§ 1.1502–92  Ownership change of a loss group or a loss subgroup.

(a) Scope. This section provides rules for determining if there is an ownership change for purposes of section 382 with respect to a loss group or a loss subgroup. See §1.1502–94 for special rules for determining if there is an ownership change with respect to a new loss member and §1.1502–96(b) for special rules for determining if there is an ownership change of a subsidiary.

(b) Determination of an ownership change—(1) Parent change method—(i) Loss group. A loss group has an ownership change if the group’s common parent has an ownership change under section 382 and the regulations thereunder. Solely for purposes of determining whether the common parent has an ownership change—

(A) The losses described in §1.1502–91(c) are treated as net operating losses (or a net unrealized built-in loss) of the common parent; and

(B) The common parent determines the earliest day that its testing period can begin by reference to only the attributes that make the group a loss group under §1.1502–91(c).

(ii) Loss subgroup. A loss subgroup has an ownership change if the loss subgroup parent has an ownership change under section 382 and the regulations thereunder. The principles of §1.1502–95(b) (relating to ceasing to be a member of a consolidated group) apply in determining whether the loss subgroup parent has an ownership change. Solely for purposes of determining whether the loss subgroup parent has an ownership change—

(A) The losses described in §1.1502–91(d) are treated as net operating losses (or a net unrealized built-in loss) of the loss subgroup parent;

(B) The day that the members of the loss subgroup become members of the group (or a loss subgroup) is treated as a testing date within the meaning of §1.382–2(a)(4); and

(C) The loss subgroup parent determines the earliest day that its testing period can begin under §1.382–2T(d)(3) by reference to only the attributes that make the members a loss subgroup under §1.1502–91(d).

(iii) Special rule if election regarding section 1504(a)(1) relationship is made—

(A) Ownership change of deemed loss subgroup parent is an ownership change of loss subgroup. If the common parent makes an election under §1.1502–91(d)(4), each of the members in the loss subgroup parent for purposes of determining whether the loss subgroup has an ownership change under section 382 and the regulations thereunder on or after the day the members become members of the group.

(B) Exception. Paragraph (b)(1)(ii)(A) of this section does not apply to cause an ownership change of a loss subgroup if a deemed loss subgroup parent has an ownership change upon (or after) ceasing to be a member of the current group.

(2) Examples. The following examples illustrate the principles of this paragraph (b):
Example 1. Loss group—ownership change of the common parent. (i) A owns all the L stock. L owns 80 percent and B owns 20 percent of the L1 stock. For Year 1, the L group has a consolidated net operating loss that resulted from the operations of L1 and that is carried over to Year 2. The value of the L stock is $1000. The total value of the L1 stock is $600 and the value of the L1 stock held by B is $120. The L group is a loss group under §1.1502-91(c)(1) because it is entitled to use its net operating loss carryover from Year 1. On August 15, Year 2, A sells 51 percent of the L stock to C. The following is a graphic illustration of these facts:

(ii) Under paragraph (b)(1)(i) of this section, section 382 and the regulations thereunder are applied to L to determine whether it (and therefore the L loss group) has an ownership change with respect to its net operating loss carryover from Year 1 attributable to L1 on August 15, Year 2. The sale of the L stock to C causes an ownership change of L under §1.382-2T and of the L loss group under paragraph (b)(1)(i) of this section. The amount of consolidated taxable income of the L loss group for any post-change...
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taxable year that may be offset by its pre-change consolidated attributes (that is, the net operating loss carryover from Year 1 attributable to L1) may not exceed the consolidated section 382 limitation for the L loss group for the taxable year.

Example 2. Loss group—owner shifts of subsidiaries disregarded. (i) The facts are the same as in Example 1, except that on August 15, Year 2, A sells only 49 percent of the L stock to C and, on December 12, Year 3, in an unrelated transaction, B sells the 20 percent of the L1 stock to D. A’s sale of the L stock to C does not cause an ownership change of L under §1.382-2T nor of the L loss group under paragraph (b)(1)(i) of this section. The following is a graphic illustration of these facts:

(ii) B’s subsequent sale of L1 stock is not taken into account for purposes of determining whether the L loss group has an ownership change under paragraph (b)(1)(i) of this section, and, accordingly, there is no ownership change of the L loss group. See paragraph (c) of this section, however, for a supplemental ownership change method that would apply to cause an ownership change if the purchases by C and D were pursuant to a plan or arrangement and certain other conditions are satisfied.

