis increased under §1.1502–32 by $50, the share's allocable portion of the $100 gain recognized on the sale of Asset 1), M's basis in its S stock is $250 (M's original $200 basis increased under §1.1502–32 by $50, the share's allocable portion of the $100 gain recognized on the sale of Asset 1), and P's basis in its M stock is $350 (P's original $300 basis increased under §1.1502–32 by $50, the tier-up of M's increase in its basis in its S stock). P then sells its M share and its S share to X for $300 and $200, respectively. M and S are not members of the same consolidated group immediately after the sale. Therefore, the M share and both of the S shares are transferred in the transaction. Regarding P's sale of its share of S stock and its share of M stock, see paragraph (f)(10)(i)(A) of this section (ceasing to own a share in a taxable transaction) and paragraph (f)(10)(i)(C) of this section (nonmember acquires share); regarding M's share of S stock, see paragraph (f)(10)(i)(B) of this section (ceasing to be members of the same group). The application of this section begins with respect to the stock of S, the subsidiary at the lowest tier in which there is a transfer of subsidiary stock. See paragraph (a)(3)(ii) of this section. Although both P and M transfer their S shares, only M's S share is a loss share. Thus, only M's transfer is a transfer of a loss share of S stock and only M's transfer is subject to this section.

(B) *Application of section to transferred S shares.* Although only M's transfer is subject to this section, all members' bases in their shares of S stock are subject to redetermination under this paragraph (b). First, paragraph (b)(2)(i)(A) of this section applies to reduce M's basis in its transferred S share, but not below value, by removing the positive investment adjustment applied to that share. Accordingly, the basis of M's S share is reduced by $50, from $250 to $200 (under §1.1502–32, that redetermination adjustment tiers up to reduce P's basis in its M stock by $50, from $350 to $300). Because there are no negative adjustments to reallocate under paragraph (b)(2)(i)(B) of this section, paragraph (b)(2)(ii)(B) of this section then applies to reallocate and apply the $50 positive investment adjustment removed from the transferred loss S share to increase P's basis in its S share in a manner that reduces disparity among members' bases in all S common shares to the greatest extent possible. Accordingly, all $50 of the positive investment adjustment is reallocated and applied to P's basis in its S share (increasing the basis from $150 to $200). Because M's transfer of its S share is not a transfer of a loss share after the application of this paragraph (b), neither paragraph (c) of this section nor paragraph (d) of this section applies to that transfer.

(C) *Application of section to transfers at next higher tier.* After the adjustments to M's share of S stock are given effect, P's transfer of its share of M stock is not a transfer of a loss share and so this section does not apply to that transfer.

(D) *Result of application of section.* After the application of this section, P recognizes no gain or loss on its sale of either the S share or the M share. In addition, the unrecognized (noneconomic) loss in M's basis in its S share is eliminated. The results would be the same if, in addition to the facts in paragraph (i)(A) of this *Example 3*, M transferred its S share to X in a fully taxable transaction and, as permitted under paragraph (b)(1)(ii)(B) of this section, P elected to redetermine basis under this paragraph (b).

(ii) *Transfer of less than all lower-tier shares of stock.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 1*, except that M and S are members of the same consolidated group immediately after the sale. Therefore, in this case, M's S share is not transferred and so this section has no application with respect to M's S share. P's transfer of its S share is not a transfer of a loss share and so is also not subject to this section. However, P's sale of its share of M stock is a transfer of a loss share and is subject to this section.

(B) *Basis redetermination under this paragraph (b).* Although P's transfer of its share of M stock is subject to this section, this

paragraph (b) does not apply to the transfer because there is only one share of M stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). Accordingly, after the application of this paragraph (b), P's sale of its M share is still a transfer of a loss share and therefore subject to paragraph (c) of this section.

(C) *Application of paragraphs (c) and (d) of this section.* Under paragraph (c) of this section, P must reduce its basis in its M share by $50, the lesser of its net positive adjustment ($50, see paragraph (c)(3) of this section) and its disconformity amount ($150, see paragraphs (c)(4), (c)(5), and (c)(6) of this section). As a result, the share is no longer a loss share and the transfer is not subject to paragraph (d) of this section.

(D) *Result of application of section.* After the application of this section, P recognizes a $50 gain on its sale of the S share and no loss on its sale of the M share. Although there is unrecognized loss preserved in M's basis in its S share, if M later transfers the share when it is a loss share, that transfer will be subject to this section.

Example 4. Application to outstanding common and preferred shares. (i) *Facts.* P owns all the stock of M and all eight outstanding shares of S common stock. S also has two shares of nonvoting preferred stock outstanding; the preferred shares each have a $100 annual, cumulative preference as to dividends. M owns one of the preferred shares (PS1) and P owns the other (PS2). On January 1, year 1, the bases and values of the outstanding S shares are:

	Preferred		Common							
	PS1 (M)	PS2 (P)	CS1 (P)	CS2 (P)	CS3 (P)	CS4 (P)	CS5 (P)	CS6 (P)	CS7 (P)	CS8 (P)
Basis	1250	990	1025	710	550	400	375	250	215	100
Value	1000	1000	375	375	375	375	375	375	375	375

(A) As of January 1, year 1, there are no arrearages on the preferred stock. In year 1, S has a $1100 capital loss and $100 of ordinary income. The group absorbs the loss and the negative remaining adjustment of $1000 is allocable entirely to the common stock, equally to each common share ($125 per share). See §1.1502–32(c)(1)(iii) and (c)(2).

(B) In year 2, S has $700 of ordinary income and a $100 ordinary loss. Also, on October 1, year 2, S declares and makes a $200 dividend distribution with respect to the preferred stock ($100 per share). Under §1.1502–32(c)(1)(i), a negative adjustment of $100 is first allocated to each of the preferred shares to reflect the declaration of the dividend.

The $600 positive remaining adjustment determined under §1.1502–32(c)(1)(iii) (reflecting S's net income reduced by the distribution) is then allocated to each of the preferred shares to the extent of its entitlement to dividends accruing in year 1 and year 2 ($200 per share). See §1.1502–32(c)(1)(iii) and (c)(3). The $200 of the positive remaining adjustment not allocated to the preferred shares is then allocated to the common stock, equally to each common share ($25 per share). See §1.1502–32(c)(1)(iii) and (c)(2). After taking into account the effects of all applicable rules of law, the adjusted bases and the values of the shares as of January 1, year 3, are:

	Preferred		Common							
	PS1 (M)	PS2 (P)	CS1 (P)	CS2 (P)	CS3 (P)	CS4 (P)	CS5 (P)	CS6 (P)	CS7 (P)	CS8 (P)
Basis	1250	990	1025	710	550	400	375	250	215	100
Year 1 §1.1502–32 adjustments	N/A	N/A	−125	−125	−125	−125	−125	−125	−125	−125
Year 2 §1.1502–32 adjustments	−100 +200	−100 +200	+25	+25	+25	+25	+25	+25	+25	+25
	+100	+100								
Adjusted basis	1350	1090	925	610	450	300	275	150	115	0
Value	1100	1100	275	275	275	275	275	275	275	275
Unrecognized gain/(loss)	(250)	10	(650)	(335)	(175)	(25)	0	125	160	275

(C) On January 1, year 3, M sells PS1 for $1100 and P sells CS2 for $275. The sales of PS1 and CS2 are transfers of loss shares and therefore subject to this section.

(ii) *Basis redetermination under this paragraph (b).* Under this paragraph (b), all members' bases in shares of S stock are subject to

redetermination in accordance with the following:

(A) *Removing positive investment adjustments from transferred loss common shares.* First, paragraph (b)(2)(i)(A) of this section applies to reduce P's basis in CS2, but not below value, by removing the positive investment adjustment applied to the basis of the share. Accordingly, P's basis in CS2 is reduced by $25, from $610 to $585.

(B) *Reallocating negative investment adjustments from common shares that are not transferred loss shares.* Because the transferred shares remain loss shares after the removal of positive investment adjustments, their bases are further reduced under paragraph (b)(2)(i)(B) of this section, but not below value, by reallocating negative investment adjustments applied to common shares that are not transferred loss shares. Reallocations are made first to preferred shares and then to the common shares, in a manner that reduces disparity among members' bases in transferred loss preferred shares, and reduces disparity among members' bases in all common shares, to the greatest extent possible. The loss on PS1 is $250, the remaining loss on CS2 is $310, and the total amount of negative investment adjustments applied to shares that are not transferred loss shares is $875 (the sum of the negative adjustments applied to all common shares other than CS2). Thus, $250 of negative investment adjustments are reallocated and applied to the basis of PS1, reducing it to the share's value, $1100. The negative investment adjustments are reallocated from the common shares that are not transferred loss shares in a manner that reduces disparity among members' bases in all common shares to the greatest extent possible. The negative investment adjustments may be reallocated to PS1 from the common shares that are not transferred loss shares as

follows: $125 from each of CS7 and CS8. Such reallocations increase the basis of CS7 by $125, from $115 to $240, and increase the basis of CS8 by $125, from $0 to $125. Negative investment adjustments are then reallocated to CS2 from the common shares that are not transferred loss shares in a manner that reduces disparity among members' bases in all common shares to the greatest extent possible. The negative investment adjustments may be reallocated to CS2 from the other common shares as follows: $80 from CS4, $105 from CS5, and $125 from CS6. Such reallocations reduce the basis of CS2 by $310, from $585 to $275, increase the basis of CS4 by $80, from $300 to $380, increase the basis of CS5 by $105, from $275 to $380, and increase the basis of CS6 by $125, from $150 to $275. However, there may be other reasonable reallocations.

(C) *Increasing basis by reallocated positive investment adjustments.* Under paragraph (b)(2)(ii)(A) of this section, the $25 positive investment adjustment removed from CS2 (the transferred loss common share) is then reallocated and applied to increase the basis of preferred shares, but not above value. Accordingly, $10 of that amount is reallocated to PS2, increasing its basis from $1090 to $1100, its value. Under paragraph (b)(2)(ii)(B) of this section, the remaining $15 is reallocated and applied to the common shares in a manner that reduces disparity among members' bases in all common shares to the greatest extent possible. The $15 positive investment adjustment that is reallocated to common shares may be reallocated entirely to CS8, increasing its basis from $125 to $140. However, there may be other reasonable reallocations.

(D) *Summary of the reallocation of adjustments.* The adjustments made under this paragraph (b) are:

	Preferred		Common							
	PS1 (M)	PS2 (P)	CS1 (P)	CS2 (P)	CS3 (P)	CS4 (P)	CS5 (P)	CS6 (P)	CS7 (P)	CS8 (P)
Adjusted basis before redetermination	1350	1090	925	610	450	300	275	150	115	0
Removing positive adjustments from transferred loss shares	....	....	....	−25	....	....	....	....	....	....
Reallocating negative adjustments	−250	....	....	−310	....	+80	+105	+125	+125	+125
Applying positive adjustments removed from transferred loss shares	....	+10	....	....	....	....	....	....	....	+15
Basis after redetermination	1100	1100	925	275	450	380	380	275	240	140
Value	1100	1100	275	275	275	275	275	275	275	275
Gain/(loss)	0	0	(650)	0	(175)	(105)	(105)	0	35	135

(iii) *Application of paragraphs (c) and (d) of this section.* Because M's sale of PS1 and P's sale of CS2 are not transfers of loss shares after the application of this paragraph (b), paragraphs (c) and (d) of this section do not apply.

(iv) *Higher-tier effects.* The $250 reduction in the basis of PS1 under this paragraph (b) is

a noncapital, nondeductible expense under § 1.1502–32(b)(3)(iii)(B) that will be included in the year 3 investment adjustment to be applied to P's basis in its M stock.

(c) *Stock basis reduction to prevent noneconomic loss*—(1) *In general.* The rules of this paragraph (c) reduce M's

basis in a transferred share of S stock to prevent noneconomic stock loss and thus promote the clear reflection of the group's income. These rules limit the reduction to M's basis in the S share to the amount of net unrealized appreciation reflected in the share's basis as of the transfer (the disconformity amount). These rules also limit the reduction to M's basis in the S share to the portion of the share's basis that is attributable to investment adjustments made pursuant to the consolidated return regulations.

(2) *Basis reduction rule.* This paragraph (c) applies if M transfers a share of S stock and, after taking into account the effects of all applicable rules of law, including any adjustments under paragraph (b) of this section, the share is a loss share. Under this paragraph (c), M's basis in the share is reduced, but not below value, by the lesser of—

(i) The share's net positive adjustment (as defined in paragraph (c)(3) of this section); and

(ii) The share's disconformity amount (as defined in paragraph (c)(4) of this section).

(3) *Net positive adjustment.* A share's *net positive adjustment* is the greater of—

(i) Zero; and

(ii) The sum of all investment adjustments reflected in the basis of the share. The term *investment adjustment* has the same meaning as in paragraph (b)(1)(iii) of this section, except that it includes all adjustments specially allocated under § 1.1502–32(c)(1)(ii).

(4) *Disconformity amount.* A share's *disconformity amount* is the excess, if any, of—

(i) M's basis in the share; over

(ii) The share's allocable portion of S's net inside attribute amount (as defined in paragraph (c)(5) of this section).

(5) *Net inside attribute amount.* S's *net inside attribute amount* is determined as of the transfer, taking into account all applicable rules of law (even if the adjustments required by such rules are not deemed effective until after the transfer, such as certain adjustments required under sections 108 and 1017 and § 1.1502–28). S's net inside attribute amount is the sum of S's net operating

and capital loss carryovers, deferred deductions, money, and basis in assets other than money, reduced by the amount of S's liabilities. For this purpose, S's basis in any share of lower-tier subsidiary stock is generally S's basis in that share, adjusted to reflect any gain or loss recognized in the transaction with respect to the share and any other related or resulting adjustments to the basis of the share. However, see paragraph (c)(6) of this section for special rules regarding the computation of S's net inside attribute amount for purposes of this paragraph (c) if S holds stock of a subsidiary that is not transferred in the transaction. See paragraph (f) of this section for definitions of "allocable portion," "deferred deduction," "liability," "loss carryover," and other relevant terms.

(6) *Determination of S's net inside attribute amount if S owns stock of a lower-tier subsidiary*—(i) *Overview.* If a loss share of S stock is transferred when S holds a share of stock of another subsidiary (S1) and the S1 share is not transferred in the same transaction, S's net inside attribute amount is determined by treating S's basis in its S1 share as tentatively reduced under this paragraph (c)(6). The purpose of this rule is to reduce the extent to which S1's investment adjustments increase noneconomic loss on S stock (as a result of S1's recognition of items that are indirectly reflected in a member's basis in a share of S stock).

(ii) *General rule for nontransferred shares of lower-tier subsidiary stock.* For purposes of determining the disconformity amount of a share of S stock, S's basis in a nontransferred share of S1 stock is treated as reduced by the share's tentative reduction amount. The tentative reduction amount is the lesser of the S1 share's net positive adjustment and the S1 share's disconformity amount.

(iii) *Multiple tiers of nontransferred shares.* If S directly or indirectly owns nontransferred shares of stock of subsidiaries in multiple tiers, then, subject to the limitations in paragraph (c)(6)(iv) of this section (regarding nontransferred shares that are lower-tier to transferred shares), the rules of this paragraph (c)(6) first apply to determine the tentatively reduced basis of

stock of the subsidiary at the lowest tier. These rules then apply to determine the tentatively reduced basis of nontransferred shares of stock of subsidiaries successively at each next higher tier that is lower-tier to S. The tentative reductions at each tier are treated as noncapital, nondeductible expenses that tier up under the principles of § 1.1502–32, and, as such, result in a tentative reduction of basis and any net positive adjustment of subsidiary shares that are lower-tier to S.

(iv) *Nonapplicability of tentative basis reduction rule to transferred shares.* The tentative basis reduction rule in this paragraph (c)(6) does not apply to any share of stock of a lower-tier subsidiary (S1) that is transferred in the same transaction in which the S share is transferred. Further, for purposes of determining the S share's disconformity amount, the tentative basis reduction rule in this paragraph (c)(6) only applies with respect to stock of a lower-tier subsidiary if such stock is lower-tier to a nontransferred S1 share. The purpose of this rule is to prevent tentative adjustments to the bases of lower-tier shares if this paragraph (c) has already applied with respect to the shares, without regard to whether such application resulted in the reduction of the basis of any share.

(v) *Example.* The rules of this paragraph (c)(6) are illustrated by the following example:

Example. (i) *Facts.* M owns the sole outstanding share of S stock, S owns the sole outstanding share of S1 stock, S1 owns all five outstanding shares of S2 stock (the bases of which are equal), and S2 owns the sole outstanding share of S3 stock. The basis of each of the shares reflects its allocable portion of a $5 positive investment adjustment attributable to income recognized by S3. The basis of the S share exceeds its value by $10 and the basis of the S1 share exceeds its value by $5. The basis of each S2 share is $1 less than its value. In one transaction, M sells its S share to X, S1 issues new shares in an amount that prevents S and S1 from being members of the same group, and S1 sells one of its S2 shares to an unrelated individual. S1, S2, and S3 elect to file a consolidated return following the transaction.

(ii) *General applicability of section.* As a result of the transaction, there is a transfer of the S share and the S2 share that was sold (because both shares were sold to nonmembers) and of the S1 share (because S and S1

cease to be members of the same group as a result of the stock issuance). The transfer of the S2 share is not a transfer of a loss share, and so this section does not apply to that transfer. The transfers of the S and S1 shares are transfers of loss shares, and so this section applies to those transfers. The S3 share and the four retained S2 shares are not transferred in the transaction. Under paragraph (a)(3)(ii)(A) of this section, this section applies first to the transfer of the S1 share because it is the lowest-tier transferred loss share.

(iii) *Application of paragraph (b) of this section and this paragraph (c) to transfer of S1 stock.* First, the $1 gain recognized on the transfer of the S2 share tiers up to adjust the basis of each upper-tier share. The transferred S1 share is still a loss share (by $4) and is therefore subject to this section. Although the transfer is subject to paragraph (b) of this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S1 stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the S1 share is still a loss share and, as such, subject to this paragraph (c). In determining the amount of any basis reduction under this paragraph (c), the disconformity amount of the S1 share is computed by comparing S's basis in its S1 share to S1's net inside attribute amount (because there is only one S1 share outstanding, the entire amount is allocable to that share). In determining S1's net inside attribute amount, the tentative reduction rule in this paragraph (c)(6) applies to nontransferred lower-tier shares (provided they are lower-tier to nontransferred shares). Thus, the rule applies to S1's four retained shares of S2 stock and to S2's share of S3 stock. The tentative reduction begins at the lowest level (S2's share of S3 stock) and any tentative reduction amount tiers up as a noncapital, nondeductible expense under the principles of § 1.1502–32, tentatively reducing the bases of any upper tier nontransferred shares that are lower-tier to the transferred loss share (the S1 share). Accordingly, each of S1's nontransferred share of S2 stock is tentatively reduced by its portion of the tentative reduction to S2's share of S3 stock. S1 then applies the tentative reduction rule to its four nontransferred S2 shares. S1's net inside attribute amount is the sum of its basis in each of its nontransferred S2 shares, as tentatively reduced under this paragraph (c)(6) and S1's actual basis in the transferred S2 share, increased to reflect the gain recognized on the sale of that share. After the application of this paragraph (c) to the transfer of the S1 share,

paragraph (b) of this section applies to M's transfer of the S share.

(iv) *Application of section to transfer of S stock.* Because the S share is still a loss share after applying paragraph (b) of this section and this paragraph (c) to the transfer of the S1 stock, this section applies to M's transfer of the S share. Although paragraph (b) of this section applies to the transfer, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to this paragraph (c). In determining the disconformity amount of the S share, S's net inside attribute amount is determined using S's actual basis in the transferred S1 stock (after any reduction under this paragraph (c)), because the tentative reduction rule in this paragraph (c)(6) does not apply to shares that are transferred in the transaction. All other shares are lower-tier to the transferred S1 share and are therefore also not subject to tentative reduction for purposes of determining the disconformity amount of the S share. After the application of this paragraph (c) to the transfer of the S share, paragraph (d) of this section applies with respect to M's transfer of the S share. After the application of paragraph (d) of this section with respect to the transfer of the S share, if the S1 share is still a loss share, paragraph (d) of this section applies with respect to S's transfer of the S1 share.

(7) *Netting of gains and losses taken into account*—(i) *General rule.* Solely for purposes of computing the basis reduction required under this paragraph (c), the basis of each transferred loss share of S stock is treated as reduced proportionately (as to loss) by the amount of income or gain taken into account by members with respect to transferred shares of S stock, provided that—

(A) The shares are transferred in one transaction; and

(B) The gain is taken into account as of the transaction.

(ii) *Example.* The netting rule of this paragraph (c)(7) is illustrated by the following example:

Example. Disposition of gain and loss shares. (i) *Facts.* M owns the only three outstanding shares of S stock. Share A has a basis of $54, Share B has a basis of $100, and Share C has a basis of $80. In the same transaction, M sells all three S shares to X for $60 each. M

realizes a gain of $6 on Share A, a loss of $40 on Share B, and a loss of $20 on Share C. M's sales of Share B and Share C are transfers of loss shares and therefore subject to this section. M's sale is a transfer of all of the shares of S stock held by members to one or more nonmembers in one fully taxable transaction and, therefore, basis is not redetermined under paragraph (b) of this section. See paragraph (b)(1)(ii)(B) of this section. The transfer is then subject to this paragraph (c). However, for this purpose, M treats its bases in Share B and Share C as reduced by the $6 gain taken into account on Share A. The gain is allocated to Share B and Share C proportionately based on the amount of loss in each share. Thus, $4 of gain ($40/$60 × $6) is treated as allocated to Share B and $2 of gain ($20/$60 × $6) is treated as allocated to Share C. Accordingly, M computes the basis reduction required under this paragraph (c) by treating its basis in Share B as $96 ($100 less $4) and its basis in Share C as $78 ($80 less $2). If, after the application of this paragraph (c), the sales of Share B and Share C are still transfers of loss shares, then the transfers are subject to paragraph (d) of this section. (Although the bases of Share B and Share C are not actually reduced by any portion of the gain, paragraph (d)(3)(i)(A) of this section applies netting principles to limit adjustments under paragraph (d) of this section.)

(ii) *Disposition of stock with deferred gain.* The facts are the same as in paragraph (i) of this *Example,* except that M sells the gain share to another member. Under §1.1502–13, M's gain recognized on Share A is not taken into account in the taxable year of the transfer and therefore cannot be treated as reducing M's loss recognized on Share B and Share C for purposes of this paragraph (c). The applicability of this section to the transfer of Share A is determined as of the time that the intercompany item (the gain on M's sale to the other member) is taken into account; see paragraph (e)(3) of this section. However, if Share B (instead of Share A) were sold to a member, the entire gain on Share A would be treated as reducing the loss on Share C for applying this paragraph (c); see paragraph (e)(3) of this section.

