

INTERNAL REVENUE BULLETIN



HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

ADMINISTRATIVE

Announcement 2023-23, page 569.

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

ESTATE TAX

Rev. Rul. 2023-15, page 559.

The 2023 interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A of the Code are listed for estate of decedents.

INCOME TAX

Notice 2023-57, page 560.

The notice announces the inflation adjustment factor and phase-out amount for the enhanced oil recovery credit for taxable years beginning in the 2023 calendar year. The format of the notice is identical to the format of previously published

Bulletin No. 2023-34
August 21, 2023

notices on this issue. The notice concludes that because the reference price for the 2022 calendar year (\$93.97) exceeds \$28 multiplied by the inflation adjustment factor for the 2023 calendar year (\$28 multiplied by 1.9998 = \$55.99) by \$37.98, the enhanced oil recovery credit for qualified costs paid or incurred in 2023 is phased-out completely.

Notice 2023-58, page 563.

The notice provides the applicable reference price for qualified natural gas production from qualified marginal wells during taxable years beginning in calendar year 2023 for the purpose of determining the marginal well production credit under § 45I. The applicable reference price for taxable years beginning in calendar year 2023 is \$5.57 per 1,000 cubic feet. The notice also provides the credit amount used for the purpose of determining the marginal well production credit. The credit amount for taxable years beginning in calendar year 2023 is \$0.00 per 1,000 cubic feet.

Notice 2023-59, page 564.

The notice announces forthcoming proposed regulations and provides interim guidance regarding Home Energy Audits for purposes of the § 25C energy efficient home improvement credit, as well as a transition rule for certain Home Energy Audits conducted during taxable years ending in calendar year 2023.

REG-134420-10, page 571.

These proposed regulations revise the consolidated return regulations to reflect statutory changes, modernize language, and enhance clarity.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned

against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

Part I

Section 2032A.—Valuation of Certain Farm, Etc., Real Property

26 CFR 20.2032A-4: Method of valuing farm real property.

Rev. Rul. 2023-15

This revenue ruling contains a list of the average annual effective interest rates on new loans under the Farm Credit System. This revenue ruling also contains a list of the states within each Farm Credit System Bank Territory.

Under § 2032A(e)(7)(A)(ii) of the Internal Revenue Code, rates on new

Farm Credit System Bank loans are used in computing the special use value of real property used as a farm for which an election is made under § 2032A. The rates in Table 1 of this revenue ruling may be used by estates that value farmland under § 2032A as of a date in 2023.

Average annual effective interest rates, calculated in accordance with § 2032A(e)(7)(A) and § 20.2032A-4(e) of the Estate Tax Regulations, to be used under § 2032A(e)(7)(A)(ii), are set forth in the accompanying Table of Interest Rates (Table 1). The states within each Farm Credit System Bank Territory are set forth in the accompanying Table of Farm Credit System Bank Territories (Table 2).

Rev. Rul. 81-170, 1981-1 C.B. 454, contains an illustrative computation of an average annual effective interest rate. The rates applicable for valuation in 2022 are in Rev. Rul. 2022-16, 2022-35 I.R.B. 171. For rate information for years prior to 2022, see Rev. Rul. 2021-15, 2021-35 I.R.B. 331, and other revenue rulings that are referenced therein.

DRAFTING INFORMATION

The principal author of this revenue ruling is Lane Damazo of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Lane Damazo at (202) 317-4628 (not a toll-free number).

REV. RUL. 2023-15 TABLE 1	
TABLE OF INTEREST RATES (Year of Valuation 2023)	
Farm Credit System Bank Servicing State in Which Property is Located	Rate
AgFirst, FCB	5.33
AgriBank, FCB	4.83
CoBank, ACB	4.83
Texas, FCB	5.22

REV. RUL. 2023-15 TABLE 2	
TABLE OF FARM CREDIT SYSTEM BANK TERRITORIES	
<i>Farm Credit System Bank</i>	<i>Location of Property</i>
<i>AgFirst, FCB</i>	<i>Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia.</i>
<i>AgriBank, FCB</i>	<i>Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin, Wyoming.</i>
<i>CoBank, ACB</i>	<i>Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Idaho, Kansas, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New Mexico, New York, Nevada, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Washington.</i>
<i>Texas, FCB</i>	<i>Alabama, Louisiana, Mississippi, Texas.</i>

Part III

2023 Section 43 Inflation Adjustment

Notice 2023-57

Section 43(a) of the Internal Revenue Code provides that for purposes of section 38, the enhanced oil recovery credit for any taxable year is an amount equal to 15 percent of the taxpayer's qualified enhanced oil recovery costs for such taxable year.

Section 43(b)(1) provides that the amount of the credit determined under subsection (a) for any taxable year shall be reduced by an amount which bears the same ratio to the amount of such credit

(determined without regard to this paragraph) as — (A) the amount by which the reference price for the calendar year preceding the calendar year in which the taxable year begins exceeds \$28, bears to (B) \$6.

Section 43(b)(3)(B) requires the Secretary to publish an inflation adjustment factor. The enhanced oil recovery credit under § 43 for any taxable year is reduced if the “reference price,” determined under § 45K(d)(2)(C), for the calendar year preceding the calendar year in which the taxable year begins is greater than \$28 multiplied by the inflation adjustment factor the current calendar year.

The term “inflation adjustment factor” means, with respect to any calendar year,

a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990.

Because the reference price for the 2022 calendar year (\$93.97) exceeds \$28 multiplied by the inflation adjustment factor for the 2023 calendar year (\$28 multiplied by 1.9998 = \$55.99) by \$37.98, the enhanced oil recovery credit for qualified costs paid or incurred in 2023 is phased out completely.

Table 1 contains the GNP implicit price deflator used for the 2022 calendar year, as well as the previously published GNP implicit price deflators used for the 1991 through 2021 calendar years.

Notice 2023-57 TABLE 1
GNP IMPLICIT PRICE DEFLATORS

<i>Calendar Year</i>	<i>GNP Implicit Price Deflator</i>
1990	112.9 (used for 1991)
1991	117.0 (used for 1992)
1992	120.9 (used for 1993)
1993	124.1 (used for 1994)
1994	126.0 (used for 1995)*
1995	107.5 (used for 1996)
1996	109.7 (used for 1997)**
1997	112.35 (used for 1998)
1998	112.64 (used for 1999)***
1999	104.59 (used for 2000)
2000	106.89 (used for 2001)
2001	109.31 (used for 2002)
2002	110.63 (used for 2003)
2003	105.67 (used for 2004)****
2004	108.23 (used for 2005)
2005	112.129 (used for 2006)
2006	116.036 (used for 2007)
2007	119.656 (used for 2008)
2008	122.407 (used for 2009)
2009	109.764 (used for 2010)*****
2010	110.654 (used for 2011)
2011	113.347 (used for 2012)*****
2012	115.387 (used for 2013)
2013	106.710 (used for 2014)*****
2014	108.407 (used for 2015)*****
2015	109.868 (used for 2016)
2016	111.528 (used for 2017)
2017	113.500 (used for 2018)
2018	110.308 (used for 2019)*****
2019	112.257 (used for 2020)
2020	113.586 (used for 2021)
2021	118.586 (used for 2022)*****
2022	127.194 (used for 2023)

* Beginning in 1995, the GNP implicit price deflator was rebased relative to 1992. The 1990 GNP implicit price deflator used to compute the 1996 § 43 inflation adjustment factor is 93.6.

** Beginning in 1997, two digits follow the decimal point in the GNP implicit price deflator. The 1990 GNP price deflator used to compute the 1998 § 43 inflation adjustment factor is 93.63.

*** Beginning in 1999, the GNP implicit price deflator was rebased relative to 1996. The 1990 GNP implicit price deflator used to compute the 2000 § 43 inflation adjustment factor is 86.53.

**** Beginning in 2003, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2004 § 43 inflation adjustment factor is 81.589.

***** Beginning in 2009, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2010 § 43 inflation adjustment factor is 72.199.

***** Beginning in 2011, the 1990 GNP implicit price deflator used to compute the 2012 § 43 inflation adjustment factor is 72.260.

***** Beginning in 2013, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2014 § 43 inflation adjustment factor is 66.803.

***** Beginning in 2014, the 1990 GNP implicit price deflator used to compute the 2015 § 43 inflation adjustment factor is 66.732.

***** Beginning in 2018, the 1990 GNP implicit price deflator used to compute the 2019 § 43 inflation adjustment factor is 63.637.

***** Beginning in 2021, the 1990 GNP implicit price deflator used to compute the 2022 § 43 inflation adjustment factor is 63.604.

Table 2 contains the inflation adjustment factor and the phase-out amount for taxable years beginning in the 2023

calendar year as well as the previously published inflation adjustment factors and phase-out amounts for taxable years

beginning in the 1991 through 2022 calendar years.

Notice 2023-57 TABLE 2 INFLATION ADJUSTMENT FACTORS AND PHASE-OUT AMOUNTS		
<i>Calendar Year</i>	<i>Inflation Adjustment Factor</i>	<i>Phase-out Amount</i>
1991	1.0000	0
1992	1.0363	0
1993	1.0708	0
1994	1.0992	0
1995	1.1160	0
1996	1.1485	0
1997	1.1720	0
1998	1.1999	0
1999	1.2030	0
2000	1.2087	0
2001	1.2353	0
2002	1.2633	0
2003	1.2785	0
2004	1.2952	0
2005	1.3266	0
2006	1.3743	100 percent
2007	1.4222	100 percent
2008	1.4666	100 percent
2009	1.5003	100 percent
2010	1.5203	100 percent
2011	1.5326	100 percent
2012	1.5686	100 percent
2013	1.5968	100 percent
2014	1.5974	100 percent
2015	1.6245	100 percent
2016	1.6464	0
2017	1.6713	0
2018	1.7008	1.069 percent
2019	1.7334	100 percent
2020	1.7640	100 percent
2021	1.7849	0
2022	1.8607	100 percent
2023	1.9998	100 percent

DRAFTING INFORMATION

The principal author of this notice is John M. Deininger of the Office of

Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr.

Deininger at (202) 317-6853 (not a toll-free number).

Reference Price for Section 45I Credit for Production of Natural Gas from Marginal Wells During Taxable Years Beginning in Calendar Year 2023

Notice 2023-58

SECTION 1. PURPOSE

This notice provides the applicable reference price for qualified natural gas production from qualified marginal wells during taxable years beginning in calendar year 2023 for the purpose of determining the marginal well production credit (MWC) under § 45I of the Internal Revenue Code. The applicable reference price for taxable years beginning in calendar year 2023 is \$5.57 per 1,000 cubic feet (Mcf).

This notice also provides the credit amount used for the purpose of determining the MWC for taxable years beginning in calendar year 2023. The credit amount is determined using the 2023 inflation adjustment factor of 1.4993 and the applicable reference price of \$5.57 per Mcf. The credit amount for taxable years beginning in calendar year 2023 is \$0.00 per Mcf.

SECTION 2. BACKGROUND

Section 45I(a), as it relates to qualified natural gas production, provides that, for purposes of § 38, the MWC for any taxable year is an amount equal to the product of (1) the credit amount and (2) the qualified natural gas production that is attributable to the taxpayer.

Section 45I(c)(1) provides that “qualified natural gas production” means domestic natural gas produced from a qualified marginal well. Section 45I(c)(3)(A) provides that a qualified marginal well is a domestic well (i) the production from which during the taxable year is treated as marginal production under § 613A(c)(6), or (ii) which, during the taxable year (1)

has average production of not more than 25 barrel-of-oil equivalents per day, and (II) produces water at a rate not less than 95 percent of total well effluent.

Section 613A(c)(6)(D) and (E) provide that “marginal production” means domestic natural gas produced during any taxable year from a property which is a stripper well property for the calendar year in which the taxable year begins. A “stripper well property” is, with respect to any calendar year, any property producing not more than 15 barrel equivalents per day, determined by dividing the average daily production of domestic crude oil and domestic natural gas from producing wells on the property for such calendar year by the number of such wells.

Section 45I(c)(2)(A) provides that generally only the first 1,095 barrels or barrel-of-oil equivalents (as defined in § 45K(d)(5)) produced during the taxable year qualify for the MWC. This limitation is proportionately reduced in the case of a short taxable year or in the case of a well that is not capable of production each day of a taxable year. *See* § 45I(c)(2)(B). The number of wells on which a taxpayer may claim the MWC is not limited.

Section 45I(d)(2) provides that to claim the credit a taxpayer must hold an operating interest in the qualified marginal well producing the natural gas to which the credit relates. Under § 45I(d)(1) if a well is owned by more than one owner and the natural gas production exceeds the limitation under § 45I(c)(2), the qualifying natural gas production attributable to the taxpayer is determined on the basis of the ratio which the taxpayer’s revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production. Finally, § 45I(d)(3) provides that the MWC is not allowable if the taxpayer is also eligible to claim the § 45K nonconventional sources credit for the taxable year, unless the taxpayer elects not to claim the credit under § 45K for the well.

For purposes of § 45I(a)(1), the credit amount is 50 cents (adjusted for inflation) per Mcf of qualified natural gas production (tentative credit amount). *See* § 45I(b)(1)(B) and (b)(2)(B).

Section 45I(b)(2)(A) and (B) provide that the tentative credit amount (adjusted for inflation) is reduced (but not below zero) to the extent that the applicable reference price exceeds \$1.67 (adjusted for inflation). More specifically, § 45I(b)(2)(A) provides that the tentative credit amount (adjusted for inflation) is reduced by an amount which bears the same ratio to the tentative credit amount (adjusted for inflation) as the excess (if any) of the applicable reference price over \$1.67 (adjusted for inflation), bears to \$0.33 (adjusted for inflation). As a result, the MWC is not available if the applicable reference price for qualified natural gas production is \$2.00 (adjusted for inflation) or more.

Section 45I(b)(2)(A) also provides that the applicable reference price for a taxable year is the reference price for the calendar year preceding the calendar year in which the taxable year begins. Section 45I(b)(2)(C)(ii) provides that the term “reference price” means, with respect to any calendar year, in the case of qualified natural gas production, the Secretary’s estimate of the annual average wellhead price per Mcf for all domestic natural gas.

Section 45I(b)(2)(B) provides that in the case of any taxable year beginning in a calendar year after 2005, each of the dollar amounts contained in § 45I(b)(2)(A) will be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under § 43(b)(3)(B) by substituting “2004” for “1990”).

SECTION 3. INFLATION ADJUSTMENT FACTOR AND REFERENCE PRICE

1 Inflation Adjustment. The inflation adjustment factor under § 45I(b)(2)(B) for calendar year 2023 is 1.4993.

2 Reference Price. The Secretary’s estimate of the calendar year 2022 annual average wellhead price per Mcf for all domestic natural gas under § 45I(b)(2)(C)(ii) was calculated by applying the Producer Price Index commodity index for “Natural Gas from the Wellhead” (WPU053101051)¹ published by the

¹ <https://data.bls.gov/cgi-bin/srgate>. The BLS publishes indexes and not actual or average prices.

Bureau of Labor Statistics (BLS) as part of its Producer Price Index program, to the 2021 annual average wellhead price (\$3.43) published in Notice 2023-41, 2023-23 I.R.B. 905. The annual Producer Price Index commodity index for natural gas published by the BLS was 106.8 in 2021 and 173.206 in 2022, which implies a ratio of 2022 to 2021 average wellhead prices of 1.622 (173.206/106.801). Therefore, the Secretary’s estimate of the calendar year 2022 annual average wellhead price per Mcf for all domestic natural gas is \$5.57 per Mcf (1.622 × \$3.43 per Mcf). The one cent difference is due to rounding.

For years after 2022, the Secretary intends to continue calculating the reference price by application of the Producer Price Index commodity index for “Natural Gas from the Wellhead” (WPU053101051) published by the BLS to the previous year’s reference price.

SECTION 4. CALCULATION OF CREDIT AMOUNT

Under § 45I(b)(1)(B) and (2)(B), the tentative credit amount used to calculate the MWC for taxable years beginning in calendar year 2023 is \$0.75 per Mcf (\$0.50 × 1.4993 inflation adjustment

factor). Pursuant to the reduction specified in § 45I(b)(2)(A), the tentative credit amount for taxable years beginning in calendar year 2023 is reduced to zero.

Specifically, pursuant § 45I(b)(2)(A), the tentative credit amount is reduced (but not below zero) by an amount (the Reduction Amount) which bears the same ratio to such amount as (i) the excess (if any) of the applicable reference price over \$2.50 (\$1.67 × 1.4993 inflation adjustment factor), bears to (ii) \$0.49 (\$0.33 × 1.4993 inflation adjustment factor). The Reduction Amount (as adjusted for inflation) is computed as follows:

$$\frac{\text{Reduction Amount}}{\text{Tentative Credit Amount}} = \frac{\text{Applicable Reference Price} - \$2.50}{\$0.49}$$

$$\frac{\text{Reduction Amount}}{\$0.75} = \frac{\$5.57 - \$2.50}{\$0.49}$$

The Reduction Amount is \$4.70 ((\$5.57 - \$2.50) ÷ \$0.49 × \$0.75) and it exceeds the tentative credit amount (\$0.75). Therefore, the credit amount used to calculate the MWC for taxable years beginning in calendar year 2023 is \$0.00 per Mcf.

SECTION 5. EFFECTIVE DATE

This notice is effective for qualified natural gas production during taxable years beginning in calendar year 2023.

SECTION 6. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Boris Kukso of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Mr. Kukso at (202) 317-6853 (not a toll-free number).

Guidance on Requirements for Home Energy Audits for Purposes of the Energy Efficient Home Improvement Credit under Section 25C

Notice 2023-59

SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (the Treasury Department) and the Internal Revenue Service (IRS) intend to propose regulations (forthcoming proposed regulations) addressing the requirements for home energy audits with respect to the energy efficient home improvement credit under § 25C of the Internal Revenue Code (Code),¹ as amended by § 13301 of Public Law 117-169, 136 Stat. 1818 (August 16,

2022), commonly known as the Inflation Reduction Act of 2022 (IRA). Sections 2 and 3 of this notice provide relevant background and definitions, respectively, with respect to the energy efficient home improvement credit allowed under § 25C (§ 25C credit). Section 4 of this notice specifies the requirements that the forthcoming proposed regulations would set forth for qualifying as a home energy auditor for purposes of the § 25C credit. Sections 5 and 6 of this notice specify the substantiation requirement and transition rule, respectively, that the forthcoming proposed regulations would establish for taxpayers claiming the § 25C credit with respect to home energy audits. Section 7 addresses the application of the Paperwork Reduction Act to this notice. The Treasury Department and the IRS also intend to propose that the forthcoming proposed regulations would apply to taxable years ending after December 31, 2022. Until the issuance of the forthcoming proposed regulations, taxpayers may rely on the rules

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

described in sections 3 through 6 of this notice.

SECTION 2. BACKGROUND

.01 Energy Efficient Home Improvement Credit

Section 25C was originally enacted by § 1333(a) of the Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594, 1026 (August 8, 2005), to provide a tax credit for the purchase and installation of certain energy efficient improvements in taxpayers' principal residences. Congress has amended § 25C several times since its original enactment, most recently under § 13301 of the IRA, which renamed this provision the "energy efficient home improvement credit" and provided that § 25C, as amended by the IRA, applies to property placed in service prior to January 1, 2033.

Section 13301(b) and (f) of the IRA amended § 25C(a) to allow a credit amount equal to 30 percent of the sum of the amounts that individual taxpayers pay or incur during a taxable year for (1) qualified energy efficiency improvements installed during the year, (2) residential energy property expenditures, and (3) home energy audits.

As amended by § 13301(c) of the IRA, the § 25C credit is generally limited to an annual cap of \$1,200. Within this \$1,200 limitation, § 25C(b) sets forth further annual caps for certain categories of improvements. The caps and categories of improvements under these limitations are as follows: \$600 for any item of qualified energy property, as defined in § 25C(d) (2); \$600 for exterior windows and skylights; \$250 for any single exterior door and \$500 in the aggregate for all exterior doors; and \$150 for home energy audits. Section 25C(b) also provides that residential energy property expenditures for heat pumps, heat pump water heaters, biomass stoves, and biomass boilers are not subject to the annual cap of \$1,200 or to the \$600 limitation for any item of qualified energy property. Instead, residential energy property expenditures for these items are subject to a separate aggregate annual limitation of \$2,000. Section 25C(d) provides that the term "residential energy property expenditures" includes expenditures for labor costs properly allocable to the onsite

preparation, assembly, or original installation of the property.

.02 Credit for Home Energy Audit Expenditures

Section 13301(f) of the IRA amended § 25C to expand the types of expenditures eligible for the § 25C credit to include expenditures for home energy audits. Section 25C(e) defines the term "home energy audit" as an inspection and written report with respect to a dwelling unit located in the United States and owned or used by the taxpayer as the taxpayer's principal residence (within the meaning of § 121). The audit must (1) identify the most significant and cost-effective energy efficiency improvements with respect to such dwelling unit, including an estimate of the energy and cost savings with respect to each such improvement, and (2) be conducted and prepared by a home energy auditor that meets the certification or other requirements specified by the Secretary of the Treasury or her delegate (Secretary) in regulations or other guidance. The IRA also imposed two limitations on this credit. First, as described above, § 25C(b)(6)(A) limits the credit allowed for amounts paid or incurred by the taxpayer during the taxable year for home energy audits up to \$150. Under this limit, for example, a taxpayer that pays \$1000 for a home energy audit during the taxable year may only claim a \$150 credit for such taxable year for this expenditure, and not the full 30 percent of the amount of the expenditure, even if the taxpayer does not have any other expenditures eligible for the § 25C credit during the taxable year. Second, § 25C(b)(6)(B) imposes a substantiation requirement, requiring taxpayers claiming the credit to include with their tax returns "such information or documentation as the Secretary may require".

In *Notice 2022-48*, 2022-43 I.R.B. 305, the Treasury Department and the IRS requested comments on various questions arising from the IRA's energy efficiency provisions. Among other questions, the notice requested comments on what certification or other requirements the Treasury Department and the IRS should require for home energy auditors that conduct the inspection and provide the written report that constitutes a "home energy audit" that qualifies for the § 25C credit.

