(4) *Application of §1.1502–20T to certain transactions*—(i) *In general.* If a group files the certification described in paragraph (h)(4)(ii) of this section, it may apply §1.1502–20T (as contained in the CFR edition revised as of April 1, 1990), to all of its members with respect to all dispositions and deconsolidations by the certifying group to which §1.1502–20T otherwise applied by its terms occurring—

(A) On or after March 9, 1990 (but only if not pursuant to a binding contract described in §1.337(d)–1T(e)(2) (as contained in the CFR edition revised as of April 1, 1990) that was entered into before March 9, 1990); and

(B) Before November 19, 1990 (or thereafter, if pursuant to a binding contract described in §1.1502–20T(g)(3) that was entered into on or after March 9, 1990 and before November 19, 1990).

The certification under this paragraph (h)(4)(i) with respect to the application of §1.1502–20T to any transaction described in this paragraph (h)(4)(i) may not be withdrawn and, if the certification is filed, §1.1502–20T must be applied to all such transactions on all returns (including amended returns) on which such transactions are included.

(ii) *Time and manner of filing certification.* The certification described in paragraph (h)(4)(i) of this section must be made in a separate statement entitled "[insert name and employer identification number of common parent] hereby certifies under §1.1502–20 (h)(4) that the group of which it is the common parent is applying §1.1502–20T to all transactions to which that section otherwise applied by its terms." The statement must be signed by the common parent and filed with the group's income tax return for the taxable year of the first disposition or deconsolidation to which the certification applies. If the separate statement required under this paragraph (h)(4) is to be filed with a return the due date (including extensions) of which is before November 16, 1991, the statement may be filed with an amended return for the year of the disposition or deconsolidation that is filed within 180 days after September 13, 1991. Any other filings required under §1.1502–20T, such as the statement required under §1.1502–20T(f)(5), may be made with the amended return, regardless of whether §1.1502–20T permits such filing by amended return.

(5) *Cross reference.* For transitional loss limitation rules, see §§1.337(d)–1 and 1.337(d)–2.

(i) [Reserved]. For further guidance, see §1.1502–20T(i).

[T.D. 8364, 56 FR 47392, Sept. 19, 1991; 57 FR 53550, Nov. 12, 1992, as amended by T.D. 8560, 59 FR 41680, Aug. 15, 1994; T.D. 8597, 60 FR 36709, July 18, 1995; T.D. 8677, 61 FR 33323, June 27, 1996; T.D. 8597, 62 FR 12098, Mar. 14, 1997; T.D. 8823, 64 FR 36099, July 2, 1999; T.D. 8824, 64 FR 36127, July 2, 1999; T.D. 8984, 67 FR 11037, Mar. 12, 2002]

§1.1502–20T Disposition or deconsolidation of subsidiary stock (temporary).

(a) through (h) [Reserved]. For further guidance, see §1.1502–20(a) through (h).

(i) Limitations on the applicability of §1.1502–20—(1) Dispositions and deconsolidations on or after March 7, 2002. Except to the extent specifically incorporated in §1.337(d)-2T, §1.1502–20 does not apply to a disposition or deconsolidation of stock of a subsidiary on or after March 7, 2002, unless the disposition or deconsolidation was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation.

(2) *Dispositions and deconsolidations prior to March 7, 2002.* In the case of a disposition or deconsolidation of stock of a subsidiary by a member before March 7, 2002, or a disposition or deconsolidation on or after March 7, 2002, that was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation, a consolidated group may determine the amount of the member's allowable loss or basis reduction by applying §1.1502–20 in its entirety, or, in lieu thereof, subject to the conditions set forth in this paragraph (i), by making an irrevocable election to apply the provisions of either—

(i) Section 1.1502–20, except that in applying §1.1502–20(c)(1), the amount of

loss disallowed under §1.1502–20(a)(1) and the amount of basis reduction under §1.1502–20(b)(1) with respect to a share of stock will not exceed the sum of the amounts described in §1.1502–20(c)(1)(i) and (ii); or

(ii) Section 1.337(d)–2T.