(8) *Examples.* The application of this paragraph (c) is illustrated by the following examples.

Example 1. Appreciation reflected in stock basis at acquisition. (i) *Appreciation recognized as gain.* (A) *Facts.* On January 1, year 1, M purchases the sole outstanding share of S stock for $100. At that time, S owns two assets, Asset 1 with a basis of $0 and a value of $40, and Asset 2 with a basis and value of $60. In year 1, S sells Asset 1 for $40, recognizing a $40 gain. On December 31, year 1, M sells its S share for $100. After taking into account

the effects of all applicable rules of law, M's basis in the S share is $140 (M's original $100 basis increased under §1.1502–32 by $40, the share's allocable portion of the gain recognized on the sale of Asset 1). M's sale of the S share is a transfer of a loss share and therefore subject to this section.

(B) *Application of paragraph (b) of this section*. Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c)*. Under this paragraph (c), M's basis in the S share, $140, is reduced, but not below value, $100, by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is the greater of zero and the sum of all investment adjustments (as defined in paragraph (b)(1)(iii) of this section) applied to the basis of the share. The only investment adjustment applied to the basis of the share is the $40 adjustment attributable to the gain recognized on the sale of Asset 1. Thus, the share's net positive adjustment is $40. The share's disconformity amount is the excess, if any, of its basis, $140, over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is the sum of S's money ($40 from the sale of Asset 1) and S's basis in Asset 2, $60, or $100. The share is the only outstanding S share and so its allocable portion of the $100 net inside attribute amount is the entire $100. Thus, the share's disconformity amount is $40, the excess of $140 over $100. The lesser of the net positive adjustment, $40, and the share's disconformity amount, $40, is $40. Accordingly, immediately before the application of paragraph (d) of this section, M's basis in the share is reduced by $40, from $140 to $100.

(D) *Application of paragraph (d) of this section*. Because M's sale of the S share is not a transfer of a loss share after the application of this paragraph (c), paragraph (d) of this section does not apply to the transfer.

(ii) *Appreciation recognized as income earned in the consumption of built-in gain*. The facts are the same as in paragraph (i)(A) of this *Example 1*, except that, instead of selling Asset 1, the value of Asset 1 is consumed in the production of $40 of income in year 1 (reducing the value of Asset 1 to $0). Because the net positive adjustment includes items of income as well as items of gain, the results are the same as those described in paragraph (i) of this *Example 1*.

(iii) *Post-acquisition appreciation eliminates stock loss*. The facts are the same as in paragraph (i)(A) of this *Example 1* except that, in addition, the value of Asset 2 increases to $100 before the stock is sold. As a result, M sells the S share for $140. Because M's sale of the S share is not a transfer of a loss share, this section does not apply to the transfer, notwithstanding that P's basis in the S share was increased by the gain recognized on Asset 1.

(iv) *Distributions*. (A) *Facts*. The facts are the same as in paragraph (i)(A) of this *Example 1* except that, in addition, S declares and makes a $10 dividend distribution before the end of year 1. As a result, the value of the share decreases and M sells the share for $90. After taking into account the effects of all applicable rules of law, M's basis in the S share is $130 (M's original $100 basis increased under §1.1502–32 by $30, the $10 distribution on the share reduced by the share's allocable portion of the $40 gain recognized on the sale of Asset 1). M's sale of the S share is a transfer of a loss share and therefore subject to this section.

(B) *Application of paragraph (b) of this section*. Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section for the reasons set forth in paragraph (i)(B) of this *Example 1*. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c)*. Under this paragraph (c), M's basis in the S share, $130, is reduced, but not below value, $90, by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $40 (the sum of all investment adjustments (as defined in paragraph (b)(1)(iii) of this section) applied to the basis of the share). The share's disconformity amount is the excess of its basis, $130, over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is $90, the sum of S's money ($30, the $40 sale proceeds less the $10 distribution) and S's basis in Asset 2, $60. The share is the only outstanding S share and so its allocable portion of the $90 net inside attribute amount is the entire $90. The lesser of the share's net positive adjustment, $40, and its disconformity amount, $40, is $40. Accordingly, immediately before the application of paragraph (d) of this section, the basis in the share is reduced by $40, from $130 to $90.

(D) *Application of paragraph (d) of this section*. Because M's sale of the S share is not a transfer of a loss share after the application of this paragraph (c), paragraph (d) of this section does not apply to the transfer.

Example 2. Loss of appreciation reflected in basis. (i) *Facts*. On January 1, year 1, M purchases the sole outstanding share of S stock

for $100. At that time, S owns two assets, Asset 1 with a basis of $0 and a value of $40, and Asset 2 with a basis and value of $60. The value of Asset 1 declines to $0 and M sells its S share for $60. After taking into account the effects of all applicable rules of law, M's basis in the S share is $100. M's sale of the S share is a transfer of a loss share and therefore subject to this section.

(ii) *Application of paragraph (b) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to this paragraph (c).

(iii) *Basis reduction under this paragraph (c).* Under this paragraph (c), M's $100 basis in the S share is reduced, but not below its $60 value by the lesser of the share's net positive adjustment and disconformity amount. There were no investment adjustments applied to M's basis in the share and so the share's net positive adjustment is $0. Thus, although the share's disconformity amount is $40 (the excess of M's $100 basis in the share over the share's $60 allocable portion of S's net inside attribute amount), no basis reduction is required under this paragraph (c).

(iv) *Application of paragraph (d) of this section.* After the application of this paragraph (c), M's sale of the S share is still a transfer of a loss share, and, accordingly, subject to paragraph (d) of this section. No adjustment is required under paragraph (d) of this section because there is no aggregate inside loss. See paragraph (d)(3)(iii) of this section.

Example 3. Items accruing after S becomes a member. (i) *Recognition of loss accruing after S becomes a member.* (A) *Facts.* On January 1, year 1, M purchases the sole outstanding share of S stock for $100. At that time, S owns two assets, Asset 1, with a basis of $0 and a value of $40, and Asset 2, with a basis and value of $60. In year 1, S sells Asset 1 for $40, recognizing a $40 gain. Also in year 1, the value of Asset 2 declines and S sells Asset 2 for $20, recognizing a $40 loss that is absorbed by the group. On December 31, year 1, M sells its S share for $60. After taking into account the effects of all applicable rules of law, M's basis in the S share is $100 (M's original $100 basis, unadjusted under §1.1502–32 because the $40 gain recognized on the sale of Asset 1 and the $40 loss on the sale of Asset 2 net, resulting in an adjustment of $0). M's sale of the S share is a transfer of a loss share and therefore subject to this section.

(B) *Application of paragraph (b) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), M's basis in the S share is reduced, but not below the share's $60 value, by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $0. Thus, although the share has a disconformity amount of $40 (the excess of M's basis in the share, $100, over the share's allocable portion of S's net inside attribute amount, $60), no basis reduction is required under this paragraph (c).

(D) *Application of paragraph (d) of this section.* After the application of this paragraph (c), M's sale of the S share is still a transfer of a loss share, and, accordingly, subject to paragraph (d) of this section. No adjustment is required under paragraph (d) of this section because there is no aggregate inside loss. See paragraph (d)(3)(iii) of this section.

(ii) *Recognition of gain accruing after S becomes a member.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 3*, except that M does not sell the S share and S does not sell either asset in year 1. In addition, in year 2, the value of Asset 1 declines to $0, the value of Asset 2 returns to $60, and S creates Asset 3 (with a basis of $0). In year 3, S sells Asset 3 for $40, recognizing a $40 gain. On December 31, year 3, M sells its S share for $100. After taking into account the effects of all applicable rules of law, M's basis in the S share is $140 (M's original $100 basis increased under §1.1502–32 by $40 (the share's allocable portion of the gain recognized on the sale of Asset 3 in year 3)). M's sale of the S share is a transfer of a loss share and therefore subject to this section.

(B) *Application of paragraph (b) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section for the reasons set forth in paragraph (i)(B) of this *Example 3.* Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), M's basis in the S share, $140, is reduced, but not below value, $100, by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $40 (the

year 3 investment adjustment). The share's disconformity amount is the excess of its basis, $140, over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is $100, the sum of S's money ($40 from the sale of Asset 3) and its basis in its assets ($60 (the sum of Asset 1's basis of $0 and Asset 2's basis of $60)). S's $100 net inside attribute amount is allocable entirely to the sole outstanding S share. Thus, the share's disconformity amount is the excess of $140 over $100, or $40. The lesser of the share's net positive adjustment, $40, and its disconformity amount, $40, is $40. Accordingly, the basis in the share is reduced by $40, from $140 to $100.

(D) *Application of paragraph (d) of this section.* Because M's sale of the S share is not a transfer of a loss share after the application of this paragraph (c), paragraph (d) of this section does not apply to the transfer.

(iii) *Recognition of income earned after S becomes a member.* The facts are the same as in paragraph (ii)(A) of this *Example 3*, except that instead of creating Asset 3, S earns $40 of income from services provided in year 3. Because the net positive adjustment includes items of income as well as items of gain, the results are the same as those described in paragraph (ii) of this *Example 3*.

Example 4. Computing the disconformity amount. (i) *Unrecognized loss reflected in stock basis.* (A) *Facts.* M owns the sole outstanding share of S stock with a basis of $100. S owns two assets, Asset 1 with a basis of $20 and a value of $60, and Asset 2 with a basis of $60 and a value of $40. In year 1, S sells Asset 1 for $60, recognizing a $40 gain. On December 31, year 1, M sells the S share for $100. After taking into account the effects of all applicable rules of law, M's basis in the S share is $140 (M's original $100 basis increased under §1.1502–32 by $40, the share's allocable portion of the gain recognized on the sale of Asset 1). M's sale of the S share is a transfer of a loss share and therefore subject to this section.

(B) *Application of paragraph (b) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), M's basis in the S share, $140, is reduced, but not below the share's $100 value, by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment

is $40 (the year 1 investment adjustment). The share's disconformity amount is the excess of its basis, $140, over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is $120, the sum of S's money ($60 from the sale of Asset 1) and S's basis in Asset 2, $60. S's net inside attribute amount is allocable entirely to the sole outstanding S share. Thus, the share's disconformity amount is $20, the excess of $140 over $120. The lesser of the share's net positive adjustment, $40, and its disconformity amount, $20, is $20. Accordingly, the basis in the share is reduced by $20, from $140 to $120.

(D) *Application of paragraph (d) of this section.* After the application of this paragraph (c), M's sale of the S share is still a transfer of a loss share, and, accordingly, S's attributes (to the extent of the $20 duplicated loss) are subject to reduction under paragraph (d) of this section.

(ii) *Loss carryover.* The facts are the same as in paragraph (i)(A) of this *Example 4*, except that Asset 2 has a basis of $0 (rather than $60) and S has a $60 loss carryover (as defined in paragraph (f)(6) of this section). The analysis is the same as paragraph (i) of this *Example 4*. Furthermore, the analysis of the application of this paragraph (c) would be the same if the $60 loss carryover were subject to a section 382 limitation from a prior ownership change, or if, instead, the $60 loss carryover were subject to the limitation in §1.1502–21(c) on losses carried from separate return limitation years.

(iii) *Liabilities.* The facts are the same as in paragraph (i)(A) of this *Example 4*, except that S borrows $100 before M sells the S share. S's net inside attribute amount remains $120, computed as the sum of S's money ($160, $60 from the sale of Asset 1 plus the $100 borrowed) and S's basis in Asset 2, $60, less its liabilities, $100. Thus, the S share's disconformity amount remains the excess of $140 over $120, or $20. The results are the same as in paragraph (i) of this *Example 4*.

Example 5. Computing the allocable portion of the net inside attribute amount. (i) *Facts.* On January 1, year 1, M owns all five outstanding shares of S stock with a basis of $20 per share. S owns Asset with a basis of $0. In year 1, S sells Asset for $100, recognizing a $100 gain. On December 31, year 1, M sells one of the S shares, Share 1, for $20. After taking into account the effects of all applicable rules of law, M's basis in Share 1 is $40 (M's original $20 basis increased under §1.1502–32 by $20 (the share's allocable portion of the gain recognized on the sale of Asset)). M's sale of Share 1 is a transfer of a loss share and therefore subject to this section.

(ii) *Application of paragraph (b) of this section.* Although the transfer is subject to this section, basis is not redetermined under paragraph (b) of this section because there is

no disparity among M's bases in shares of S common stock and there are no shares of S preferred stock outstanding (so there can be no unrecognized gain or loss with respect to preferred shares). See paragraph (b)(1)(ii)(A) of this section. After the application of paragraph (b) of this section, M's sale of Share 1 is still a transfer of a loss share and therefore subject to this paragraph (c).

(iii) *Basis reduction under this paragraph (c)*. Under this paragraph (c), M's $40 basis in Share 1 is reduced, but not below its $20 value by the lesser of the share's net positive adjustment and disconformity amount. Share 1's net positive adjustment is $20 (the year 1 investment adjustment). Share 1's disconformity amount is the excess of its $40 basis over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is equal to the amount of S's money ($100 from the sale of the asset). Share 1's allocable portion of S's $100 net inside attribute amount is $20 (1/5 × $100). Thus, Share 1's disconformity amount is the excess of $40 over $20, or $20. The lesser of the share's $20 net positive adjustment and its $20 disconformity amount is $20. Accordingly, the basis in the share is reduced by $20, from $40 to $20.

(iv) *Application of paragraph (d) of this section*. Because M's sale of Share 1 is not a transfer of a loss share after the application of this paragraph (c), paragraph (d) of this section does not apply to the transfer.

Example 6. Liabilities. (i) *In general.* (A) *Facts.* On January 1, year 1, M purchases the sole outstanding share of S stock for $100. At that time, S owns Asset, with a basis of $0 and value of $100, and $100 cash. S also has a $100 liability. In year 1, S declares and makes a $60 dividend distribution to M and recognizes $20 of income. The value of Asset declines to $60 and, on December 31, year 1, M sells the S share for $20. After taking into account the effects of all applicable rules of law, M's basis in the S share is $60 (M's original $100 basis decreased under § 1.1502–32 by $40 (the net of the $60 distribution and the $20 income recognized)). M's sale of the S share is a transfer of a loss share and therefore subject to this section.

(B) *Application of paragraph (b) of this section*. Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c)*. Under this paragraph (c), M's basis in the S

share, $60, is reduced, but not below value, $20, by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $20 (the year 1 investment adjustment, as defined in paragraph (b)(1)(iii) of this section). The share's disconformity amount is the excess of its basis, $60, over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is negative $40, computed as the sum of S's money ($60 ($100 less the $60 distribution plus the $20 income recognized)) and S's basis in Asset, $0, less S's liability, $100. S's net inside attribute amount is allocable entirely to the sole outstanding S share. Thus, the share's disconformity amount is the excess of $60 over negative $40, or $100. The lesser of the share's net positive adjustment, $20, and its disconformity amount, $100, is $20. Accordingly, the basis in the share is reduced by $20, from $60 to $40.

(D) *Application of paragraph (d) of this section*. After the application of this paragraph (c), the S share is still a loss share and, accordingly, S's attributes are subject to reduction under paragraph (d) of this section. No adjustment is required under paragraph (d) of this section, however, because there is no aggregate inside loss. See paragraph (d)(3)(iii) of this section.

(ii) *Excluded cancellation of indebtedness income—insufficient attributes available for reduction under sections 108 and 1017, and § 1.1502–28.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 6*, except that M does not sell the S share. Instead, in year 4, Asset is destroyed in a fire and S spends its $60 on deductible expenses that are not absorbed by the group. S's loss becomes part of the consolidated net operating loss (CNOL). In year 5, S becomes insolvent and S's debt is discharged. Because of S's insolvency, S's discharge of indebtedness income is excluded under section 108 and, as a result, S's attributes are subject to reduction under sections 108 and 1017, and § 1.1502–28. S's only attribute is the portion of the CNOL attributable to S, $60, and it is reduced to $0. There are no other consolidated attributes. In year 5, the S stock (which is treated as a capital asset) becomes worthless under section 165, taking into account § 1.1502–80(c). After taking into account the effects of all applicable rules of law, M's basis in the S share is $60 (M's original $100 basis decreased under § 1.1502–32 by the year 1 investment adjustment of $40 (the net of the $60 distribution and the $20 income recognized). The investment adjustment for year 5 is $0 (the net of the $60 tax exempt income from the excluded COD applied to reduce attributes and the $60 noncapital, nondeductible expense from the reduction of S's portion of the CNOL). Under paragraph (f)(10)(i)(D) of this section, a share is transferred on the last day of the taxable year

during which it becomes worthless under section 165 if the share is treated as a capital asset, or the date the share becomes worthless if the share is not treated as a capital asset, taking into account §1.1502–80(c). Accordingly, M transfers the loss share of S stock on December 31, year 5, and the transfer is therefore subject to this section.

(B) *Application of paragraph (b) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section for the reasons set forth in paragraph (i)(B) of this *Example 6.* Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), M's basis in its S share, $60, is reduced, but not below value, $0, by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $20 (the year 1 investment adjustment, as defined in paragraph (b)(1)(iii) of this section). The share's disconformity amount is the excess of its basis, $60, over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is $0. (The effects of the attribute reduction required under sections 108 and 1017 and §1.1502–28 are taken into account in applying this section; therefore, for purposes of this section, S's portion of the CNOL is treated as eliminated under section 108 and §1.1502–28.) S's net inside attribute amount is allocable entirely to the sole outstanding S share. Thus, the share's disconformity amount is the excess of $60 over $0, or $60. The lesser of the share's net positive adjustment, $20, and its disconformity amount, $60, is $20. Accordingly, the basis in the share is reduced by $20, from $60 to $40, immediately before the transfer.

(D) *Application of paragraph (d) of this section.* After the application of this paragraph (c), the S share is still a loss share, and, accordingly, S's attributes are subject to reduction under paragraph (d) of this section. No adjustment is required under paragraph (d) of this section, however, because there is no aggregate inside loss. See paragraph (d)(3)(iii) of this section.

(iii) *Excluded cancellation of indebtedness income—full attribute reduction under sections 108 and 1017, and §1.1502–28 (using attributes attributable to another member).* (A) *Facts.* The facts are the same as in paragraph (ii)(A) of this *Example 6* except that M loses the $60 distributed in year 1 and the group does not absorb the loss. Thus, as of December 31, year 5, the CNOL is $120, attributable $60 to S and $60 to P. As a result, under §1.1502–28(a)(4), after the portion of the CNOL attributable to S is reduced to $0, the remaining $40 of excluded COD applies to the portion of the CNOL attributable to P, reducing it from $60 to $20. After taking into account the ef-

fects of all applicable rules of law, M's basis in the S share at the end of year 5 is $100 (M's original $100 basis decreased under §1.1502–32 by $40 at the end of the year 1 and then increased under §1.1502–32 by $40 at end of the year 5 (the net of the $100 tax exempt income from the excluded COD applied to reduce attributes and the $60 noncapital, nondeductible expense from the reduction of S's portion of the CNOL)). Under paragraph (f)(10)(i)(D) of this section, a share is transferred on the last day of the taxable year during which it becomes worthless under section 165 if the share is treated as a capital asset, or the date the share becomes worthless if the share is not treated as a capital asset, taking into account §1.1502–80(c). Accordingly, M transfers the loss share of S stock on December 31, year 5, and the transfer is therefore subject to this section.

(B) *Application of paragraph (b) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section for the reasons set forth in paragraph (i)(B) of this *Example 6.* Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to this paragraph (c).

(C) *Basis reduction under this paragraph (c).* Under this paragraph (c), M's basis in the S share, $100, is reduced, but not below value, $0, by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $60 (the sum of the year 1 investment adjustment, as defined in paragraph (b)(1)(iii) of this section, $20, and the year 5 investment adjustment, $40). The share's disconformity amount is the excess of its basis, $100, over its allocable portion of S's net inside attribute amount. S's net inside attribute amount is $0 (taking into account the effects of the attribute reduction required under sections 108 and 1017 and §1.1502–28). S's net inside attribute amount is allocable entirely to the sole outstanding S share. The share's disconformity amount is therefore $100. The lesser of the share's net positive adjustment, $60, and its disconformity amount, $100, is $60. Accordingly, M's basis in the share is reduced by $60, from $100 to $40, immediately before the transfer.

(D) *Application of paragraph (d) of this section.* After the application of this paragraph (c), the S share is still a loss share, and, accordingly, S's attributes are subject to reduction under paragraph (d) of this section. No adjustment is required under paragraph (d) of this section, however, because there is no aggregate inside loss. See paragraph (d)(3)(iii) of this section.

Example 7. Lower-tier subsidiary (no transfer of lower-tier stock). (i) *Facts.* M owns the sole outstanding share of S stock with a basis of $160. S owns two assets, Asset 1 with a basis and value of $100, and the sole outstanding

share of S1 stock with a basis of $60. S1 owns one asset, Asset 2, with a basis of $20 and value of $60. In year 1, S1 sells Asset 2 to X for $60, recognizing a $40 gain. On December 31, year 1, M sells its S share to Y, a member of another consolidated group, for $160. After taking into account the effects of all applicable rules of law, M's basis in the S share is $200 (M's original $160 basis increased under §1.1502–32 by $40 (to reflect the tier-up of the adjustment to S's basis in the S1 stock for the gain recognized on S1's sale of Asset 2)). M's sale of the S share is a transfer of a loss share and therefore subject to this section. (S does not transfer the S1 share because S and S1 are members of the same group following the transfer. See paragraph (f)(10) of this section.)

(ii) *Application of paragraph (b) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to this paragraph (c).

(iii) *Basis reduction under this paragraph (c).* (A) *In general.* Under this paragraph (c), M's basis in the S share, $200, is reduced, but not below value, $160, by the lesser of the share's net positive adjustment and disconformity amount. The S share's net positive adjustment is $40. The share's disconformity amount is the excess of its basis, $200, over the share's allocable portion of S's net inside attribute amount. S's net inside attribute amount is the sum of S's basis in Asset 1, $100, and S's basis in the S1 share.