The Treasury Department and the IRS published a *Fact Sheet* (FS-2022-40) on December 22, 2022, addressing "frequently asked questions about energy efficient home improvements and residential clean energy property credits." This Fact Sheet provides that a qualifying home energy audit "must include an inspection of a dwelling, including condominiums and certain manufactured homes, located in the United States that is owned or used by the taxpayer as the taxpayer's principal residence. The home energy auditor must provide a written report (to the taxpayer) that identifies the most significant and cost-effective energy efficiency improvements for that dwelling, including an estimate of the energy and cost savings for each such improvement. The auditor must meet the certification or other requirements specified by the Department of the Treasury and the Internal Revenue Service in forthcoming guidance." The Fact Sheet also clarifies that the § 25C credit with respect to home energy audits may be claimed by a taxpayer renting a home as their principal residence provided such home is located in the United States.

SECTION 3. DEFINITIONS

.01 Home Energy Audit Credit. The term "Home Energy Audit Credit" means the § 25C credit allowed to individuals by reason of § 25C(a)(3) equal to 30 percent of the amount paid or incurred for Home Energy Audits in the taxable year, up to \$150 per taxable year.

.02 Home Energy Audit. The term "Home Energy Audit" means an inspection and written report (audit) with respect to a dwelling unit located in the United States and owned or used by the taxpayer as the taxpayer's principal residence (within the meaning of § 121) that meets each of the following requirements.

(1) The audit identifies the most significant and cost-effective energy efficiency improvements with respect to such dwelling unit, including an estimate of the energy and cost savings with respect to each such improvement,

(2) The inspection is conducted either by a Qualified Home Energy Auditor or under the supervision of a Qualified Home Energy Auditor,

(3) The written report is prepared and signed by a Qualified Home Energy Auditor, and

(4) The audit is consistent with the most recent Department of Energy (DOE)-led and industry-validated Jobs Task Analysis.²

.03 Qualified Home Energy Auditor. The term “Qualified Home Energy Auditor” means an individual who is a home energy auditor that is certified by a Qualified Certification Program at the time of the Home Energy Audit.

.04 Qualified Certification Program. The term “Qualified Certification Program” means a certification program described in section 4.03 of this notice.

SECTION 4. CERTIFICATIONS AND OTHER REQUIREMENTS FOR QUALIFIED HOME ENERGY AUDITORS.

.01 In General. Except as otherwise provided in section 6 of this notice, the forthcoming proposed regulations would provide that a taxpayer may claim the Home Energy Audit Credit for a taxable year only if the taxpayer pays or incurs amounts for a Home Energy Audit.

.02 Written Report. The forthcoming proposed regulations would require the Qualified Home Energy Auditor to provide the following information in the written report:

(1) The Qualified Home Energy Auditor’s name and the relevant employer identification number (EIN) or other type of relevant taxpayer identifying number as referenced in § 301.6109-1(a)(1) (i) of the Procedure and Administration Regulations (26 CFR part 301) in lieu of an EIN,³

(2) An attestation that the Qualified Home Energy Auditor is certified by a Qualified Certification Program, and

(3) The name of such Qualified Certification Program.

.03 Qualified Certification Program. A Qualified Certification Program is a certification program that satisfies the criteria

described in section 4.03(1) and (2) of this notice for certifying home energy auditors and that is included in the list described in section 4.04 of this notice.

(1) The certification program must be reviewed and evaluated through the most recent DOE-led and industry-validated Jobs Task Analysis, demonstrating substantial alignment with key duties, tasks, knowledge, skills, and abilities of home energy auditors.

(2) The certification program must satisfy one of following standards development processes:

(a) The credentials are developed and maintained in accordance with industry standards using criteria such as those cited in the Department of Labor (DOL) Training and Employment Notice No. 25-19⁴, Attachment I, section b., or the most recent guidance from DOL on characteristics of credentials; or

(b) The program is accredited by the American National Standards Institute (ANSI), International Accreditation Service, or other qualified accreditation bodies that are in compliance with ISO/IEC 17024:2012, Conformity assessment – General requirements for bodies operating certification of persons.

.04 Qualified Certification Programs List. The list of Qualified Certification Programs is maintained by the DOE at the following web address: <https://www.energy.gov/eere/buildings/25c-energy-efficient-home-improvement-credit>. The listed Qualified Certification Programs are the exclusive certification programs through which an auditor can qualify as a Qualified Home Energy Auditor, and that will allow a taxpayer to claim the Home Energy Audit Credit. DOE intends to update the list on a rolling basis as it identifies additional Qualified Certification Programs.

SECTION 5. SUBSTANTIATION REQUIREMENT

The forthcoming proposed regulations would provide that taxpayers claiming

the Home Energy Audit Credit would be in compliance with the substantiation requirement under § 25C(b)(6)(B) if they (1) maintain the written report signed by the Qualified Home Energy Auditor as a record, pursuant to the general record-keeping and retention requirements under § 6001 and §1.6001-1, and (2) comply with the instructions for Form 5695, *Residential Energy Credits*, or any successor form required by the IRS.

SECTION 6. TRANSITION RULE

With respect to home energy audits conducted during taxable years ending after December 31, 2022, and conducted on or before December 31, 2023, a home energy auditor is not required to be a Qualified Home Energy Auditor as defined in section 3.03 of this notice. Therefore, taxpayers that paid or incurred expenses for a home energy audit that meets the requirements of § 25C, and that was conducted during taxable years ending after December 31, 2022, and conducted on or before December 31, 2023, may claim a Home Energy Audit Credit for such audit even if the auditor who conducted the home energy audit was not a Qualified Home Energy Auditor, as defined in section 3.03 of this notice, at the time of the home energy audit. However, taxpayers may not claim a Home Energy Audit Credit for home energy audits conducted after December 31, 2023, that were not conducted by a Qualified Home Energy Auditor.

SECTION 7. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (“PRA”) generally requires that a federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or

²The *Single-Family Energy Auditor Job Task Analysis* and a *Multifamily Energy Auditor Job/Task Analysis and Report* were developed by the National Renewable Energy Laboratory. Public comment informed the development of these documents. See Workforce Guidelines for Home Energy Upgrades, 75 FR 68781 (Nov. 9, 2010), available at: <https://www.federalregister.gov/documents/2010/11/09/2010-28289/workforce-guidelines-for-home-energy-upgrades>.

³If the Qualified Home Energy Auditor is acting in his or her capacity as a partner in a partnership, or as an employee of any person, whether an individual, corporation, or partnership, the relevant EIN is the EIN of the partnership or the person who employs the Qualified Home Energy Auditor.

⁴Employment & Training Administration Training and Employment Notice No. 25-19 (Jun. 08, 2020) available at: <https://www.dol.gov/agencies/eta/advisories/training-and-employment-notice-no-25-19>.

sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information contained in this notice includes recordkeeping requirements, as detailed in section 5 of this notice. These recordkeeping requirements are approved by OMB under 1545-0074.

Additionally, the notice includes a third-party disclosure requirement for Qualified Home Energy Auditors to

provide a written report (to the taxpayer) that identifies the most significant and cost-effective energy efficiency improvements for that dwelling, including an estimate of the energy and cost savings for each such improvement. The disclosure of these reports is considered a usual and customary business practice provided during the normal course of business in conducting a Home Energy Audit. This customary business practice imposes no additional burden on respondents.

SECTION 8. CONTACT INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317-6853 (not a toll-free number).

Part IV

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2023-23

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, appraisers, and unenrolled/unlicensed return preparers (individuals who are not enrolled to practice and are not licensed as attorneys or certified public accountants). Licensed or enrolled practitioners are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Subtitle A, Part 10, and which are released as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations. Unenrolled/unlicensed return preparers are subject to Revenue Procedure 81-38 and superseding guidance in Revenue Procedure 2014-42, which govern a preparer's eligibility to represent taxpayers before the IRS in examinations of tax returns the preparer both prepared for the taxpayer and signed as the preparer. Additionally, unenrolled/unlicensed return preparers who voluntarily participate in the Annual Filing Season Program under Revenue Procedure 2014-42 agree to be subject to the duties and restrictions in Circular 230, including the restrictions on incompetent or disreputable conduct.

The disciplinary sanctions to be imposed for violation of the applicable standards are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) for a minimum period of five (5) years.

Suspended from practice before the IRS—An individual who is suspended is not eligible to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to practice before the IRS, but OPR may subject the individual's future practice rights to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction, or on an employer, firm, or entity if the individual was acting on its behalf and it knew, or reasonably should have known, of the individual's conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Ineligible for limited practice—An unenrolled/unlicensed return preparer who fails to comply with the requirements in Revenue Procedure 81-38 or to comply with Circular 230 as required by Revenue Procedure 2014-42 may be determined ineligible to engage in limited practice as a representative of any taxpayer.

Under the regulations, individuals subject to Circular 230 may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision, Suspended by decision, Censured by decision, Monetary penalty imposed by decision, and Disqualified after hearing—An administrative law judge (ALJ) issued a decision imposing one of these sanctions after the ALJ either (1) granted the government's summary judgment motion or (2) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations. After 30 days from the

issuance of the decision, in the absence of an appeal, the ALJ's decision becomes the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR's complaint was filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current fitness and eligibility to practice (*i.e.*, an active professional license or active enrollment status, with no intervening violations of the regulations).

Suspended indefinitely by decision in expedited proceeding, Suspended indefinitely by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license for cause, and criminal convictions).

Determined ineligible for limited practice—There has been a final

determination that an unenrolled/unlicensed return preparer is not eligible for limited representation of any taxpayer because the preparer violated standards of conduct or failed to comply with any of the requirements to act as a representative.

A practitioner who has been disbarred or suspended under 31 C.F.R. § 10.60, or suspended under § 10.82, or a disqualified appraiser may petition for reinstatement before the IRS after the expiration of 5 years following such disbarment, suspension, or disqualification (or immediately following the expiration of the suspension or disqualification period if shorter than 5 years). Reinstatement will not be granted unless the IRS is satisfied that the petitioner is not likely to engage thereafter in conduct contrary to Circular 230, and that granting such reinstatement would not be contrary to the public interest.

Reinstatement decisions are published at the individual’s request, and described in these terms:

Reinstated to practice before the IRS—The individual’s petition for reinstatement has been granted. The agent, and eligible to practice before the IRS, or in the case of an appraiser, the individual is no longer disqualified.

Reinstated to engage in limited practice before the IRS—The individual’s petition for reinstatement has been granted. The individual is an unenrolled/unlicensed return preparer and eligible to engage in limited practice before the IRS, subject to requirements the IRS has prescribed for limited practice by tax return preparers.

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary’s delegate on appeal has issued a final

decision; (2) the individual has settled a disciplinary case by signing OPR’s “consent to sanction” agreement admitting to one or more violations of the regulations and consenting to the disclosure of the admitted violations (for example, failure to file Federal income tax returns, lack of due diligence, conflict of interest, etc.); (3) OPR has issued a decision in an expedited proceeding for indefinite suspension; or (4) OPR has made a final determination (including any decision on appeal) that an unenrolled/unlicensed return preparer is ineligible to represent any taxpayer before the IRS.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by state and second by the last names of the sanctioned individuals.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Alabama				
	Sumner, Elizabeth, see Mississippi			
Arizona				
Goodyear	Plimley, Rise H.	Enrolled Agent	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 30, 2023
California				
Larkspur	Blecka, John C.	CPA		Reinstated to practice before the IRS, effective 04/19/2023
Colorado				
Erie	Devaney, Cathleen A.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 30, 2023
Illinois				
Kingston	Jensen, Cynthia (Cyndi)	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 30, 2023
Louisiana				
Baton Rouge	Triche, Wayne A.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from June 6, 2023
Maryland				
Baltimore	Dailey, Mitzi E.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 3, 2023

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Massachusetts				
Wrentham	Hubbell, Scott C.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 30, 2023
Mississippi				
Meridian	Sumner, Elizabeth R.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from June 27, 2023
New Hampshire				
Manchester	Dunn, David C.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from June 21, 2023
North Carolina				
Charlotte	Caviness, Elizabeth J.	Attorney	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from June 21, 2023
	James, Andre, see Virginia			
Lexington	Rives, II, Leon L.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from June 27, 2023
Virginia				
Fairfax	James, Andre	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from April 17, 2023
Washington				
Bellevue	Shimizu, Steven G.	CPA	Suspended by default decision in expedited proceeding under 31 C.F.R. § 10.82(b)	Indefinite from May 30, 2023

Notice of Proposed Rulemaking

Revising Consolidated Return Regulations to Reflect Statutory Changes, Modernize Language, and Enhance Clarity

REG-134420-10

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; withdrawal of notices of proposed rulemaking; partial withdrawal of notices of proposed rulemaking; and proposed withdrawal of temporary regulations.

SUMMARY: This document contains proposed amendments to regulations applicable to affiliated groups of corporations that file consolidated Federal income tax returns. The proposed regulations would modify those regulations to reflect statutory changes, update language to remove antiquated or regressive terminology, and enhance clarity. Additionally, this document partially or completely withdraws certain notices of proposed rulemaking and proposes to withdraw certain temporary regulations. The proposed regulations would affect corporations filing consolidated returns.

DATES: As of August 7, 2023, the notices of proposed rulemaking published on November 14, 2001 (66 FR 57021), March 12, 2002 (67 FR 11070), May 31, 2002 (67 FR 38039), May 31, 2002 (67 FR 38040), March 14, 2003 (68 FR 12324), May 7, 2003 (68 FR 24404), March 18, 2004 (69 FR 12811), August 18, 2004 (69 FR 51209), August 26, 2004 (69 FR 52462), April 10, 2007 (72 FR 17814), and June 23, 2010 (75 FR 35710) are withdrawn. As of August 7, 2023, the notices of proposed rulemaking published on December 30, 1992 (57 FR 62251-01), March 18, 2004 (69 FR 12281), and June 11, 2015 (80 FR 33211) are partially withdrawn (see SUPPLEMENTARY INFORMATION for specific details).

Written or electronic comments as well as requests for a public hearing must be received by November 6, 2023. Requests for a public hearing must be submitted as prescribed in the “**Comments and Requests for a Public Hearing**” section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <https://www.regulations.gov> (indicate IRS and REG-134420-10). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG-134420-10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, William W. Burhop at (202) 317-5363 or Kelton P. Frye at (202) 317-5135 (not toll-free numbers); concerning the submission of comments and/or requests for a public hearing, Vivian Hayes by email at publichearings@irs.gov or by phone at (202) 317-5306 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking (NPRM) contains proposed regulations under sections 1502, 1503, 1552, and 1563 of the Internal Revenue Code of 1986 (Code). These proposed regulations primarily would revise the Income Tax Regulations (26 CFR part 1) under section 1502 (consolidated return regulations). Section 1502 authorizes the Secretary of the Treasury or the Secretary’s delegate (Secretary) to prescribe consolidated return 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 clearly reflect 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 (chapter 1) 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.

The proposed regulations also would revise or propose to remove other regulations under the Code. These regulations are set forth in (i) the Income Tax Regulations (26 CFR part 1), (ii) the Temporary Income Tax Regulations under the Revenue Act of 1978 (26 CFR part 5), (iii) the Regulations on Procedure and Administration (26 CFR part 301), and (iv) the OMB Control Numbers under the Paperwork Reduction Act Regulations (26 CFR part 602).

Explanation of Provisions

I. Overview

In this NPRM, the Treasury Department and the IRS have proposed revisions to the consolidated return regulations to (i) eliminate obsolete or otherwise outdated provisions, (ii) modernize the language and improve the clarity of the regulations, and (iii) facilitate taxpayer compliance. As an initial matter, the proposed regulations would update the consolidated return regulations to reflect statutory changes made by legislation enacted during the last 50-plus years and remove consolidated return regulations that have no practical applicability to taxpayers. The proposed regulations also would revise the consolidated return regulations to eliminate obsolete or otherwise incorrect terms and cross-references. Lastly, the proposed regulations generally would remove transition rules for transactions occurring in or before 2009 because the taxable years affected by such transition rules generally are closed and the rules have no practical applicability to taxpayers.

The proposed regulations also would update the consolidated return regulations and the regulations under section

1563 to eliminate antiquated or regressive terminology. For example, the proposed regulations would replace all gender-specific pronouns and other identifiers in the consolidated return regulations with gender-neutral pronouns and identifiers. The proposed regulations also would revise the consolidated regulations to identify (i) American Samoa, (ii) the Commonwealth of the Northern Mariana Islands, (iii) the Commonwealth of Puerto Rico, (iv) Guam, and (v) the U.S. Virgin Islands as “territories” of the United States rather than “possessions.” Each of those jurisdictions has its own government and its own tax system. These revisions are consistent with, and in furtherance of, the Treasury Department’s Equity Action Plan, as well as Executive Order 13985 of January 20, 2021, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 86 FR 7009 (January 25, 2021).

The proposed regulations also withdraw or partially withdraw numerous NPRMs. These NPRMs include: (i) NPRMs that are incorporated, in revised form, into these proposed regulations or that were incorporated into final regulations in revised form; (ii) a NPRM that became obsolete when proposed regulations provided in a subsequent, discrete NPRM were adopted as final regulations; and (iii) NPRMs that cross-referenced temporary regulations (the text of which served as the text for those proposals) that were removed, have expired, or otherwise have become obsolete. Additionally, the proposed regulations propose to withdraw temporary regulations that (i) no longer have practical applicability to taxpayers, or (ii) would be replaced by final regulations proposed by this document.

With regard to each provision of the consolidated return regulations that these proposed regulations would remove, the Treasury Department and the IRS generally have proposed to reserve the affected provision. This approach is intended solely to avoid cascading changes to cross-references throughout the consolidated return regulations, thereby preserving historical citations and reducing potential confusion for taxpayers. Accordingly, the reserving of those provisions does not indicate in any

manner that the Treasury Department and the IRS are studying, or intend to study, any of the one or more topics addressed by the reserved provision.

Lastly, the proposed regulations would remove numerous provisions that cross-reference prior-law editions of the Code of Federal Regulations (CFR). Following adoption of the proposed regulations as final regulations, taxpayers may consult the CFR for a particular year to determine the rules applicable to that year.

The Treasury Department and the IRS request comments on whether any aspect of the proposed regulations would effectuate a substantive revision of the consolidated return regulations, as opposed to a mere update or similar modification. Additionally, comments are requested on whether any provision proposed to be removed or revised by this document should be retained in its form as of August 4, 2023. Lastly, the Treasury Department and the IRS request comments identifying any other provision of the consolidated return regulations that should be revised consistent with the scope of the proposed regulations, such as additional provisions of the consolidated return regulations that are obsolete or otherwise outdated.

II. Summary of Proposed Changes

A. Removal of regulations that implement repealed statutory provisions

The proposed regulations would remove provisions of the consolidated return regulations that have been rendered obsolete by enacted legislation.

1. Section 1.1502-1 (definitions)

Sections 1.1502-1(f)(2) and (3) currently reference section 1562 of the Internal Revenue Code of 1954 (1954 Code), which allowed controlled groups of corporations (as defined in section 1563(a) of the 1954 Code) to elect multiple surtax exemptions. Section 1562 of the 1954 Code was repealed by section 401(a)(2) of the Tax Reform Act of 1969, Public Law 91-172, 83 Stat. 487 (December 30, 1969). The proposed regulations would remove from §1.1502-1(f) (2) and (3) all references to section 1562 of the 1954 Code.

2. Section 1.1502-11 (consolidated taxable income)

The proposed regulations would remove §1.1502-11(a)(6), which provides that consolidated taxable income for a consolidated return year is determined by taking into account any “consolidated section 922 deduction.” Section 922 of the 1954 Code (providing a deduction for Western Hemisphere trade corporations) was repealed for taxable years beginning after December 31, 1979, by section 1052(b) of the Tax Reform Act of 1976, Public Law 94-455, 90 Stat. 1520 (October 4, 1976). In 1984, a subsequent section 922 (relating to foreign sales corporations) was added to the 1954 Code by section 801(a) of the Deficit Reduction Act of 1984, Public Law 98-369, 98 Stat. 494 (July 18, 1984), which defined the term “FSC” for purposes of statutory provisions regarding the taxation of foreign sales corporations. This subsequent section 922 of the 1954 Code was redesignated as section 922 of the Code (by section 2(a) of the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085 (October 22, 1986)) before its repeal by section 2 of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000, Public Law 106-519, 114 Stat. 2423 (November 15, 2000). This repeal applies to transactions after September 30, 2000. See section 5(a) of the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

The proposed regulations also would revise §1.1502-11 to make other minor updates. Specifically, the proposed regulations would remove references to rules applicable to taxable years beginning before January 1, 1977, because those rules no longer have practical applicability to taxpayers. In addition, the proposed regulations would remove references to prior law regulations proposed to be withdrawn by this document.

3. Section 1.1502-12 (separate taxable income)

The proposed regulations would remove §1.1502-12(m), which provides that no deduction under now-repealed section 922 of the 1954 Code is taken into account in determining taxable income

of separate corporations (that is, separate taxable income). *See* part II.A.2 of this Explanation of Provisions (describing the repeal of section 922 of the 1954 Code). The proposed regulations also would revise §1.1502-12(n) to remove references to section 244 of the Code, which related to a special dividends-received deduction (DRD) for dividends received on certain preferred stock, and former section 247 of the Code, which related to a special DRD for dividends paid on certain preferred stock of public utilities. Sections 244 and 247 of the Code were repealed by section 221(a)(41)(A) of Division A of the Tax Increase Prevention Act of 2014, Public Law 113-295, 128 Stat. 4010 (December 19, 2014). Although section 13821(b)(1) of Public Law 115-97, 131 Stat. 2054 (December 22, 2017), commonly referred to as the “Tax Cuts and Jobs Act” (TCJA), added a new section 247 to the Code, that statutory provision allows deductions for certain contributions to Alaska Native Settlement Trusts and therefore is not applicable with regard to DRDs.

4. Section 1.1502-13 (intercompany transactions)

The proposed regulations would revise §1.1502-13(c)(5) to remove a reference to section 595 of the Code, which provided nonrecognition treatment for foreclosure on property that secured the payment of indebtedness. Section 595 of the Code was repealed by section 1616(b)(8) of the Small Business Jobs Protection Act of 1996, Public Law 104-188, 110 Stat. 1755 (August 20, 1996).