(3) *Operating rules*—(i) *Reattribution of losses in the case of an election to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section.* If a consolidated group elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section, an election described in §1.1502–20(g) to reattribute losses will be respected only if the requirements of §1.1502–20(g), including the requirement that the election be filed with the group's income tax return for the year of the disposition, have been or are satisfied. For example, if a consolidated group did not file a valid election described in §1.1502–20(g) with its return for the year of the disposition, this section does not authorize the group that disposed of the stock to make such an election with its return for the year in which it elects to determine its allowable stock loss under the provisions described in paragraph (i)(2)(i) of this section. If a consolidated group that made a valid election described in §1.1502–20(g) with respect to the disposition of stock elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section, the election described in §1.1502–20(g) may not be revoked, and the amount of loss treated as reattributed as of the time of the disposition pursuant to the election described in §1.1502–20(g) is the amount of loss originally reattributed, reduced to the extent that it exceeds the greater of—

(A) The amount of stock loss disallowed after applying the provisions described in paragraph (i)(2)(i) of this section; and

(B) The amount of reattributed losses that the group that disposed of the stock absorbed in years for which the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply the provisions described in paragraph (i)(2)(i) of this section is filed and at all times thereafter.

(ii) *Reattribution of losses in the case of an election to determine allowable loss by applying the provisions described in paragraph (i)(2)(ii) of this section.* If a consolidated group elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(ii) of this section, the consolidated group may not make an election described in §1.1502–20(g) to reattribute any losses. If the consolidated group made an election described in §1.1502–20(g) with respect to the disposition of subsidiary stock, the amount of loss treated as reattributed pursuant to such election will be the greater of—

(A) Zero; and

(B) The amount of reattributed losses that the group that disposed of the stock absorbed in years for which the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply the provisions described in paragraph (i)(2)(ii) of this section is filed and at all times thereafter.

(iii) *Apportionment of section 382 limitation in the case of a reduction of reattributed losses*—(A) *Losses subject to a separate section 382 limitation.* If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change separate attributes that were subject to a separate section 382 limitation are treated as losses of a subsidiary and the common parent previously elected to apportion all or a part of such limitation to itself under §1.1502–96(d), the common parent may reduce the amount of such limitation apportioned to itself.

(B) *Losses subject to a subgroup section 382 limitation.* If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change subgroup attributes that were subject to a subgroup section 382 limitation are treated as losses of a subsidiary and the common parent previously elected to apportion all or a part of such limitation to itself under §1.1502–96(d), the common parent may reduce the amount of such limitation apportioned to itself. In addition, if such subsidiary has ceased to be a member of the loss subgroup to which the pre-change subgroup attributes relate, the common parent may increase

the total amount of such limitation apportioned to such subsidiary (or loss subgroup that includes such subsidiary) under §1.1502–95(c) by an amount not in excess of the amount by which such limitation that is apportioned to the common parent is reduced pursuant to the previous sentence.

(C) *Losses subject to a consolidated section 382 limitation.* If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change consolidated attributes (or pre-change subgroup attributes) that were subject to a consolidated section 382 limitation (or subgroup section 382 limitation where the common parent was a member of the loss subgroup) are treated as losses of a subsidiary, and the subsidiary has ceased to be a member of the loss group (or loss subgroup), the common parent may increase the amount of such limitation that is apportioned to such subsidiary (or loss subgroup that includes such subsidiary) under §1.1502–95(c). The amount of each element of such limitation that can be apportioned to a subsidiary (or loss subgroup that includes such subsidiary) pursuant to this paragraph (i)(3)(iii)(C), however, cannot exceed the product of (x) the element and (y) a fraction the numerator of which is the amount of pre-change consolidated attributes (or subgroup attributes) subject to that limitation that are treated as losses of the subsidiary (or loss subgroup) as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section and the denominator of which is the total amount of pre-change attributes subject to that limitation determined as of the close of the taxable year in which the subsidiary ceases to be a member of the group (or loss subgroup).

(D) *Operating rules—(i) Limitations on apportionment.* In making any adjustment to an apportionment of a subgroup section 382 limitation or a consolidated section 382 limitation pursuant to paragraph (i)(3)(iii)(B) or (C) of this section, the common parent must take into account the extent, if any, to which such limitation has previously been apportioned to another subsidiary or loss subgroup prior to the date the election to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section is filed.