(B) *S's basis in the S1 share.* Although S's actual basis in the S1 share is $100 (S's original $60 basis increased under §1.1502–32 by $40 (the share's allocable portion of the gain recognized on the sale of Asset 2)), for purposes of computing the S share's disconformity amount, S's net inside attribute amount is determined by treating S's basis in the S1 share as tentatively reduced by the lesser of the S1 share's net positive adjustment and the S1 share's disconformity amount. The S1 share's net positive adjustment is $40 (the year 1 investment adjustment). The S1 share's disconformity amount is the excess of its basis, $100, over the share's allocable portion of S1's net inside attribute amount. S1's net inside attribute amount is equal to the amount of S1's money ($60 from the sale of Asset 2), and is allocable entirely to the sole outstanding S1 share. Thus, the S1 share's disconformity amount is the excess of $100 over $60, or $40. The lesser of the S1 share's net positive adjustment, $40, and its

disconformity amount, $40, is $40. Accordingly, for purposes of computing the disconformity amount of the S share, S's net inside attribute amount is determined by treating S's basis in its S1 share as tentatively reduced by $40, from $100 to $60.

(C) *The disconformity amount of M's S share.* S's net inside attribute amount is treated as the sum of its basis in Asset 1, $100, and its tentatively reduced basis in the S1 share, $60, or $160. S's net inside attribute amount is allocable entirely to the sole outstanding S share. Thus, the S share's disconformity amount is the excess of $200 over $160, or $40.

(D) *Amount of reduction.* M's basis in its S share is reduced by the lesser of the S share's net positive adjustment, $40, and disconformity amount, $40, or $40. Accordingly, M's basis in the S share is reduced by $40, from $200 to $160.

(E) *Effect on S's basis in its S1 share.* The tentative reduction under this paragraph (c) has no effect on S's actual basis in the S1 share. Thus, after the application of this paragraph (c), S owns the S1 share with a basis of $100 (S's original $60 basis increased under §1.1502–32 by $40 (the share's allocable portion of the gain recognized on the sale of Asset 2)).

(iv) *Application of paragraph (d) of this section.* Because M's sale of the S share is not a transfer of a loss share after the application of this paragraph (c), paragraph (d) of this section does not apply to the transfer.

(d) *Attribute reduction to prevent duplication of loss*—(1) *In general.* The rules of this paragraph (d) reduce attributes of S and its lower-tier subsidiaries to the extent they duplicate a net loss on shares of S stock transferred by members in one transaction. This rule furthers single-entity principles by preventing S (or its lower-tier subsidiaries) from using deductions and losses to the extent that the group or its members (including former members) have either used, or preserved for later use, a corresponding loss in S shares.

(2) *Attribute reduction rule*—(i) *General rule.* If a transferred share is a loss share after taking into account the effects of all applicable rules of law, including any adjustments under paragraph (b), (c), or (d)(5)(iii) of this section, S's attributes are reduced by S's attribute reduction amount immediately before the transfer. S's attribute reduction amount is determined under paragraph (d)(3) of this section and applied in accordance with the provisions of paragraphs (d)(4), (d)(5), and (d)(6) of this section. In addition, paragraph (d)(7) of this section

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provides for additional attribute reduction in the case of certain transfers due to worthlessness and certain transfers not followed by a separate return year.

(ii) *Attribute reduction amount less than five percent of value.* This paragraph (d) generally does not apply to a transaction if the aggregate attribute reduction amount in the transaction is less than five percent of the aggregate value of the shares transferred by members in the transaction. However, in such a case, P may elect to apply this paragraph (d) to the transaction. If such an election is made, this paragraph (d) will apply with respect to the entire aggregate attribute reduction amount determined in the transaction. Such an election is made in the manner provided in paragraph (e)(5) of this section.

(3) *Attribute reduction amount*—(i) *In general.* S's *attribute reduction amount* is the lesser of—

(A) The net stock loss (as defined in paragraph (d)(3)(ii) of this section); and

(B) S's aggregate inside loss (as defined in paragraph (d)(3)(iii) of this section).

(ii) *Net stock loss.* The *net stock loss* is the excess, if any, of—

(A) The aggregate basis of all shares of S stock transferred by members in the transaction; over

(B) The aggregate value of those shares.

(iii) *Aggregate inside loss*—(A) *In general.* S's *aggregate inside loss* is the excess, if any, of—

(*1*) S's net inside attribute amount; over

(*2*) The value of all outstanding shares of S stock.

(B) *Net inside attribute amount.* S's *net inside attribute amount* generally has the same meaning as in paragraph (c)(5) of this section. However, if S holds stock of a lower-tier subsidiary, the provisions of paragraph (d)(5) of this section (and not the provisions of paragraph (c)(6) of this section) modify the computation of S's net inside attribute amount for purposes of this paragraph (d).

(iv) *Lower-tier subsidiaries.* See paragraph (d)(5) of this section for special rules relating to the application of this paragraph (d) if S owns shares of stock of a subsidiary.

(4) *Application of attribute reduction amount*—(i) *Attributes available for reduction.* S's attributes available for reduction under this paragraph (d) are—

(A) *Category A.* Capital loss carryovers;

(B) *Category B.* Net operating loss carryovers;

(C) *Category C.* Deferred deductions; and

(D) *Category D.* Basis of assets other than assets identified as Class I assets in §1.338–6(b)(1).

(ii) *Rules of application*—(A) *Category A, Category B, and Category C attributes.* S's attribute reduction amount is first allocated and applied to reduce the attributes in Category A, Category B, and Category C.

(*1*) *Attribute reduction amount less than total attributes in Category A, Category B, and Category C.* If S's attribute reduction amount is less than S's total attributes in Category A, Category B, and Category C, all of S's attribute reduction amount will be applied to reduce such attributes. However, P may specify the allocation of S's attribute reduction amount among such attributes. An election to specify the allocation of S's attribute reduction amount is made in the manner provided in paragraph (e)(5) of this section. To the extent that P does not specify an allocation of S's attribute reduction amount, S's attribute reduction amount will be applied to reduce any Category A attributes not reduced as a result of the specific allocation of S's attribute reduction amount, from oldest to newest, until they are eliminated. Then, any remaining attribute reduction amount will be applied to reduce any Category B attributes not reduced as a result of the specific allocation of S's attribute reduction amount, from oldest to newest, until they are eliminated. Finally, any remaining attribute reduction amount will be applied to reduce any Category C attributes not reduced as a result of the specific allocation of S's attribute reduction amount, proportionately.

(*2*) *Attribute reduction amount not less than the total attributes in Category A, Category B, and Category C.* If S's attribute reduction amount equals or exceeds S's total attributes in Category A, Category B, and Category C, all such

attributes are eliminated and any re-
maining attribute reduction amount is
allocated and applied as provided in
paragraphs (d)(4)(ii)(B) and (d)(4)(ii)(C)
of this section.

(B) *Category D attributes.* Any at-
tribute reduction amount not applied
to reduce S's Category A, Category B,
and Category C attributes is allocated
and applied as provided in this para-
graph (d)(4)(ii)(B) and, to the extent ap-
plicable, paragraph (d)(5) of this sec-
tion.

(*1*) *Allocation if S holds stock of another
subsidiary.* If S holds shares of stock of
another subsidiary, the attribute re-
duction amount not applied to reduce
S's Category A, Category B, and Cat-
egory C attributes is first allocated be-
tween S's shares of lower-tier sub-
sidiary stock and S's other Category D
assets in the manner provided in para-
graph (d)(5)(ii) of this section. S's at-
tribute reduction amount allocated to
shares of lower-tier subsidiary stock is
applied to reduce S's bases in those
shares, becomes an attribute reduction
amount of the lower-tier subsidiary,
and, subject to certain limitations, re-
duces the lower-tier subsidiary's at-
tributes. See paragraphs (d)(5)(iii)
through (d)(5)(vi) of this section.

(*2*) *Allocation and application of at-
tribute reduction amount not applied to
lower-tier subsidiary stock.* Any portion
of S's attribute reduction amount not
applied to reduce S's Category A, Cat-
egory B, and Category C attributes and
not allocated to lower-tier subsidiary
stock is allocated to S's Category D as-
sets other than lower-tier subsidiary
stock in the manner provided in this
paragraph (d)(4)(ii)(B)(*2*). Such amount
is first allocated to S's bases (if any) in
its assets identified as Class VII assets
in §1.338–6(b)(2)(vii). If the attribute re-
duction amount allocated to Class VII
assets is less than S's aggregate basis
in those assets, it is applied propor-
tionately (by basis) to reduce the bases
of such assets. If the attribute reduc-
tion amount allocated to Class VII as-
sets equals or exceeds S's aggregate
basis in those assets, it is applied to re-
duce the bases of such assets to zero.
Any remaining attribute reduction
amount is then allocated and applied in
the same manner to reduce S's bases (if
any) in assets identified as Class VI as-

sets in §1.338–6(b)(2)(vi), and then to re-
duce S's bases (if any) in its assets
identified in §1.338–6(b)(2) as Class V,
Class IV, Class III, and Class II, succes-
sively.

(C) *Attribute reduction amount exceed-
ing attributes available for reduction.* If
the amount to be allocated and applied
to attributes in Category D other than
lower-tier subsidiary stock exceeds the
amount of attributes in that category,
then—

(*1*) To the extent of any liabilities of
S that are not taken into account for
tax purposes before the transfer, such
excess amount is suspended. The sus-
pended amount is applied proportion-
ately to reduce any amounts attrib-
utable to S that would be deductible or
capitalizable as a result of such liabil-
ities being taken into account by S or
any other person. Solely for purposes
of this paragraph (d)(4)(ii)(C)(*1*) and
paragraph (d)(5)(ii)(B) of this section,
the term *liability* means any liability or
obligation the satisfaction of which
would be required to be capitalized as
an assumed liability by a person that
purchased all of S's assets and assumed
all of S's liabilities in a single trans-
action.

(*2*) To the extent such excess amount
is greater than any amount suspended
under paragraph (d)(4)(ii)(C)(*1*) of this
section, it is disregarded and has no
further effect.

(iii) *Time and effect of attribute reduc-
tion.* In general, the reduction of at-
tributes is effective immediately before
the transfer of a loss share of S stock.
If the reduction to a member's basis in
a share of lower-tier subsidiary stock
exceeds the basis of that share, to the
extent the excess is not restored under
paragraph (d)(5)(vi) of this section it is
an excess loss account in that share
(and such excess loss account is not
taken into account under §1.1502–19 or
otherwise as a result of the trans-
action). The reductions to attributes
required under this paragraph (d)(4), in-
cluding by reason of paragraph (d)(5)(v)
of this section (tier down of attribute
reduction amounts to lower-tier sub-
sidiaries), are not noncapital, non-
deductible expenses described in
§1.1502–32(b)(2)(iii).

(5) *Special rules applicable if S holds
stock of another subsidiary.* If S holds

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shares of stock of any other subsidiary (S1) as of a transfer of loss shares of S stock, the rules of this paragraph (d)(5) apply with respect to each such subsidiary.

(i) *Treatment of lower-tier subsidiary stock for computation of S's attribute reduction amount.* For purposes of determining S's net inside attribute amount and attribute reduction amount under paragraph (d)(3) of this section—

(A) *Single share.* All of S's shares of S1 stock held as of the transfer of S stock (whether or not transferred in, or held by S immediately after, the transaction) are treated as a single share of stock (generally referred to as the S1 stock); and

(B) *Deemed basis.* S's basis in its S1 stock is treated as its *deemed basis* in the stock, which is equal to the greater of—

(*1*) The sum of S's basis in each share of S1 stock (adjusted to reflect any gain or loss recognized on the transfer of any S1 shares in the transaction, whether allowed or disallowed); and

(*2*) The portion of S1's net inside attribute amount allocable to S's shares of S1 stock.

(C) *Multiple tiers.* For purposes of computing deemed basis under paragraph (d)(5)(i)(B) of this section, a subsidiary's basis in stock of a lower-tier subsidiary is the deemed basis in that lower-tier subsidiary stock. Thus, if stock is held in multiple tiers, the computation of deemed basis begins at the lowest tier, so that the computation of deemed basis at each tier takes into account the deemed basis of all lower-tier shares.

(ii) *Allocation of S's attribute reduction amount between lower-tier subsidiary stock and other Category D assets.* The portion of S's attribute reduction amount that is not applied to reduce S's Category A, Category B, and Category C attributes must be allocated between each of S's deemed single shares of S1 stock and all of S's other Category D assets. For this purpose, S's Category D assets other than lower-tier subsidiary stock are treated as one asset with a basis equal to the aggregate bases of all Category D assets other than lower-tier subsidiary stock (non-stock Category D asset). S's attribute reduction amount is allocated

proportionately (by basis) between (among) the non-stock Category D asset and S's deemed single share(s) of subsidiary stock. (See paragraphs (d)(4)(ii)(B)(*2*) and (d)(4)(ii)(C) of this section regarding the portion of S's attribute reduction amount allocated to the Category D assets other than lower-tier subsidiary stock.) For allocation purposes, S's basis in each deemed single share of S1 stock is its deemed basis (determined under paragraphs (d)(5)(i)(B) and (d)(5)(i)(C) of this section), reduced by—

(A) The value of S's transferred shares of S1 stock; and

(B) The nontransferred S1 shares' allocable portion of the excess of S1's non-loss assets over S1's liabilities (including liabilities described in paragraph (d)(4)(ii)(C)(*1*) of this section). For this purpose, S1's non-loss assets are—

(*1*) S1's assets identified as Class I assets in §1.338–6(b)(1),

(*2*) The value of S1's transferred shares of lower-tier subsidiary stock, and

(*3*) The nontransferred lower-tier subsidiary shares' allocable portions of lower-tier non-loss assets (net of liabilities, including liabilities described in paragraph (d)(4)(ii)(C)(*1*) of this section) of all lower-tier subsidiaries.

(iii) *Application of attribute reduction amount to S's S1 stock.* The portion of S's attribute reduction amount allocated under paragraph (d)(5)(ii) of this section to each deemed single share of S1 stock (allocated attribute reduction amount) is apportioned among, and applied to reduce S's bases in, individual S1 shares in accordance with the following—

(A) No portion of the allocated attribute reduction amount is apportioned to an individual share of transferred S1 stock if gain or loss is recognized on its transfer (recognition transfer);

(B) The allocated attribute reduction amount is apportioned among all of S's other shares of S1 stock in a manner that, first reduces the loss in and disparity among S's bases in loss shares of S1 preferred stock to the greatest extent possible, and then reduces the disparity among S's bases in the shares of S1 common stock (other than those

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transferred in a recognition transfer) to the greatest extent possible;

(C) The allocated attribute reduction amount apportioned to an individual S1 share is applied to reduce the basis of that share to, but not below, value if the share is either a preferred share or a common share that is transferred other than in a recognition transfer; and

(D) The allocated attribute reduction amount apportioned to an individual S1 share is applied to reduce the basis of that share without regard to value if the share is a common share that is not transferred in the transaction.

(iv) *Unapplied allocated attribute reduction amount.* Any portion of the allocated attribute reduction amount that is not applied to reduce S's basis in a share of S1 stock has no effect on any other attributes of S, it is not a noncapital, nondeductible expense of S, and it does not cause S to recognize income or gain. However, such amounts continue to be part of the allocated attribute reduction amount for purposes of the tier down rule in paragraph (d)(5)(v) of this section.

(v) *Tier down of attribute reduction amount*—(A) *General rule.* The allocated attribute reduction amount of each deemed single share of S1 stock is an attribute reduction amount of S1 (tier-down attribute reduction amount). Accordingly, the tier-down attribute reduction amount, in combination with any attribute reduction amount computed with respect to the transferred S1 shares (if any) (direct S1 attribute reduction amount), applies to reduce S1's attributes under the provisions of this paragraph (d). The tier-down attribute reduction amount is an attribute reduction amount of S1 that must be allocated to S1's assets, and may become an allocated attribute reduction amount of lower-tier subsidiary stock (and thus a tier-down attribute reduction amount of a lower-tier subsidiary), even if its application to S1's attributes is limited under paragraph (d)(5)(v)(B) of this section.

(B) *Conforming limitation on reduction of lower-tier subsidiary's attributes.* Notwithstanding the general rule in paragraph (d)(5)(v)(A) of this section, and unless P elects otherwise in the manner provided in paragraph (e)(5) of this section, the application of S1's tier-down attribute reduction amount to S1's attributes is limited to an amount equal to the excess of the portion of S1's net inside attribute amount that is allocable to all S1 shares held by members as of the transaction (whether or not transferred in the transaction) over the sum of—

(*1*) Any direct S1 attribute reduction amount;

(*2*) The aggregate value of all S1 shares transferred by members in the transaction with respect to which gain or loss was recognized (recognition transfer);

(*3*) The sum of all members' bases (after any reduction under this section, including this paragraph (d)) in any shares of S1 stock transferred by members in the transaction (other than in a recognition transfer), reduced by any direct S1 attribute reduction amount computed with respect to the transfer of such S1 shares; and

(*4*) The sum of all members' bases (after any reduction under this section, including this paragraph (d)) in any nontransferred shares of S1 stock held as of the transaction.

(vi) *Stock basis restoration*—(A) *In general.* After paragraph (d)(5)(v) of this section has applied with respect to all shares of subsidiary stock transferred in the transaction, lower-tier subsidiary stock basis is restored under this paragraph (d)(5)(vi). Under this paragraph (d)(5)(vi), the reductions to members' bases in shares of lower-tier subsidiary stock under paragraph (d)(5)(iii) of this section are reversed to the extent necessary to restore such bases to an amount that conforms the basis of each such share to its allocable portion of the subsidiary's net inside attribute amount, taking into account any reductions under this paragraph (d). Restoration adjustments are first made at the lowest tier and then at each next higher tier successively. Restoration adjustments do not tier up to affect the bases of higher-tier shares. Rather, restoration is computed and applied separately at each tier. For purposes of this rule, when computing a subsidiary's net inside attribute amount—

(*1*) The subsidiary's basis in stock of a lower-tier subsidiary is the actual

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basis of the stock after application of this paragraph (d); and

(*2*) Any attribute reduction amount allocated to the subsidiary's Category D assets other than lower-tier subsidiary stock that is suspended under paragraph (d)(4)(ii)(C)(*1*) of this section is treated as reducing the subsidiary's net inside attribute amount.

(B) *Election not to restore basis.* Notwithstanding paragraph (d)(5)(vi)(A) of this section, P may elect not to restore basis in stock of a lower-tier subsidiary that was reduced under paragraph (d)(5)(iii) of this section. An election not to restore lower-tier subsidiary stock basis is made in the manner provided in paragraph (e)(5) of this section.

(6) *Elections to reduce the potential for loss duplication*—(i) *In general.* Notwithstanding the general operation of this paragraph (d), P may elect to reduce the potential for loss duplication, and thereby reduce or avoid attribute reduction. To the extent of S's attribute reduction amount tentatively computed without regard to any election under this paragraph (d)(6), P may elect—

(A) To reduce all or any portion (including any portion in excess of a specified amount) of members' bases in transferred loss shares of S stock;

(B) To reattribute all or any portion (including any portion in excess of a specified amount) of S's Category A, Category B, and Category C attributes (including such attributes of lower-tier subsidiaries), to the extent they would otherwise be subject to reduction under this paragraph (d); or

(C) Any combination thereof.

(ii) *Manner and effect of election.* An election to reduce loss duplication under this paragraph (d)(6) is made in the manner provided in paragraph (e)(5) of this section. Although such elections are irrevocable, they have no effect—

(A) If there is no attribute reduction amount; or

(B) To the extent S's attribute reduction amount is less than the amount specified in the election.

(iii) *Order of application*—(A) *Stock of one subsidiary transferred in the transaction.* If shares of stock of only one subsidiary are transferred in the transaction, any stock basis reduction and reattribution of attributes (including from lower-tier subsidiaries) is deemed to occur immediately before the application of this paragraph (d). If a transferred share is still a loss share after giving effect to this election, the other provisions of this paragraph (d) then apply with respect to that share.

(B) *Stock of multiple subsidiaries transferred in the transaction.* If shares of stock of more than one subsidiary are transferred in the transaction and elections under this paragraph (d)(6) are made with respect to transfers of stock of subsidiaries in multiple tiers, effect is given to the elections from the lowest tier to the highest tier in the manner provided in this paragraph (d)(6)(iii)(B). The amount of the election for the transfer at the lowest tier is determined by applying this paragraph (d) with respect to the transferred loss shares of this lowest-tier subsidiary immediately after applying paragraphs (b) and (c) of this section to the stock of such subsidiary. The effect of any stock basis reduction or reattribution of losses immediately tiers up under §1.1502–32 to adjust members' bases in higher-tier shares. Elections and adjustments are then made with respect to transfers at each next higher tier successively.

(iv) *Special rules for reattribution elections*—(A) *In general.* Because the reattribution election is intended to provide the group a means to retain certain S attributes, and not to change the location of attributes where S continues to be a member of the same group as P, the election to reattribute attributes may only be made if S becomes a nonmember (within the meaning of §1.1502–19(c)(2)) as a result of the transaction and S does not become a member of any group that includes P. The election to reattribute S's attributes can only be made for attributes in Category A, Category B, and Category C. The attributes that would otherwise be reduced under paragraph (d)(4) of this section may be reattributed to P. Accordingly, P may specify the attributes in Category A, Category B, and Category C to be reattributed. Such an election is made in the manner provided in paragraph (e)(5) of this section. To the extent that P elects to reattribute attributes but

does not specify the attributes to be re-attributed, any attributes not specifically reattributed will be reattributed in the default amount, order, and category described in paragraph (d)(4)(ii)(A)(*1*) of this section. P succeeds to reattributed attributes as if such attributes were succeeded to in a transaction to which section 381(a) applies. Any owner shift of the subsidiary (including any deemed owner shift resulting from section 382(g)(4)(D) or section 382(l)(3)) in connection with the transaction is not taken into account under section 382 with respect to the reattributed attributes. (See §1.1502–96(d) for rules relating to section 382 and the reattribution of losses under this paragraph (d)(6).) The reattribution of S's attributes is a noncapital, nondeductible expense described in §1.1502–32(b)(2)(iii). See §1.1502–32(c)(1)(ii)(A) regarding special allocations applicable to such noncapital, nondeductible expense. If P elects to reattribute S attributes (including attributes of a lower-tier subsidiary) and reduce S stock basis, the reattribution is given effect before the stock basis reduction.

(B) *Insolvency limitation.* If S, or any higher-tier subsidiary, is insolvent within the meaning of section 108(d)(3) at the time of the transfer, S's losses may be reattributed only to the extent they exceed the sum of the separate insolvencies of any subsidiaries (taking into account only S and its higher-tier subsidiaries) that are insolvent. For purposes of determining insolvency, liabilities owed to higher-tier members are not taken into account, and stock of a subsidiary that is limited and preferred as to dividends and that is not owned by higher-tier members is treated as a liability to the extent of the amount of preferred distributions to which the stock would be entitled if the subsidiary were liquidated on the date of the transfer.