Example 3. Loss subgroup—ownership change of loss subgroup parent controls. (i) P owns all the L stock. L owns 80 percent and A owns 20 percent of the L1 stock. The P group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. On September 9, Year 2, P sells 51 percent of the L stock to B, and L1 is apportioned a portion of the Year 1 consolidated net operating loss under §1.1502-21(b), which it carries over to its next taxable year. L and L1 file a consolidated return for their first taxable year ending after the sale to B. The following is a graphic illustration of these facts:
(ii) Under §1.1502-91(d)(1), L and L1 compose a loss subgroup on September 9, Year 2, the day that they become members of the L group. Under paragraph (b)(1)(ii) of this section, section 382 and the regulations thereunder are applied to L to determine whether it (and therefore the L loss subgroup) has an ownership change with respect to the portion

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of the Year 1 consolidated net operating loss that is apportioned to L1 on September 9, Year 2. L has an ownership change resulting from P’s sale of 51 percent of the L stock to A. Therefore, the L loss subgroup has an ownership change with respect to that loss.

Example 4. Loss group and loss subgroup—contemporaneous ownership changes. (i) A owns all the stock of corporation M, M owns 35 percent and B owns 65 percent of the L stock, and L owns all the L1 stock. The L group has a consolidated net operating loss arising in Year 1 that is carried over to Year 2. On May 19, Year 2, B sells 45 percent of the L stock to M for cash. M, L, and L1 thereafter file consolidated returns. L and L1 are each apportioned a portion of the Year 1 consolidated net operating loss, which they carry over to the M group’s Year 2 and Year 3 consolidated return years. The M group has a consolidated net operating loss arising in Year 2 that is carried over to Year 3. On June 9, Year 3, A sells 70 percent of the M stock to C. The following is a graphic illustration of these facts:
(ii) Under §1.1502-91(d)(1), L and L1 compose a loss subgroup on May 19, Year 2, the day they become members of the M group. Under paragraph (b)(1)(ii) of this section, section 382 and the regulations thereunder are applied to L to determine whether L (and therefore the L loss subgroup) has an ownership change with respect to the loss
carryovers from Year 1 on May 19, Year 2, a
testing date because of B's sale of L stock to
M. The sale of L stock to M results in only a
46 percentage point increase in A's own-
ership of L stock. Thus, there is no ownership
change of L (or the L loss subgroup) with re-
spect to those loss carryovers under para-
graph (b)(1)(i) of this section on that day.

(iii) June 9, Year 3, is also a testing date
with respect to the L loss subgroup because
of A's sale of M stock to C. The sale results
in a 56 percentage point increase in C's own-
ership of M stock, and L has an ownership
change. Therefore, the L loss subgroup has an
ownership change on that day with re-
spect to the loss carryovers from Year 1.

(iv) Paragraph (b)(1)(i) of this section re-
quires that section 382 and the regulations
thereunder be applied to M to determine
whether M (and therefore the M loss group)
has an ownership change with respect to the
net operating loss carryover from Year 2 on
June 9, Year 3, a testing date because of A's
sale of M stock to C. The sale results in a 70
percentage point increase in C's ownership of
M stock, and M has an ownership change.
Therefore, the M loss group has an ownership
change on that day with respect to that loss
carryover.

Example 5. Deemed subgroup parent. (i) P
owns all the stock of L and L1 and 80 percent
of the stock of T. A owns the remaining 20
percent of the stock of T. L owns all the
stock of L2. P1, which owns 60 percent of the
stock of P, acquires, at the beginning of Year
2, the T, L, and L1 stock owned by P and T, L,
L1, and L2 become members of the P1 group.
The P group has a consolidated net
operating loss arising in Year 1 that is car-
rried over to Year 2. L, L1, and L2 are each
apportioned a portion of the Year 1 consoli-
dated net operating loss under §1.1502–21(b),
which they carry over to the P1 group's Year
2 and Year 3 consolidated return years. P1
makes the election described in §1.1502–
91(d)(4) to treat T, L, L1 and L2 as meeting
the section 1504(a)(1) requirement of §1.1502–
91(d)(1)(ii). As a result of the election, T, L,
L1 and L2 also are each treated as the loss sub-
group parent for purposes of this paragraph
(b). Because of P1's indirect ownership of T,
L, L1, and L2 prior to P1's acquisition of the
T, L, and L1 stock, P1's acquisition does not
cause an ownership change of the loss sub-
group.

