

## § 1.1502-21T

## 26 CFR Ch. I (4-1-04 Edition)

to a SRLY limitation in the M group. See paragraph (g)(4)(ii) of this section.

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

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

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

(2) *SRLY limitation.* Except in the case of those members (including members of a SRLY subgroup) described in paragraph (h)(3) of this section, a group does not take into account a consolidated taxable year beginning before January 1, 1997, in determining the aggregate of the consolidated taxable income under paragraph (c)(1) of this section (including for purposes of §1.1502-15 and §1.1502-22(c)) for the members (or SRLY subgroups).

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

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

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

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

(6) [Reserved]. For further guidance, see §1.1502-21T(h)(6).

(7) *Prior periods.* For certain taxable years ending on or before June 25, 1999, see §1.1502-21T in effect prior to June 25, 1999, as contained in 26 CFR part 1 revised April 1, 1999, as applicable.

(8) [Reserved]. For further guidance, see §1.1502-21T(h)(8).

[T.D. 8823, 64 FR 36105, July 2, 1999; 64 FR 41784, Aug. 2, 1999, as amended by T.D. 8884, 65 FR 33759, May 25, 2000; T.D. 8997, 67 FR 38002, May 31, 2002; T.D. 9048, 68 FR 12291, Mar. 14, 2003; T.D. 9089, 68 FR 52491, Sept. 4, 2003; T.D. 9100, 68 FR 70706, Dec. 19, 2003; 69 FR 5017, Feb. 3, 2004]

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

(a) [Reserved]. For further guidance, see §1.1502-21(a).

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

(1) *Carryovers and carrybacks generally.* The net operating loss carryovers and carrybacks to a taxable year are determined under the principles of section 172 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. In addition, the amount of any CNOL absorbed by the group in any year is apportioned among members based on the percentage of the CNOL attributable to each member as of the beginning of the year. The percentage of the CNOL attributable to a member is determined pursuant to paragraph (b)(2)(iv)(B) of this section. Additional rules provided under the Internal Revenue Code or regulations also apply. See, e.g., section

382(l)(2)(B) (if losses are carried from the same taxable year, losses subject to limitation under section 382 are absorbed before losses that are not subject to limitation under section 382). See § 1.1502-21(c)(1)(iii), *Example 2*, for an illustration of pro rata absorption of losses subject to a SRLY limitation. See paragraph (b)(3)(v) of this section regarding the treatment of any loss that is treated as expired under § 1.1502-35T(f)(1).

(2) (i) through (iii) [Reserved]. For further guidance, see § 1.1502-21(b)(2) (i) through (iii).

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

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

(2) *Special rule.* If during a taxable year either a member realizes discharge of indebtedness income that is excluded from gross income under section 108(a) and such amount reduces any portion of the CNOL attributable to such member pursuant to section 108 and § 1.1502-28T, or a member that had a separate net operating loss for the year of the CNOL ceases to be a member, the percentage of the CNOL attributable to each member as of the first day of the following taxable year shall be recomputed. In addition, if a portion of the CNOL attributable to a member for a taxable year is carried back to a separate return year, the percentage of the CNOL attributable to each member as of the first day of the taxable year

following the taxable year of the CNOL shall be recomputed. In each case, such recomputed percentage shall equal the unabsorbed CNOL attributable to the member on the first day of the following taxable year divided by the sum of the unabsorbed CNOL attributable to all of the members on the first day of the following taxable year. For purposes of the preceding sentence, a CNOL that is reduced pursuant to section 108 and § 1.1502-28T or that is otherwise permanently disallowed or eliminated shall be treated as absorbed.

(b)(2)(v) [Reserved]. For further guidance, see § 1.1502-21(b)(2)(v) through (b)(3)(ii)(B).

(3) *Special rules—(i) Election to relinquish carryback.* A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. Except as provided in paragraph (b)(3)(ii)(B) of this section, the election may not be made separately for any member (whether or not it remains a member), and must be made in a separate statement entitled "THIS IS AN ELECTION UNDER § 1.1502-21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT". The statement must be filed with the group's income tax return for the consolidated return year in which the loss arises. If the consolidated return year in which the loss arises begins before January 1, 2003, the statement making the election must be signed by the common parent. If the consolidated return year in which the loss arises begins after December 31, 2002, the election may be made in an unsigned statement.

