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[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9927]

RIN 1545-BP27

Consolidated Net Operating Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 1502 and 1503 of the Internal Revenue Code (Code). These regulations provide guidance implementing recent statutory amendments to section 172 of the Code relating to the absorption of consolidated net operating loss (CNOL) carryovers and carrybacks. These regulations also update regulations applicable to consolidated groups that include both life insurance companies and other companies to reflect statutory changes. These regulations affect corporations that file consolidated returns.

DATES: Effective Date: These regulations are effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §§1.1502-1(l), 1.1502-21(h)(10), 1.1502-47(n), and 1.1503(d)-8(b)(8).

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SUPPLEMENTARY INFORMATION:

## **Background**

This Treasury decision amends the Income Tax Regulations (26 CFR part 1) under section 1502 of the Code. Section 1502 authorizes the Secretary of the Treasury or his delegate (Secretary) to prescribe regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (consolidated group) to reflect clearly the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability. See § 1.1502-1(h) (defining the term “consolidated group”). For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code that would apply if the corporations composing the consolidated group filed separate returns. Terms used in the consolidated return regulations generally are defined in § 1.1502-1.

On July 8, 2020, the IRS published a notice of proposed rulemaking (REG-125716-18) in the **Federal Register** (85 FR 40927) under section 1502 of the Code (proposed regulations). The proposed regulations provided guidance implementing recent statutory amendments to section 172, relating to net operating loss (NOL) deductions, and withdrew and re-proposed certain sections of proposed guidance issued in prior notices of proposed rulemaking relating to the absorption of CNOL

carryovers and carrybacks. In addition, the proposed regulations updated regulations applicable to consolidated groups that include both life insurance companies and other companies to reflect statutory changes.

In connection with the proposed regulations, the IRS published on the same date temporary regulations under section 1502 (TD 9900) in the **Federal Register** (85 FR 40892) (temporary regulations). The temporary regulations permit consolidated groups that acquire new members that were members of another consolidated group to elect to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 for certain losses attributable to the acquired members. The text of the temporary regulations also serves as the text of §1.1502-21(b)(3)(ii)(C) and (D) of the proposed regulations.

The IRS received seven comments in response to the proposed regulations. Copies of the comments received are available for public inspection at <http://www.regulations.gov> or upon request. No public hearing was requested or held. This Treasury decision adopts the proposed regulations, other than proposed §1.1502-21(b)(3)(ii)(C) and (D), as final regulations with the changes described in the following Summary of Comments and Explanation of Revisions. The Treasury Department and the IRS expect to finalize proposed §1.1502-21(b)(3)(ii)(C) and (D) at a later date and welcome further comments on these provisions.

## **Summary of Comments and Explanation of Revisions**

### I. Comments on and Changes to Proposed §1.1502-21

#### A. Overview of section 172

These final revisions implement certain statutory amendments to section 172 made by Public Law 115-97, 131 Stat. 2054 (December 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA), and by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116-136, 134 Stat. 281 (March 27, 2020). See generally the Background section of the preamble to the proposed regulations. As amended, section 172(a)(2) allows an NOL deduction for a taxable year beginning after December 31, 2020, in an amount equal to the sum of (A) the aggregate amount of pre-2018 NOLs that are carried to such taxable year, and (B) the lesser of (i) the aggregate amount of post-2017 NOLs that are carried to such taxable year, or (ii) the “80-percent limitation.” The 80-percent limitation is equal to 80 percent of the excess (if any) of (I) taxable income computed without regard to any deductions under sections 172, 199A, and 250 of the Code, over (II) the aggregate amount of pre-2018 NOLs carried to the taxable year. See section 172(a)(2)(B)(ii). For purposes of the foregoing computation, the term “pre-2018 NOLs” refers to NOLs arising in taxable years beginning before January 1, 2018, and the term “post-2017 NOLs” refers to NOLs arising in taxable years beginning after December 31, 2017.

The 80-percent limitation does not apply to the offset of income by NOLs in taxable years beginning before January 1, 2021. Section 172(a)(1). The 80-percent limitation also does not apply to limit the use of pre-2018 NOLs. Section 172(a)(2)(A).

Moreover, the 80-percent limitation does not apply to insurance companies other than life insurance companies (nonlife insurance companies). Section 172(f).

Therefore, the taxable income of nonlife insurance companies may be fully offset by NOL deductions. In addition, under section 172(b)(1)(C) and (b)(1)(D)(i), losses of

nonlife insurance companies arising in taxable years beginning after December 31, 2020, may be carried back two years and carried over 20 years. In contrast, losses (aside from farming losses) of other taxpayers arising in such taxable years may not be carried back but may be carried forward indefinitely. Section 172(b)(1). Thus, nonlife insurance companies are subject to special rules under section 172 both with respect to the amount of taxable income that may be offset by NOL deductions and with respect to the taxable years to which NOLs may be carried.

B. Overview of the proposed approach and the alternative approach

To implement the special rules under section 172 for nonlife insurance companies for a consolidated return year beginning after December 31, 2020, the proposed regulations provided that the application of the 80-percent limitation within a consolidated group to post-2017 NOLs depends on the status of the member that generated the income being offset. The proposed regulations further provided that the amount of post-2017 CNOLs that may be absorbed by one or more members of the group in such a consolidated return year (post-2017 CNOL deduction limit) is determined by applying the 80-percent limitation, section 172(f) (that is, the special rule for nonlife insurance companies), or both, to the group's consolidated taxable income (CTI) for that year. See proposed §1.1502-21(a)(2)(ii)(A) and (B).

For consolidated groups comprised of both nonlife insurance companies and other members for a consolidated return year beginning after December 31, 2020, the proposed regulations adopted a two-factor computation (proposed approach). In general, under the proposed approach, the post-2017 CNOL deduction limit for such a group equals the sum of two amounts. The first amount, which relates to the income of

those members that are not nonlife insurance companies (residual income pool), is subject to the 80-percent limitation. The second amount, which relates to the income of those members that are nonlife insurance companies (nonlife income pool), is not subject to the 80-percent limitation. See proposed §1.1502-21(a)(2)(iii)(C). Thus, the proposed approach divides a consolidated group's nonlife insurance companies and its other members into two separate "pools" for purposes of determining the amount of CTI that is available to be offset by post-2017 CNOLs after applying the 80-percent limitation.

In formulating the proposed regulations, the Treasury Department and the IRS considered another approach (alternative approach). This alternative approach would have required a group to first offset income and loss items within a pool of nonlife insurance companies and a pool of other members for all purposes of section 172 applicable to taxable years beginning after December 31, 2020. In other words, the alternative approach would have applied a pooling concept beyond merely determining the group's post-2017 CNOL deduction limit, but would have required a group's CTI to be allocated between the operations of its nonlife insurance company members, which can be offset fully by CNOL deductions, and the operations of its other members subject to the 80-percent limitation. This alternative approach would also have applied similar rules to allocate CNOLs within groups including both nonlife insurance companies and other members to consistently identify the portions of CNOLs allocable to nonlife insurance company members, which are subject to different carryover rules than those of other members.

The alternative approach would have contrasted with the historical application of §1.1502-21(b)(2)(iv)(B), under which a CNOL for a taxable year is attributed pro rata to all members of a group that produce net loss, without first netting among entities of the same type. In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments regarding both the proposed approach and the alternative approach.

C. Comments on the proposed approach and the alternative approach

In response to the request for comments, the Treasury Department and the IRS received comments that uniformly approved the proposed approach. For example, two commenters commended the proposed regulations as implementing the statutory amendments to section 172 in a reasonable manner that is consistent with both the statute and consolidated return principles. Specifically, both commenters supported the proposed regulations' approach to computing a group's post-2017 CNOL deduction limit as well as the proposed regulations' retention of the historical pro rata approach under §1.1502-21(b)(2)(iv)(B) to determine the amount of nonlife insurance company losses that can be carried to other taxable years.

In support of the proposed regulations, one commenter asserted that the proposed approach is more consistent with the treatment of CNOLs as consolidated items and with the current CNOL use and absorption rules in §1.1502-21 than the alternative approach. The commenter further asserted that, because the alternative approach would depart from the general pro rata rules of §1.1502-21 by first netting income and loss among entities of the same type within a consolidated group, the

alternative approach could result in computational and compliance complications in circumstances that may be difficult to anticipate.

In response to the comments received, these final regulations retain the proposed approach to computing a consolidated group's post-2017 CNOL deduction limit.

D. Application of the proposed approach to life-nonlife groups

One commenter recommended that, for consolidated groups with both nonlife insurance companies and life insurance companies, the amounts of the residual income pool and the nonlife income pool in proposed §1.1502-21(a)(2)(iii)(C)(2) and (3) be clarified to refer only to the items of income, gain, deduction, or loss of members of the nonlife subgroup (as defined in §1.1502-47(b)(9) of these final regulations). The commenter further recommended that, in making this clarification, the Treasury Department and the IRS should not prevent nonlife CNOLs from offsetting life subgroup income where permitted by the Code and §1.1502-47. The commenter noted that this outcome appears to be the intent of the cross-reference to §1.1502-47 in proposed §1.1502-21(b)(2)(iv)(E), but the commenter indicated that clarification would be useful. The Treasury Department and the IRS agree with the commenter regarding the purpose of the cross-reference to §1.1502-47 in proposed §1.1502-21(b)(2)(iv)(E) and have revised the regulations to more clearly confirm this outcome.

E. Consolidated capital gain net income

Section 1.1502-11(a)(3) provides that the CTI for a consolidated return year is determined by taking into account, among other enumerated items, any consolidated capital gain net income. See generally §1.1502-22(a) (providing rules for determining



consolidated capital gain net income). Under §1.1502-22(a), the determinations for a consolidated group under section 1222, including capital gain net income, are not made separately. Instead, such consolidated amounts are determined for the group as a whole.

Section 1.1502-11 does not provide explicit rules for allocating consolidated capital gain net income among members. Thus, one commenter requested that the final regulations clarify that, for groups that include nonlife insurance companies, consolidated capital gain net income under §1.1502-11(a)(3) is allocated to the residual income pool and the nonlife income pool using a pro rata method based on the principles of §1.1502-21(b)(2)(iv), as reflected in the general rule in §1.1502-21(b)(1), for the use and absorption of CNOLs.

Section 1.1502-11 also does not provide explicit rules for determining the amount of each member's income that is offset by losses (whether incurred in the current year or carried over or back as a part of a CNOL or consolidated net capital loss). However, the Treasury Department and the IRS understand that, in the absence of express rules, consolidated return practitioners generally apply the principles of §1.1502-21(b)(2)(iv) to make such determinations. The methodology for computing a consolidated group's post-2017 CNOL deduction limit is intended to implement the changes made to section 172(a) by the TCJA and the CARES Act in a manner that is flexible for taxpayers to apply and administrable for the IRS. The Treasury Department and the IRS have determined that specific rules regarding the allocation of consolidated capital gain net income to the residual income pool and the nonlife income pool under §1.1502-21(a)(2)(iii)(C)(2) and (3) would exceed the scope of these final regulations.

Accordingly, the Treasury Department and the IRS continue to reflect on the commenter's recommendation but have not incorporated that recommendation into the final regulations.

F. Example 6 in proposed §1.1502-21(b)(2)(v)(F)

Proposed §1.1502-21(b)(2)(v)(F) (Example 6) contains an example that illustrates the application of section 172 to a CNOL incurred by a consolidated group (P group) that includes P, an includible corporation under section 1504(b) of a type other than a nonlife insurance company, and PC1, a nonlife insurance company. Both P and PC1 were incorporated in Year 1, a year beginning after December 31, 2020. In Year 1, the P group has \$45 of CTI, \$20 of which is attributable to P and \$25 of which is attributable to PC1. In Year 2, the P group incurs a \$16 CNOL that is attributable to PC1 and that is carried back to Year 1 under section 172(b)(1)(C)(i).

The example illustrates that, under proposed §1.1502-21(a)(2)(iii)(C), the P group's post-2017 CNOL deduction limit for Year 1 is \$41, which is the sum of the residual income pool (\$16) and the nonlife income pool (\$25), as described in proposed §1.1502-21(a)(2)(iii)(C)(2) and (3), respectively. More specifically, the amount of the residual income pool equaled the lesser of the aggregate amount of post-2017 NOLs carried to Year 1 (\$16), or 80 percent of the excess of P's taxable income for that year (\$20) over the aggregate amount of pre-2018 NOLs allocable to P (\$0), which also was \$16 (80 percent × (\$20-\$0)). See proposed §1.1502-21(b)(2)(v)(F)(3). The amount of the nonlife income pool equaled the excess of PC1's taxable income for Year 1 (\$25) over the aggregate amount of pre-2018 NOLs allocable to PC1 (\$0). *Id.*

Two commenters requested clarification as to how much taxable income in each pool is offset by a CNOL carryover or carryback if each pool has positive taxable income, as in Example 6. Specifically, commenters contended that a specific absorption rule is needed to determine how much taxable income in the residual income pool (which is subject to the 80-percent limitation) can be offset by subsequent CNOL carryovers or carrybacks to the same year. For example, assume the same facts as in Example 6, but that the P group also incurs a \$30 CNOL in Year 3 that is entirely attributable to PC1 and that is eligible to be carried back to Year 1. Absent a rule specifying how much taxable income in each pool was offset in Year 1 by the \$16 Year 2 CNOL carryback, the commenters questioned how to compute the residual income pool for purposes of determining how much of the P group's Year 3 CNOL carryback could be absorbed by the P group in Year 1.

As noted in part I.A of this Summary of Comments and Explanation of Revisions, the computation in section 172(a)(2)(B)(ii) is made "without regard to the deductions under [section 172] and sections 199A and 250." Consistent with the statute, the amount of income in the residual income pool that is subject to the 80-percent limitation for a particular consolidated return year is not recomputed to reflect the amount of CNOLs carried over to and absorbed in that year. See §1.1502-21(a)(2)(iii)(C)(2) of these final regulations. Rather, the only component of the post-2017 CNOL deduction limit that is subject to change upon the carryover or carryback of additional CNOLs to the same consolidated return year is the aggregate amount of post-2017 CNOLs carried to that year. See §1.1502-21(a)(2)(iii)(C)(1)(i) of these final regulations. Determining this amount does not require an absorption rule.

With regard to Example 6, if the P group were to incur a \$30 CNOL in Year 3 that was eligible to be carried back to Year 1, the P group would redetermine the aggregate amount of the P group's post-2017 CNOLs that are carried to Year 1, but the P group would not recompute the amount of Year 1 income subject to the 80-percent limitation. Thus, an absorption rule is not needed to determine how much of the P group's Year 1 CTI can be offset by subsequent CNOL carrybacks. However, these final regulations provide additional facts in Example 6 to illustrate the computation of the amount of additional CNOL carryovers or carrybacks to the same consolidated return year that can be deducted to offset income in that year.

G. Split-waiver elections

If a member of one consolidated group becomes a member of another consolidated group, §1.1502-21(b)(3)(ii)(B) permits the acquiring group to make an irrevocable election to relinquish, with respect to all CNOLs attributable to the acquired corporation, the portion of the carryback period for which the acquired corporation was a member of another group (so long as any other corporation joining the acquiring group that was affiliated with the acquired corporation immediately before it joined the acquiring group also is included in the waiver).

A commenter noted that, pursuant to §1.1502-21(b)(3)(ii)(B), an acquiring group may make a split-waiver election only with respect to acquired corporations that were members of a different consolidated group in a carryback year. The commenter recommended that §1.1502-21(b)(3)(ii) be expanded to allow a split-waiver election if the acquired corporation was not a member of a consolidated group in the carryback year.

The Treasury Department and the IRS appreciate the commenter's suggestion and will continue to consider it in connection with the future finalization of the temporary regulations. However, this comment exceeds the scope of these final regulations, which adopt the provisions of the proposed regulations other than those for which the text was contained in the temporary regulations (specifically, §1.1502-21(b)(3)(ii)(C) and (D)). Therefore, the Treasury Department and the IRS decline to adopt this recommendation in this Treasury decision.