(ii) On February 2, Year 3, L1 sells all of the
stock of L2 to B. Although L2 is treated as a
loss subgroup parent, the determination
whether the loss subgroup comprised of T, L,
and L1 has an ownership change under this
paragraph (b) is made without regard to the
sale of L2 because L2's ownership change oc-
curred upon ceasing to be a member of the
P1 group. See §1.1502–96(b) to determine the
application of section 382 to L2 when L2
ceases to be a member of the P1 group and
the T, L, L1 and L2 loss subgroup.

(iii) On March 26, Year 3, A sells her 20 per-
cent minority stock interest in T to C. C's
purchase, together with the 32 percentage
point owner shift effected by P1's acquisition
of the T stock at the beginning of Year 2,
causes an ownership change of T, and there-
fore of the loss subgroup comprised of T, L,
and L1.

(3) Special adjustments—(i) Common
parent succeeded by a new common par-
ent. For purposes of determining if a
loss group has an ownership change, if
the common parent of a loss group is
succeeded or acquired by a new com-
mon parent and the loss group remains
in existence, the new common parent is
treated as a continuation of the former
common parent with appropriate ad-
justments to take into account shifts in
ownership of the former common
parent during the testing period (in-
cluding shifts that occur incident to
the common parent's becoming the
former common parent). A new com-
mon parent may be a continuation of the
former common parent even if, un-
der §1.1502–91(g)(2)(ii), the new com-
mon parent is not included in deter-
mining whether the group has a net un-
realized built-in loss.

(ii) Newly created loss subgroup parent.
For purposes of determining if a loss
subgroup has an ownership change, if
the member that is the loss subgroup
parent has not been the loss subgroup
parent for at least 3 years as of a test-
ing date, appropriate adjustments must
be made to take into account owner
shifts of members of the loss subgroup
so that the structure of the loss sub-
group does not have the effect of avoid-
ing an ownership change under section
382. (See paragraph (b)(3)(iii), Example 3
of this section.)

(iii) Examples. The following exam-
ple illustrate the principles of this
paragraph (b)(3):

Example 1. New common parent acquires old
common parent. (i) A, who owns all the L
stock, sells 30 percent of the L stock to B on
August 26, Year 1. L owns all the L1 stock.
The L group has a consolidated net operat-
ing loss arising in Year 1 that is carried over to
Year 3. On July 16, Year 2, A and B transfer
their L stock to a newly created holding
company, HC, in exchange for 70 percent
and 30 percent, respectively, of the HC stock.
HC, L, and L1 thereafter file consolidated
returns. Under the principles of §1.1502–75(4),
the L loss group is treated as remaining in existence, with HC taking the place of L as the new common parent of the loss group.

The following is a graphic illustration of these facts:

![Diagram]

- **Diagram Description**: The diagram illustrates the flow of stock and the relationships between entities A, B, HC, and L. The notation (30% of L stock) and (25% of HC stock) indicates the transfer of stock percentages between entities.
(ii) On November 11, Year 3, A sells 25 percent of the HC stock to B. For purposes of determining if the L loss group has an ownership change under paragraph (b)(1)(i) of this section on November 11, Year 3, HC is treated as a continuation of L under paragraph (b)(4)(i) of this section because it acquired L and became the common parent without terminating the L loss group. Accordingly, HC’s testing period commences on January 1, Year 1, the first day of the taxable year of the L loss group in which the consolidated net operating loss that is carried over to Year 3 arose (see §1.382-2T(d)(3)(i)). Immediately after the close of November 11, Year 3, B’s percentage ownership interest in the common parent of the loss group (HC) has increased by 55 percentage points over its lowest percentage ownership during the testing period (zero percent). Accordingly, HC and the L loss group have an ownership change on that day.