(C) *Limitation on reattribution from lower-tier subsidiaries.* P's ability to reattribute attributes of lower-tier subsidiaries is limited under this paragraph (d)(6)(iv)(C) in order to prevent circular computations of the attribute reduction amount. Accordingly, attributes that would otherwise be reduced as a result of tier-down attribute reduction under paragraph (d)(5)(v) of this section may only be reattributed to the extent that the reduction in the basis of any lower-tier subsidiary stock resulting from the noncapital, nondeductible expense (as allocated under §1.1502–32(c)(1)(ii)(A)(*2*)) will not create an excess loss account in any such stock.

(v) *Special rules for stock basis reduction elections*—(A) *In general.* An election to reduce basis in S stock is made with respect to all members' bases in loss shares of S stock that are transferred in the transaction. The reduction is allocated among all such shares in proportion to the amount of loss on each share. This reduction in S stock basis is a noncapital, nondeductible expense described in §1.1502–32(b)(2)(iii) of the transferring member.

(B) *Adjustment to the attribute reduction amount.* The attribute reduction amount (determined under paragraph (d)(3)(i) of this section) is treated as reduced by the amount of any elective reduction in the basis of the S stock under this paragraph (d)(6). Accordingly, the election to reduce stock basis under this paragraph (d)(6) is treated as reducing or eliminating the duplication even if the shares of S stock are loss shares after giving effect to the election.

(C) *Deemed stock basis reduction election in the case of certain disallowed stock losses.* If there is a net stock loss in transferred shares after taking into account any actual elections under this paragraph (d)(6), and the stock loss would otherwise be permanently disallowed (for example, under section 311(a)), P will be deemed to have made a stock basis reduction election equal to such net stock loss.

(7) *Additional attribute reduction in the case of certain transfers due to worthlessness and certain transfers not followed by a separate return year*—(i) *In general.* Notwithstanding any other provision of this paragraph (d), if a transfer is subject to this paragraph (d)(7) any of S's Category A, Category B, and Category C attributes not otherwise reduced or reattributed under this paragraph (d), and any credit carryover attributable to S, including any consolidated credits that would be apportioned to S under the principles of §1.1502–79 if S

had a separate return year, are eliminated. Attributes other than consolidated tax attributes are eliminated under this paragraph (d)(7)(i) immediately before the transfer subject to this paragraph (d)(7)(i). The elimination of attributes under this paragraph (d)(7)(i) is not a noncapital, nondeductible expense described in §1.1502–32(b)(2)(iii).

(ii) *Transfers subject to this paragraph (d)(7).* A transfer is subject to this paragraph (d)(7) if—

(A) M transfers a share of S stock solely by reason of a transfer defined in paragraph (f)(10)(i)(D) of this section (worthlessness where the provisions of §1.1502–80(c) are satisfied), M recognizes a net deduction or loss on the share, and S is a member of the group on the day following the last day of the group's taxable year during which the share becomes worthless under section 165 (taking into account the provisions of §1.1502–80(c)), or

(B) M recognizes a net deduction or loss on the stock of S in a transaction in which S ceases to be a member and does not become a nonmember within the meaning of §1.1502–19(c)(2).

(iii) *Example.* The application of this paragraph (d) to transfers due to worthlessness and to loss transfers not followed by separate return years is illustrated by the following example.

Example. (i) *Worthlessness where S continues as a member.* M owns the sole share of S stock. The share is worthless under section 165. In addition, S has disposed of all its assets within the meaning of §1.1502–19(c)(1)(iii)(A) and therefore satisfies the provisions of §1.1502–80(c). M claims a worthless securities deduction with respect to the share. The worthlessness is a transfer of the S share, a loss share, and therefore subject to this section. After the application of paragraphs (b) and (c) of this section, M's basis in the share (and therefore M's net stock loss) is $75. The portion of the consolidated net operating loss attributable to S is $100. Under the general rules of this paragraph (d), S's attribute reduction amount is $75 (the lesser of M's $75 net stock loss and S's $100 aggregate inside loss ($100 net inside attribute amount over $0 value of S share)). S's attributes are reduced by $75, from $100 to $25. In addition, if S remains a member of the P group, this paragraph (d)(7) applies to eliminate the remaining $25 of the consolidated net operating loss attributable to S because the S share is worthless, and M recognizes a deduction (taking into account

§1.1502–80(c)) with respect to the share. Accordingly, after the application of this section, M recognizes a $75 worthless securities deduction, S has $0 net inside attributes, and the consolidated net operating loss is reduced by a total of $100.

(ii) *Dissolution of insolvent subsidiary.* The facts are the same as in paragraph (i) of this *Example,* except that S is insolvent, does not dispose of all its assets within the meaning of §1.1502–19(c)(1)(iii)(A), M causes S to be legally dissolved, and the S share held by M is cancelled without consideration. Under paragraph (d)(7)(ii)(B) of this section, the dissolution of S is subject to this paragraph (d)(7) and the result is the same as in paragraph (i) of this *Example.* The result would also be the same if instead of being legally dissolved, S was converted into an entity that is disregarded as separate from M.

(iii) *Stock cancelled in connection with a section 381(a) transaction with another member.* M owns the sole share of S common stock with a basis of $75. M1 owns the sole share of S preferred stock. The value of S's assets (net of liabilities) is less than the liquidation preference on the S preferred stock. In a reorganization described in section 368(a)(1)(D), S transfers all of its assets to M2 in exchange for M2 common stock and M2's assumption of S's liabilities, S distributes all of the M2 common stock received in the exchange to M1 in exchange for M1's S preferred stock, the S common stock held by M is cancelled without consideration, and S ceases to exist. Notwithstanding that M is not entitled to treat its common share of S stock as worthless until §1.1502–80(c) is satisfied, M's share is transferred within the meaning of paragraph (f)(10)(i)(A) of this section because M ceases to own the share in a transaction in which, but for this section (and notwithstanding the deferral of any amount recognized on the transfer, other than by reason of §1.1502–13), M would recognize a loss or deduction with respect to the share. Accordingly, there is a transfer of the S common share and this section applies to the transfer. There are no adjustments under paragraphs (b) or (c) of this section because no investment adjustments have been applied to the bases of the shares. The transfer of the S common stock is subject to the general rules of this paragraph (d), but is not subject to the additional attribute reduction under this paragraph (d)(7) because the transfer was not solely by reason of worthlessness where §1.1502–80(c) is satisfied, and S did not cease to be a member because M2 is a successor to S.

(iv) *Stock cancelled in connection with a section 381(a) transaction with a nonmember.* The facts are the same as in paragraph (iii) of this *Example,* except that the S preferred share is held by X, instead of M2 acquiring

S's assets, S merges into Y in a reorganization described in section 368(a)(1)(A), M1 receives all of the Y stock issued in the merger in exchange for M1's S preferred stock, and Y does not become a member as a result of the transaction. M treats the cancelled S common stock as worthless, and §1.1502–80(c) is satisfied because S ceases to be a member. In this case, there is a transfer of M's S common share because it becomes worthless (taking into account §1.1502–80(c)); because M ceases to own the share in a transaction in which, but for this section (and notwithstanding the deferral of any amount recognized on the transfer, other than by reason of §1.1502–13), M would recognize a loss or deduction with respect to the share; and because M and S cease to be members of the same group. The transfer of the S common stock is subject to the general rules of this paragraph (d), but is not subject to the additional attribute reduction under this paragraph (d)(7) because the transfer was not solely by reason of worthlessness where §1.1502–80(c) is satisfied and, although S did cease to be a member, S became a nonmember within the meaning of §1.1502–19(c)(2) because Y is a successor to S.

(8) *Examples.* The application of this paragraph (d) is illustrated by the following examples:

Example 1. Computation of attribute reduction amount. (i) *Transfer of all S shares.* (A) *Facts.* M owns all 100 of the outstanding shares of S stock with a basis of $2 per share. S owns land with a basis of $100, has a $120 loss carryover, and has no liabilities. Each share has a value of $1. M sells 30 of the S shares to X for $30. As a result of the sale, M and S cease to be members of the same group. Accordingly, all 100 of the S shares are transferred. See paragraphs (f)(10)(i)(A), (f)(10)(i)(B), and (f)(10)(i)(C) (with respect to the 30 S shares sold to X) of this section. M's transfer of the S shares is a transfer of loss shares and therefore subject to this section.

(B) *Application of paragraphs (b) and (c) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is no disparity among M's bases in shares of S common stock and there are no shares of S preferred stock outstanding (so there can be no unrecognized gain or loss on preferred stock). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to paragraph (c) of this section. No adjustment is required under paragraph (c) of this section because the net positive adjustment is $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, M's transfer of the

S shares is still a transfer of loss shares and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* Under this paragraph (d), S's attributes are reduced by S's attribute reduction amount. Paragraph (d)(3) of this section provides that S's attribute reduction amount is the lesser of the net stock loss and S's aggregate inside loss. The net stock loss is the excess of the $200 aggregate bases of the transferred shares over the $100 aggregate value of the transferred shares, or $100. S's aggregate inside loss is the excess of its $220 net inside attribute amount (the sum of the $100 basis in the land and the $120 loss carryover) over the $100 value of all outstanding S shares, or $120. The attribute reduction amount is therefore the lesser of the $100 net stock loss and the $120 aggregate inside loss, or $100. Under paragraph (d)(4) of this section, S's $100 attribute reduction amount is allocated and applied to reduce S's $120 loss carryover to $20. Under paragraph (d)(4)(iii) of this section, the reduction of the loss carryover is not a noncapital, nondeductible expense and has no effect on M's basis in the S stock.

(ii) *Transfer of less than all S shares.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 1*, except that M only sells 20 S shares to X. M's sale of the 20 S shares is a transfer of loss shares and therefore subject to this section. See paragraph (f)(10)(i)(A) and (f)(10)(i)(C) of this section. (There is no transfer of the remaining shares because S and M remain members of the same group.)

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) or paragraph (c) of this section for the reasons set forth in paragraph (i)(B) of this *Example 1*. Thus, after the application of paragraph (c) of this section, M's transfer of the S shares is still a transfer of loss shares and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* Under this paragraph (d), S's attributes are reduced by S's attribute reduction amount. Paragraph (d)(3) of this section provides that S's attribute reduction amount is the lesser of the net stock loss and S's aggregate inside loss. The net stock loss is $20, the excess of the $40 aggregate bases of the transferred shares over the $20 aggregate value of the transferred shares. S's aggregate inside loss is $120, the excess of its $220 net inside attribute amount (the sum of the $100 basis in the land and the $120 loss carryover) over the $100 value of all outstanding S shares. The attribute reduction amount is therefore $20, the lesser of the $20 net stock loss and the $120 aggregate inside loss. Under paragraph (d)(4) of this section, S's $20 attribute reduction amount is allocated and applied to reduce S's $120 loss carryover to $100.

Example 2. Proportionate allocation of attribute reduction amount. (i) *Facts.* M owns the sole outstanding share of S stock with a basis of $150. S owns land with a basis of $60, a factory with a basis of $30, publicly traded property with a basis of $30 and goodwill with a basis of $30. M sells its S share for $90. M's sale of the S share is a transfer of a loss share and therefore subject to this section. See paragraphs (f)(10)(i)(A), (f)(10)(i)(B), and (f)(10)(i)(C) of this section.

(ii) *Application of paragraphs (b) and (c) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to paragraph (c) of this section.

No adjustment is required under paragraph (c) of this section because both the disconformity amount and the net positive adjustment are $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, M's sale of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(iii) *Attribute reduction under this paragraph (d).* Under paragraph (d)(3) of this section, S's attribute reduction amount is determined to be $60, the lesser of the $60 net stock loss ($150 basis over $90 value) and S's $60 aggregate inside loss (the excess of S's $150 net inside attribute amount (the $60 basis of the land, plus the $30 basis of the factory, plus the $30 basis of the publicly traded property, plus the $30 basis of the goodwill) over the $90 value of the S share). Under paragraph (d)(4)(ii)(B)(*2*) of this section, the $60 attribute reduction amount is allocated and applied to reduce S's bases in its Category D assets, S's only attributes available for reduction, as follows:

Available attributes, basis in Category D assets	Attribute amount	Allocable portion of attribute reduction amount	Adjusted attribute amount
Class VII, Goodwill	$30	$30	$0
Class V:			
Land	60	(60/90 × 60) 40	20
Factory	30	(30/90 × 60) 20	10
Total Class V	90	60	30
Class II, publicly traded property	30	0	30
Totals	150	60	90

Example 3. Attribute reduction amount less than total attributes in Category A, Category B, and Category C. (i) *No election to prescribe the allocation of S's attribute reduction amount.* (A) *Facts.* P owns the sole outstanding share of M stock with a basis of $1,000 and M owns the sole outstanding share of S stock with a basis of $210. M sells its S share to X for $100. M's sale of the S share is a transfer of a loss share and therefore subject to this section. See paragraphs (f)(10)(i)(A), (f)(10)(i)(B), and (f)(10)(i)(C) of this section. At the time of the sale, S has no liabilities and the following attributes:

Category	Attribute	Attribute amount
Category A	Capital loss carryover	$10
Category B	NOL carryover	200
Category C	Deferred deductions	40
Category D, Class V	Basis in Land	50
Total Attributes		300

(B) *Application of paragraphs (b) and (c) of this section.* Although the transfer is subject to this section, there is no basis redeter-

mination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to paragraph (c) of this section. No adjustment is required under paragraph (c) of this section because both the disconformity amount and the net positive adjustment are $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, M's transfer of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of the $110 net stock loss ($210 basis over $100 value) and S's aggregate inside loss. S's aggregate inside loss is $200 (S's $300 net inside attribute amount (the $10 capital loss

carryover, plus the $200 NOL carryover, plus the $40 deferred deductions, plus the $50 basis in land) less the $100 value of all outstanding S shares). Thus, the attribute reduction amount is $110, the lesser of the $110 net stock loss and S's $200 aggregate inside loss. Under paragraph (d)(4)(ii)(A)(*1*) of this section, the $110 attribute reduction amount is allocated and applied to reduce S's attributes as follows:

Category	Attribute	Attribute amount	Allocation of attribute reduction amount	Adjusted attribute amount
Category A	Capital loss carryover	$10	$10	$0
Category B	NOL carryover	200	100	100
Category C	Deferred deductions	40	0	40
Category D, Class V	Basis in land	50	0	50
Totals	....	300	110	190

(ii) *Election to prescribe the allocation of attribute reduction amount.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 3*, except that P elects to allocate the attribute reduction amount to eliminate the Category C attributes, preserve the capital loss carryover, and reduce Category B attributes.

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) or paragraph (c) of this section for the reasons set forth in paragraph (i)(B) of this *Example 3*. Thus, after the application of paragraph (c) of this section, M's sale of the S share is still a transfer of a loss share, and accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* For the reasons set forth in paragraph (i)(C) of this *Example 3*, under this paragraph (d)(3), S's attribute reduction amount is determined to be $110. M elects to apply S's $110 attribute reduction amount as follows:

Category	Attribute	Attribute amount	Allocation of attribute reduction amount	Adjusted attribute amount
Category A	Capital loss carryover	$10	$0	$10
Category B	NOL carryover	200	70	130
Category C	Deferred deductions	40	40	0
Category D, Class V	Basis of land	50	0	50
Totals	....	300	110	190

Example 4. Attributes attributable to liability not taken into account. (i) *S operates one business.* (A) *Facts.* On January 1, year 1, M forms S by exchanging $150 for the sole outstanding share of S stock. In year 1, S earns $500, purchases land for $50, spends $100 to build a factory on that land, and then purchases publicly traded property for $250. In year 2, S earns a section 38 general business credit of $50. However, pollution generated by S's business gives rise to an environmental remediation liability under Federal law that would be required to be capitalized if a person purchased S's assets and assumed the liability. Before any amounts have been taken into account with respect to the environmental remediation liability, when the liability has a present value of $500, M sells its S share to X for $150. After giving effect to all other provisions of law, M's basis in the S share is $650 (the original basis of $150 increased under §1.1502–32 by $500 for the income earned). The sale is therefore a transfer of a loss share of subsidiary stock and sub-

ject to this section. See paragraphs (f)(10)(i)(A), (f)(10)(i)(B), and (f)(10)(i)(C) of this section.

(B) *Application of paragraphs (b) and (c) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to paragraph (c) of this section. No adjustment to basis is made under paragraph (c) of this section because, although the net positive adjustment is $500, the disconformity amount is $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, M's sale of the S share is still a transfer of a loss

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share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d)*. (*1*) Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of the $500 net stock loss ($650 basis over $150 value) and the aggregate inside loss. The aggregate inside loss is $500, computed as the excess of S's $650 net inside attribute amount (the sum of S's $100 basis in the factory, $50

basis in the land, $250 basis in the publicly traded property, and $250 cash remaining after the purchases) over the $150 value of the S share. Thus, S's attribute reduction amount is $500, the lesser of the $500 net stock loss and the $500 aggregate inside loss. Under paragraph (d)(4)(ii)(B)(*2*) of this section, S's $500 attribute reduction amount is allocated and applied to reduce S's attributes as follows:

Available attributes	Attribute amount	Allocable portion of attribute reduction amount	Adjusted attribute amount
Category D:			
Class V Assets:			
Basis of factory	$100	$100	$0
Basis of land	50	50	0
Class II Assets:			
Publicly traded property	250	250	0

(*2*) The remaining $100 attribute reduction amount is not applied to S's $250 cash (Class I asset) or to S's $50 general business tax credit. Under the general rule of this paragraph (d), that remaining $100 attribute reduction amount would have no further effect on S's attributes. However, S has a $500 liability that has not been taken into account. Therefore, under paragraph (d)(4)(ii)(C)(*1*) of this section, the remaining $100 attribute reduction amount is suspended and will be allocated and applied to reduce any amounts that become deductible or capitalizable as a result of the environmental remediation liability later being taken into account. If the liability is satisfied for an amount that is less than $100, under paragraph (d)(4)(ii)(C)(*2*) of this section the remaining portion of that $100 suspended attribute reduction amount is disregarded and has no further effect.

(ii) *Lower-tier subsidiary with additional liability.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of *Example 4*, except that, in addition, S exchanged $50 for the sole outstanding share of stock of S1. S1 has $50 and equipment with an aggregate basis of $0. S1 also has employee medical expense liabilities that have not been taken into account and that would be required to be capitalized if a person purchased S1's assets and assumed the liabilities. At the time of the sale, S's environmental remediation liability had a present value of $475 and S1's employee medical expenses had a present value of $25. For the reasons set forth in paragraph (i)(A) of this *Example 4*, M's sale of the S share is a transfer of a loss share and therefore subject to this section.

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is made under paragraph (b) or paragraph (c) of this section for the reasons set forth in paragraph (i)(B) of this *Example 4*. Thus, after the application of paragraph (c) of this section, M's sale of

the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of the $500 net stock loss ($650 basis over $150 value) and the aggregate inside loss. The aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. Under paragraphs (d)(3)(iii)(B) and (d)(5)(i)(B) of this section, S's net inside attribute amount is determined by using S's $50 deemed basis in the S1 share (the greater of S's $50 actual basis in the share and S1's $50 net inside attribute amount). Accordingly, S's net inside attribute amount is $650 (the sum of its $100 basis in the factory, $50 basis in the land, $250 basis in the publicly traded property, $200 cash, and $50 deemed basis in its S1 share). The aggregate inside loss is $500, the excess of S's $650 net inside attribute amount over the $150 value of the S share. Thus, S's attribute reduction amount is $500, the lesser of the $500 net stock loss and S's $500 aggregate inside loss.

(*2*) *Allocation, apportionment, and application of attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $500 attribute reduction amount is allocated proportionately (by basis) between its S1 share and its non-stock Category D asset (consisting of all S's Category D assets other than its share of S1 stock, with a basis equal to $600, the aggregate basis of S's non-stock assets). However, under paragraph (d)(5)(ii) of this section, for purposes of allocating S's attribute reduction amount between its non-stock Category D asset and the S1 share, S's $50 deemed basis in its S1 share is treated as reduced by S1's $25 net non-loss assets (its Class I asset, $50 cash over S1's liabilities

(which, for this purpose include the $25 of employee medical expense liabilities not taken into account as of the transfer)). As a result, S's attribute reduction amount is allocated $480 (600/625 × 500) to S's non-stock Category D asset and $20 (25/625 × 500) to the S1 share. The $480 attribute reduction amount allocated to S's non-stock Category D asset produces the same reduction in the bases of S's assets (other than the S1 stock) as in paragraph (i)(C) of this *Example 4;* in addition, the $80 attribute reduction amount not applied to reduce S's attributes is suspended and applied to reduce any amounts that become deductible or capitalizable as a result of the environmental remediation liability later being taken into account. If the liability is satisfied for an amount that is less than $80, under paragraph (d)(4)(ii)(C)(*2*) of this section the remaining portion of that $80 suspended attribute reduction amount is disregarded and has no further effect. Because the S1 share is not transferred within the meaning of paragraph (f)(10) of this section, the allocated attribute reduction amount apportioned to the S1 share is applied fully to reduce the basis of the S1 share to $30. See paragraph (d)(5)(iii) of this section.

(D) *Tier down of S's attribute reduction amount.* The $20 portion of S's attribute reduction amount allocated to the S1 share is an attribute reduction amount of S1. Because S1 holds only cash, it has no attributes available for reduction under this paragraph (d). However, because S1 has a $25 liability not taken into account for tax purposes, paragraph (d)(4)(ii)(C)(*1*) of this section requires that $20 of the unapplied attribute reduction amount be suspended and then allocated and applied to reduce any amounts that become deductible or capitalizable as a result of the employee medical expense liabilities later being taken into account. If these liabilities are satisfied for an amount that is less than $20, under paragraph (d)(4)(ii)(C)(*2*) of this section the remaining portion of that $20 suspended attribute reduction amount is disregarded and has no further effect.

Example 5. Wholly owned lower-tier subsidiary (no lower-tier transfer). (i) *Application of conforming limitation.* (A) *Facts.* M owns the sole outstanding share of S stock with a basis of $250. S owns Asset with a basis of $100 and the only two outstanding shares of S1 stock (Share A has a basis of $40 and Share B has a basis of $60). S1 owns Asset 1 with a basis of $50. M sells its S share to P1, the common parent of another consolidated group, for $50. The sale is a transfer of a loss share and therefore subject to this section. See paragraphs (f)(10)(i)(A), (f)(10)(i)(B), and (f)(10)(i)(C) of this section.