#### H. Modification to SRLY rules

The proposed regulations modify the separate return limitation year (SRLY) rules in §1.1502-21(c) to take into account the limitations on NOL deductions under section 172, as amended by the TCJA and the CARES Act. See proposed §1.1502-21(c)(1)(i)(E). A commenter recommended that this modification not apply for purposes of section 1503(d) (the dual consolidated loss (DCL) rules). In certain cases, the extent to which section 1503(d) restricts the use of a DCL, or requires the recapture of a DCL (or a related interest charge), depends on the application of the SRLY rules in §1.1502-21(c), subject to certain adjustments. See §§1.1503(d)-4(c)(3) and 1.1503(d)-6(h)(2). In these cases, the adjusted SRLY rules are generally intended to ensure that a DCL may be used only to offset income of the dual resident corporation or separate unit that incurred the DCL, such that the use does not result in a "double dip" of the DCL.

The commenter recommended that the modification reflected in proposed §1.1502-21(c)(1)(i)(E) not apply for purposes of the DCL rules because the modification addresses policies specific to the SRLY rules in §1.1502-21(c) (replicating, to the extent possible, separate-entity usage of SRLY attributes), which differ from the policies

underlying the DCL rules (preventing double dipping of losses). In addition, the commenter asserted that applying the rule in proposed §1.1502-21(c)(1)(i)(E) for DCL purposes could distort the determination of whether double dipping could occur.

The Treasury Department and the IRS agree with the commenter. The final regulations therefore provide that §1.1502-21(c)(1)(i)(E) does not apply for purposes of the DCL rules. See §1.1503(d)-4(c)(3)(v).

#### I. Clarifying changes to proposed §1.1502-21

In addition to the foregoing comments, a commenter recommended clarifying changes to proposed §1.1502-21. The Treasury Department and the IRS appreciate these suggested clarifications and have incorporated many of them into the final regulations. However, the commenter also recommended deleting the reference to section 199A in proposed §§1.1502-21(a)(2)(iii)(A)(2)(ii) and 1.1502-21(a)(2)(iii)(C)(2)(ii) on the grounds that the deduction under section 199A is available to only noncorporate taxpayers. Because section 199A(g) provides a deduction for specified agricultural or horticultural cooperatives, which (as C corporations) can be members of a consolidated group, these references to section 199A have been retained in the final regulations.

The Treasury Department and the IRS also have made additional clarifying revisions based on further review of the proposed regulations. In particular, the final regulations contain corrections to scrivener's errors in the two-factor computation in proposed §1.1502-21(a)(2)(iii). Specifically, the "lesser of" language in proposed §1.1502-21(a)(2)(iii)(C)(2), which was intended to reflect the application of section 172(a)(2)(B) to groups that include both nonlife insurance companies and other corporations, was mislocated. To accurately reflect the comparison required under

section 172(a)(2)(B), the language at issue has been moved to §1.1502-21(a)(2)(iii)(C)(1) of the final regulations.

Additional edits have been made to enhance the consistency and clarity of the rules in proposed §1.1502-21(a)(2). For example, language reflecting the “lesser of” comparison described in the preceding paragraph has been explicitly integrated into §§1.1502-21(a)(2)(iii)(B) and 1.1502-21(a)(2)(iii)(C)(5)(ii) (concerning CNOL deductions that offset income of nonlife insurance company members) of these final regulations. As discussed in part II.B of this Summary of Comments and Explanation of Revisions, the post-2017 CNOL deduction limit equals the maximum amount of post-2017 CNOLs that can be deducted against taxable income in a consolidated return year beginning after December 31, 2020. This amount could never exceed the total amount of post-2017 CNOLs carried to that year. See section 172(f) (providing that, in the case of a nonlife insurance company, the amount of the NOL deduction allowed under section 172(a) in any taxable year equals the aggregate of NOL carrybacks and carryovers to that year).

Likewise, in the absence of any other limitation, the taxable income of a taxpayer always constitutes a limit on the deductibility of NOLs. See generally section 172(b)(2). Without such limit, the deduction of NOLs in excess of taxable income would create an additional NOL. The Treasury Department and IRS have determined that explicitly providing the respective post-2017 CNOL and taxable income limitations on the deduction of NOLs to offset taxable income of nonlife insurance companies will enhance the clarity of the final regulations and the consistency of their application.

## II. Comments on and Changes to Proposed §1.1502-47

The proposed regulations updated the rules in §1.1502-47 to reflect statutory changes enacted since these rules were promulgated. Commenters commended the Treasury Department and the IRS for updating these regulations. Additionally, several commenters expressed their understanding that another guidance project has been initiated to propose substantive changes to §1.1502-47 and urged the Treasury Department and the IRS to give priority to this effort. These commenters argued that the objective of that guidance project should be the elimination of any provisions that depart from general consolidated return principles in life-nonlife consolidation, except to the extent non-conforming provisions are necessary to implement specific provisions of the Code. In particular, these commenters expressed concern about the treatment of consolidated capital gains and losses under §1.1502-47 and requested simplification of the eligibility and tacking rules.

The Treasury Department and the IRS appreciate the commenters' input and welcome further comments regarding substantive changes to §1.1502-47 for purposes of potential future guidance. However, such changes are beyond the scope of these final regulations.

Additionally, commenters recommended several clarifying changes to proposed §1.1502-47. Many of these suggested clarifications have been incorporated into the final regulations. For example, these final regulations have added a cross-reference to the definition of "nonlife insurance company" in §1.1502-1(k). However, one commenter recommended that §1.1502-47(g)(3) of these final regulations be modified to more closely parallel §1.1502-47(f)(3) of these final regulations. The commenter further requested that paragraph (d)(5) of these final regulations be modified to explicitly set



forth the various rules (both statutory and regulatory) that apply to certain dividends received by an includible member from another member of the consolidated group. These comments exceed the scope of these final regulations, but the Treasury Department and the IRS will continue to consider these comments for purposes of potential future guidance regarding §1.1502-47.

### **Effective/Applicability Dates**

The final regulations in §§1.1502-1(k), 1.1502-21(a), (b)(1), (b)(2)(iv), and (c)(1)(i)(E), 1.1502-47, and 1.1503(d)-8(b)(8) apply to taxable years beginning after December 31, 2020. However, a taxpayer may choose to apply the rules in §§1.1502-1(k) and 1.1502-47 of these final regulations to taxable years beginning on or before December 31, 2020. If a taxpayer makes the choice described in the previous sentence with regard to the rules in §1.1502-47, the corporation must apply those rules in their entirety and consistently with the provisions of the Internal Revenue Code applicable to the years at issue.

### **Special Analyses**

#### **I. Regulatory Planning and Review – Economic Analysis**

Executive Orders 13563, 13771, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These final regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs (OIRA) has designated the final regulations as economically significant under section 1(c) of the Memorandum of Agreement. Accordingly, OMB has reviewed the final regulations.

A. Background and Need for Regulations

In general, taxpayers whose deductions exceed their income generate a net operating loss (NOL), calculated under the rules of section 172. Section 172 also governs the use of NOLs generated in other years to offset taxable income in the current year. Regulations issued under the authority of section 1502 may be used to govern how section 172 applies to consolidated groups of C corporations. In general, a consolidated group generates a combined NOL at an aggregate level (CNOL), with the CNOL generally equal to the loss generated from treating the consolidated group as a single entity. Under regulations promulgated prior to the Tax Cuts and Jobs Act (TCJA), the allowed CNOL deduction was equal to the lesser of the CNOL carryover or the combined taxable income of the group (before the CNOL deduction).

The TCJA and the Coronavirus Aid, Relief, and Economic Security (CARES) Act made several changes to section 172. First, the TCJA and the CARES Act disallowed the carry back of NOLs generated in taxable years beginning after 2020, except for farming losses and losses incurred by corporations that are insurance companies other than life insurance companies (nonlife insurance companies). Second, the TCJA and

the CARES Act limited the NOL deduction in taxable years beginning after 2020 for NOLs generated in 2018 or later (post-2017 NOLs) to 80 percent of taxable income determined after the deduction for pre-2018 NOLs but before the deduction for post-2017 NOLs. This 80-percent limitation does not apply to nonlife insurance companies.

These final regulations implement the changes to section 172 in the context of consolidated groups. In particular, regulations are needed to address three issues related to consolidated groups that were not expressly addressed in the TCJA or the CARES Act. First, the final regulations describe how to determine the 80-percent limitation in the case of a “mixed” group – that is, a consolidated group containing nonlife insurance companies and other members. Second, the final regulations address the calculation and allocation of farming losses. Third, the final regulations implement the 80-percent limitation into existing regulations to determine the CNOL deduction attributable to losses from a member arising during periods in which that member was not part of that group. Part I.B of this Special Analyses describes the manner by which the final regulations addresses each of these issues.

Part I.B also describes an alternative approach that was contemplated by the Treasury Department and the IRS regarding the allocation of currently generated losses to nonlife insurance companies and other members. The Treasury Department and the IRS elected not to implement this approach.

#### B. Overview of the Final Regulations

In this part I.B the following terms are used. The term “P group” means a consolidated group of which P is the common parent. The term “P&C member” means a member of the P group that is a nonlife insurance company. The term “C member”

means a member of the P group that is a C corporation other than a nonlife insurance company.

#### 1. Application of 80-percent limitation in mixed groups

Under the statute, the general rule for determining the NOL deduction (for a taxable year beginning after December 31, 2020) effectively proceeds in two steps. First, the taxpayer deducts pre-2018 NOLs without limit. Second, the taxpayer deducts post-2017 NOLs up to 80 percent of the taxpayer's taxable income (computed without regard to the deductions under sections 199A and 250) determined after the deduction of pre-2018 NOLs (but, naturally, before the deduction for post-2017 NOLs). However, this 80-percent limitation does not apply for corporations that are nonlife insurance companies.

The application of the 80-percent limitation to the P group is straightforward if (i) there are no pre-2018 NOLs and (ii) both classes of P&C members and C members have positive income before the CNOL deduction. In that case, these final regulations provide, quite naturally, that the CNOL limitation is determined by adding (i) the pre-CNOL income generated by the class of C members (C member income pool), determined by applying the 80-percent limitation, plus (ii) 100 percent of the pre-CNOL income generated by the class of P&C members (P&C member income pool). This latter treatment reflects the rule in section 172(f) that nonlife insurance companies are not subject to the 80-percent limitation.

One complication arises when the pre-CNOL C member income pool is positive and the pre-CNOL P&C income pool is negative, and the P group has positive combined pre-CNOL taxable income. In this case (where the pre-CNOL income is

generated by C members, rather than P&C members), these final regulations provide that the post-2017 CNOL deduction limit is determined by applying the 80-percent limitation to the income of the P group. If the situation were reversed, such that the P group had positive combined taxable income but the pre-CNOL income is generated by P&C members, rather than the C members, the post-2017 CNOL deduction limit is equal to the income of the P group (that is, determined without regard to the 80-percent limitation). In essence, in these situations, the amount of the P group's income able to absorb a post-2017 CNOL carryover is defined by the member pool (that is, the C member income pool or the P&C member income pool) that is generating the income.

The other complication occurs when there is a pre-2018 NOL. In this situation, it matters whether the pre-2018 NOL is treated as reducing the amount of the C member income pool or reducing the amount of P&C member income pool. Consider the following example (Example 1). In Example 1, the P group carries \$50 in pre-2018 NOLs and \$1000 in post-2017 NOLs to 2021. In 2021, the P&C members and the C members, respectively, earn (pre-CNOL) income of \$100. If the pre-2018 NOL were treated as solely reducing the amount of C member income pool, then the limitation for the post-2017 CNOL deduction would be \$100 plus 80 percent of \$50 (\$100 minus \$50), equal to \$140. If the pre-2018 NOL were treated as solely reducing the amount of the P&C member income pool, then the post-2017 CNOL deduction limit for the P group would be \$50 (\$100 minus \$50) plus 80 percent of \$100, or \$130.

These final regulations allocate the pre-2018 NOL pro-rata to the C member income pool and the P&C member income pool in proportion to their current-year income. In Example 1, \$25 of the pre-2018 NOL would be allocated to the C member

income pool and \$25 to the P&C member income pool. Therefore, the post-2017 CNOL deduction limit for the P group would be \$75 (\$100 minus \$25) plus 80 percent of \$75 (\$100 minus \$25), or \$135.

## 2. Farming losses

Section 172 provides that NOLs arising in a taxable year beginning after December 31, 2020, may not be carried back to prior years, with two exceptions: (1) farming losses and (2) nonlife insurance company losses. Section 172(b)(1)(B) defines a “farming loss” as the smaller of the actual loss from farming activities in a given year (that is, the excess of the deductions in farming activities over income in farming activities) and the total NOL generated in that year. This statutory provision means that if a taxpayer incurs a loss in farming activities but has overall income in other activities, the farming loss will be smaller than the loss in farming activities (and can possibly be zero).

Regulations were needed to clarify two issues that arise in the context of consolidated groups. First, these regulations clarify that the maximum amount of farming loss is the CNOL of the group rather than the NOL of the specific member generating the loss in farming activities. This approach follows closely regulations issued by the Treasury Department and the IRS in 2012 in an analogous setting.

Second, given the overlapping categories of carryback-eligible NOLs (farming losses and nonlife insurance companies), regulations are needed to allocate the farming loss to the various members to determine the total amount of CNOL that can be carried back. Consider the following example (Example 2). In Example 2, the P group consists of one C member and one P&C member. In 2021, the C member’s only activity is

farming and the C member incurs a loss of \$30, while the P&C member incurs a loss of \$10. The total farming loss is \$30, since \$30 is less than the P group CNOL of \$40. If this farming loss were allocated entirely to the C member, then the total amount eligible for carryback would be \$40 (that is, \$30 for the farming loss and \$10 for the loss incurred by the P&C member). By contrast, if the farming loss were allocated entirely to the P&C member, only \$30 would be eligible to be carried back.

Again, following a similar rule as the 2012 regulations, these final regulations allocate the farming loss to each member of the group in proportion with their share of total losses, without regard to whether each member actually engaged in farming. In Example 2, this would allocate \$7.50 (that is, one-fourth of \$30) of the farming loss to the P&C member and the remaining \$22.50 (that is, three-fourths of \$30) to the C member. Therefore, the P group would be allowed to carry back \$32.50 total (that is, the \$10 of loss generated by the P&C member and the \$22.50 of farming losses allocated to the C member).

### 3. Separate Return Limitation Year

To reduce “loss trafficking,” existing regulations under section 1502 limit the extent to which a consolidated group (that is, the P group) can claim a CNOL attributable to losses generated by some member (M) in years in which M was not a member. In particular, existing rules limit this amount of loss to the amount of the loss that would have been deductible had M remained a separate entity; that is, the rules are designed to preserve neutrality in loss use between being a separate entity or a member of a group. Existing rules operationalize this principle using the mechanic of a “cumulative register.” The cumulative register is equal to the (cumulative) amount of

M's income that is taken into account in the P group's income. Income earned by M while a member of the P group increases the cumulative register, while losses (carried over or otherwise) taken into account by the group reduce the cumulative register. In general, the existing rules provide that M's pre-group NOLs cannot offset the P group's income when the cumulative register is less than or equal to zero.

The introduction of the 80-percent limitation in the TCJA and CARES Act necessitates an adjustment to this mechanism in order to retain this neutrality-in-loss-use property. In particular, these final regulations provide that any losses by M that are absorbed by the P group and subject to the 80-percent limitation cause a reduction to the register equal to the full amount of income needed to support that deduction. The following example (Example 3) demonstrates why this adjustment is necessary. In Example 3, P and S are each corporations other than nonlife insurance companies (that is, they are subject to the 80-percent limitation). Suppose in 2021, S incurs a loss of \$800, which is the only loss ever incurred by S. In 2022, S incurs income of \$400. If S were not a member of a consolidated group, its 2022 NOL deduction would be limited to \$320 (80 percent of \$400). Suppose instead that P acquires S in 2022 and that P has separate income of \$600 in 2022, so the consolidated group has \$1000 in pre-CNOL income in 2022. Before claiming any CNOLs, S's cumulative register would increase to \$400 in 2022. Without any additional rules, the \$400 cumulative register would allow P to claim a CNOL of \$400 (bringing the register down to zero), greater than what would have been allowed had S remained a separate entity. By contrast, requiring the register to be reduced by 125 percent of the NOL (as under the final regulations) allows P to claim only a \$320 CNOL, replicating the result if S were a separate entity.



