

taxable year for the member that owned the property, in accordance with the regulations under section 613A and paragraphs (a) and (d)(2) of this section.

(2) Any amount that was disallowed as a deduction in a separate return limitation year of a member may be carried to a consolidated return year only to the extent that 65 percent of the excess determined under paragraph (d)(3) of this section exceeds the sum of the otherwise allowable percentage depletion deductions for the member's oil and gas properties for the year.

(3) The excess determined in this subparagraph (3) for a member is the excess, if any, of adjusted consolidated taxable income for the year under paragraph (b) of this section over that income recomputed by excluding the items of income and deductions of the member.

(e) *Effective date.* This section applies to taxable years for which the due date (without extensions) for filing returns is after September 30, 1980.

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**§ 1.1502-47 Consolidated returns by life-nonlife groups.**

(a) *Scope—(1) In general.* Under section 1504(b)(2), insurance companies that are taxed under section 801 (relating to life insurance companies) are not treated as includible corporations for purposes of determining under section 1504(a) the existence of an affiliated group and the composition of its membership. Section 1504(c)(2) provides an election whereby certain life insurance companies may be treated as includible corporations, and thus members, of a group composed of other includible corporations. This section provides regulations for the making of this election and for the determination of an electing group's composition, its consolidated taxable income (or loss), and its consolidated tax liability.

(2) *General method of consolidation—(i) Subgroup method.* The regulations adopt a subgroup method to determine consolidated taxable income. One subgroup is the group's nonlife companies. The other subgroup is the group's life insurance companies. Initially, the nonlife

subgroup computes nonlife consolidated taxable income and the life subgroup computes consolidated LICTI. A subgroup's income may in effect be reduced by a loss of the other subgroup, subject to the limitations in sections 172 and 1503(c). The life subgroup losses consist of life consolidated net operating loss, consolidated operations loss carryovers from taxable years beginning before January 1, 2018 (consolidated operations loss carryovers), and life consolidated net capital loss. The nonlife subgroup losses consist of nonlife consolidated net operating loss and nonlife consolidated net capital loss. Consolidated taxable income is therefore defined in pertinent part as the sum of nonlife consolidated taxable income and consolidated LICTI, reduced by life subgroup losses and/or nonlife subgroup losses.

(ii) *Subgroup loss.* A subgroup loss does not actually affect the computation of nonlife consolidated taxable income or consolidated LICTI. It merely constitutes a bottom-line adjustment in reaching consolidated taxable income. Furthermore, the amount of a subgroup's loss, if any, that is eligible to be carried back to a prior taxable year first must be carried back against income of the same subgroup before it may be used as a setoff against the other subgroup's income in the taxable year the loss arose. (See sections 172(b)(1) and 1503(c)(1); see also § 1.1502-21(b).) The carryback of losses from one subgroup may not be used to offset income of the other subgroup in the year to which the loss is to be carried. This carryback of one subgroup's loss may "bump" the other subgroup's loss that, in effect, previously reduced the income of the first subgroup. The subgroup's loss that is bumped in appropriate cases may, in effect, reduce a succeeding year's income of either subgroup. This approach gives the group the tax savings of the use of losses, but the bumping rule assures that, insofar as possible, life deductions will be matched against life income and nonlife deductions against nonlife income.

(iii) *Carryover of subgroup loss.* A subgroup's loss may be used in a succeeding year, but in any particular succeeding year the loss must be used to

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reduce the income of the same subgroup before it may be used as a setoff against the other subgroup's income.

(3) *Other provisions.* The provisions of §§ 1.1502-0 through 1.1502-100 apply unless this section provides otherwise. Further, unless otherwise indicated in this section, a term used in this section has the same meaning as in sections 801-848.

(b) *Definitions.* For purposes of this section:

(1) *Life company.* The term *life company* means a life insurance company as defined in section 816 and subject to tax under section 801. Section 816 applies to each company separately.

(2) *Nonlife insurance company.* The term *nonlife insurance company* has the meaning provided in § 1.1502-1(k).

(3) *Life insurance company taxable income.* The term *life insurance company taxable income* or *LICTI* has the meaning provided in section 801(b).

(4) *Group.* The term *group* has the meaning provided in § 1.1502-1(a). Unless otherwise indicated in this section, a group's composition is determined without regard to section 1504(b)(2).

(5) *Member.* The term *member* has the meaning provided in § 1.1502-1(b). A life company is tentatively treated as a member for any taxable year for purposes of determining if it is an eligible corporation under paragraph (b)(12) of this section and, therefore, if it is an includible corporation under section 1504(c)(2). If such a company is eligible and includible (under section 1504(c)(2)), it will actually be treated as a member of the group.

(6) *Life member.* A life member is a member of the group that is a life company.

(7) *Nonlife member.* A nonlife member is a member of the group that is not a life company.

(8) *Life subgroup.* A life subgroup is composed of those members that are life members. If the group has only one life member, it constitutes a life subgroup.

(9) *Nonlife subgroup.* A nonlife subgroup is composed of those members that are nonlife members. If the group has only one nonlife member, it constitutes a nonlife subgroup.

(10) *Separate return year.* The term *separate return year* has the meaning

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provided in § 1.1502-1(e). For purposes of this paragraph (b)(10), the term *group* is defined with regard to section 1504(b)(2) for years in which an election under section 1504(c)(2) is not in effect. Thus, a separate return year includes a taxable year for which that election is not in effect.

(11) *Separate return limitation year.* Section 1.1502-1(f)(2) provides exceptions to the definition of the term separate return limitation year. For purposes of applying those exceptions to this section, the term *group* is defined without regard to section 1504(b)(2), and the definition in this paragraph (b)(11) applies separately to the nonlife subgroup in determining nonlife consolidated taxable income under paragraph (f) of this section and to the life subgroup in determining consolidated LICTI under paragraph (g) of this section. Paragraph (h)(3)(ix) of this section defines the term separate return limitation year for purposes of determining whether the losses of one subgroup may be used against the income of the other subgroup.

(12) *Eligible corporations—(i) In general.* A corporation is an eligible corporation for a taxable year of a group only if, throughout every day of the base period the corporation:

(A) Was in existence and a member of the group determined without the exclusions in section 1504(b)(2) (see paragraphs (b)(12) (iii) through (vi) of this section),

(B) Was engaged in the active conduct of a trade or business ("active business"),

(C) Did not experience a change in tax character (see paragraph (b)(12)(vii) of this section), and

(D) Did not undergo disproportionate asset acquisitions (see paragraph (b)(12)(viii) of this section).

(ii) *Base period.* The base period consists of the common parent's five taxable years immediately preceding the group's taxable year for which the consolidated return and the determination of eligibility are made. Eligibility is determined for each consolidated return year beginning with the first year for which the election under section 1504(c)(2) is effective.

(iii) *In existence.* Except as provided in paragraphs (b)(12) (v) and (vi) of this

section, a corporation organized after the base period begins is not eligible even though it is a member of the group immediately after its organization. For purposes of this paragraph (b)(12)(iii), a corporation that was a party to a reorganization described in section 368(a)(1)(F) shall be treated as the same entity both before and after the reorganization.

(iv) *Membership period.* Except as provided in paragraphs (b)(12) (v) and (vi) of this section, a corporation must have been a member of the group throughout the base period to be eligible. Thus, an ineligible corporation includes one whose stock was acquired from outside the group at any time during the base period or one which was a member of a different group (whether by application of reverse acquisition rules in §1.1502-75(d)(3) or otherwise) at any time during the base period. For purposes of this subdivision (iv), the common parent of a group is treated as constituting a group (and hence is a member) during any period when it was not a member of an affiliated group within the meaning of section 1504(a) (applied without section 1504(b)(2)).