(ii) Manner and effect of adjustment to previous apportionment of limitation to common parent. Any reduction in a previous apportionment of a separate section 382 limitation or a subgroup section 382 limitation to the common parent made pursuant to paragraph (i)(3)(iii)(A) or (B) of this section is treated as effective when the previous apportionment was effective. Any such adjustment must be made in a manner consistent with the principles of §1.1502–95(c). For example, to the extent the apportionment of a separate section 382 limitation or a subgroup section 382 limitation to a common parent is reduced pursuant to paragraph (i)(3)(iii)(A) or (B) of this section, the amount of such limitation available to the subsidiary or loss subgroup, as applicable, is increased.

(iii) Manner and effect of adjustment to apportionment of limitation to departing subsidiary or loss subgroup. Any increase in an amount of a subgroup section 382 limitation or a consolidated section 382 limitation apportioned to a departing subsidiary (or loss subgroup that includes such subsidiary) made pursuant to paragraph (i)(3)(iii)(B) or (C) of this section is treated as effective for taxable years ending after the date the subsidiary ceases to be a member of the group or loss subgroup. Any such adjustment may be made regardless of whether the common parent previously elected to apportion all or a part of such limitation to such subsidiary (or loss subgroup that includes such subsidiary) under §1.1502–95(c) or 1.1502–95A(c), but must be made in a manner consistent with the principles of §1.1502–95(c). For example, to the extent the apportionment of an element of a subgroup section 382 limitation or a consolidated section 382 limitation to a departing subsidiary is increased pursuant to paragraph (i)(3)(iii)(B) or (C) of this section, the amount of such element of such limitation that is available to the loss subgroup or loss group is reduced consistent with §1.1502–95(c)(3).

(iv) Prohibition against other adjustments. This paragraph (i)(3)(iii) does not authorize the common parent to

adjust the apportionment of any separate section 382 limitation, subgroup section 382 limitation, or consolidated section 382 limitation that it previously apportioned to a subsidiary, to a loss subgroup, or to itself under §1.1502–95(c), 1.1502–95A(c), or 1.1502–96(d), other than as provided in paragraphs (i)(3)(iii)(A), (B), and (C) of this section.

(E) *Time and manner of making apportionment adjustment.* An adjustment to the apportionment of any separate section 382 limitation, subgroup section 382 limitation, or consolidated section 382 limitation pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section must be made as part of the group's election to apply the provisions of paragraph (i)(2)(i) or (ii) of this section, as described in paragraph (i)(4) of this section.

(iv) *Notification of reduction of reattributed losses and adjustment of apportionment of section 382 limitation.* If the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction of the losses treated as reattributed pursuant to an election described in §1.1502–20(g), then, prior to the date that the group files its income tax return for the taxable year that includes March 7, 2002, the common parent must send the notification required by this paragraph to the subsidiary, at the subsidiary's last known address. In addition, if the acquirer of the subsidiary stock was a member of a consolidated group at the time of the disposition, the common parent must send a copy of such notification to the person that was the common parent of the acquirer's group at the time of the acquisition, at its last known address. The notification is to be in the form of a statement entitled "Recomputation of Losses Reattributed Pursuant to the Election Described in §1.1502–20(g)," that is signed by the common parent and that includes the following information—

(A) The name and employer identification number (E.I.N.) of the subsidiary;

(B) The original and the recomputed amount of losses treated as reattributed pursuant to the election described in §1.1502–20(g); and

(C) If the apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation is adjusted pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section, the original and the adjusted apportionment of such limitation.

(v) *Items taken into account in open years*—(A) *General rule.* An election under paragraph (i)(2) of this section affects a taxpayer's items of income, gain, deduction, or loss only to the extent that the election gives rise, directly or indirectly, to items or amounts that would properly be taken into account in a year for which an assessment of deficiency or a refund of overpayment, as the case may be, is not prevented by any law or rule of law. Under this paragraph, if the election increases the loss allowed with respect to a disposition of subsidiary stock, but the year of the disposition (or the year to which such loss would have been carried back or carried forward) is a year for which a refund of overpayment is prevented by law, to the extent that the absorption of such excess loss in such year would have affected the tax treatment of another item (e.g., another loss that was absorbed in such year) that has an effect in a year for which a refund of overpayment is not prevented by any law or rule of law, the election will affect the treatment of such other item. Therefore, if the absorption of the excess loss in the year of the disposition (which is a year for which a refund of overpayment is prevented by law) would have prevented the absorption of another loss (the second loss) in such year and such loss would have been carried to and used in a year for which a refund of overpayment is not prevented by any law or rule of law (the other year), the election makes the second loss available for use in the other year.