#### 4. Allocation of current losses to nonlife insurance companies

In general, under the TCJA and CARES Act, taxpayers may not carry back any losses generated in tax years beginning after 2020, with the exception of losses generated by nonlife insurance companies and farming losses. Existing regulations clarify that CNOLs are allocated to each member in proportion to the total loss. This allocation rule can be illustrated by example (Example 4). In Example 4, the C member has a current loss of \$10 (in a tax year beginning in 2021 or later). The P&C members are corporations PC1 and PC2. PC1 has a gain of \$40 and PC2 has a loss of \$40. Assume that the P group does not engage in any farming activities. The CNOL for the P group is \$10. The \$10 of CNOL is allocated to the C member and PC2 in proportion to their total losses. The C member has one-fifth of the total loss (\$10 divided by \$50) and PC2 has four-fifths. Therefore, under the existing regulations, the C member is allocated \$2 (\$10 times one-fifth) and PC2 is allocated \$8 (\$10 times four-fifths). In the end, \$8 of the CNOL may be carried back in Example 4. The final regulations do not alter these existing regulations.

In formulating these final regulations, the Treasury Department and the IRS contemplated an alternative approach. Under this alternative, consolidated groups would be required to compute gain and loss by grouping P&C members and C members separately prior to allocating CNOL to members. The application of this approach can be seen by revisiting Example 4. Under this alternative approach, because the P&C members as a whole do not have a loss, no CNOL would be allocated to any P&C member regardless of the gain or loss of any of the individual P&C

members. Thus, under the alternative approach, none of the \$10 CNOL would be eligible for carryback in Example 4.

### C. Economic Analysis

#### 1. Baseline

In this analysis, the Treasury Department and the IRS assess the benefits and costs of the final regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

#### 2. Summary of economic effects

The final regulations provide certainty and clarity to taxpayers regarding the treatment of NOLs under section 172 and the regulations under section 1502. In the absence of such guidance, the chance that different taxpayers would interpret the statute and the regulations differently would be exacerbated. Similarly situated taxpayers might interpret those rules differently, with one taxpayer pursuing an economic opportunity that another taxpayer might decline to make because of different interpretations of the ability of losses to offset taxable income. If this second taxpayer's activity were more profitable, the resulting economic decisions are inefficient. Such situations are more likely to arise in the absence of guidance. While no guidance can curtail all differential or inaccurate interpretations of the statute, the regulations significantly mitigate the chance for differential or inaccurate interpretations and thereby increase economic efficiency.

To the extent that the specific provisions of the final regulations result in the acceleration or delay of the tax year in which taxpayers deduct an NOL relative to the baseline, those taxpayers may face a change in the present value of the after-tax return

to new investment, particularly investment that may result in losses. The resulting changes in the incentives facing the taxpayer are complex and may lead the taxpayer either to increase, decrease, or leave unchanged the volume and risk level of its investment portfolio, relative to the baseline, in ways that depend on the taxpayer's stock of NOLs and the depreciation schedules and income patterns of investments they would typically consider, including whether the investment is subject to bonus depreciation. Because these elements are complex and taxpayer-specific and because the sign of the effect on investment is generally ambiguous, the Treasury Department and the IRS have not projected the specific effects on economic activity arising from the final regulations.

The Treasury Department and the IRS project that these regulations will have annual effects below \$100 million (\$2020) relative to the baseline. The effects are small because the regulations apply only to consolidated groups; in addition, several provisions of the final regulations apply only to the extent that a consolidated group contains a mix of member types. Moreover, the effects are small because: (i) for provisions of the final regulations that affect the deduction for pre-2018 NOLs, the effects are limited to the stock of the pre-2018 NOLs; and (ii) for provisions that affect the allowable rate of loss usage of post-2017 NOLs, the effect arises only from the 20 percentage point differential in the deduction for these NOLs. This latter effect in particular, to which the bulk of the provisions apply, is too small to substantially affect taxpayers' use of NOLs and thus too small to lead to meaningful changes in economic decisions.

The Treasury Department and the IRS did not estimate more precisely the economic effects of these regulations because (i) the effects are expected to be small and (ii) data or models that would address the effects of these regulations are not readily available. In the absence of quantitative estimates, the subsequent discussion provides qualitative analysis of these economic effects.

The proposed regulations solicited comments on the economic effects of the proposed regulations. No such comments were received.

### 3. Allocation of CNOLs to specific members of consolidated groups

The final regulations do not amend existing rules for the allocation of the CNOL within consolidated groups. The final regulations follow existing rules and allocate the CNOLs to each member of the group in proportion to the total loss.

The Treasury Department and the IRS considered an alternative approach that would have required groups to compute gain and loss at the subgroup level prior to allocating CNOL to members. Recall Example 4 in which the P&C subgroup had no gain or loss but the C subgroup had a loss of \$10. Under this alternative approach, because the P&C subgroup as a whole does not have a loss, no CNOL would be allocated to any member in the P&C group regardless of the gain or loss of any of the individual members of PC. Thus, in Example 4, none of the \$10 CNOL would be eligible for carryback.

The Treasury Department and the IRS recognize that as a result of the TCJA and the CARES Act, the final regulations may provide groups with an incentive to split their C members into several corporations – some with loss and some with gain; this potential incentive would not exist under the alternative regulatory approach. In certain

circumstances, such a strategy would effectively enable some share of the losses generated by the other C members to be carried back. This change in the business structure of consolidated groups may entail economic costs because, to the extent this strategy is pursued, it would result from tax-driven rather than market-driven considerations. The Treasury Department and the IRS project, however, that the adopted approach will have lower compliance costs for taxpayers, relative to the alternative regulatory approach, because it generally follows existing regulatory practice for allocating losses within a consolidated group.

The Treasury Department and the IRS have not attempted to estimate the economic consequences of either of these effects but project them to be small. The effects are projected to be small because (i) only a small number of taxpayers are likely to be affected; (ii) any reorganization that occurs due to the final regulations will primarily be “on paper” and entail little or no economic loss; and (iii) the compliance burden of loss allocation, under either the final regulations or the alternative approach, is not high.

No additional substantive alternatives were raised by the comments.

#### 4. Affected Taxpayers

The Treasury Department and the IRS project that these regulations will primarily affect consolidated groups that contain at least one nonlife insurance member and at least one member that is not a nonlife insurance company. Based on data from 2015, the Treasury Department and the IRS calculate that there were 1,130 such consolidated groups. Approximately 460 of these groups were of “mixed loss” status, meaning that at

least one nonlife insurance member had a gain and one other member had a loss, or vice versa.

#### D. Summary

In sum, these regulations clarify the recent statutory changes to section 172 as they apply to consolidated corporate groups. The Treasury Department and IRS project the economic effect of these regulations to be small given that (1) the effect of NOL usage on investment incentives is of ambiguous sign, (2) these regulations are projected to have only a small effect on NOL usage, and (3) it is expected that most taxpayers would have come to a similar interpretation of the statute in the absence of these regulations.

#### II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these final regulations apply only to corporations that file consolidated Federal income tax returns, and that such corporations almost exclusively consist of larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120 (U.S. Corporation Income Tax Return). However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate amount of receipts provided on all Forms 1120. Therefore, these final regulations would not create additional obligations for, or impose an economic impact on, small entities.

Accordingly, the Secretary certifies that the final regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments on the notice were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

### III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately \$156 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

### IV. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications, does not impose substantial direct compliance costs on state and local

governments, and does not preempt state law within the meaning of the Executive Order.

#### V. Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 et seq.) (CRA). Under section 801(3) of the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. Consistent with this requirement, the effective date of this Treasury decision is **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, whereas the rules in this Treasury decision apply for taxable years beginning after December 31, 2020.

#### **Drafting Information**

The principal authors of these regulations are Justin O. Kellar, Gregory J. Galvin, and William W. Burhop of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

#### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

#### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

#### **PART 1--INCOME TAX**

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*



Par. 2. Section 1.1502-1 is amended by adding paragraphs (k) and (l) to read as follows:

§1.1502-1 Definitions.

\* \* \* \* \*

(k) Nonlife insurance company. The term nonlife insurance company means a member that is an insurance company other than a life insurance company, each as defined in section 816(a).

(l) Applicability date. Paragraph (k) of this section applies to taxable years beginning after December 31, 2020. However, a taxpayer may choose to apply paragraph (k) of this section to taxable years beginning on or before December 31, 2020.

Par. 3. Section 1.1502-21 is amended:

1. By revising paragraph (a).
2. By revising paragraph (b)(1).
3. By revising paragraphs (b)(2)(iv)(A) and (B).
4. By adding paragraphs (b)(2)(iv)(C) through (E).
5. By revising paragraph (b)(2)(v) introductory text.
6. In paragraph (b)(2)(v), by designating Examples 1 through 3 as paragraphs (b)(2)(v)(A) through (C), respectively.
7. In newly designated paragraphs (b)(2)(v)(A) through (C), by redesignating paragraphs (b)(2)(v)(A)(i) and (ii) as paragraphs (b)(2)(v)(A)(1) and (2), paragraphs (b)(2)(v)(B)(i) and (ii) as paragraphs (b)(2)(v)(B)(1) and (2), and paragraphs (b)(2)(v)(C)(i) and (ii) as paragraphs (b)(2)(v)(C)(1) and (2).

8. By adding paragraphs (b)(2)(v)(D) through (G).
9. In paragraph (b)(3)(ii)(B), by removing the language “§ 1.1502-21(b)(3)(ii)(B)(2)” and adding in its place “§1.1502-21(b)(3)(ii)(B)”.
10. By revising paragraph (b)(3)(ii)(C).
11. By adding paragraph (b)(3)(ii)(D).
12. By revising paragraph (c)(1)(i) introductory text.
13. In paragraph (c)(1)(i)(C)(2), by removing the language “and”.
14. In paragraph (c)(1)(i)(D), by removing the language “account.” and adding in its place “account; and”.
15. By adding paragraph (c)(1)(i)(E).
16. In paragraph (c)(1)(iii) introductory text, by adding a new first sentence.
17. In paragraph (c)(1)(iii), by designating Examples 1 through 5 as paragraphs (c)(1)(iii)(A) through (E), respectively.
18. In newly redesignated paragraphs (c)(1)(iii)(A) through (E), by redesignating paragraphs (c)(1)(iii)(A)(i) through (iii) as paragraphs (c)(1)(iii)(A)(1) through (3), paragraphs (c)(1)(iii)(B)(i) through (vi) as paragraphs (c)(1)(iii)(B)(1) through (6), paragraphs (c)(1)(iii)(C)(i) through (iii) as paragraphs (c)(1)(iii)(C)(1) through (3), paragraphs (c)(1)(iii)(D)(i) through (iv) as paragraphs (c)(1)(iii)(D)(1) through (4), and paragraphs (c)(1)(iii)(E)(i) through (v) as paragraphs (c)(1)(iii)(E)(1) through (5).
19. In newly redesignated paragraph (c)(1)(iii)(C)(2), by adding the language “, a taxable year that begins on January 1, 2021” after the language “at the beginning of Year 4”.
20. By revising paragraphs (c)(1)(iii)(A)(2) and (c)(1)(iii)(B)(2) through (6).

21. By revising paragraphs (c)(1)(iii)(D)(2) through (4).
22. By adding paragraph (c)(1)(iii)(D)(5).
23. By revising paragraphs (c)(1)(iii)(E)(2) through (5).
24. By adding paragraphs (c)(1)(iii)(E)(6) and (c)(1)(iii)(F).
25. By revising paragraph (c)(2)(v).
26. In paragraph (c)(2)(viii) introductory text, by adding a new first sentence.
27. In paragraph (c)(2)(viii), by designating Examples 1 through 4 as paragraphs (c)(2)(viii)(A) through (D), respectively.
28. In newly designated paragraphs (c)(2)(viii)(A) through (D), by redesignating paragraphs (c)(2)(viii)(A)(i) through (vii) as paragraphs (c)(2)(viii)(A)(1) through (7), paragraphs (c)(2)(viii)(B)(i) through (iv) as paragraphs (c)(2)(viii)(B)(1) through (4), paragraphs (c)(2)(viii)(C)(i) through (iii) as paragraphs (c)(2)(viii)(C)(1) through (3), and paragraphs (c)(2)(viii)(D)(i) and (ii) as paragraphs (c)(2)(viii)(D)(1) and (2).
29. In newly redesignated paragraphs (c)(2)(viii)(A)(3) through (7), the first sentence of each, by adding the language “, including the limitation under paragraph (c)(1)(i)(E) of this section” after the language “under paragraph (c) of this section”.
30. In newly redesignated paragraph (c)(2)(viii)(B)(1), the first sentence, by adding the language “, none of which is a nonlife insurance company” after the language “S, T, P and M”.
31. In newly redesignated paragraph (c)(2)(viii)(B)(1), the fourth sentence, by adding the language “(a taxable year beginning after December 31, 2020)” after the language “Year 3”.
32. By revising newly designated paragraph (c)(2)(viii)(B)(3).

33. By redesignating newly redesignated paragraph (c)(2)(viii)(B)(4) as paragraph (c)(2)(viii)(B)(5).
34. By adding a new paragraph (c)(2)(viii)(B)(4).
35. By revising newly redesignated paragraph (c)(2)(viii)(B)(5).
36. By adding paragraph (c)(2)(viii)(B)(6).
37. In paragraph (g)(5), by designating Examples 1 through 9 as paragraphs (g)(5)(i) through (ix), respectively.

38. In newly redesignated paragraphs (g)(5)(i) through (ix), by redesignating paragraphs (g)(5)(i)(i) through (iv) as paragraphs (g)(5)(i)(A) through (D), paragraphs (g)(5)(ii)(i) through (iv) as paragraphs (g)(5)(ii)(A) through (D), paragraphs (g)(5)(iii)(i) through (iii) as paragraphs (g)(5)(iii)(A) through (C), paragraphs (g)(5)(iv)(i) through (iv) as paragraphs (g)(5)(iv)(A) through (D), paragraphs (g)(5)(v)(i) through (iv) as paragraphs (g)(5)(v)(A) through (D), paragraphs (g)(5)(vi)(i) through (iv) as paragraphs (g)(5)(vi)(A) through (D), paragraphs (g)(5)(vii)(i) through (vi) as paragraphs (g)(5)(vii)(A) through (F), paragraphs (g)(5)(viii)(i) through (v) as paragraphs (g)(5)(viii)(A) through (E), and paragraphs (g)(5)(ix)(i) through (vii) as paragraphs (g)(5)(ix)(A) through (G).

39. By revising paragraph (h)(9).

40. By adding paragraph (h)(10).

The revisions and additions read as follows:

§1.1502-21 Net operating losses.

(a) Consolidated net operating loss deduction--(1) In general. Subject to any limitations under the Internal Revenue Code or this chapter (for example, the limitations

under section 172(a)(2) and paragraph (a)(2) of this section), the consolidated net operating loss deduction (or CNOL deduction) for any consolidated return year is the aggregate of the net operating loss carryovers and carrybacks to the year. The net operating loss carryovers and carrybacks consist of—

(i) Any CNOLs (as defined in paragraph (e) of this section) of the consolidated group; and

(ii) Any net operating losses (or NOLs) of the members arising in separate return years.

(2) Application of section 172 for computing net operating loss deductions--(i) Overview. For purposes of §1.1502-11(a)(2) (regarding a CNOL deduction), the rules of section 172 regarding the use of net operating losses are taken into account as provided by this paragraph (a)(2) in calculating the consolidated taxable income of a group for a particular consolidated return year. More specifically, in computing taxable income for taxable years beginning after December 31, 2020, section 172(a) generally limits the deductibility of net operating losses arising in taxable years beginning after December 31, 2017 (post-2017 NOLs). However, these limitations do not apply to net operating losses arising in taxable years beginning before January 1, 2018 (pre-2018 NOLs). Therefore, in any particular consolidated return year beginning after December 31, 2020, the group's CNOL deduction includes CNOLs arising in taxable years beginning before January 1, 2018 (pre-2018 CNOLs), without limitation under section 172(a). Following the deduction of pre-2018 CNOLs, this paragraph (a)(2) applies to compute the maximum amount of CNOLs from taxable years beginning after December 31, 2017 (post-2017 CNOLs), that can be deducted against taxable income in a

consolidated return year beginning after December 31, 2020 (post-2017 CNOL deduction limit). See section 172(a)(2)(A) and (B).