Example 2. New common parent in case in which common parent ceases to exist. (i) A, B, and C each own one-third of the L stock. L owns all the L1 stock. The L group has a consolidated net operating loss arising in Year 2 that is carried over to Year 3. On November 22, Year 3, L is merged into P, a corporation owned by D, and L1 thereafter files consolidated returns with P. A, B, and C, as a result of owning stock of L, own 90 percent of P’s stock after the merger. D owns the remaining 10 percent of P’s stock. The merger of L into P qualifies as a reverse acquisition of the L group under §1.1502-75(d)(3)(i), and the L loss group is treated as remaining in existence, with P taking the place of L as the new common parent of the L group. The following is a graphic illustration of these facts:
(ii) For purposes of determining if the L loss group has an ownership change on November 22, Year 3, the day of the merger, P is treated as a continuation of L so that the testing period for P begins on January 1, Year 2, the first day of the taxable year of the L loss group in which the consolidated net operating loss that is carried over to
Year 3 arose. Immediately after the close of November 22, Year 3, D is the only 5-percent shareholder that has increased his ownership interest in P during the testing period (from zero to 10 percentage points).

(iii) The facts are the same as in paragraph (i) of this Example 2, except that A has held 23 1/3 shares (23 1/3 percent) of L's stock for five years, and A purchased an additional 10 shares of L stock from E two years before the merger. Immediately after the close of the day of the merger (a testing date), A's ownership interest in P, the common parent of the L loss group, has increased by 62 2/3 percentage points over A's lowest percentage ownership during the testing period (23 1/3 percent to 30 percent).

(iv) The facts are the same as in (i) of this Example 2, except that P has a net operating loss arising in Year 1 that is carried over to Year 3. On January 19, Year 2, L issues a 20 percent stock interest to B. On February 5, Year 3, P contributes its L stock to a newly formed subsidiary, HC, in exchange for all the HC stock, and distributes the HC stock to its sole shareholder A. HC, L, and L1 thereafter file consolidated returns. A portion of the P group's Year 1 consolidated net operating loss is apportioned to L and L1 under §1.1502-21(b) and is carried over to the HC group's year ending after February 5, Year 3. HC, L, and L1 compose a loss subgroup within the meaning of §1.1502-91(d) with respect to the net operating loss carryovers from Year 1. The following is a graphic illustration of these facts:
(ii) February 5, Year 3, is a testing date for HC as the loss subgroup parent with respect to the net operating loss carryovers of L and L1 from Year 1. See paragraph (b)(1)(ii)(B) of this section. For purposes of determining whether HC has an ownership change on the testing date, appropriate adjustments must be made with respect to the changes in the...
percentage ownership of the stock of HC because HC was not the loss subgroup parent for at least 3 years prior to the day on which it became a member of the HC loss subgroup (a testing date). The appropriate adjustments include adjustments so that HC succeeds to the owner shifts of other members of the former group. Thus, HC succeeds to the owner shift of L that resulted from the sale of the 20 percent interest to B in determining whether the HC loss subgroup has an ownership change on February 5, Year 3, and on any subsequent testing date that includes January 19, Year 2.

(4) End of separate tracking of certain losses. If §1.1502–96(a) (relating to the end of separate tracking of attributes) applies to a loss subgroup, then, while one or more members that were included in the loss subgroup remain members of the consolidated group, there is an ownership change with respect to their attributes described in §1.1502–96(a)(2) only if the consolidated group is a loss group and has an ownership change under paragraph (b)(1)(i) of this section (or such a member has an ownership change under §1.1502–96(b) (relating to ownership changes of subsidiaries)). If, however, the loss subgroup has had an ownership change before §1.1502–96(a) applies, see §1.1502–96(c) for the continuing application of the subgroup’s section 382 limitation with respect to its pre-change subgroup attributes.

(c) Supplemental rules for determining ownership change—

(1) Scope. This paragraph contains a supplemental rule for determining whether there is an ownership change of a loss group (or loss subgroup). It applies in addition to, and not instead of, the rules of paragraph (b) of this section. Thus, for example, if the common parent of the loss group has an ownership change under paragraph (b) of this section, the loss group has an ownership change even if, by applying this paragraph (c), the common parent would not have an ownership change. This paragraph (c) does not apply in determining an ownership change of a loss subgroup for which an election under §1.1502–91(d)(4) is made.

