

apply paragraph (c)(3)(i)(A) of this section to transactions that occurred prior to September 17, 2008. Any such determination or redetermination does not, however, affect any prior period. Paragraphs (a)(3), (c)(1)(iii)(A), and (c)(3)(i)(A) of this section apply with respect to determinations and transactions occurring on or after September 17, 2008. However, taxpayers may elect to apply paragraph (c)(3)(i)(A) of this section to transactions that occurred prior to September 17, 2008. The last sentence of paragraph (a)(1) and paragraph (b)(1)(iv) of this section applies with respect to dispositions on or after December 16, 2008.

(2) *Dispositions of stock*—(i) *Dispositions of stock before effective date.* If M was treated as disposing of stock of S in a tax year beginning before January 1, 1995 (including, for example, a deemed disposition because S was worthless) under the rules of this section then in effect, the amount of M's income, gain, deduction, or loss, and the stock basis reflected in that amount, are not redetermined under paragraph (h)(1) of this section. See paragraph (h)(3) of this section for the applicable rules.

(ii) *Application of special limitation.* If M was treated as disposing of stock of S because S was treated as worthless as a result of the application of paragraph (c)(1)(iii)(B) of this section after August 29, 2003, the amount of M's income, gain, deduction, or loss, and the stock basis reflected in that amount, are determined or redetermined with regard to paragraph (b)(1)(ii) of this section. If M was treated as disposing of stock of S because S was treated as worthless as a result of the application of paragraph (c)(1)(iii)(B) of this section on or before August 29, 2003, the group may determine or redetermine the amount of M's income, gain, deduction, or loss, and the stock basis reflected in that amount with regard to paragraph (b)(1)(ii) of this section.

(iii) *Intercompany amounts.* For purposes of this paragraph (h)(2), a disposition does not include a transaction to which § 1.1502-13, § 1.1502-13T, § 1.1502-14, or § 1.1502-14T applies. Instead, the transaction is deemed to occur as the

income, gain, deduction, or loss (if any) is taken into account.

(iv) *Intercompany reorganizations.* Paragraphs (d) and (g) *Example 2* of this section apply to transactions occurring on or after July 18, 2007. For transactions occurring on or after January 23, 2006, and before July 18, 2007, see § 1.1502-19T as contained in 26 CFR part 1 in effect April 1, 2007. For transactions occurring before January 23, 2006, see § 1.1502-19 as contained in 26 CFR part 1 in effect April 1, 2005.

(3) *Prior law.* For prior determinations, see prior regulations under section 1502 as in effect with respect to the determination. See, e.g., § 1.1502-19 as contained in the 26 CFR part 1 edition revised as of April 1, 1994. For guidance regarding determinations of the basis of the stock of a subsidiary acquired in an intercompany reorganization before January 23, 2006, see paragraph (d) and (g) *Example 2* of § 1.1502-19 as contained in the 26 CFR part 1 edition revised as of April 1, 2005.

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COMPUTATION OF CONSOLIDATED ITEMS

§ 1.1502-21 Net operating losses.

(a) *Consolidated net operating loss deduction.* The consolidated net operating loss deduction (or CNOL deduction) for any consolidated return year is the aggregate of the net operating loss carryovers and carrybacks to the year. The net operating loss carryovers and carrybacks consist of—

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

(2) Any net operating losses of the members arising in separate return years.

(b) *Net operating loss carryovers and carrybacks to consolidated return and separate return years.* Net operating losses of members arising during a consolidated return year are taken into account in determining the group's CNOL under paragraph (e) of this section for that year. Losses taken into account in determining the CNOL may

be carried to other taxable years (whether consolidated or separate) only under this paragraph (b).

(1) *Carryovers and carrybacks generally.* The net operating loss carryovers and carrybacks to a taxable year are determined under the principles of section 172 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. In addition, the amount of any CNOL absorbed by the group in any year is apportioned among members based on the percentage of the CNOL attributable to each member as of the beginning of the year. The percentage of the CNOL attributable to a member is determined pursuant to paragraph (b)(2)(iv)(B) of this section. Additional rules provided under the Internal Revenue Code or regulations also apply. See, e.g., section 382(1)(2)(B) (if losses are carried from the same taxable year, losses subject to limitation under section 382 are absorbed before losses that are not subject to limitation under section 382). See paragraph (c)(1)(iii) of this section, *Example 2*, for an illustration of pro rata absorption of losses subject to a SRLY limitation.

(2) *Carryovers and carrybacks of CNOLs to separate return years—(i) In general.* If any CNOL that is attributable to a member may be carried to a separate return year of the member, the amount of the CNOL that is attributable to the member is apportioned to the member (apportioned loss) and carried to the separate return year. If carried back to a separate return year, the apportioned loss may not be carried back to an equivalent, or earlier, consolidated return year of the group; if carried over to a separate return year, the apportioned loss may not be carried over to an equivalent, or later, consolidated return year of the group.

(ii) *Special rules—(A) Year of departure from group.* If a corporation ceases to be a member during a consolidated return year, net operating loss carryovers attributable to the corporation are first

carried to the consolidated return year, then are subject to reduction under section 108 and §1.1502-28 (regarding discharge of indebtedness income that is excluded from gross income under section 108(a)), and then are subject to reduction under §1.1502-36 (regarding transfers of loss shares of subsidiary stock). Only the amount that is neither absorbed by the group in that year nor reduced under section 108 and §1.1502-28 or under §1.1502-36 may be carried to the corporation's first separate return year. For rules concerning a member departing a subgroup, see paragraph (c)(2)(vii) of this section.

(B) *Offspring rule.* In the case of a member that has been a member continuously since its organization (determined without regard to whether the member is a successor to any other corporation), the CNOL attributable to the member is included in the carrybacks to consolidated return years before the member's existence. If the group did not file a consolidated return for a carryback year, the loss may be carried back to a separate return year of the common parent under paragraph (b)(2)(i) of this section, but only if the common parent was not a member of a different consolidated group or of an affiliated group filing separate returns for the year to which the loss is carried or any subsequent year in the carryback period. Following an acquisition described in §1.1502-75(d)(2) or (3), references to the common parent are to the corporation that was the common parent immediately before the acquisition.

(iii) *Equivalent years.* Taxable years are equivalent if they bear the same numerical relationship to the consolidated return year in which a CNOL arises, counting forward or backward from the year of the loss. For example, in the case of a member's third taxable year (which was a separate return year) that preceded the consolidated return year in which the loss arose, the equivalent year is the third consolidated return year preceding the consolidated return year in which the loss arose. See paragraph (b)(3)(iii) of this section for certain short taxable years that are disregarded in making this determination.

(iv) *Operating rules*—(A) *Amount of CNOL attributable to a member.* The amount of a CNOL that is attributable to a member shall equal the product of the CNOL and the percentage of the CNOL attributable to such member.

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

(2) *Special rules*—(i) *Carryback to a separate return year.* If a portion of the CNOL attributable to a member for a taxable year is carried back to a separate return year, the percentage of the CNOL attributable to each member as of immediately after such portion of the CNOL is carried back shall be recomputed pursuant to paragraph (b)(2)(iv)(B)(2)(v) of this section.

(ii) *Excluded discharge of indebtedness income.* If during a taxable year a member realizes discharge of indebtedness income that is excluded from gross income under section 108(a) and such amount reduces any portion of the CNOL attributable to any member pursuant to section 108 and § 1.1502-28, the percentage of the CNOL attributable to each member as of immediately after the reduction of attributes pursuant to sections 108 and 1017 and § 1.1502-28 shall be recomputed pursuant to paragraph (b)(2)(iv)(B)(2)(v) of this section.

(iii) *Departing member.* If during a taxable year a member that had a separate net operating loss for the year of the CNOL ceases to be a member, the percentage of the CNOL attributable to each member as of the first day of the following consolidated return year shall be recomputed pursuant to paragraph (b)(2)(iv)(B)(2)(v) of this section.