(ii) Computation of the 80-percent limitation and special rule for nonlife insurance companies--(A) Determinations based on status of group members. If a portion of a post-2017 CNOL is carried back or carried over to a consolidated return year beginning after December 31, 2020, whether the members of the group include nonlife insurance companies, other types of corporations, or both determines whether section 172(a) (including the limitation described in section 172(a)(2)(B)(ii) (80-percent limitation)), section 172(f) (providing special rules for nonlife insurance companies), or both, apply to the group for the consolidated return year.

(B) Determination of post-2017 CNOL deduction limit. The post-2017 CNOL deduction limit is determined under paragraph (a)(2)(iii) of this section by applying section 172(a)(2)(B)(ii) (that is, the 80-percent limitation), section 172(f) (that is, the special rule for nonlife insurance companies), or both, to the group's consolidated taxable income for that year.

(C) Inapplicability of 80-percent limitation. The 80-percent limitation does not apply to CNOL deductions taken in taxable years beginning before January 1, 2021, or to CNOLs arising in taxable years beginning before January 1, 2018 (that is, pre-2018 CNOLs). See section 172(a).

(iii) Computations under sections 172(a)(2)(B) and 172(f). This paragraph (a)(2)(iii) provides rules for applying sections 172(f) and 172(a)(2)(B) to consolidated return years beginning after December 31, 2020 (that is, for computing the post-2017 CNOL deduction limit). Section 172(f) applies to income of nonlife insurance company

members, whereas section 172(a)(2)(B)(ii) applies to income of members that are not nonlife insurance companies. Thus, this paragraph (a)(2)(iii) provides specific rules for groups with no nonlife insurance company members, only nonlife insurance company members, or a combination of nonlife insurance company members and other members. For groups with both nonlife insurance company members and life insurance company members, see paragraph (b)(2)(iv)(E) of this section.

(A) Groups without nonlife insurance company members. If no member of a group is a nonlife insurance company during a particular consolidated return year beginning after December 31, 2020, section 172(a)(2)(B)(ii) (that is, the 80-percent limitation) applies to all income of the group for that year. Therefore, the post-2017 CNOL deduction limit for the group for that year is the lesser of--

(1) The aggregate amount of post-2017 NOLs carried to that year; or

(2) The amount determined by multiplying--

(i) 80 percent, by

(ii) Consolidated taxable income for the group for that year (determined without regard to any deductions under sections 172, 199A, and 250) less the aggregate amount of pre-2018 NOLs carried to that year.

(B) Groups comprised solely of nonlife insurance companies. If a group is comprised solely of nonlife insurance companies during a particular consolidated return year beginning after December 31, 2020, section 172(f) applies to all income of the group for that year. Therefore, the post-2017 CNOL deduction limit for the group for that year equals the lesser of--

(1) The aggregate amount of post-2017 NOLs carried to that year, or

(2) Consolidated taxable income less the aggregate amount of pre-2018 NOLs carried to that year.

(C) Groups that include both nonlife insurance companies and other corporations--(1) General rule. Except as provided in paragraph (a)(2)(iii)(C)(5) of this section, if a group has at least one member that is a nonlife insurance company and at least one member that is not a nonlife insurance company during a particular consolidated return year beginning after December 31, 2020, the post-2017 CNOL deduction limit for the group for that year equals the lesser of--

- (i) The aggregate amount of post-2017 NOLs carried to that year, or
- (ii) The sum of the amounts in the income pools determined under paragraphs (a)(2)(iii)(C)(2) and (3) of this section.

(2) Residual income pool. The amount determined under this paragraph (a)(2)(iii)(C)(2) (residual income pool) is eighty percent of the excess of--

(i) The consolidated taxable income of the group for a consolidated return year beginning after December 31, 2020, determined without regard to any income, gain, deduction, or loss of members that are nonlife insurance companies and without regard to any deductions under sections 172, 199A, and 250, over

(ii) The aggregate amount of pre-2018 NOLs carried to that year that are allocated to this income pool under paragraph (a)(2)(iii)(C)(4) of this section (that is, by applying the 80-percent limitation). See section 172(a)(2)(B)(ii).

(3) Nonlife income pool. The amount determined under this paragraph (a)(2)(iii)(C)(3) (nonlife income pool) is the consolidated taxable income of the group for a consolidated return year beginning after December 31, 2020, determined without



regard to any income, gain, deduction, or loss of members included in the computation under paragraph (a)(2)(iii)(C)(2) of this section, less the aggregate amount of pre-2018 NOLs carried to that year that are allocated to this income pool under paragraph (a)(2)(iii)(C)(4) of this section. See section 172(f).

(4) Pro rata allocation of pre-2018 NOLs between pools of income. For purposes of paragraphs (a)(2)(iii)(C)(2) and (3) of this section, the aggregate amount of pre-2018 NOLs carried to any particular consolidated return year beginning after December 31, 2020, is prorated between the residual income pool and the nonlife income pool based on the relative amounts of positive income of those two pools. For example, if \$30 of pre-2018 NOLs is carried over to a consolidated return year in which the residual income pool contains \$75 and the nonlife income pool contains \$150, the residual income pool is allocated \$10 of the pre-2018 NOLs ( $\$30 \times \$75 / (\$75 + \$150)$ , or  $\$30 \times 1/3$ ), and the nonlife income pool is allocated the remaining \$20 of pre-2018 NOLs ( $\$30 \times \$150 / (\$75 + \$150)$ , or  $\$30 \times 2/3$ ).

(5) Exception. The post-2017 CNOL deduction limit for the group for a consolidated return year is determined under this paragraph (a)(2)(iii)(C)(5) if the amounts computed under paragraphs (a)(2)(iii)(C)(2) and (3) of this section for that year are not both positive.

(i) Positive residual income pool and negative nonlife income pool. This paragraph (a)(2)(iii)(C)(5)(i) applies if the amount computed under paragraph (a)(2)(iii)(C)(2) of this section for the residual income pool is positive and the amount computed under paragraph (a)(2)(iii)(C)(3) of this section for the nonlife income pool is negative. If this paragraph (a)(2)(iii)(C)(5)(i) applies, the post-2017 CNOL deduction

limit for the group for a consolidated return year equals the lesser of the aggregate amount of post-2017 NOLs carried to that year, or 80 percent of the consolidated taxable income of the entire group (determined without regard to any deductions under sections 172, 199A, and 250) after subtracting the aggregate amount of pre-2018 NOLs carried to that year (that is, by applying the 80-percent limitation). See section 172(a)(2)(B).

(ii) Positive nonlife income pool and negative residual income pool. If the amount computed under paragraph (a)(2)(iii)(C)(3) of this section for the nonlife income pool is positive and the amount computed under paragraph (a)(2)(iii)(C)(2) of this section for the residual income pool is negative, the post-2017 CNOL deduction limit for the group for a consolidated return year equals the lesser of the aggregate amount of post-2017 NOLs carried to that year, or the consolidated taxable income of the entire group less the aggregate amount of pre-2018 NOLs carried to that year. See section 172(f).

(b) \* \* \*

(1) Carryovers and carrybacks generally. The net operating loss carryovers and carrybacks to a taxable year are determined under the principles of, and are subject to any limitations under, section 172 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. In addition, except as otherwise provided in this section, the amount of any CNOL absorbed by the group in any year is apportioned among members based on the percentage of the CNOL eligible for carryback or

carryover that is attributable to each member as of the beginning of the year. The percentage of the CNOL attributable to a member is determined pursuant to paragraph (b)(2)(iv)(B) of this section. Additional rules provided under the Internal Revenue Code or regulations also apply. See, for example, section 382(l)(2)(B) (if losses are carried from the same taxable year, losses subject to limitation under section 382 are absorbed before losses that are not subject to limitation under section 382). See paragraph (c)(1)(iii) of this section, Example 2, for an illustration of pro rata absorption of losses subject to a SRLY limitation.

(2) \* \* \*

(iv) \* \* \*

(A) Amount of CNOL attributable to a member. The amount of a CNOL that is attributable to a member equals the product obtained by multiplying the CNOL and the percentage of the CNOL attributable to the member.

(B) Percentage of CNOL attributable to a member--(1) In general. Except as provided in paragraph (b)(2)(iv)(B)(2) of this section, the percentage of the CNOL for the consolidated return year attributable to a member equals the separate net operating loss of the member for the consolidated return year divided by the sum of the separate net operating losses for that year of all members having such losses for that year. For this purpose, the separate net operating loss of a member is determined by computing the CNOL by reference to only the member's items of income, gain, deduction, and loss, including the member's losses and deductions actually absorbed by the group in the consolidated return year (whether or not absorbed by the member).

(2) Recomputed percentage. If, for any reason, a member's portion of a CNOL is absorbed or reduced on a non-pro rata basis (for example, under §1.1502-11(b) or (c), paragraph (b)(2)(iv)(C) of this section, §1.1502-28, or §1.1502-36(d), or as the result of a carryback to a separate return year), the percentage of the CNOL attributable to each member is recomputed. In addition, if a member with a separate net operating loss ceases to be a member, the percentage of the CNOL attributable to each remaining member is recomputed. The recomputed percentage of the CNOL attributable to each member equals the remaining CNOL attributable to the member at the time of the recomputation divided by the sum of the remaining CNOL attributable to all of the remaining members at the time of the recomputation. For purposes of this paragraph (b)(2)(iv)(B)(2), a CNOL that is permanently disallowed or eliminated is treated as absorbed.

(C) Net operating loss carryovers and carrybacks--(1) General rules. Subject to the rules regarding allocation of special status losses under paragraph (b)(2)(iv)(D) of this section--

(i) Nonlife insurance companies. The portion of a CNOL attributable to any members of the group that are nonlife insurance companies is carried back or carried over under the rules in section 172(b) applicable to nonlife insurance companies.

(ii) Corporations other than nonlife insurance companies. The portion of a CNOL attributable to any other members of the group is carried back or carried over under the rules in section 172(b) applicable to corporations other than nonlife insurance companies.

(2) Recomputed percentage. For rules governing the recomputation of the percentage of a CNOL attributable to each remaining member if any portion of the CNOL attributable to a member is carried back under section 172(b)(1)(B) or (C) and absorbed on a non-pro rata basis, see paragraph (b)(2)(iv)(B)(2) of this section.

(D) Allocation of special status losses. The amount of the group's CNOL that is determined to constitute a farming loss (as defined in section 172(b)(1)(B)(ii)) or any other net operating loss that is subject to special carryback or carryover rules (special status loss) is allocated to each member separately from the remainder of the CNOL based on the percentage of the CNOL attributable to the member, as determined under paragraph (b)(2)(iv)(B) of this section. This allocation is made without regard to whether a particular member actually incurred specific expenses or engaged in specific activities required by the special status loss provisions. This paragraph (b)(2)(iv)(D) applies only with regard to losses for which the special carryback or carryover rules are dependent on the type of expense generating the loss, rather than on the special status of the entity to which the loss is allocable. See section 172(b)(1)(C) and paragraph (b)(2)(iv)(C)(1)(i) of this section (applicable to losses of nonlife insurance companies). This paragraph (b)(2)(iv)(D) does not apply to farming losses incurred by a consolidated group in any taxable year beginning after December 31, 2017, and before January 1, 2021.

(E) Coordination with rules for life-nonlife groups under §1.1502-47. For groups that include at least one member that is a life insurance company and for which an election is in effect under section 1504(c)(2), any computation of the 80-percent limitation under paragraph (a)(2)(iii)(C) of this section is computed only with respect to

items of income, gain, deduction, and loss of the members of the nonlife subgroup (as defined in §1.1502-47(b)(9)). For rules regarding the use of CNOLs of the nonlife subgroup to offset life insurance company taxable income of the life subgroup (each as defined in §1.1502-47(b)), or the use of CNOLs of the life subgroup to offset consolidated taxable income of the nonlife subgroup, see generally section 1503(c)(1) and §1.1502-47.

(v) Examples. For purposes of the examples in this paragraph (b)(2)(v), unless otherwise stated, all groups file consolidated returns, all corporations have calendar taxable years, all losses are farming losses within the meaning of section 172(b)(1)(B)(ii), all taxable years begin after December 31, 2020, the facts set forth the only corporate activity, value means fair market value and the adjusted basis of each asset equals its value, all transactions are with unrelated persons, and the application of any limitation or threshold under section 382 is disregarded. The principles of this paragraph (b) are illustrated by the following examples:

\* \* \* \* \*

(D) Example 4: Allocation of a CNOL arising in a consolidated return year beginning after December 31, 2020. (1) P is the common parent of a consolidated group that includes S. Neither P nor S is a nonlife insurance company. The P group also includes nonlife insurance companies PC1, PC2, and PC3. In the P group's 2021 consolidated return year, all members except S have separate net operating losses, and the P group's CNOL in that year is \$40. No member of the P group engages in farming activities. See section 172(b)(1)(B)(ii).

(2) Under paragraphs (b)(1) and (b)(2)(iv)(B)(1) of this section, for purposes of carrying losses to other taxable years, the P group's \$40 CNOL is allocated pro rata among the group members that have separate net operating losses. Under paragraph (b)(2)(iv)(C) of this section, those respective portions of the CNOL attributable to PC1, PC2, and PC3 (that is, members that are nonlife insurance companies) are carried back to each of the two preceding taxable years and then carried over to each of the 20 subsequent taxable years. See section 172(b)(1)(C). The portion attributable to P

(which is not a nonlife insurance company) may not be carried back but is carried over to future years. See section 172(b)(1)(A).

(E) Example 5: Allocation of a CNOL arising in a consolidated return year beginning before January 1, 2021. The facts are the same as in paragraph (b)(2)(v)(D)(1) of this section, except that the P group incurred the CNOL during the P group's 2020 consolidated return year. The allocation among the P group members of the CNOL described in paragraph (b)(2)(v)(D)(2) of this section would be the same. However, those respective portions of the CNOL attributable to PC1, PC2, and PC3 (that is, members that are nonlife insurance companies) will be carried back to each of the five preceding taxable years and then carried over to each of the 20 subsequent taxable years. See section 172(b)(1)(C) and section 172(b)(1)(D)(i). The portion attributable to P (which is not a nonlife insurance company) will be carried back to each of the five preceding taxable years and then carried over to future years. See section 172(b)(1)(A) and section 172(b)(1)(D)(i).

(F) Example 6: CNOL deduction and application of section 172. (1) P (a type of corporation other than a nonlife insurance company) is the common parent of a consolidated group that includes PC1 (a nonlife insurance company). P and PC1 were both incorporated in Year 1 (a year beginning after December 31, 2020). In Year 1, P and PC1 have separate taxable income of \$20 and \$25, respectively. As a result, the P group has Year 1 consolidated taxable income of \$45. In Year 2, P has separate taxable income of \$24, and PC1 has a separate taxable loss of \$40, resulting in a P group CNOL of \$16. Additionally, in Year 3, P has separate taxable income of \$15, and PC1 has a separate taxable loss of \$45, resulting in a P group CNOL of \$30. No member of the P group engages in farming activities. See section 172(b)(1)(B)(ii).

(2) Under paragraph (b)(2)(iv)(B) of this section, the P group's Year 2 CNOL and Year 3 CNOL are entirely attributable to PC1, a nonlife insurance company. Therefore, under section 172(b)(1)(C)(i), the entire amount of each of these CNOLs is eligible to be carried back to Year 1.

(3) Under paragraph (a)(2)(ii) of this section, the amount of the Year 2 CNOL that may be used by the P group in Year 1 is determined by taking into account the status (nonlife insurance company or other type of corporation) of the member that has separate taxable income composing in whole or in part the P group's consolidated taxable income. Because the P group includes both a nonlife insurance company member and a member that is not a nonlife insurance company, paragraph (a)(2)(iii)(C) of this section applies to determine the computation of the post-2017 CNOL deduction limit for the group for Year 1. Therefore, the 80-percent limitation is applied to the residual income pool, which consists of the taxable income of P, a type of corporation other than a nonlife insurance company. Under the 80-percent limitation, the maximum amount of P's Year 1 income that may be offset by the P group's post-2017 CNOLs is \$16, which equals 80 percent of the excess of P's taxable income for Year 1 (\$20) over the aggregate amount of pre-2018 NOLs allocable to P (\$0) (80 percent x (\$20 - \$0)). See paragraph (a)(2)(iii)(C)(2) and (a)(2)(iii)(C)(4) of this section. PC1 is a nonlife

insurance company to which section 172(f), rather than the 80-percent limitation in section 172(a)(2)(B)(ii), applies. Therefore, the maximum amount of PC1's Year 1 income that may be offset by the P group's post-2017 CNOLs is \$25, which equals the excess of PC1's taxable income for Year 1 (\$25) over the aggregate amount of pre-2018 NOLs allocable to PC1 (\$0). See paragraph (a)(2)(iii)(C)(3) and (4) of this section.