(B) *Application of paragraphs (b) and (c) of this section.* Although the transfer is subject to this section, there is no basis redeter-mination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to paragraph (c) of this section. No adjustment is required under paragraph (c) of this section because, although there is a $50 disconformity amount, the net positive adjustment is $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, M's sale of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of M's net stock loss and S's aggregate inside loss. M's net stock loss is $200 ($250 basis over $50 value). S's aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. Under paragraphs (d)(3)(iii)(B) and (d)(5)(i)(B) of this section, S's net inside attribute amount is $200, computed as the sum of S's $100 basis in Asset and its $100 deemed basis in the deemed single share of S1 stock (computed as the greater of S's $100 aggregate basis in the S1 shares and S1's $50 basis in Asset 1). S's aggregate inside loss is therefore $150, $200 net inside attribute amount over the $50 value of the S share. Accordingly, S's attribute reduction amount is $150, the lesser of the $200 net stock loss and the $150 aggregate inside loss.

(*2*) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $150 attribute reduction amount is allocated proportionately (by basis) between Asset (non-stock Category D asset) with a basis of $100, and the S1 stock (treated as a single share with a deemed basis of $100). Accordingly, $75 of the attribute reduction amount ($100/$200 × $150) is allocated to Asset and $75 of the attribute reduction amount ($100/$200 × $150) is allocated to the S1 stock. The $75 of the attribute reduction amount allocated to Asset is applied to reduce S's basis in Asset from $100 to $25. The $75 of the attribute reduction amount allocated to the S1 stock is first apportioned between the shares in a manner that reduces disparity to the greatest extent possible. Thus, of the total $75 allocated to the S1 stock, $27.50 is apportioned to Share A and $47.50 is apportioned to Share B. Because neither of the S1 shares is transferred within the meaning of paragraph (f)(10) of this section, the allocated attribute reduction amount apportioned to each of the individual S1 shares is applied

fully to reduce the basis of each share to $12.50. See paragraph (d)(5)(iii) of this section. As a result, immediately after the allocation, apportionment, and application of S's attribute reduction amount, S's basis in Asset is $25 and S's basis in each of the S1 shares is $12.50.

(3) *Tier down of S's attribute reduction amount, application of conforming limitation.* Under paragraph (d)(5)(v)(A) of this section, the $75 portion of S's attribute reduction amount allocated to the S1 stock is an attribute reduction amount of S1 (regardless of the extent, if any, to which it is apportioned and applied to reduce the basis of any shares of S1 stock). Under the general rules of this paragraph (d), the $75 tier-down attribute reduction amount would be allocated and applied to reduce S1's basis in Asset 1 from $50 to $0. However, under paragraph (d)(5)(v)(B) of this section, S1's attributes can be reduced by only $25, the excess of the $50 portion of S1's net inside attribute amount that is allocable to all S1 shares held by members as of the transaction over $25, the aggregate amount of members' bases in nontransferred S1 shares after reduction under this paragraph (d). Thus, of S1's $75 tier-down attribute reduction amount, only $25 is applied to reduce S1's basis in Asset 1, from $50 to $25. The $50 unapplied portion of the tier-down attribute reduction amount subject to the conforming limitation has no further effect.

(ii) *Application of basis restoration rule.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 5,* except that S's basis in Share A is $15 and S's basis in Share B is $35, and S1's basis in Asset 1 is $100.

(B) *Basis redetermination and basis reduction under paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) or paragraph (c) of this section for the reasons set forth in paragraph (i)(B) of this *Example 5.* Thus, after the application of paragraph (c) of this section, M's transfer of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (1) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of M's net stock loss and S's aggregate inside loss. M's net stock loss is $200 ($250 basis over $50 value). S's aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. Under paragraphs (d)(3)(iii)(B) and (d)(5)(i)(B) of this section, S's net inside attribute amount is $200, the sum of S's $100 basis in Asset and its $100 deemed basis in the deemed single share of S1 stock (computed as the greater of S's $50 aggregate basis in the S1 shares and S1's $100 basis in Asset 1). S's aggregate inside loss is therefore $150, $200 net inside attribute amount over the $50 value of the S share. Accordingly, S's attribute reduction

amount is $150, the lesser of the $200 net stock loss and the $150 aggregate inside loss.

(2) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $150 attribute reduction amount is allocated proportionately (by basis) between Asset (non-stock Category D asset) with a basis of $100, and the S1 stock (treated as a single share with a deemed basis of $100). Accordingly, $75 of the attribute reduction amount ($100/$200 × $150) is allocated to Asset and $75 of the attribute reduction amount ($100/$200 × $150) is allocated to the S1 stock. The $75 of the attribute reduction amount allocated to Asset is applied to reduce S's basis in Asset from $100 to $25. The $75 of the attribute reduction amount allocated to the S1 stock is first apportioned between the shares in a manner that reduces disparity to the greatest extent possible. Thus, of the total $75 allocated to the S1 stock, $27.50 is apportioned to Share A and $47.50 is apportioned to Share B. Because neither of the S1 shares is transferred within the meaning of paragraph (f)(10) of this section, the allocated attribute reduction amount apportioned to each of the individual S1 shares is applied fully to reduce the basis of each share to an excess loss account of $12.50. See paragraph (d)(5)(iii) of this section. As a result, immediately after the allocation, apportionment, and application of S's attribute reduction amount, S's basis in Asset is $25 and S's basis in each of the S1 shares is an excess loss account of $12.50.

(3) *Tier down of S's attribute reduction amount.* Under paragraph (d)(5)(v)(A) of this section, the $75 portion of S's attribute reduction amount allocated to S1 stock is an attribute reduction amount of S1 (regardless of the extent, if any, to which it is apportioned and applied to reduce the basis of any shares of S1 stock). Accordingly, under the general rules of this paragraph (d), the $75 tier-down attribute reduction amount is applied to reduce S1's basis in Asset 1 from $100 to $25.

(4) *Basis restoration.* Under paragraph (d)(5)(vi)(A) of this section, after this paragraph (d) has been applied with respect to all transfers of subsidiary stock, any reduction made to the basis of a share of lower-tier subsidiary stock under paragraph (d)(5)(iii) of this section is reversed to the extent necessary to conform the basis of that share to the share's allocable portion of the subsidiary's net inside attribute amount (after reduction). S1's net inside attribute amount after the application of this paragraph (d) is $25 and thus each of the two S1 share's allocable portion of S1's net inside attribute amount is $12.50. Accordingly, the reductions to Share A and to Share B under paragraph (d)(5)(iii) of this section are reversed to the extent necessary to restore the basis of each

share to $12.50. Thus, $25 of the $27.50 of reduction to the basis of Share A, and $25 of the $47.50 of reduction to the basis of share B, is reversed, restoring the basis of each share to $12.50.

Example 6. Multiple blocks of lower-tier subsidiary stock outstanding. (i) *Excess loss account taken into account (transfer of upper-tier share causes disposition within the meaning of §1.1502–19(c)(1)(ii)(B)).* (A) *Facts.* M owns the sole outstanding share of S stock with a basis of $200. S holds all five outstanding shares of S1 common stock (Shares A, B, C, D, and E). S has an excess loss account of $20 in Share A and a positive basis of $20 in each of the other shares. The only investment adjustment applied to any S1 share was a negative $20 investment adjustment applied to Share A when it was the only outstanding share, and this amount tiered up and adjusted M's basis in the S share. S1 owns one asset with a basis of $250. M sells its S share to P1, the common parent of a consolidated group, for $20. The sale of the S share is a disposition of Share A under §1.1502–19(c)(1)(ii)(B) (S1 becomes a nonmember because it will have a separate return year as a member of the P1 group). Accordingly, under §1.1502–19(b)(1)(i) and paragraph (a)(3)(i) of this section, before the application of this section, S's excess loss account in Share A is taken into account, increasing S's basis in Share A to $0 and M's basis in its S share to $220. After giving effect to the recognition of the excess loss account, M's sale of the S share is a transfer of a loss share and therefore subject to this section. See paragraphs (f)(10)(i)(A), (f)(10)(i)(B), and (f)(10)(i)(C) of this section.

(B) *Basis redetermination and basis reduction under paragraphs (b) and (c) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to paragraph (c) of this section. No adjustment is made under paragraph (c) of this section because, even though there is a disconformity amount of $140, the net positive adjustment is $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, M's sale of the S share remains a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (1) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of M's net stock loss and S's aggregate

inside loss. M's net stock loss is $200 ($220 basis over $20 value). S's aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. Under paragraphs (d)(3)(iii)(B) and (d)(5)(i)(B) of this section, S's net inside attribute amount is $250, S's $250 deemed basis in the deemed single share of S1 stock (computed as the greater of S's $80 aggregate basis in the S1 shares ($0 basis in Share A plus $20 basis in each of the four other shares) and S1's $250 basis in its asset). S's aggregate inside loss is therefore $230, $250 net inside attribute amount over the $20 value of the S share. Accordingly, S's attribute reduction amount is $200, the lesser of the $200 net stock loss and the $230 aggregate inside loss.

(2) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $200 attribute reduction amount is allocated entirely to the S1 stock (treated as a single share) and then apportioned among the shares in a manner that reduces disparity to the greatest extent possible. Thus, $24 is apportioned to Share A and $44 is apportioned to each of the other shares. Because none of the S1 shares are transferred within the meaning of paragraph (f)(10) of this section (notwithstanding that there is a disposition under §1.1502–19(c)(1)(ii)(B)), the allocated attribute reduction amount apportioned to each of the individual S1 shares is applied fully to reduce the basis of each share to an excess loss account of $24. See paragraph (d)(5)(iii) of this section.

(3) *Tier down of S's attribute reduction amount.* Under paragraph (d)(5)(v)(A) of this section, the $200 of S's attribute reduction amount allocated to the S1 shares is an attribute reduction amount of S1 (regardless of the extent, if any, to which it is apportioned and applied to reduce the basis of any shares of S1 stock). Under the general rules of this paragraph (d), S1's $200 tier-down attribute reduction amount is allocated and applied to reduce S1's basis in its asset from $250 to $50.

(4) *Basis restoration.* Under paragraph (d)(5)(vi)(A) of this section, after this paragraph (d) has been applied with respect to all transfers of subsidiary stock, any reduction made to the basis of a share of lower-tier subsidiary stock under paragraph (d)(5)(iii) of this section is reversed to the extent necessary to conform the basis of that share to the share's allocable portion of the subsidiary's net inside attribute amount (after reduction). S1's net inside attribute amount after the application of this paragraph (d) is $50 and thus each of the five S1 share's allocable portion of S1's net inside attribute amount is $10. Accordingly, the reductions to the bases of S1 shares under paragraph (d)(5)(iii) of this section are reversed to the extent necessary to restore (to the extent possible) the basis of each share to $10. Thus, $24 of the $24 of reduction to the basis of

Share A is reversed, restoring the basis of Share A to $0, and $34 of the $44 of reduction to the basis of each other share is reversed, restoring the basis of each of those shares to $10.

(ii) *Sale of gain share to member*. (A) *Facts*. The facts are the same as in paragraph (i)(A) of this *Example 6*, except that M owns Shares A, B, C, and D, S owns Share E, S has a liability of $20, and S1's basis in its asset is $500. Also, as part of the transaction, S sells Share E to M for $40. Unlike under the facts of paragraph (i)(A) of this *Example 6*, there is no disposition of Share A within the meaning of §1.1502–19(c)(1)(ii)(B) (S1 continues to be a member of the group, and thus does not have a separate return year). As a result, the Share A excess loss account is not taken into account. Although S's sale of Share E is a transfer of that share, the share is not a loss share and thus the transfer is not subject to this section. M's sale of the S share, however, is a transfer of a loss share and therefore subject to this section. See paragraphs (f)(10)(i)(A), (f)(10)(i)(B), and (f)(10)(i)(C) of this section.

(B) *Transfer in lowest tier (gain share)*. S's sale of Share E is the lowest-tier transfer in the transaction. Under paragraph (a)(3)(ii)(A) of this section, because there are no transfers of loss shares at that tier, no adjustments are required under paragraph (b) or (c) of this section. However, S's gain recognized on the transfer of Share E is computed and immediately adjusts members' bases in subsidiary stock under §1.1502–32 (because M and S are not members of the same group immediately after the transaction, the sale is not an intercompany transaction subject to §1.1502–13). Accordingly, M's basis in its S share is increased by $20, from $200 to $220.

(C) *Transfers in next higher tier, application of paragraphs (b) and (c) of this section*. The next higher tier transfer is M's sale of the S stock. The sale is a transfer of a loss share and therefore subject to this section. Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to paragraph (c) of this section. Under paragraph (c) of this section, M's basis in its S share is decreased by $20, the lesser of S's $200 disconformity amount (computed as the excess of M's $220 basis in the S stock over S's $20 net inside attribute amount (computed as the $20 basis in Share E, increased by $20 to reflect the gain recognized with respect to the share, less the $20 liability)), and the $20 net

positive adjustment. Thus, after the application of paragraph (c) of this section, M's basis in the S share is $200, and the sale remains a transfer of a loss share. There are no higher tier transfers and, therefore, M's transfer of the S share is then subject to this paragraph (d).

(D) *Attribute reduction under this paragraph (d)*. (1) *Computation of attribute reduction amount*. Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of M's net stock loss and S's aggregate inside loss. M's net stock loss is $180 ($200 basis over $20 value). S's aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. Under paragraphs (d)(3)(iii)(B) and (d)(5)(i)(B) of this section, S's net inside attribute amount is $80, computed as $100 (S's deemed basis in Share E (the greater of $40 (S's $20 basis in Share E, adjusted for the $20 gain recognized with respect to the share), and Share E's allocable portion of S1's net inside attribute amount of $100 (1/5 of S1's $500 basis in its asset)), less S's $20 liability. Accordingly, S's aggregate inside loss is $60 ($80 net inside attribute amount over the $20 value of the S stock). S's attribute reduction amount is therefore the lesser of $180 net stock loss and $60 aggregate inside loss.

(2) *Allocation, apportionment, and application of S's attribute reduction amount*. Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $60 attribute reduction amount is allocated entirely to its S1 stock, Share E. However, because Share E was transferred within the meaning of paragraph (f)(10) of this section and gain was recognized on its transfer, none of the allocated amount is apportioned to, or applied to reduce the basis of Share E. See paragraph (d)(5)(iii)(A) of this section. Under paragraph (d)(5)(iv) of this section, the $60 allocated attribute reduction amount not apportioned or applied to Share E has no effect on S or S's attributes.

(3) *Tier down of S's attribute reduction amount*. Notwithstanding the fact that no portion of the allocated attribute reduction amount was apportioned to or applied to reduce the basis of Share E, the entire $60 allocated attribute reduction amount is an attribute reduction amount of S1. See paragraph (d)(5)(v)(A) of this section. Under the general rules of this paragraph (d), S1's $60 tier-down attribute reduction amount is allocated and applied to reduce S1's basis in its asset from $500 to $440.

(4) *Basis restoration*. Under paragraph (d)(5)(vi)(A) of this section, after this paragraph (d) has been applied with respect to all transfers of subsidiary stock, any reduction made to the basis of a share of subsidiary stock under paragraph (d)(5)(iii) of this section is reversed to the extent necessary to conform the basis of that share to the share's allocable portion of the subsidiary's net inside attribute amount. No reduction was

made to the basis of the S1 stock under paragraph (d)(5)(iii) of this section. Therefore, no stock basis is increased under the basis restoration rule in paragraph (d)(5)(vi)(A) of this section.

Example 7. Allocation of attribute reduction if lower-tier subsidiary has non-loss assets or liabilities. (i) *S1 holds cash.* (A) *Facts.* M owns the sole outstanding share of S stock with a basis of $800. S owns Asset with a basis of $400 and the sole outstanding share of S1 stock with a basis of $300. S1 holds Asset 1 with a basis of $50, and $100 cash. M sells its S share to P1, the common parent of a consolidated group, for $100. The sale is not a transfer of the S1 share because S and S1 are members of the same group following the transaction. However, the sale is a transfer of the S share, a loss share, and therefore subject to this section. See paragraphs (f)(10)(i)(A), (f)(10)(i)(B), and (f)(10)(i)(C) of this section.

(B) *Application of paragraphs (b) and (c) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to the provisions of this paragraph (c). No adjustment is required under paragraph (c) of this section because, even though there is a disconformity amount of $100, the net positive adjustment is $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, M's sale of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (1) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of M's net stock loss and S's aggregate inside loss. M's net stock loss is $700 ($800 basis over $100 value). S's aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. Under paragraphs (d)(3)(iii)(B) and (d)(5)(i)(B) of this section, S's net inside attribute amount is $700, the sum of its $400 basis in Asset and its $300 deemed basis in the S1 share (computed as the greater of S's $300 basis in the S1 share and S1's $150 net inside attribute amount (reflecting the sum of S1's $50 basis in Asset 1 and S1's $100 cash)). Therefore, S's aggregate inside loss is $600 ($700 net inside attribute amount over the $100 value of the S stock). S's attribute reduction amount is $600, the lesser of the $700 net stock loss and the $600 aggregate inside loss.

(2) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $600 attribute reduction amount is allocated proportionately (by basis) between S's $400 basis in Asset (non-stock Category D asset) and its deemed basis in the S1 share. However, under paragraph (d)(5)(ii) of this section, for purposes of allocating the attribute reduction amount, S's $300 deemed basis in the S1 share is treated as reduced by S1's net non-loss assets (its Class I asset, $100 cash) to $200. Thus, the $600 is allocated $400 to Asset ($400/$600 × $600) and $200 to the S1 share ($200/$600 × $600). The $400 allocated to Asset is applied to reduce S's basis in Asset from $400 to $0. Because the S1 share is not transferred within the meaning of paragraph (f)(10) of this section, the allocated attribute reduction amount apportioned to the S1 share is applied fully to reduce the basis of the S1 share to $100. See paragraph (d)(5)(iii) of this section.

(3) *Tier down of S's attribute reduction amount.* Under paragraph (d)(5)(v)(A) of this section, the $200 portion of S's attribute reduction amount allocated to the S1 stock is an attribute reduction amount of S1 (regardless of the extent, if any, to which it is apportioned and applied to reduce the basis of any shares of S1 stock). Under the general rules of this paragraph (d), S1's $200 tier-down attribute reduction amount is allocated and applied to reduce S1's basis in Asset 1 (S1's only attribute available for reduction) from $50 to $0. The $150 unapplied attribute reduction amount is disregarded and has no further effect.

(4) *Basis restoration.* Under paragraph (d)(5)(vi)(A) of this section, after this paragraph (d) has been applied with respect to all transfers of subsidiary stock, any reduction made to the basis of a share of subsidiary stock under paragraph (d)(5)(iii) of this section is reversed to the extent necessary to conform the basis of that share to the share's allocable portion of the subsidiary's net inside attribute amount. There is only one share of S1 stock outstanding and so S1's entire $100 net inside attribute amount is allocable to that share. Because S's $100 basis in the S1 share (as reduced under this paragraph (d)) is already conformed with its $100 allocable portion of S1's net inside attribute amount, there is no restoration under paragraph (d)(5)(vi)(A) of this section.

(ii) *S1 borrows cash.* The facts are the same as in paragraph (i)(A) of this *Example 7* except that, in addition, S1 borrows $50 from X immediately before M sells the S share. The computation of the attribute reduction amount is the same as in paragraph (i)(C) of this *Example 7* (the $50 cash from the loan proceeds and the $50 liability offset in the computation of S1's net inside attribute amount and so the net amount is unaffected, and the computation of S's deemed basis in

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the S1 stock is unaffected). Similarly, for purposes of allocating the attribute reduction amount between the non-stock Category D asset and the S1 stock, paragraph (d)(5)(ii) of this section requires S's deemed basis in the S1 share to be treated as reduced by S1's net non-loss assets (S1's non-loss assets over S1's liabilities). Accordingly, the additional $50 cash proceeds is offset by the $50 liability and there is no effect on the allocation of the attribute reduction amount. The results are the same as in paragraph (i) of this *Example 7*.

(iii) *S1 has a liability not taken into account for tax purposes.* (A) *Facts.* The facts are the same as in paragraph (ii) of this *Example 7* except that, in addition, S1 has a $40 liability that is not taken into account for tax purposes as of the transfer and that would be required to be capitalized if a person purchased S1's assets and assumed the liability.

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) or paragraph (c) of this section for the reasons set forth in paragraph (i)(B) of this *Example 7*. Thus, after the application of paragraph (c) of this section, P's sale of the S share is still a transfer of a loss share and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* The attribute reduction amount is the same as computed in paragraph (i)(C)(*1*) of this *Example 7* (under paragraph (f)(5) of this section, the term liability does not include liabilities not taken into account for tax purposes and so the additional $40 liability not yet taken into account for tax purposes does not affect the computation of S's attribute reduction amount).

(*2*) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $600 attribute reduction amount is allocated proportionately (by basis) between S's $400 basis in Asset 1 (non-stock Category D asset) and its deemed basis in the S1 share. However, under paragraph (d)(5)(ii) of this section, for purposes of allocating the attribute reduction amount, S's $300 deemed basis in the S1 share is treated as reduced by S1's net non-loss assets (S1's non-loss assets over S1's liabilities). For this purpose, the term liabilities includes liabilities not taken into account for tax purposes, as described in paragraph (d)(4)(ii)(C)(*1*) of this section (generally, liabilities that, if assumed in a purchase, would give rise to a capitalized amount when satisfied). Thus, for this purpose, S's $300 deemed basis in the S1 share is reduced by S1's $60 net non-loss assets (the excess of S1's $150 non-loss assets (its Class I asset, $150 cash) over S1's $90 liabilities ($50 loan and $40 liability not yet taken into account for tax purposes)), to $240. Accordingly, S's $600 attribute reduction amount is

allocated and applied $375 ($400/$640 × $600) to Asset (reducing S's basis in Asset from $400 to $25) and $225 ($240/$640 × $600) to the S1 share. Because the S1 share is not transferred within the meaning of paragraph (f)(10) of this section, the allocated attribute reduction amount apportioned to the S1 share is applied fully to reduce the basis of the S1 share to $75. See paragraph (d)(5)(iii) of this section.