5. Section 1.1502-24 (consolidated charitable contributions deduction)

Section 1.1502-24(a) sets forth a rule to determine the amount of the consolidated charitable contributions deduction for a consolidated group. The proposed regulations would revise §1.1502-24(c) to remove the reference to section 242 of the 1954 Code, which allowed for a deduction for partially tax-exempt interest for C corporations. Section 242 of the 1954 Code was repealed by section 1901(a)(33) of the Tax Reform Act of 1976.

6. Section 1.1502-26 (consolidated dividends received deduction)

The proposed regulations would revise §1.1502-26 by removing paragraphs (a)(2) through (6) of that section, which provide rules to calculate a consolidated DRD by taking into account thrift institution members of the group (including such members that compute a deduction based on the “percentage of taxable income method” under section 593(b)(2) of the Code). Section 1616(a) of the Small Business Jobs Protection Act of 1996 added section 593(f) to the Code. Section 593(f) provides that sections 593(a) through (d) of the Code do not apply to any taxable year beginning after December 31, 1995.

7. Section 1.1502-27 (consolidated section 247 deduction) and related provisions

As discussed in part II.A.3 of this Explanation of Provisions, (i) section 247 of the Code was repealed by section 221(a)(41)(A) of Division A of the Tax Increase Prevention Act of 2014; and (ii) section 13821(b)(1) of the TCJA added to the Code a new section 247, which allows deductions for certain contributions to Alaska Native Settlement Trusts. Accordingly, the proposed regulations would remove §1.1502-27, which provides rules under the version of section 247 of the Code repealed by the Tax Increase Prevention Act of 2014. The proposed regulations also would (i) remove §1.1502-11(a)(8), which solely provides a reference to a consolidated section 247 deduction computed under §1.1502-27, and (ii) revise §§1.1502-24(c) and 1.1502-43(b)(2)(iii), to remove a cross-reference to §1.1502-27 in each respective section.

8. Section 1.1502-42 (consolidated returns including thrift institutions) and related provisions

The proposed regulations would remove §1.1502-42, which provides rules for members of a consolidated group that are thrift institutions (that is, any member that is described in section 593(a) of the Code). Section 1.1502-42 became obsolete as a result of the enactment of section 593(f) of the Code by

section 1616(a) of the Small Business Jobs Protection Act of 1996, which provides that sections 593(a) through (d) of the Code do not apply to any taxable year beginning after December 31, 1995. The proposed regulations also would remove §1.1502-12(q), which provides solely that a thrift institution’s deduction under section 593(b)(2) of the Code is determined under §1.1502-42.

9. Section 5.1502-45 (at-risk limitation temporary regulations)

The Treasury Department and the IRS published §5.1502-45 as temporary regulations relating to the application of the at-risk limitations under section 465 of the 1954 Code to corporations that join with their subsidiaries in filing a consolidated return. *See* TD 7685, published in the **Federal Register** (45 FR 16484) on March 14, 1980 (at-risk limitation temporary regulations). Prior to the publication of §5.1502-45, the Treasury Department determined that consolidated groups were actively considering transactions or plans to avoid the at-risk limitations. *See* preamble to the at-risk limitation temporary regulations, 45 FR 16484. Under the temporary regulations, if a parent meets the stock ownership test for a personal holding company, a subsidiary’s loss from an activity to which section 465 of the Code (as redesignated by section 2(a) of the Tax Reform Act of 1986) applies will be allowed as a deduction on a consolidated return only to the extent that the parent is at risk in the activity of a subsidiary, under the principles of section 465 of the Code, as of the close of the subsidiary’s taxable year. *See id.*

Section 5.1502-45(a)(4) refers to section 465(c)(3)(D) of the 1954 Code, which was repealed by section 503(a) of the Tax Reform Act of 1986. The Treasury Department and the IRS understand that no proposed regulations ever were published with regard to §5.1502-45. Therefore, in addition to addressing the reference to repealed section 465(c)(3)(D) of the 1954 Code, this document proposes the entire text of §5.1502-45 as proposed §1.1502-45 and proposes to withdraw §5.1502-45. The Treasury Department and the IRS request comments on proposed §1.1502-45.

B. Updates to reflect amended statutory provisions

The proposed regulations would remove or revise regulations under section 1502 and other provisions of the Code that implement statutory provisions that have been substantially revised since those regulations were promulgated.

1. Section 1.167(c)-1 (limitations on methods of computing depreciation under section 167(b)(2), (3), and (4))

Section 1.167(c)-1(a)(5) provides a reference to certain provisions of the consolidated return regulations that address depreciation of property received by a member of an affiliated group from another member of the group during a consolidated return period. To implement amendments made by the TCJA to section 168(k) of the Code, the Department of the Treasury and the Internal Revenue Service published final regulations under §1.1502-68 that provide guidance regarding the additional first-year depreciation deduction under section 168(k). *See* TD 9916, published in the **Federal Register** (85 FR 71734) on November 10, 2020. *See also* sections 12001(b)(13), 13201, and 13204 of the TCJA. Accordingly, the proposed regulations would revise §1.167(c)-1(a)(5) to include a reference to §1.1502-68.

2. Section 1.1502-1(g) (definition of “consolidated return change of ownership”)

The proposed regulations would remove paragraph (g) of §1.1502-1, which provides rules to determine the occurrence of a consolidated return change of ownership (CRCO). The CRCO rules generally paralleled the ownership change rules of section 382 of the 1954 Code, as that section existed prior to enactment of the Tax Reform Act of 1986. *See* preamble to the NPRM published in the **Federal Register** (56 FR 4228, 4232) on February 4, 1991. Following the complete revision of section 382 of the 1954 Code by the Tax Reform Act of 1986, the Treasury Department and the IRS determined that the policies underlying the CRCO rules were

subsumed by the single-entity approach to the application of section 382 of the Code to consolidated groups. *See* section 621(a) of the Tax Reform Act of 1986. *See also* 56 FR at 4232. Accordingly, the Treasury Department and the IRS replaced the CRCO rules with the consolidated section 382 rules set forth in §§1.1502-90 through 1.1502-99. *See* TD 8679, published in the **Federal Register** (61 FR 33313) on June 27, 1996.

3. Section 1.1502-3 (consolidated tax credits)

The proposed regulations would remove §1.1502-3(e), which applies only to a CRCO that occurred during a consolidated return year for which the due date of the Federal income tax return (without extensions) is on or before March 13, 1998. *See* §1.1502-3(e)(3).

4. Section 1.1502-5 (consolidated estimated tax)

The Treasury Department and the IRS published proposed regulations in the **Federal Register** (57 FR 62251) on December 30, 1992, regarding the computation of the former alternative minimum tax (Former AMT) by consolidated groups and the allocation of related items (consolidated Former AMT proposed regulations). The proposed regulations would incorporate in revised form part of the consolidated Former AMT proposed regulations that proposed to amend the consolidated estimated tax provisions in §1.1502-5. The Treasury Department and the IRS received no comments on §1.1502-5 as proposed in the consolidated Former AMT proposed regulations.

The proposed regulations would revise §1.1502-5 to reflect the amendments to section 6655, which provides penalties for corporations failing to pay estimated income tax, made by section 10301(a) of the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, 101 Stat. 1330 (December 22, 1987). The proposed regulations also would remove references to section 6154 of the Code, which provided special rules for installment payments of estimated tax by corporations prior to the repeal of section 6154 of the Code

by section 10301(b)(1) of the Omnibus Budget Reconciliation Act of 1987, and would add a reference to section 59A, which was added to section 6655(g)(1) by section 14401(d)(4)(A) of the TCJA.

The consolidated Former AMT proposed regulations provided guidance on consolidated estimated taxes under the Former AMT in section 55 of the Code and the environmental tax under former section 59A of the Code. The Former AMT was made inapplicable to corporations by section 12001(a) of the TCJA, and former section 59A of the Code was repealed by section 221(a)(12)(A), Division A, of the Tax Increase Prevention Act of 2014. Current section 59A of the Code (as added by section 14401(a) of the TCJA) imposes the base erosion and anti-abuse tax, commonly referred to as the “BEAT.”

As a result of those amendments to the Code, the proposed regulations would make the following revisions to §1.1502-5. First, the proposed regulations would not incorporate provisions from the consolidated Former AMT proposed regulations that addressed these issues. However, section 10101 of Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022, amended section 55 of the Code to impose a new corporate alternative minimum tax based on adjusted financial statement income. This new corporate alternative minimum tax is commonly referred to as the corporate alternative minimum tax, or CAMT. Therefore, the proposed regulations would modify the definition of the term “tax” in §1.1502-5(b)(5) to add a reference to section 55(a). In addition, the proposed regulations would add a reference to section 59A (that is, the BEAT).

The Treasury Department and the IRS are actively working on guidance to implement the CAMT, including guidance on the application of the CAMT to consolidated groups. Accordingly, issues regarding the substantive operation of the CAMT will be addressed in that guidance. However, these proposed regulations would provide guidance regarding the computation of consolidated estimated taxes to take into account the CAMT liability of the consolidated group.

5. Section 1.1502-9 (consolidated overall foreign losses, separate limitation losses, and overall domestic losses)

The proposed regulations would revise §1.1502-9 to account for changes made by final foreign tax credit regulations (TD 9882) published in the **Federal Register** (84 FR 69022) on December 17, 2019. The final foreign tax credit regulations provide guidance relating to the determination of the foreign tax credit under the Code, implementing statutory changes made by the TCJA. In particular, the proposed regulations would revise §1.1502-9 to remove references to the fair market value method option for interest expense apportionment, which was repealed by section 14502 of the TCJA. Relatedly, the proposed regulations would (1) update citations set forth in §§1.1502-9(a) and 1.1502-9(c)(2)(ii) and (iii), and (2) add a reference to §1.861-13. In addition, the proposed regulations would update an internal cross-reference in §1.1502-9(b)(1).

6. Section 1.1502-12(g) (deductions under section 167 of the 1954 Code) and related provisions

Section 1.1502-12(g) was added to the consolidated return regulations by final regulations (TD 7246) published in the **Federal Register** (38 FR 758) on January 4, 1973. Section 1.1502-12(g) provides that, in the computation of the deduction under section 167 of the 1954 Code, property does not lose its character as new property as a result of a transfer from one member to another member during a consolidated return year if certain conditions are satisfied. Since the date of those final regulations, extensive changes to the depreciation rules of the Code have made §1.1502-12(g) obsolete. *See, for example*, section 201 of the Economic Recovery Tax Act of 1981, Public Law 97-34, 95 Stat. 172 (August 13, 1981) (enacting section 168 of the 1954 Code, which provided the accelerated cost recovery system); section 201(a) of the Tax Reform Act of 1986 (amending section 168 of the Code, as redesignated by section 2(a) of the Tax Reform Act of 1986, to replace generally the accelerated cost recovery system with the modified accelerated cost recovery system).

As a result of the obsolescence of §1.1502-12(g) due to the above-described enacted legislation, the proposed regulations would remove that provision. Relatedly, the proposed regulations would revise §§1.57-1(b)(4)(ii) and 1.167(c)-1(a)(5) to remove cross-references to §1.1502-12(g). The proposed regulations also would remove the second sentence of §1.1502-17(a), which refers the reader to §1.1502-12(g) for the treatment of depreciable property after a transfer within the group.

7. Section 1.1502-24 (consolidated charitable contributions deduction)

As noted in part II.A.5 of this Explanation of Provisions, §1.1502-24(a) sets forth a rule to determine the amount of the consolidated charitable contributions deduction for a group. Section 1.1502-24(a)(2) includes a reference to “five percent” of the adjusted consolidated taxable income of a group, which is based on section 170(b)(2) of the 1954 Code, as that section existed prior to enactment of the Economic Recovery Tax Act of 1981. Section 263(a) of the Economic Recovery Tax Act of 1981 amended section 170(b)(2) of the 1954 Code to increase the deduction limitation for corporations from 5 percent of the taxpayer’s total income for a taxable year to 10 percent of that income.

The proposed regulations would revise §1.1502-24(a)(2) to replace the reference to “five percent” with a reference to the “percentage limitation on the total charitable contribution deduction provided in section 170(b)(2)(A).” The Treasury Department and the IRS have proposed this revision, as opposed to a reference to “10 percent” (as currently set forth in section 170(b)(2)(A) of the Code), to reduce the need to provide future statutory updates to §1.1502-24. *See* paragraph 9 of the Proposed Amendments to the Regulations, set forth in the NPRM (REG-101652-10) published in the **Federal Register** (80 FR 33211) on June 11, 2015.

8. Section 1.1502-26 (consolidated dividends received deduction)

Section 1.1502-26 provides rules for determining the consolidated DRD for the

taxable year of a group. On several occasions since the publication of the original version of §1.1502-26 in 1966, Congress has enacted legislation that amended the corporate DRD sections of the 1954 Code and the Code – most recently by section 13002 of the TCJA. To update §1.1502-26 to reflect the corporate DRD provisions of the Code, the proposed regulations would revise §1.1502-26(a) to replace the reference to the 85-percent DRD (reflecting the rate set forth in section 246(b)(1) of the 1954 Code, prior to the enactment of section 611(a)(3) of the Tax Reform Act of 1986) with a reference to the limitation on the aggregate amount of dividends-received deductions described in section 246(b) of the Code.

In addition, the proposed regulations would strike the reference to section 244 of the Code in §1.1502-26(a), and the reference to section 247 of the Code in §1.1502-26(b), both of which were repealed by section 221(a)(41)(A) of Division A of the Tax Increase Prevention Act of 2014. The proposed regulations also would revise the examples in §1.1502-26(c) to reflect the updates made to §1.1502-26.

9. Section 1.1502-34 (special aggregate stock ownership rules)

Section 1.1502-34 provides that, for purposes of §§1.1502-1 through 1.1502-80, in determining the stock ownership of a member of a group in another corporation (issuing corporation) for purposes of determining the application of now-repealed section 333(b) of the 1954 Code, section 165(g)(3)(A) of the Code, section 332(b)(1) of the Code, section 351(a) of the Code, section 732(f) of the Code, or section 904(f) of the Code, in a consolidated return year, there is included stock owned by all other members of the group in the issuing corporation. Section 1.1502-34 also provides that the special rule for minority shareholders in now-repealed section 337(d) of the 1954 Code does not apply with respect to amounts received by applicable member shareholders in a liquidation of the issuing member.

Numerous statutory amendments have impacted the provisions described in §1.1502-34. First, section 333 of the 1954 Code was repealed by section 631(e)(3) of

the Tax Reform Act of 1986. In addition, section 631(a) of the Tax Reform Act of 1986 struck section 337 of the 1954 Code and replaced that provision with section 337 of the Code, which sets forth a subsection (d) that provides the Secretary with authority to prescribe regulations that are necessary or appropriate to carry out the purposes of *General Utilities* repeal. Lastly, section 337(c) of the Code was amended by section 10223(a) of title X of the Omnibus Budget Reconciliation Act of 1987 to clarify that, for purposes of section 337 of the Code, “the determination of whether any corporation is an 80-percent distributee shall be made without regard to any consolidated return regulation.”

The proposed regulations would revise §1.1502-34 to reflect those statutory amendments. Specifically, the proposed regulations would revise §1.1502-34 to remove references to sections 333 and 337(d) of the 1954 Code. To reduce the need for future updates, the proposed regulations also would replace the reference to “§§1.1502-1 through 1.1502-80” with a reference to “the consolidated return regulations,” as defined in proposed §1.1502-1(g). See part II.D.1 of this Explanation of Provisions.

10. Section 1.1502-79(d) (carryover and carryback of consolidated unused foreign tax)

Section 1.1502-79(d) provides rules addressing the apportionment of carryover and carryback of consolidated unused foreign tax to separate return years. The proposed regulations would update §1.1502-79 to reflect changes to the foreign tax credit rules enacted since the regulation was issued as part of the 1966 final consolidated return regulations (TD 6894), published in the **Federal Register** (31 FR 11794) on September 8, 1966.

Specifically, the proposed regulations would revise §1.1502-79(d) to remove references to the per-country foreign tax credit limitation that was repealed by section 1031(a) of the Tax Reform Act of 1976, update citations from section 904(d) to section 904(c) to reflect amendments to the 1954 Code made by section 1031(a) of the Tax Reform Act of 1976, and update a cross-reference from §1.1502-4(e) to

§1.1502-4(d) to reflect the revision of §1.1502-4 made by final regulations (TD 9922) published in the **Federal Register** (85 FR 71998) on November 12, 2020.

11. Section 1.1552-1 (earnings and profits of members of consolidated groups)

Section 1.1552-1 requires generally that, for purposes of determining the earnings and profits of each member of an affiliated group that is required to be included in a consolidated return for the group filed for a taxable year beginning after December 31, 1953, and ending after August 16, 1954, the tax liability of the group is allocated among the members of the group in accordance with certain elected methods under §1.1552-1(c). See §1.1552-1(a). Currently, §1.1552-1(a)(2)(ii)(i) contains references to a corporate surtax exemption.

However, section 301(a) of the Revenue Act of 1978, Public Law 95-600, 92 Stat. 2763 (November 6, 1978), struck section 11 of the 1954 Code and replaced that section with a new section 11 of the 1954 Code, which set forth a corporate income tax rather than a corporate surtax. Accordingly, the proposed regulations would revise §1.1552-1(a)(2)(ii)(i) to remove the reference to the repealed corporate surtax.

12. Section 1.1563-1 (controlled group of corporations and component members)

Section 1563(a) and 1.1563-1 define the term “controlled group of corporations” for purposes of sections 1561 through 1563 of the Code as including a “parent-subsidiary controlled group.” Section 1563(a)(1) defines a parent-subsidiary controlled group. In this regard, section 1563(d)(1) provides rules for determining stock ownership for purposes of determining whether a corporation is a member of a parent-subsidiary controlled group of corporations within the meaning of section 1563(a)(1). Section 1.1563-1(a)(2) incorporates these rules in defining a parent-subsidiary controlled group.

Prior to amendment by the Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647, 102 Stat. 3342 (November 10, 1988), section 1563(d)(1) of the Code provided that for purposes

of determining whether a corporation is a member of a parent-subsidiary controlled group of corporations, stock owned by a corporation means (A) stock owned directly by such corporation, and (B) stock owned with the application of section 1563(e)(1), which provides constructive ownership rules related to options to acquire stock. Similarly, §1.1563-1(a)(2)(i)(A) and (B) provide that ownership of stock for purposes of determining a parent-subsidiary controlled group takes into account stock owned “(directly and with the application of §1.1563-3(b)(1), relating to options).”

Section 1018(s)(3)(A) of the Technical and Miscellaneous Revenue Act of 1988 amended section 1563(d)(1)(B) to expand the application of the constructive ownership rules of section 1563(e) for purposes of section 1563(d)(1) to include the constructive ownership rules of section 1563(e)(2) relating to attribution from partnerships and section 1563(e)(3) relating to attribution from estates or trusts. Accordingly, the proposed regulations would revise §1.1563-1(a)(2)(i)(A) and (B) to include references to the constructive stock ownership rules in §1.1563-3(b)(2) that attribute ownership of stock directly or indirectly owned by or for a partnership and the constructive stock ownership rules in §1.1563-3(b)(3) that attribute ownership of stock directly or indirectly owned by or for an estate or trust, to conform with the statutory amendment to section 1563(d)(1)(B).

C. Removal of non-applicable consolidated return regulations; revisions to remove obsolete or outdated references or terms

The proposed regulations would remove numerous Treasury regulations that are obsolete because they no longer are applicable under their stated effective or applicability dates. In addition, the proposed regulations would revise numerous Treasury regulations that contain references or terms that have no practical applicability to taxpayers because they are, for example, obsolete or otherwise outdated. Further, the proposed regulations would replace all gender-specific pronouns and other identifiers in the consolidated return

regulations with gender-neutral pronouns and identifiers.

1. The “Cap A” consolidated return regulations

Certain consolidated return regulations are designated with an “A” in the citation (for example, §1.1502-9A). These regulations (Cap A regulations) generally are applicable only to taxable years ending in 1999 or earlier. The Cap A regulations provide rules regarding overall foreign loss recapture (§1.1502-9A), built-in deductions (§1.1502-15A), consolidated net operating losses (§1.1502-21A), consolidated capital gain or loss (§§1.1502-22A and 1.1502-41A), consolidated net “section 1231” gain or loss (§1.1502-23A), the agent for the group (§1.1502-77A), separate return years (§1.1502-79A), and the application of section 382 of the Code (§§1.1502-90A through 1.1502-99A).

The Cap A regulations have been superseded, in their entirety, by §§1.1502-9, 1.1502-15, 1.1502-21 through 1.1502-23, 1.1502-77, 1.1502-79, and 1.1502-90 through 1.1502-99. Therefore, with one exception, the proposed regulations would remove the Cap A regulations.

The proposed regulations would not remove §1.1502-77A because that section has continuing applicability with regard to IRS examination and audit functions. Specifically, the IRS examination function has ongoing audits in which the years at issue are subject to the agent for the group rules in §1.1502-77A. Because those rules address threshold issues including which entity may act on behalf of the group, and thus the validity of any filing by the group, §1.1502-77A continues to have practical applicability for taxpayers.

The proposed regulations also would make conforming revisions to the consolidated return regulations due to the near-total removal of the Cap A regulations. For example, the proposed regulations would revise §§1.1502-11, 1.1502-43, and 1.1502-44 to remove all cross-references to the Cap A regulations. The proposed regulations also would revise §1.382-8 (relating to controlled groups) to remove §1.382-8(i), which provides references to the Cap A regulations.

2. Section 1.1502-13 (intercompany transactions)

The proposed regulations would revise §1.1502-13 to remove outdated transition rules and references. Specifically, the proposed regulations would (i) revise §1.1502-13(a)(3)(i) to remove a transition rule for consolidated return years beginning on or after November 7, 2001; (ii) revise §1.1502-13(f)(5)(ii)(B)(2) to remove cross-references to obsolete temporary regulations that affected certain liquidations where the original Federal income tax return for the year of liquidation was filed on or before November 3, 2009; and (iii) revise §1.1502-13(f)(6) (v) to remove references to transactions occurring before July 12, 1995.

