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Thus, for example, only one consent executed by the common parent to the apportionment plan is required for the group filing the consolidated return. If any component member of the controlled group which joins in the filing of the consolidated return is an organization to which section 593 applies or a cooperative organization described in section 1381(a), rules similar to the rules contained in paragraph (a)(3)(ii) of § 1.1502-3 are applicable.

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

Example 1. At all times during 1972 Smith, an individual, owns all the stock of corporations X, Y, and Z. Corporation X files an income tax return on a calendar year basis. Corporation Y files an income tax return on the basis of a fiscal year ending June 30. Corporation Z files an income tax return on the basis of a fiscal year ending September 30. On December 31, 1972, X, Y, and Z are component members of the same controlled group. X, Y, and Z all consent to an apportionment plan in which the \$25,000 amount is apportioned entirely to Y for its taxable year ending June 30, 1973 (Y's taxable year which includes December 31, 1972). Such consent is timely filed. For purposes of computing the credit under section 40, Y's limitation based on amount of tax for its taxable year ending June 30, 1973, is so much of Y's liability for tax as does not exceed \$25,000, plus 50 percent of Y's liability for tax in excess of \$25,000. X's and Z's limitations for their taxable years ending December 31, 1972, and September 30, 1973, respectively, are equal to 50 percent of X's liability for tax and 50 percent of Z's liability for tax. On the other hand, if an apportionment plan is not timely filed, X's limitation would be so much of X's liability for tax as does not exceed \$8,333.33, plus 50 percent of X's liability in excess of \$8,333.33, and Y's and Z's limitations would be computed similarly.

Example 2. At all times during 1972, Jones, an individual, owns all the outstanding stock of corporations P, Q, and R. Corporations Q and R both file returns for taxable year ending December 31, 1972. P files a consolidated return as a common parent for its fiscal year ending June 30, 1973, with its wholly owned subsidiaries N and O. On December 31, 1972, N, O, P, Q, and R are component members of the same controlled group. No consent to an apportionment plan is filed. Therefore, each member is apportioned \$5,000 of the \$25,000 amount (\$25,000 divided equally among the five members). The limitation based on the amount of tax for the group filing the consolidated return (P, N, and O) for the year ending June 30, 1973 (the consolidated tax-

able year within which December 31, 1972, falls), is computed by using \$15,000 instead of the \$25,000 amount. The \$15,000 is arrived at by adding together the \$5,000 amounts apportioned to P, N, and O.

[38 FR 6152, Mar. 7, 1973, as amended by T.D. 7636, 44 FR 47049, Aug. 10, 1979]

§ 1.50A-2 Carryback and carryover of unused credit.

(a) *Allowance of unused credit as carryback or carryover—(1) In general.* Section 50A(b)(1) provides for carrybacks and carryovers of any unused credit. An unused credit is the excess of the credit earned for the taxable year (as determined under paragraph (a) of § 1.50A-1) over the limitation based on amount of tax for such taxable year (as determined under paragraph (b) of § 1.50A-1). Subject to the limitation contained in paragraph (b) of this section, an unused credit shall be added to the amount allowable as a credit under section 40 for the years to which the unused credit can be carried. The year with respect to which an unused credit arises shall be referred to in this section as the "unused credit year."

(2) *Taxable years to which unused credit may be carried.* An unused credit shall be a work incentive program (WIN) credit carryback to each of the 3 taxable years preceding the unused credit year and a WIN credit carryover to each of the 7 taxable years succeeding the unused credit year, except that an unused credit shall be a carryback only to taxable years beginning after December 31, 1971. An unused credit must be carried first to the earliest of the taxable years to which it may be carried, and then to each of the other taxable years (in order of time) to the extent that the unused credit may not be added (because of the limitation contained in paragraph (b) of this section) to the amount allowable as a credit under section 40 for a prior taxable year.

(b) *Limitation on allowance of unused credit.* The amount of the unused credit from any particular unused credit year which may be added to the amount allowable as a credit under section 40 for any of the preceding or succeeding taxable years to which such credit may be carried shall not exceed the amount by which the limitation based on amount

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of tax for such preceding or succeeding taxable year exceeds the sum of (1) the credit earned for such preceding or succeeding year, and (2) other unused credits carried to such preceding or succeeding year which are attributable to unused credit years prior to the particular unused credit year.

(c) *Corporate acquisitions.* For the carryover of unused credits in the case of certain corporate acquisitions, see section 381(c)(24) and the regulations thereunder. [§1.381(c)(24)-1]

(d) *Periods of less than 12 months.* A fractional part of a year which is considered as a taxable year under sections 441(b) and 7701(a)(23) shall be treated as a preceding or a succeeding taxable year for the purpose of determining under section 50A(b) and this section the taxable years to which an unused credit may be carried.