(v) *Tacking rule.* The period during which an old corporation is in existence and a member of the group engaged in active business is included in (or tacks onto) the period for the new corporation if the following four conditions listed in this paragraph (b)(12)(v) are met. For purposes of this paragraph (b)(12)(v), a new corporation is a corporation (whether or not newly organized) during the period its eligibility depends upon the tacking rule. The four conditions are as follows—

(A) The first condition is that, at any time, 80 percent or more of the new corporation's assets it acquired (other than in the ordinary course of its trade or business) were acquired from the old corporation in one or more transactions described in section 351(a) or 381(a). This asset test is applied by using the fair market values of assets on the date they were acquired and without regard to liabilities. Assets acquired in the ordinary course of business will be excluded from total assets only if they were acquired after the new corporation became a member of

the group (determined without section 1504(b)(2)). In addition, assets that the old corporation acquired from outside the group in transactions not conducted in the ordinary course of its trade or business are not included in the 80 percent (but are included in total assets) if the old corporation acquired those assets within five calendar years before the date of their transfer to the new corporation.

(B) The second condition is that at the end of the taxable year during which the first condition is first met, the old corporation and the new corporation must both have the same tax character. For purposes of this paragraph (b)(12), a corporation's tax character is the section under which it would be taxed (for example, section 11, section 801, or section 831) if it filed a separate return. If the old corporation is not in existence (or adopts a plan of complete liquidation) at the end of that taxable year, this paragraph (b)(12)(v)(B) will apply to the old corporation's taxable year immediately preceding the beginning of the taxable year during which the first condition is first met.

(C) The third condition is that, at the end of the taxable year during which the first condition is first met, the new corporation does not undergo a disproportionate asset acquisition under paragraph (b)(12)(viii) of this section.

(D) The fourth condition is that, if there is more than one old corporation, the first two conditions apply to all of the corporations. Thus, the second condition (tax character) must be met by all of the old corporations transferring assets taken into account in meeting the test in paragraph (b)(12)(v)(A) of this section.

(vi) *Old group remaining in existence.* If the common parent of a group (or a new common parent) became the common parent in a transaction described in §1.1502-75 (d)(2) or (d)(3) where a group remained in existence, then paragraph (b)(12) (ii) through (iv) of this section apply by treating that common parent as if it were also the previous common parent of the group that remains in existence. If this paragraph (b)(12)(vi) applies to a transaction, the tacking rule in paragraph

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(b)(12)(v) of this section does not apply to the transaction.

(vii) *Change in tax character.* A corporation must not experience during the base period a change in tax character (as defined in paragraph (b)(12)(v)(B) of this section) if the change is attributable to an acquisition of assets from outside the group in transactions not conducted in the ordinary course of its trade or business. However, if a new corporation relies on the tacking rules in paragraph (b)(12)(v) of this section, this paragraph (b)(12)(vii) shall apply during the base period and the current consolidated return year even if the change in tax character is attributable to an asset acquisition from within the group.

(viii) *Disproportionate asset acquisition.* To be eligible, a corporation must not undergo during the base period disproportionate asset acquisitions which are attributable to an acquisition (or a series of acquisitions) of assets from outside the group in transactions not conducted in the ordinary course of its trade or business (special acquisition). Whether special acquisitions are disproportionate is determined at the end of each base period. Whether an acquisition results in a disproportionate asset acquisition depends on all of the facts and circumstances including the following factors and rules:

(A) One factor is the portion of the insurance reserves (that is, total reserves in section 816(c), as modified by section 816(h)) of the acquiring company at the end of the base period which is attributable to special acquisitions.

(B) A second factor is the portion of the fair market value of the assets (without reduction for liabilities) of the acquiring company at the end of the base period that is attributable to special acquisitions.

(C) A third factor is the portion of the premiums generated during the last taxable year of the base period which are attributable to special acquisitions.

(D) A corporation will not experience a disproportionate asset acquisition unless 75 percent of one factor (whether or not listed in this paragraph (b)(12)(viii)) is attributable to special acquisitions.

(E) Money or other property contributed to a corporation by a shareholder that is not a member of the group (without section 1504(b)(2)) is not a special acquisition.

(F) If a new corporation relies on the tacking rules in paragraph (b)(12)(v) of this section, this paragraph (b)(12)(viii) applies to that corporation during a consolidated return year. Thus, if at any time during a consolidated return year, a new corporation undergoes a disproportionate asset acquisition, the corporation becomes ineligible at that time.

(13) *Ineligible corporation.* A corporation that is not an eligible corporation is ineligible. If a life company is ineligible, it is not treated under section 1504(c)(2) as an includable corporation. Losses of a nonlife member arising in years when it is ineligible may not be used under section 1503(c)(2) and paragraph (g) of this section to set off the income of a life member. If a life company is ineligible and is the common parent of the group (without regard to section 1504(b)(2)), the election under section 1504(c)(2) may not be made.

(14) *Examples* The following examples illustrate this paragraph (b). In each example, L indicates a life company, another letter indicates a nonlife company, and each corporation uses the calendar year as its taxable year.

(i) *Example 1.* P has owned all of the stock of S since 2012. On January 1, 2018, P purchased all of the stock of L<sub>1</sub> which owns all of the stock of L<sub>2</sub> and S<sub>2</sub>. L<sub>1</sub> and L<sub>2</sub> are treated as members for purposes of determining if they are eligible for 2020. However, for 2020, L<sub>1</sub>, L<sub>2</sub>, and S<sub>2</sub> are ineligible because none of them has been a member of the group for P's five taxable years preceding 2020. For 2020, L<sub>1</sub> and L<sub>2</sub> may elect to file a consolidated return because they constitute an affiliated group under section 1504(c)(1), and P and S may file a consolidated return. S<sub>2</sub> must file its own separate return for 2020.

(ii) *Example 2.* Since 2012, L<sub>1</sub> has been a life company owning all the stock of L<sub>2</sub>. In 2018, L<sub>1</sub> transfers assets to S<sub>1</sub>, a new nonlife insurance company subject to taxation under section 831(a). For

2020, only L<sub>1</sub> and L<sub>2</sub> are eligible corporations. The tacking rule in paragraph (b)(12)(v) of this section does not apply in 2020 because the old corporation (L<sub>1</sub>) and the new corporation (S<sub>1</sub>) do not have the same tax character.

(iii) *Example 3.* Since 2012, L has owned all the stock of L<sub>1</sub> which has owned all the stock of S<sub>1</sub>, a nonlife insurance company. L<sub>1</sub> writes some accident and health insurance business. In 2018, L<sub>1</sub> transfers this business, and S<sub>1</sub> transfers some of its business, to a new nonlife insurance company, S<sub>2</sub>, in a transaction described in section 351 (a). The property transferred to S<sub>2</sub> by L<sub>1</sub> had a fair market value of \$50 million. The property transferred by S<sub>1</sub> had a fair market value of \$40 million. S<sub>2</sub> is ineligible for 2020 because the tacking rule in paragraph (b)(12)(v) of this section does not apply. The old corporations (L<sub>1</sub> and S<sub>1</sub>) and the new corporation (S<sub>2</sub>) do not all have the same tax character. See subparagraph (b)(12)(v)(B) and (E) of this section. The result would be the same if L<sub>1</sub> transferred other property (for example, stock and securities) with the same value, rather than accident and health insurance contracts, to S<sub>2</sub>.

