

the tax shown on the consolidated return allocable to the member under paragraph (b)(5) of this section. If the member was included in the consolidated return filed by the group for the preceding taxable year then:

(i) For purposes of section 6655(d)(1), the "tax shown on the return" for any member shall be the portion of the tax shown on the consolidated return for the preceding year allocable to the member under paragraph (b)(5) of this section.

(ii) For purposes of section 6655(d)(2), the "facts shown on the return" shall be the facts shown on the consolidated return for the preceding year and the tax computed under that section shall be allocated under the rules of paragraph (b)(5) 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)(2), the "amount, if any of the installment paid" by any member is an amount apportioned to the member in a manner designated by the common parent that is satisfactory to the Commissioner. If the member was included in the consolidated return filed by the group for the preceding taxable year, the amount of a member's penalty under section 6655 is computed on the separate member basis described in paragraph (b)(3) (i) and (ii) of this section.

(5) *Rules for allocation of consolidated tax liability.* For purposes of subparagraphs (1) and (2) of this paragraph, the tax shown on a consolidated return shall be allocated to the members of the group under the method which the group has elected pursuant to section 1552 and 1.1502-33(d)(2).

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

Example (1). Corporations P and S-1 file a consolidated return for the first time for calendar year 1978. P and S-1 also file consolidated returns for 1979 and 1980. For 1978 and 1979, P and S-1 may make payments of estimated tax on either a separate or consolidated basis. For 1980, however, the group must pay its estimated tax on a consolidated basis. In determining whether P and S-1 come within the exception provided in section 6655(d)(1) for 1980, the "tax shown on the

return" is the tax shown on the consolidated return for 1979.

Example (2). Assume the same facts as in example (1). Assume further that corporation S-2 was a member of the group during 1979, and joins in the filing of the consolidated return for such year but ceases to be a member of the group on September 15, 1980. In determining whether the group (which no longer includes S-2) comes within the exception provided in section 6655(d)(1) for 1980, the "tax shown on the return" is the tax shown on the consolidated return for 1979.

Example (3). Assume the same facts as in example (1). Assume further that corporation S-2 becomes a member of the group on July 1, 1980, and joins in the filing of the consolidated return for 1980. In determining whether the group (which now includes S-2) comes within the exception provided in section 6655(d)(1) for 1980, the "tax shown on the return" is the tax shown on the consolidated return for 1979. Any tax of S-2 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).

Example (4). Corporations X and Y filed consolidated returns for the calendar years 1977 and 1978 and separate returns for 1979. In determining whether X and Y comes within the exception provided in section 6655(d)(1) for 1979, the "tax shown on the return" is the amount of tax shown on the consolidated return for 1978 allocable to X and Y in accordance with paragraph (b)(5) of this section.

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

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7059, 35 FR 14549, Sept. 17, 1970; T.D. 7637, 44 FR 46840, Aug. 9, 1979; 62 FR 23657, May 1, 1997]

§ 1.1502-6 Liability for tax.

(a) *Several liability of members of group.* Except as provided in paragraph (b) of this section, the common parent corporation and each subsidiary which was a member of the group during any part of the consolidated return year shall be severally liable for the tax for such year computed in accordance with the regulations under section 1502 prescribed on or before the due date (not including extensions of time) for the filing of the consolidated return for such year.

(b) *Liability of subsidiary after withdrawal.* If a subsidiary has ceased to be a member of the group and in such cessation resulted from a bona fide sale or

exchange of its stock for fair value and occurred prior to the date upon which any deficiency is assessed, the district director may, if he believes that the assessment or collection of the balance of the deficiency will not be jeopardized, make assessment and collection of such deficiency from such former subsidiary in an amount not exceeding the portion of such deficiency which the district director may determine to be allocable to it. If the district director makes assessment and collection of any part of a deficiency from such former subsidiary, then for purposes of any credit or refund of the amount collected from such former subsidiary the agency of the common parent under the provisions of § 1.1502-77 shall not apply.

(c) *Effect of intercompany agreements.* No agreement entered into by one or more members of the group with any other member of such group or with any other person shall in any case have the effect of reducing the liability prescribed under this section.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966]

§ 1.1502-9 Application of overall foreign loss recapture rules to corporations filing consolidated returns.

(a) *In general.* An affiliated group of corporations filing a consolidated return sustains an overall foreign loss (a consolidated overall foreign loss) in any taxable year in which its gross income from sources without the United States subject to a separate limitation (as defined in § 1.904(f)-1(c)(2)) is exceeded by the sum of the deductions properly allocated and apportioned thereto. However, for taxable years prior to 1983, affiliated groups may have determined their overall foreign losses for income subject to the passive interest limitation, DISC dividend limitation, and general limitation on a combined basis in accordance with the rules in § 1.904(f)-1(c)(1). The rules contained in §§ 1.904(f)-1 through 1.904(f)-6 are applicable to affiliated groups filing consolidated returns. This section provides special rules for applying those sections to such groups. Paragraph (b) provides rules for additions and subtractions of a portion of overall foreign losses to and from consolidated overall

foreign loss accounts. Paragraph (c) requires that separate notional overall foreign loss accounts be kept for each member of the group that contributes to a consolidated overall foreign loss account and provides for allocation of a portion of the group's overall foreign loss account to a member when the member leaves the group prior to recapture of the entire amount of the loss account. These rules are similar to the rules provided in § 1.1502-21T(b)(2) (or § 1.1502-79A, as appropriate) concerning the apportionment of consolidated net operating losses to a member who leaves the group. However, the rules differ somewhat because the absorption rule of § 1.1502-21T(b)(1) (or § 1.1502-79A, as appropriate) is applied year-by-year, consistently with the sequence rules of section 172(b), and recapture of overall foreign losses is based on overall foreign loss accounts that may consist of losses in more than one year. Paragraph (d) provides rules for recapture of amounts in consolidated overall foreign loss accounts. Paragraph (e) provides special rules pertaining to section 904(f)(3) dispositions between members of a group. Paragraphs (b), (c), and (e) also contain special rules that apply to overall foreign losses that arise in separate return limitation years; the principles therein also apply to overall foreign losses when there has been a consolidated return change of ownership (as defined in § 1.1502-1(g)). See § 1.1502-9T(b)(1)(v) for the rule that ends the separate return limitation year limitation for consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, and § 1.1502-9T(b)(1)(vi) for an election to continue the separate return limitation year limitation for consolidated return years beginning before January 1, 1998. See also § 1.1502-3T(c)(4) for an optional effective date rule (generally making the rules of paragraphs (b)(1)(iii) and (iv) of this section inapplicable for a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(b) *Consolidated overall foreign loss accounts.* Any group that sustains an