(B) *Special rule.* If a member's basis in stock of a subsidiary was reduced pursuant to §1.1502–32 because a loss with respect to stock of a lower-tier subsidiary was treated as disallowed under §1.1502–20, then, to the extent such disallowed loss is allowed as a result of an election under paragraph (i) of the section but would have been properly absorbed or expired in a year for which a

refund of overpayment is prevented by law or rule of law, the member's basis in the subsidiary stock may be increased for purposes of determining the group's or the shareholder-member's Federal income tax liability in all years for which a refund of overpayment is not prevented by law or rule of law.

(vi) *Conforming amendments for items previously taken into account in open years.* To the extent that, on any Federal income tax return, the common parent absorbed losses that were reattributed pursuant to an election described in §1.1502–20(g) and the amount of losses so absorbed is in excess of the amount of losses that are treated as reattributed after application of paragraph (i)(3)(i) or (ii) of this section, or that may be taken into account after any adjustment to an apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation pursuant to paragraph (i)(3)(iii) of this section, such returns must be amended to the greatest extent possible to reflect the reduction in the amount of losses treated as reattributed and any adjustment to the apportionment of such limitation.

(vii) *Availability of losses to subsidiary.* To the extent that any losses of a subsidiary are reattributed to the common parent pursuant to an election described in §1.1502–20(g), such reattribution is binding on the subsidiary and any group of which the subsidiary is or becomes a member. Therefore, if the subsidiary ceases to be a member of the group, any reattributed losses are not thereafter available to the subsidiary and may not be utilized by the subsidiary or any other group of which such subsidiary is or becomes a member. To the extent that the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction in the amount of losses treated as reattributed to the common parent pursuant to an election described in §1.1502–20(g), however, losses in the amount of such reduction are available to the subsidiary and may be utilized by the subsidiary or any group of which such subsidiary is a member, subject to applicable limitations (e.g., section 382).

(viii) *Apportionment of section 382 limitation in the case of an amendment of an election made pursuant to §1.1502–32(b)(4).* (A) *In general.* If, in connection with a disposition or deconsolidation of subsidiary stock, the subsidiary the stock of which was disposed of or deconsolidated became a member of another consolidated group (the acquiring group), and, pursuant to §1.1502–32T(b)(4)(vii), the acquiring group amends an election made pursuant to §1.1502–32(b)(4) to treat all or a portion of the loss carryovers of such subsidiary (or a lower-tier corporation of such subsidiary) as expiring for all Federal income tax purposes, then the common parent may reapportion a separate, subgroup, or consolidated section 382 limitation with respect to such subsidiary or lower-tier corporation in a manner consistent with the principles of paragraph (i)(3)(iii)(A) through (D) of this section. Any reapportionment of a section 382 limitation made pursuant to the previous sentence shall have the effects described in paragraph (i)(3)(iii)(D)(*ii*) and (*iii*) of this section. For purposes of this section, a lower-tier corporation is a corporation that was a member of the group of which the subsidiary was a member immediately before becoming a member of the acquiring group and that became a member of the acquiring group as a result of the subsidiary becoming a member of the acquiring group.

(B) *Time and manner of adjustment of apportionment of section 382 limitation.* The common parent must include a statement entitled *Adjustment of Apportionment of Section 382 Limitation in Connection with Amendment of Election under §1.1502–32(b)(4)* with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before May 7, 2003 or with or as part of an amended return filed before the date the original return for the taxable year that includes May 7, 2003 is due (with regard to extensions). The statement must set forth the name and employer identification number (E.I.N.) of the subsidiary and both the original and the adjusted apportionment of a separate section 382 limitation, a subgroup

section 382 limitation, and a consolidated section 382 limitation, as applicable. The requirements of this paragraph (i)(3)(viii)(B) will be treated as satisfied if the information required by this paragraph (i)(3)(viii)(B) is included in the statement required by paragraph (i)(4) of this section rather than in a separate statement.