(iv) *Example 4.* Since 2012, P has owned all the stock of S and L<sub>1</sub>. L<sub>1</sub> is a large life company engaged in active business since 2012. On January 1, 2020, L<sub>1</sub> transfers in a section 351 (a) transaction assets (not acquired from outside the group) to a new life company, L<sub>2</sub>. For 2020, L<sub>2</sub> is eligible because under paragraph (b)(12)(v) of this section, L<sub>2</sub> is considered to have been in existence and a member of the group engaged in the active business since 2012 which is the period L<sub>1</sub>, the old corporation, was in existence and a member of the group so engaged.

(v) *Example 5.* The facts are the same as in example (4). Assume that the fair market value of the assets L<sub>1</sub> transferred to L<sub>2</sub> was \$10 million on January 1, 2020 and that L<sub>2</sub> acquired no other assets prior to June 30, 2021. Assume further that on January 1, 2021, L<sub>1</sub> acquires (other than in the ordinary course of its trade or business) assets having a fair market value of \$40 million from L<sub>3</sub>, an unrelated life company. On June 30, 2021, L<sub>1</sub> transfers those assets to L<sub>2</sub>. L<sub>2</sub> becomes ineli-

gible on June 30, 2021. Since by fair market values, 80 percent (in other words, 40/50) of L<sub>2</sub>'s assets are attributable to special acquisitions, L<sub>2</sub> has undergone a disproportionate asset acquisition at that time. See paragraph (b)(12)(viii)(B), (D), and (F) of this section.

(vi) *Example 6.* The facts are the same as in example (5) except that L<sub>1</sub> transfers assets (other than life insurance contracts) having a fair market value of \$40 million to L<sub>2</sub> and L<sub>2</sub> purchases the assets of L<sub>3</sub> on June 30, 2021. the result of the 2021 acquisition is the same as in example (5).

(vii) *Example 7.* The facts are the same as in example (5) except the acquired assets acquired by L<sub>2</sub> in 2021 from L<sub>1</sub> have a fair market value of \$20 million. In 2021, L<sub>2</sub> had \$1 million of premiums on its pre-existing contracts but premiums generated by the acquired business for the entire year would have been \$2 million. L<sub>2</sub> is eligible in 2021 because it did not experience a disproportionate asset acquisition on June 30, 2021.

(viii) *Example 8.* Since 2012, L, a State A corporation, has owned all of the stock of L<sub>1</sub> and S<sub>1</sub>. On January 1, 2020, L merges into L<sub>3</sub>, a smaller State B corporation, which owns the stock of S<sub>2</sub>. The transaction is a reverse acquisition described in § 1.1502-75(d)(3) and the group of which L was the common parent remains in existence. Under paragraph (b)(12)(vi) of this section, L<sub>3</sub> is eligible for 2020. However, S<sub>2</sub> is ineligible in 2020 under paragraph (b)(12)(iv) of this section.

(ix) *Example 9.* The facts are the same as in example (8) except that L acquires the stock of L<sub>3</sub>. L<sub>3</sub> and S<sub>2</sub> are both ineligible for 2020. On January 1, 2021, the fair market value of L<sub>3</sub>'s assets are \$5 million (without liabilities) and on that date L transfers assets (not acquired from outside the group) having a fair market value of \$95 million (without liabilities) to L<sub>3</sub>. L and L<sub>3</sub> are life companies at the end of 2021. L<sub>3</sub> is eligible in 2021 under the tacking rule in paragraph (b)(12)(v) of this section. S<sub>2</sub> is ineligible in that year. The result would be the same if L<sub>3</sub> was not a life company prior to January 1, 2021. See paragraph (b)(12)(v)(B) of this section.

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(x) *Example 10.* Since 2012, X, a foreign corporation, has owned all the stock of S<sub>2</sub> and S<sub>1</sub>, and S<sub>1</sub> has owned all of the stock of L<sub>1</sub>. On January 1, 2020, X incorporates a new U.S. company P, and transfers the stock of S<sub>1</sub> and S<sub>2</sub> to P. Assume that under §1.1502-75(d)(3) (relating to reverse acquisitions), the S<sub>1</sub>-L<sub>1</sub> affiliated group remains in existence. Under paragraph (b)(12)(vi) of this section, P, S<sub>1</sub>, and L<sub>1</sub> are eligible but S<sub>2</sub> is ineligible. The result would be the same if X were an individual.

(xi) *Example 11.* The facts are the same as in *Example 10* except that X owns all of the stock of S<sub>1</sub>, L<sub>1</sub>, and S<sub>2</sub>. In addition, on January 1, 2020, X transfers the stock of S<sub>1</sub> and S<sub>2</sub> to L<sub>1</sub>. L<sub>1</sub> is eligible in 2020 under paragraph (b)(12)(iv) of this section. L<sub>1</sub> would still be eligible even if it owned a subsidiary during the base period but sold the subsidiary prior to January 1, 2020. S<sub>1</sub> and S<sub>2</sub> are ineligible in 2020.

(xii) *Example 12.* Since 2012, S<sub>1</sub> has owned all of the stock of L<sub>1</sub>. S<sub>2</sub>, an unrelated company, has owned all of the stock of L<sub>2</sub> and S<sub>3</sub> for 10 years. S<sub>1</sub> and S<sub>2</sub> are active nonlife insurance companies and not holding companies. On January 1, 2020, S<sub>1</sub> and S<sub>2</sub> merge into a new nonlife insurance company, S, in a transaction described in §1.1502-75(d)(3) so that the group of which S<sub>1</sub> was the common parent remains in existence. S and L<sub>1</sub> are eligible in 2020 under paragraph (b)(12)(vi) of this section. L<sub>2</sub> and S<sub>3</sub> are ineligible.

(xiii) *Example 13.* The facts are the same as in *Example 12* except that S<sub>2</sub> (the first corporation in §1.1502-75(d)(3)) acquires the stock of S<sub>1</sub> in exchange for the stock of S<sub>2</sub>. The result is that only S<sub>2</sub>, S<sub>1</sub>, and L<sub>1</sub> are eligible in 2020.

(c) *Election—(1) In general.* The election under section 1504(c)(2) may not be made if the group's common parent is an ineligible life company. The election under section 1504(c)(2) may only be made by the common parent of the group (as defined in section 1504(c)(2) without the exclusions in section 1504(b)(2)). For example, assume that P owns all of the stock of L<sub>1</sub>, an eligible life company, which owns the stock of S<sub>1</sub>. Assume further that P also owns the stock of L<sub>2</sub>, an ineligible life member, which (for more than five years)

has owned the stock of a nonlife company, S<sub>2</sub>. Only P may make the election and, if it does so, P, L<sub>1</sub>, and S<sub>1</sub> may file a consolidated return under this section. L<sub>2</sub> may not make the election under section 1504(c)(2) and may not file a consolidated return with S<sub>2</sub>.

(2) *How election is made—(i) General rule.* The election under section 1504(c)(2) is generally made by the group's common parent in the same manner (and it has the same effect) as the election to file a consolidated return is made under §1.1502-75 (a) and (b) for a group which did not file a consolidated return for the immediately preceding taxable year. The procedure for making the election under section 1504(c)(2) is the same whether or not a consolidated return was filed by the life members or the nonlife members for the immediately preceding taxable year.

(ii) *Special rule.* Notwithstanding the general rule, however, if the nonlife members in the group filed a consolidated return for the immediately preceding taxable year and had executed and filed a Form 1122 that is effective for the preceding year, then such members will be treated as if they filed a Form 1122 when they join in the filing of a consolidated return under section 1504(c)(2) and they will be deemed to consent to the regulations under this section. However, an affiliation schedule (Form 851) must be filed by the group and the life members must execute a Form 1122 in the manner prescribed in §1.1502-75(h)(2).