(iv) *Reduction of attributes for stock loss.* If during a taxable year a member does not cease to be a member of the group and any portion of the CNOL attributable to any member is reduced under § 1.1502-36, the percentage of the CNOL attributable to each member as of immediately after the reduction of attributes under § 1.1502-36 shall be recomputed pursuant to paragraph (b)(2)(iv)(B)(2)(v) of this section.

(v) *Recomputed percentage.* The recomputed percentage of the CNOL attributable to each member shall equal the unabsorbed CNOL attributable to the member at the time of the recomputation divided by the sum of the unabsorbed CNOL attributable to all of the members at the time of the recomputation. For purposes of the preceding sentence, a CNOL that is reduced under section 108 and § 1.1502-28, or under § 1.1502-36, or that is otherwise permanently disallowed or eliminated, shall be treated as absorbed.

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

Example 1. Offspring rule. (i) During Year 1, Individual A forms P and T, and they each file a separate return. P forms S on March 15 of Year 2, and P and S file a consolidated return. P acquires all the stock of T from Individual A at the beginning of Year 3, and T becomes a member of the P group. P's acquisition of T is not an ownership change within the meaning of section 382. P, S, and T sustain a \$1,100 CNOL in Year 3 and, under paragraph (b)(2)(iv) of this section, the loss is attributable \$200 to P, \$300 to S, and \$600 to T.

(ii) Of the \$1,100 CNOL in Year 3, the \$500 amount of the CNOL that is attributable to P and S (\$200 + \$300) may be carried to P's separate return in Year 1. Even though S was not in existence in Year 1, the \$300 amount of the CNOL attributable to S may be carried back to P's separate return in Year 1 because S (unlike T) has been a member of the P group since its organization and P is a qualified parent under paragraph (b)(2)(ii)(B) of

this section. To the extent not absorbed in that year, the loss may then be carried to the P group's return in Year 2. The \$600 amount of the CNOL attributable to T is a net operating loss carryback to T's separate return in Year 1, and if not absorbed in Year 1, then to Year 2.

Example 2. Departing members. (i) The facts are the same as in *Example 1*. In addition, on June 15 of Year 4, P sells all the stock of T. The P group's consolidated return for Year 4 includes the income of T through June 15. T files a separate return for the period from June 16 through December 31.

(ii) \$600 of the Year 3 CNOL attributable to T is apportioned to T and is carried back to its separate return in Year 1. To the extent the \$600 is not absorbed in T's separate return in Year 1 or Year 2, it is carried to the consolidated return in Year 4 before being carried to T's separate return in Year 4. Any portion of the loss not absorbed in T's Year 1 or Year 2 or in the P group's Year 4 is then carried to T's separate return in Year 4.

Example 3. Offspring rule following acquisition. (i) Individual A owns all of the stock of P, the common parent of a consolidated group. In Year 1, B, an individual unrelated to Individual A, forms T. P acquires all of the stock of T at the beginning of Year 3, and T becomes a member of the P group. The P group has \$200 of consolidated taxable income in Year 2, and \$300 of consolidated taxable income in Year 3 (computed without regard to the CNOL deduction). At the beginning of Year 4, T forms a subsidiary, Y, in a transaction described in section 351. The P group has a \$300 consolidated net operating loss in Year 4, and under paragraph (b)(2)(iv) of this section, the loss is attributable entirely to Y.

(ii) Even though Y was not in existence in Year 2, \$300, the amount of the consolidated net operating loss attributable to Y, may be carried back to the P group's Year 2 consolidated return under paragraph (b)(2)(ii)(B) of this section because Y has been a member of the P group since its organization. To the extent not absorbed in that year, the loss may then be carried to the P group's consolidated return in Year 3.

(3) *Special rules*—(i) *Election to relinquish carryback.* A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. Except as provided in § 1.1502-21(b)(3)(ii)(B), the election may not be made separately for any member (whether or not it remains a member), and must be made in a separate statement entitled “THIS IS AN ELECTION UNDER § 1.1502-21(b)(3)(i) TO WAIVE

THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT.” The statement must be filed with the group's income tax return for the consolidated return year in which the loss arises. 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. If the consolidated return year in which the loss arises begins after December 31, 2002, the election may be made in an unsigned statement.

(ii) *Special elections*—(A) *Groups that include insolvent financial institutions.* For rules applicable to relinquishing the entire carryback period with respect to losses attributable to insolvent financial institutions, see § 301.6402-7 of this chapter.

(B) *Acquisition of member from another consolidated group.* If one or more members of a consolidated group becomes a member of another consolidated group, the acquiring group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses attributable to the member, the portion of the carryback period for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election must be made in a separate statement entitled “THIS IS AN ELECTION UNDER § 1.1502-21(b)(3)(ii)(B)(2) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members].” The statement must be filed with the acquiring consolidated group's original income tax return for the year the corporation (or corporations) became a

member. If the year in which the corporation (or corporations) became a member begins before January 1, 2003, the statement must be signed by the common parent and each of the members to which it applies. If the year in which the corporation (or corporations) became a member begins after December 31, 2002, the election may be made in an unsigned statement.

(C) [Reserved]. For further guidance, see § 1.1502-21T(b)(3)(ii)(C).

(iii) *Short years in connection with transactions to which section 381(a) applies.* If a member distributes or transfers assets to a corporation that is a member immediately after the distribution or transfer in a transaction to which section 381(a) applies, the transaction does not cause the distributor or transferor to have a short year within the consolidated return year of the group in which the transaction occurred that is counted as a separate year for purposes of determining the years to which a net operating loss may be carried.

(iv) *Special status losses.* [Reserved]

(c) *Limitations on net operating loss carryovers and carrybacks from separate return limitation years—(1) SRLY limitation—(i) General rule.* Except as provided in paragraph (g) of this section (relating to an overlap with section 382), the aggregate of the net operating loss carryovers and carrybacks of a member arising (or treated as arising) in SRLYs that are included in the CNOL deductions for all consolidated return years of the group under paragraph (a) of this section may not exceed the aggregate consolidated taxable income for all consolidated return years of the group determined by reference to only the member's items of income, gain, deduction, and loss. For this purpose—

(A) Consolidated taxable income is computed without regard to CNOL deductions;

(B) Consolidated taxable income takes into account the member's losses and deductions (including capital losses) actually absorbed by the group in consolidated return years (whether or not absorbed by the member);

(C) In computing consolidated taxable income, the consolidated return years of the group include only those

years, including the year to which the loss is carried, that the member has been continuously included in the group's consolidated return, but exclude—

(1) For carryovers, any years ending after the year to which the loss is carried; and

(2) For carrybacks, any years ending after the year in which the loss arose; and

(D) The treatment under § 1.1502-15 of a built-in loss as a hypothetical net operating loss carryover in the year recognized is solely for purposes of determining the limitation under this paragraph (c) with respect to the loss in that year and not for any other purpose. Thus, for purposes of determining consolidated taxable income for any other losses, a built-in loss allowed under this section in the year it arises is taken into account.

(ii) *Losses treated as arising in SRLYs.* If a net operating loss carryover or carryback did not arise in a SRLY but is attributable to a built-in loss (as defined under § 1.1502-15), the carryover or carryback is treated for purposes of this paragraph (c) as arising in a SRLY if the built-in loss was not allowed, after application of the SRLY limitation, in the year it arose. For an illustration, see § 1.1502-15(d), *Example 5*. But see § 1.1502-15(g)(1).

(iii) *Examples.* The principles of this paragraph (c)(1) are illustrated by the following examples:

Example 1. Determination of SRLY limitation.

(i) Individual A owns P. In Year 1, Individual A forms T, and T sustains a \$100 net operating loss that is carried forward. P acquires all the stock of T at the beginning of Year 2, and T becomes a member of the P group. The P group has \$300 of consolidated taxable income in Year 2 (computed without regard to the CNOL deduction). Such consolidated taxable income would be \$70 if determined by reference to only T's items.

(ii) T's \$100 net operating loss carryover from Year 1 arose in a SRLY. See § 1.1502-1(f)(2)(iii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, the \$100 net operating loss carryover is subject to the SRLY limitation in paragraph (c)(1) of this section. The SRLY limitation for Year 2 is consolidated taxable income determined by reference to only T's items, or \$70. Thus, \$70 of the loss is included under paragraph (a) of this section in the P group's CNOL deduction for Year 2.