(4) Based on paragraph (a)(2)(iii)(C) of this section and the analysis set forth in paragraph (b)(2)(v)(F)(3) of this section, at the end of Year 2, the P group's post-2017 CNOL deduction limit for Year 1 is the lesser of the aggregate amount of post-2017 NOLs carried to Year 1 (\$16), or \$41 (\$16 + \$25). Therefore, the P group can offset \$16 of its Year 1 income with its CNOL carryback from Year 2.

(5) When the Year 3 CNOL is carried back to Year 1, the P group's post-2017 CNOL deduction limit for Year 1 is the lesser of \$46 (the aggregate amount of post-2017 NOLs carried to Year 1) or \$41 (\$16 + \$25; see the computation in paragraph (b)(2)(v)(F)(3) of this section). Thus, the total amount of the P group's Year 1 income that may be offset by the P group's Year 2 and Year 3 CNOLs is \$41 (\$16 from Year 2 + \$25 from Year 3). As a result, the P group reports \$4 of income (\$45 - \$41) in Year 1 that is ineligible for offset by any other NOLs. The P group carries over its remaining \$5 CNOL (\$46 - \$41) to future years.

(G) Example 7: Pre-2018 and post-2017 CNOLs. (1) P is the common parent of a consolidated group. No member of the P group is a nonlife insurance company or is engaged in a farming business, and no member of the P group has a loss that is subject to a SRLY limitation. The P group had the following consolidated taxable income or CNOL for the following taxable years:

Table 1 to paragraph (b)(2)(v)(G)(1)

2014	2015	2016	2017	2018	2019	2020	2021
\$60	\$0	\$0	(\$90)	\$30	(\$40)	(\$100)	\$120

(2) Under section 172(a)(1), all \$30 of the P group's 2018 consolidated taxable income is offset by the 2017 CNOL carryover without limitation. The remaining \$60 of the P group's 2017 CNOL is carried over to 2021 under section 172(b)(1)(A)(ii)(I).

(3) Under section 172(b)(1)(D)(i)(I), the P group's \$40 2019 CNOL is carried back to the five taxable years preceding the year of the loss. Thus, the P group's \$40 2019 CNOL is carried back to offset \$40 of its 2014 consolidated taxable income.

(4) Under section 172(a)(2) and paragraph (a)(2)(i) of this section, the P group's CNOL deduction for 2021 equals the aggregate amount of pre-2018 NOLs carried to 2021 plus the group's post-2017 CNOL deduction limit. The P group has \$60 of pre-2018 NOLs carried to 2021 (\$90 - \$30). Because no member of the P group is a nonlife insurance company, paragraph (a)(2)(iii)(A) of this section applies to determine the computation of the group's post-2017 CNOL deduction limit for 2021. See also section



172(a)(2)(B). Therefore, the post-2017 CNOL deduction limit of the P group for 2021 is \$48, which equals the lesser of the aggregate amount of post-2017 NOLs carried to 2021 (\$100), or 80 percent of the excess of the P group's consolidated taxable income for that year computed without regard to any deductions under sections 172, 199A, and 250 (\$120) over the aggregate amount of pre-2018 NOLs carried to 2021 (\$60) (that is, 80 percent x \$60). Thus, the P group's CNOL deduction for 2021 equals \$108 (\$60 pre-2018 NOLs carried to 2021 + \$48 post-2017 CNOL deduction limit). See section 172(a)(2) and paragraph (a)(2)(i) of this section. The P group offsets \$108 of its \$120 of 2021 consolidated taxable income, resulting in \$12 of consolidated taxable income in 2021. The remaining \$52 of the P group's 2020 CNOL (\$100 - \$48) is carried over to future taxable years. See section 172(b)(1)(A)(ii)(II).

(3) \* \* \*

(ii) \* \* \*

(C) Waiver of carryback period for losses in taxable years to which statutorily amended carryback rules apply. For further information, see §1.1502-21T(b)(3)(ii)(C).

(D) Examples. For further information, see §1.1502-21T(b)(3)(ii)(D).

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) General rule. Except as provided in paragraph (g) of this section (relating to an overlap with section 382), the aggregate of the net operating loss carryovers and carrybacks of a member (SRLY member) arising (or treated as arising) in SRLYs (SRLY NOLs) that are included in the CNOL deductions for all consolidated return years of the group under paragraph (a) of this section may not exceed the aggregate consolidated taxable income for all consolidated return years of the group determined by reference to only the member's items of income, gain, deduction, and loss (cumulative register). For this purpose—

\* \* \* \* \*

(E) If a limitation on the amount of taxable income that may be offset under section 172(a) (see paragraph (a)(2) of this section) applies in a taxable year to a member whose carryovers or carrybacks are subject to a SRLY limitation (SRLY member), the amount of net operating loss subject to a SRLY limitation that is available for use by the group in that year is limited to the percentage of the balance in the cumulative register that would be available for offset under section 172(a) if the SRLY member filed a separate return and reported as taxable income in that year the amount contained in the cumulative register. For example, assume that a consolidated group has a SRLY member that is a corporation other than a nonlife insurance company, and that the SRLY member has a SRLY NOL that arose in a taxable year beginning after December 31, 2017 (post-2017 NOL). The group's consolidated taxable income for a consolidated return year beginning after December 31, 2020 is \$200, but the cumulative register has a positive balance of only \$120 (and no other net operating loss carryovers or carrybacks are available for the year). Because the SRLY limitation would be \$96 ( $\$120 \times 80$  percent), only \$96 of SRLY loss may be used, rather than \$160 ( $\$200 \times 80$  percent). In addition, to the extent that this paragraph (c)(1)(i)(E) applies, the cumulative register is decreased by the full amount of income required under section 172(a) to support the amount of SRLY NOL absorption. See, for example, paragraph (c)(1)(iii)(A) and (B) of this section for examples illustrating the application of this rule.

\* \* \* \* \*

(iii) \* \* \* For purposes of the examples in this paragraph (c)(1)(iii), no corporation is a nonlife insurance company and, unless otherwise specified, all taxable years begin

after December 31, 2020, and all CNOLs arise in taxable years beginning after December 31, 2020. \* \* \*

(A) \* \* \*

(2) T's \$100 net operating loss carryover from Year 1 arose in a SRLY. See §1.1502-1(f)(2)(iii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, the \$100 net operating loss carryover is subject to the SRLY limitation in paragraph (c)(1) of this section. The positive balance of the cumulative register of T for Year 2 equals the consolidated taxable income of the P group determined by reference to only T's items, or \$70. However, due to the 80-percent limitation and the application of paragraph (c)(1)(i)(E) of this section, the SRLY limitation is \$56 (\$70 x 80 percent). No losses from equivalent years are available, and the P group otherwise has sufficient consolidated taxable income to support the CNOL deduction (\$300 x 80 percent = \$240). Therefore, \$56 of the SRLY net operating loss is included under paragraph (a) of this section in the P group's CNOL deduction for Year 2. Although only \$56 is absorbed, the cumulative register of T is reduced by \$70, the full amount of income necessary to support the \$56 deduction after taking into account the 80-percent limitation (\$70 x 80 percent = \$56).

\* \* \* \* \*

(B) \* \* \*

(2) P's Year 1, Year 2, and Year 3 are not SRLYs with respect to the P group. See §1.1502-1(f)(2)(i). Thus, P's \$40 net operating loss arising in Year 1 and \$120 net operating loss arising in Year 3 are not subject to the SRLY limitation under paragraph (c) of this section. Although the P group has \$160 of taxable income in Year 4, the 80-percent limitation reduces the P group's net operating loss deduction in that year to \$128 (\$160 x 80 percent). Under the principles of section 172, paragraph (b) of this section requires that P's \$40 loss arising in Year 1 be the first loss absorbed by the P group in Year 4. Absorption of this loss leaves \$88 (\$128 - \$40) of the P group's Year 4 consolidated taxable income available for offset by loss carryovers.

(3) T's Year 2 and Year 3 are SRLYs with respect to the P group. See §1.1502-1(f)(2)(ii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, T's \$50 net operating loss arising in Year 2 and \$60 net operating loss arising in Year 3 are subject to the SRLY limitation. The positive balance of the cumulative register of T for Year 4 equals the P group's consolidated taxable income determined by reference to only T's items, or \$70. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, T's SRLY limitation is \$56 (\$70 x 80 percent). Therefore, the P group can absorb up to \$56 of T's SRLY net operating losses in Year 4. Under the principles of section 172, T's \$50 SRLY net operating loss from Year 2 is included under paragraph (a) of this section in the P group's CNOL deduction for Year 4. After absorption of this loss, under paragraph

(c)(1)(i) of this section, \$6 of SRLY limit remains in Year 4 (\$56 - \$50). Further, the total amount of Year 4 consolidated taxable income available for offset by other loss carryovers under section 172(a) is \$38 (\$88 - \$50).

(4) P and T each carry over net operating losses to Year 4 from a taxable year ending on the same date (that is, Year 3). The losses carried over from Year 3 total \$180. However, the remaining Year 4 SRLY limit is \$6. Therefore, the total amount of loss available for absorption is \$126 (\$120 allocable to P and \$6 allocable to T). Under paragraph (b) of this section, the losses available for absorption that are carried over from Year 3 are absorbed on a pro rata basis, even though one loss arises in a SRLY and the other loss does not. Thus, \$36.19 of P's Year 3 loss is absorbed ( $\$120/(\$120 + \$6) \times \$38 = \$36.19$ ). In addition, \$1.81 of T's Year 3 loss is absorbed ( $\$6/(\$120 + \$6) \times \$38 = \$1.81$ ).

(5) After deduction of T's SRLY net operating losses in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. A total of \$51.81 of SRLY net operating losses were absorbed in Year 4 (\$50 + \$1.81). After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is \$64.76 ( $\$64.76 \times 80 \text{ percent} = \$51.81$ ). Therefore, the cumulative register of T is decreased by \$64.76, and \$5.24 remains in the cumulative register (\$70 - \$64.76).

(6) P carries its remaining \$83.81 (\$120 - \$36.19) Year 3 net operating loss and T carries its remaining \$58.19 (\$60 - \$1.81) Year 3 net operating loss over to Year 5. Assume that, in Year 5, the P group has \$90 of consolidated taxable income (computed without regard to the CNOL deduction). The P group's consolidated taxable income determined by reference to only T's items is a CNOL of \$4. Therefore, the positive balance of the cumulative register of T in Year 5 equals \$1.24 (\$5.24 - \$4). Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, T's SRLY limitation is \$0.99 ( $\$1.24 \times 80 \text{ percent}$ ). For Year 5, the total amount of Year 5 consolidated taxable income available for offset by loss carryovers as a result of the 80-percent limitation is \$72 ( $\$90 \times 80 \text{ percent}$ ). Under paragraph (b) of this section, the losses carried over from Year 3 are absorbed on a pro rata basis, even though one loss arises in a SRLY and the other loss does not. Therefore, \$71.16 of P's Year 3 loss is absorbed ( $(\$83.81/(\$83.81 + \$0.99)) \times \$72 = \$71.16$ ). In addition, \$0.84 of T's Year 3 losses is absorbed ( $(\$0.99/(\$83.81 + \$0.99)) \times \$72 = \$0.84$ ).

\* \* \* \* \*

(D) \* \* \*

(2) Under §1.1502-15(a), T's \$100 of ordinary loss in Year 3 constitutes a built-in loss that is subject to the SRLY limitation under paragraph (c) of this section. The amount of the limitation is determined by treating the deduction as a net operating loss carryover from a SRLY. The built-in loss is therefore subject to both a SRLY limitation and the 80-percent limitation for Year 3. The built-in loss is treated as a net operating

loss carryover solely for purposes of determining the extent to which the loss is not allowed by reason of the SRLY limitation, and for all other purposes the loss remains a loss arising in Year 3. See §1.1502-21(c)(1)(i)(D). Consequently, under paragraph (b) of this section, the built-in loss is absorbed by the P group before the net operating loss carryover from Year 1 is absorbed. The positive balance of the cumulative register of T for Year 3 equals the P group's consolidated taxable income determined by reference to only T's items, or \$60. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 3 is \$48 ( $\$60 \times 80$  percent). Therefore, \$48 of the built-in loss is absorbed by the P group. None of T's \$100 SRLY net operating loss carryover from Year 1 is allowed.

(3) After deduction of T's \$48 SRLY built-in loss in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is \$60 ( $\$60 \times 80$  percent = \$48). Therefore, the cumulative register of T is decreased by \$60, and zero remains in the cumulative register ( $\$60 - \$60$ ).

(4) Under §1.1502-15(a), the \$52 balance of the built-in loss that is not allowed in Year 3 because of the SRLY limitation and the 80-percent limitation is treated as a \$52 net operating loss arising in Year 3 that is subject to the SRLY limitation because, under paragraph (c)(1)(ii) of this section, Year 3 is treated as a SRLY. The built-in loss is carried to other years in accordance with the rules of paragraph (b) of this section. The positive balance of the cumulative register of T for Year 4 equals \$40 (zero from Year 3 + \$40). Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 4 is \$32 ( $\$40 \times 80$  percent). Therefore, under paragraph (c) of this section, \$32 of T's \$100 net operating loss carryover from Year 1 is included in the CNOL deduction under paragraph (a) of this section in Year 4.

(5) After deduction of T's \$32 SRLY net operating loss in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is \$40 ( $\$40 \times 80$  percent = \$32). Therefore, the cumulative register is decreased by \$40, and zero remains in the cumulative register ( $\$40 - \$40$ ).

(E) \* \* \*

(2) For Year 2, the P group computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group determines its ability to use its capital loss carryover before it determines its ability to use its ordinary loss carryover. Under section 1212, because the P group has no Year 2 capital gain, it cannot absorb any capital losses in Year 2. T's Year 1 net capital loss and the P group's Year 2 consolidated net capital loss (all of which is attributable to T) are carried over to Year 3.

(3) The P group's ability to deduct net operating losses in Year 2 is subject to the 80-percent limitation, based on the P group's consolidated taxable income for the year. Thus, the group's limitation for Year 2 is \$72 ( $\$90 \times 80$  percent). However, use of the

Year 1 net operating loss also is subject to the SRLY limitation. The positive balance of the cumulative register of T applicable to SRLY net operating losses for Year 2 equals the P group's consolidated taxable income determined by reference to only T's items, or \$60. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 2 is \$48 ( $\$60 \times 80$  percent). Therefore, only \$48 of T's Year 1 SRLY net operating loss is absorbed by the P group in Year 2. T carries over its remaining \$52 of its Year 1 loss to Year 3.

(4) After deduction of T's SRLY net operating losses in Year 2, the net operating loss cumulative register is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. The P group deducted \$48 of T's SRLY net operating losses in Year 2. After taking into account the 80-percent limitation, the amount of taxable income necessary to support this deduction is \$60 ( $\$60 \times 80$  percent = \$48). Therefore, the net operating loss cumulative register of T is decreased by \$60, and zero remains in the net operating loss cumulative register ( $\$60 - \$60$ ).

(5) For Year 3, the P group again computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group has consolidated net capital gain (without taking into account a net capital loss carryover deduction) of \$30. Under §1.1502-22(c), the aggregate amount of T's \$50 capital loss carryover from Year 1 that is included in computing the P group's consolidated net capital gain for all years of the group (in this case, Years 2 and 3) may not exceed \$30 (the aggregate consolidated net capital gain computed by reference only to T's items, including losses and deductions actually absorbed (that is, \$30 of capital gain in Year 3)). Thus, the P group may include \$30 of T's Year 1 capital loss carryover in its computation of consolidated net capital gain for Year 3, which offsets the group's capital gains for Year 3. T carries over its remaining \$20 of its Year 1 capital loss to Year 4. Therefore, the capital loss cumulative register of T is decreased by \$30, and zero remains in the capital loss cumulative register ( $\$30 - \$30$ ). Further, because the net operating loss cumulative register includes all taxable income of T included in the P group, as well as all absorbed losses of T (including capital items), a zero net increase occurs in the net operating loss cumulative register. The P group carries over the Year 2 consolidated net capital loss to Year 4.