3. Section 1.1502-17 (methods of accounting)

Section 1.1502-17 provides generally that the method of accounting to be used by each member of the group must be determined in accordance with the provisions of section 446 of the Code as if such member filed a separate return. *See* §1.1502-17(a). Section 1.1502-17(e) refers taxpayers to §1.1502-17 (as contained in the 26 CFR part 1 edition revised as of April 1, 1995) for changes in method of accounting effective for years beginning before July 12, 1995. The proposed regulations would revise §1.1502-17(e) to strike that language because it has no practical applicability to taxpayers.

4. Section 1.1502-18 (inventory adjustment)

Section 1.1502-18 provides that, if a member of a group filing a consolidated return for the taxable year (i) was a member of the group for its immediately preceding taxable year, and (ii) filed a separate return for that preceding year, then the intercompany profit amount of that corporation for that separate return year (that is, the initial inventory amount) is added to the income of that corporation for the consolidated return year or years in which the goods to which the initial inventory amount is attributable are disposed of outside the group or that corporation becomes a non-member. *See*

§1.1502-18(b). Section 1.1502-18(a) provides that, for purposes of §1.1502-18 and subject to certain exceptions, the term “intercompany profit amount” for a taxable year means an amount equal to the profits of a corporation arising in transactions with other members of the group with respect to goods that are, at the close of such corporation’s taxable year, included in the inventories of any member of the group. *See* §1.1502-18(a).

However, paragraphs (a) through (f) of §1.1502-18 do not apply for taxable years beginning on or after July 12, 1995. *See* §1.1502-18(g). Therefore, the special rules set forth in §1.1502-18 have no practical applicability to taxpayers.

As a result, the proposed regulations would remove §1.1502-18 and make conforming revisions to other Treasury regulations. With regard to such conforming revisions, the proposed regulations would remove §1.279-6(d)(4), which provides that members of an affiliated group that file a consolidated return must not apply the provisions of §1.1502-18 dealing with inventory adjustments in determining earnings and profits for purposes of §1.279-6. The proposed regulations also would remove §1.1502-12(e), which requires that, in computing the separate taxable income of a member, inventory adjustments must be made as provided in §1.1502-18.

5. Section 1.1502-21 (net operating losses)

Section 1.1502-21(b)(3)(i) and (ii) provide rules for consolidated groups to make irrevocable elections to relinquish certain carryback periods with regard to consolidated net operating losses. Elections under each of §1.1502-21(b)(3)(i) and (ii) must be made through statements filed pursuant to rules set forth in those provisions. Each provision provides that, if the consolidated return year in which the loss arises begins before January 1, 2003, the statement making the election must be signed by the common parent. The proposed regulations would revise §1.1502-21(b)(3)(i) and (b)(3)(ii)(B) to remove those special instructions regarding elections for pre-2003 taxable years because those special rules no longer have practical applicability to taxpayers.

The proposed regulations also would remove §1.1502-21(d), which provides coordination rules for CRCOs that occurred before January 1, 1997. See part II.B.2 of this Explanation of Provisions (describing the replacement of the CRCO rules with the consolidated section 382 rules set forth in §§1.1502-90 through 1.1502-99).

6. Section 1.1502-22 (consolidated capital gain and loss)

Section 1.1502-22 provides generally that determinations under section 1222 (including capital gain and loss) with respect to members during consolidated return years are not made separately; rather, consolidated amounts are determined for the group as a whole. See §1.1502-22(a). The proposed regulations would remove §1.1502-22(d), which provides coordination rules for CRCOs that occurred before January 1, 1997. See part II.B.2 of this Explanation of Provisions.

7. Section 1.1502-24 (consolidated charitable contributions deduction)

The proposed regulations would revise §1.1502-24(c) to remove the reference to §1.1502-25, which provided rules for groups to compute a “consolidated section 922 deduction.” See part II.A.2 of this Explanation of Provisions (describing the repeal of section 922 of the 1954 Code by the Tax Reform Act of 1976). Section 1.1502-25 was removed by final regulations (TD 8474) published in the **Federal Register** (58 FR 25556) on April 27, 1993, which removed final and temporary regulations relating primarily to provisions of prior law in accordance with the Regulatory Burden Reduction Initiative of the Treasury Department and the IRS.

8. Section 1.1502-75 (filing of consolidated returns)

Section 1.1502-75(h)(2) provides that, if a group wishes to file a consolidated return for a taxable year, then a Form 1122, *Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*, must be executed by each subsidiary. Section 1.1502-75(h)(2) also provides that, (i) for

taxable years beginning after December 31, 2002, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return; but (ii) for taxable years beginning before January 1, 2003, the executed Forms 1122 must be attached to the consolidated return for the taxable year. This transition rule for taxable years beginning before January 1, 2003, no longer has practical applicability to taxpayers. Therefore, the proposed regulations would revise §1.1502-75(h)(2) to provide simply that the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return.

9. Section 1.1502-76 (taxable year of members of group)

Section 1.1502-76 sets forth rules for the taxable year of members of a group. The proposed regulations would revise §1.1502-76(b)(1)(ii)(A)(2) and (b)(2)(v) to remove references to transactions occurring before November 10, 1999, because those references have no practical applicability to taxpayers.

10. Section 1.1502-80 (applicability of other provisions of law)

Section 1.1502-80 provides generally that (i) the Code, or other law, is applicable to the group to the extent the consolidated return regulations do not exclude its application; and (ii) to the extent not excluded, other rules operate in addition to, and may be modified by, the regulations. See §1.1502-80(a)(1). Section 1.1502-80(c)(2) provides a cross-reference to §1.1502-36 for additional rules relating to worthlessness of subsidiary stock on or after September 17, 2008. The proposed regulations would remove the reference to that date because it no longer has practical applicability to taxpayers.

Section 1.1502-80 also sets forth a special rule that provides that section 357(c) of the Code does not apply to any transaction to which §1.1502-13 and other specified sections of the consolidated return regulations apply. See §1.1502-80(d).

A concern arose in response to this rule that, because §1.1502-80(d) provides that section 357(c) of the Code does not apply to

certain intragroup section 351 exchanges, no liabilities can technically be excluded under section 357(c)(3). See preamble to proposed regulations (REG-137519-01) published in the **Federal Register** (66 FR 57021, 57022) on November 14, 2001 (proposed consolidated section 357(c) regulations). Therefore, in such an intragroup section 351 exchange, the transferor’s basis in the stock of the transferee received in the transfer first would be reduced by liabilities assumed by the transferee, including those liabilities described in section 357(c)(3) of the Code that would not have reduced basis had section 357(c) applied. See *id.* Then, the transferor’s basis in the stock of the transferee would be reduced a second time under the principles of §1.1502-32 at the time the liability does in fact give rise to a deduction on the part of the transferee and is taken into account on the consolidated return. See *id.* This result ultimately could cause the transferor to recognize an amount of gain on the sale of the stock of the transferee that does not clearly reflect income. See *id.*

The Treasury Department and the IRS published the proposed consolidated section 357(c) regulations to eliminate potential duplicative stock basis reductions arising from such transactions. Specifically, those proposed regulations were published to clarify that, in certain transfers described in section 351 of the Code between members of a consolidated group, a transferee’s assumption of liabilities described in section 357(c)(3)(A) of the Code, other than those also described in section 357(c)(3)(B) of the Code, will not reduce the transferor’s basis in the transferee’s stock received in the exchange. See Explanation of Provisions to the proposed consolidated section 357(c) regulations, 66 FR 57021.

However, upon reflection, the proposed rule is unnecessary because §§1.1502-32 and 1.1502-80 prevent any duplicative stock basis reduction. See §1.1502-32(a)(2) (providing that a member’s basis in its subsidiary’s stock “must not be adjusted under this section and other rules of law in a manner that has the effect of duplicating an adjustment.”); §1.1502-80(a)(2) (“Nothing in these regulations shall be interpreted or applied to require an adjustment, inclusion, or other item to the extent

it would have the effect of duplicating any other adjustment, inclusion, or other item required under the Code or other rule of law, including other provisions of these regulations.”). Accordingly, this document withdraws those proposed regulations.

11. Section 1.1502-81T (Alaska Native Corporations)

In 1984, Congress enacted legislation to revise the affiliation requirements under section 1504(a) of the 1954 Code to incorporate an 80-percent equity ownership test. See section 60(a) of the Deficit Reduction Act of 1984. However, the applicability of these statutory amendments was delayed until 1992 with respect to the affiliation of a corporation with an Alaska Native Corporation (ANC) established under the Alaska Native Claims Settlement Act, Public Law 92-203, 85 Stat. 688 (December 18, 1971). See section 60(b)(5) of the Deficit Reduction Act of 1984. Moreover, section 1804(e)(4) of the Tax Reform Act of 1986 struck section 60(b)(5) of the Deficit Reduction Act of 1984 and replaced that provision with a provision that, for any taxable year beginning after 1984 and before 1992, relaxed the requirements for affiliation with an ANC or with a wholly owned ANC subsidiary. Accordingly, until 1992, the pre-1984 affiliation requirements contained in section 1504(a) of the 1954 Code governed affiliation with an ANC or with a wholly owned ANC subsidiary, without regard to escrow arrangements, redemption rights, or similar provisions.

The Treasury Department and the IRS published temporary regulations to implement those statutory provisions (ANC temporary regulations). See TD 8130, published in the **Federal Register** (52 FR 8447) on March 18, 1987. Specifically, §1.1502-81T makes clear that the statutory ANC affiliation rules resulted in no tax saving, tax benefit, or tax loss to any person, other than the use of the losses and credits of an ANC and its wholly owned subsidiaries. See preamble to the ANC temporary regulations (52 FR 8447).

In particular, the ANC temporary regulations provided that, except as approved by the Secretary, no positive adjustment under §1.1502-32(b)(1) would be made with respect to the basis of stock of a

corporation that is affiliated with an ANC through application of the ANC affiliation rules. *Id.* In general, such approval by the Secretary took into account the economic effect of the investment by the ANC in the corporation with which it is so affiliated. *Id.* The proposed regulations propose to withdraw §1.1502-81T because those special affiliation rules no longer have practical applicability to taxpayers.

12. Section 1.1502-99 (effective/applicability dates regarding consolidated return regulations addressing sections 382 and 383 of the Code)

The application of sections 382 and 383 of the Code in a consolidated return is addressed in §§1.1502-90 through 1.1502-99. In particular, §1.1502-99 provides effective and applicability dates and transition rules for §§1.1502-90 through 1.1502-99. The proposed regulations would revise §1.1502-99 to remove transition rules for testing periods that include June 25, 1999. Those transition rules have no practical applicability to taxpayers because taxable years subject to those transition rules generally are closed.

13. Section 1.1552-1 (earnings and profits)

Section 1.1552-1(a)(1)(ii) provides that the taxable income of a member is the separate taxable income determined under §1.1502-12, adjusted for certain items taken into account in the computation of consolidated taxable income. One item, set forth in §1.1552-1(a)(1)(ii)(B), is the “member’s capital gain net income (net capital gain for taxable years beginning before January 1, 1977) (determined without regard to any net capital loss carryover attributable to such member).” The proposed regulations would revise §1.1552-1(a)(1)(ii)(B) to remove the reference to net capital gain for taxable years beginning before January 1, 1977, because the reference to that date has no practical applicability to taxpayers.

14. Sections 1.1503-2 (dual consolidated loss) and 1.1503(d)-8 (effective dates)

Section 1.1503-2 provides rules to address dual consolidated losses incurred in

taxable years beginning on or after October 1, 1992, and before April 18, 2007 (or January 1, 2007, in limited instances). See §1.1503-2(h) (providing October 1, 1992, applicability date) §1.1503(d)-8 (providing April 18, 2007, and January 1, 2007, applicability dates). Dual consolidated losses incurred on or after April 18, 2007, or January 1, 2007, are subject to the rules set forth in §§1.1503(d)-1 through 1.1503(d)-7. See §1.1503(d)-8. Therefore, the proposed regulations would remove §1.1503-2 because that section has no practical applicability to taxpayers. For the same reason, the proposed regulations also would make conforming changes to the effective date provisions set forth in §1.1503(d)-8 to reflect the removal of §1.1503-2.

15. Removal of obsolete or gendered terminology

The proposed regulations would make nonsubstantive changes to the consolidated return regulations to removed obsolete or gendered terminology the proposed regulations would replace all gender-specific pronouns and other identifiers in the consolidated return regulations with gender-neutral pronouns and identifiers. See part I of this Explanation of Provisions. The proposed regulations would replace the term “possession” with the defined term “U.S. territory” in §§1.1502-4(d)(1) and 1.1503(d)-1(b)(7). See proposed §1.1502-1(l). The proposed regulations also would replace all gender-specific pronouns and other identifiers in the consolidated return regulations and the regulations under section 1563 of the Code with gender-neutral pronouns and identifiers.

D. Changes to Improve Clarity

The proposed regulations would make various revisions to the consolidated return regulations that are intended to increase their clarity and usability. These proposed revisions are limited to creating defined terms, updating cross-references, correcting numbering, and other minor, non-substantive edits.

1. Section 1.1502-1 (definitions)

Currently, the regulations under section 1502 of the Code reference the term

“consolidated return regulations” in several provisions, although that term is not defined in those regulations. In addition, certain provisions in the regulations published under section 1502 of the Code refer to multiple sections of the regulations. At the time of publication, those provisions were intended to refer to all regulations under section 1502. However, due to the publication of additional regulations under section 1502 of the Code, those references are no longer accurate. To avoid taxpayer confusion, the proposed regulations would add a defined term “consolidated return regulations” to §1.1502-1 that would not need to be updated to account for future additions to the regulations under section 1502 of the Code. See proposed §1.1502-1(g).

2. Section 1.1502-13(f)(7) (examples regarding intercompany transactions with respect to stock of members)

As part of final regulations (TD 9475) addressing corporate reorganizations and distributions under sections 368(a)(1)(D) and 354(b)(1)(B) of the Code, published in the **Federal Register** (74 FR 67053) on December 18, 2009, the Treasury Department and the IRS inserted a new *Example 4* into the intercompany transaction examples set forth in §1.1502-13(f)(7). However, those final regulations did not update internal cross-references to certain existing examples in §1.1502-13(f)(7), which were redesignated as a result of new *Example 4*. Accordingly, the proposed regulations would revise §1.1502-13(f)(7) to update those internal cross-references. More generally, the proposed regulations would add paragraph designations to undesignated examples throughout §1.1502-13.

3. Section 1.1502-32(b)(4) and (5) (waiver of loss carryovers from separate return limitation years and examples)

The proposed regulations would revise §1.1502-32(b)(4) to remove paragraphs that cross-reference provisions of the loss disallowance regulations under §1.1502-20 that were removed by final regulations (TD 9424) published in the **Federal Register** (73 FR 53934) on September 17, 2008 (final unified loss regulations).

Section 1.1502-20 provided loss-disallowance rules with regard to the disposition or deconsolidation of subsidiary stock. As provided in the preamble to the final unified loss regulations, the Treasury Department and the IRS do not expect that §1.1502-20 would affect any transactions occurring on or after September 17, 2008 (the applicability date of those final regulations). See 73 FR 53944. The proposed regulations would replace the removed paragraphs with cross-references to provisions set forth in §1.1502-32(b)(4), as contained in 26 CFR part 1, revised as of April 1, 2005.

Additionally, the proposed regulations would correct an error in *Example 6* of §1.1502-32(b)(5)(ii), which (1) addressed an intercompany reorganization described in section 368(a)(1)(A) of the Code (and in section 368(a)(1)(D) of the Code), and (2) treats a receipt of \$10 of boot as a dividend under section 356(a)(2) of the Code. This treatment of intercompany boot conflicts with §1.1502-13(f)(3)(ii), which expressly provides that nonqualifying property (that is, money or other property) received as part of such intercompany reorganization (that is, a transaction to which section 354 of the Code would apply but for the fact that nonqualifying property is received) is treated as received by the member shareholder in a separate transaction occurring immediately after the transaction.

4. Section 1.1502-47 (consolidated returns by life-nonlife groups)

The proposed regulations would revise §1.1502-47(b), (h), and (j) to correct certain typographical errors and update certain cross-references.

5. Section 1.1502-75 (filing of consolidated returns)

The proposed regulations would revise §1.1502-75(c)(1) to set forth the current procedures for a group to request to discontinue filing consolidated returns. The proposed regulations would remove §1.1502-75(d)(5), which applies to consolidated return years in which an existing consolidated group obtains a new common parent solely by reason of the enactment of section 833 of the Code as part of the Tax Reform Act of 1986.

This provision no longer has practical applicability to taxpayers. In addition, the proposed regulations would update §1.1502-75(h)(1) to reflect final regulations (TD 9715) that revise rules regarding agency for consolidated groups under §1.1502-77, which were published in the **Federal Register** (80 FR 17314) on April 1, 2015. The proposed regulations also would update §1.1502-75(h)(1) to reflect the elimination of the district director positions by the Commissioner pursuant to section 1001 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685 (July 22, 1998).

6. Section 1.1502-76 (taxable year of members of group)

The proposed regulations would revise §1.1502-76(a) to set forth the current procedures for taxpayers requesting consent of the Commissioner if at least one member of the group is on a 52-53-week taxable year and all members of the group have taxable years ending within the same 7-day period. The proposed regulations also would revise several examples in §§1.1502-76(c)(3) and 1.1502-77(g) to reflect changes to the due date for Federal corporate income tax returns set forth in section 6072(a) of the Code, as made by section 2006(a)(2) of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Public Law 114-41, 129 Stat. 443 (July 31, 2015).

7. Section 1.1502-79 (separate return years)

Section 1.1502-79(e)(2) provides a rule to determine the portion of the consolidated excess charitable contributions attributable to a member of a consolidated group. The proposed regulations would make non-substantive changes to enhance the clarity of that provision. In particular, the proposed regulations would separate the current one-sentence rule into three sentences, the first of which provides that the portion of the consolidated excess charitable contributions for any year attributable to a member is an amount equal to the consolidated excess contributions multiplied by a fraction. The second and third sentences set forth

the numerator and denominator of that fraction, respectively.

8. Section 1.1502-100 (corporations exempt from tax)

Section 1.1502-100 provides rules to compute the tax liability for a consolidated return year of a group of exempt corporations that files or is required to file a consolidated return for the taxable year. The proposed regulations would revise §1.1502-100(a)(2) to replace the reference to “§§1.1502-1 through 1.1502-80” with a reference to “the consolidated return regulations” (see the discussion in parts II.B.9 and II.D.1 of this Explanation of Provisions.) The proposed regulations also would revise §1.1502-100(d) to reflect the changes proposed by this document to §1.1502-12.

9. Removal of cross-references to prior-law versions of the CFR

In general, the proposed regulations would revise numerous provisions in the consolidated return regulations to remove cross-references to prior-law versions of the CFR. However, the proposed regulations would retain cross-references in the consolidated return regulations to prior-law CFRs with continuing relevance. In particular, the proposed regulations would retain cross-references relating to intercompany transactions and certain separate return limitation year issues.

E. Provisions Affected by Legislation That the Proposed Regulations Do Not Change

The proposed regulations would not modify certain provisions in the consolidated return regulations that have been affected by subsequent legislation. Principally, aside from the nonsubstantive change discussed in part II.B.3 of this Explanation of Provisions, the proposed regulations would not revise §1.1502-3 (relating to consolidated credits). Section 1.1502-3 provides rules for the former investment tax credit that existed prior to its replacement by the general business credit in section 211 of the Tax Reform Act of 1986. The proposed regulations also would not revise §1.1502-79(c), which

provides rules for the carryover and carry-back of unused investment credits to separate return years. Because of extensive changes to the relevant statutory provisions, substantive revisions of §§1.1502-3 and 1.1502-79(c) are beyond the scope of these proposed regulations. However, the Treasury Department and the IRS are considering updating §§1.1502-3 and 1.1502-79(c) to reflect current law, and the Treasury Department and the IRS request comments on potential revisions to these regulatory provisions.

F. Withdrawal of proposed regulations; proposed withdrawal of temporary regulations

1. Notices of Proposed Rulemaking Incorporated into the Proposed Regulations or into Final Regulations

This document withdraws the portions of two NPRMs that, in revised form, (i) have been incorporated into final regulations, or (ii) are incorporated into these proposed regulations in revised form.

a. Consolidated former alternative minimum tax proposed regulations

As discussed in part II.B.4 of this Explanation of Provisions, the Treasury Department and the IRS published the consolidated Former AMT proposed regulations on December 30, 1992, regarding the computation of the Former AMT by consolidated groups and the allocation of related items. This document withdraws proposed amendments to §1.1502-2, regarding the computation of a consolidated group’s tax liability, set forth in the consolidated Former AMT proposed regulations. These proposed amendments were incorporated, in revised form, into the base erosion and anti-abuse tax final regulations (TD 9885), published in the **Federal Register** (84 FR 66968) on December 6, 2019 (BEAT final regulations). However, the proposed amendments to §1.1502-2 set forth in the consolidated Former AMT proposed regulations were not withdrawn by the BEAT final regulations. Accordingly, this document withdraws the revisions to §1.1502-2 proposed by the consolidated Former AMT proposed regulations.

The consolidated Former AMT proposed regulations also would provide rules under §1.1552-1(h) governing the allocation of the environmental tax imposed by section 59A of the Code (as in effect at the time) to members for purposes of computing earnings and profits. Section 59A of the Code was repealed by section 221(a)(12)(A), Division A, of the Tax Increase Prevention Act of 2014. As a result, this document withdraws proposed §1.1552-1(h), as contained in the consolidated Former AMT proposed regulations.

b. Proposed regulations regarding absorption of members’ losses and to eliminate circular basis adjustments

The Treasury Department and the IRS published a NPRM (REG-101652-10) in the **Federal Register** (80 FR 33211) on June 11, 2015 (circular basis proposed regulations). The circular basis proposed regulations would provide guidance regarding the absorption of members’ losses in a consolidated return year, and provide guidance to eliminate circular adjustments to the basis of a group member. These circular basis proposed regulations would have (i) revised §§1.1502-11(a) and 1.1502-24 to remove references to repealed statutes or obsolete regulations, and (ii) removed §§1.1502-21A, 1.1502-22A, and 1.1502-23A. Because this document would (i) make the same revisions to §§1.1502-11(a) and 1.1502-24, and (ii) remove §§1.1502-21A, 1.1502-22A, and 1.1502-23A, this document withdraws the proposed revisions to §§1.1502-11(a), 1.1502-21A, 1.1502-22A, 1.1502-23A, and 1.1502-24 set forth in the circular basis proposed regulations.