(iii) The facts are the same as in paragraph (i) of this *Example 1*, except that such consolidated taxable income (computed without regard to the CNOL deduction and by reference to only T's items) for Year 2 is a loss (a CNOL) of \$370. Because the SRLY limitation may not exceed the consolidated taxable income determined by reference to only T's items, and such items aggregate to a CNOL, T's \$100 net operating loss carryover from Year 1 is not allowed under the SRLY limitation in Year 2. Moreover, if consolidated taxable income (computed without regard to the CNOL deduction and by reference to only T's items) did not exceed \$370 in Year 3, the carryover would still be restricted under paragraph (c) of this section in Year 3, because the aggregate consolidated taxable income for all consolidated return years of the group computed by reference to only T's items would not be a positive amount.

Example 2. Net operating loss carryovers. (i) In Year 1, Individual A forms P, and P sustains a \$40 net operating loss that is carried forward. P has no income in Year 2. Individual A also owns T which sustains a net operating loss of \$50 in Year 2 that is carried forward. P acquires the stock of T from Individual A during Year 3, but T is not a member of the P group for each day of the year. P and T file separate returns and sustain net operating losses of \$120 and \$60, respectively, for Year 3. The P group files consolidated returns beginning in Year 4. During Year 4, the P group has \$160 of consolidated taxable income (computed without regard to the CNOL deduction). Such consolidated taxable income would be \$70 if determined by reference to only T's items. These results are summarized as follows:

	Separate	Separate	Separate/ affiliated	Consolidated
	Year 1	Year 2	Year 3	Year 4
P	\$ (40)	\$0	\$ (120)	\$90
T	0	(50)	(60)	70
CTI	160

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

(iii) T's Year 2 and Year 3 are SRLYs with respect to the P group. See §1.1502-1(f)(2)(ii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, T's

\$50 net operating loss arising in Year 2 and \$60 net operating loss arising in Year 3 are subject to the SRLY limitation. Under paragraph (c)(1) of this section, the SRLY limitation for Year 4 is \$70, and under paragraph (b) of this section, T's \$50 loss from Year 2 must be included under paragraph (a) of this section in the P group's CNOL deduction for Year 4. The absorption of this loss leaves \$70 of the group's consolidated taxable income available for offset by other loss carryovers.

(iv) P and T each carry over net operating losses to Year 4 from a taxable year ending on the same date (Year 3). The losses carried over from Year 3 total \$180. Under paragraph (b) of this section, the losses carried over from Year 3 are absorbed on a pro rata basis, even though one arises in a SRLY and the other does not. However, the group cannot absorb more than \$20 of T's \$60 net operating loss arising in Year 3 because its \$70 SRLY limitation for Year 4 is reduced by T's \$50 Year 2 SRLY loss already included in the CNOL deduction for Year 4. Thus, the absorption of Year 3 losses is as follows:

Amount of P's Year 3 losses absorbed = $\$120/(\$120 + \$20) \times \$70 = \$60$.

Amount of T's Year 3 losses absorbed = $\$20/(\$120 + \$20) \times \$70 = \$10$.

(v) The absorption of \$10 of T's Year 3 loss further reduces T's SRLY limitation to \$10 (\$70 of initial SRLY limitation, reduced by the \$60 net operating loss already included in the CNOL deductions for Year 4 under paragraph (a) of this section).

(vi) P carries its remaining \$60 Year 3 net operating loss and T carries its remaining \$50 Year 3 net operating loss over to Year 5. Assume that, in Year 5, the P group has \$90 of consolidated taxable income (computed without regard to the CNOL deduction). The group's CTI determined by reference to only T's items is a CNOL of \$4. For Year 5, the CNOL deduction is \$66, which includes \$60 of P's Year 3 loss and \$6 of T's Year 3 loss (the aggregate consolidated taxable income for Years 4 and 5 determined by reference to T's items, or \$66, reduced by T's SRLY losses actually absorbed by the group in Year 4, or \$60).

Example 3. Net operating loss carrybacks. (i) P owns all of the stock of S and T. The members of the P group contribute the following to the consolidated taxable income of the P group for Years 1, 2, and 3:

	Year 1	Year 2	Year 3	Total
P	\$100	\$60	\$80	\$240
S	20	20	30	70
T	30	10	(50)	(10)
CTI	150	90	60	300

(ii) P sells all of the stock of T to Individual A at the beginning of Year 4. For its Year 4 separate return year, T has a net operating loss of \$30.

(iii) T's Year 4 is a SRLY with respect to the P group. See §1.1502-1(f)(1). T's \$30 net operating loss carryback to the P group from Year 4 is not allowed under paragraph (c) of this section to be included in the CNOL deduction under paragraph (a) of this section for Year 1, 2, or 3, because the P group's consolidated taxable income would not be a positive amount if determined by reference to only T's items for all consolidated return years through Year 4 (without regard to the \$30 net operating loss). The \$30 loss is carried forward to T's Year 5 and succeeding taxable years as provided under the Internal Revenue Code.

Example 4. Computation of SRLY limitation for built-in losses treated as net operating loss carryovers. (i) Individual A owns P. In Year 1, Individual A forms T by contributing \$300 and T sustains a \$100 net operating loss. During Year 2, T's assets decline in value by \$100. At the beginning of Year 3, P acquires all the stock of T from Individual A, and T becomes a member of the P group in a transaction that does not result in an ownership change under section 382(g). At the time of the acquisition, T has a \$100 net unrealized built-in loss, which exceeds the threshold requirements of section 382(h)(3)(B). During Year 3, T recognizes its unrealized loss as a \$100 ordinary loss. The members of the P group contribute the following to the consolidated taxable income of the P group for Years 3 and 4 (computed without regard to T's recognition of its unrealized loss and any CNOL deduction under this section):

	Year 3	Year 4	Total
P group (without T)	\$100	\$100	\$200
T	60	40	100
CTI	160	140	300

(ii) Under §1.1502-15(a), T's \$100 of ordinary loss in Year 3 constitutes a built-in loss that is subject to the SRLY limitation under paragraph (c) of this section. The amount of the limitation is determined by treating the deduction as a net operating loss carryover from a SRLY. The built-in loss is therefore subject to a \$60 SRLY limitation for Year 3. The built-in loss is treated as a net operating loss carryover solely for purposes of determining the extent to which the loss is not allowed by reason of the SRLY limitation, and for all other purposes the loss remains a loss arising in Year 3. Consequently, under paragraph (b) of this section, the \$60 allowed under the SRLY limitation is absorbed by the P group before T's \$100 net operating loss carryover from Year 1 is allowed.

(iii) Under §1.1502-15(a), the \$40 balance of the built-in loss that is not allowed in Year 3 because of the SRLY limitation is treated as a \$40 net operating loss arising in Year 3 that is subject to the SRLY limitation because, under paragraph (c)(1)(ii) of this section, Year 3 is treated as a SRLY, and is car-

ried to other years in accordance with the rules of paragraph (b) of this section. The SRLY limitation for Year 4 is the P group's consolidated taxable income for Year 3 and Year 4 determined by reference to only T's items and without regard to the group's CNOL deductions (\$60 + \$40), reduced by T's loss actually absorbed by the group in Year 3 (\$60). The SRLY limitation for Year 4 is \$40.

(iv) Under paragraph (c) of this section and the principles of section 172(b), \$40 of T's \$100 net operating loss carryover from Year 1 is included in the CNOL deduction under paragraph (a) of this section in Year 4.