(e) *Example.* The provisions of paragraphs (a) through (d) of this section may be illustrated by the following example:

Example. Corporation X files its income tax return on the basis of the calendar year. X's credit earned and its limitation based on amount of tax for each of its taxable years 1972 through 1978 are as follows:

	Credit earned	Limitation based on amount of tax
1972	\$175,000	\$200,000
1973	250,000	160,000
1974	200,000	210,000
1975	210,000	230,000
1976	220,000	260,000
1977	260,000	220,000
1978	270,000	280,000

(i) Corporation X's credit earned for 1972, \$175,000, is allowable in full as a credit under section 40 for 1972 since such amount is less than the limitation based on amount of tax for such year, \$200,000. Since the limitation based on amount of tax for 1973 is \$160,000, only \$160,000 of the \$250,000 credit earned for such year is allowable under section 40 as a credit for 1973. The unused credit for 1973 of \$90,000 (\$250,000 less \$160,000) is a WIN credit carryback to 1972 and a WIN credit carryover to 1974 and subsequent years up to and including 1980. The portion of the \$90,000 unused credit which shall be added to the amount allowable as a credit under section 40 for 1972 and 1974 and subsequent years is computed as follows:

(a) 1972. The portion of the unused credit for 1973 (\$90,000) which is allowable as a credit for 1972 is \$25,000. This amount shall be added to the amount allowable as a credit for

1972. The balance of the unused credit for 1973 to be carried to 1974 is \$65,000. These amounts are computed as follows:

Carryback to 1972	\$90,000
1972 limitation based on tax	\$200,000
Less: Credit earned for 1972	\$175,000
Unused credits attributable to years preceding 1973	0
	175,000
Limit on amount of 1973 unused credit which may be added as a credit for 1972	25,000
	65,000

(b) 1974. The portion of the balance of the unused credit for 1973 (\$65,000) allowable as a credit for 1974 is \$10,000. This amount shall be added to the amount allowable as a credit for 1974. The balance of the unused credit for 1973 to be carried to 1975 is \$55,000. These amounts are computed as follows:

Carryover to 1974	\$65,000
1974 limitation based on tax	\$210,000
Less: Credit earned for 1974	\$200,000
Unused credits attributable to years preceding 1973	0
	200,000
Limit on amount of 1973 unused credit which may be added as a credit for 1974	10,000
	55,000

(c) 1975. The portion of the balance of the unused credit for 1973 (\$55,000) allowable as a credit for 1975 is \$20,000. This amount shall be added to the amount allowable as a credit for 1975. The balance of the unused credit for 1973 to be carried to 1976 is \$35,000. These amounts are computed as follows:

Carryover to 1975	\$55,000
1975 limitation based on tax	\$230,000
Less: Credit earned for 1975	\$210,000
Unused credits attributable to years preceding 1973	0
	210,000
Limit on amount of 1973 unused credit which may be added as a credit for 1975	\$20,000
	35,000

(d) 1976. The entire balance of the unused credit for 1973 (\$35,000) is allowable as a credit for 1976, since the limitation based on amount of tax for 1976 exceeds the sum of the credit earned for 1976 and unused credits attributable to years prior to 1973 by an

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amount in excess of \$35,000. Since the balance of the unused credit for 1973 has been fully allowed, no portion thereof remains to be carried to subsequent taxable years. This is illustrated as follows:

Carryover to 1976	\$35,000	
1976 limitation based on tax	\$260,000	
Less: Credit earned for 1976	\$220,000	
Unused credits attributable to years pre-ceding 1973	0	
		220,000
Limit on amount of 1973 unused credit which may be added as a credit for 1976	40,000	
Balance of 1973 unused credit to be carried to 1977	0	

(ii) Since the limitation based on amount of tax for 1977 is \$220,000, only \$220,000 of the \$260,000 credit earned for such year is allowable as a credit for 1977. The unused credit for 1977 of \$40,000 (\$260,000 less \$220,000) is a WIN credit carryback to 1974, 1975, and 1976 and a WIN credit carryover to 1978 and subsequent years. The portions of the \$40,000 unused credit which shall be added to the amount allowable as a credit for such years are computed as follows:

(a) 1974. The portion of the unused credit for 1977 (\$40,000) allowable as a credit for 1974 is zero. The balance of the unused credit for 1977 to be carried to 1975 is \$40,000. These amounts are computed as follows:

Carryback to 1974	\$40,000	
1974 limitation based on tax	\$210,000	
Less: Credit earned for 1974	\$200,000	
Unused credits attributable to years pre-ceding 1977 (unused credit from 1973)	10,000	
		\$210,000

Limit on amount of 1977 unused credit which may be added as a credit for 1974	0	
Balance of 1977 unused credit to be carried to 1975	40,000	

(b) 1975. The portion of the unused credit for 1977 (\$40,000) allowable as a credit for 1975 is zero. The balance of the unused credit for 1977 to be carried to 1976 is \$40,000. These amounts are computed as follows:

Carryback to 1975	\$40,000	
1975 limitation based on tax	\$230,000	
Less: Credit earned for 1975	\$210,000	

Unused credits attributable to years pre-ceding 1977 (unused credit from 1973)	20,000	
		230,000
Limit on amount of 1977 unused credit which may be added as a credit for 1975		0
Balance of 1977 unused credit to be carried to 1976		40,000