2. NPRM that became obsolete as a result of incorporation of subsequent NPRM into final regulations

On March 18, 2004, the Treasury Department and the IRS published in the **Federal Register** (69 FR 12811) a NPRM (REG-153172-03) under §1.1502-80(c) (proposed loss limitation rules). The proposed loss limitation rules set forth guidance regarding (i) the deductibility of losses recognized on dispositions of subsidiary stock by members of a consolidated group, (ii) the consequences of treating

subsidiary stock as worthless, and (iii) when stock of a member of a consolidated group may be treated as worthless. The proposed loss limitation rules cross-referenced temporary regulations (TD 9118) published in the **Federal Register** (69 FR 12799) on the same day, the text of which served as the text for those proposals.

On July 18, 2007, the Treasury Department and the IRS published in the **Federal Register** (72 FR 39313) final regulations (TD 9341), which finalized a version of §1.1502-80(c) that had been proposed by an NPRM (REG-157711-02) published in the **Federal Register** (72 FR 2964) on January 23, 2007. Those final regulations removed §1.1502-80T(c) but did not withdraw the proposed loss limitation rules. Accordingly, this document withdraws the proposed loss limitation rules.

3. NPRMs that cross-reference temporary regulations that have been removed, have expired, or otherwise have become obsolete

a. NPRMs under §1.1502-20

The Treasury Department and the IRS published four NPRMs under §1.1502-20, which cross-referenced temporary regulations under §1.1502-20T published in the **Federal Register** on the same day, the text of which served as the text for those proposals. On September 17, 2008, the Treasury Department and the IRS published final regulations (TD 9424) in the **Federal Register** (73 FR 53934) that included the final unified loss rule under §1.1502-36. As a result of these final regulations, the Treasury Department and the IRS removed §§1.1502-20 and 1.1502-20T. However, the four NPRMs under §1.1502-20 were not withdrawn by those final regulations.

Accordingly, this document withdraws the four NPRMs under §1.1502-20, which consist of the following:

- (1) An NPRM (REG-102740-02) published in the **Federal Register** (67 FR 11070) on March 12, 2002, which cross-referenced the text of temporary regulations (TD 8984) published in the **Federal Register** (67 FR 11034) on the same day (March 12 unified loss proposed regulations).
- (2) An NPRM (REG-102305-02) published in the **Federal Register** (67

FR 38040) on May 31, 2002, which clarified and revised aspects of the March 12 unified loss proposed regulations and cross-referenced the text of temporary regulations (TD 8998) published in the **Federal Register** (67 FR 37998) on the same day.

- (3) An NPRM (REG-152524-02) published in the **Federal Register** (68 FR 24404) on May 7, 2003, which cross-referenced the text of temporary regulations (TD 9057) published in the **Federal Register** (68 FR 24351) on the same day.
- (4) An NPRM (REG-135898-04) published in the **Federal Register** (69 FR 52462) on August 26, 2004, which cross-referenced the text of temporary regulations (TD 9154) published in the **Federal Register** (69 FR 52419) on the same day.

b. NPRMs under §1.1502-21

The Treasury Department and the IRS published three NPRMs under §1.1502-21, which cross-referenced temporary regulations under §1.1502-21T published in the **Federal Register** on the same day, the text of which served as the text for those proposals. These NPRMs also contained proposed regulations under §1.1502-32 (see part II.F.3.c of this Explanation of Provisions).

Each of these temporary regulations under §1.1502-21T has expired or has been removed. However, the Treasury Department and the IRS have not yet withdrawn the three NPRMs under §1.1502-21.

Accordingly, this document withdraws three NPRMs under §1.1502-21, which consist of the following:

- (1) An NPRM (REG-122564-02) published in the **Federal Register** (67 FR 38039) on May 31, 2002, which addressed elections for consolidated groups to waive the carryback of certain losses arising in 2001 or 2002 and cross-referenced the text of temporary regulations (TD 8997) published in the **Federal Register** (67 FR 38000) on the same day.
- (2) An NPRM (REG-131478-02) published in the **Federal Register** (68 FR 12324) on March 14, 2003, which addressed losses treated as expired under §1.1502-35T(f)(1) on

and after March 7, 2002, and on or before March 11, 2006 (including corresponding basis adjustments), and cross-referenced the text of temporary regulations (TD 9048) published in the **Federal Register** (68 FR 12287) on the same day.

- (3) An NPRM (REG-151605-09) published in the **Federal Register** (75 FR 35710) on June 23, 2010, which addressed elections by consolidated groups to elect to extend a net operating loss carryback period arising in a single taxable year ending after December 31, 2007, and beginning before January 1, 2010, and cross-referenced the text of now-expired temporary regulations (TD 9490) published in the **Federal Register** (75 FR 35643) on the same day.

c. NPRMs under §1.1502-32

The Treasury Department and the IRS published five NPRMs under §1.1502-32 that cross-referenced temporary regulations under §1.1502-32T published in the **Federal Register** on the same day, the text of which served as the text for those proposals. Each of these temporary regulations under §1.1502-32T has expired or have been removed. However, the Treasury Department and the IRS have not yet withdrawn the corresponding five NPRMs under §1.1502-32.

Accordingly, this document withdraws the five NPRMs under §1.1502-32, which consist of the following:

- (1) An NPRM (REG-129274-04) published in the **Federal Register** (69 FR 51208) on August 18, 2004, which addressed elections for consolidated groups to waive the carryback of certain losses arising in 2001 or 2002 and cross-referenced the text of temporary regulations (TD 9155) published in the **Federal Register** (69 FR 51175) on the same day.
- (2) An NPRM (REG-156420-06) published in the **Federal Register** (72 FR 17814) on April 10, 2007 (proposed anti-avoidance and anti-loss reimportation regulations), which proposed an anti-avoidance rule and revised an anti-loss reimportation rule, and cross-referenced the text of temporary regulations (TD 9322)

published in the **Federal Register** (72 FR 17804) on the same day. The proposed anti-avoidance and anti-loss importation regulations also contained proposed regulations under §1.1502-35 (see part II.F.3.d of this Explanation of Provisions).

- (3) Each NPRM described in part II.F.3.b of this Explanation of Provisions.

d. NPRM under §1.1502-35

The Treasury Department and the IRS published two NPRMs under §1.1502-35, which cross-referenced temporary regulations under §1.1502-35T published in the **Federal Register** on the same day, the text of which served as the text for those proposals. The temporary regulations under §1.1502-35T have expired or have been removed. However, the Treasury Department and the IRS have not yet withdrawn the corresponding two NPRMs under §1.1502-35.

Accordingly, this document withdraws the two NPRMs under §1.1502-35, which consist of the following:

- (1) An NPRM (REG 153172-03) published in the **Federal Register** (69 FR 12811) on March 18, 2004, which proposed guidance regarding worthless subsidiary stock, and cross-referenced the text of temporary regulations (TD 9118) published in the **Federal Register** (69 FR 12799) on the same day.
- (2) The proposed anti-avoidance and anti-loss reimportation regulations, described in part II.F.3.c of this Explanation of Provisions.

Proposed Applicability Date

Pursuant to section 1503(a) of the Code, these proposed regulations would apply to consolidated return years for which the due date of the return (without regard to extensions) is after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review

Executive Orders 13563 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, reducing costs, harmonizing rules, and promoting flexibility.

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

These regulations update the regulations under section 1502 of the Code (that is, the consolidated return regulations) by revising and removing outdated and obsolete provisions, such as cross-references to temporary regulations, regulations, and statutes that have been repealed, removed, expired, renumbered, or otherwise have become obsolete. Therefore, the proposed regulations would not impose additional reporting burden beyond what is otherwise required by existing statutes, regulations, and forms. The total burden associated with the proposed regulations, if finalized in their current form, would be \$0.

III. Regulatory Flexibility Act

The proposed regulations would not impose a collection of information on small entities. Further, pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed regulations would apply only to corporations that file consolidated Federal income tax returns, and that such corporations tend to be larger businesses. Therefore, the proposed regulations would not create additional obligations

for, or impose an economic impact on, small entities.

Pursuant to section 7805(f) of the Code, the proposed regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. 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 2022, that threshold is approximately \$190 million. The proposed regulations do not propose any rule that would 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.

V. Executive Order 13132: Federalism

Executive Order 13132 (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. The proposed regulations do not propose rules that would have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “ADDRESSES” heading. The Treasury Department and

the IRS request comments on all aspects of the proposed regulations, including comments on any consolidated return rules not addressed in these proposed regulations that require revision or removal as a result of amendments to the Code or regulations made after such rules were promulgated. All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on <https://www.regulations.gov>.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, a notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2023-16, 2023-20 IRB 854, provides that, following the end of the national emergency concerning the Coronavirus Disease 2019 (COVID-19) pandemic, the IRS no longer will conduct public hearings on notices of proposed rulemaking solely by telephone for proposed regulations published in the **Federal Register** after May 11, 2023. A telephonic option will remain available for those who prefer to attend or testify at a public hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

Announcement 2023-16, 2023-20 IRB 854, is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal authors of this document are Kelton P. Frye and William W. Burhop of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and record-keeping requirements.

26 CFR Part 5

Income taxes, Reporting and record-keeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR parts 1, 5, 301, and 602 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for §§1.1503-2, 1.1502-9A, 1.1502-15A, 1.1502-21A, 1.1502-22A, 1.1502-23A, 1.1502-41A, 1.1502-79A, 1.1502-91A, 1.1502-92A, 1.1502-93A, 1.1502-94A, 1.1502-95A, 1.1502-96A, 1.1502-98A, and 1.1502-99A to read in part as follows:

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

§1.57-1 [Amended]

Par. 2. Section 1.57-1 is amended by removing the text “and § 1.1502-12(g)” from paragraph (b)(4)(ii).

Par. 3. Section 1.167(c)-1 is amended by revising paragraph (a)(5) to read as follows:

§1.167(c)-1 Limitations on methods of computing depreciation under section 167(b)(2), (3), and (4).

(a) * * *

(5) See §§1.1502-13 and 1.1502-68 for provisions dealing with depreciation of property received by a member of an affiliated group from another member of the group during a consolidated return period.

* * * * *

§1.279-6 [Amended]

Par. 4. Section 1.279-6 is amended by:

1. Removing the text “and” from the end of paragraph (d)(1).
2. Adding the text “and” to the end of paragraph (d)(2).
3. Removing the text “, and” from the end of paragraph (d)(3) and adding the text “.” in its place.
4. Removing paragraph (d)(4).

§1.382-8 [Amended]

Par. 5. Section 1.382-8 is amended by removing and reserving paragraph (i).

Par. 6. Section 1.1502-0 is revised to read as follows:

§1.1502-0 Effective/Applicability dates.

(a) *In general.* Except as provided in paragraph (b) of this section, the consolidated return regulations (as defined in §1.1502-1(g)) are applicable to taxable years beginning after December 31, 1965.

(b) *Exceptions.* The applicability date described in paragraph (a) of this section does not apply to any provision of the consolidated return regulations with an applicability or effective date different than the date provided by paragraph (a) of this section.

Par. 7. Section 1.1502-1 is amended by:

1. Adding introductory text.
2. Removing the text “,” from the end of paragraph (f)(2)(iii) and adding the text “.” in its place.
3. Removing the undesignated paragraph after paragraph (f)(2)(iii).
4. Removing the text “and for which section 1562 was not effective” from the last sentence of paragraph (f)(3).
5. Revising paragraph (g).
6. Redesignating paragraph (l) as paragraph (m).
7. Adding a new paragraph (l).

The revision and addition read as follows:

§1.1502-1 Definitions.

For purposes of the consolidated return regulations:

(g) *Consolidated return regulations.*

The term *consolidated return regulations* means the regulations under section 1502.

(1) *U.S. territory.* The term *U.S. territory* means—

(1) American Samoa;

(2) The Commonwealth of the Northern Mariana Islands;

(3) The Commonwealth of Puerto Rico;

(4) Guam; and

(5) The Virgin Islands of the United States.

§ 1.1502-3 [Amended]

Par. 8. Section 1.1502-3 is amended by removing and reserving paragraph (e).

§1.1502-4 [Amended]

Par. 9. Section 1.1502-4 is amended by removing the text “possession” from paragraph (d)(1) and adding the text “U.S. territory” in its place.

Par. 10. Section 1.1502-5 is revised to read as follows:

§1.1502-5 Estimated tax.

(a) *General rule*—(1) *Consolidated estimated tax.* If a group files a consolidated return for two consecutive taxable years, it must make payments of estimated tax on a consolidated basis for each subsequent taxable year until separate returns are filed. When filing on a consolidated basis, the group is generally treated as a single corporation for purposes of section 6655 (relating to payment of estimated tax by corporations). If separate returns are filed by the members for a taxable year, the amount of any estimated tax payments made with respect to a consolidated estimated tax for the year is credited against the separate tax liabilities of the members in any reasonable manner designated by the common parent.

(2) *First two consolidated return years.* For its first two consolidated return years,

a group may make payments of estimated tax on either a consolidated or a separate member basis. The amount of any separate estimated tax payments is credited against the consolidated tax liability of the group.

(b) *Addition to tax for failure to pay estimated tax under section 6655*—(1) *Consolidated return filed.* For its first two consolidated return years, a group may compute the amount of the penalty (if any) under section 6655 on a consolidated basis or a separate member basis, regardless of the method of payment. Thereafter, the group must compute the penalty for any consolidated return year on a consolidated basis.

(2) *Computation of penalty on consolidated basis.* (i) This paragraph (b) (2) provides rules for computing the penalty under section 6655 on a consolidated basis.

(ii) The tax shown on the return for the preceding taxable year referred to in section 6655(d)(1)(B)(ii) is, if a consolidated return was filed for that preceding year, the tax shown on the consolidated return for that preceding year or, if a consolidated return was not filed for that preceding year, the aggregate of the taxes shown on the separate returns of the common parent and any other corporation that was a member of the same affiliated group as the common parent for that preceding year.

(iii) If estimated tax was not paid on a consolidated basis, the amount of the group’s payments of estimated tax for the taxable year is the aggregate of the payments made by all members for the year.

(iv) If the common parent is otherwise eligible to use the section 6655(d)(1)(B) (ii) required annual payment rule, that rule applies only if the group’s consolidated return, or each member’s separate return if the group did not file a consolidated return, for the preceding taxable year was a taxable year of 12 months.

(3) *Computation of penalty on separate member basis.* To compute any penalty under section 6655 on a separate member basis, for purposes of section 6655(d)(1) (B)(i), the “tax shown on the return” for the taxable year is the portion of the tax shown on the consolidated return allocable to the member under paragraph (b) (6) of this section. If the member was

included in the consolidated return filed by the group for the preceding taxable year, for purposes of section 6655(d)(1) (B)(ii), the “tax shown on the return” for the preceding taxable year for any member is the portion of the tax shown on the consolidated return for the preceding year allocable to the member under paragraph (b)(6) of this section.

(4) *Consolidated payments if separate returns filed.* If the group does not file a consolidated return for the taxable year but makes payments of estimated tax on a consolidated basis, for purposes of section 6655(b)(1)(B), the “amount (if any) of the installment paid” by any member is an amount apportioned to the member in any reasonable manner designated by the common parent. If a member was included in the consolidated return filed by the group for the preceding taxable year, the amount of the member’s penalty under section 6655 is computed on the separate member basis described in paragraph (b)(3) of this section.

(5) *Tax defined.* For purposes of this section, the term “tax” means the excess of—

(i) The sum of—

(A) The consolidated tax imposed by section 11 or subchapter L of chapter 1, whichever applies;

(B) The tax imposed by section 55(a); plus

(C) The tax imposed by section 59A; over

(ii) The credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code.

(6) *Allocation of consolidated tax liability for determining earnings and profits.* For purposes of this section, the tax shown on a consolidated return is allocated to the members of the group by allocating any tax described in paragraph (b)(5)(i) of this section, net of allowable credits under paragraph (b)(5)(ii) of this section, under the method that the group has elected pursuant to section 1552 and §1.1502-33(d).

(c) *Examples.* The provisions of this section are illustrated by the following examples.

(1) *Example 1.* Corporations P and S1 file a consolidated return for the first time for calendar year 2021. P and S1 also file consolidated returns for calendar year 2022 and calendar year 2023. Under paragraph (a)(2) of this section, for the 2021 and 2022 taxable years, P and S1 may pay estimated tax on

either a separate or consolidated basis. Under paragraph (a)(1) of this section, for the 2023 taxable year, the group must pay its estimated tax on a consolidated basis. In determining whether P and S1 come within the exception provided in section 6655(d)(1)(B)(ii) for 2023, the “tax shown on the return” is the tax shown on the consolidated return for the 2022 taxable year.

(2) *Example 2.* Corporations P, S1, and S2 file a consolidated return for the first time for calendar year 2021 and file their second consolidated return for calendar year 2022. S2 ceases to be a member of the group on September 15, 2023. Under paragraph (b)(2) of this section, in determining whether the group (which no longer includes S2) comes within the exception provided in section 6655(d)(1)(B)(ii) for 2023, the “tax shown on the return” is the tax shown on the consolidated return for calendar year 2022.

(3) *Example 3.* Corporations P and S1 file a consolidated return for the first time for calendar year 2021 and file their second consolidated return for calendar year 2022. Corporation S2 becomes a member of the group on July 1, 2023, and joins in the filing of the consolidated return for calendar year 2023. Under paragraph (b)(2) of this section, in determining whether the group (which now includes S2) comes within the exception provided in section 6655(d)(1)(B)(ii) for 2023, the “tax shown on the return” is the tax shown on the consolidated return for calendar year 2022. Any tax of S2 for any separate return year is not included as a part of the “tax shown on the return” for purposes of applying section 6655(d)(1)(B)(ii).

(4) *Example 4.* Corporations X and Y file consolidated returns for the calendar years 2021 and 2022 and separate returns for calendar year 2023. Under paragraph (b)(3) of this section, in determining whether X or Y comes within the exception provided in section 6655(d)(1)(B)(ii) for 2023, the “tax shown on the return” is the amount of tax shown on the consolidated return for 2022 allocable to X and to Y in accordance with paragraph (b)(6) of this section.

(d) *Cross-references*—(1) For provisions relating to quick refunds of corporate estimated tax payments, see §§1.1502-78 and 1.6425-1 through 1.6425-3.

(2) For provisions relating to depositing estimated taxes, see §1.6302-1(b).

(e) *Applicability date.* This section applies to any taxable year for which the due date of the income tax return (without regard to extensions) is on or after the date final regulations are published in the **Federal Register**. For prior years, see §1.1502-5 (as contained in the 26 CFR edition revised as of April 1, 2023).

§1.1502-6 [Amended]

Par. 11. Section 1.1502-6 is amended by removing the text “he” from paragraph (b) and adding the text “the Commissioner” in its place.

Par. 12. Section 1.1502-9 is amended by:

1. Removing the text “§1.904-4(m)” from paragraph (a) and adding the text “§1.904-5(a)(4)(v)” in its place.

2. Removing the text “(a)(8)” from the first sentence of paragraph (b)(1) and adding the text “(a)(6)” in its place.

3. Removing the text “§§1.861-9T(g)(3) and 1.861-12T” from the second sentence of paragraph (c)(2)(ii) and adding the text “§§1.861-9T(g)(3), 1.861-12, and 1.861-13” in its place.

4. Removing the text “§1.861-9T(g)(1)” from paragraph (c)(2)(ii) wherever it appears and adding the text “§1.861-9(g)(1)” in its place.

5. Removing the text “, fair market value,” from the sixth sentence of paragraph (c)(2)(ii).

6. Removing the text “§1.861-9T(g)(2)” from paragraph (c)(2)(ii) wherever it appears and adding the text “§1.861-9(g)(2)” in its place.

7. Removing the text “If the group uses the tax book value method, the” from the

eighth sentence of paragraph (c)(2)(ii) and adding the text “The” in its place.

8. Revising the heading of paragraph (c)(2)(iii).

9. Removing the text “a group uses the tax book value method of valuing assets for purposes of paragraph (c)(2)(ii) of this section and” from the first sentence of paragraph (c)(2)(iii).

§1.1502-9 Consolidated overall foreign losses, separate limitation losses, and overall domestic losses.

(c) ***

(2) ***

(iii) *Limitation on member’s portion.*

Par. 13. Section 1.1502-11 is amended by:

1. Revising the introductory text in paragraph (a).

2. Revising paragraphs (a)(2) through (4).

3. Adding the text “and” at the end of paragraph (a)(5).

4. Removing paragraph (a)(6).

5. Redesignating paragraph (a)(7) as paragraph (a)(6).

6. In newly redesignated paragraph (a)(6), removing the text “; and”, and adding the text “.” in its place.

7. Removing paragraph (a)(8).

8. In paragraph (b)(2)(iii), designating *Examples 1* through *3* as paragraphs (b)(2)(iii)(A) through (C), respectively.

9. In newly redesignated paragraphs (b)(2)(iii)(A) through (C), further redesignating the paragraphs in the first column as the paragraphs in the second column:

Old Paragraphs	New Paragraphs
(b)(2)(iii)(A)(a), (b), and (c).....	(b)(2)(iii)(A)(1), (2), and (3)
(b)(2)(iii)(B)(a), (b), (c), and (d).....	(b)(2)(iii)(B)(1), (2), (3), and (4)
(b)(2)(iii)(C)(a), (b), (c), (d), and (e).....	(b)(2)(iii)(C)(1), (2), (3), (4), and (5)

10. Removing the text “(or 1.1502-79A, as appropriate)” from newly redesignated paragraphs (b)(2)(iii)(A)(3) and (b)(2)(iii)(B)(4).

11. Removing the last sentence of paragraph (c)(7).

The revisions read as follows:

§1.1502-11 Consolidated taxable income.