(3) *Irrevocability.* Except as provided in §1.1502-75(c), the election under section 1504(c)(2) is irrevocable.

(4) *Cross reference.* If an election is made under section 1504(c)(2), see §1.1502-75 (e) and (f) for rules that apply for not including (or including) a member or a nonmember in the consolidated return.

(d) *Effect of election.* If the common parent makes the election under section 1504(c)(2), the following rules apply:

(1) *Termination of group.* A mere election under section 1504(c)(2) will not cause the creation of a new group or the termination of an affiliated group that files a consolidated return in the immediately preceding taxable year.

(2) *Effect of eligibility.* If a life member is eligible after an election under section 1504(c)(2), it may not be included as a member of an affiliated group as defined in section 1504(c)(1).

(3) *Eligible and ineligible life companies.* If any life company was a member of an affiliated group of life companies (as defined in section 1504(c)(1)) but is ineligible for a taxable year for which the election under section 1504(c)(2) is effective, that year is not a separate return year merely by reason of the election under section 1504(c)(2) in applying §§1.1502-13 and 1.1502-19 to transactions occurring in prior consolidated return years of that affiliated group. In addition, if more than one ineligible life member of the group (as defined in section 1504(c)(1)) joined in the filing of a consolidated return in the taxable year immediately preceding the year for which the election under section 1504(c)(2) is effective and, solely as a result of the election, one of the ineligible life members becomes the common parent of such a group (section 1504(c)(1)), the group must continue to file a consolidated return. For example, assume that  $L_1$  owns all of the stock of  $S_1$  and all of the stock of  $L_2$ .  $L_2$  owns the stock of  $L_3$ .  $L_1$ ,  $L_2$ , and  $L_3$  are life companies and  $S_1$  is a nonlife company. Assume further that in 2019,  $L_1$ ,  $L_2$ , and  $L_3$  file a consolidated return but  $L_1$  makes the election under section 1504(c)(2) for 2020 and  $L_2$  and  $L_3$  are ineligible.  $L_2$  and  $L_3$  must continue to file a consolidated return in 2020. Moreover,  $L_2$  could elect in 2020 to file a consolidated return (section 1504(c)(1)) with  $L_3$  even if they did not file a consolidated return in 2019 with  $L_1$ .

(4) *Inclusion of life company.* If a life company is ineligible in the consolidated return year for which the election is effective, it will be treated as an includible corporation for the common parent's first taxable year in which the company becomes eligible.

(5) *Dividends received deduction—(i) Dividends received by an includible insurance company.* Dividends received by an includible member insurance company, taxed under either section 801 or section 831, from another includible member of the group are treated for Federal income tax purposes as if the group did not file a consolidated return. See sec-

tions 818(e)(2) and 805(a)(4) for rules regarding a member taxed under section 801, and see sections 832(g) and 832(b)(5)(B) through (E) for rules regarding a member taxed under section 831.

(ii) *Other dividends.* Dividends received from a life company member of the group that are not subject to paragraph (d)(5)(i) of this section are not included in gross income of the distributee member. See section 1504(c)(2)(B)(i). If the distributee corporation is a nonlife insurance company subject to tax under section 831, the rules of section 832(b)(5)(B) through (E) apply.

(6) *Controlled group.* Sections 1563 (a)(4), (b)(2)(D), and (b)(3)(C) (insofar as it applies to corporations described in section 1563(b)(2)(D)) do not apply to any eligible or ineligible life company that is a member of the group for a taxable year during which the election is effective.

(7) *Consolidated tax.* The tax liability of a group for a consolidated return year (before application of credits against that tax) is computed on a consolidated basis by adding together the following taxes:

(i) The tax imposed under section 11 on consolidated taxable income (as determined under paragraph (e) of this section). The taxes imposed under sections 801(a) and 831(a) will each be treated as a tax imposed under section 11.

(ii) Any taxes described in § 1.1502-2 (other than in § 1.1502-2(a)(1), (a)(6), and (a)(7)).

(e) *Consolidated taxable income.* The consolidated taxable income is the sum of the following two amounts:

(1) *Nonlife consolidated taxable income.* The nonlife consolidated taxable income (as defined in paragraph (f) of this section) of the nonlife subgroup, as set off by the life subgroup losses as provided in paragraph (j) of this section. The amount in this paragraph (e)(1) may not be less than zero.

(2) *Consolidated LICTI.* The consolidated LICTI (as defined in paragraph (g)(1) of this section) of the life subgroup, as set off by the nonlife subgroup losses as provided in paragraph (h) of this section. The amount in this

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paragraph (e)(2) may not be less than zero.

(f) *Nonlife consolidated taxable income*—(1) *In general*. Nonlife consolidated taxable income is the consolidated taxable income of the nonlife subgroup, computed under §1.1502-11 as modified by this paragraph (f). For this purpose, separate taxable income of a member includes insurance company taxable income (as defined in section 832).

(2) *Nonlife consolidated net operating loss deduction*—(i) *In general*. In applying §1.1502-21, the rules in this paragraph (f)(2) apply in determining for the nonlife subgroup the nonlife net operating loss and the portion of the nonlife net operating loss carryovers and carrybacks to the taxable year.

(ii) *Nonlife CNOL*. The nonlife consolidated net operating loss is determined under §1.1502-21(e) by treating the nonlife subgroup as the group.

(iii) *Carrybacks*. The portion of the nonlife consolidated net operating loss for the nonlife subgroup described in paragraph (f)(2)(vi) of this section, if any, that is eligible to be carried back to prior taxable years under §1.1502-21 is carried back to the appropriate years (whether consolidated or separate) before the nonlife consolidated net operating loss may be used as a nonlife subgroup loss under paragraphs (e)(2) and (h) of this section to set off consolidated LICTI in the year the loss arose. The election under section 172(b)(3) to relinquish the entire carryback period for the net operating loss of the nonlife subgroup may be made by the agent for the group within the meaning of §1.1502-77.

(iv) *Subgroup rule*. In determining the portion of the nonlife consolidated net operating loss that is absorbed when the loss is carried back to a consolidated return year, §1.1502-21 is applied by treating the nonlife subgroup as the group. Therefore, the absorption is determined without taking into account any life subgroup losses that were previously reported on a consolidated return as setting off nonlife consolidated taxable income for the year to which the nonlife subgroup loss is carried back.

(v) *Carryover*. The portion of the nonlife consolidated net operating loss

that is not absorbed in a prior year as a carryback, or as a nonlife subgroup loss that set off consolidated LICTI for the year the loss arose, constitutes a nonlife carryover under this paragraph (f)(2) to reduce nonlife consolidated taxable income before that portion may constitute a nonlife subgroup loss that sets off consolidated LICTI for a particular year. For limitations on the use of nonlife carryovers to offset nonlife consolidated taxable income or consolidated LICTI, see §1.1502-21.

(vi) *Portion of nonlife consolidated net operating loss that is carried back to prior taxable years*. The portion of the nonlife consolidated net operating loss that (absent an election to waive carrybacks) is carried back to the two preceding taxable years is the sum of the nonlife subgroup's farming loss (within the meaning of section 172(b)(1)(B)(ii)) and the amount of the subgroup's net operating loss that is attributable to nonlife insurance companies (as determined under §1.1502-21). For rules governing the absorption of net operating loss carrybacks, including limitations on the amount of net operating loss carrybacks that may be absorbed in prior taxable years, see §1.1502-21(b).