(*3*) *Tier down of S's attribute reduction amount, application of conforming limitation.* Under paragraph (d)(5)(v)(A) of this section, the $225 portion of S's attribute reduction amount allocated to the S1 stock is an attribute reduction amount of S1 (regardless of the extent, if any, to which it is apportioned and applied to reduce the basis of any shares of S1 stock). Under the general rules of this paragraph (d), S1's $225 tier-down attribute reduction amount would be allocated and applied to reduce S1's attributes. However, under paragraph (d)(5)(v)(B) of this section, S1's attributes can be reduced by only $75, the excess of the $150 portion of S1's net inside attribute amount that is allocable to all S1 shares held by members as of the transaction over $75, the aggregate amount of members' bases in nontransferred S1 shares, after reduction under this paragraph (d). Thus, of S1's $225 tier-down attribute reduction amount, $50 is applied to reduce S1's basis in Asset 1, from $50 to $0. Although the $25 unapplied attribute reduction amount not subject to the conforming limitation would generally be disregarded without further effect, because S1 has a $40 liability not taken into account for tax purposes, paragraph (d)(4)(ii)(C)(*1*) of this section requires that the $25 of the unapplied attribute reduction amount not subject to the conforming limitation be suspended and then allocated and applied to reduce any amounts that become deductible or capitalizable as a result of that liability later being taken into account. If the liability is satisfied for an amount that is less than $25, under paragraph (d)(4)(ii)(C)(*2*) of this section the remaining portion of that $25 suspended attribute reduction amount is disregarded and has no further effect. The $150 unapplied portion of the tier-down attribute reduction amount subject to the conforming limitation has no further effect.

(*4*) *Basis restoration.* Under paragraph (d)(5)(vi)(A) of this section, after this paragraph (d) has been applied with respect to all transfers of subsidiary stock, any reduction made to the basis of a share of lower-tier subsidiary stock under paragraph (d)(5)(iii) of this section is reversed to the extent necessary to conform the basis of that share to the share's allocable portion of the subsidiary's net inside attribute amount. Paragraph (d)(5)(vi)(A) provides that, for this purpose, S1's net inside attribute amount is its net inside attribute amount, taking into account

any reductions under this paragraph (d) and treating it as reduced by any attribute reduction amount suspended under paragraph (d)(4)(ii)(C)(*1*) of this section. Because S's $75 basis in its S1 stock (after application of this paragraph (d)) is already conformed with its $75 allocable portion of S1's net inside attribute amount ($100 net inside attributes after reduction, reduced by S1's $25 suspended attribute reduction amount), there is no restoration under paragraph (d)(5)(vi)(A) of this section.

Example 8. Election to reduce stock basis or reattribute attributes under paragraph (d)(6) of this section. (i) *Deconsolidating sale.* (A) *Facts.* P owns the sole outstanding share of M stock with a basis of $1,000. M owns all 100 outstanding shares of S stock with a basis of $2.10 per share ($210 total). M sells all its S shares to X for $1 per share ($100 total). M's sale of the S shares is a transfer of loss shares and therefore subject to this section. See paragraphs (f)(10)(i)(A), (f)(10)(i)(B), and (f)(10)(i)(C) of this section. At the time of the sale, S has no liabilities and the following:

Category	Attribute	Attribute amount
Category A	Capital loss carryover	$10
Category B	NOL carryover	90
Category C	Deferred deduction	40
Total Category A, Category B, and Category C Attributes	140.	
Category D, Class V	Basis in land	70
Total Attributes	210.	

(B) *Application of paragraphs (b) and (c) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is no disparity among M's bases in shares of S common stock and there are no shares of S preferred stock outstanding (so there can be no unrecognized gain or loss with respect to preferred shares). See paragraph (b)(1)(ii)(A) of this section. No adjustment is required under paragraph (c) of this section because both the disconformity amount and the net positive adjustment are $0. See paragraph (c)(3) of this section. Thus, after the application of paragraph (c) of this section, M's transfer of the S shares is still a transfer of loss shares and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of the $110 net stock loss ($210 aggregate basis over the $100 aggregate value) and S's aggregate inside loss. S's aggregate inside loss is $110 (S's $210 net inside attribute amount (the $10 capital loss carryover, plus the $90 NOL carryover, plus the $40 deferred deduction, plus the $70 basis in the land) over the $100 value of all outstanding S shares). S's attribute reduction amount is $110, the lesser of the $110 net stock loss and the $110 aggregate inside loss.

(*2*) *Application of attribute reduction amount.* (*i*) S's $110 attribute reduction amount is applied as follows:

Category	Attribute	Attribute amount	Allocation of attribute reduction amount	Adjusted attribute amount
Category A	Capital loss carryover	$10	$10	$0
Category B	NOL carryover	90	90	0
Category C	Deferred deduction	40	10	30
Category D, Class V	Basis in land	70	0	70
Totals	210	110	100	

(*ii*) Alternatively, under paragraph (d)(4)(ii)(A)(*1*) of this section, P could specify the allocation of S's $110 attribute reduction amount among S's $10 capital loss carryover, S's $90 NOL carryover, and S's $40 deferred deduction.

(D) *Results.* The P group recognizes a $110 loss on M's sale of the S shares that is absorbed by the group, which reduces P's basis

in the M share under § 1.1502–32 from $1,000 to $890. Immediately after the transaction, the entities own the following:

Entity	Asset	Basis
P	M share	$890
X	100 S shares	100
S	Category C, deferred deduction	30
	Category D, Class V Asset (land)	70

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(E) *Election to reduce stock basis.* The facts are the same as in paragraph (i)(A) of this *Example 8* except that P elects under paragraph (d)(6) of this section to reduce M's basis in the S shares by the full attribute reduction amount of $110, in lieu of S reducing its attributes. The election is effective for all transferred loss shares and is allocated to those shares in proportion to the loss in each. See paragraph (d)(6)(v)(A) of this section. Accordingly, the basis of each of the 100 transferred shares is reduced from $2.10 to $1.00. After giving effect to the election, the S shares are not loss shares and this section has no further application to the transfer. The $110 reduction in M's basis in the S shares pursuant to the election under paragraph (d)(6) of this section is a noncapital, nondeductible expense of M that will reduce P's basis in the M share. See paragraph (d)(6)(v)(A) of this section. Immediately after the transaction, the entities own the following:

Entity	Asset	Basis/ attribute
P	M share	$890
X	100 S shares	100
S	Category A, capital loss carryover	10
	Category B, NOL carryover	90
	Category C, deferred deduction	40
	Category D, Class V Asset (land)	70

(F) *Election to reattribute losses.* The facts are the same as in paragraph (i)(A) of this *Example 8* except that P elects under paragraph (d)(6) of this section to reattribute S's attributes. S's attribute reduction amount is $110, and P can reattribute all or any portion of the attributes in Category A, Category B, and Category C to the extent of $110. P elects to reattribute the $90 NOL, and, as a result, S's NOL is $0. Under paragraph (d)(6)(iv)(A) of this section, the reattribution of the $90 NOL is a noncapital, nondeductible expense of S. Under §1.1502–32(c)(1)(ii)(A)(*1*) this $90 expense is allocated to the transferred loss shares of S stock in proportion to the loss in the shares, or $.90 per share. Further, this expense tiers up under §1.1502–32 and reduces

P's basis in the M stock by $90. After giving effect to the election, the P group would recognize a $20 loss on M's sale of the S shares, S would have an aggregate inside loss of $20 (S's $120 net inside attribute amount (the $10 capital loss carryover, plus the $40 deferred deduction, plus the $70 basis in the land) over the $100 value of all outstanding S shares), and S's attribute reduction amount would be $20 (applied $10 to the $10 capital loss carryover and $10 to the $40 deferred deduction). (Alternatively, under paragraph (d)(4)(ii)(A)(*1*) of this section, P could specify the allocation of S's $20 attribute reduction amount between S's $10 capital loss carryover and S's $40 deferred deduction. Further, P could elect to reduce M's remaining basis in the S shares by any amount up to the $20 attribute reduction amount, thereby reducing or eliminating S's attribute reduction amount.)

(ii) *Nondeconsolidating sale.* (A) *Facts.* The facts are the same as in paragraph (i)(A) of this *Example 8*, except that M only sells 20 S shares ($20 total).

(B) *Application of paragraphs (b) and (c) of this section.* No adjustment is required under paragraph (b) or paragraph (c) of this section for the reasons set forth in paragraph (i)(B) of this *Example 8.* Thus, after the application of paragraph (c) of this section, M's sale of the S shares is still a transfer of loss shares and, accordingly, subject to this paragraph (d).

(C) *Attribute reduction under this paragraph (d).* (*1*) *Computation of attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of the $22 net stock loss ($42 aggregate basis over $20 aggregate value) and S's $110 aggregate inside loss (as calculated in paragraph (i)(C)(*1*) of this *Example 8*). S's attribute reduction amount is $22, the lesser of the $22 net stock loss and the $110 aggregate inside loss.

(*2*) *Application of attribute reduction amount.* (*i*) S's $22 attribute reduction amount is applied as follows:

Category	Attribute	Attribute amount	Allocation of attribute reduction amount	Adjusted attribute amount
Category A	Capital loss carryover	$10	$10	$0
Category B	NOL carryover	90	12	78
Category C	Deferred deduction	40	0	40
Category D, Class V	Land	70	0	70

(*ii*) Alternatively, under paragraph (d)(4)(ii)(A)(*1*) of this section, P could specify the allocation of S's $22 attribute reduction amount among S's $10 capital loss carryover, S's $90 NOL carryover, and S's $40 deferred deduction.

(D) *Results.* The P group recognizes a $22 loss on M's sale of the S shares that is absorbed by the group, which reduces P's basis in the M share under §1.1502–32 from $1,000 to $978. Immediately after the transaction, the entities have the following:

Entity	Asset	Basis
P	M share	$978
X	20 S shares	20
S	Category B, NOL carryover	78
	Category C, deferred deduction	40
	Category D, Class V Asset (land)	70

(E) *Election to reduce stock basis.* The facts are the same as in paragraph (ii)(A) of this *Example 8*, except that P elects under paragraph (d)(6) of this section to reduce M's basis in the S shares by the full attribute reduction amount of $22, in lieu of S reducing its attributes. The election is effective for all transferred loss shares and is allocated to such shares in proportion to the loss in each share. See paragraph (d)(6)(v)(A) of this section. Accordingly, the basis of each of the 20 transferred shares is reduced from $2.10 to $1.00. After giving effect to the election, the transferred S shares are not loss shares and this section has no further application to the transfer. The $22 reduction in M's basis in the S shares pursuant to the election under paragraph (d)(6) of this section is a noncapital, nondeductible expense of M that will reduce P's basis in the M share. See paragraph (d)(6)(v)(A) of this section. Immediately after the transaction, the entities have the following:

Entity	Asset	Basis/ attribute
P	M share	$978
M	80 S shares	168
X	20 S shares	20
S	Category A, capital loss carryover	10
	Category B, NOL	90
	Category C, deferred deduction	40
	Category D Class V Asset (land) ..	70

(F) *Election to reattribute attributes.* The facts are the same as in paragraph (ii)(A) of this *Example 8*. Because S remains a member of the same group as P following M's sale of S stock, P cannot elect under paragraph (d)(6) of this section to reattribute any portion of S's attributes in lieu of attribute reduction.

Example 9. Transfers at multiple tiers, gain and loss shares. (i) *Facts.* M owns the sole outstanding share of S stock with a basis of $700. S owns Asset 1 (basis of $170) and all ten outstanding shares of S1 common stock ($170 basis in share 1, $10 basis in share 2, and $15 basis in each of share 3 through share 10). S1 owns the sole outstanding share of S2 ($0 basis), the sole outstanding share of S3 ($60 basis), and the sole outstanding share of S4 ($100 basis). S2's sole asset is Asset 2 ($75 basis). S3's sole asset is Asset 3 ($75 basis). S4's sole asset is Asset 4 ($80 basis). In one transaction, M sells its S share to P1 (the common parent of a consolidated group) for $240, S sells S1 share 1 to X for $20, S contributes S1 share 2 to a partnership in a section 721 transaction, and S1 sells its S2 share to Y

for $50. M's sale of the S share and S1's sale of the S2 share are transfers under paragraphs (f)(10)(i)(A), (f)(10)(i)(B), and (f)(10)(i)(C) of this section. S's sale of S1 share 1 to X is a transfer under paragraphs (f)(10)(i)(A) and (f)(10)(i)(C) of this section. S's contribution of S1 share 2 to the partnership is a transfer under paragraph (f)(10)(i)(C) of this section.

(ii) *Transfer in lowest tier (gain share).* However, S1's gain recognized on the transfer of the S2 share is computed and immediately adjusts members' bases in subsidiary stock under § 1.1502–32. Under paragraph (a)(3)(ii)(A) of this section, because there are no transfers of loss shares at that tier, no adjustments are required under paragraph (b) or (c) of this section. However, S1's gain recognized on the transfer of the S2 share is computed and immediately adjusts members' bases in subsidiary stock under § 1.1502–32. Accordingly, $5 is allocated to each of 10 S1 shares, increasing the basis of share 1 to $175, the basis of share 2 to $15, and the basis of each other share to $20. The $50 applied to S's bases in the S1 shares then tiers up to increase P's basis in the S share from $700 to $750.

(iii) *Transfers in next highest tier (loss share).* S's sale of the S1 share 1 and S's transfer of the S1 share 2 to a partnership are both transfers of stock in the next higher tier. However, only the S1 share 1 is a loss share and so this section only applies with respect to the transfer of that share.

(A) *Basis redetermination under paragraph (b) of this section.* Under paragraph (b)(2)(i)(A) of this section, members' bases in S1 shares are redetermined by first removing the positive investment adjustments applied to the bases of transferred loss common shares. Accordingly, the $5 positive investment adjustment applied to the basis of S1 share 1 is removed, reducing the basis of S1 share 1 from $175 to $170. Because there were no negative adjustments applied to the bases of S1 shares, there are no negative adjustments that can be reallocated to further reduce the basis of S1 share 1 under paragraph (b)(2)(i)(B) of this section. Finally, under paragraph (b)(2)(ii)(B) of this section, the $5 positive investment adjustment removed from S1 share 1 is reallocated and applied to increase the bases of other S1 common shares in a manner that reduces disparity to the greatest extent possible. Accordingly, the entire $5 investment adjustment removed from S1 share 1 is reallocated and applied to increase the basis of S1 share 2, from $15 to $20. After basis is redetermined under paragraph (b) of this section, the S1 share 1 is still a loss share and therefore subject to basis reduction under paragraph (c) of this section. (Because the S1 share 2 is not a loss share, this section does not apply with respect to the transfer of that share.)

(B) *Basis reduction under paragraph (c) of this section.* No adjustment is required to the basis of S1 share 1 under paragraph (c) of this section. The S1 share 1 has a disconformity amount of $149. This $149 disconformity amount is computed as the excess of the $170 basis in the S1 share 1 over the S1 share 1's $21 allocable portion (1/10) of S1's $210 net inside attribute amount. S1's $210 net inside attribute amount is determined under paragraph (c)(5) of this section as the sum of $50 (S1's $0 basis in the S2 share, adjusted for the $50 gain recognized with respect to that share), S1's $60 basis in the S3 stock, and S1's $100 basis in the S4 stock. (In computing the disconformity amount, the basis of the S2 share is not treated as tentatively reduced because that share is transferred in the transaction, and the bases of the S3 and S4 shares are not treated as tentatively reduced because no positive investment adjustments were applied to the bases of those shares.) However, the S1 share 1's net positive adjustment is $0 because the $5 positive investment adjustment originally allocated to S1 share 1 was reallocated to S1 share 2 under paragraph (b) of this section. See paragraph (c)(3) of this section. No adjustment is required to the basis of S1 share 2 under paragraph (c) of this section because S1 share 2 is not a loss share.

(C) *Computation of loss, adjustments to stock basis.* S recognizes a loss of $150 on the sale of the S1 share 1 ($170 basis over $20 amount realized) that is absorbed by the group. Under §1.1502–32, M's basis in its S share is therefore decreased by $100, the net of the $150 loss recognized by S on the sale of the S1 share, and the $50 gain that tiered up from S1 (as a result of S1's sale of the S2 share). Following these adjustments, M's basis in the S share is $600 and the sale of the S share is still a transfer of a loss share.

(iv) *Transfer in highest tier (loss share).* The sale of the S share is a transfer in the next higher tier, which is the highest tier in this transaction. Because the sale is a transfer of a loss share, it is subject to this section.

(A) *Basis redetermination and basis reduction under paragraphs (b) and (c) of this section.* Although the transfer is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is only one share of S stock outstanding (and so there can be no disparity among members' bases in common shares and there are no outstanding preferred shares with respect to which there can be unrecognized gain or loss). See paragraph (b)(1)(ii)(A) of this section. Therefore, after the application of paragraph (b) of this section, the share is still a loss share and, as such, subject to paragraph (c) of this section. In addition, no adjustment is required under paragraph (c) of this section. The S share has a disconformity amount of $230. This $230 disconformity amount is computed as the excess of the $600 basis in the S share over the S share's $370 allocable portion (1/1) of S's $370 net inside attribute amount. S's $370 net inside attribute amount is determined under paragraph (c)(5) of this section as the sum of $200 (S's $170 basis in the S1 share 1, adjusted for the $150 loss recognized with respect to that share, and S's $20 basis in each of S1 share 2 through share 10), and S's $170 basis in Asset 1. (In computing the disconformity amount, the bases of S1 share 1 and share 2 are not treated as tentatively reduced because those shares are transferred in the transaction, and the bases of S1 share 3 through share 10 are not treated as tentatively reduced because none of those shares have a disconformity amount—each share has a basis of $20 and a $21 allocable portion (1/10) of S1's $210 net inside attribute amount, as determined in paragraph (iii)(B) of this *Example 9*.) However, the S share's net positive adjustment is $0 (the S share's net adjustment is negative $100). See paragraph (c)(3) of this section. Accordingly, the sale of the S share is still a transfer of a loss share. Because there are no higher-tier loss shares transferred in the transaction, this paragraph (d) then applies with respect to the transfer of the S share.

(B) *Attribute reduction under this paragraph (d).* (*1*) *Computation of S's attribute reduction amount.* Under paragraph (d)(3) of this section, S's attribute reduction amount is the lesser of P's net stock loss and S's aggregate inside loss. P's net stock loss is $360 ($600 basis over $240 amount realized). S's aggregate inside loss is the excess of S's net inside attribute amount over the value of the S share. S's net inside attribute amount is the sum of its bases in its assets, treating its S1 shares as a single share (the S1 stock) and treating S's deemed basis in the S1 stock as its basis in that stock. Under paragraph (d)(5)(i)(C) of this section, when subsidiaries are owned in multiple tiers, deemed basis is first determined for shares at the lowest tier, and then for stock in each next higher tier. Under paragraph (d)(5)(i)(B) of this section, S1's deemed basis in the S2 stock is $75 (computed as the greater of $50 (S1's $0 basis in the S2 share, adjusted for the $50 gain recognized with respect to the share) and $75 (S2's net inside attribute amount, the basis in Asset 2)). S1's deemed basis in the S3 stock is $75 (computed as the greater of $60 (S1's basis in the S3 share) and $75 (S3's net inside attribute amount, the basis in Asset 3)). S1's deemed basis in the S4 stock is $100 (computed as the greater of $100 (S1's basis in the S4 share) and $80 (S4's net inside attribute amount, the basis in Asset 4)). Accordingly, S1's net inside attribute amount is $250 ($75 deemed basis in the S2 stock plus $75 deemed basis in the S3 stock plus $100 deemed basis in the S4 stock). S's deemed basis in the S1 stock is the greater of the sum of S's actual basis in each share of S1 stock (adjusted for

any gain or loss recognized) and S1's net inside attribute amount. S's actual basis in the S1 stock, adjusted for the loss recognized, is $200 (the sum of S's $170 basis in the S1 share 1, adjusted by the $150 loss recognized with respect to the share, and S's $20 basis in each of S1 share 2 through share 10). Thus, S's deemed basis in the S1 stock is $250, the greater of $200 (aggregate basis in S1 shares, adjusted for loss recognized) and $250 (S1's net inside attribute amount). As a result, S's net inside attribute amount is $420, the sum of S's $250 deemed basis in the S1 stock and S's $170 basis in Asset 1. Accordingly, the aggregate inside loss is $180, the excess of S's $420 net inside attribute amount over the $240 value of all of the S stock. S's attribute reduction amount is therefore $180, the lesser of the $360 net stock loss and the $180 aggregate inside loss.

(*2*) *Allocation, apportionment, and application of S's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S's $180 attribute reduction amount is allocated proportionately (by basis) between Asset 1 (non-stock Category D asset) and the S1 stock. However, under paragraph (d)(5)(ii) of this section, for purposes of allocating S's $180 attribute reduction amount between S's non-stock Category D asset and the S1 stock, S's $250 deemed basis in the S1 stock is reduced by the $40 value of the transferred S1 shares (S1 share 1 and share 2) and the non-transferred S1 shares' $40 allocable portion (8/10) of S1's $50 net non-loss assets. S1's net non-loss assets is the $50 value of S1's transferred S2 shares. (S1 has no other non-loss assets, and there are no non-loss assets held by lower-tier subsidiaries.) Accordingly, for this purpose, S's deemed basis in the S1 stock is reduced by $80, from $250 to $170. Thus, $90 of the attribute reduction amount ($170/$340 × $180) is allocated to Asset 1 (reducing S's basis in Asset 1 from $170 to $80) and $90 of the attribute reduction amount ($170/$340 × $180) is allocated to the S1 stock. Under paragraph (d)(5)(iii)(A) of this section, none of the $90 allocated attribute reduction amount is apportioned to S1 share 1 because loss is recognized on the transfer of S1 share 1. Under paragraph (d)(5)(iii)(B) of this section, the $90 allocated attribute reduction amount is apportioned among the other nine shares of S1 common stock in a manner that reduces disparity to the greatest extent possible. Accordingly, of the total $90 allocated amount, $10 is apportioned to each of the remaining nine shares of S1 stock. Under paragraph (d)(5)(iii)(C) of this section, the allocated attribute reduction amount apportioned to an individual share cannot be applied to reduce the basis of the share below its value if the share is transferred other than in a recognition transfer. Because the S1 share 2 is transferred (contributed to the partnership) and the basis of S1 share 2 is already equal to its value, none of the $10 allo-

cated attribute reduction amount apportioned to S1 share 2 is applied to reduce its basis. Because none of S1 share 3 through share 10 are transferred within the meaning of paragraph (f)(10) of this section, the $10 allocated attribute reduction amount apportioned to each of S1 share 3 through share 10 is applied fully to reduce the basis of each of those shares from $20 to $10. As a result, immediately after the allocation and application of S's attribute reduction amount, S's basis in Asset 1 is $80 ($170 minus $90), its bases in S1 share 1 and share 2 are not adjusted under paragraph (d)(5)(iii), and its basis in each of S1 share 3 through share 10 is $10. Under paragraph (d)(5)(v)(A) of this section, the entire $90 of S's attribute reduction amount that was allocated to the S1 stock is an attribute reduction amount of S1, regardless of the fact that none of the allocated amount was apportioned to S1 share 1 and none of the amount apportioned to S1 share 2 was applied to reduce the basis of S1 share 2.