Example 5. Dual SRLY registers and accounting for SRLY losses actually absorbed. (i) In Year 1, T sustains a \$100 net operating loss and a \$50 net capital loss. At the beginning of Year 2, T becomes a member of the P group in a transaction that does not result in an ownership change under section 382(g). Both of T's carryovers from Year 1 are subject to SRLY limits under this paragraph (c) and §1.1502-22(c). The members of the P group contribute the following to the consolidated taxable income for Years 2 and 3 (computed without regard to T's CNOL deduction under this section or net capital loss carryover under §1.1502-22):

	P	T
Year 1 (SRLY)		
Ordinary	(100)
Capital	(50)
Year 2		
Ordinary	30	60
Capital	0	(20)
Year 3		
Ordinary	10	40
Capital	0	30

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

(iii) Under this section, the aggregate amount of T's \$100 net operating loss carryover from Year 1 that may be included in the CNOL deduction of the group for Year 2 may not exceed \$60—the amount of the consolidated taxable income computed by reference only to T's items, including losses and deductions to the extent actually absorbed (i.e., \$60 of T's ordinary income for Year 2). Thus, the group may include \$60 of T's ordinary loss carryover from Year 1 in its Year

2 CNOL deduction. T carries over its remaining \$40 of its Year 1 loss to Year 3.

(iv) For Year 3, the group again computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group has consolidated net capital gain (without taking into account a net capital loss carryover deduction) of \$30. Under §1.1502-22(c), the aggregate amount of T's \$50 capital loss carryover from Year 1 that may be included in computing the group's consolidated net capital gain for all years of the group (here Years 2 and 3) may not exceed \$30 (the aggregate consolidated net capital gain computed by reference only to T's items, including losses and deductions actually absorbed (i.e., \$30 of capital gain in Year 3)). Thus, the group may include \$30 of T's Year 1 capital loss carryover in its computation of consolidated net capital gain for Year 3, which offsets the group's capital gains for Year 3. T carries over its remaining \$20 of its Year 1 loss to Year 4. The group carries over the Year 2 consolidated net capital loss to Year 4.

(v) Under this section, the aggregate amount of T's net operating loss carryover from Year 1 that may be included in the CNOL deduction of the group for Years 2 and 3 may not exceed \$100, which is the amount of the aggregate consolidated taxable income for Years 2 and 3 determined by reference only to T's items, including losses and deductions actually absorbed (i.e., \$60 of ordinary income in Year 2 plus \$40 of ordinary income, \$30 of capital gain, and \$30 of SRLY capital losses actually absorbed in Year 3). The group included \$60 of T's ordinary loss carryover in its Year 2 CNOL deduction. It may include the remaining \$40 of the carryover in its Year 3 CNOL deduction.

(2) *SRLY subgroup limitation.* In the case of a net operating loss carryover or carryback for which there is a SRLY subgroup, the principles of paragraph (c)(1) of this section apply to the SRLY subgroup, and not separately to its members. Thus, the contribution to consolidated taxable income and the net operating loss carryovers and carrybacks arising (or treated as arising) in SRLYs that are included in the CNOL deductions for all consolidated return years of the group under paragraph (a) of this section are based on the aggregate amounts of income, gain, deduction, and loss of the members of the SRLY subgroup for the relevant consolidated return years (as provided in paragraph (c)(1)(i)(C) of this section). For an illustration of aggregate amounts during the relevant consolidated return years following the year

in which a member of a SRLY subgroup ceases to be a member of the group, see paragraph (c)(2)(viii) *Example 4* of this section. A SRLY subgroup may exist only for a carryover or carryback arising in a year that is not a SRLY (and is not treated as a SRLY under paragraph (c)(1)(ii) of this section) with respect to another group (the former group), whether or not the group is a consolidated group, or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or §1.1502-15(g) with respect to another group (the former group). A separate SRLY subgroup is determined for each such carryover or carryback. A consolidated group may include more than one SRLY subgroup, and a member may be a member of more than one SRLY subgroup. Solely for purposes of determining the members of a SRLY subgroup with respect to a loss:

(i) *Carryovers.* In the case of a carryover, the SRLY subgroup is composed of the member carrying over the loss (the loss member) and each other member that was a member of the former group that becomes a member of the group at the same time as the loss member. A member remains a member of the SRLY subgroup until it ceases to be affiliated with the loss member. The aggregate determination described in paragraph (c)(1) of this section and this paragraph (c)(2) includes the amounts of income, gain, deduction, and loss of each member of the SRLY subgroup for the consolidated return years during which it remains a member of the SRLY subgroup. For an illustration of the aggregate determination of a SRLY subgroup, see paragraph (c)(2)(viii) *Example 2* of this section.

(ii) *Carrybacks.* In the case of a carryback, the SRLY subgroup is composed of the member carrying back the loss (the loss member) and each other member of the group from which the loss is carried back that has been continuously affiliated with the loss member from the year to which the loss is carried through the year in which the loss arises.

(iii) *Built-in losses.* In the case of a built-in loss, the SRLY subgroup is composed of the member recognizing the loss (the loss member) and each

other member that was part of the subgroup with respect to the loss determined under §1.1502-15(c)(2) immediately before the members became members of the group. The principles of paragraphs (c)(2)(i) and (ii) of this section apply to determine the SRLY subgroup for the built-in loss that is, under paragraph (c)(1)(ii) of this section, treated as arising in a SRLY with respect to the group in which the loss is recognized. For this purpose and as the context requires, a reference in paragraphs (c)(2)(i) and (ii) of this section to a group or former group is a reference to the subgroup determined under §1.1502-15(c)(2).

(iv) *Principal purpose of avoiding or increasing a SRLY limitation.* The members composing a SRLY subgroup are not treated as a SRLY subgroup if any of them is formed, acquired, or availed of with a principal purpose of avoiding the application of, or increasing any limitation under, this paragraph (c). Any member excluded from a SRLY subgroup, if excluded with a principal purpose of so avoiding or increasing any SRLY limitation, is treated as included in the SRLY subgroup.

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

(vi) *Anti-duplication.* If the same item of income or deduction could be taken into account more than once in determining a limitation under this paragraph (c), or in a manner inconsistent with any other provision of the Internal Revenue Code or regulations incorporating this paragraph (c), the item of income or deduction is taken into account only once and in such manner that losses are absorbed in accordance with the ordering rules in paragraph (b) of this section and the underlying purposes of this section.

(vii) *Corporations that leave a SRLY subgroup.* If a loss member ceases to be affiliated with a SRLY subgroup, the amount of the member's remaining SRLY loss from a specific year is determined pursuant to the principles of paragraphs (b)(2)(ii)(A) and (b)(2)(iv) of this section.

(viii) *Examples.* The principles of this paragraph (c)(2) are illustrated by the following examples:

Example 1. Members of SRLY subgroups. (i) Individual A owns all of the stock of P, S, T and M. P and M are each the common parent of a consolidated group. During Year 1, P sustains a \$50 net operating loss. At the beginning of Year 2, P acquires all the stock of S at a time when the aggregate basis of S's assets exceeds their aggregate value by \$70, and S becomes a member of the P group. At the beginning of Year 3, P acquires all the stock of T, T has a \$60 net operating loss carryover at the time of the acquisition, and T becomes a member of the P group. During Year 4, S forms S1 and T forms T1, each by contributing assets with built-in gains which are, in the aggregate, material. S1 and T1 become members of the P group. During Year 7, M acquires all of the stock of P, and the members of the P group become members of the M group for the balance of Year 7. The \$50 and \$60 loss carryovers of P and T are carried to Year 7 of the M group, and the value and basis of S's assets did not change after it became a member of the former P group. None of the transactions described above resulted in an ownership change under section 382(g).

(ii) Under paragraph (c)(2) of this section, a separate SRLY subgroup is determined for each loss carryover and built-in loss. In the P group, P's \$50 loss carryover is not treated as arising in a SRLY. See §1.1502-1(f). Consequently, the carryover is not subject to limitation under paragraph (c) of this section in the P group.

(iii) In the M group, P's \$50 loss carryover is treated as arising in a SRLY and is subject to the limitation under paragraph (c) of this section. A SRLY subgroup with respect to that loss is composed of members which were members of the P group, the group as to which the loss was not a SRLY. The SRLY subgroup is composed of P, the member carrying over the loss, and each other member of the P group that became a member of the M group at the same time as P. A member of the SRLY subgroup remains a member until it ceases to be affiliated with P. For Year 7, the SRLY subgroup is composed of P, S, T, S1, and T1.