(a) *In general.* The consolidated taxable income (CTI) for a consolidated return year is determined by taking into account:

(2) Any consolidated net operating loss (CNOL) deduction (see §1.1502-21 for the computation of the CNOL deduction);

(3) Any consolidated capital gain net income (see §1.1502-22 for the

computation of consolidated capital gain net income);

(4) Any consolidated section 1231 net loss (see §1.1502-23 for the computation of consolidated section 1231 net loss);
 * * * * *

Par. 14. Section 1.1502-12 is amended by:

1. Revising paragraph (b).
2. Removing and reserving paragraphs (e), (g), and (m).
3. Revising paragraph (n).
4. Removing and reserving paragraph (q).

The revisions read as follows:

§1.1502-12 Separate taxable income.

* * * * *

(b) Any deduction that is disallowed under §1.1502-15 must be taken into account as provided in that section.

* * * * *

(n) No deduction under section 243(a)(1) or section 245 (relating to deductions with respect to dividends received) is taken into account;

* * * * *

Par. 15. Section 1.1502-13 is amended by:

1. Revising the second sentence of paragraph (a)(3)(i).

2. Revising paragraph (a)(6)(ii).
3. Adding the text “of this section” after the text “paragraph (c)(4)(i)(A)” in the first sentence of paragraph (c)(4)(i)(B).

4. Revising the last sentence of paragraph (c)(5).

5. In paragraph (d)(3), designating *Examples 1* through *5* as paragraphs (d)(3)(i) through (v), respectively.

6. In newly redesignated paragraphs (d)(3)(i) through (v), further redesignating paragraphs in the first column as paragraphs in the second column:

Old Paragraphs	New Paragraphs
(d)(3)(i)(a), (b), (c), (d), (e), (f), and (g).....	(d)(3)(i)(A), (B), (C), (D), (E), (F), and (G)
(d)(3)(ii)(a), (b), and (c).....	(d)(3)(ii)(A), (B), and (C)
(d)(3)(iii)(a) and (b).....	(d)(3)(iii)(A) and (B)
(d)(3)(iv)(a), (b), and (c).....	(d)(3)(iv)(A), (B), and (C)
(d)(3)(v)(a) and (b).....	(d)(3)(v)(A) and (B)

7. In paragraph (d)(3), for each newly redesignated paragraph listed in the “Paragraph” column, removing the text indicated in the “Remove” column and adding in its place the text indicated in the “Add” column:

Paragraph	Remove	Add
(d)(3)(i)(E)	paragraph (a) of this <i>Example 1</i>	paragraph (d)(3)(i)(A) of this section (<i>Example 1</i>)
(d)(3)(i)(F)	paragraph (a) of this <i>Example 1</i>	paragraph (d)(3)(i)(A) of this section (<i>Example 1</i>)
(d)(3)(i)(G)	paragraph (a) of this <i>Example 1</i>	paragraph (d)(3)(i)(A) of this section (<i>Example 1</i>)
(d)(3)(ii)(C)	paragraph (a) of this <i>Example 2</i>	paragraph (d)(3)(ii)(A) of this section (<i>Example 2</i>)

8. In paragraph (e)(1)(v), designating *Examples 1* through *3* as paragraphs (e)(1)(v)(A) through (C), respectively.

9. In newly redesignated paragraphs (e)(1)(v)(A) through (C), further redesignating paragraphs in the first column as paragraphs in the second column:

Old Paragraphs	New Paragraphs
(e)(1)(v)(A)(a), (b), (c)(i), (c)(ii), (d), and (e).....	(e)(1)(v)(A)(1), (2), (3)(i), (3)(ii), (4), and (5)
(e)(1)(v)(B)(a), (b)(i), (b)(ii), and (c).....	(e)(1)(v)(B)(1), (2)(i), (2)(ii), and (3)
(e)(1)(v)(C)(a) and (b).....	(e)(1)(v)(C)(1) and (2)

10. In paragraph (e)(1)(v), for each newly redesignated paragraph listed in the “Paragraph” column, removing the text indicated in the “Remove” column and adding in its place the text indicated in the “Add” column:

Paragraph	Remove	Add
(e)(1)(v)(A)(4)	paragraph (a) of this <i>Example 1</i>	paragraph (e)(1)(v)(A)(1) of this section (<i>Example 1</i>)
(e)(1)(v)(A)(5)	paragraph (a) of this <i>Example 1</i>	paragraph (e)(1)(v)(A)(1) of this section (<i>Example 1</i>)
(e)(1)(v)(B)(1)	<i>Example 1</i>	paragraph (e)(1)(v)(A)(1) of this section (<i>Example 1</i>)
(e)(1)(v)(B)(3)	paragraph (a) of this <i>Example 2</i>	paragraph (e)(1)(v)(B)(1) of this section (<i>Example 2</i>)

11. Removing the second sentence from paragraph (f)(5)(ii)(B)(2).

12. Removing the text “In either case, the” from the third sentence of paragraph (f)(5)(ii)(B)(2) and adding the text “The” in its place.

13. Revising paragraph (f)(5)(ii)(F).

14. Revising paragraphs (f)(6)(ii) and (v).

15. In paragraph (f)(7), designating *Examples 1* through 7 as paragraphs (f)(7)(i) through (vii), respectively.

16. In newly redesignated paragraphs (f)(7)(i) through (vii), further redesignating paragraphs in the first column as paragraphs in the second column:

Old Paragraphs	New Paragraphs
(f)(7)(i)(a), (b), (c), (d), and (e).....	(f)(7)(i)(A), (B),(C), (D), and (E)
(f)(7)(ii)(a), (b), (c), (d), (e), (f), and (g).....	(f)(7)(ii)(A), (B), (C), (D), (E), (F), and (G)
(f)(7)(iii)(a), (b), (c), and (d).....	(f)(7)(iii)(A), (B), (C), and (D)
(f)(7)(iv)(a) and (b).....	(f)(7)(iv)(A) and (B)
(f)(7)(v)(a), (b), (c), and (d).....	(f)(7)(v)(A), (B), (C), and (D)
(f)(7)(vi)(a), (b), and (c).....	(f)(7)(vi)(A), (B), and (C)
(f)(7)(vii)(a), (b), (c), and (d).....	(f)(7)(vii)(A), (B), (C), and (D)

17. In paragraph (f)(7), for each newly redesignated paragraph listed in the “Paragraph” column, removing the text indicated in the “Remove” column and adding in its place the text indicated in the “Add” column:

Paragraph	Remove	Add
(f)(7)(i)(D)	paragraph (a) of this <i>Example 1</i>	paragraph (f)(7)(i)(A) of this section (<i>Example 1</i>)
(f)(7)(i)(E)	paragraph (a) of this <i>Example 1</i>	paragraph (f)(7)(i)(A) of this section (<i>Example 1</i>)
(f)(7)(ii)(D)	paragraph (a) of this <i>Example 2</i>	paragraph (f)(7)(ii)(A) of this section (<i>Example 2</i>)
(f)(7)(ii)(D)	paragraph (c) of this <i>Example 2</i>	paragraph (f)(7)(ii)(C) of this section (<i>Example 2</i>)
(f)(7)(ii)(E)	paragraph (a) of this <i>Example 2</i>	paragraph (f)(7)(ii)(A) of this section (<i>Example 2</i>)
(f)(7)(ii)(F)	paragraph (a) of this <i>Example 2</i>	paragraph (f)(7)(ii)(A) of this section (<i>Example 2</i>)
(f)(7)(ii)(F)	paragraph (c) of this <i>Example 2</i>	paragraph (f)(7)(ii)(C) of this section (<i>Example 2</i>)
(f)(7)(ii)(F)	paragraph (d) of this <i>Example 2</i>	paragraph (f)(7)(ii)(D) of this section (<i>Example 2</i>)
(f)(7)(ii)(G)	paragraph (a) of this <i>Example 2</i>	paragraph (f)(7)(ii)(A) of this section (<i>Example 2</i>)
(f)(7)(ii)(G)	paragraph (c) of this <i>Example 2</i>	paragraph (f)(7)(ii)(C) of this section (<i>Example 2</i>)
(f)(7)(iii)(C)	paragraph (a) of this <i>Example 3</i>	paragraph (f)(7)(iii)(A) of this section (<i>Example 3</i>)
(f)(7)(iii)(C)	paragraph (b) of this <i>Example 3</i>	paragraph (f)(7)(iii)(B) of this section (<i>Example 3</i>)
(f)(7)(v)(C)	paragraph (a) of this <i>Example 4</i>	paragraph (f)(7)(v)(A) of this section (<i>Example 5</i>)
(f)(7)(v)(C)	paragraph (b) of this <i>Example 4</i>	paragraph (f)(7)(v)(B) of this section (<i>Example 5</i>)
(f)(7)(v)(D)	paragraph (a) of this <i>Example 4</i>	paragraph (f)(7)(v)(A) of this section (<i>Example 5</i>)
(f)(7)(vi)(C)	paragraph (a) of this <i>Example 5</i>	paragraph (f)(7)(vi)(A) of this section (<i>Example 6</i>)
(f)(7)(vii)(C)	paragraph (a) of this <i>Example 6</i>	paragraph (f)(7)(vii)(A) of this section (<i>Example 7</i>)
(f)(7)(vii)(C)	paragraph (b) of this <i>Example 6</i>	paragraph (f)(7)(vii)(B) of this section (<i>Example 7</i>)
(f)(7)(vii)(D)	paragraph (c) of this <i>Example 6</i>	paragraph (f)(7)(vii)(C) of this section (<i>Example 7</i>)

18. In paragraph (g)(7)(ii), designating *Examples 1* through *11* as paragraphs (g)(7)(ii)(A) through (K), respectively.

19. In newly redesignated paragraphs (g)(7)(ii)(A) through (K), further redesignating paragraphs in the first column as paragraphs in the second column:

Old Paragraphs	New Paragraphs
(g)(7)(ii)(A)(i), (ii), (iii), and (iv).....	(g)(7)(ii)(A)(1), (2), (3), and (4)
(g)(7)(ii)(B)(i), (ii), (iii), (iv), (v), (vi), (vii), and (viii)	(g)(7)(ii)(B)(1), (2), (3), (4), (5), (6), (7), and (8)
(g)(7)(ii)(C)(i), (ii), (iii), and (iv).....	(g)(7)(ii)(C)(1), (2), (3), and (4)
(g)(7)(ii)(D)(i), (ii), (iii), (iv), and (v).....	(g)(7)(ii)(D)(1), (2), (3), (4), and (5)
(g)(7)(ii)(E)(i) and (ii).....	(g)(7)(ii)(E)(1) and (2)
(g)(7)(ii)(F)(i) and (ii).....	(g)(7)(ii)(F)(1) and (2)
(g)(7)(ii)(G)(i) and (ii)	(g)(7)(ii)(G)(1) and (2)
(g)(7)(ii)(H)(i) and (ii)	(g)(7)(ii)(H)(1) and (2)
(g)(7)(ii)(I)(i) and (ii).....	(g)(7)(ii)(I)(1) and (2)
(g)(7)(ii)(J)(i), (ii), (iii), and (iv).....	(g)(7)(ii)(J)(1), (2), (3), and (4)
(g)(7)(ii)(K)(i), (ii), and (iii)	(g)(7)(ii)(K)(1), (2), and (3)

20. In paragraph (g)(7)(ii), for each “Paragraph” column, removing the text adding in its place the text indicated in the newly redesignated paragraph listed in the indicated in the “Remove” column and “Add” column:

Paragraph	Remove	Add
(g)(7)(ii)(A)(3)	paragraph (i) of this <i>Example 1</i>	paragraph (g)(7)(ii)(A)(1) of this section (<i>Example 1</i>)
(g)(7)(ii)(A)(3)	paragraph (ii) of this <i>Example 1</i>	paragraph (g)(7)(ii)(A)(2) of this section (<i>Example 1</i>)
(g)(7)(ii)(A)(4)	paragraph (i) of this <i>Example 1</i>	paragraph (g)(7)(ii)(A)(1) of this section (<i>Example 1</i>)
(g)(7)(ii)(A)(4)	paragraph (ii) of this <i>Example 1</i>	paragraph (g)(7)(ii)(A)(2) of this section (<i>Example 1</i>)
(g)(7)(ii)(B)(3)	paragraph (i) of this <i>Example 2</i>	paragraph (g)(7)(ii)(B)(1) of this section (<i>Example 2</i>)
(g)(7)(ii)(B)(3)	paragraph (ii) of this <i>Example 2</i>	paragraph (g)(7)(ii)(B)(2) of this section (<i>Example 2</i>)
(g)(7)(ii)(B)(4)	paragraph (i) of this <i>Example 2</i>	paragraph (g)(7)(ii)(B)(1) of this section (<i>Example 2</i>)
(g)(7)(ii)(B)(4)	paragraph (iii) of this <i>Example 2</i>	paragraph (g)(7)(ii)(B)(3) of this section (<i>Example 2</i>)
(g)(7)(ii)(B)(5)	paragraph (i) of this <i>Example 2</i>	paragraph (g)(7)(ii)(B)(1) of this section (<i>Example 2</i>)
(g)(7)(ii)(B)(6)	same as paragraph (i) of this <i>Example 2</i>	same as in paragraph (g)(7)(ii)(B)(1) of this section (<i>Example 2</i>)
(g)(7)(ii)(B)(6)	paragraph (ii) of this <i>Example 2</i>	paragraph (g)(7)(ii)(B)(2) of this section (<i>Example 2</i>)
(g)(7)(ii)(B)(7)	paragraph (i) of this <i>Example 2</i>	paragraph (g)(7)(ii)(B)(1) of this section (<i>Example 2</i>)
(g)(7)(ii)(B)(8)	paragraph (i) of this <i>Example 2</i>	paragraph (g)(7)(ii)(B)(1) of this section (<i>Example 2</i>)
(g)(7)(ii)(C)(3)	paragraph (i) of this <i>Example 3</i>	paragraph (g)(7)(ii)(C)(1) of this section (<i>Example 3</i>)
(g)(7)(ii)(C)(3)	paragraph (ii) of this <i>Example 3</i>	paragraph (g)(7)(ii)(C)(2) of this section (<i>Example 3</i>)
(g)(7)(ii)(C)(4)	paragraph (i) of this <i>Example 3</i>	paragraph (g)(7)(ii)(C)(1) of this section (<i>Example 3</i>)
(g)(7)(ii)(C)(4)	paragraph (ii) of this <i>Example 3</i>	paragraph (g)(7)(ii)(C)(2) of this section (<i>Example 3</i>)
(g)(7)(ii)(C)(4)	paragraph (ii) of this <i>Example 3</i>	paragraph (g)(7)(ii)(C)(2) of this section (<i>Example 3</i>)
(g)(7)(ii)(D)(3)	paragraph (i) of this <i>Example 4</i>	paragraph (g)(7)(ii)(D)(1) of this section (<i>Example 4</i>)
(g)(7)(ii)(D)(4)	paragraph (i) of this <i>Example 4</i>	paragraph (g)(7)(ii)(D)(1) of this section (<i>Example 4</i>)
(g)(7)(ii)(D)(5)	paragraph (i) of this <i>Example 4</i>	paragraph (g)(7)(ii)(D)(1) of this section (<i>Example 4</i>)
(g)(7)(ii)(J)(2)	<i>paragraph (iii) of Example 1 of this paragraph (g)(7)</i>	paragraph (g)(7)(ii)(A)(3) of this section (<i>Example 1</i>)
(g)(7)(ii)(J)(3)	paragraph (i) of this <i>Example 10</i>	paragraph (g)(7)(ii)(J)(1) of this section (<i>Example 10</i>)
(g)(7)(ii)(K)(3)	paragraph (i) of this <i>Example 11</i>	paragraph (g)(7)(ii)(K)(1) of this section (<i>Example 11</i>)

21. Redesignating paragraphs (h)(2)(v) (a) and (b) as paragraphs (h)(2)(v)(A) and (B).

22. In paragraph (j)(9), designating *Examples 1* through 7 as paragraphs (j)(9) (i) through (vii), respectively.

23. In newly redesignated paragraphs (j)(9)(i) through (vii), further redesignating paragraphs in the first column as paragraphs in the second column:

Old Paragraphs	New Paragraphs
(j)(9)(i)(a), (b), (c), (d), and (e).....	(j)(9)(i)(A), (B), (C), (D), and (E)
(j)(9)(ii)(a) and (b).....	(j)(9)(ii)(A) and (B)
(j)(9)(iii)(a), (b), and (c).....	(j)(9)(iii)(A), (B), and (C)
(j)(9)(iv)(a), (b), (c), (d), and (e).....	(j)(9)(iv)(A), (B), (C), (D), and (E)
(j)(9)(v)(a) and (b).....	(j)(9)(v)(A) and (B)
(j)(9)(vi)(a) and (b).....	(j)(9)(vi)(A) and (B)
(j)(9)(vii)(a) and (b).....	(j)(9)(vii)(A) and (B)

24. In paragraph (j)(9), for each newly redesignated paragraph listed in the

“Paragraph” column, removing the text indicated in the “Remove” column and

adding in its place the text indicated in the “Add” column:

Paragraph	Remove	Add
(j)(9)(i)(E)	paragraph (a) of this <i>Example 1</i>	paragraph (j)(9)(i)(A) of this section (<i>Example 1</i>)
(j)(9)(iv)(D)	paragraph (a) of this <i>Example 4</i>	paragraph (j)(9)(iv)(A) of this section (<i>Example 1</i>)
(j)(9)(iv)(E)	paragraph (a) of this <i>Example 4</i>	paragraph (j)(9)(iv)(A) of this section (<i>Example 1</i>)

25. Revising paragraph (l)(6).

The revisions and additions read as follows:

(i) * * * See §§1.1502-17 and 1.446-1(c)(2)(iii). * * *

26. Redesignating paragraph (m) as paragraph (l)(7).

* * * * *

27. Revising newly redesignated paragraph (l)(7).

§1.1502-13 Intercompany transactions.

(6) * * *

28. Adding paragraphs (l)(8) and (9).

* * *
(3) * * *

(ii) *Table of examples.* This section contains the following examples:

Rule	General Location	Paragraph	Example
(A) Matching rule.	§1.1502-13(c)(7)(ii)	(A)	Example 1. Intercompany sale of land followed by sale to a nonmember.
		(B)	Example 2. Dealer activities.
		(C)	Example 3. Intercompany section 351 transfer.
		(D)	Example 4. Depreciable property.
		(E)	Example 5. Intercompany sale followed by installment sale.
		(F)	Example 6. Intercompany sale of installment obligation.
		(G)	Example 7. Performance of services.
		(H)	Example 8. Rental of property.
		(I)	Example 9. Intercompany sale of a partnership interest.
		(J)	Example 10. Net operating losses subject to section 382 or the SRLY rules.
		(K)	Example 11. Section 475.
		(L)	Example 12. Section 1092.
		(M)	Example 13. [Reserved]
		(N)	Example 14. Source of income under section 863.

Rule	General Location	Paragraph	Example
		(O)	Example 15. Section 1248.
		(P)	Example 16. Intercompany stock distribution followed by section 332 liquidation.
		(Q)	Example 17. Intercompany stock sale followed by section 355 distribution.
		(R)	Example 18. Redetermination of attributes for section 250 purposes.
(B) Acceleration rule.	§1.1502-13(d)(3)	(i)	Example 1. Becoming a nonmember—timing.
		(ii)	Example 2. Becoming a nonmember—attributes.
		(iii)	Example 3. Selling member’s disposition of installment note.
		(iv)	Example 4. Cancellation of debt and attribute reduction under section 108(b).
		(v)	Example 5. Section 481.
(C) Simplifying rules—inventory.	§1.1502-13(e)(1)(v)	(A)	Example 1. Increment averaging method.
		(B)	Example 2. Increment valuation method.
		(C)	Example 3. Other reasonable inventory methods.
(D) Stock of members.	§1.1502-13(f)(7)	(i)	Example 1. Dividend exclusion and property distribution.
		(ii)	Example 2. Excess loss accounts.
		(iii)	Example 3. Intercompany reorganization.
		(iv)	Example 4. All cash intercompany reorganization under section 368(a)(1)(D).
		(v)	Example 5. Stock redemptions and distributions.
		(vi)	Example 6. Intercompany stock sale followed by section 332 liquidation.
		(vii)	Example 7. Intercompany stock sale followed by section 355 distribution.
(E) Obligations of members.	§1.1502-13(g)(7)(ii)	(A)	Example 1. Interest on intercompany obligation.
		(B)	Example 2. Intercompany obligation becomes nonintercompany obligation.
		(C)	Example 3. Loss or bad debt deduction with respect to intercompany obligation.
		(D)	Example 4. Intercompany nonrecognition transactions.
		(E)	Example 5. Assumption of intercompany obligation.
		(F)	Example 6. Extinguishment of intercompany obligation.
		(G)	Example 7. Exchange of intercompany obligations.
		(H)	Example 8. Tax benefit rule.
		(I)	Example 9. Issuance at off-market rate of interest.
		(J)	Example 10. Nonintercompany obligation becomes intercompany obligation.
		(K)	Example 11. Notional principal contracts.
(F) Anti-avoidance rules.	§1.1502-13(h)(2)	(i)	Example 1. Sale of a partnership interest.
		(ii)	Example 2. Transitory status as an intercompany obligation.
		(iii)	Example 3. Corporate mixing bowl.

Rule	General Location	Paragraph	Example
		(iv)	Example 4. Partnership mixing bowl.
		(v)	Example 5. Sale and leaseback.
		(vi)	Example 6. Section 163(j) interest limitation.
(G) Miscellaneous operating rules.	§1.1502-13(j)(9)	(i)	Example 1. Intercompany sale followed by section 351 transfer to member.
		(ii)	Example 2. Intercompany sale of member stock followed by recapitalization.
		(iii)	Example 3. Back-to-back intercompany transactions—matching.
		(iv)	Example 4. Back-to-back intercompany transactions—acceleration.
		(v)	Example 5. Successor group.
		(vi)	Example 6. Liquidation—80% distributee.
		(vii)	Example 7. Liquidation—no 80% distributee.

(c) ***

(5) *** For other special status issues, see, for example, sections 818(b) (life insurance company treatment of capital gains and losses) and 1503(c) (limitation on absorption of certain losses).

(f) ***

(5) ***

(ii) ***

(F) *Applicability date.* Paragraphs (f)(5)(ii)(B)(1) and (2) of this section apply to transactions in which old T's liquidation into B occurs on or after October 25, 2007.