(vii) *Example*. P, a holding company that is not an insurance company, owns all of the stock of S, a nonlife insurance company, and L1, a life insurance company. L1 owns all of the stock of L2, a life insurance company. Both L1 and L2 satisfy the eligibility requirements of §1.1502-47(b)(12). Each corporation uses the calendar year as its taxable year, and no corporation has incurred farming losses (within the meaning of section 172(b)(1)(B)(ii)). For 2021, the group first files a consolidated return for which the election under section 1504(c)(2) is effective. P and S filed consolidated returns for 2019 and 2020. In 2021, the P-S group sustains a nonlife consolidated net operating loss that is attributable entirely to S (see §1.1502-21(b)). The election in 2021 under section 1504(c)(2) does not result under paragraph (d)(1) of this section in the creation of a new group or the termination of the P-S group. The loss is carried back to the consolidated return years 2019 and 2020 of P and S. Pursuant to §1.1502-21(b), the loss may be

used to offset S's income in 2019 and 2020 without limitation, and the loss may be used to offset P's income in those years, subject to the limitation in section 172(a) (see § 1.1502-21(b)). The portion of the loss not absorbed in 2019 and 2020 may serve as a nonlife subgroup loss in 2021 that may set off the consolidated LICTI of L1 and L2 under paragraphs (e)(2) and (h) of this section.

(3) *Nonlife consolidated capital gain net income or loss*—(i) *In general*. In applying § 1.1502-22, the rules in this paragraph (f)(3) apply in determining for the nonlife subgroup the nonlife consolidated capital gain net income or loss and the portion of the nonlife net capital loss carryovers and carrybacks to the taxable year. In particular, the nonlife consolidated capital gain net income and nonlife consolidated net capital loss are determined under the principles of § 1.1502-22 by treating the nonlife subgroup as the group.

(ii) *Additional principles*. In applying § 1.1502-22 to nonlife consolidated net capital loss carryovers and carrybacks, the principles set forth in paragraph (f)(2)(iii) through (v) of this section for applying § 1.1502-21 to nonlife consolidated net operating loss carryovers and carrybacks also apply, without regard to the limitation in paragraph (f)(2)(vi) of this section.

(iii) *Special rules*. The nonlife consolidated net capital loss is reduced, for purposes of determining the carryovers and carrybacks under § 1.1502-22(b) by the lesser of:

(A) The aggregate of the additional capital loss deductions allowed under section 832(c)(5), or

(B) The nonlife consolidated taxable income computed without capital gains and losses.

(g) *Consolidated LICTI*—(1) *General rule*. Consolidated LICTI is the consolidated taxable income of the life subgroup, computed under § 1.1502-11 as modified by this paragraph (g).

(2) *Life consolidated net operating loss deduction*—(i) *In general*. In applying § 1.1502-21, the rules in this paragraph (g)(2) apply in determining for the life subgroup the life net operating loss and the portion of the life net operating loss carryovers and carrybacks to the taxable year.

(ii) *Life CNOL*. The life consolidated net operating loss is determined under § 1.1502-21(e) by treating the life subgroup as the group.

(iii) *Carrybacks*—(A) *General rule*. The portion of the life consolidated net operating loss for the life subgroup, if any, that is eligible to be carried back under § 1.1502-21 is carried back to the appropriate years (whether consolidated or separate) before the life consolidated net operating loss may be used as a life subgroup loss under paragraphs (e)(1) and (j) of this section to set off nonlife consolidated taxable income in the year the loss arose. The election under section 172(b)(3) to relinquish the entire carryback period for the consolidated net operating loss of the life subgroup may be made by the agent for the group within the meaning of § 1.1502-77.

(B) *Special rule for life consolidated net operating losses arising in 2018, 2019, or 2020*. If a life consolidated net operating loss arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, is carried back to a life insurance company taxable year beginning before January 1, 2018, then such life consolidated net operating loss is treated as an operations loss carryback (within the meaning of section 810, as in effect prior to its repeal) of such company to such taxable year.

(iv) *Subgroup rule*. In determining the portion of the life consolidated net operating loss that is absorbed when the loss is carried back to a consolidated return year, § 1.1502-21 is applied by treating the life subgroup as the group. Therefore, the absorption is determined without taking into account any nonlife subgroup losses that were previously reported on a consolidated return as setting off life consolidated taxable income for the year to which the life subgroup loss is carried back.

(v) *Carryovers*. The portion of the life consolidated net operating loss that is not absorbed in a prior year as a carryback, or as a life subgroup loss that set off nonlife consolidated taxable income for the year the loss arose, constitutes a life carryover under this paragraph (g)(2) to reduce consolidated LICTI before that portion may constitute a life subgroup loss that sets off nonlife consolidated taxable income for

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that particular year. For limitations on the use of life carryovers to offset nonlife consolidated taxable income or consolidated LICTI, see § 1.1502-21(b).

(3) *Life consolidated capital gain net income or loss*—(i) [Reserved].

(ii) *Life consolidated net capital loss carryovers and carrybacks*. The life consolidated net capital loss carryovers and carrybacks for the life subgroup are determined by applying the principles of § 1.1502-22 as modified by the following rules in this paragraph (g)(3)(ii):

(A) Life consolidated net capital loss is first carried back (or apportioned to the life members for separate return years) to be absorbed by life consolidated capital gain net income without regard to any nonlife subgroup capital losses and before the life consolidated net capital loss may serve as a life subgroup capital loss that sets off nonlife consolidated capital gain net income in the year the life consolidated net capital loss arose.

(B) If a life consolidated net capital loss is not carried back or is not a life subgroup loss that sets off nonlife consolidated capital gain net income in the year the life consolidated net capital loss arose, then it is carried over to the particular year under this paragraph (g)(3)(ii) first against life consolidated capital gain net income before it may serve as a life subgroup capital loss that sets off nonlife consolidated capital gain net income in that particular year.

(h) *Consolidated LICTI setoff by nonlife subgroup losses*—(1) *In general*. The nonlife subgroup losses consist of the nonlife consolidated net operating loss and the nonlife consolidated net capital loss. Under paragraph (e)(2) of this section, consolidated LICTI is set off by the amounts of these two consolidated losses specified in paragraph (h)(2) of this section. The setoff is subject to the rules and limitations in paragraph (h)(3) of this section.

(2) *Amount of setoff*—(i) *Current year*. Consolidated LICTI for the current taxable year is set off by the portion of the nonlife consolidated net operating loss and nonlife consolidated net capital loss arising in that year that cannot be carried back under paragraph (f) of this section to prior taxable years

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(whether consolidated or separate return years) of the nonlife subgroup.

(ii) *Carryovers*. The portion of the offsettable nonlife consolidated net operating loss or nonlife consolidated net capital loss that has not been used as a nonlife subgroup loss setoff against consolidated LICTI in the year it arose may be carried over to succeeding taxable years under the principles of § 1.1502-21 (relating to net operating loss deduction) or § 1.1502-22 (as appropriate) (relating to net capital loss carryovers). However, in any particular succeeding year, the losses will be used under paragraph (f) of this section in computing nonlife consolidated taxable income before being used in that year as a nonlife subgroup loss that sets off consolidated LICTI. Additionally, the amount of consolidated LICTI that may be offset by nonlife consolidated net operating loss carryovers may be subject to limitation (see section 172 and § 1.1502-21).

(3) *Nonlife subgroup loss rules and limitations*. The nonlife subgroup losses are subject to the following operating rules and limitations:

(i) *Separate return years*. The carryovers in paragraph (h)(2)(ii) of this section may include net operating losses and net capital losses of the nonlife members arising in separate return years, that may be carried over to a succeeding year under the principles (including limitations) of §§ 1.1502-21 and 1.1502-22. But see subdivision (ix) of this paragraph (h)(3).