(iv) In the P group, S's \$70 unrealized loss, if recognized within the 5-year recognition period after S becomes a member of the P

group, is subject to limitation under paragraph (c) of this section. See § 1.1502-15 and paragraph (c)(1)(ii) of this section. Because S was not continuously affiliated with P, T, or T1 for 60 consecutive months prior to joining the P group, these corporations cannot be included in a SRLY subgroup with respect to S's unrealized loss in the P group. See paragraph (c)(2)(iii) of this section. As a successor to S, S1 is included in a subgroup with S in the P group, and, because 100 percent of S1's stock is owned directly by corporations that were members of the SRLY subgroup when the members of the SRLY subgroup became members of the P group, its net positive income is not excluded from the consolidated taxable income of the P group that may be offset by the built-in loss. See paragraph (f) of this section.

(v) In the M group, S's \$70 unrealized loss, if recognized within the 5-year recognition period after S becomes a member of the M group, is subject to limitation under paragraph (c) of this section. Prior to becoming a member of the M group, S had been continuously affiliated with P (but not T or T1) for 60 consecutive months, and S1 is a successor that has remained continuously affiliated with S. Those members had a net unrealized built-in loss immediately before they became members of the group under § 1.1502-15(c). Consequently, in Year 7, S, S1, and P compose a subgroup in the M group with respect to S's unrealized loss. Because S1 was a member of the SRLY subgroup when it became a member of the M group and also because 100 percent of S1's stock is owned directly by corporations that were members of the SRLY subgroup when the members of the SRLY subgroup became members of the M group, its net positive income is not excluded from the consolidated taxable income of the M group that may be offset by the recognized built-in loss. See paragraph (f) of this section.

(vi) In the P group, T's \$60 loss carryover arose in a SRLY and is subject to limitation under paragraph (c) of this section. P, S, and S1 were not members of the group in which T's loss arose, and T's loss carryover was not subject to the overlap rule described in paragraph (g) of this section with respect to the P group (the former group). Thus, P, S, and S1 are not members of a SRLY subgroup with respect to the T carryover in the P group. See paragraph (c)(2)(i) of this section. As a successor to T, T1 is included in a SRLY subgroup with T in the P group, and, because 100 percent of T1's stock is owned directly by corporations that were members of the SRLY subgroup when the members of the SRLY subgroup became members of the P group, its net positive income is not excluded from the consolidated taxable income of the P group that may be offset by the carryover. See paragraph (f) of this section.

(vii) In the M group, T's \$60 loss carryover arose in a SRLY and is subject to limitation under paragraph (c) of this section. T and T1 remain the only members of a SRLY subgroup with respect to the carryover. Because T1 was a member of the SRLY subgroup when it became a member of the M group and also because 100 percent of T1's stock is owned directly by corporations that were members of the SRLY subgroup when the members of the SRLY subgroup became members of the M group, its net positive income is not excluded from the consolidated taxable income of the M group that may be offset by the carryover. See paragraph (f) of this section.

Example 2. Computation of SRLY subgroup limitation. (i) Individual A owns all of the stock of S, T, P and M. P and M are each the common parent of a consolidated group. In Year 2, P acquires all the stock of S and T from Individual A, and S and T become members of the P group. For Year 3, the P group has a \$45 CNOL, which is attributable to P, and which P carries forward. M is the common parent of another group. At the beginning of Year 4, M acquires all of the stock of P, and the former members of the P group become members of the M group. None of the transactions described above resulted in an ownership change under section 382(g).

(ii) P's year to which the loss is attributable, Year 3, is a SRLY with respect to the M group. See § 1.1502-1(f)(1). However, P, S, and T compose a SRLY subgroup with respect to the Year 3 loss under paragraph (c)(2)(i) of this section because Year 3 is not a SRLY (and is not treated as a SRLY) with respect to the P group. P's loss is carried over to the M group's Year 4 and is therefore subject to the SRLY subgroup limitation in paragraph (c)(2) of this section.

(iii) In Year 4, the M group has \$10 of consolidated taxable income (computed without regard to the CNOL deduction for Year 4). Such consolidated taxable income would be \$45 if determined by reference to only the items of P, S, and T, the members included in the SRLY subgroup with respect to P's loss carryover. Therefore, the SRLY subgroup limitation under paragraph (c)(2) of this section for P's net operating loss carryover from Year 3 is \$45. Because the M group has only \$10 of consolidated taxable income in Year 4, however, only \$10 of P's net operating loss carryover is included in the CNOL deduction under paragraph (a) of this section in Year 4.

(iv) In Year 5, the M group has \$100 of consolidated taxable income (computed without regard to the CNOL deduction for Year 5). Neither P, S, nor T has any items of income, gain, deduction, or loss in Year 5. Although the members of the SRLY subgroup do not contribute to the \$100 of consolidated taxable

income in Year 5, the SRLY subgroup limitation for Year 5 is \$35 (the sum of SRLY subgroup consolidated taxable income of \$45 in Year 4 and \$0 in Year 5, less the \$10 net operating loss carryover actually absorbed by the M group in Year 4). Therefore, \$35 of P's net operating loss carryover is included in the CNOL deduction under paragraph (a) of this section in Year 5.

Example 3. Inclusion in more than one SRLY subgroup. (i) Individual A owns all of the stock of S, T, P and M. S, P, and M are each the common parent of a consolidated group. At the beginning of Year 1, S acquires all the stock of T from Individual A, and T becomes a member of the S group. For Year 1, the S group has a CNOL of \$10, all of which is attributable to S and is carried over to Year 2. At the beginning of Year 2, P acquires all the stock of S, and S and T become members of the P group. For Year 2, the P group has a CNOL of \$35, all of which is attributable to P and is carried over to Year 3. At the beginning of Year 3, M acquires all of the stock of P, and the former members of the P group become members of the M group. None of the transactions described above resulted in an ownership change under section 382(g).

(ii) P's and S's net operating losses arising in SRLYs with respect to the M group are subject to limitation under paragraph (c) of this section. P, S, and T compose a SRLY subgroup for purposes of determining the limitation for P's \$35 net operating loss carryover arising in Year 2 because, under paragraph (c)(2)(i) of this section, Year 2 is not a SRLY with respect to the P group. Similarly, S and T compose a SRLY subgroup for purposes of determining the limitation for S's \$10 net operating loss carryover arising in Year 1 because Year 1 is not a SRLY with respect to the S group.

(iii) S and T are members of both the SRLY subgroup with respect to P's losses and the SRLY subgroup with respect to S's losses. Under paragraph (c)(2) of this section, S's and T's items cannot be included in the determination of the SRLY subgroup limitation for both SRLY subgroups for the same consolidated return year; paragraph (c)(2)(vi) of this section requires the M group to consider the items of S and T only once so that the losses are absorbed in the order of the taxable years in which they were sustained. Because S's loss was incurred in Year 1, while P's loss was incurred in Year 2, the items will be added in the determination of the consolidated taxable income of the S and T SRLY subgroup to enable S's loss to be absorbed first. The taxable income of the P, S, and T SRLY subgroup is then computed by including the consolidated taxable income for the S and T SRLY subgroup less the amount of any net operating loss carryover of S that is absorbed after applying this section to the S subgroup for the year.

Example 4. Corporation ceases to be affiliated with a SRLY subgroup. (i) Individual A owns all of the stock of P, and M. P and S are members of the P group and the P group has a CNOL of \$30 in Year 1, all of which is attributable to P and carried over to Year 2. At the beginning of Year 2, M acquires all of the stock of P, and P and S become members of the M group. P and S compose a SRLY subgroup with respect to P's net operating loss carryover. For Year 2, consolidated taxable income of the M group determined by reference to only the items of P (and without regard to the CNOL deduction for Year 2) is \$40. However, such consolidated taxable income of the M group determined by reference to the items of both P and S is a loss of \$20. Thus, the SRLY subgroup limitation under paragraph (c)(2) of this section prevents the M group from including any of P's net operating loss carryover in the CNOL deduction under paragraph (a) of this section in Year 2, and P carries the Year 1 loss to Year 3.