(2) Cause for applying supplemental rule. This paragraph (c) applies to a loss group (or loss subgroup) if—

(i) Any 5-percent shareholder of the common parent (or loss subgroup parent) increases its percentage ownership interest in the stock of both—

(A) A subsidiary of the loss group (or loss subgroup) other than by a direct or indirect acquisition of stock of the common parent (or loss subgroup parent); and

(B) The common parent (or loss subgroup parent);

(ii) Those increases occur within a 3 year period ending on any day of a consolidated return year or, if shorter, the period beginning on the first day following the most recent ownership change of the loss group (or loss subgroup); and

(iii) Either—

(A) The common parent (or loss subgroup parent) has actual knowledge of the increase in the 5-percent shareholder’s ownership interest in the stock of the subsidiary (or has actual knowledge of the plan or arrangement described in paragraph (c)(3)(i) of this section) before the date that the group’s income tax return is filed for the taxable year that includes the date of that increase; or

(B) At any time during the period described in paragraph (c)(2)(ii) of this section, the 5-percent shareholder of the common parent is also a 5-percent shareholder of the subsidiary (determined without regard to paragraph (c)(3)(i) of this section) whose percentage increase in the ownership of the stock of the subsidiary would be taken into account in determining if the subsidiary has an ownership change (determined as if the subsidiary was a loss corporation and applying the principles of §1.382–2T(k), including the principles relating to duty to inquire).

(3) Operating rules. Solely for purposes of this paragraph (c)—

(i) A 5-percent shareholder of the common parent (or loss subgroup parent) is treated as increasing its ownership interest in the stock of a subsidiary to the extent, if any, that another person or persons increases its percentage ownership interest in the stock of a subsidiary pursuant to a plan or arrangement under which the 5-percent shareholder increases its percentage ownership interest in the common parent (or loss subgroup parent); and

(ii) The rules in section 382(1)(3) and §§1.382–2T(h) and 1.382–4(d) (relating to...
constructive ownership) apply with respect to the stock of the subsidiary by treating such stock as stock of a loss corporation; and

(iii) In the case of a loss subgroup, a subsidiary includes any member of the loss subgroup other than the loss subgroup parent. (A loss subgroup parent is, however, a subsidiary of the loss group of which it is a member.)

(4) Supplemental ownership change rules. The determination whether the common parent (or loss subgroup parent) has an ownership change is made by applying paragraph (b)(1) of this section as modified by the following additional rules:

(i) Additional testing dates for the common parent (or loss subgroup parent). A testing date for the common parent (or loss subgroup parent) also includes—

(A) Each day on which there is an increase in the percentage ownership of stock of a subsidiary as described in paragraph (c)(2) of this section; and

(B) The first day of the first consolidated return year for which the group is a loss group (or the members compose a loss subgroup).

(ii) Treatment of subsidiary stock as stock of the common parent (or loss subgroup parent). The common parent (or loss subgroup parent) is treated as though it had issued to the person acquiring (or deemed to acquire) the subsidiary stock an amount of its own stock (by value) that equals the value of the subsidiary stock represented by the percentage increase in that person’s ownership of the subsidiary (determined on a separate entity basis). Simple principles apply if the increase in percentage ownership interest is effected by a redemption or similar transaction.

(iii) Different testing periods. Stock treated as issued under paragraph (c)(4)(ii) of this section on a testing date is not treated as so issued for purposes of applying the ownership change rules of this paragraph (c) and paragraph (b)(1) of this section in a testing period that does not include that testing date.

(iv) Disaffiliation of a subsidiary. If a deemed issuance of stock under paragraph (c)(4)(i) of this section would not cause the loss group (or loss subgroup) to have an ownership change before the day (if any) on which the subsidiary ceases to be a member of the loss group (or subgroup), then paragraph (c)(4) of this section shall not apply.

(v) Subsidiary stock acquired first. If an increase of subsidiary stock described in paragraph (c)(2)(i)(A) of this section occurs before the date that the 5-percent shareholder increases its percentage ownership interest in the stock of the common parent (or loss subgroup parent), then the deemed issuance of stock is treated as occurring on that later date, but in an amount equal to the value of the subsidiary stock on the date it was acquired.

(vi) Anti-duplication rule. If two or more 5-percent shareholders are treated as increasing their percentage ownership interests pursuant to the same plan or arrangement described in paragraph (c)(3)(i) of this section, appropriate adjustments must be made so that the amount of stock treated as issued is not taken into account more than once.