(c) 1976. The portion of the unused credit for 1977 (\$40,000) allowable as a credit for 1976 is \$5,000. This amount shall be added to the amount allowable as a credit for 1976. The balance of the unused credit for 1977 to be carried to 1978 is \$35,000. These amounts are computed as follows:

Carryback to 1976	\$40,000	
1976 limitation based on tax	\$260,000	
Less: Credit earned for 1976	\$220,000	
Unused credits attributable to years pre-ceding 1977 (unused credit from 1973)	35,000	
		255,000

Limit on amount of 1977 unused credit which may be added as a credit for 1976	5,000	
Balance of 1977 unused credit to be carried to 1978		35,000

(d) 1978. The portion of the balance of the unused credit for 1977 (\$35,000) allowable as a credit for 1978 is \$10,000. This amount shall be added to the amount allowable as a credit for 1978. The balance of the unused credit for 1977 to be carried to 1979 and subsequent years is \$25,000. These amounts are computed as follows:

Carryover to 1978	\$35,000	
1978 limitation based on tax	\$280,000	
Less: Credit earned for 1978	\$270,000	
Unused credits attributable to years pre-ceding 1977	0	
		\$270,000

Limit on amount of 1977 unused credit which may be added as a credit for 1978	\$10,000	
Balance of 1977 unused credit to be carried to 1979		25,000

(f) *Electing small business corporation.* An unused credit of a corporation which arises in an unused credit year for which the corporation is not an electing small business corporation (as defined in section 1371(b)) and which is a carryback or carryover to a taxable year for which the corporation is an

electing small business corporation shall not be added to the amount allowable as a credit under section 40 to the shareholders of such corporation for any taxable year. However, a taxable year for which the corporation is an electing small business corporation shall be counted as a taxable year for purposes of determining the taxable years to which such unused credit may be carried.

[38 FR 6153, Mar. 7, 1973]

§ 1.50A-3 Recomputation of credit allowed by section 40.

(a) *General rule*—(1) *Early termination of employment by employer*—(i) *In general.* If the employment of any employee, with respect to whom work incentive program (WIN) expenses (as defined in paragraph (a) of § 1.50B-1) are taken into account under paragraph (a) of § 1.50A-1, is terminated by the taxpayer at any time during the first 12 months of such employment (whether or not consecutive) or before the close of the 12th calendar month after the calendar month in which such employee completes the first 12 months of employment (whether or not consecutive) with the taxpayer, then subparagraph (3) of this paragraph shall apply. See paragraph (c) of this section for rules relating to the determination of the first 12 months of employment (whether or not consecutive). See § 1.50A-4 for rules relating to other circumstances under which a termination of employment will not be treated as a termination of employment to which the provisions of subparagraph (3) of this paragraph are applicable.

(ii) *Rules for determining whether a termination of employment has occurred.* For purposes of this section, the taxpayer is deemed to have terminated the employment of any WIN employee (as defined in paragraph (h) of § 1.50B-1) if the employment relationship (as determined under common law principles) has terminated. A layoff for any reason is considered a termination of employment for purposes of the preceding sentence. However, a temporary suspension of employment of any WIN employee necessitated by the installation of new equipment or by the retooling of existing equipment (such as for a model changeover in the automobile

industry) shall not be deemed to be a termination of employment if such suspension is for a period of time no longer than 60 days. For purposes of this section, the death of the taxpayer is considered a termination of the employment relationship between the taxpayer and any WIN employee.

(2) *Failure to pay comparable wages*—

(i) *In general.* If, at any time during the period described in subparagraph (1)(i) of this paragraph, the taxpayer pays wages (as defined in section 50B(b) and paragraph (b) of § 1.50B-1) to an employee, with respect to whom WIN expenses are taken into account under paragraph (a) of § 1.50A-1, which are less than the wages paid to other employees of the taxpayer who perform comparable services, then subparagraph (3) of this paragraph shall apply.

(ii) *Comparable services.* (a) For purposes of subdivision (i) of this subparagraph, the term “comparable services” refers to services performed in work positions which require similar education, training, and skills. Comparable services are those associated with other work positions which require similar levels of judgment and responsibility, which make similar physical and mental demands of an employee, and which could easily be performed by the employee without substantial additional training or experience.

(b) If substantial training, skill, or experience are material to the performance of a particular job, a taxpayer may pay wages to a WIN employee which are less than those paid to other employees of the taxpayer who possess such training, skill, or experience. However, there must be a reasonable relationship between the lower wages or salary of such WIN employee and his relative lack of training, skill, or experience.

(3) *Recomputation of credit earned.* (i) If, by reason of subparagraph (1) or (2) of this paragraph, this subparagraph (3) is applicable, then the credit earned for all credit years (as defined in subdivision (ii)(a) of this subparagraph) shall be recomputed under the principles of paragraph (a) of § 1.50A-1 by not taking into account WIN expenses with respect to the employee (or employees) described in subparagraph (1) or (2) of