loss) because neither §1.1502-36(b) nor §1.1502-36(c) would adjust the basis of the transferred share (because there are no investment adjustments) and §1.1502-36(d) would not reduce S’s attributes (because S’s aggregate inside loss is $0). However, because P acted with a view to prevent the consolidated return provisions from addressing the duplication of the loss on Asset 2, P’s transfer of Asset 2 to S is subject to the anti-abuse rule in this paragraph (h)(2). Accordingly, effective immediately before the transfer of Share 5 to X, either P’s basis in Share 5 or S’s basis in Asset 2 must be adjusted to reflect what it would have been had section 362(e)(2) been applied at the time P transferred Asset 2 to S (taking into account the interim facts and circumstances). Accordingly, S must either reduce its basis in Asset 2 by $80 to $20 (eliminating the duplicated loss) or P must reduce its basis in Share 5 by $80 to $20 (eliminating the duplicated loss).

(C) Transfer of all S shares. Assume the same facts as those in paragraph (A) of this Example, except that P sells all five S shares to X. Although P’s transfer of Asset 2 to S results in the duplication of an $80 loss, because all the shares are transferred, the transaction does not prevent the consolidated return provisions from properly addressing loss duplication. P’s $80 duplicated loss is offset by an $80 duplicated gain, and the group recognizes the offsetting stock gain and loss. Accordingly, this paragraph (h)(2) does not apply to P’s transfer of Asset 2 to S.

[T.D. 8402, 57 FR 9385, Mar. 18, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.1502–80, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

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