(ii) At the end of Year 2, P sells all of the S stock, and S ceases to be a member of the M group and the P subgroup. For Year 3, consolidated taxable income of the M group is \$50 (determined without regard to the CNOL deduction for Year 3), and such consolidated taxable income would be \$10 if determined by reference to only items of P. However, the limitation under paragraph (c) of this section for Year 3 for P's net operating loss carryover still prevents the M group from including any of P's loss in the CNOL deduction under paragraph (a) of this section. The limitation results from the inclusion of S's items for Year 2 in the determination of the SRLY subgroup limitation for Year 3 even though S ceased to be a member of the M group (and the P subgroup) at the end of Year 2. Thus, the M group's consolidated taxable income determined by reference to only the SRLY subgroup members' items for all consolidated return years of the group through Year 3 (determined without regard to the CNOL deduction) is not a positive amount.

(ix) *Application to other than loss carryovers.* Paragraph (g) of this section and the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or § 1.1502-15(g) with respect to another group (the former group)" in this paragraph (c)(2) apply only to carryovers of net operating losses, net capital losses, and for taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000, to carryovers of credits described in section 383(a)(2). Accordingly, as the context may require, if another regulation references this section and such

other regulation does not concern a carryover of net operating losses, net capital losses, or for taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000, carryovers of credits described in section 383(a)(2), then such reference does not include a reference to such paragraph or phrase.

(d) *Coordination with consolidated return change of ownership limitation and transactions subject to old section 382—(1) Consolidated return changes of ownership.* If a consolidated return change of ownership occurred before January 1, 1997, the principles of § 1.1502-21A(d) apply to determine the amount of the aggregate of the net operating losses attributable to old members of the group that may be included in the consolidated net operating loss deduction under paragraph (a) of this section. For this purpose, § 1.1502-1(g) is applied by treating that date as the end of the year of change.

(2) *Old section 382.* The principles of § 1.1502-21A(e) apply to disallow or reduce the amount of a net operating loss carryover of a member as a result of a transaction subject to old section 382.

(e) *Consolidated net operating loss.* Any excess of deductions over gross income, as determined under § 1.1502-11(a) (without regard to any consolidated net operating loss deduction), is also referred to as the consolidated net operating loss (or CNOL).

(f) *Predecessors and successors—(1) In general.* For purposes of this section, any reference to a corporation, member, common parent, or subsidiary, includes, as the context may require, a reference to a successor or predecessor, as defined in § 1.1502-1(f)(4).

(2) *Limitation on SRLY subgroups—(i) General rule.* Except as provided in paragraph (f)(2)(ii) of this section, if a successor's items of income and gain exceed the successor's items of deduction and loss (net positive income), then the net positive income attributable to the successor is excluded from the computation of the consolidated taxable income of a SRLY subgroup.

(ii) *Exceptions.* A successor's net positive income is not excluded from the consolidated taxable income of a SRLY subgroup if—

(A) The successor acquires substantially all the assets and liabilities of its predecessor, and the predecessor ceases to exist;

(B) The successor was a member of the SRLY subgroup when the SRLY subgroup members became members of the group;

(C) 100 percent of the stock of the successor is owned directly by corporations that were members of the SRLY subgroup when the SRLY subgroup members became members of the group; or

(D) The Commissioner so determines.

(g) *Overlap with section 382—(1) General rule.* The limitation provided in paragraph (c) of this section does not apply to net operating loss carryovers (other than a hypothetical carryover described in paragraph (c)(1)(i)(D) of this section and a carryover described in paragraph (c)(1)(ii) of this section) when the application of paragraph (c) of this section results in an overlap with the application of section 382. For a similar rule applying in the case of net operating loss carryovers described in paragraphs (c)(1)(i)(D) and (c)(1)(ii) of this section, see § 1.1502-15(g).

(2) *Definitions—(i) Generally.* For purposes of this paragraph (g), the definitions and nomenclature contained in section 382, the regulations thereunder, and §§ 1.1502-90 through 1.1502-99 apply.

(ii) *Overlap.* (A) An overlap of the application of paragraph (c) of this section and the application of section 382 with respect to a net operating loss carryover occurs if a corporation becomes a member of a consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 382(a) limitation with respect to that carryover (the section 382 event).

(B) If an overlap described in paragraph (g)(2)(ii)(A) of this section occurs with respect to net operating loss carryovers of a corporation whose SRLY event occurs within the six month period beginning on the date of a section 382 event, then an overlap is treated as also occurring with respect to that corporation's net operating loss carryover that arises within the period beginning with the section 382 event and ending with the SRLY event.

(C) For special rules in the event that there is a SRLY subgroup and/or a loss subgroup as defined in §1.1502-91(d)(1) with respect to a carryover, see paragraph (g)(4) of this section.

(3) *Operating rules*—(i) *Section 382 event before SRLY event.* If a SRLY event occurs on the same date as a section 382 event or within the six month period beginning on the date of the section 382 event, paragraph (g)(1) of this section applies beginning with the tax year that includes the SRLY event.

(ii) *SRLY event before section 382 event.* If a section 382 event occurs within the period beginning the day after the SRLY event and ending six months after the SRLY event, paragraph (g)(1) of this section applies starting with the first tax year that begins after the section 382 event.

(4) *Subgroup rules.* In general, in the case of a net operating loss carryover for which there is a SRLY subgroup and a loss subgroup (as defined in §1.1502-91(d)(1)), the principles of this paragraph (g) apply to the SRLY subgroup, and not separately to its members. However, paragraph (g)(1) of this section applies—

(i) With respect to a carryover described in paragraph (g)(2)(ii)(A) of this section only if—

(A) All members of the SRLY subgroup with respect to that carryover are also included in a loss subgroup with respect to that carryover; and

(B) All members of a loss subgroup with respect to that carryover are also members of a SRLY subgroup with respect to that carryover; and

(ii) With respect to a carryover described in paragraph (g)(2)(ii)(B) of this section only if all members of the SRLY subgroup for that carryover are also members of a SRLY subgroup that has net operating loss carryovers described in paragraph (g)(2)(ii)(A) of this section that are subject to the overlap rule of paragraph (g)(1) of this section.

(5) *Examples.* The principles of this paragraph (g) are illustrated by the following examples:

Example 1. Overlap—Simultaneous Acquisition. (i) Individual A owns all of the stock of P, which in turn owns all of the stock of S. P and S file a consolidated return. In Year 2, B, an individual unrelated to Individual A, forms T which incurs a \$100 net operating

loss for that year. At the beginning of Year 3, S acquires T.

(ii) S's acquisition of T results in T becoming a member of the P group (the SRLY event) and also results in an ownership change of T, within the meaning of section 382(g), that gives rise to a limitation under section 382(a) (the section 382 event) with respect to the T carryover.

(iii) Because the SRLY event and the change date of the section 382 event occur on the same date, there is an overlap of the application of the SRLY rules and the application of section 382.

(iv) Consequently, under this paragraph (g), in Year 3 the SRLY limitation does not apply to the Year 2 \$100 net operating loss.

Example 2. Overlap—Section 382 event before SRLY event. (i) Individual A owns all of the stock of P, which in turn owns all of the stock of S. P and S file a consolidated return. In Year 1, B, an individual unrelated to Individual A, forms T which incurs a \$100 net operating loss for that year. On February 28 of Year 2, S purchases 55% of T from Individual B. On June 30, of Year 2, S purchases an additional 35% of T from Individual B.

(ii) The February 28 purchase of 55% of T is a section 382 event because it results in an ownership change of T, under section 382(g), that gives rise to a section 382(a) limitation with respect to the T carryover. The June 30 purchase of 35% of T results in T becoming a member of the P group and is therefore a SRLY event.

(iii) Because the SRLY event occurred within six months of the change date of the section 382 event, there is an overlap of the application of the SRLY rules and the application of section 382.

(iv) Consequently, under paragraph (g) of this section, in Year 2 the SRLY limitation does not apply to the Year 1 \$100 net operating loss.

Example 3. No overlap—Section 382 event before SRLY event. (i) The facts are the same as in *Example 2* except that Individual B does not sell the additional 35% of T to S until September 30, Year 2.