(6) The P group's ability to deduct net operating losses in Year 3 is subject to the 80-percent limitation, based on the P group's consolidated taxable income for the year. Thus, the P group's taxable income for Year 3 that can be offset, before use of net operating losses, is \$40 (80 percent  $\times$  the sum of zero capital gain, after use of the capital loss carryover, plus \$50 of ordinary income). However, use of the Year 1 net operating loss also is subject to the SRLY limitation. The positive balance of the cumulative register of T applicable to SRLY net operating losses for Year 3 equals the P group's consolidated taxable income determined by reference only to T's items, or \$40. This amount equals the sum obtained by adding the zero carryover from Year 2, a net inclusion of zero from capital items implicated in Year 3 ( $\$30 - \$30$ ), and \$40 of taxable income in Year 3. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 3 is \$32 ( $\$40 \times 80$  percent).

Therefore, only \$32 of the Year 1 net operating loss is absorbed by the P group in Year 3. T carries over its remaining \$20 of its Year 1 loss to Year 4.

(F) Example 6: Pre-2018 NOLs and post-2017 NOLs. (1) Individual A owns P. On January 1, 2017, A forms T. P and T are calendar-year taxpayers. In 2017, T sustains a \$100 net operating loss that is carried over. During 2018, 2019, and 2020, T deducts a total of \$90 of its 2017 net operating loss against its taxable income, and T carries over the remaining \$10 of its 2017 net operating loss. In 2021, T sustains a net operating loss of \$50. On December 31, 2021, P acquires all the stock of T, and T becomes a member of the P group. The P group has \$300 of consolidated taxable income in 2022 (computed without regard to the CNOL deduction). Such consolidated taxable income would be \$70 if determined by reference to only T's items. The P group has no other SRLY net operating loss carryovers or CNOL carryovers.

(2) T's remaining \$10 of net operating loss carryover from 2017 and its \$50 net operating loss carryover from 2021 are both SRLY losses in the P group. See §1.1502-1(f)(2)(iii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, T's net operating loss carryovers are subject to the SRLY limitation in paragraph (c)(1) of this section. The SRLY limitation for the P group's 2022 consolidated return year is consolidated taxable income determined by reference to only T's \$70 of items.

(3) Because T's oldest (2017) carryover was sustained in a year beginning before January 1, 2018, its use is not subject to limitation under section 172(a)(2)(B). Therefore, all \$10 of T's 2017 SRLY net operating loss (that is, a pre-2018 NOL) is included under paragraph (a) of this section in the P group's CNOL deduction for 2022. After deduction of T's \$10 SRLY net operating loss from 2017, the cumulative register of T is reduced on a dollar-for-dollar basis, pursuant to paragraph (c)(1)(i) of this section. Therefore, the cumulative register of T is decreased by \$10, and \$60 remains in the cumulative register (\$70 - \$10).

(4) The P group's deduction of T's 2021 net operating loss is subject to both a SRLY limitation and the 80-percent limitation under section 172(a)(2)(B)(ii). Therefore, the total limitation on the use of T's 2021 net operating loss in the P group is \$48 (the remaining cumulative register of \$60 x 80 percent). No losses from equivalent years are available, and the P group otherwise has sufficient consolidated taxable income to support the CNOL deduction (\$290 x 80 percent = \$232). Therefore, \$48 of T's 2021 SRLY net operating loss is included under paragraph (a) of this section in the P group's CNOL deduction for 2022. The remaining \$2 of T's 2021 SRLY net operating loss (\$50 - \$48) is carried over to the P group's 2023 consolidated return year.

(5) After deduction of T's \$48 SRLY NOL in 2022, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is \$60 (\$60 x 80 percent = \$48). Therefore, the cumulative register of T is decreased by \$60, and zero remains in the cumulative register (\$60 - \$60).

(2) \* \* \*

(v) Coordination with other limitations. This paragraph (c)(2) does not allow a net operating loss to offset income to the extent inconsistent with other limitations or restrictions on the use of losses, such as a limitation based on the nature or activities of members. For example, a net operating loss may not offset income in excess of any limitations under section 172(a) and paragraph (a)(2) of this section. Additionally, any dual consolidated loss may not reduce the taxable income to an extent greater than that allowed under section 1503(d) and §§ 1.1503(d)-1 through 1.1503(d)-8. See also §1.1502-47(k) (relating to preemption of rules for life-nonlife groups).

\* \* \* \* \*

(viii) \* \* \* For purposes of the examples in this paragraph (c)(2)(viii), no corporation is a nonlife insurance company or has any farming losses. \* \* \*

\* \* \* \* \*

(B) \* \* \*

(3) In Year 4, the M group has \$10 of consolidated taxable income (computed without regard to the CNOL deduction for Year 4). That consolidated taxable income would be \$45 if determined by reference only to the items of P, S, and T, the members included in the SRLY subgroup with respect to P's loss carryover. Therefore, the positive balance of the cumulative register of the P SRLY subgroup for Year 4 equals \$45 and, due to the application of the 80-percent limitation under paragraph (c)(2)(v) of this section, the SRLY subgroup limitation under this paragraph (c)(2) is \$36 (\$45 x 80 percent). However, the M group has only \$10 of consolidated taxable income in Year 4. Thus, due to the 80-percent limitation and the application of paragraph (b)(1) of this section, the M group's deduction of all net operating losses in Year 4 is limited to \$8 (\$10 x 80 percent). As a result, the M group deducts \$8 of P's SRLY net operating loss carryover, and the remaining \$37 is carried over to Year 5.

(4) After deduction of \$8 of P's SRLY net operating loss in Year 4, the cumulative register of the P SRLY subgroup is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is \$10 (\$10 x 80 percent = \$8). Therefore, the



cumulative register of the P SRLY subgroup is decreased by \$10, and \$35 remains in the cumulative register (\$45 - \$10).

(5) In Year 5, the M group has \$100 of consolidated taxable income (computed without regard to the CNOL deduction for Year 5). None of P, S, or T has any items of income, gain, deduction, or loss in Year 5. Although the members of the P SRLY subgroup do not contribute to the \$100 of consolidated taxable income in Year 5, the positive balance of the cumulative register of the P SRLY subgroup for Year 5 is \$35 and, due to the application of the 80-percent limitation under paragraph (c)(2)(v) of this section, the SRLY subgroup limitation under this paragraph (c)(2) is \$28 (\$35 x 80 percent). Because of the 80-percent limitation and the application of paragraph (b)(1) of this section, the M group's deduction of net operating losses in Year 5 is limited to \$80 (\$100 x 80 percent). Because the \$28 of net operating loss available to be absorbed is less than 80 percent of the M group's consolidated taxable income, \$28 of P's SRLY net operating loss is absorbed in Year 5, and the remaining \$9 (\$37 - \$28) is carried over to Year 6.

(6) After deduction of \$28 of P's SRLY net operating loss in Year 5, the cumulative register of the P SRLY subgroup is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is \$35 (\$35 x 80 percent = \$28). Therefore, the cumulative register of the P SRLY subgroup is decreased by \$35, and zero remains in the cumulative register (\$35 - \$35).

\* \* \* \* \*

(h) \* \* \*

(9) For the applicability dates of paragraphs (b)(3)(ii)(C) and (b)(3)(ii)(D) of this section, see §1.1502-21T(h)(9).

(10) The rules of paragraphs (a), (b)(1), (b)(2)(iv), and (c)(1)(i)(E) of this section apply to taxable years beginning after December 31, 2020.

Par. 4. Section 1.1502-47 is amended:

1. By revising paragraphs (a)(2)(i) and (ii).
2. By removing paragraph (a)(3).
3. By redesignating paragraph (a)(4) as paragraph (a)(3).
4. By removing paragraphs (b) and (c).

5. By redesignating paragraph (d) as paragraph (b).
6. By revising newly redesignated paragraphs (b)(1), (2), (3), (4), (5), (10), (11), and (13).
7. In newly redesignated paragraph (b)(14), by designating Examples 1 through 14 as paragraphs (b)(14)(i) through (xiv), respectively.
8. In newly redesignated paragraph (b)(14)(i), by adding a new last sentence.
9. By revising newly redesignated paragraph (b)(14)(ii).
10. By removing newly redesignated paragraph (b)(14)(xiv).
11. By redesignating paragraph (e) as paragraph (c).
12. By removing newly redesignated paragraphs (c)(4) and (5).
13. By redesignating paragraph (c)(6) as paragraph (c)(4).
14. By redesignating paragraph (f) as paragraph (d).
15. By revising newly redesignated paragraph (d)(5).
16. By removing the last sentence of newly redesignated paragraph (d)(6).
17. By removing newly redesignated paragraph (d)(7)(ii).
18. By redesignating paragraph (d)(7)(iii) as paragraph (d)(7)(ii).
19. By revising newly redesignated paragraph (d)(7)(ii).
20. By redesignating paragraph (g) as paragraph (e).
21. In newly redesignated paragraph (e)(2), by removing the language “partial” everywhere it appears.
22. By removing newly redesignated paragraph (e)(3).
23. By redesignating paragraph (h) as paragraph (f).
24. By revising newly redesignated paragraph (f)(2)(iii).

25. In newly designated paragraph (f)(2)(v), by removing the language “partial” everywhere it appears.

26. In newly redesignated paragraph (f)(2)(v), by adding a new last sentence.

27. By revising newly redesignated paragraph (f)(2)(vi) and (vii).

28. By removing newly redesignated paragraph (f)(3).

29. By redesignating newly redesignated paragraph (f)(4) as paragraph (f)(3).

30. By revising newly redesignated paragraph (f)(3)(ii).

31. By adding a new paragraph (g).

32. By removing paragraphs (j), (k), and (l).

33. By redesignating paragraph (m) as paragraph (h), and redesignating paragraph (n) as paragraph (j).

34. In newly redesignated paragraph (h), by removing the language “partial” everywhere it appears.

35. In newly redesignated paragraph (h)(2)(ii), by adding a new last sentence.

36. In newly redesignated paragraph (h)(3)(iv), by adding a new last sentence.

37. In newly redesignated paragraph (h)(3)(viii), by removing the language “common parent’s election” and adding in its place “election by the agent for the group (within the meaning of §1.1502-77)”.

38. In newly redesignated paragraph (h)(3)(ix), by removing the last two sentences.

39. By removing newly redesignated paragraph (h)(4).

40. By redesignating newly redesignated paragraph (h)(5) as paragraph (h)(4).

41. By revising newly redesignated paragraph (h)(4) introductory text.

42. In newly redesignated paragraph (h)(4), by redesignating Examples 1 through 6 as paragraphs (h)(4)(i) through (vi).

43. By revising newly redesignated paragraphs (h)(4)(ii) and (iii).

44. By removing newly redesignated paragraphs (h)(4)(v) and (vi).

45. In newly redesignated paragraph (j)(2)(iii), by removing the language “, and “section 812(b)(3)” for “section 172(b)(3)(C)””.

46. By removing newly redesignated paragraph (j)(2)(v).

47. By redesignating newly redesignated paragraph (j)(2)(vi) as paragraph (j)(2)(v).

48. By revising newly redesignated paragraph (j)(3).

49. By redesignating paragraphs (q), (r), and (s) as paragraphs (k), (l), and (m), respectively.

50. By adding a new paragraph (n).

51. By removing paragraphs (o), (p), and (t).

52. In the following table, for each section designated or redesignated under these proposed regulations (as indicated in the second column), removing the language in the third column and adding the language in the fourth column with the frequency indicated in the fifth column:

<b>Paragraph</b>	<b>Redesignations</b>	<b>Remove</b>	<b>Add</b>	<b>Frequency</b>
1.1502-47(a)(1)	N/A	section 802 or 821 (relating respectively to life insurance companies and to certain mutual	section 801 (relating to life insurance companies)	Once

		insurance companies)		
1.1502-47(a)(1)	N/A	life insurance companies and mutual insurance companies may	life insurance companies may	Once
1.1502-47(a)(1)	N/A	composition and its consolidated tax	composition, its consolidated taxable income (or loss), and its consolidated tax	Once
1.1502-47(a)(4)	1.1502-47(a)(3)	§§ 1.1502-1 through 1.1502-80	§§1.1502-0 through 1.1502-100	Once
1.1502-47(a)(4)	1.1502-47(a)(3)	844	848	Once
1.1502-47(d)(12)(i)(A), (d)(12)(i)(C), (d)(12)(i)(D), (d)(12)(iii), (d)(12)(iv), (d)(12)(v), (d)(12)(v)(B), (d)(12)(v)(C), (d)(12)(v)(D), (d)(12)(vi), (d)(12)(vii), and (d)(12)(viii)(F)	1.1502-47(b)(12)(i)(A), (b)(12)(i)(C), (b)(12)(i)(D), (b)(12)(iii), (b)(12)(iv), (b)(12)(v), (b)(12)(v)(B), (b)(12)(v)(C), (b)(12)(v)(D), (b)(12)(vi), (b)(12)(vii), and (b)(12)(viii)(F), respectively	(d)(12)	(b)(12)	Each place it appears
1.1502-47(d)(12)(iii)	1.1502-47(b)(12)(iii)	subdivision (iii)	paragraph (b)(12)(iii)	Once
1.1502-47(d)(12)(iv)	1.1502-47(b)(12)(iv)	subdivision (iv)	paragraph (b)(12)(iv)	Once
1.1502-47(d)(12)(v)(B)	1.1502-47(b)(12)(v)(B)	(i.e., sections 11, 802, 821, or 831)	(for example, section 11, section 801, or section 831)	Once

1.1502-47(d)(12)(vi)	1.1502-47(b)(12)(vi)	subdivision (vi)	paragraph (b)(12)(vi)	Once
1.1502-47(d)(12)(vii)	1.1502-47(b)(12)(vii)	return year and even	return year even	Once
1.1502-47(d)(12)(viii)(A)	1.1502-47(b)(12)(viii)(A)	(i.e., total reserves in section 801(c))	(that is, total reserves in section 816(c), as modified by section 816(h))	Once
1.1502-47(d)(12)(viii)(D) and (F)	1.1502-47(b)(12)(viii)(D) and (F), respectively	subdivision (viii)	paragraph (b)(12)(viii)	Once
1.1502-47(d)(14)	1.1502-47(b)(14)	<u>Illustrations</u>	<u>Examples</u>	Once
1.1502-47(d)(14)	1.1502-47(b)(14)	paragraph (d)	paragraph (b)	Once
1.1502-47(d)(14), Example 1	1.1502-47(b)(14)(i)	1913	2012	Once
1.1502-47(d)(14), Examples 2 through 4, 8, 10, and 12	1.1502-47(b)(14)(ii) through (iv), (viii), (x), and (xii), respectively	1974	2012	Each place it appears
1.1502-47(d)(14), Examples 1 through 3	1.1502-47(b)(14)(i) through (iii), respectively	1980	2018	Each place it appears
1.1502-47(d)(14), Examples 1 through 5 and 8 through 13	1.1502-47(b)(14)(i) through (v) and (viii) through (xiii), respectively	1982	2020	Each place it appears

1.1502-47(d)(14), Examples 5 through 7 and 9	1.1502-47(b)(14)(v) through (vii) and (ix), respectively	1983	2021	Each place it appears
1.1502-47(d)(14), Examples 2 through 5 and 8 through 12	1.1502-47(b)(14)(ii) through (v) and (viii) through (xii), respectively	(d)(12)	(b)(12)	Each place it appears
1.1502-47(d)(14), Examples 2, 3, and 12	1.1502-47(b)(14)(ii), (iii), and (xii), respectively	stock casualty	nonlife insurance	Each place it appears
1.1502-47(d)(14), Example 3	1.1502-47(b)(14)(iii)	subparagraph (d)(12)(v)(B) and (E)	paragraph (b)(12)(v)(B) and (D)	Once
1.1502-47(d)(14), Example 3	1.1502-47(b)(14)(iii)	e.g.	for example	Once
1.1502-47(d)(14), Example 5	1.1502-47(b)(14)(v)	i.e.	in other words	Once
1.1502-47(d)(14), Example 12	1.1502-47(b)(14)(xii)	casualty	nonlife insurance	Once
1.1502-47(e)(1)	1.1502-47(c)(1)	life company or an ineligible mutual company.	life company.	Once
1.1502-47(e)(3)	1.1502-47(c)(3)	§ 1.1502-75(c) and paragraph (e)(4) of this section,	§1.1502-75(c),	Once
1.1502-47(f)(3)	1.1502-47(d)(3)	1981	2019	Each place it appears