(5) Examples. The following examples illustrate the principles of this paragraph (c):

Example 1. Stock of the common parent under supplemental rules. (i) A owns all the L stock. L is not a member of an affiliated group and has a net operating loss carryover arising in Year 1 that is carried over to Year 6. On September 20, Year 6, L transfers all of its assets and liabilities to a newly created subsidiary, S, in exchange for S stock. L and S there after file consolidated returns. On November 23, Year 6, B contributes cash to L in exchange for a 45 percent ownership interest in L and contributes cash to S for a 20 percent ownership interest in S.

(ii) During the 3 year period ending on November 23, Year 6, B is a 5% shareholder of L and of S that increases its ownership interest in L and S during that period. Under paragraph (c)(4)(i) of this section, the determination whether L (the common parent of a loss group) has an ownership change on November 23, Year 6 (or, subject to paragraph (c)(4)(iv) of this section, on any testing date in the testing period which includes November 23, Year 6), is made by applying paragraph (b)(1)(i) of this section and by treating the value of B’s 20 percent ownership interest in S as if it were L stock issued to B. Because B is a 5% shareholder of both L and S during the 3 year period ending on November 23, Year 6, and B’s increase in its percentage ownership in the stock of S would be taken into account in determining if S (if it were a loss corporation) had an ownership change,
it is not relevant whether L has actual knowledge of B’s acquisition of S stock.

Example 2. Plan or arrangement—public offering of subsidiary stock. (i) A owns all the stock of L and L owns all the stock of L1. The L group has a consolidated net operating loss arising in Year 1 that resulted from the operations of L1 and that is carried over to Year 2. On October 7, Year 2, A sells 49 percent of the L stock to B. As part of a plan that includes the sale of L stock, A causes a public offering of L1 stock on November 6, Year 2. L has actual knowledge of the plan. The following is a graphic illustration of these facts:
(ii) A’s sale of the L stock to B does not cause an ownership change of the L loss group on October 7, Year 2, under the rules of §1.382-2T and paragraph (b)(1)(i) of this section.

(iii) Because the issuance of L1 stock to the public occurs as part of the same plan as
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B's acquisition of L stock, and L has knowledge of the plan, paragraph (c)(4) of this section applies to determine whether the L loss group has an ownership change on November 6, Year 2 (or, subject to paragraph (c)(4)(iv) of this section, on any testing date for which the testing period includes November 6, Year 2).

(d) Testing period following ownership change under this section. If a loss group (or a loss subgroup) has had an ownership change under this section, the testing period for determining a subsequent ownership change with respect to pre-change consolidated attributes (or pre-change subgroup attributes) begins no earlier than the first day following the loss group's (or loss subgroup's) most recent change date.

(e) Information statements—(1) Common parent of a loss group. The common parent of a loss group must file the information statement required by §1.382–11(a) for a consolidated return year because of any owner shift, equity structure shift, or other transaction described in §1.382–2T(a)(2)(i)—

(i) With respect to the common parent and with respect to any subsidiary stock subject to paragraph (c) of this section; and

(ii) With respect to an ownership change described in §1.1502–96(b) (relating to ownership changes of subsidiaries).

(2) Abbreviated statement with respect to loss subgroups. The common parent of a consolidated group that has a loss subgroup during a consolidated return year must file the information statement required by §1.382–11(a) because of any owner shift, equity structure shift, or other transaction described in §1.382–2T(a)(2)(i) with respect to the loss subgroup parent and with respect to any subsidiary stock subject to paragraph (c) of this section. Instead of filing a separate statement for each loss subgroup parent, the common parent (which is treated as a loss corporation) may file the single statement described in paragraph (e)(1) of this section concerning stock ownership of the common parent, the single statement must identify each loss subgroup parent and state which loss subgroups, if any, have had ownership changes during the consolidated return year. The loss subgroup parent is, however, still required to maintain the records necessary to determine if the loss subgroup has an ownership change. This paragraph (e)(2) applies with respect to the attributes of a loss subgroup until, under §1.1502–96(a), the attributes are no longer treated as described in §1.1502–91(d) (relating to the definition of loss subgroup). After that time, the information statement described in paragraph (e)(1) of this section must be filed with respect to those attributes.