(6) ***

(ii) *Gain stock.* For dispositions of P stock, see §1.1032-3.

(v) *Applicability date.* This paragraph (f)(6) applies to gain or loss taken into account on or after July 12, 1995, and to transactions occurring on or after July 12, 1995.

(l) ***

(6) *Applicability date regarding paragraph (f)(7)(iv) of this section (Example 4).* Paragraph (f)(7)(iv) of this section (Example 4) applies to transactions occurring on or after December 18, 2009.

(7) *Election to apply paragraph (f)(5)(ii) of this section to an intercompany transaction.* Paragraph (f)(5)(ii) (E) of this section applies to any original

consolidated Federal income tax return due (without extensions) after June 14, 2007.

(8) *Election to reduce basis of parent stock under paragraph (f)(6) of this section.* Paragraph (f)(6)(i)(C)(2) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007.

(9) *Certain qualified stock dispositions.* Paragraph (f)(5)(ii)(C) of this section applies to any qualified stock disposition (as defined in §1.336-1(b)(6)) for which the disposition date (as defined in §1.336-1(b)(8)) is on or after May 15, 2013.

§1.1502-17 [Amended]

Par. 16. Section 1.1502-17 is amended by removing the last sentence of paragraph (a) and the second sentence of paragraph (e).

§1.1502-18 [Removed]

Par. 17. Section 1.1502-18 is removed.

Par. 18. Section 1.1502-21 is amended by:

1. In paragraph (b)(3)(i), removing the fourth sentence and revising the last sentence.

2. In paragraph (b)(4), removing the fifth sentence and revising the last sentence.

3. Removing and reserving paragraph (d).

4. Removing the last three sentences of paragraph (h)(6).

5. Removing the second sentence of paragraph (h)(8).

The revisions read as follows:

§1.1502-21 Net operating losses.

(b) ***

(3) ***

(i) *** The election may be made in an unsigned statement.

(ii) ***

(B) *** The election may be made in an unsigned statement.

§ 1.1502-22 [Amended]

Par. 19. Section 1.1502-22 is amended by removing and reserving paragraph (d).

Par. 20. Section 1.1502-24 is amended by:

1. Revising paragraph (a)(2).

2. Removing the text “section 242, section 243(a)(2) and (3), § 1.1502-25, § 1.1502-26, and § 1.1502-27,” from paragraph (c) and adding the text “section 243(a)(2) and (3) and §1.1502-26,” in its place.

The revision reads as follows:

§1.1502-24 Consolidated charitable contributions deduction.

(a) ***

(2) The percentage limitation on the total charitable contribution deduction provided in section 170(b)(2)(A) applied to adjusted consolidated income as determined under paragraph (c) of this section.
 * * * * *

Par. 21. Section 1.1502-26 is amended by:

1. Revising paragraph (a).
2. Designating *Examples 1* and *2* in paragraph (c) as paragraphs (c)(1) and (2), respectively.
3. Revising newly designated paragraphs (c)(1) and (2).

The revisions read as follows:

§1.1502-26 Consolidated dividends received deduction.

(a) *In general.* The consolidated dividends received deduction for the taxable year is the lesser of—

(1) The aggregate of the deduction of the members of the group allowable under sections 243(a)(1), 245(a) and (b), and 250 (computed without regard to the limitations provided in section 246(b)), or

(2) The aggregate amount described in section 246(b), determined by substituting, wherever it appears—

(i) The term *consolidated taxable income* for *taxable income*,

(ii) The term *consolidated net operating loss* for *net operating loss*, and

(iii) The term *consolidated net capital loss* for *capital loss*.
 * * * * *

(c) * * *

(1) *Example 1.* Corporations P, S, and S-1 filed a consolidated return for the calendar year 2023 showing consolidated taxable income of \$100,000 (determined without regard to the consolidated net operating loss deduction, and the consolidated dividends received deduction). These corporations received dividends during such year from less than 20-percent owned domestic corporations as follows:

Table 1 to paragraph (c)(1)

Corporation	Dividends
P	\$6,000
S	\$10,000
S-1	\$34,000
Total	\$50,000

The dividends received deduction allowable to each member under section 243(a)(1) (computed without regard to the limitation in section 246(b)) is as follows: P has \$3,000 (50 percent of \$6,000), S has \$5,000 (50 percent of \$10,000), and S-1 has \$17,000 (50 percent of \$34,000), or a total of \$25,000. Since \$25,000 is less than \$50,000 (50

percent of \$100,000), the consolidated dividends received deduction is \$25,000.

(2) *Example 2.* Assume the same facts as in paragraph (c)(1) of this section (*Example 1*), except that consolidated taxable income (computed without regard to the consolidated net operating loss deduction and the consolidated dividends received deduction) was \$40,000. The aggregate of the dividends received deductions, \$42,500, computed without regard to section 246(b), results in a consolidated net operating loss of \$2,500. See section 172(d)(5). Therefore, paragraph (a)(2) of this section does not apply and the consolidated dividends received deduction is \$42,500.

§1.1502-27 [Removed]

Par. 22. Section 1.1502-27 is removed.

Par. 23. Section 1.1502-32 is amended by:

1. Revising paragraphs (b)(4)(v) and (vii).
2. In paragraph (b)(5)(ii), designating *Examples 1* through *10* as paragraphs (b)(5)(ii)(A) through (J), respectively.
3. In newly redesignated paragraphs (b)(5)(ii)(A) through (J), further redesignating paragraphs in the first column as paragraphs in the second column:

Old Paragraphs	New Paragraphs
(b)(5)(ii)(A)(a), (b), and (c).....	(b)(5)(ii)(A)(I), (2), and (3)
(b)(5)(ii)(B)(a), (b), (c), and (d).....	(b)(5)(ii)(B)(I), (2), (3), and (4)
(b)(5)(ii)(C)(a) and (b).....	(b)(5)(ii)(C)(I) and (2)
(b)(5)(ii)(D)(a), (b), (c), and (d).....	(b)(5)(ii)(D)(I), (2), (3), and (4)
(b)(5)(ii)(E)(a), (b), and (c).....	(b)(5)(ii)(E)(I), (2), and (3)
(b)(5)(ii)(F)(i) and (ii).....	(b)(5)(ii)(F)(I) and (2)
(b)(5)(ii)(H)(a), (b), and (c).....	(b)(5)(ii)(H)(I), (2), and (3)
(b)(5)(ii)(I)(a), (b), and (c).....	(b)(5)(ii)(I)(I), (2), and (3)
(b)(5)(ii)(J)(a), (b), and (c).....	(b)(5)(ii)(J)(I), (2), and (3)

4. Removing the text “is treated as a dividend under section 356(a)(2)” from the last sentence of newly designated paragraph (b)(5)(ii)(F)(I) and adding the text “is treated as received by M in a separate

transaction occurring immediately after the merger of T into S” in its place.

5. In paragraph (b)(5), for each newly redesignated paragraph listed in the “Paragraph” column, removing the text

indicated in the “Remove” column and adding in its place the text indicated in the “Add” column:

Paragraph	Remove	Add
(b)(5)(ii)(A)(2)	paragraph (a) of this <i>Example 1</i>	paragraph (b)(5)(ii)(A)(1) of this section (<i>Example 1</i>)
(b)(5)(ii)(A)(3)	paragraph (b) of this <i>Example 1</i>	paragraph (b)(5)(ii)(A)(2) of this section (<i>Example 1</i>)
(b)(5)(ii)(B)(2)	paragraph (a) of this <i>Example 2</i>	paragraph (b)(5)(ii)(B)(1) of this section (<i>Example 2</i>)
(b)(5)(ii)(B)(3)	paragraph (a) of this <i>Example 2</i>	paragraph (b)(5)(ii)(B)(1) of this section (<i>Example 2</i>)
(b)(5)(ii)(B)(4)	paragraph (a) of this <i>Example 2</i>	paragraph (b)(5)(ii)(B)(1) of this section (<i>Example 2</i>)
(b)(5)(ii)(D)(3)	paragraph (a) of this <i>Example 4</i>	paragraph (b)(5)(ii)(D)(1) of this section (<i>Example 4</i>)
(b)(5)(ii)(E)(2)	paragraph (a) of this <i>Example 5</i>	paragraph (b)(5)(ii)(E)(1) of this section (<i>Example 5</i>)
(b)(5)(ii)(E)(3)	paragraph (a) of this <i>Example 5</i>	paragraph (b)(5)(ii)(E)(1) of this section (<i>Example 5</i>)
(b)(5)(ii)(H)(2)	paragraph (a) of this <i>Example 8</i>	paragraph (b)(5)(ii)(H)(1) of this section (<i>Example 8</i>)
(b)(5)(ii)(I)(3)	paragraph (a) of this <i>Example 9</i>	paragraph (b)(5)(ii)(I)(1) of this section (<i>Example 9</i>)

6. Removing the last sentence of paragraph (h)(2)(i).

7. Removing paragraph (h)(5)(i).

8. Redesignating paragraph (h)(5)(ii) as paragraph (h)(5).

9. Removing the last sentence of paragraphs (h)(6), (h)(7), and (h)(8).

10. Removing the text “(b)(5)(ii) *Example 6* of this section” from paragraph (h)(8) and adding the text “(b)(5)(ii)(F) of this section (*Example 6*)” in its place.

11. Redesignating paragraph (j) as paragraph (h)(10).

12. Revising the heading of newly designated paragraph (h)(10).

13. Removing the last sentence of newly designated paragraph (h)(10).

14. Removing paragraph (k).

The revisions read as follows:

§1.1502-32 Investment adjustments.

(b) ***

(4) ***

(v) *Special rule for loss carryovers of a subsidiary acquired in a transaction for which an election under §1.1502-20(i) (2) is made.* See paragraph (b)(4)(v) of this section as contained in 26 CFR part 1 revised as of April 1, 2005.

(vii) *Special rules for amending waiver of loss carryovers from separate return limitation year relating to the acquisition of a subsidiary in a transaction subject to §1.1502-20.* See paragraph (b)(4)(vii) of this section as contained in 26 CFR part 1 revised as of April 1, 2005.

(h) ***

(10) *Election to treat loss carryover as expiring.* * * *

* * * * *

Par. 24. Section 1.1502-34 is revised to read as follows:

§1.1502-34 Special aggregate stock ownership rules.

(a) Determination of stock ownership—(1) *Aggregation rule.* For purposes of the consolidated return regulations, in determining the stock ownership of a member of a group in another corporation (issuing corporation) for purposes of determining the application of section 165(g)(3)(A), section 332(b)(1), section 351(a), section 732(f), or section 904(f) in a consolidated return year, stock in the issuing corporation owned by all other members of the group is included. For the determination of whether a member of the group is an 80-percent distributee, see section 337(c) (providing that, for purposes of section 337, the determination of whether any corporation is an 80-percent distributee is made without regard to any consolidated return regulation).

(2) *Example regarding liquidation of member.* The following example illustrates the stock ownership aggregation rule set forth in paragraph (a)(1) of this section.

(i) *Facts.* P wholly owns A, B, and C, each of which is a member of the P group. A, B, and C each owns 33 1/3 percent of the stock of D. D liquidates in a transaction purported to qualify under section 332.

(ii) *Analysis.* For purposes of determining satisfaction of the 80-percent stock ownership requirement under section 332(b)(1), under the stock ownership aggregation rule set forth in paragraph (a) (1) of this section: A is treated as owning all of the D stock owned by B and C; B is treated as owning all

of the D stock owned by A and C; and C is treated as owning all of the D stock owned by A and B. Therefore, each of A, B, and C is treated as owning 100 percent of the stock of D and thus meeting the 80-percent stock ownership requirement for purposes of section 332. However, none of A, B, or C is treated as an 80-percent distributee for purposes of section 337. See section 337(c). Therefore, section 337(a) does not apply.

(b) [Reserved]

§1.1502-42 [Removed]

Par. 25. Section 1.1502-42 is removed.

Par. 26. Section 1.1502-43 is amended by:

1. Revising paragraphs (b)(2)(iii) through (vi), the last sentence of paragraph (b)(2)(vii), and paragraph (b)(2)(viii).

2. Removing the last two sentences of paragraph (e).

The revisions read as follows:

§1.1502-43 Consolidated accumulated earnings tax.

(b) ***

(2) ***

(iii) Under section 535(b)(3), the deduction determined under §1.1502-26 is not allowed.

(iv) Under section 535(b)(4), the consolidated net operating loss deduction described in §1.1502-21(a) is not allowed.

(v) Under section 535(b)(5), there is allowed as a deduction the consolidated net capital loss, determined under §1.1502-22(a).

(vi) Under section 535(b)(6), there is allowed as a deduction an amount equal to—

(A) The consolidated capital gain net income for the taxable year (determined under §1.1502-22(a) and without the consolidated net capital loss carryovers and carrybacks to the taxable year), minus

(B) The taxes attributable to such gain.

(vii) * * * See §1.1502-22(b).

(viii) Section 1.1502-15 does not apply.

* * * * *

Par. 27. Section 1.1502-44 is amended by:

1. Removing the text “.” from the end of paragraph (b)(1) and adding the text “;” in its place.

2. Revising paragraphs (b)(2) and (3).

The revisions read as follows:

§1.1502-44 Percentage depletion for independent producers and royalty owners.

* * * * *

(b) * * *

(2) Any consolidated net operating loss carryback to the consolidated return year under §1.1502-21; and

(3) Any consolidated net capital loss carryback to the consolidated return year under §1.1502-22.

* * * * *

Par. 28. Section 1.1502-45 is added to read as follows:

§1.1502-45 Limitation on losses to amount at risk.

(a) *In general*—(1) *Scope*. This section applies to a loss of any subsidiary if the common parent’s stock meets the stock ownership requirement described in section 465(a)(1)(B).

(2) *Limitation on use of losses*. Except as provided in paragraph (a)(4) of this section, a loss from an activity of a subsidiary during a consolidated return year is includible in the computation of consolidated taxable income (or consolidated net operating loss) and consolidated capital gain net income (or consolidated net capital loss) only to the extent the loss does not exceed the amount that the parent is at risk in the activity at the close of that subsidiary’s taxable year. In addition, the sum of a subsidiary’s losses from all its activities is includible only to the extent that the parent is at risk in the subsidiary at the close of that year. Any excess may not

be taken into account for the consolidated return year but will be treated as a deduction allocable to that activity of the subsidiary in the first succeeding taxable year.

(3) *Amount parent is at risk in subsidiary’s activity*. The amount the parent is at risk in an activity of a subsidiary is the lesser of the amount the parent is at risk in the subsidiary, or the amount the subsidiary is at risk in the activity. These amounts are determined under paragraph (b) of this section and the principles of section 465. See section 465 and the regulations thereunder and the examples in paragraph (e) of this section.

(4) *Excluded activities*. The limitation on the use of losses in paragraph (a)(2) of this section does not apply to a loss attributable to an activity described in section 465(c)(4).

(5) *Substance over form*. Any transaction or arrangement between members (or between a member and a person that is not a member) which does not cause the parent to be economically at risk in an activity of a subsidiary will be treated in accordance with the substance of the transaction or arrangement notwithstanding any other provision of this section.

(b) *Rules for determining amount at risk*—(1) *Excluded amounts*. The amount a parent is at risk in an activity of a subsidiary at the close of the subsidiary’s taxable year does not include any amount that would not be taken into account under section 465 were the subsidiary not a separate corporation. Thus, for example, if the amount a parent is at risk in the activity of a subsidiary is attributable to nonrecourse financing, the amount at risk is not more than the fair market value of the property (other than the subsidiary’s stock or debt or assets) pledged as security.

(2) *Guarantees*. If a parent guarantees a loan by a person other than a member to a subsidiary, the loan increases the amount the parent is at risk in the activity of the subsidiary.

(c) *Application of section 465*. This section applies in a manner consistent with the provisions of section 465. Thus, for example, the recapture of losses provided in section 465(e) applies if the amount the parent is at risk in the activity of a subsidiary is reduced below zero.

(d) *Other consolidated return provisions unaffected*. This section limits only

the extent to which losses of a subsidiary may be used in a consolidated return year. This section does not apply for other purposes, such as §§1.1502-32 and 1.1502-19, relating to investment in stock of a subsidiary and excess loss accounts, respectively. Thus, a loss which reduces a subsidiary’s earnings and profits in a consolidated return year, but is disallowed as a deduction for the year by reason of this section, may nonetheless result in a negative adjustment to the basis of an owning member’s stock in the subsidiary or create (or increase) an excess loss account.

(e) *Examples*. The provisions of this section may be illustrated by the examples in this paragraph (e). In each example, the stock ownership requirement of section 465(a)(1)(B) is met for the stock of the parent (P), and each affiliated group files a consolidated return on a calendar year basis and comprises only the members described.

(1) *Example 1*. In 2022, P forms S with a contribution of \$200 in exchange for all of S’s stock. During the year, S borrows \$400 from a commercial lender and P guarantees \$100 of the loan. S uses \$500 of its funds to acquire a motion picture film. S incurs a loss of \$120 for the year with respect to the film. At the close of 2022, the amount P is at risk in S’s activity is \$300 (\$200 contribution plus \$100 guarantee). If S has no gain or loss in 2023, and there are no contributions from or distributions to P, at the close of 2023 P’s amount at risk in S’s activity will be \$180.

(2) *Example 2*. P forms S-1 with a capital contribution of \$1 on January 1, 2023. On February 1, 2023, S-1 borrows \$100 with full recourse and contributes all \$101 to its newly formed subsidiary S-2. S-2 uses the proceeds to explore for natural oil and gas resources. S-2 incurs neither gain nor loss from its explorations during the taxable year. As of December 31, 2023, P is at risk in the exploration activity of S-2 only to the extent of \$1.

(f) *Applicability date*. This section applies to consolidated return years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 29. Section 1.1502-47 is amended by:

1. Italicizing the text “Nonlife insurance company” in the heading of paragraph (b)(2).

2. Italicizing the text “separate return limitation year” wherever it appears in paragraph (b)(11).

3. Adding the text “,” after the text “base period” in paragraph (b)(12)(i).

4. Removing the extra space between the text “paragraphs (b)(12)” and the text “(iii) through (vi)” in paragraph (b)(12)(i) (A).

5. Removing the extra space between the text “paragraphs (b)(12)” and the text “(v) and (vi)” in the first sentence of paragraphs (b)(12)(iii) and (iv).

6. Removing the text “subdivision (iv)” from the last sentence of paragraph (b)(12)(iv) and adding the text “paragraph (b)(12)(iv)” in its place.

7. Removing the extra space between the text “1.1502-75” and the text “(d)(2) or (d)(3)” in paragraph (b)(12)(vi).

8. Removing the extra space between the text “paragraph (b)(12)” and the text “(ii) through (iv)” in paragraph (b)(12) (vi).

9. Adding a period after the heading in paragraph (b)(14).

10. Removing the text “subparagraph (b)(12)(v)(B) and (E)” from paragraph (b) (14)(iii) and adding the text “paragraphs (b)(12)(v)(B) and (D)” in its place.

11. Removing the extra space between the text “351” and the text “(a)” in paragraph (b)(14)(iii).

12. Removing the text “the result” from paragraph (b)(14)(vi) and adding the text “The result” in its place.

13. Revising paragraph (c)(2)(ii).

14. Removing the text “subdivision (ix) of this paragraph (h)(3)” from paragraph (h)(3)(i) and adding the text “paragraph (h)(3)(ix) of this section” in its place.

15. Removing the text “paragraph (g) (4)” from paragraph (h)(3)(ii) and adding the text “paragraph (g)(3)” in its place.

16. Designating the first and second sentences of the undesignated paragraph after paragraph (h)(3)(x) as paragraphs (h) (3)(x)(A) and (B), respectively.

17. Removing the text “(as defined in paragraph (j) of this section)” from newly designated paragraph (h)(3)(x)(B).

18. Removing the text “paragraph (f)” from paragraph (h)(4) and adding the text “paragraph (h)” in its place.

19. Removing the text “paragraph (f) (4)(i)” from the first sentence of paragraph (h)(4)(ii)(A) and adding the text “paragraph (h)(4)(i)” in its place.

20. Removing the text “paragraph (f) (3)(vi)” from the third sentence of paragraph (h)(4)(ii)(A) and adding the text “paragraph (h)(3)(vi)” in its place.

21. Removing the text “paragraph (f) (3)(x)” from the fifth sentence of paragraph (h)(4)(ii)(A) and adding the text “paragraph (h)(3)(x)” in its place.

22. Removing the text “paragraph (f) (2)(ii)” from the seventh sentence of paragraph (h)(4)(ii)(A) and adding the text “paragraph (h)(2)(ii)” in its place.

23. Removing the text “paragraph (f) (4)(ii)” from the first sentence of paragraph (h)(4)(iii) and adding the text “paragraph (h)(4)(ii)” in its place.

24. Removing the text “paragraph (f) (3)(vi)” from the fourth sentence of paragraph (h)(4)(iii) and adding the text “paragraph (h)(3)(vi)” in its place.

25. Removing the text “paragraph (f) (3)(ii)” from the fifth sentence of paragraph (h)(4)(iii) and adding the text “paragraph (h)(3)(ii)” in its place.

26. Italicizing the text “In” in the heading of paragraph (j)(1).

27. In paragraph (m)(1)(i), removing the text “or”, and adding the text “or any successor form” at the end of the paragraph.

28. Adding the text “or any successor form,” before the text “whether filed” in paragraphs (m)(1)(iv) and (m)(1)(v).

The revision reads as follows:

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

* * * * *

(c) * * *

(2) * * *

(ii) *Special rule.* Notwithstanding the general rule, however, if the nonlife members in the group filed a consolidated return for the immediately preceding taxable year and had executed and filed a Form 1122 (or successor form) that is effective for the preceding year, then such members will be treated as if they filed a Form 1122 (or successor form) when they join in the filing of a consolidated return under section 1504(c)(2) and they will be deemed to consent to the regulations under this section. However, an affiliation schedule (Form 851, or any successor form) must be filed by the group and the life members must execute a Form 1122 (or successor form) in the manner prescribed in §1.1502-75(h)(2).