1.1502-47(f)(3)	1.1502-47(d)(3)	1982	2020	Each place it appears
1.1502-47(f)(3)	1.1502-47(d)(3)	applying §§ 1.1502-13, 1.1502-18, and 1.1502-19	applying §§1.1502-13 and 1.1502-19	Once
1.1502-47(f)(7)(i)	1.1502-47(d)(7)(i)	paragraph (g)	paragraph (e)	Once
1.1502-47(f)(7)(i)	1.1502-47(d)(7)(i)	sections 802(a), 821(a), and 831(a)	sections 801(a) and 831(a)	Once
1.1502-47(g)	1.1502-47(e)	three	two	Once
1.1502-47(g)(1)	1.1502-47(e)(1)	paragraph (h)	paragraph (f)	Once
1.1502-47(g)(1)	1.1502-47(e)(1)	paragraph (n)	paragraph (j)	Once
1.1502-47(g)(1)	1.1502-47(e)(1)	paragraph (g)(1)	paragraph (e)(1)	Once
1.1502-47(g)(2)	1.1502-47(e)(2)	paragraph (j)	paragraph (g)(1)	Once
1.1502-47(g)(2)	1.1502-47(e)(2)	paragraph (m)	paragraph (h)	Once
1.1502-47(g)(2)	1.1502-47(e)(2)	paragraph (g)(2)	paragraph (e)(2)	Once
1.1502-47(h)(1)	1.1502-47(f)(1)	paragraph (h)	paragraph (f)	Once
1.1502-47(h)(1)	1.1502-47(f)(1)	includes separate mutual insurance company taxable income (as defined in section 821(b)) and insurance company taxable income	includes insurance company taxable income	Once



1.1502-47(h)(2)(i)	1.1502-47(f)(2)(i)	§§ 1.1502-21 or 1.1502-21A (as appropriate), the rules in this subparagraph (2)	§1.1502-21, the rules in this paragraph (f)(2)	Once
1.1502-47(h)(2)(ii)	1.1502-47(f)(2)(ii)	§§ 1.1502-21(A)(f) or 1.1502-21(e) (as appropriate)	§1.1502-21(e)	Once
1.1502-47(h)(2)(iv)	1.1502-47(f)(2)(iv)	year beginning after December 31, 1981, §§ 1.1502-21A or 1.1502-21 (as appropriate)	year, §1.1502-21	Once
1.1502-47(h)(2)(iv)	1.1502-47(f)(2)(iv)	nonlife loss	nonlife subgroup loss	Once
1.1502-47(h)(2)(v)	1.1502-47(f)(2)(v)	subparagraph (2)	paragraph (f)(2)	Once
1.1502-47(h)(4)(i)	1.1502-47(f)(3)(i)	§§ 1.1502-22 or 1.1502-22A (as appropriate)	§1.1502-22	Once
1.1502-47(h)(4)(i)	1.1502-47(f)(3)(i)	subparagraph (4)	paragraph (f)(3)	Once
1.1502-47(h)(4)(i)	1.1502-47(f)(3)(i)	§§ 1.1502-22 or 1.1502-22A(a) (as appropriate)	§1.1502-22	Once
1.1502-47(h)(4)(iii)	1.1502-47(f)(3)(iii)	§§ 1.1502-22A(b)(1) or 1.1502-22(b)	§1.1502-22(b),	Once
1.1502-47(h)(4)(iii)(A)	1.1502-47(f)(3)(iii)(A)	allowed under section 822(c)(6) or section 832(c)(5),	allowed under section 832(c)(5),	Once

1.1502-47(m)	1.1502-47(h)	paragraph (g)	paragraph (e)	Each place it appears
1.1502-47(m)	1.1502-47(h)	paragraph (h)	paragraph (f)	Each place it appears
1.1502-47(m)	1.1502-47(h)	paragraph (l)	paragraph (g)	Each place it appears
1.1502-47(m)	1.1502-47(h)	paragraph (m)	paragraph (h)	Each place it appears
1.1502-47(m)(2)(ii)	1.1502-47(h)(2)(ii)	§§ 1502-21 or 1.1502-21A (as appropriate)	§1.1502-21	Once
1.1502-47(m)(2)(ii)	1.1502-47(h)(2)(ii)	§§ 1.1502-22 or 1.1502-22A (as appropriate)	§1.1502-22	Once
1.1502-47(m)(3)(i)	1.1502-47(h)(3)(i)	But see subdivision (ix) of this paragraph (m)(3)	But see paragraph (h)(3)(ix) of this section	Once
1.1502-47(m)(3)(i)	1.1502-47(h)(3)(i)	arising in separate return years ending after December 31, 1980,	arising in separate return years	Once
1.1502-47(m)(3)(i)	1.1502-47(h)(3)(i)	and 1.1502-22 (or §§ 1.1502-21A and 1.1502-22A, as appropriate).	and 1.1502-22.	Once
1.1502-47(m)(3)(iii)	1.1502-47(h)(3)(iii)	consolidated LO	life consolidated net operating loss	Once
1.1502-47(m)(3)(v)	1.1502-47(h)(3)(v)	GO or TII	taxable income	Once

1.1502-47(m)(3)(v)	1.1502-47(h)(3)(v)	LICTI (as determined under paragraph (j) of this section) for any	LICTI for any	Once
1.1502-47(m)(3)(vi)(A)	1.1502-47(h)(3)(vi)(A)	subparagraph (3)	paragraph (h)(3)	Once
1.1502-47(m)(3)(vii)(A)	1.1502-47(h)(3)(vii)(A)	notwithstanding § 1.1502-21A(b)(3)(ii) or 1.1502-21(b),	notwithstanding §1.1502-21(b),	Once
1.1502-47(m)(3)(vii)(A)	1.1502-47(h)(3)(vii)(A)	taxable income for that year.	taxable income for that year, subject to the limitation in section 172(a).	Once
1.1502-47(m)(3)(vii)(B)	1.1502-47(h)(3)(vii)(B)	(A) of this subdivision (vii)	paragraph (h)(3)(vii)(A) of this section	Once
1.1502-47(m)(3)(viii)	1.1502-47(h)(3)(viii)	section 172(b)(3)(C)	section 172(b)(3)	Once
1.1502-47(m)(3)(ix)	1.1502-47(h)(3)(ix)	243(b)(2)	243(b)(3)	Once
1.1502-47(m)(3)(ix)	1.1502-47(h)(3)(ix)	return year ending after December 31, 1980,	return year,	Once
1.1502-47(m)(3)(x)	1.1502-47(h)(3)(x)	LICTI (as defined in paragraph (j) of this section) in the particular	LICTI in the particular	Once
1.1502-47(m)(3)(xii)	1.1502-47(h)(3)(xii)	carryback of a consolidated LO	carryback of a life consolidated net operating loss	Once

1.1502-47(m)(3)(xii)	1.1502-47(h)(3)(xii)	(2) or (4)	(2) or (3)	Once
1.1502-47(m)(5), Examples 1 through 4	1.1502-47(h)(4)(i) through (iv), respectively	1982	2021	Each place it appears
1.1502-47(m)(5), Examples 1 through 4	1.1502-47(h)(4)(i) through (iv), respectively	i.e.	that is	Each place it appears
1.1502-47(m)(5), Example 1	1.1502-47(h)(4)(i)	paragraph (d)(13)	paragraph (b)(13)	Once
1.1502-47(m)(5), Example 1	1.1502-47(h)(4)(i)	attributable to I (an ineligible member)	attributable to I (an ineligible member that is not a nonlife insurance company)	Once
1.1502-47(m)(5), Example 1	1.1502-47(h)(4)(i)	of this section. The result would be	of this section and section 172(a). The result would be	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	of this section or under § 1.1502-15A.	of this section.	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	taxable income is \$35	taxable income is \$32.5	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	30%	35%	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	(15)	(17.5)	Once

1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	(65)	(67.5)	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	(85)	(82.5)	Once
1.1502-47(n)	1.1502-47(j)	consolidated LO	life consolidated net operating loss and consolidated operations loss carryovers	Each place it appears
1.1502-47(n)(1)	1.1502-47(j)(1)	paragraph (g)(1)	paragraph (e)(1)	Once
1.1502-47(n)(1)	1.1502-47(j)(1)	paragraph (n)(2) of this section	paragraph (j)(2) of this section, subject to the rules and limitations in paragraph (j)(3) of this section	Once
1.1502-47(n)(1)	1.1502-47(j)(1)	consolidated net capital loss (as determined under paragraph (l)(4) of this section).	consolidated net capital loss.	Once
1.1502-47(n)(2)	1.1502-47(j)(2)	paragraph (h)	paragraph (f)	Once
1.1502-47(n)(2)	1.1502-47(j)(2)	paragraphs (m)(2) and (3)	paragraphs (h)(2) and (3)	Once
1.1502-47(n)(2)(ii)	1.1502-47(j)(2)(ii)	consolidated partial LICTI	consolidated LICTI	Once
1.1502-47(n)(2)(iii)	1.1502-47(j)(2)(iii)	“paragraph (l)” or “paragraph (j)”	“paragraph (g)”	Once

1.1502-47(n)(2)(iii)	1.1502-47(j)(2)(iii)	paragraph (h)	paragraph (f)	Once
1.1502-47(n)(2)(iv)	1.1502-47(j)(2)(iv)	Paragraphs (m)(3)(vi), (vii), (x), and (xi)	Paragraphs (h)(3)(vi), (vii), (x), and (xi)	Once
1.1502-47(q)	1.1502-47(k)	§ 1.1502-1 through 1.1502-80	§§1.1502-0 through 1.1502-100	Once
1.1502-47(q)	1.1502-47(k)	paragraph (m)(3)(vi)	paragraph (h)(3)(vi)	Once
1.1502-47(q)	1.1502-47(k)	§§ 1.1502-21A(b)(3) and 1.1502-79A(a)(3) (or § 1.1502-21, as appropriate)	§1.1502-21	Once
1.1502-47(r)	1.1502-47(l)	partial LICTI (or LO)	LICTI (or life consolidated net operating loss)	Once
1.1502-47(r)	1.1502-47(l)	§§ 1.1502-0 - 1.1502-80	§§1.1502-0 through 1.1502-100	Once
1.1502-47(s)(1)(iii)	1.1502-47(m)(1)(iii)	paragraphs (g), (m), and (n)	paragraphs (e), (h), and (j)	Once
1.1502-47(s)(1)(iv)	1.1502-47(m)(1)(iv)	paragraph (h)	paragraph (f)	Once
1.1502-47(s)(1)(v)	1.1502-47(m)(1)(v)	consolidated partial Life	consolidated Life	Once
1.1502-47(s)(1)(v)	1.1502-47(m)(1)(v)	(as defined by paragraph (d)(3) of this section), determined under paragraph (j) of this section,	or life consolidated net operating loss	Once

The additions and revisions read as follows:

§1.1502-47 Consolidated returns by life-nonlife groups.

(a) \* \* \*

(2) General method of consolidation--(i) Subgroup method. The regulations adopt a subgroup method to determine consolidated taxable income. One subgroup is the group's nonlife companies. The other subgroup is the group's life insurance companies. Initially, the nonlife subgroup computes nonlife consolidated taxable income and the life subgroup computes consolidated LICTI. A subgroup's income may in effect be reduced by a loss of the other subgroup, subject to the limitations in sections 172 and 1503(c). The life subgroup losses consist of life consolidated net operating loss, consolidated operations loss carryovers from taxable years beginning before January 1, 2018 (consolidated operations loss carryovers), and life consolidated net capital loss. The nonlife subgroup losses consist of nonlife consolidated net operating loss and nonlife consolidated net capital loss. Consolidated taxable income is therefore defined in pertinent part as the sum of nonlife consolidated taxable income and consolidated LICTI, reduced by life subgroup losses and/or nonlife subgroup losses.

(ii) Subgroup loss. A subgroup loss does not actually affect the computation of nonlife consolidated taxable income or consolidated LICTI. It merely constitutes a bottom-line adjustment in reaching consolidated taxable income. Furthermore, the amount of a subgroup's loss, if any, that is eligible to be carried back to a prior taxable year first must be carried back against income of the same subgroup before it may be used as a setoff against the other subgroup's income in the taxable year the loss arose.

(See sections 172(b)(1) and 1503(c)(1); see also §1.1502-21(b)). The carryback of losses from one subgroup may not be used to offset income of the other subgroup in the year to which the loss is to be carried. This carryback of one subgroup's loss may "bump" the other subgroup's loss that, in effect, previously reduced the income of the first subgroup. The subgroup's loss that is bumped in appropriate cases may, in effect, reduce a succeeding year's income of either subgroup. This approach gives the group the tax savings of the use of losses, but the bumping rule assures that, insofar as possible, life deductions will be matched against life income and nonlife deductions against nonlife income.

\* \* \* \* \*

(b) \* \* \*

(1) Life company. The term life company means a life insurance company as defined in section 816 and subject to tax under section 801. Section 816 applies to each company separately.

(2) Nonlife insurance company. The term nonlife insurance company has the meaning provided in §1.1502-1(k).

(3) Life insurance company taxable income. The term life insurance company taxable income or LICTI has the meaning provided in section 801(b).

(4) Group. The term group has the meaning provided in §1.1502-1(a). Unless otherwise indicated in this section, a group's composition is determined without regard to section 1504(b)(2).

(5) Member. The term member has the meaning provided in §1.1502-1(b). A life company is tentatively treated as a member for any taxable year for purposes of



determining if it is an eligible corporation under paragraph (b)(12) of this section and, therefore, if it is an includible corporation under section 1504(c)(2). If such a company is eligible and includible (under section 1504(c)(2)), it will actually be treated as a member of the group.

\* \* \* \* \*

(10) Separate return year. The term separate return year has the meaning provided in §1.1502-1(e). For purposes of this paragraph (b)(10), the term group is defined with regard to section 1504(b)(2) for years in which an election under section 1504(c)(2) is not in effect. Thus, a separate return year includes a taxable year for which that election is not in effect.

(11) Separate return limitation year. Section 1.1502-1(f)(2) provides exceptions to the definition of the term separate return limitation year. For purposes of applying those exceptions to this section, the term group is defined without regard to section 1504(b)(2), and the definition in this paragraph (b)(11) applies separately to the nonlife subgroup in determining nonlife consolidated taxable income under paragraph (f) of this section and to the life subgroup in determining consolidated LICTI under paragraph (g) of this section. Paragraph (h)(3)(ix) of this section defines the term separate return limitation year for purposes of determining whether the losses of one subgroup may be used against the income of the other subgroup.

\* \* \* \* \*

(13) Ineligible corporation. A corporation that is not an eligible corporation is ineligible. If a life company is ineligible, it is not treated under section 1504(c)(2) as an includible corporation. Losses of a nonlife member arising in years when it is ineligible

may not be used under section 1503(c)(2) and paragraph (g) of this section to set off the income of a life member. If a life company is ineligible and is the common parent of the group (without regard to section 1504(b)(2)), the election under section 1504(c)(2) may not be made.

(14) \* \* \*

(i) \* \* \* S<sub>2</sub> must file its own separate return for 2020.

(ii) Example 2. Since 2012, L1 has been a life company owning all the stock of L2. In 2018, L1 transfers assets to S1, a new nonlife insurance company subject to taxation under section 831(a). For 2020, only L1 and L2 are eligible corporations. The tacking rule in paragraph (b)(12)(v) of this section does not apply in 2020 because the old corporation (L1) and the new corporation (S1) do not have the same tax character.

\* \* \* \* \*

(d) \* \* \*

(5) Dividends received deduction--(i) Dividends received by an includible insurance company. Dividends received by an includible member insurance company, taxed under either section 801 or section 831, from another includible member of the group are treated for Federal income tax purposes as if the group did not file a consolidated return. See sections 818(e)(2) and 805(a)(4) for rules regarding a member taxed under section 801, and see sections 832(g) and 832(b)(5)(B) through (E) for rules regarding a member taxed under section 831.

(ii) Other dividends. Dividends received from a life company member of the group that are not subject to paragraph (d)(5)(i) of this section are not included in gross income of the distributee member. See section 1504(c)(2)(B)(i). If the distributee corporation is a nonlife insurance company subject to tax under section 831, the rules of section 832(b)(5)(B) through (E) apply.