(v) *Attribute reduction under this paragraph (d) in next lower tier. (A) Computation of S1's attribute reduction amount.* S's sale of S1 share 1 is a transfer of a loss share and it is in the next lower tier. Thus, this paragraph (d) next applies with respect to S's transfer of S1 share 1. S1's attribute reduction amount will include both the $90 attribute reduction amount that tiered down from S and any attribute reduction amount resulting from the application of this paragraph (d) with respect to S's transfer of S1 share 1 and share 2 (S1's direct attribute reduction amount). Under paragraph (d)(3) of this section, S1's direct attribute reduction amount is the lesser of the net stock loss on transferred S1 shares and S1's aggregate inside loss. The net stock loss on transferred S1 shares is $150, computed as the excess of S's $190 adjusted bases in transferred shares of S1 stock ($170 in S1 share 1 plus $20 in S1 share 2) over the $40 aggregate value of those shares. S1's aggregate inside loss is $50, the excess of S1's $250 net inside attribute amount (as calculated in paragraph (iv)(B)(*1*) of this *Example 9*) over the $200 value of all outstanding S1 shares. Therefore, S1's direct attribute reduction amount is $50, the lesser of the $150 net stock loss and S1's $50 aggregate inside loss. S1's total attribute reduction amount is thus $140, the sum of the $90 tier-down attribute reduction amount and the $50 direct attribute reduction amount.

(B) *Allocation, apportionment, and application of S1's attribute reduction amount.* Under paragraphs (d)(4) and (d)(5)(ii) of this section, S1's $140 attribute reduction amount is allocated proportionately (by basis) among the S2 stock, the S3 stock, and the S4 stock. However, under paragraph (d)(5)(ii) of this section, for purposes of allocating S1's $140 attribute reduction amount among S1's lower-tier subsidiary stock, S1's $75 deemed

basis in the S2 stock is reduced by the $50 value of the transferred S2 share. Accordingly, for this purpose, S1's deemed basis in the S2 stock is reduced by $50, from $75 to $25. Thus, $17.50 of S1's attribute reduction amount ($25/$200 × $140) is allocated to the S2 stock, $52.50 of S1's attribute reduction amount ($75/$200 × $140) is allocated to the S3 stock, and $70 of S1's attribute reduction amount ($100/$200 × $140) is allocated to the S4 stock. Under paragraph (d)(5)(iii)(A) of this section, none of the $17.50 of S1's attribute reduction amount allocated to S2 stock is apportioned to the S2 share because gain was recognized on the transfer of the S2 share. Because neither the S3 share nor the S4 share is transferred within the meaning of paragraph (f)(10) of this section, the $52.50 of S1's attribute reduction amount allocated to the S3 stock, and the $70 of S1's attribute reduction amount allocated to the S4 stock, is apportioned to and applied fully to reduce the basis of such shares. Thus, S1's basis in the S3 share is reduced by $52.50, from $60 to $7.50, and S1's basis in the S4 stock is reduced by $70, from $100 to $30. (Note: The conforming limitation in paragraph (d)(5)(v)(B) of this section limits the application of the $90 tier down attribute reduction amount to $80, the amount by which the portion (10/10) S1's $250 net inside attribute amount attributable to S1 shares held by members exceeds $170 (the sum of the $50 direct attribute reduction amount, the $20 value of the S1 share 1 transferred in a recognition transfer, the $20 basis (after reduction) in the S1 share 2 transferred other than in a recognition transfer, and the $80 aggregate basis (after reduction) in the nontransferred S1 shares held by members). However, the conforming limitation does not limit the application of S1's $90 tier-down attribute reduction amount because none of the $17.50 of S1's total attribute reduction amount allocated to the S2 share was applied to reduce the basis of the share. Accordingly, only $78.75 ($90—($17.50 × ($90/$140)) of the $90 tier-down attribute reduction amount was applied to reduce S1's attributes.) Under paragraph (d)(5)(v)(A) of this section, the attribute reduction amount allocated to the S2 stock, the S3 stock, and the S4 stock becomes an attribute reduction amount of S2, S3, and S4, respectively (even though the amount allocated to S2 stock was not apportioned to or applied to reduce the basis of the S2 share).

(vi) *Attribute reduction under this paragraph (d) in lowest tier.* Although the sale of the S2 share is a transfer of subsidiary stock at the next lower tier, the S2 share is not a loss share. Thus, this paragraph (d) does not apply with respect to that transfer. However, S2, S3, and S4 have attribute reduction amounts that tiered down from S1 and that are applied to reduce attributes under this paragraph (d).

(A) *Tier down of S1's attribute reduction amount to S2.* Under the general rules of this paragraph (d), S2's $17.50 tier-down attribute reduction amount is allocated and applied to reduce S2's basis in Asset 2 from $75 to $57.50.

(B) *Tier down of S1's attribute reduction amount to S3.* Under the general rules of this paragraph (d), S3's $52.50 tier-down attribute reduction amount is allocated and applied to reduce S3's basis in Asset 3 from $75 to $22.50.

(C) *Tier down of S1's attribute reduction amount to S4, application of conforming limitation.* Under the general rules of this paragraph (d), S4's $70 tier-down attribute reduction amount is allocated to, and would be applied to reduce, S4's basis in Asset 4. However, under paragraph (d)(5)(v)(B) of this section, the reduction is limited to the excess of S4's $80 net inside attribute amount over the $30 basis of the S4 share (after reduction under this paragraph (d)). As a result, only $50 (the excess of $80 over $30) of S4's $70 attribute reduction amount is applied to S4's basis in Asset 4, reducing it from $80 to $30. The $20 unapplied portion of S4's tier-down attribute reduction amount subject to the conforming limitation is disregarded and has no further effect.

(vii) *Application of basis restoration rule.* Under paragraph (d)(5)(vi)(A) of this section, after this paragraph (d) has been applied with respect to all transfers of subsidiary stock, any reduction made to the basis of a share of lower-tier subsidiary stock under paragraph (d)(5)(iii) of this section is reversed to the extent necessary to conform the basis of that share to the share's allocable portion of the subsidiary's net inside attribute amount. Restoration adjustments are first made at the lowest tier and then at each next higher tier successively.

(A) *Basis restoration at lowest tier.* The basis of the S2 share was not reduced under paragraph (d)(5)(iii) of this section and so there is no restoration of any basis in the S2 share. S3's $22.50 net inside attribute amount (after reduction under this paragraph (d)) exceeds S1's $7.50 basis in the S3 share (after reduction under this paragraph (d)) by $15. To conform S1's basis in the S3 share to S3's net inside attribute amount, the $52.50 reduction to the basis of the S3 share under paragraph (d)(5)(iii) of this section is reversed by $15 (restoring S1's basis in the S3 share to $22.50). The restoration of S1's basis in the S3 share does not tier up to affect the basis in stock of any other subsidiary. S1's $30 basis in the S4 share (after reduction under this paragraph (d)) is already conformed with S4's $30 net inside attribute amount (after reduction under this paragraph (d)) and so there is no restoration of any basis in the S4 share.

(B) *Basis restoration at next higher tier.* Each share of S1 stock has an allocable portion of S1's net inside attribute amount (after reduction) equal to $10.25 (1/10 × $102.50, the sum of S1's $0 basis in the S2 stock, adjusted

for the $50 gain recognized with respect to the share, S1's $22.50 basis in the S3 stock (after restoration), and S1's $30 basis in the S4 stock). Neither S's basis in S1 share 1 nor S's basis in S1 share 2 was reduced under paragraph (d)(5)(iii) of this section. Accordingly, there is no restoration of any basis in either S1 share 1 or share 2. However, S's basis in each of S1 share 3 through share 10 was reduced under paragraph (d)(5)(iii) of this section by $10, from $20 to $10. Accordingly, the $10 reduction to the basis of each

of those shares is reversed to the extent of $.25, to restore the basis of each such share to $10.25 (its allocable portion of S1's net inside attribute amount).

(viii) *Results.* After the application of this section, P recognizes a loss of $360 on the sale of the S share, S recognizes a loss of $150 on the sale of S1 share 1, and S1 recognizes a $50 gain on the sale of the S2 share. Immediately after the transaction, the entities each directly own the following:

Entity	Asset	Basis	Value
P1	S share	$240	$240
P	Proceeds of the sale of S share	240	240
S	Proceeds of sale of S1 share 1	20	20
	Partnership interest received for S1 share 2	20	20
	S1 share 3 through share 10	82 ($10.25 per share).	
	Asset 1	80.	
S1	Proceeds of sale of S2 share	50	50
	The S3 share	22.50.	
	The S4 share	30.	
S2	Asset 2	57.50.	
S3	Asset 3	22.50.	
S4	Asset 4	30.	
X	S1 share 1	20	20
Partnership	S1 share 2	20	20
Y	The S2 share	50	50

(e) *Operating rules*—(1) *Predecessors, successors.* This section applies to predecessor or successor persons, groups, and assets to the extent necessary to effectuate the purposes of this section.

(2) *Adjustments for prior transactions that altered stock basis or other attributes.* In certain situations, M's basis in S stock or S's attributes may be adjusted in a manner that alters the relationship between stock basis and inside attributes and prevents that relationship from identifying the extent to which stock basis reflects unrecognized gain and duplicated loss. The provisions of this paragraph (e)(2) modify the computations in paragraphs (c) and (d) of this section to adjust for the effects of such adjustments.

(i) *Prior reductions to S's basis in assets or other attributes pursuant to section 362(e)(2)(A).* If M transferred loss property to S in an intercompany transaction subject to section 362(e)(2) (for example, if the transfer was prior to September 17, 2008, no election was made to apply §1.1502–80(h), and, as a result, S's attributes were reduced under section 362(e)(2)), then the disconformity amount of the S shares received in the section 362(e)(2) trans-

action is reduced by the amount that the basis in such shares would have been reduced under section 362(e)(2)(C) had such an election been made. In addition, for purposes of determining the attribute reduction amount under paragraph (d) of this section resulting from the transfer of any S shares received (or deemed received) in such a transfer, and for purposes of applying paragraph (d)(5)(v)(B) of this section (conforming limitation) to S, the bases in such shares is treated as reduced by the amount the bases in such shares would have been reduced under section 362(e)(2)(C) had such an election been made.

(ii) *Prior reductions to the basis of any share of S stock pursuant to an election under section 362(e)(2)(C).* If M transferred loss property to S in an intercompany transaction subject to section 362(e)(2) and the basis of any share of S stock was reduced as the result of an election under section 362(e)(2)(C) (including in the hands of a predecessor, to the extent that the effect of the election remains reflected in the basis of the S stock), then, for purposes of computing either any S share's disconformity amount or S's aggregate inside

loss, and for purposes of applying paragraph (d)(5)(vi)(A) of this section (stock basis restoration) to S, S's net inside attribute amount is treated as reduced by the amount that S's attributes would have been reduced under section 362(e)(2)(A) in the absence of an election under section 362(e)(2)(C). Notwithstanding the general rule of this paragraph (e)(2)(ii), no reduction will be required to the extent that the group can establish that the net loss in the S shares transferred by M is no longer reflected in S's net inside attributes.

(iii) *Other adjustments.* Appropriate adjustments will be made in any other case in which an adjustment to S's net inside attributes or to M's basis in a share of S stock alters the relationship between such amounts, and the adjustment does not relate to the extent to which loss reflected in M's basis in S stock is noneconomic or duplicated within the meaning of this section.

(3) *Special rules for subsidiary stock transferred in an intercompany transaction*—(i) *In general.* This section applies with respect to M's transfer of a share of S stock to another member in an intercompany transaction in which M's intercompany item is deferred under §1.1502–13 (and to any subsequent transfer of that share by a member) as of the time M's intercompany item is taken into account under §1.1502–13. In determining the application of this section, all transferor-members are treated as divisions of a single corporation. Appropriate adjustments will be made to the intercompany item(s), any member's basis in an S share, to S's attributes, or any combination thereof, to further the purposes of this section and §1.1502–13.

(ii) *Certain prior intercompany transactions.* If M transferred a share of S stock to another member before September 17, 2008 and M's intercompany item related to the transfer is taken into account on or after September 17, 2008, P may elect to apply this paragraph (e)(3) to the transfer. The election is made in the manner provided in paragraph (e)(5) of this section.

(iii) *Examples.* The application of this paragraph (e)(3) is illustrated by the following examples:

Example 1. Intercompany sale with duplicated loss. (i) *Buying member later sells at gain.* (A) *Facts.* M owns the sole outstanding share of stock of S with a basis of $100. S has one asset with a basis of $100. M sells the S share to M1 for $70, recognizing a loss of $30. While owned by M1, S recognizes $10 of depreciation deductions that are absorbed by the group. S's basis in the asset is reduced by $10 (from $100 to $90), and M1's basis in the S stock is reduced under §1.1502–32 by $10 (from $70 to $60). Later, M1 sells the S share to X, an unrelated person, for $80.

(B) *Analysis.* M's sale of its S share to M1 is a transfer of the share, but this section applies as of the time M's intercompany item is taken into account under §1.1502–13, as if M and M1 were divisions of a single corporation. If M and M1 were divisions of a single corporation, the S share's basis would be $90 ($100 reduced by $10 for the depreciation deductions absorbed by the group) and the group would recognize a $10 loss on the sale of the share that is potentially subject to this section. Thus, the sale would be a transfer of a loss share (to the extent of $10) and would be subject to this section (to the extent of that $10). Although the transfer would be subject to this section, there would be no adjustment under paragraph (b) of this section (S has only one share outstanding and so there is no disparity in bases of common shares and no unrecognized gain or loss with respect to preferred) or under paragraph (c) of this section (S has no net positive adjustment). Thus, after the application of paragraph (c) of this section, the share would still be a loss share and would therefore be subject to paragraph (d) of this section. Under paragraph (d) of this section, S would be subject to $10 of attribute reduction (the lesser of the $10 net stock loss and S's $10 aggregate inside loss), allocable to the basis in S's asset. Accordingly, S's basis in its asset is reduced by $10, from $90 to $80, M takes its $30 intercompany stock loss into account, and M1 recognizes a $20 stock gain.

(ii) *Selling member deconsolidates.* Assume the same facts as in paragraph (i)(A) of this *Example 1*, except that M1 does not sell the S share and M ceases to be a member of the group when the value of the S share is $80. Under §1.1502–13, M's deconsolidation causes M's intercompany loss to be taken into account and this section applies at that time. At the time that M deconsolidates, if M and M1 were divisions of a single corporation, the basis in the S share would be $90 ($100 reduced by $10 for the depreciation deductions absorbed by the group) and the group would recognize a $10 loss on the sale of the share that is potentially subject to this section. Such a sale would be a transfer of a loss share (to the extent of $10) and would be subject to this section (to the extent of that $10). The analysis is then the same as in

paragraph (i)(B) of this *Example 1*. As a result, S's basis in its asset is reduced from $90 to $80, M takes its $30 intercompany stock loss into account, and M1 holds the S stock with a basis of $60 (and an unrecognized gain of $20).

(iii) *M1 sells the S share at a loss.* Assume the same facts as in paragraph (i)(A) of this *Example 1*, except that S declines in value and M1 sells the S share to X for $50, realizing a $10 loss. In this case, if M and M1 were divisions of a single corporation, the share's basis would be $90 ($100 reduced by $10 for the depreciation deductions absorbed by the group) and the group would recognize a $40 loss on the sale of the share that is potentially subject to this section. Thus, the sale would be a transfer of a loss share (to the extent of $40) and would be subject to this section (to the extent of that $40). Although the transfer would be subject to this section, for the reasons set forth in paragraph (i)(B) of this *Example 1*, there would be no adjustment under either paragraph (b) or paragraph (c) of this section. Thus, after the application of paragraph (c), the share would still be a loss share and would therefore be subject to paragraph (d) of this section. Under paragraph (d) of this section, S would be subject to $40 of attribute reduction (the lesser of the $40 net stock loss and S's $40 aggregate inside loss), allocable to the basis in S's asset. Accordingly, S's basis in its asset is reduced by $40, from $90 to $50, M takes its $30 intercompany stock loss into account, and M1 recognizes a $10 stock loss.

Example 2. Intercompany sale of built-in gain stock. (i) *Facts.* M owns the sole outstanding share of stock of S with a basis of $100. S's sole asset has a basis of $0. S sells its asset for $100 and recognizes a $100 gain that increases M's basis in its S share under §1.1502–32 to $200. M sells the S share to M1 for $100 and recognizes a $100 intercompany loss. Later, M1 sells the S share to X, an unrelated person, for $120.

(ii) *Analysis.* M's sale of the S share to M1 is a transfer of the share, but this section applies as of the time M's intercompany item is taken into account under §1.1502–13, as if M and M1 were divisions of a single corporation. If M and M1 were divisions of a single corporation, the S share's basis would be $200 ($100 increased by $100 for the gain recognized on the sale of the asset) and the group would recognize an $80 loss on the sale of the share that is potentially subject to this section. Thus, the sale would be a transfer of a loss share (to the extent of $80) and would be subject to this section (to the extent of that $80). Although the transfer would be subject to this section, there would be no adjustment under paragraph (b) of this section (S has only one share outstanding and so there is no disparity in bases of common shares and no unrecognized gain or loss with respect to preferred). Thus, after the applica-

tion of paragraph (b), the share would still be a loss share and would therefore be subject to paragraph (c) of this section. Under paragraph (c) of this section, the basis in the S share would be reduced, but not below its $120 value, by the lesser of the $100 disconformity amount and the $100 net positive adjustment that was applied to the share when held by M. Accordingly, the basis in the S share would be reduced by $80, to $120. Because the S share would not be a loss share after the application of paragraph (c) of this section, paragraph (d) of this section would not apply to the transfer. As a result, because the positive adjustment was applied to the share when held by M, M's intercompany item is adjusted to reflect what it would have been had M's basis in its S share been reduced by $80 immediately before its sale to M1. Thus, M's intercompany loss is reduced to $20 and M takes this loss into account, and M1 recognizes a gain of $20.

Example 3. Intercompany sale creates built-in gain stock. (i) *Facts.* M owns the sole outstanding share of stock of S with a basis of $0. S's sole asset has a basis of $0. M sells the S share to M1 for $100 and recognizes a $100 intercompany gain. While owned by M1, S sells its asset for $100, recognizing a $100 gain that increases M1's basis in the S share under §1.1502–32 to $200. Later, M1 sells the S share to X for $120.

(ii) *Analysis.* M's sale of its S share to M1 is a transfer of the share, but this section applies as of the time M's intercompany item is taken into account under §1.1502–13, as if M and M1 were divisions of a single corporation. If M and M1 were divisions of a single corporation, the S share's basis would be $100 ($0 increased by $100 for the gain recognized on the sale of the asset) and the group would recognize a $20 gain on the sale of the share. Thus, the sale would not be a transfer of a loss share and this section would not apply to the transfer. Accordingly, under this paragraph (e)(3), no portion of M1's $80 loss is subject to this section. M takes its $100 intercompany stock gain into account, and M1 recognizes an $80 loss.

Example 4. Disparate bases in members' shares. (i) *Facts.* M holds Share A, one of the two outstanding shares of S stock, with a basis of $50 and M1 holds Share B, the other outstanding share of S stock with a basis of $0. S has $50 cash and an asset with a basis of $0. S sells the asset for $50, recognizing a $50 gain that increases M's basis in its S share under §1.1502–32 by $25 (from $50 to $75) and increases M1's basis under §1.1502–32 by $25 (from $0 to $25). Later, M sells its Share A to M1 for $50 and recognizes a $25 intercompany loss. Later, M1 sells both S shares to X for $100.

(ii) *Analysis.* M's sale of its Share A to M1 is a transfer of the share, but this section applies as of the time M's intercompany item is taken into account under §1.1502–13, as if M

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and M1 were divisions of a single corpora-
tion. If M and M1 were divisions of a single
corporation, the basis of Share A would be
$75 ($50 increased by $25 for its share of the
gain recognized on the sale of the asset), the
basis of Share B would be $25, and the group
would recognize a $25 loss on the sale of
Share A that is potentially subject to this
section and a $25 gain on the sale of Share B.
Thus, the sale would be a transfer of a loss
share (to the extent of $25) and would be sub-
ject to this section (to the extent of that
$25). Although the transfer is subject to this
section, there would be no adjustment under
paragraph (b) of this section (all S shares
held by members are transferred to a non-
member in one taxable transaction). Thus,
after the application of paragraph (b), Share
A would still be a loss share and therefore
subject to paragraph (c) of this section.
Under paragraph (c)(7) of this section, the
basis of Share A would be treated as reduced
by the gain recognized and taken into ac-
count with respect to the transfer of Share B
in the same transaction, and so Share A
would not be a loss share for purposes of
paragraph (c) of this section. Although the
share would be a loss share after the applica-
tion of paragraph (c) of this section, no ad-
justment would be required under paragraph
(d) of this section because there would be no
net stock loss in the transaction. Because no
adjustment would be made under this section
if M and M1 were divisions of a single cor-
poration, M takes its $25 intercompany stock
loss into account and M1 recognizes a gain of
$25. Alternatively, if the group elects to
apply paragraph (b) of this section, M's
intercompany item would be adjusted to re-
flect what it would have been had the $25 in-
vestment adjustment applied to Share A
been reallocated to Share B, and M1's basis
in Share B would be increased by that
amount. If so, M's $25 intercompany loss
would be reduced to zero, M1's basis in Share
B would be increased from $25 to $50, and
there would be no gain or loss recognized on
either share.

*Example 5. Subsidiary with built-in gain and
built-in loss assets.* (i) *Facts.* M owns the sole
outstanding share of stock of S with a basis
of $100. S has two assets, Asset 1 with a basis
of $0 and Asset 2 with a basis of $80. M sells
the S share to M1 for $90 and recognizes a $10
intercompany loss. While owned by M1, S
sells Asset 1 for $60, recognizing a $60 gain
that increases M1's basis in the S share
under §1.1502–32 to $150. Later, M1 sells the S
share to X for $90.