* * * * *

Par. 30. Section 1.1502-75 is amended by:

1. Adding the text “(or successor form)” after the text “Form 1122” wherever it appears in paragraph (b)(1).

2. Adding the text “(or successor form)” after the text “Form 851” in paragraph (b)(2)(iii).

3. Adding the text “(or successor form)” after the text “Form 1122” wherever it appears in paragraph (b)(3)

4. Revising the second sentence of paragraph (c)(1)(i).

5. Removing the text “his” from paragraphs (c)(2)(i) and (ii) and adding the text “the Commissioner’s” in its place.

6. Removing paragraph (d)(5).

7. Revising paragraph (h)(1).

8. Adding the text “, or any successor form,” before the text “must be executed” in the first sentence of paragraph (h)(2), removing the second sentence and revising the third sentence.

9. Adding the text “(or successor forms)” after the text “Forms 1122” in the fourth sentence of paragraph (h)(2).

10. Adding the text “(or any successor form)” after the text “Form 1122” in the last sentence of paragraph (h)(2).

The revisions read as follows:

§1.1502-75 Filing of consolidated returns.

* * * * *

(c) * * *

(1) * * *

(i) * * * Any such application must be made through a letter ruling request filed not later than the 90th day before the due date of the consolidated return for the taxable year (including extensions). * * *

(h) *Method of filing returns and forms*—(1) *Consolidated return made by common parent or agent.* The consolidated return must be made on Form 1120, *U.S. Corporation Income Tax Return* (or any successor form), for the group by the common parent or the agent for the group as provided in §1.1502-77(c). The consolidated return, with Form 851, *Affiliations Schedule* (or any successor form), attached, must be filed with the service center with which the common parent would have filed a separate return.

(2) * * * The group must attach either executed Forms 1122 (or successor forms) or unsigned copies of the completed Forms 1122 (or successor forms) to the consolidated return. * * *

Par. 31. Section 1.1502-76 is amended by:

1. Revising the last sentence of paragraph (a).
2. Removing the last sentence from paragraphs (b)(1)(ii)(A)(2) and (b)(2)(v).
3. Revising paragraph (b)(6).
4. Designating *Example 1* and *2* in paragraph (c)(3) as paragraphs (c)(3)(i) and (ii), respectively.
5. In newly designated paragraph (c)(3)(i), removing the text “June 15” wherever it appears and adding the text “July 15” in its place, and removing the text “March 15” wherever it appears and adding the text “April 15” in its place.
6. In newly redesignated paragraph (c)(3)(i), removing the text “1966” wherever it appears and adding the text “2022” in its place.
7. In newly redesignated paragraphs (c)(3)(i), removing the text “1967” wherever it appears and adding the text “2023” in its place.
8. In newly redesignated paragraphs (c)(3)(i), removing the text “1968” wherever

it appears and adding the text “2024” in its place.

9. In newly redesignated paragraph (c)(3)(ii), removing the text “June 15” wherever it appears and adding the text “July 15” in its place, and removing the text “March 15” wherever it appears and adding the text “April 15” in its place.

10. In newly redesignated paragraph (c)(3)(ii), removing the text “1967” wherever it appears and adding the text “2023” in its place.

11. In newly redesignated paragraph (c)(3)(ii), removing the text “1968” wherever it appears and adding the text “2024” in its place.

12. Revising paragraph (d).

The revisions read as follows:

§1.1502-76 Taxable year of members of group.

(a) * * * Any request for such consent must be requested at the time and in the manner that the Commissioner of Internal Revenue may prescribe by Internal Revenue Service forms and instructions or by publication in the Internal Revenue Bulletin (see §601.601(d)(2)(ii) of this chapter).

(b) * * *

(6) *Applicability date.* Except as provided in paragraphs (b)(1)(ii)(A)(2) and (b)(2)(v) of this section, this paragraph (b) applies to corporations becoming or ceasing to be members of consolidated groups on or after January 1, 1995.

* * * * *

(d) *Applicability date*—(1) *Taxable years of members of group applicability date.* Paragraph (a) of this section applies to any original consolidated Federal income tax return due (without extensions) after July 20, 2007.

(2) *Election to ratably allocate items applicability date.* Paragraph (b)(2)(ii)(D) of this section applies to any original consolidated Federal income tax return due (without extensions) after July 20, 2007.

§1.1502-77 [Amended]

Par. 32. Section 1.1502-77 is amended by:

1. Designating *Examples 1* through *15* in paragraph (g) as paragraphs (g)(1) through (15), respectively.
2. In paragraph (g), for each newly redesignated paragraph listed in the “Paragraph” column, removing the text indicated in the “Remove” column and adding in its place the text indicated in the “Add” column:

Paragraph	Remove	Add
(g)(2)(i)	Example 1	paragraph (g)(1)(i) of this section (<i>Example 1</i>)
(g)(4)(i)	<i>Example 3</i>	paragraph (g)(3)(i) of this section (<i>Example 3</i>)
(g)(5)(i)	<i>Example 4</i>	paragraph (g)(4) of this section (<i>Example 4</i>)
(g)(11)(i)(B)(I)	his	the Commissioner’s
(g)(11)(ii)(A)	paragraph (i)(A) of this <i>Example 11</i>	paragraph (g)(11)(i)(A) of this section
(g)(12)(i)	paragraph (ii)(A) of <i>Example 11</i>	paragraph (g)(11)(ii)(A) of this section (<i>Example 11</i>)
(g)(13)(i)	March 15	April 15

§1.1502-77A [Amended]

Par. 33. Section 1.1502-77A is amended by removing the text “he may, if he deems it advisable,” from the last sentence of paragraph (d) and adding the text “the Commissioner may” in its place.

§1.1502-77B [Amended]

Par. 34. Section 1.1502-77B is amended by:

1. Removing the text “he may, if he deems it advisable,” from the last sentence of paragraph (a)(6)(i) and adding the text “the Commissioner may” in its place.

2. Removing the text “he” from paragraph (a)(6)(ii) and adding the text “the Commissioner” in its place.

Par. 35. Section 1.1502-78 is amended by revising paragraph (f) to read as follows:

§1.1502-78 Tentative carryback adjustments.

(f) *Applicability date.* This section applies to taxable years to which a loss or credit may be carried back and for which the due date (without extensions) of the original return is after June 28, 2002, except that the provisions of paragraph (e) (2) of this section apply for applications by new members of consolidated groups for tentative carryback adjustments resulting from net operating losses, net capital losses, or unused business credits arising in separate return years of new members that begin on or after January 1, 2001.

Par. 36. Section 1.1502-79 is amended by:

1. Revising paragraphs (a), (b), and (d).
2. Removing the text “(or §§ 1.1502-79A(a)(1) and (2), as appropriate)” from paragraph (e)(1).
3. Revising paragraph (e)(2).

The revisions read as follows:

§1.1502-79 Separate return years.

(a) *Carryover and carryback of consolidated net operating losses to separate return years.* For rules regarding the carryover and carryback of consolidated net operating losses to separate return years, see §1.1502-21(b).

(b) *Carryover and carryback of consolidated net capital loss to separate return years.* For rules regarding the carryover and carryback of consolidated net capital losses to separate return years, see §1.1502-22(b).

(d) *Carryover and carryback of consolidated unused foreign tax—(1) In general.* If a consolidated unused foreign tax can be carried under the principles of section 904(c) and §1.1502-4(d) to a separate

return year of a corporation (or could have been so carried if such corporation were in existence) that was a member of the group in the year in which the unused foreign tax arose, then the portion of the consolidated unused foreign tax attributable to the corporation (as determined under paragraph (d)(2) of this section) is apportioned to the corporation (and any successor to that corporation in a transaction to which section 381(a) applies) under the principles of §1.1502-21(b) and is deemed paid or accrued in such separate return year to the extent provided in section 904(c).

(2) *Portion of consolidated unused foreign tax attributable to a member.* The portion of a consolidated unused foreign tax for any year attributable to a member is an amount equal to the consolidated unused foreign tax multiplied by a fraction. The numerator of the fraction is the foreign taxes paid or accrued by the member for the year (including those taxes deemed paid or accrued, other than by reason of section 904(c)). The denominator of the fraction is the aggregate of all such taxes paid or accrued for the year (including those taxes deemed paid or accrued, other than by reason of section 904(c)) by all members of the group.

(e) ***

(2) *Portion of consolidated excess charitable contributions attributable to a member.* The portion of the consolidated excess charitable contributions for any year attributable to a member is an amount equal to the consolidated excess contributions multiplied by a fraction. The numerator of the fraction is the charitable contributions paid by the member for the year. The denominator of the fraction is the aggregate of all charitable contributions paid for the year by all members of the group.

§1.1502-80 [Amended]

Par. 37. Section 1.1502-80 is amended by removing the text “on or after September 17, 2008” from paragraph (c) (2).

§1.1502-81T [Removed]

Par. 38. Section 1.1502-81T is removed.

Par. 39. Section 1.1502-90 is amended by revising the entry in the table of contents for §1.1502-99, in numerical order, to read as follows:

§1.1502-90 Table of contents.

§1.1502-99 Effective/applicability dates.

- (a) In general.
- (b) Reattribution of losses under §1.1502-36(d)(6).
- (c) Application to section 163(j).
 - (1) Sections 1.382-2 and 1.382-5.
 - (2) Sections 1.382-6 and 1.383-1.

§1.1502-91 [Amended]

Par. 40. Section 1.1502-91 is amended by removing paragraph (b)(3).

§1.1502-92 [Amended]

Par. 41. Section 1.1502-92 is amended by:

1. Designating *Examples 1* through *3* in paragraph (b)(3)(iii) as paragraphs (b)(3)(iii)(A) through (C), respectively.
2. In newly redesignated paragraphs (b)(3)(iii)(A) through (C), further redesignating paragraphs in the first column as paragraphs in the second column:

Old Paragraphs	New Paragraphs
(b)(3)(iii)(A)(i) and (ii).....	(b)(3)(iii)(A)(1) and (2)
(b)(3)(iii)(B)(i), (ii), (iii), and (iv).....	(b)(3)(iii)(B)(1), (2), (3), and (4)
(b)(3)(iii)(C)(i) and (ii).....	(b)(3)(iii)(C)(1) and (2)

3. Removing the text “his” from newly redesignated paragraph (b)(3)(iii)(B)(2) and adding the text “its” in its place.

Par. 42. Section 1.1502-99 is amended by:

1. Revising paragraphs (a) and (b).

2. Removing paragraph (c).
3. Redesignating paragraph (d) as paragraph (c).

The revisions read as follows:

§1.1502-99 Effective/applicability dates.

(a) *In general.* Sections 1.1502-91 through 1.1502-96 and §1.1502-98 apply to any testing date that is on or after June 25, 1999. Sections 1.1502-94 through 1.1502-96 also apply to a corporation that becomes a member of a group or ceases to be a member of a group (or loss subgroup) on or after June 25, 1999.

(b) *Reattribution of losses under §1.1502-36(d)(6).* Section 1.1502-96(d) applies to reattributions of net operating loss carryovers, capital loss carryovers, and deferred deductions in connection with a transfer of stock to which §1.1502-36 applies, and the election under §1.1502-96(d)(5) (relating to an election to reattribute section 382 limitation) can be made with an election under §1.1502-36(d)(6) to reattribute a loss to the common parent that is filed at the time and in the manner provided in §1.1502-36(e)(5) (x).

Par. 43. Section 1.1502-100 is amended by:

1. Removing the text “§ 1.1502-1 through § 1.1502-80” from paragraph (a) (2) wherever it appears and adding the text “the consolidated return regulations” in its place.

2. Removing the text “1.1502-21A or” and the text “(as appropriate)” from paragraph (c)(2).

3. Revising paragraph (d).

The revision reads as follows:

§1.1502-100 Corporations exempt from tax.

(d) *Separate unrelated business taxable income—(1) In general.* The separate unrelated business taxable income of a member of an exempt group must be computed in accordance with the provisions of section 512 covering the determination of unrelated business taxable income of separate corporations, except that:

(i) The provisions of paragraphs (a) through (d), (f) through (k), and (o) of §1.1502-12 apply; and

(ii) No charitable contributions deduction is taken into account under section 512(b)(10).

(2) *Section 501(c)(2) organizations.* See sections 511(c) and 512(a)(3)(C) for special rules applicable to organizations described in section 501(c)(2).

§§1.1502-9A, 1.1502-15A, 1.1502-21A, 1.1502-22A, 1.1502-23A, 1.1502-41A, 1.1502-79A, 1.1502-90A, 1.1502-91A, 1.1502-92A, 1.1502-93A, 1.1502-94A, 1.1502-95A, 1.1502-96A, 1.1502-97A, 1.1502-98A, 1.1502-99A, and 1.1503-2 [Removed]

Par. 44. Sections 1.1502-9A, 1.1502-15A, 1.1502-21A, 1.1502-22A, 1.1502-23A, 1.1502-41A, 1.1502-79A, 1.1502-90A, 1.1502-91A, 1.1502-92A, 1.1502-93A, 1.1502-94A, 1.1502-95A, 1.1502-96A, 1.1502-97A, 1.1502-98A, 1.1502-99A, and 1.1503-2 are removed.

§1.1503-2 [Removed]

Par. 45. Section 1.1503-2 is removed.

§1.1503(d)-1 [Amended]

Par. 46. Section 1.1503(d)-1 is amended by removing the text “possession of the United States” from paragraph (b)(7) and adding the text “U.S. territory (as defined in §1.1502-1(l))” in its place.

Par. 47. Section 1.1503(d)-8 is amended by:

1. Revising the last sentence of paragraph (a).

2. Removing and reserving paragraphs (b)(1), (b)(2), (b)(3)(ii), (b)(3)(iii), and (b) (4).

The revision reads as follows:

§1.1503(d)-8 Effective dates.

(a)*** Section 1.1503-2, as contained in 26 CFR part 1, revised as of April 1, 2023, applies for dual consolidated losses incurred in taxable years beginning on or after October 1, 1992, and before the application date.

Par. 48. Section 1.1552-1 is amended by:

1. Redesignating paragraphs (a)(1)(ii) (a) through (d) as paragraphs (a)(1)(ii)(A) through (D), respectively.

2. Revising newly redesignated paragraph (a)(1)(ii)(B).

3. Redesignating paragraphs (a)(2)(ii) (a) through (i) as paragraphs (a)(2)(ii)(A) through (I), respectively.

4. Removing and reserving newly redesignated paragraph (a)(2)(ii)(B).

5. Revising paragraph (a)(2)(ii)(I).

The revisions read as follows:

§1.1552-1 Earnings and Profits.

(a)***

(1)***

(ii)***

(B) Such member’s capital gain net income (determined without regard to any net capital loss carryover attributable to such member);

(2)***

(ii)***

(I) For purposes of subtitle A of the Code, if two or more taxable income brackets are set forth in section 11(b) of the Code, the amount in each taxable income bracket is divided by the number of members (or such portion of each bracket which is apportioned to the member pursuant to a schedule attached to the consolidated return for the consolidated return year). However, if for the taxable year some or all of the members are component members of a controlled group of corporations (within the meaning of section 1563) and if there are other such component members which do not join in filing the consolidated return for such year, the amount to be divided among the members filing the consolidated return is (in lieu of the taxable income brackets) the sum of the amounts apportioned to the component members which join in filing the consolidated return.

§1.1563-1 [Amended]

Par. 49. Section 1.1563-1 is amended by:

1. Removing the text “(directly and with the application of § 1.1563-3(b)(1), relating to options)” from paragraph (a) (2) wherever it appears and adding the text “(directly and with the application of § 1.1563-3(b)(1), (2), and (3))” in its place.

2. Removing the text “his” from paragraph (a)(6) wherever it appears and adding the text “the shareholder’s” in its place.

3. In paragraph (b)(4), designating *Examples 1* through 4 as paragraphs (b)(4)(i) through (iv), respectively.

4. Removing the text “he” from the third sentence of newly designated paragraph (b)(4)(i) and adding the text “B” in its place.

§1.1563-2 [Amended]

Par. 50. Section 1.1563-2 is amended by:

1. Removing the text “his” from each of paragraphs (b)(2)(iii) and (b)(4)(ii), and adding the text “the employee’s” in its place.

2. In paragraph (b)(7), designating *Examples 1* through 3 as paragraphs (b)(7)(i) through (iii), respectively.

3. In newly designated paragraph (b)(7)(iii), removing the text “he” wherever it appears and adding the text “Davis” in its place; removing the text “his” wherever it appears and adding the text “Davis’s” in its place; and removing the text “wife” from the last sentence and adding the text “spouse” in its place.

§ 1.1563-3 [Amended]

Par. 51. Section 1.1563-3 is amended by:

1. Removing the text “his” from paragraph (b)(2)(i) and adding the text “the partner’s” in its place.

2. Removing the text “The provisions of this subparagraph may be illustrated by the following example:” from paragraph (b)(2)(ii).

3. Removing the text “his” from the fourth sentence of paragraph (b)(2)(ii) and adding the text “Green’s” in its place.

4. In the sixth sentence of paragraph (b)(2)(ii), removing the text “he” and adding the text “Jones” in its place, and removing the text “his” and adding the text “Jones’s” in its place.

5. Removing the text “he” from the last sentence of paragraph (b)(2)(ii) and adding the text “White” in its place.

6. In paragraph (b)(3)(i), removing the text “his” from the second sentence

and adding the text “the beneficiary’s” in its place, and removing the text “he” and “him” from the second-to-last sentence and adding the text “that beneficiary” in its place.

7. In paragraph (b)(3)(ii), removing the text “his” and adding the text “the decedent’s” in its place, and removing the text “he” and “him” wherever it appears and adding the text “the person” in its place.

8. Removing the text “The provisions of this subparagraph may be illustrated by the following example:” from paragraph (b)(4)(ii).

9. In paragraph (b)(4)(ii), removing the text “he” from the fifth sentence and adding the text “Smith” in its place, and removing the text “Smith’s wife” and “his wife” from the last sentence wherever it appears and adding the text “Smith’s spouse” in its place.

10. Removing the text “his” from paragraphs (b)(5)(i) and (ii) and (b)(6)(i) and (ii) wherever it appears and adding the text “the individual’s” in its place.

11. Removing the text “The provisions of this subparagraph may be illustrated by the following example:” from paragraph (b)(6)(iv).

12. Redesignating paragraphs (b)(6)(iv)(a) through (d) as paragraphs (b)(6)(iv)(A) through (D).

13. In newly designated paragraph (b)(6)(iv)(A), removing the text “F” and adding the text “B” in its place, and removing the text “His son” and “his son” and adding the text “B’s child” in its place.

14. In newly designated paragraph (b)(6)(iv)(B), removing the text “F” wherever it appears and adding the text “B” in its place, removing the text “subdivision (ii) of this subparagraph” and adding the text “paragraph (b)(6)(ii) of this section” in its place, removing the text “he” and adding the text “B” in its place, and removing the text “his adult son” and adding the text “B’s adult child” in its place.

15. In the first sentence of newly designated paragraph (b)(6)(iv)(C), removing the text “son” and adding the text “child” in its place, and removing the text “by his father, F” and adding the text “by B” in its place.

16. In the second sentence of newly designated paragraph (b)(6)(iv)(C),

removing the text “his brother” and adding the text “M’s sibling” in its place, removing the text “F” wherever it appears and adding the text “B” in its place, removing the text “him” and adding the text “B” in its place, and removing the text “his” and adding the text “B’s” in its place.

17. In newly redesignated paragraph (b)(6)(iv)(D), removing the text “son” and adding the text “child” in its place, removing the text “he” wherever it appears and adding the text “A” in its place, and removing the text “his father” and adding the text “B” in its place.

18. Removing the text “him” from paragraph (c)(2) and adding the text “the individual” in its place.

19. In paragraph (c)(4), designating *Examples 1* through 3 as paragraphs (c)(4)(i) through (iii), respectively.

20. In newly designated paragraph (c)(4)(ii), removing the text “brother” from the second sentence and adding the text “sibling” in its place, and removing the text “father” from the third sentence and adding the text “parent” in its place.

21. Removing the text “his son,” from the first sentence of newly designated paragraph (c)(4)(iii).

22. In paragraph (d)(3), designating *Examples 1* through 3 as paragraphs (d)(3)(i) through (iii), respectively.

23. In newly designated paragraph (d)(3)(i), removing the text “he” from the third sentence and adding the text “Smith” in its place, and removing the text “his stock in corporation Z” from the fifth sentence and adding the text “the corporation Z stock” in its place.

24. In newly designated paragraph (d)(3)(ii), removing the text “H” wherever it appears and adding the text “A” in its place, and removing the text “W” wherever it appears and adding the text “B” in its place.

25. Removing the text “wife” from the first sentence of newly designated paragraph (d)(3)(ii) and adding the text “spouse” in its place.

26. Removing the text “subparagraph (2)(iii) of this paragraph” from the fifth sentence of newly designated paragraph (d)(3)(ii) and adding the text “paragraph (d)(2)(iii) of this section” in its place.

**PART 5—TEMPORARY INCOME
TAX REGULATIONS UNDER THE
REVENUE ACT OF 1978**

Par. 52. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 7805.

§5.1502-45 [Removed]

Par. 53. Section 5.1502-45 is removed.

**PART 301—PROCEDURE AND
ADMINISTRATION**

Par. 54. The authority citation for part 301 continues to read in part as follows:

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

§301.6402-7 [Amended]

Par. 55. Section 301.6402-7 is amended by removing the text “§§ 1.1502-21(b) or 1.1502-21A(b) (as appropriate)” from paragraph (g)(2)(iii) and adding the text “§1.1502-21(b)” in its place.

**PART 602—OMB CONTROL
NUMBERS UNDER THE
PAPERWORK REDUCTION ACT**

Par. 56. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§602.101 [Amended]

Par. 57. Section 602.101(b) is amended by removing the entries for §§1.1502-9A, 1.1502-18, 1.1502-76T, 1.1502-95A, 1.1503-2, and 1.1503-2A from the table.

Douglas W. O’Donnell,
*Deputy Commissioner for Services
and Enforcement.*

(Filed by the Office of the Federal Register July 4, 2023, 8:45 a.m., and published in the issue of the Federal Register for July 7, 2023, 88 FR 52057)

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the

new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.

ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
FR.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.

PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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Internal Revenue Service

Washington, DC 20224

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INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at www.irs.gov/irb/.

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