(ii) The February 28 purchase of 55% of T is a section 382 event because it results in an ownership change of T, under section 382(g), that gives rise to a section 382(a) limitation with respect to the T carryover. The September 30 purchase of 35% of T results in T becoming a member of the P group and is therefore a SRLY event.

(iii) Because the SRLY event did not occur within six months of the change date of the section 382 event, there is no overlap of the application of the SRLY rules and the application of section 382. Consequently, the Year 1 net operating loss is subject to a SRLY limitation and a section 382 limitation.

Example 4. Overlap—SRLY event before section 382 event. (i) P and S file a consolidated return. S has owned 40% of T for 6 years. For

Year 6, T has a net operating loss of \$500 that is carried forward. On March 31, Year 7, S acquires an additional 40% of T, and on August 31, Year 7, S acquires the remaining 20% of T.

(ii) The March 31 purchase of 40% of T results in T becoming a member of the P group and is therefore a SRLY event. The August 31 purchase of 20% of T is a section 382 event because it results in an ownership change of T, under section 382(g), that gives rise to a section 382(a) limitation with respect to the T carryover.

(iii) Because the SRLY event occurred within six months of the change date of the section 382 event, there is an overlap of the application of the SRLY rules and the application of section 382 within the meaning of this paragraph (g).

(iv) Under this paragraph (g), the SRLY rules of paragraph (c) of this section will apply to the Year 7 tax year. Beginning in Year 8 (the year after the section 382 event), any unabsorbed portion of the Year 6 net operating loss will not be subject to a SRLY limitation.

Example 5. Overlap—Coextensive subgroups.

(i) Individual A owns all of the stock of S, which in turn owns all of the stock of T. S and T file a consolidated return beginning in Year 1. B, an individual unrelated to Individual A, owns all of the stock of P, the common parent of a consolidated group. In Year 2, the S group has a \$200 consolidated net operating loss which is carried forward, of which \$100 is attributable to S, and \$100 is attributable to T. At the beginning of Year 3, the P group acquires all of the stock of S from Individual A.

(ii) P's acquisition of S results in S and T becoming members of the P group (the SRLY event). With respect to the Year 2 net operating loss carryover, S and T compose a SRLY subgroup under paragraph (c)(2) of this section.

(iii) S and T also compose a loss subgroup under § 1.1502-91(d)(1) with respect to the Year 2 net operating loss carryover. P's acquisition also results in an ownership change of S, the subgroup parent, within the meaning of section 382(g), that gives rise to a limitation under section 382(a) (the section 382 event) with respect to the Year 2 carryover.

(iv) Because the SRLY event and the change date of the section 382 event occur on the same date, there is an overlap of the application of the SRLY rules and the application of section 382 within the meaning of paragraph (g) of this section. Because the SRLY subgroup and the loss subgroup are coextensive, under paragraph (g) of this section, the SRLY limitation does not apply to the Year 2 \$200 net operating loss.

Example 6. No overlap—Different subgroups.

(i) Individual B owns all of the stock of P, the common parent of a consolidated group. P owns all of the stock of S and all of the

stock of T. Individual A owns all of the stock of X, the common parent of another consolidated group. In Year 1, the P group has a \$200 consolidated net operating loss, of which \$100 is attributable to S and \$100 is attributable to T. At the beginning of Year 3, the X group acquires all of the stock of S and T from P and does not make an election under § 1.1502-91(d)(4) (concerning an election to treat the loss subgroup parent requirement as having been satisfied).

(ii) X's acquisition of S and T results in S and T becoming members of the X group (the SRLY event). With respect to the Year 1 net operating loss, S and T compose a SRLY subgroup under paragraph (c)(2) of this section.

(iii) S and T do not bear (and are not treated as bearing) a section 1504(a)(1) relationship. Therefore S and T do not qualify as a loss subgroup under § 1.1502-91(d)(1). X's acquisition of S and T results in separate ownership changes of S and T, that give rise to separate limitations under section 382(a) (the section 382 events) with respect to each of S and T's Year 1 net operating loss carryovers. See § 1.1502-94.

(iv) The SRLY event and the change dates of the section 382 events occur on the same date. However, paragraph (g)(1) of this section does not apply because the SRLY subgroup (composed of S and T) is not coextensive with a loss subgroup with respect to the Year 1 carryovers. Consequently, the Year 1 net operating loss is subject to both a SRLY subgroup limitation and also separate section 382 limitations for each of S and T.

Example 7. No overlap—Different subgroups.

(i) Individual A owns all of the stock of T and all of the stock of S, the common parent of a consolidated group. B, an individual unrelated to Individual A, owns all of the stock of P, the common parent of another consolidated group. In Year 1, T has a net operating loss of \$100 that is carried forward. At the end of Year 2, S acquires all of the stock of T from Individual A. In Year 3, the S group sustains a \$200 consolidated net operating loss that is carried forward. In Year 8, the P group acquires all of the stock of S from Individual A.

(ii) S's acquisition of T in Year 1 results in T becoming a member of the S group. The acquisition, however, did not result in an ownership change under section 382(g). As a result, T's Year 1 net operating loss is subject to SRLY within the S group. At the end of Year 7, § 1.1502-96(a) treats T's Year 1 net operating loss as not having arisen in a SRLY with respect to the S group. Section 1.1502-96(a), however, applies only for purposes of §§ 1.1502-91 through 1.1502-96 and § 1.1502-98 but not for purposes of this section. See § 1.1502-96(a)(5).

(iii) P's acquisition of S in Year 8 results in S and T becoming members of the P group (the SRLY event). With respect to the Year 1 net operating loss, S and T do not compose

a SRLY subgroup under paragraph (c)(2) of this section.

(iv) S and T compose a loss subgroup under §1.1502-91(d)(1) with respect to the Year 1 net operating loss carryover. P's acquisition of S results in an ownership change of the loss subgroup, within the meaning of section 382(g), that gives rise to a subgroup limitation under section 382(a) (the section 382 event) with respect to that carryover.

(v) The SRLY event and the change date of the section 382 event occur on the same date. However, under paragraph (g)(4) of this section, because the SRLY subgroup and the loss subgroup are not coextensive, T's Year 1 net operating loss carryover is subject to a SRLY limitation.

(vi) With respect to the Year 3 net operating loss carryover, S and T compose both a SRLY subgroup and a loss subgroup under §1.1502-91(d)(1). Thus, paragraph (g)(1) of this section applies, and the S group's Year 3 net operating loss carryover is not subject to a SRLY limitation.

Example 8. SRLY after overlap. (i) Individual A owns all of the stock of R and M, each the common parent of a consolidated group. B, an individual unrelated to Individual A, owns all of the stock of D. In Year 1, D incurs a \$100 net operating loss that is carried forward. At the beginning of Year 3, R acquires all of the stock of D. In Year 5, M acquires all of the stock of R in a transaction that did not result in an ownership change of R.

(ii) R's Year 3 acquisition of D results in D becoming a member of the R group (the SRLY event) and also results in an ownership change of D, that gives rise to a limitation under section 382(a) (the section 382 event) with respect to D's net operating loss carryover.

(iii) Because the SRLY event and the change date of the section 382 event occur on the same date, there is an overlap of the application of paragraph (c) of this section and section 382 with respect to D's net operating loss. Consequently, under this paragraph (g), D's Year 1 \$100 net operating loss is not subject to a SRLY limitation in the R group.

(iv) M's Year 5 acquisition of R results in R and D becoming members of the M group (the SRLY event), but does not result in an ownership change of R or D that gives rise to a limitation under section 382(a). Because there is no section 382 event, the application of the SRLY rules and section 382 do not overlap. Consequently, D's Year 1 \$100 net operating loss is subject to a SRLY limitation in the M group.

(v) Because D's Year 1 net operating loss carryover was subject to the overlap rule of paragraph (g) of this section when it joined the R group, under §1.1502-21(c)(2), the SRLY subgroup with respect to that carryover includes all of the members of the R group

that joined the M group at the same time as D.