\* \* \* \* \*

(7) \* \* \*

(ii) Any taxes described in §1.1502-2 (other than in §1.1502-2(a)(1), (a)(6), and (a)(7)).

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(iii) Carrybacks. The portion of the nonlife consolidated net operating loss for the nonlife subgroup described in paragraph (f)(2)(vi) of this section, if any, that is eligible to be carried back to prior taxable years under §1.1502-21 is carried back to the appropriate years (whether consolidated or separate) before the nonlife consolidated net operating loss may be used as a nonlife subgroup loss under paragraphs (e)(2) and (h) of this section to set off consolidated LICTI in the year the loss arose. The election under section 172(b)(3) to relinquish the entire carryback period for the net operating loss of the nonlife subgroup may be made by the agent for the group within the meaning of §1.1502-77.

\* \* \* \* \*

(v) \* \* \* For limitations on the use of nonlife carryovers to offset nonlife consolidated taxable income or consolidated LICTI, see §1.1502-21.

(vi) Portion of nonlife consolidated net operating loss that is carried back to prior taxable years. The portion of the nonlife consolidated net operating loss that (absent an election to waive carrybacks) is carried back to the two preceding taxable years is the sum of the nonlife subgroup's farming loss (within the meaning of section

172(b)(1)(B)(ii)) and the amount of the subgroup's net operating loss that is attributable to nonlife insurance companies (as determined under §1.1502-21). For rules governing the absorption of net operating loss carrybacks, including limitations on the amount of net operating loss carrybacks that may be absorbed in prior taxable years, see §1.1502-21(b).

(vii) Example. P, a holding company that is not an insurance company, owns all of the stock of S, a nonlife insurance company, and L1, a life insurance company. L1 owns all of the stock of L2, a life insurance company. Both L1 and L2 satisfy the eligibility requirements of §1.1502-47(b)(12). Each corporation uses the calendar year as its taxable year, and no corporation has incurred farming losses (within the meaning of section 172(b)(1)(B)(ii)). For 2021, the group first files a consolidated return for which the election under section 1504(c)(2) is effective. P and S filed consolidated returns for 2019 and 2020. In 2021, the P-S group sustains a nonlife consolidated net operating loss that is attributable entirely to S (see §1.1502-21(b)). The election in 2021 under section 1502(c)(2) does not result under paragraph (d)(1) of this section in the creation of a new group or the termination of the P-S group. The loss is carried back to the consolidated return years 2019 and 2020 of P and S. Pursuant to §1.1502-21(b), the loss may be used to offset S's income in 2019 and 2020 without limitation, and the loss may be used to offset P's income in those years, subject to the limitation in section 172(a) (see §1.1502-21(b)). The portion of the loss not absorbed in 2019 and 2020 may serve as a nonlife subgroup loss in 2021 that may set off the consolidated LICTI of L1 and L2 under paragraphs (e)(2) and (h) of this section.

(3) \* \* \*

(ii) Additional principles. In applying §1.1502-22 to nonlife consolidated net capital loss carryovers and carrybacks, the principles set forth in paragraph (f)(2)(iii) through (v) of this section for applying §1.1502-21 to nonlife consolidated net operating loss carryovers and carrybacks also apply, without regard to the limitation in paragraph (f)(2)(vi) of this section.

\* \* \* \* \*

(g) Consolidated LICTI--(1) General rule. Consolidated LICTI is the consolidated taxable income of the life subgroup, computed under §1.1502-11 as modified by this paragraph (g).

(2) Life consolidated net operating loss deduction--(i) In general. In applying §1.1502-21, the rules in this paragraph (g)(2) apply in determining for the life subgroup the life net operating loss and the portion of the life net operating loss carryovers and carrybacks to the taxable year.

(ii) Life CNOL. The life consolidated net operating loss is determined under §1.1502-21(e) by treating the life subgroup as the group.

(iii) Carrybacks--(A) General rule. The portion of the life consolidated net operating loss for the life subgroup, if any, that is eligible to be carried back under §1.1502-21 is carried back to the appropriate years (whether consolidated or separate) before the life consolidated net operating loss may be used as a life subgroup loss under paragraphs (e)(1) and (j) of this section to set off nonlife consolidated taxable income in the year the loss arose. The election under section 172(b)(3) to relinquish the entire carryback period for the consolidated net operating loss of the life subgroup may be made by the agent for the group within the meaning of §1.1502-77.

(B) Special rule for life consolidated net operating losses arising in 2018, 2019, or 2020. If a life consolidated net operating loss arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, is carried back to a life insurance company taxable year beginning before January 1, 2018, then such life consolidated net operating loss is treated as an operations loss carryback (within the meaning of section 810, as in effect prior to its repeal) of such company to such taxable year.

(iv) Subgroup rule. In determining the portion of the life consolidated net operating loss that is absorbed when the loss is carried back to a consolidated return year, §1.1502-21 is applied by treating the life subgroup as the group. Therefore, the absorption is determined without taking into account any nonlife subgroup losses that were previously reported on a consolidated return as setting off life consolidated taxable income for the year to which the life subgroup loss is carried back.

(v) Carryovers. The portion of the life consolidated net operating loss that is not absorbed in a prior year as a carryback, or as a life subgroup loss that set off nonlife consolidated taxable income for the year the loss arose, constitutes a life carryover under this paragraph (g)(2) to reduce consolidated LICTI before that portion may constitute a life subgroup loss that sets off nonlife consolidated taxable income for that particular year. For limitations on the use of life carryovers to offset nonlife consolidated taxable income or consolidated LICTI, see §1.1502-21(b).

(3) Life consolidated capital gain net income or loss--(i) [Reserved].

(ii) Life consolidated net capital loss carryovers and carrybacks. The life consolidated net capital loss carryovers and carrybacks for the life subgroup are determined by applying the principles of §1.1502-22 as modified by the following rules in this paragraph (g)(3)(ii):

(A) Life consolidated net capital loss is first carried back (or apportioned to the life members for separate return years) to be absorbed by life consolidated capital gain net income without regard to any nonlife subgroup capital losses and before the life consolidated net capital loss may serve as a life subgroup capital loss that sets off

nonlife consolidated capital gain net income in the year the life consolidated net capital loss arose.

(B) If a life consolidated net capital loss is not carried back or is not a life subgroup loss that sets off nonlife consolidated capital gain net income in the year the life consolidated net capital loss arose, then it is carried over to the particular year under this paragraph (g)(3)(ii) first against life consolidated capital gain net income before it may serve as a life subgroup capital loss that sets off nonlife consolidated capital gain net income in that particular year.

(h) \* \* \*

(2) \* \* \*

(ii) \* \* \* Additionally, the amount of consolidated LICTI that may be offset by nonlife consolidated net operating loss carryovers may be subject to limitation (see section 172 and §1.1502-21).

\* \* \* \* \*

(3) \* \* \*

(iv) \* \* \* The amount of consolidated LICTI that may be offset by nonlife consolidated net operating loss carryovers may be subject to limitation (see section 172 and §1.1502-21).

\* \* \* \* \*

(4) Examples. The following examples illustrate the principles of this paragraph (h). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no

company has farming losses (within the meaning of section 172(b)(1)(B)(ii)), and each corporation uses the calendar year as its taxable year.

\* \* \* \* \*

(ii) Example 2. (A) The facts are the same as in paragraph (h)(4)(i) of this section, except that, for 2021, S's separate net operating loss is \$200. Assume further that L's consolidated LICTI is \$200. Under paragraph (h)(3)(vi) of this section, the offsettable nonlife consolidated net operating loss is \$100 (the nonlife consolidated net operating loss computed under paragraph (f)(2)(ii) of this section (\$200), reduced by the separate net operating loss of I (\$100)). The offsettable nonlife consolidated net operating loss that may be set off against consolidated LICTI in 2021 is \$35 (35 percent of the lesser of the offsettable \$100 or consolidated LICTI of \$200). See section 1503(c)(1) and paragraph (h)(3)(x) of this section. S carries over a loss of \$65, and I carries over a loss of \$100, to 2022 under paragraph (f)(2) of this section to be used against nonlife consolidated taxable income (consolidated net operating loss (\$200) less amount used in 2021 (\$35)). Under paragraph (h)(2)(ii) of this section, the offsettable nonlife consolidated net operating loss that may be carried to 2022 is \$65 (\$100 minus \$35). The facts and results are summarized in the following table.

**Table 1 to paragraph (h)(4)(ii)(A)**

(Dollars omitted)

		Facts	Offsettable	Limit	Unused Loss
		(a)	(b)	(c)	(d)
1	P	100			
2	S	(200)	(100)		(65)
3	I	(100)			(100)
4	Nonlife Subgroup	(200)	(100)	(100)	(165)
5	L	200		200	
6	35% of lower of line 4(c) or 5(c)			35	
7	Unused offsettable loss				(65)

(B) Accordingly, under paragraph (e) of this section, consolidated taxable income is \$165 (line 5(a) minus line 6(c)).

(iii) Example 3. The facts are the same as in paragraph (h)(4)(ii) of this section, with the following additions for 2022. The nonlife subgroup has nonlife consolidated taxable income of \$50 (all of which is attributable to I) before the nonlife consolidated net operating loss deduction under paragraph (f)(2) of this section. Consolidated LICTI is \$100. Under paragraph (f)(2) of this section, \$50 of the nonlife consolidated net



operating loss carryover (\$165) is used in 2022 and, under paragraph (h)(3)(vi) and (vii) of this section, the portion used in 2022 is attributable to I, the ineligible nonlife member. Accordingly, the offsettable nonlife consolidated net operating loss from 2021 under paragraph (h)(3)(ii) of this section is \$65, the unused loss from 2021. The offsettable nonlife consolidated net operating loss in 2022 is \$22.75 (35 percent of the lesser of the offsettable loss of \$65 or consolidated LICTI of \$100). Accordingly, under paragraph (e) of this section, consolidated taxable income is \$77.25 (consolidated LICTI of \$100 minus the offsettable loss of \$22.75).

\* \* \* \* \*

(j) \* \* \*

(3) Examples. The following examples illustrate the principles of this paragraph

(j). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)(ii)), and each corporation uses the calendar year as its taxable year.

(i) Example 1. P, S, L1 and L2 constitute a group that elects under section 1504(c)(2) to file a consolidated return for 2021. In 2021, the nonlife subgroup consolidated taxable income is \$100 and there is \$20 of nonlife consolidated net capital loss that cannot be carried back under paragraph (f) of this section to taxable years (whether consolidated or separate) preceding 2021. The nonlife subgroup has no carryover from years prior to 2021. The life consolidated net operating loss is \$150, which under paragraph (g) of this section includes life consolidated capital gain net income of \$25. Since life consolidated capital gain net income is zero for 2021 (see paragraph (h)(3)(iii) of this section), the nonlife capital loss offset is zero (see paragraph (h)(3)(ii) of this section). However, \$100 of life consolidated net operating loss sets off the \$100 nonlife consolidated taxable income in 2021. The life subgroup carries under paragraph (g)(2) of this section to 2022 \$50 of the life consolidated net operating loss (\$150 minus \$100). The \$50 carryover will be used in 2022 (subject to the limitation in section 172(a)) against life subgroup income before it may be used in 2022 to setoff nonlife consolidated taxable income.

(ii) Example 2. The facts are the same as in paragraph (j)(3)(i) of this section, except that, for 2021, the nonlife consolidated taxable income is \$150 (this amount is entirely attributable to S and includes nonlife consolidated capital gain net income of \$50), consolidated LICTI is \$200, and a life consolidated net capital loss is \$50. Assume that the \$50 life consolidated net capital loss sets off the \$50 nonlife consolidated capital gain net income. Consolidated taxable income under paragraph (e) of this

section is \$300 (nonlife consolidated taxable income (\$150) minus the setoff of the life consolidated net capital loss (\$50), plus consolidated LICTI (\$200)).

(iii) Example 3. The facts are the same as in paragraph (j)(3)(ii) of this section, except that, for 2022, the nonlife consolidated net operating loss is \$150. This entire amount is attributable to S; thus, it is eligible to be carried back to 2021 against nonlife consolidated taxable income under paragraph (f)(2) of this section and §1.1502-21(b). If P, the agent for the group within the meaning of §1.1502-77, does not elect to relinquish the carryback under section 172(b)(3), the entire \$150 will be carried back, reducing 2021 nonlife consolidated taxable income to zero and nonlife consolidated capital gain net income to zero. Under paragraph (h)(3)(xii) of this section, the setoff in 2021 of the nonlife consolidated capital gain net income (\$50) by the life consolidated net capital loss (\$50) is restored. Accordingly, the 2021 life consolidated net capital loss may be carried over by the life subgroup to 2022. Under paragraph (e) of this section, after the carryback, consolidated taxable income for 2021 is \$200 (nonlife consolidated taxable income (\$0) plus consolidated LICTI (\$200)).

(iv) Example 4. The facts are the same as in paragraph (j)(3)(iii) of this section, except that P elects under section 172(b)(3) to relinquish the carryback of \$150 arising in 2022. The setoff in Example 2 is not restored. However, the offsettable nonlife consolidated net operating loss for 2022 (or that may be carried over from 2022) is zero. See paragraph (h)(3)(viii) of this section. Nevertheless, the \$150 nonlife consolidated net operating loss may be carried over to be used by the nonlife group.

(v) Example 5. P owns all of the stock of S1 and of L1. On January 1, 2017, L1 purchases all of the stock of L2. For 2021, the group elects under section 1504(c)(2) to file a consolidated return. For 2021, L1 is an eligible corporation under paragraph (b)(12) of this section but L2 is ineligible. Thus, L1 but not L2 is a member for 2021. For 2021, L2 sustains a net operating loss, which cannot be carried back (see section 172(b)). For 2021, L2 is treated under paragraph (d)(6) of this section as a member of a controlled group of corporations under section 1563 with P, S, and L1. For 2022, L2 is eligible and is included on the group's consolidated return. L2's net operating loss for 2021 that may be carried to 2022 is not treated under paragraph (b)(11) of this section as having been sustained in a separate return limitation year for purposes of computing consolidated LICTI of the L1-L2 life subgroup for 2022. Furthermore, the portion of L2's net operating loss not used under paragraph (g)(2) of this section against life subgroup income in 2022 may be included in offsettable life consolidated net operating loss under paragraph (j)(2) and (h)(3)(i) of this section that reduces in 2022 nonlife consolidated taxable income (subject to the limitation in section 172(a)) because L2's loss in 2021 was not sustained in a separate return limitation year under paragraph (j)(2) and (h)(3)(ix)(A) of this section or in a separate return year (2021) when an election was in effect under neither section 1504(c)(2) nor section 243(b)(3).

\* \* \* \* \*

(n) Effective/applicability dates. The rules of this section apply to taxable years beginning after December 31, 2020. However, a taxpayer may choose to apply the rules of this section to taxable years beginning on or before December 31, 2020. If a taxpayer makes the choice described in the previous sentence, the taxpayer must apply those rules in their entirety and consistently with the provisions of subchapter L of the Internal Revenue Code applicable to the years at issue.

Par. 5. Section 1.1503(d)-4 is amended by:

1. In paragraph (c)(3)(iii)(B), removing the period and adding in its place a semi-colon.
2. In paragraph (c)(3)(iv), removing the period and adding in its place “; and”.
3. Adding paragraph (c)(3)(v).

The addition reads as follows:

§1.1503(d)-4 Domestic use limitation and related operating rules.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(v) The SRLY limitation is applied without regard to §1.1502-21(c)(1)(i)(E) (section 172(a) limitation applicable to a SRLY member).

\* \* \* \* \*

Par. 6. Section 1.1503(d)-8 is amended by adding paragraph (b)(8) to read as follows:

§1.1503(d)-8 Effective dates.

\* \* \* \* \*

(b) \* \* \*

(8) Rule providing that SRLY limitation applies without regard to §1.1502-21(c)(1)(i)(E). Section 1.1503(d)-4(c)(3)(v) applies to any period to which §1.1502-21(c)(1)(i)(E) applies.

Sunita Lough,  
Deputy Commissioner for Services and Enforcement.

Approved: September 29, 2020.

David J. Kautter,  
Assistant Secretary of the Treasury (Tax Policy).