(ii) *Capital loss*. Nonlife consolidated net capital loss sets off consolidated LICTI only to the extent of life consolidated capital gain net income (as determined under paragraph (g)(4) of this section) and this setoff applies before any nonlife consolidated net operating loss sets off consolidated LICTI.

(iii) *Capital gain*. Life consolidated capital gain net income is zero in any taxable year in which the life subgroup has a life consolidated net operating loss and, in any taxable year, it may not exceed consolidated LICTI.

(iv) *Ordering rule*. Consolidated LICTI for a consolidated return year is set off by nonlife subgroup losses for that year before being set off (under paragraph (h)(2)(ii) of this section) by a carryover of a nonlife subgroup loss to that year.

The amount of consolidated LICTI that may be offset by nonlife consolidated net operating loss carryovers may be subject to limitation (see section 172 and § 1.1502-21).

(v) *Setoff at bottom line.* The setoff of nonlife subgroup losses against consolidated LICTI does not affect life member deductions that depend in whole or in part on taxable income. Thus, the setoff does not affect the amount of consolidated LICTI for any for any taxable year but it merely constitutes an adjustment in arriving at the group's consolidated taxable income under paragraph (e) of this section.

(vi) *Ineligible nonlife member.* (A) The offsettable nonlife consolidated net operating loss that arises in any consolidated return year (that may be set off against consolidated LICTI in the current taxable year or in a succeeding taxable year) is the amount computed under paragraph (f)(2)(ii) of this section reduced by the ineligible NOL. For purposes of this paragraph (h)(3), the "ineligible NOL" is in the year the loss arose the amount of the separate net operating loss (determined under §§ 1.1502-21(b) of any nonlife member that is ineligible in that year (and not the portion of the nonlife consolidated net operating loss attributable under §§ 1.1502-21(b) to such a member).

(B) The carryovers of offsettable nonlife net operating losses under paragraph (h)(2)(ii) of this section do not include an ineligible NOL arising in a consolidated return year or a loss attributable to an ineligible member arising in a separate return year. See section 1503(c)(2). (C) For absorption within the nonlife subgroup of an ineligible NOL arising in a consolidated return year or a loss of an ineligible member arising in a separate return year which is not a separate return limitation year under paragraph (h)(3)(ix) of this section, see paragraph (h)(3)(vii) of this section.

(vii) *Absorption of ineligible NOL.* (A) If all or a portion of a nonlife member's ineligible NOL (determined under paragraph (h)(3)(vi)(A) of this section) may be carried back or carried over under paragraph (f)(2) of this section to a particular consolidated return year of the nonlife subgroup (absorption year), then notwithstanding § 1.1502-21(b), the

amount carried to the absorption year will be absorbed by that member's contribution (to the extent thereof) to nonlife consolidated taxable income for that year, subject to the limitation in section 172(a).

(B) For purposes of paragraph (h)(3)(vii)(A) of this section, a member's contribution to nonlife consolidated taxable income for an absorption year is the amount of such income (computed without the portion of the nonlife consolidated net operating loss deduction attributable to taxable years subsequent to the year the loss arose), minus such consolidated taxable income recomputed by excluding both that member's items of income and deductions for the absorption year. The deductions of the member include the prior application of this paragraph (h)(3)(vii) to the absorption of the nonlife consolidated net operating loss deduction for losses arising in taxable years prior to the particular loss year.

(viii) *Election to relinquish carryback.* The offsettable nonlife consolidated net operating loss does not include the amount that could be carried back under paragraph (f)(2) of this section but for the election by the agent for the group (within the meaning of § 1.1502-77) under section 172(b)(3) to relinquish the carryback. See section 1503(c)(1).

(ix) *Separate return limitation year.* The offsettable nonlife consolidated net operating and capital loss carryovers do not include any losses attributable to a nonlife member that were sustained (A) in a separate return limitation year (determined without section 1504(b)(2)) of that member (or a predecessor), or (B) in a separate return year, in which an election was in effect under neither section 1504(c)(2) nor section 243(b)(3).

(x) *Percentage limitation.* The offsettable nonlife consolidated net operating losses that may be set off against consolidated LICTI in a particular year may not exceed a percentage limitation. This limitation is the applicable percentage in section 1503(c)(1) of the lesser of two amounts. The first amount is the sum of the offsettable nonlife consolidated net operating losses under paragraph (h)(2) of

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this section that may serve in the particular year (determined without this limitation) as a setoff against consolidated LICTI. The second amount is consolidated LICTI (as defined in paragraph (j) of this section) in the particular year reduced by any nonlife consolidated net capital loss that sets off consolidated LICTI in that year.

(xi) *Further limitation.* Any offsettable nonlife consolidated net operating loss remaining after applying the percentage limitation that is carried over to a succeeding taxable year may not be set off against the consolidated LICTI attributable to a life member that was not an eligible life member in the year the loss arose. See section 1503(c)(2).

(xii) *Restoration rule.* The carryback of a life consolidated net operating loss or life consolidated net capital loss under paragraph (g) of this section that reduces consolidated LICTI (or life consolidated capital gain net income) for a prior year may reduce the amount of nonlife subgroup losses that would offset consolidated LICTI in that prior year. Thus, that amount may be carried over under paragraph (f)(2) or (3) of this section from that prior year in determining nonlife consolidated taxable income in a succeeding year or serve as offsettable nonlife subgroup losses in a succeeding year.

(4) *Examples.* The following examples illustrate the principles of this paragraph (f). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)(ii)), and each corporation uses the calendar year as its taxable year.

(i) *Example 1.* P owns all of the stock of L and S. S owns all of the stock of I, a nonlife member that is an ineligible corporation for 2021 under paragraph (b)(13) of this section. For 2021, the group elects under section 1504(c)(2) to file a consolidated return. For 2021, assume that any nonlife consolidated net operating loss may not be carried back to a prior taxable year. Other facts are summarized in the following table.

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	Separate taxable income (loss)
P .....	\$100
S .....	(100)
I .....	(100)
Nonlife consolidated net operating loss ..	(100)

Under paragraph (h)(3)(vi) of this section, P's separate income is considered to absorb the loss of S, an eligible member, first and the offsettable nonlife consolidated net operating loss is zero, that is, the consolidated net operating loss (\$100) reduced by I's loss (\$100). The consolidated net operating loss (\$100) may be carried over, but since it is entirely attributable to I (an ineligible member that is not a nonlife insurance company) its use is subject to the restrictions in paragraph (h)(3)(vi) of this section and section 172(a). The result would be the same if the group contained two additional members, S<sub>1</sub>, an eligible member, and I<sub>1</sub>, an ineligible member, where S<sub>1</sub> had a loss of (\$100) and I<sub>1</sub> had income of \$100.

(ii) *Example 2.* (A) The facts are the same as in paragraph (f)(4)(i) of this section, except that, for 2021, S's separate net operating loss is \$200. Assume further that L's consolidated LICTI is \$200. Under paragraph (f)(3)(vi) of this section, the offsettable nonlife consolidated net operating loss is \$100 (the nonlife consolidated net operating loss computed under paragraph (f)(2)(ii) of this section (\$200), reduced by the separate net operating loss of I (\$100)). The offsettable nonlife consolidated net operating loss that may be set off against consolidated LICTI in 2021 is \$35 (35 percent of the lesser of the offsettable \$100 or consolidated LICTI of \$200). See section 1503(c)(1) and paragraph (f)(3)(x) of this section. S carries over a loss of \$65, and I carries over a loss of \$100, to 2022 under paragraph (f)(2) of this section to be used against nonlife consolidated taxable income (consolidated net operating loss (\$200) less amount used in 2021 (\$35)). Under paragraph (f)(2)(ii) of this section, the offsettable nonlife consolidated net operating loss that may be carried to 2022 is \$65 (\$100 minus \$35). The facts and results are summarized in the following table.