(ii) *Analysis.* M's sale of the S share to M1
is a transfer of the share, but this section ap-
plies as of the time M's intercompany item is
taken into account under §1.1502–13, as if M
and M1 were divisions of a single corpora-
tion. If M and M1 were divisions of a single
corporation, the S share's basis would be $160
($100 increased by $60 for the gain recognized

on the sale of Asset 1) and the group would
recognize a $70 loss on the sale of the share
that is potentially subject to this section.
Thus, the sale would be a transfer of a loss
share (to the extent of $70) and would be sub-
ject to this section (to the extent of that
$70). Although the transfer is subject to this
section, there would be no adjustment under
paragraph (b) of this section (S has only one
share outstanding and so there is no dis-
parity in bases of common shares and no un-
recognized gain or loss with respect to pre-
ferred). Thus, after the application of para-
graph (b), the share would still be a loss
share and would therefore be subject to para-
graph (c) of this section. Under paragraph (c)
of this section, the basis in the S share
would be reduced, but not below its $90
value, by the lesser of the $20 disconformity
amount ($160 stock basis over $140 net inside
attribute amount) and the $60 net positive
adjustment that was applied to the share
when held by M1. Accordingly, the basis in
the S share would be reduced by $20, to $140.
Because the S share would still be a loss
share after the application of paragraph (c)
of this section, paragraph (d) of this section
would apply to the transfer. Under paragraph
(d) of this section, S would have an attribute
reduction amount of $50, the lesser of the $50
net stock loss ($140 basis over $90 value) and
S's $50 aggregate inside loss (the excess of
the sum of S's $80 basis in Asset 2 and S's $60
cash from the sale of Asset 1, over the $90
value of the S share). The adjustments re-
quired under this section are applied as fol-
lows: because the positive adjustment was
applied to the share when held by M1, the $20
basis reduction required under paragraph (c)
of this section is applied to M1's basis in its
S share immediately before its sale to X, re-
ducing it from $150 to $130. In addition, pur-
suant to paragraph (d) of this section, S's
basis in Asset 2 is reduced by $50, from $80 to
$30. M takes its $10 intercompany stock loss
into account and M1 recognizes a loss of $40.

(iii) *Allocation of basis reduction.* Assume
the same facts as in paragraph (i) of this *Ex-
ample 5,* except that, while S is held by M, S
earns $30 (consuming a portion of Asset 1)
and, while S is held by M1, S earns $20 (con-
suming a portion of Asset 1) and sells Asset
1 for $10. Thus, M's basis in the S share im-
mediately before the sale to M1 is $130, and
M recognizes a $40 intercompany stock loss,
and M1's basis in the S share immediately
before the sale to X is $120. The analysis re-
garding the application of this section is the
same as in paragraph (ii) of this *Example 5.*
On a separate entity basis, M's basis in the S
share would be subject to a $20 reduction
under paragraph (c) of this section (at the
time M transferred the S share the share had
a $30 net positive adjustment and a $20 dis-
conformity amount), and M1's basis in the S
share would not be subject to reduction
under paragraph (c) of this section (at the

time M1 transferred the S share the share had a $30 net positive adjustment and a $20 negative disconformity amount). Therefore, the $20 basis reduction required under paragraph (c) of this section is allocated entirely to M. Accordingly, M's intercompany item is adjusted to reflect what it would have been had the entire $20 basis reduction been applied to the S share while held by M, and M1's basis in the S share is not reduced. Thus, M's intercompany stock loss is reduced by $20 to $20 and M takes this loss into account, and M1 recognizes a $30 loss. S's basis in Asset 2 is reduced by $50, from $80 to $30.

(4) *Limited application to multiple-member section 332 liquidations.* If more than one member owns shares of S stock, paragraphs (c) and (d) of this section do not apply to any transfer of S shares resulting from a liquidation of S to which section 332 applies.

(5) *Form and manner of election(s) under this section.* The elections provided in this section are irrevocable and made in the form of a statement titled ''Section 1.1502–36 Statement.'' The statement must be included on or with the group's timely filed return (original or amended, if filed by the due date for the return, including extensions) for the taxable year of the transfer of the subsidiary stock to which the election relates or, in the case of an intercompany transfer, the year in which the intercompany item from the transfer is taken into account. The statement must include—

(i) The name and employer identification number (E.I.N.) of each subsidiary with respect to which an election is being made;

(ii) If P is electing under paragraph (b)(1)(ii) of this section to redetermine basis with respect to the transfer of stock of one or more subsidiaries, a statement that members' bases in shares of [name of subsidiary or subsidiaries] stock are being redetermined notwithstanding that all members' shares of [name of subsidiary or subsidiaries] are being transferred to one or more nonmembers in one fully taxable transaction;

(iii) If P is electing under paragraph (d)(2)(ii) of this section (attribute reduction amount less than five percent of value) to apply the attribute reduction provisions, a statement that paragraph (d) of this section is being ap-

plied to the transfer of shares of stock of [names of all subsidiaries whose shares are transferred] notwithstanding that the aggregate attribute reduction amount in the transaction is less than five percent of the aggregate value of the stock of [names of all subsidiaries whose shares are transferred] transferred by members in the transaction;

(iv) If P is electing under paragraph (d)(4)(ii)(A)(*1*) of this section to specify the allocation of the attribute reduction amount, a statement (for each subsidiary for which the election is being made) that the attribute reduction amount of [name of subsidiary] is being applied (or not applied) to reduce [identify the attributes in Category A, Category B, and Category C, and the amount of each, with respect to which the election is being made];

(v) If P is electing under paragraph (d)(5)(v)(B) of this section not to apply the conforming limitation on tier-down attribute reduction with respect to one or more subsidiaries, a statement that the conforming limitation in paragraph (d)(5)(v)(B) of this section is not being applied with respect to [name of subsidiary or subsidiaries];

(vi) If P is electing under paragraph (d)(5)(vi)(B) of this section not to restore lower-tier subsidiary stock basis with respect to one or more subsidiaries, a statement that members' bases in [name of subsidiary or subsidiaries] is not being restored under paragraph (d)(5)(vi)(A) of this section;

(vii) If P is electing under paragraph (d)(6) of this section to reattribute attributes, a statement (for each subsidiary for which the election is being made) that [identify the attributes in Category A, Category B, and Category C, and the amount of each or the amount in excess of an amount, with respect to which the election is being made] of [name of subsidiary] are being reattributed (or not) to P;

(viii) If P is electing under paragraph (d)(6) of this section to reduce stock basis, a statement (for each subsidiary for which the election is being made) that members' bases in shares of stock of [name of subsidiary] are being reduced by [specify amount or the amount in excess of an amount];

(ix) If P is electing under paragraph (e)(3)(ii) of this section to apply paragraph (e)(3) of this section to an intercompany transfer that occurred before September 17, 2008, a statement that paragraph (e)(3) of this section is being elected to apply to the transfer of stock of [name of subsidiary] by [name of transferor subsidiary] to [name of transferee subsidiary] on [date of transfer]; and

(x) If P is electing under §1.1502–96(d)(5) to reattribute to itself all or any part of a section 382 limitation, a statement that P is electing to reattribute a section 382 limitation with respect to losses of [name of subsidiary or, if two or more subsidiaries are members of a loss subgroup, the name of each subsidiary in the loss subgroup]. A separate statement is made for each subsidiary or loss subgroup for which an election is being made. Each statement must include—

(A) The date of the ownership change giving rise to the separate section 382 limitation or subgroup section 382 limitation that is being apportioned;

(B) The amount of the separate (or subgroup) section 382 limitation for the taxable year in which the reattribution occurs (determined without reference to any apportionment under this section or §1.1502–95(c)); and

(C) The amount of each net operating loss carryover, capital loss carryover, or deferred deduction, and the year in which it arose, of the subsidiary (or subsidiaries) that is subject to the separate section 382 limitation or subgroup section 382 limitation that is being apportioned to the common parent, and the amount of the value element and adjustment element of that limitation that is apportioned to the common parent.

(f) *Definitions.* In addition to the definitions in other paragraphs of this section and in other provisions of the regulations under section 1502, the following definitions apply for purposes of this section.

(1) *Allocable portion* has the same meaning as in §1.1502–32(b)(4)(iii)(B). Thus, for example, within a class of stock, each share has the same allocable portion of the net inside attribute amount and, if there is more than one class of stock, the net inside

attribute amount is allocated to each class by taking into account the terms of each class and all other facts and circumstances relating to the overall economic arrangement.

(2) *Deferred deduction* means any deduction for expenses or loss that would be taken into account under general tax accounting principles as of the time of the transfer of the share, but that is nevertheless not taken into account immediately after the transfer by reason of the application of a deferral provision. Such provisions include, for example, sections 267(f) and 469, and §1.1502–13. ''Deferred deduction'' also includes S's portion of such consolidated tax attributes, for example consolidated excess charitable contributions that would be apportioned to S under the principles of §1.1502–79(e) if S had a separate return year. Additionally, it includes amounts equivalent to deductions, such as negative adjustments under section 475 (mark to market accounting method for dealers in securities) and section 481 (adjustments required by changes in method of accounting).

(3) *Distribution* has the same meaning as in §1.1502–32(b)(3)(v).

(4) *Higher-tier, lower-tier.* A subsidiary (S1) (and its shares of stock) is ''higher-tier'' with respect to another subsidiary (S2) (and its shares of stock) if investment adjustments made to the bases of shares of S2 stock under §1.1502–32 affect the investment adjustments made to the bases of shares of S1 stock. A subsidiary (S1) (and its shares of stock) is ''lower-tier'' with respect to another subsidiary (S) (and its shares of stock) if investment adjustments made to the bases of shares of S1 stock affect the investment adjustments made to the bases of shares of S stock. The term *lowest-tier subsidiary* generally refers to a subsidiary that owns no stock of another subsidiary. The term *highest-tier subsidiary* generally refers to a subsidiary the stock of which is not lower tier to any shares transferred in the transaction.

(5) *Liability* means a liability that has been incurred within the meaning of section 461(h), except to the extent otherwise provided in paragraph (d)(4)(ii)(C)(*1*) of this section.

(6) *Loss carryover* means any net operating or capital loss carryover that is attributable to S, including any losses that would be apportioned to S under the principles of §1.1502–21(b)(2) if S had a separate return year. However, solely for purposes of applying paragraph (d) of this section, loss carryovers do not include the amount of any losses waived under §1.1502–32(b)(4).

(7) *Loss share, gain share*. A *loss share* is a share of stock with a basis that exceeds its value. A *gain share* is a share of stock with a value that exceeds its basis.

(8) *Preferred stock, common stock*. *Preferred stock* and *common stock* have the same meanings as in §1.1502–32(d)(2) and (3), respectively.

(9) *Transaction* includes all the steps taken pursuant to the same plan or arrangement.

(10) *Transfer*—(i) *Definition*. Except as provided in paragraph (f)(10)(ii) of this section, for purposes of this section, M transfers a share of S stock on the earliest of—

(A) The date that M ceases to own the share as a result of a transaction in which, but for the application of this section (and notwithstanding the deferral of any amount recognized on the transfer, other than by reason of §1.1502–13), M would recognize income, gain, loss or deduction with respect to the share (see paragraph (e)(3) of this section in the case of a transfer in an intercompany transaction);

(B) The date that M and S cease to be members of the same group;

(C) The date that a nonmember acquires the share from M; and

(D) The last day of the taxable year during which the share becomes worthless under section 165 (taking into account the provisions of §1.1502–80(c)) if the share is treated as a capital asset, or the date the share becomes worthless (taking into account the provisions of §1.1502–80(c)) if the share is not treated as a capital asset.

(ii) *Excluded transactions*. Notwithstanding paragraph (f)(10)(i) of this section, M does not transfer a share of S stock if—

(A) M ceases to own the share as a result of a transaction to which section 381(a) applies and in which either a member acquires assets from S or S acquires assets from M, provided that—

(*1*) M recognizes no income, gain, loss, or deduction with respect to the share, and

(*2*) If the transaction is a liquidation to which section 332 applies, M is the only member that owns shares of S stock (if another member owns shares of S stock, see paragraph (e)(4) of this section for a limitation on the application of this section); or

(B) M ceases to own the share as a result of a distribution of the share to a nonmember in a transaction to which section 355 applies, and in which the share is treated as qualified property for purposes of section 355(c) or section 361(c).

(11) *Value* means the amount realized, if any, or otherwise the fair market value.

(g) *Anti-abuse rule*—(1) *General rule*. If a taxpayer acts with a view to avoid the purposes of this section or to apply the rules of this section to avoid the purposes of any other rule of law, appropriate adjustments will be made to carry out the purposes of this section or such other rule of law.

(2) *Examples*. The following examples illustrate the principles of the anti-abuse rule in this paragraph (g). No implication is intended regarding the potential applicability of any other anti-abuse rules:

Example 1. Loss Trafficking. (i) *Facts*. M purchases the sole outstanding share of S stock for $100. At that time, S owns Asset 1 with a basis of $0. S sells Asset 1 for $100. Later, S purchases the sole outstanding share of X stock, a corporation with losses, with a view to liquidating X in a transaction to which section 332 applies in order to reduce S's disconformity amount. S purchases the X share for $1, and X has a $100 NOL and an asset with a basis of $1. Subsequently, M sells its S share for $100. After taking into account the effects of all applicable rules of law, M's basis in the S share is $200 (M's original $100 basis, increased under §1.1502–32 to reflect the $100 gain recognized on the sale of Asset 1). M's sale of the S share is a transfer of a loss share and therefore subject to this section.

(ii) *Analysis*. Although M's transfer of the S share is subject to this section, there is no adjustment under paragraph (b) of this section (S has only one share outstanding and so there is no disparity in bases of common shares and no shares of S preferred stock outstanding (and so there is no unrecognized

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gain or loss on S preferred stock)). See paragraph (b)(1)(ii)(A) of this section. Accordingly, after the application of paragraph (b) of this section, M's sale of the S share is still a transfer of a loss share and therefore subject to paragraph (c) of this section. Under paragraph (c) of this section, M's $200 basis in the S share is reduced, but not below the share's $100 value, by the lesser of the share's net positive adjustment and disconformity amount. The share's net positive adjustment is $100, the positive adjustment attributable to the gain recognized on the sale of Asset 1. The share's disconformity amount is $0, the excess of M's $200 basis in the S share over S's $200 net inside attribute amount. Thus, the reduction to basis under paragraph (c) of this section would be $0. However, because S purchased the X stock and liquidated X with a view to avoiding the purposes of this section (by using X's attributes to minimize the disconformity amount of the S share), the attributes acquired from X are disregarded for purposes of applying this section. Accordingly, S's net inside attribute amount is limited to the $100 of attributes S would have had absent the purchase of the X stock, S's money ($100 from the sale of Asset 1). The loss share's disconformity amount is therefore the excess of $200 over $100, or $100. The lesser of the share's $100 net positive adjustment and $100 disconformity amount is $100. As a result, M's $200 basis in the S share is reduced by $100, to $100, and M recognizes no gain or loss on the sale of the S share.

Example 2. Use of a partnership to prevent current attribute reduction. (i) *Facts.* M owns all 5 outstanding shares of S common stock with a basis of $200 each. S owns Asset 1 with a basis of $1000. In year 1, with a view to preventing a current reduction in the basis of Asset 1, S contributes Asset 1 to a partnership in a transaction in which S recognizes no gain or loss. On December 31, year 2, M sells one S share for $20. After taking into account the effects of all applicable rules of law, M's basis in each S share is $200. M's sale of the S share is a transfer of a loss share and therefore subject to this section.

(ii) *Analysis.* Although M's transfer of the S share is subject to this section, there is no basis redetermination under paragraph (b) of this section because there is no disparity among M's bases in its shares of S common stock and there are no shares of S preferred stock outstanding (and so there is no unrecognized gain or loss on S preferred stock). See paragraph (b)(1)(ii)(A) of this section. Accordingly, after the application of paragraph (b) of this section, M's sale of the S share is still a transfer of a loss share and therefore subject to paragraph (c) of this section. However, no adjustment is required under paragraph (c) of this section because both the disconformity amount and the net positive adjustment are $0. See paragraph (c)(3) of this section. Under paragraph (d) of

this section, S's attribute reduction amount is $180 (the lesser of the $180 net stock loss and S's $900 aggregate inside loss ($1000 of attributes over $100 value of all of the S shares)). Absent the application of this paragraph (g), the $180 attribute reduction amount would be applied to reduce S's basis in the partnership interest. However, because S acted with a view to avoiding a current reduction in the basis of Asset 1 under paragraph (d) of this section, this section is applied by treating S as if it held Asset 1 at the time of the stock sale. The basis of Asset 1 is reduced by $180, to $820, effective immediately before the transfer to the partnership and, as a result, S's basis in its partnership interest is $820.

Example 3. Creation of an intercompany receivable to mitigate attribute reduction. (i) *Facts.* M owns all five outstanding shares of S common stock each with equal basis that exceeds value. S holds cash and Asset 1 with a basis that exceeds value. In year 1, with a view to mitigating a reduction in the basis of Asset 1, S lends the cash to M1. Asset 1 and the intercompany note received from M1 are assets of the same class under §1.338–6(b)(2). On December 31, year 2, M sells one of its S shares and, without regard to this section, recognizes a loss. M's sale of the S share is a transfer of a loss share and therefore subject to this section.

(ii) *Analysis.* Although M's transfer of the S share is subject to this section, no adjustment is required under paragraph (b) of this section because there is no disparity among M's bases in shares of S common stock and there are no shares of S preferred stock outstanding (and so there is no unrecognized gain or loss on S preferred stock). See paragraph (b)(1)(ii)(A) of this section. Accordingly, after the application of paragraph (b) of this section, M's sale of the S shares is still a transfer of a loss share and therefore subject to paragraph (c) of this section. However, there is no adjustment under paragraph (c) of this section because the net positive adjustment is $0. See paragraph (c)(3) of this section. Under paragraph (d) of this section, S's attribute reduction amount would be applied to reduce S's basis in Asset 1 and the intercompany receivable in proportion to basis. However, because S acted with a view to mitigating the reduction in the basis of Asset 1 under paragraph (d) of this section, this section is applied without regard to the intercompany receivable. Accordingly, S's basis in Asset 1 is reduced by the full attribute reduction amount.

Example 4. Use of a partnership to reduce net stock loss. (i) *Facts.* M owns all ten outstanding shares of S common stock, one share (Share 1) has a basis of $0, and one share (Share 2) has a basis of $160. S has an aggregate inside loss of $80. In one transaction and with a view to mitigating a reduction in S's attributes, M contributes

Share 1 to a partnership, recognizing no gain or loss, and sells Share 2 for $80. M's contribution of Share 1 to the partnership is a transfer, but the share is not a loss share and so the transfer is not subject to this section. M's sale of Share 2 is a transfer of a loss share and is therefore subject to this section.

(ii) *Analysis.* Although M's transfer of Share 2 is subject to this section, there is no adjustment under paragraph (b) of this section because there are no investment adjustments that have been applied to the shares. Accordingly, after the application of paragraph (b) of this section, M's sale of Share 2 is still a transfer of a loss share and therefore subject to paragraph (c) of this section. There is no adjustment under paragraph (c) of this section because the net positive adjustment is $0. See paragraph (c)(3) of this section. Accordingly, after the application of paragraph (c) of this section, M's sale of Share 2 is still a transfer of loss shares and therefore subject to paragraph (d) of this section. Under paragraph (d) of this section, the net stock loss would be determined to be $0, the excess of the $160 aggregate basis in all of the transferred shares over the $160 aggregate value of those shares. S's attribute reduction amount would be determined to be $0, the lesser of the $0 net stock loss and S's $80 aggregate inside loss. Thus, there would be no reduction of attributes under this paragraph (d) of this section. However, because M acted with a view to reducing the attribute reduction amount by transferring a gain share to a partnership while avoiding the recognition of the gain on the share, this section is applied without regard to the transfer of the gain share. Accordingly, the net stock loss is determined to be $80, and the attribute reduction amount is determined to be $80.

Example 5. Stuffing gain asset. (i) *Facts.* M owns the sole outstanding share of S stock (Share 1) with a basis of $100. S owns Asset 1 with a basis of $100 and a value of $20. With a view to avoid the purposes of this section, M transfers Asset 2 with a basis of $0 and a value of $80 to S in exchange for four additional shares of S stock (Share 2 through Share 5) in a transaction to which section 351 applies. M later sells Share 1 to X for $20. M's sale of Share 1 is a transfer of a loss share and therefore subject to this section.

(ii) *Analysis.* Although M's transfer of the Share 1 is subject to this section, there is no adjustment under paragraph (b) of this section because no investment adjustments have been applied to the basis of any S shares. Thus, after the application of paragraph (b) of this section, M's sale of the S share is still a transfer of a loss share and therefore subject to paragraph (c) of this section. There is no adjustment under paragraph (c) of this section because the net positive adjustment is $0. Accordingly, after the application of paragraph (c) of this section,

M's sale of the S share is still a transfer of a loss share and therefore subject to paragraph (d) of this section. Under paragraph (d) of this section, S's attribute reduction amount would be $0, the lesser of the $80 net stock loss and S's $0 aggregate inside loss ($100 of attributes does not exceed the $100 value of all of the S shares). However, because M transferred Asset 2 to S with a view to avoid the purposes of this section, the application of this section to M's transfer of Share 1 is made without regard to the transfer of Asset 2. Accordingly, under paragraph (d) of this section, S's attribute reduction amount is $80, the lesser of the $80 net stock loss and S's $80 aggregate inside loss (computed without regard to Asset 2). S's basis in Asset 1 is therefore reduced by $80, from $100 to $20, under paragraph (d) of this section.

(iii) *Transfer of all S shares.* Assume the same facts as in paragraph (i) of this *Example 5*, except that M sells all five S shares to X, recognizing both the gain and the loss on the S shares. The transfer of Share 1 is still a transfer of a loss share and therefore subject to this section. However, because all the shares are transferred, the group's income is clearly reflected. Therefore, the purposes of this section are not avoided and this section applies without modification. S's attribute reduction amount is $0, the lesser of the $0 net stock loss and S's $0 aggregate inside loss.

(h) *Effective/applicability date.* This section applies to transfers of shares of subsidiary stock on or after September 17, 2008 unless the transfer was made pursuant to a binding agreement that was in effect prior to September 17, 2008 and at all times thereafter. For transfers of shares of subsidiary stock that are not subject to this section, see §§ 1.337(d)–2 and 1.1502–35.

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SPECIAL TAXES AND TAXPAYERS

§ 1.1502–42 Mutual savings banks, etc.

(a) *In general.* This section applies to mutual s avings banks and other institutions described in section 593(a).

(b) *Total deposits.* In computing for purposes of section 593(b)(1)(B)(ii) total deposits or withdrawable accounts at the close of the taxable year, the total deposits or withdrawable accounts of other members shall be excluded.

(c) *Taxable income; taxable years for which the due date (without extensions) for filing returns is before March 15, 1983.*