Example 9. Overlap—Interim losses. (i) Individual A owns all of the stock of P and S, each the common parent of a consolidated group. S owns all of the stock of T, its only subsidiary. B, an individual unrelated to Individual A, owns all of the stock of M, the common parent of a consolidated group. In Year 1, the S group has a \$100 consolidated net operating loss. On January 1 of Year 2, P acquires all of the stock of S from Individual A. On December 31 of Year 2, M acquires 51% of the stock of P from Individual A. On May 31 of Year 3, M acquires the remaining 49% of the stock of P from Individual A. The P group, for the Year 3 period prior to June 1, had a \$50 consolidated net operating loss, and under paragraph (b)(2)(iv) of this section, the loss is attributable entirely to S. Other than the losses described above, the P group does not have any other consolidated net operating losses.

(ii) In the P group, S's \$100 loss carryover is treated as arising in a SRLY and is subject to the limitation under paragraph (c) of this section. A SRLY subgroup with respect to that loss is composed of S and T, the members which were members of the S group as to which the loss was not a SRLY.

(iii) M's December 31 purchase of 51% of P is a section 382 event because it results in an ownership change of the S loss subgroup that gives rise to a section 382(a) limitation (the section 382 event) with respect to the Year 1 net operating loss carryover. The purchase, however, does not result in an ownership change of P because it is not a loss corporation under section 382(k)(1). M's May 31 purchase of 49% of P results in P, S, and T becoming members of the M group and is therefore a SRLY event.

(iv) With respect to the Year 1 net operating loss, S and T compose a SRLY subgroup under paragraph (c)(2) of this section and a loss subgroup under §1.1502-91(d)(1). The loss subgroup does not include P because the only loss at the time of the section 382 event was subject to SRLY with respect to the P group. See §1.1502-91(d)(1).

(v) Because the SRLY event occurred within six months of the change date of the section 382 event and the SRLY subgroup and loss subgroup are coextensive with respect to the Year 1 net operating loss carryover, there is an overlap of the application of the SRLY rules and the application of section 382 within the meaning of paragraph (g) of this section. Thus, the SRLY limitation does not apply to that carryover.

(vi) The Year 3 net operating loss, which arose between the section 382 event and the SRLY event, is a net operating loss described in paragraph (g)(2)(ii)(B) of this section because it is the net operating loss of a corporation whose SRLY event occurs within

the six month period beginning on the date of a section 382 event.

(vii) With respect to the Year 3 net operating loss, P, S, and T compose a SRLY subgroup under paragraph (c)(2) of this section. Because P, a member of the SRLY subgroup for the Year 3 carryover, is not also a member of a SRLY subgroup that has net operating loss carryovers described in paragraph (g)(2)(ii)(A) of this section (the Year 1 net operating loss), the Year 3 carryover is subject to a SRLY limitation in the M group. See paragraph (g)(4)(ii) of this section.

(h) *Effective/applicability date*—(1) *In general.* This section generally applies to taxable years for which the due date (without extensions) of the consolidated return is after June 25, 1999. However—

(i) In the event that paragraph (g)(1) of this section does not apply to a particular net operating loss carryover in the current group, then solely for purposes of applying paragraph (c) of this section to determine a limitation with respect to that carryover and with respect to which the SRLY register (consolidated taxable income determined by reference to only the member's or subgroup's items of income, gain, deduction, or loss) began in a taxable year for which the due date of the return was on or before June 25, 1999, paragraph (c)(2) of this section shall be applied without regard to the phrase “or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or §1.1502-15(g) with respect to another group (the former group)”; and

(ii) For purposes of paragraph (g) of this section, only an ownership change to which section 382(a), as amended by the Tax Reform Act of 1986, applies shall constitute a section 382 event.

(iii) Paragraphs (b)(2)(ii)(A) and (b)(2)(iv)(B)(2) of this section apply to taxable years for which the due date of the original return (without regard to extensions) is on or after September 17, 2008.

(2) *SRLY limitation.* Except in the case of those members (including members of a SRLY subgroup) described in paragraph (h)(3) of this section, a group does not take into account a consolidated taxable year beginning before January 1, 1997, in determining the aggregate of the consolidated taxable income under paragraph (c)(1) of this sec-

tion (including for purposes of §1.1502-15 and §1.1502-22(c)) for the members (or SRLY subgroups).

(3) *Prior retroactive election.* A consolidated group that applied the rules of §1.1502-21T(g)(3) in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, to all consolidated return years ending on or after January 29, 1991, and beginning before January 1, 1997, does not take into account a consolidated taxable year beginning before January 29, 1991, in determining the aggregate of the consolidated taxable income under paragraph (c)(1) of this section (including for purposes of §1.1502-15 and §1.1502-22(c)) for the members (or SRLY subgroups).

(4) *Offspring rule.* Paragraph (b)(2)(ii)(B) of this section applies to net operating losses arising in taxable years ending on or after June 25, 1999.

(5) *Waiver of carrybacks.* Paragraph (b)(3)(ii)(B) of this section (relating to the waiver of carrybacks for acquired members) applies to acquisitions occurring after June 25, 1999.

(6) *Certain prior periods.* Paragraphs (b)(1), (b)(2)(iv)(A), (b)(2)(iv)(B)(1), and (c)(2)(vii) of this section apply to taxable years for which the due date of the original return (without regard to extensions) is after March 21, 2005. Paragraphs (b)(2)(ii)(A) and (b)(2)(iv)(B)(2) (as contained in 26 CFR part 1 revised as of April 1, 2008) apply to taxable years for which the due date of the original return (without regard to extensions) is on or after March 21, 2005, and before September 17, 2008. Paragraph (b)(2)(ii)(A) of this section and §1.1502-21T(b)(1), (b)(2)(iv), and (c)(2)(vii), as contained in 26 CFR part 1 revised as of April 1, 2004, apply to taxable years for which the due date of the original return (without regard to extensions) is after August 29, 2003, and on or before March 21, 2005. For taxable years for which the due date of the original return (without regard to extensions) is on or before August 29, 2003, see paragraphs (b)(1), (b)(2)(ii)(A), (b)(2)(iv), and (c)(2)(vii) of this section and §1.1502-21T(b)(1) as contained in 26 CFR part 1 revised as of April 1, 2003.

(7) *Prior periods.* For certain taxable years ending on or before June 25, 1999, see §1.1502-21T in effect prior to June

25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.

(8) *Losses treated as expired under § 1.1502-35(f)(1)*. For rules regarding losses treated as expired under § 1.1502-35(f) on or after March 10, 2006, see § 1.1502-21(b)(3)(v) as contained in 26 CFR part 1 in effect on April 1, 2006. For rules regarding losses treated as expired before March 10, 2006, see § 1.1502-21T(h)(8) as contained in 26 CFR part 1 in effect on January 1, 2006.

[T.D. 8823, 64 FR 36105, July 2, 1999]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.1502-21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 1.1502-21T Net operating losses (temporary).

(a) through (b)(3)(ii)(B) [Reserved]. For further guidance, see § 1.1502-21(a) through (b)(3)(ii)(B).

(C) *Partial waiver of carryback period for 2001 and 2002 losses—(1) Application*. The acquiring group may make the elections described in paragraphs (b)(3)(ii)(C)(2) and (3) of this section with respect to an acquired member or members only if it did not file a valid election described in § 1.1502-21(b)(3)(ii)(B) with respect to such acquired member or members on or before May 31, 2002.

(2) *Partial waiver of entire pre-acquisition carryback period*. If one or more members of a consolidated group become members of another consolidated group after June 25, 1999, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the carryback period for such losses for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating losses arising in a particular tax-

able year if any carryback is claimed, as provided in paragraph (b)(3)(ii)(C)(4) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled “THIS IS AN ELECTION UNDER SECTION 1.1502-21T (b)(3)(ii)(C)(2) TO WAIVE THE PRE-[insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members].” Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(5) of this section.

(3) *Partial waiver of pre-acquisition extended carryback period*. If one or more members of a consolidated group become members of another consolidated group, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the carryback period for such losses for which the corporation was a member of another group to the extent that such carryback period includes one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating losses arising in a particular taxable year if a carryback to one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss is claimed, as provided in paragraph (b)(3)(ii)(C)(4) of this section, with respect to any such losses on a return or