TABLE 1 TO PARAGRAPH (h)(4)(ii)(A)  
[Dollars omitted]

	Facts (a)	Offsettable (b)	Limit (c)	Unused Loss (d)
1. P .....	100 .....	.....	.....	
2. S .....	(200) .....	(100) .....	.....	(65)
3. I .....	(100) .....	.....	.....	(100)
4. Nonlife Subgroup .....	(200) .....	(100) .....	(100) .....	(165)
5. L .....	200 .....	.....	200 .....	
6. 35% of lower of line 4(c) or 5(c) .....	.....	.....	35 .....	
7. Unused offsettable loss .....	.....	.....	.....	(65)

(B) Accordingly, under paragraph (e) of this section, consolidated taxable income is \$165 (line 5(a) minus line 6(c)).

(iii) *Example 3.* The facts are the same as in paragraph (f)(4)(ii) of this section, with the following additions for 2022. The nonlife subgroup has nonlife consolidated taxable income of \$50 (all of which is attributable to I) before the nonlife consolidated net operating loss deduction under paragraph (f)(2) of this section. Consolidated LICTI is \$100. Under paragraph (f)(2) of this section, \$50 of the nonlife consolidated net operating loss carryover (\$165) is used in 2022 and, under paragraph (f)(3)(vi) and (vii) of this section, the portion used in 2022 is attributable to I, the ineligible nonlife member. Accordingly, the offsettable nonlife consolidated net operating loss from 2021 under paragraph (f)(3)(ii) of this section is \$65, the unused loss from 2021. The offsettable nonlife consolidated net operating loss in 2022 is \$22.75 (35 percent of the lesser of the offsettable loss of \$65 or consolidated LICTI of \$100). Accordingly, under paragraph (e) of this section, consolidated taxable income is \$77.25 (consolidated LICTI of \$100 minus the offsettable loss of \$22.75).

(iv) *Example 4.* P owns all of the stock of S and L. For 2021, all corporations are eligible corporations, and the group elects under section 1504(c)(2) to file a consolidated return, the nonlife consolidated net operating loss is \$100, and the nonlife consolidated net capital loss is \$50. Assume that the losses may not be carried back and the capital losses are not attributable to built-in deductions under paragraph (h)(3)(ix) of this section. Other facts and the results are set forth in the following table:

	P-S	L
1. Nonlife consolidated net operating loss .....	(\$100) .....	.....
2. Nonlife consolidated capital loss .....	(50) .....	.....
3. Consolidated LICTI .....	.....	\$100
4. Life consolidated capital gain net income included in line 3 .....	.....	50
5. Offsettable:		
(a) 35% of lower of line (1) or line (3)–(4)	(17.5) .....	
(b) Line 2 .....	(50) .....	
(c) Total .....	(67.5) .....	
6. Unused losses available to be carried over:		
(a) From line 1 (line 1 minus line 5 (a)) .....	(82.5) .....	
(b) From line 2 (line 2 minus line 5 (b)) .....	0 .....	

Accordingly, under paragraph (e) of this section consolidated taxable income is \$32.5, that is, line 3 minus line 5(c).

(i) [Reserved]

(j) *Nonlife consolidated taxable income set off by life subgroup losses*—(1) *In general.* The life subgroup losses consist of the life consolidated net operating loss and consolidated operations loss carryovers and the life consolidated net capital loss. Under paragraph (e)(1) of this section, nonlife consolidated taxable income is set off by the amounts of these two consolidated losses specified in paragraph (j)(2) of this section, subject to the rules and limitations in paragraph (j)(3) of this section.

(2) *Amount of setoff.* The portion of the life consolidated net operating loss and consolidated operations loss carryovers or life consolidated net capital loss that may be set off against nonlife consolidated taxable income (determined under paragraph (f) of this section) is determined by applying the rules prescribed in paragraphs (h)(2) and (3) of this section in the following manner:

(i) Substitute the term “life” for “nonlife”, and vice versa.

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(ii) Substitute the term “nonlife consolidated taxable income” for “consolidated LICTI”, and vice versa.

(iii) Substitute the term “life consolidated net operating loss and consolidated operations loss carryovers” for “nonlife consolidated net operating loss”, and “paragraph (g)” for “paragraph (f)”.

(iv) Paragraphs (h)(3)(vi), (vii), (x), and (xi) of this section do not apply to a life consolidated net operating loss and consolidated operations loss carryovers.

(v) The setoff of life subgroup losses against nonlife consolidated taxable income does not affect nonlife member deductions that depend in whole or in part on taxable income.

(3) *Examples.* The following examples illustrate the principles of this paragraph (j). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)(ii)), and each corporation uses the calendar year as its taxable year.

(i) *Example 1.* P, S, L1 and L2 constitute a group that elects under section 1504(c)(2) to file a consolidated return for 2021. In 2021, the nonlife subgroup consolidated taxable income is \$100 and there is \$20 of nonlife consolidated net capital loss that cannot be carried back under paragraph (f) of this section to taxable years (whether consolidated or separate) preceding 2021. The nonlife subgroup has no carryover from years prior to 2021. The life consolidated net operating loss is \$150, which under paragraph (g) of this section includes life consolidated capital gain net income of \$25. Since life consolidated capital gain net income is zero for 2021 (see paragraph (h)(3)(iii) of this section), the nonlife capital loss offset is zero (see paragraph (h)(3)(ii) of this section). However, \$100 of life consolidated net operating loss sets off the \$100 nonlife consolidated taxable income in 2021. The life subgroup carries under paragraph (g)(2) of this section to 2022 \$50 of the life consolidated net operating loss (\$150 minus \$100). The \$50 carryover will be used in 2022 (subject to the limitation in section 172(a))

against life subgroup income before it may be used in 2022 to setoff nonlife consolidated taxable income.

(ii) *Example 2.* The facts are the same as in paragraph (j)(3)(i) of this section, except that, for 2021, the nonlife consolidated taxable income is \$150 (this amount is entirely attributable to S and includes nonlife consolidated capital gain net income of \$50), consolidated LICTI is \$200, and a life consolidated net capital loss is \$50. The \$50 life consolidated net capital loss sets off the \$50 nonlife consolidated capital gain net income. Consolidated taxable income under paragraph (e) of this section is \$300 (nonlife consolidated taxable income (\$150) minus the setoff of the life consolidated net capital loss (\$50), plus consolidated LICTI (\$200)).

(iii) *Example 3.* The facts are the same as in paragraph (j)(3)(ii) of this section, except that, for 2022, the nonlife consolidated net operating loss is \$150. This entire amount is attributable to S; thus, it is eligible to be carried back to 2021 against nonlife consolidated taxable income under paragraph (f)(2) of this section and § 1.1502-21(b). If P, the agent for the group within the meaning of § 1.1502-77, does not elect to relinquish the carryback under section 172(b)(3), the entire \$150 will be carried back, reducing 2021 nonlife consolidated taxable income to zero and nonlife consolidated capital gain net income to zero. Under paragraph (h)(3)(xii) of this section, the setoff in 2021 of the nonlife consolidated capital gain net income (\$50) by the life consolidated net capital loss (\$50) is restored. Accordingly, the 2021 life consolidated net capital loss may be carried over by the life subgroup to 2022. Under paragraph (e) of this section, after the carryback, consolidated taxable income for 2021 is \$200 (nonlife consolidated taxable income (\$0) plus consolidated LICTI (\$200)).