(C) *Effective date.* This paragraph (i)(3)(viii) is applicable on and after May 7, 2003.

(4) *Time and manner of making the election.* An election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii) of this section is made by including the statement required by this paragraph with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before March 7, 2002, or, if the date of the disposition or deconsolidation of the stock of the subsidiary is after March 7, 2002, then such date, or with or as part of an amended return filed before the date the original return for the taxable year that includes March 7, 2002, is due (including any extensions). Filing a statement in accordance with the provisions of this paragraph satisfies the requirement to file a "statement of allowed loss" otherwise imposed under §1.1502–20(c)(3) or §1.337(d)–2T(c)(3). The statement required by this paragraph satisfies the requirement that a statement be filed in order to claim allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii). The statement filed under this paragraph shall be entitled "Allowed Loss under Section [Specify Section under Which Allowed Loss Is Determined] Pursuant to Section 1.1502–20T(i)" and must include the following information—

(i) The name and employer identification number (E.I.N.) of the subsidiary and of the member(s) that disposed of the subsidiary stock;

(ii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(ii) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iv) If an election described in §1.1502–20(g) was made with respect to the disposition of the stock of the subsidiary, the amount of losses originally treated as reattributed pursuant to such election and the amount of losses treated as reattributed pursuant to paragraph (i)(3)(i) or (ii) of this section;

(v) If an apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation is adjusted pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section, the original and redetermined apportionment of such limitation; and

(vi) If the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction of the amount of losses treated as reattributed pursuant to an election described in §1.1502–20(g), a statement that the notification described in paragraph (i)(3)(iv) of this section was sent to the subsidiary and, if the acquirer was a member of a consolidated group at the time of the stock sale, to the person that was the common parent of such group at such time, as required by paragraph (i)(3)(iv) of this section.

(5) *Special time for filing election in the case of a waiver under §1.1502–32(b)(4).* (i) *In general.* Notwithstanding the provisions of paragraph (i)(4) of this section, the election to determine allowable loss or basis reduction provided in this paragraph (i) may be made by including the statement required by paragraph (i)(4) of this section with or as part of an original or amended return that is filed on or before June 15, 2003, if—

(A) The group that includes the acquirer of the subsidiary stock made an election pursuant to §1.1502–32(b)(4) to treat all or a portion of the loss carryovers of the subsidiary (or a lower-tier corporation of such subsidiary) as expiring for all Federal income tax purposes;

(B) The timely filing of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii) of this section would permit the acquiring group to amend its election under §1.1502–32(b)(4) pursuant to §1.1502–32T(b)(4)(vii);

(C) June 6, 2003 is after the date the original return of the consolidated group for the taxable year that includes March 7, 2002, is due (including extensions); and

(D) The statement required by paragraph (i)(4) of this section specifies that the filing of the election is permitted under this paragraph (i)(5).

(ii) *Effective date.* This paragraph (i)(5) is applicable on and after May 7, 2003.

(6) *Cross references.* See §1.1502–32(b)(4)(v) for a special rule for filing a waiver of loss carryovers.

[T.D. 8984, 67 FR 11037, Mar. 12, 2002, as amended by T.D. 8998, 67 FR 38000, May 31, 2002; T.D. 9057, 68 FR 24353, May 7, 2003]

COMPUTATION OF CONSOLIDATED ITEMS

§1.1502–21 Net operating losses.

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

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

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

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

(1) [Reserved]. For further guidance, see §1.1502–21T(b)(1).

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

(ii) *Special rules*—(A) *Year of departure from group.* If a corporation ceases to be a member during a consolidated return year, net operating loss carryovers attributable to the corporation are first carried to the consolidated return year, and only the amount so attributable that is not absorbed by the group in that year is carried to the corporation's first separate return year. For rules concerning a member departing a subgroup, see paragraph (c)(2)(vii) of this section.

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

(iii) *Equivalent years.* Taxable years are equivalent if they bear the same numerical relationship to the consolidated return year in which a CNOL