(iv) *Example 4.* The facts are the same as in paragraph (j)(3)(iii) of this section, except that P elects under section 172(b)(3) to relinquish the carryback of \$150 arising in 2022. The setoff in Example 2 is not restored. However, the offsettable nonlife consolidated net operating loss for 2022 (or that may be carried over from 2022) is zero. See paragraph (h)(3)(viii) of this section.

Nevertheless, the \$150 nonlife consolidated net operating loss may be carried over to be used by the nonlife group.

(v) *Example 5.* P owns all of the stock of S1 and of L1. On January 1, 2017, L1 purchases all of the stock of L2. For 2021, the group elects under section 1504(c)(2) to file a consolidated return. For 2021, L1 is an eligible corporation under paragraph (b)(12) of this section but L2 is ineligible. Thus, L1 but not L2 is a member for 2021. For 2021, L2 sustains a net operating loss, which cannot be carried back (see section 172(b)). For 2021, L2 is treated under paragraph (d)(6) of this section as a member of a controlled group of corporations under section 1563 with P, S, and L1. For 2022, L2 is eligible and is included on the group's consolidated return. L2's net operating loss for 2021 that may be carried to 2022 is not treated under paragraph (b)(11) of this section as having been sustained in a separate return limitation year for purposes of computing consolidated LICTI of the L1-L2 life subgroup for 2022. Furthermore, the portion of L2's net operating loss not used under paragraph (g)(2) of this section against life subgroup income in 2022 may be included in offsettable life consolidated net operating loss under paragraph (j)(2) and (h)(3)(i) of this section that reduces in 2022 nonlife consolidated taxable income (subject to the limitation in section 172(a)) because L2's loss in 2021 was not sustained in a separate return limitation year under paragraph (j)(2) and (h)(3)(ix)(A) of this section or in a separate return year (2021) when an election was in effect under neither section 1504(c)(2) nor section 243(b)(3).

(k) *Preemption.* The rules in this section preempt any inconsistent rules in other sections (§§ 1.1502-0 through 1.1502-100) of the consolidated return regulations. For example, the rules in paragraph (h)(3)(vi) apply notwithstanding § 1.1502-21.

(l) *Other consolidation principles.* The fact that this section treats the life and nonlife members as separate groups in computing, respectively, consolidated LICTI (or life consolidated net operating loss) and nonlife consolidated taxable income (or loss) does not affect the usual rules in §§ 1.1502-0 through 1.1502-100 unless this section

provides otherwise. Thus, the usual rules in § 1.1502-13 (relating to intercompany transactions) apply to both the life and nonlife members by treating them as members of one affiliated group.

(m) *Filing requirements—(1) In general.* To file a consolidated income tax return for a life-nonlife consolidated group, the common parent shall—

(i) File the applicable consolidated corporate income tax return: a Form 1120-L, "U.S. Life Insurance Company Income Tax Return," where the common parent is a life insurance company; a Form 1120-PC, "U.S. Property and Casualty Insurance Company Income Tax Return," where the common parent is an insurance company, other than a life insurance company; or a Form 1120, "U.S. Corporation Income Tax Return," where the common parent is any other type of corporation;

(ii) Indicate clearly on the face of this return that such corporate tax return is a life-nonlife return;

(iii) Show any set offs required by paragraphs (e), (h), and (j) of this section;

(iv) Report separately the nonlife consolidated taxable income or loss, determined under paragraph (f) of this section, on a Form 1120 or 1120-PC (whether filed by the common parent or as an attachment to the consolidated return), as the case may be, of all nonlife members of the consolidated group; and

(v) Report separately the consolidated Life Insurance Company Taxable Income or life consolidated net operating loss, on a Form 1120-L (whether filed by the common parent or as an attachment to the consolidated return), of all life members of the consolidated group.

(2) *Cross reference.* See § 1.1502-75(j), regarding the inclusion in a corporate tax return of the required statements and schedules for subsidiaries.

(n) *Effective/applicability dates.* The rules of this section apply to taxable years beginning after December 31, 2020. However, a taxpayer may choose to apply the rules of this section to taxable years beginning on or before December 31, 2020. If a taxpayer makes the choice described in the previous sentence, the taxpayer must apply

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those rules in their entirety and consistently with the provisions of subchapter L of the Internal Revenue Code applicable to the years at issue.

(Secs. 1502 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 637, 917; 26 U.S.C. 1502, 7805))

[T.D. 7877, 48 FR 11441, Mar. 18, 1983]

EDITORIAL NOTES: 1. For FEDERAL REGISTER citations affecting §1.1502-47, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

2. By T.D. 9927, 85 FR 67988, Oct. 27, 2020, §1.1502-47 was amended; however, a portion of the amendment could not be incorporated due to inaccurate amendatory instruction.

## § 1.1502-50 Consolidated section 250.

(a) *In general*—(1) *Scope*. This section provides rules for applying section 250 and §§1.250-1 through 1.250(b)-6 (the *section 250 regulations*) to a member of a consolidated group (*member*). Paragraph (b) of this section provides rules for the determination of the amount of the deduction allowed to a member under section 250(a)(1). Paragraph (c) of this section provides rules governing the impact of intercompany transactions on the determination of a member's qualified business asset investment (QBAI) and the effect of intercompany transactions on the determination of a member's foreign-derived deduction eligible income (FDDEI). Paragraph (d) of this section provides rules governing basis adjustments to member stock resulting from the application of paragraph (b)(1) of this section. Paragraph (e) of this section provides definitions. Paragraph (f) of this section provides examples illustrating the rules of this section. Paragraph (g) of this section provides an applicability date.

(2) *Overview*. The rules of this section ensure that the aggregate amount of deductions allowed under section 250 to members appropriately reflects the income, expenses, gains, losses, and property of all members. Paragraph (b) of this section allocates the consolidated group's overall deduction amount under section 250 to each member on the basis of its contribution to the consolidated foreign-derived deduction eligible income (consolidated FDDEI) and consolidated global intangible low-taxed income (consolidated GILTI).

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The definitions in paragraph (e) of this section provide for the aggregation of the deduction eligible income (DEI), FDDEI, deemed tangible income return, and global intangible low-taxed income (GILTI) of all members in order to calculate the consolidated group's overall deduction amount under section 250.

(b) *Allowance of deduction*—(1) *In general*. A member is allowed a deduction for a consolidated return year under section 250. See §1.250(a)-1(b). The amount of the deduction is equal to the sum of—

(i) The product of the consolidated FDII deduction amount and the member's FDII deduction allocation ratio; and

(ii) The product of the consolidated GILTI deduction amount and the member's GILTI deduction allocation ratio.

(2) *Consolidated taxable income limitation*. For purposes of applying the limitation described in §1.250(a)-1(b)(2) to the determination of the consolidated FDII deduction amount and the consolidated GILTI deduction amount of a consolidated group for a consolidated return year—

(i) The consolidated foreign-derived intangible income (consolidated FDII) (if any) is reduced (but not below zero) by an amount which bears the same ratio to the consolidated section 250(a)(2) amount that such consolidated FDII bears to the sum of the consolidated FDII and the consolidated GILTI; and

(ii) The consolidated GILTI (if any) is reduced (but not below zero) by the excess of the consolidated section 250(a)(2) amount over the reduction described in paragraph (b)(2)(i) of this section.

(c) *Impact of intercompany transactions*—(1) *Impact on qualified business asset investment determination*—(i) *In general*. For purposes of determining a member's QBAI, the basis of specified tangible property does not include an amount equal to any gain or loss recognized with respect to such property by another member in an intercompany transaction (as defined in §1.1502-13(b)(1)) until the time that such gain or loss is no longer deferred under §1.1502-13. Thus, for example, if a selling member owns specified tangible