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

(B) *Acquisition of member from another consolidated group.* If one or more members of a consolidated group becomes a member of another consolidated group, the acquiring group may make an irrevocable election to relinquish, with

respect to all consolidated net operating losses attributable to the member, the portion of the carryback period for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election must be made in a separate statement entitled “THIS IS AN ELECTION UNDER §1.1502-21(b)(3)(ii)(B)(2) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members].” The statement must be filed with the acquiring consolidated group’s original income tax return for the year the corporation (or corporations) became a member. If the year in which the corporation (or corporations) became a member begins before January 1, 2003, the statement must be signed by the common parent and each of the members to which it applies. If the year in which the corporation (or corporations) became a member begins after December 31, 2002, the election may be made in an unsigned statement.

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

(2) *Partial waiver of entire pre-acquisition carryback period.* If one or more members of a consolidated group become members of another consolidated group after June 25, 1999, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the

carryback period for such losses for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating losses arising in a particular taxable year if any carryback is claimed, as provided in paragraph (b)(3)(ii)(C)(4) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled “THIS IS AN ELECTION UNDER SECTION 1.1502-21T (b)(3)(ii)(C)(2) TO WAIVE THE PRE-[insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] CARRYBACK PERIOD FOR THE CNOLs ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members].” Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(5) of this section.

(3) *Partial waiver of pre-acquisition extended carryback period.* If one or more members of a consolidated group become members of another consolidated group, then, with respect to all consolidated net operating losses attributable to the member for the taxable year ending during either 2001 or 2002, or both, the acquiring group may make an irrevocable election to relinquish the portion of the carryback period for such losses for which the corporation was a member of another group to the extent that such carryback period includes one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver and that the conditions of

this paragraph are satisfied. The acquiring group cannot make the election described in this paragraph with respect to any consolidated net operating losses arising in a particular taxable year if a carryback to one or more taxable years that are prior to the taxable year that is 2 taxable years preceding the taxable year of the loss is claimed, as provided in paragraph (b)(3)(ii)(C)(4) of this section, with respect to any such losses on a return or other filing by a group of which the acquired member was previously a member and such claim is filed on or before the date the election described in this paragraph is filed. The election must be made in a separate statement entitled "THIS IS AN ELECTION UNDER SECTION 1.1502-21T (b)(3)(ii)(C)(3) TO WAIVE THE PRE-[insert first day of the first taxable year for which the member (or members) was a member of the acquiring group] EXTENDED CARRYBACK PERIOD FOR THE CNOLS ATTRIBUTABLE TO THE [insert taxable year of losses] TAXABLE YEAR(S) OF [insert names and employer identification numbers of members]." Such statement must be filed as provided in paragraph (b)(3)(ii)(C)(5) of this section.

(4) *Claim for a carryback.* For purposes of paragraphs (b)(3)(ii)(C)(2) and (3) of this section, a carryback is claimed with respect to a consolidated net operating loss if there is a claim for refund, an amended return, an application for a tentative carryback adjustment, or any other filing that claims the benefit of the net operating loss in a taxable year prior to the taxable year of the loss, whether or not subsequently revoked in favor of a claim based on a 5-year carryback period.

(5) *Time and manner for filing statement.* A statement described in paragraph (b)(3)(ii)(C)(2) or (3) of this section that relates to consolidated net operating losses attributable to a taxable year ending during 2001 must be filed with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001, provided that such original or amended return is filed on or before October 31, 2002. A statement described in paragraph (b)(3)(ii)(C)(2) or (3) of this sec-

tion that relates to consolidated net operating losses attributable to a taxable year ending during 2002 must be filed with the acquiring consolidated group's timely filed (including extensions) original or amended return for the taxable year ending during 2001 or 2002, provided that such original or amended return is filed on or before September 15, 2003.

(b)(3)(iii) and (b)(3)(iv) [Reserved]. For further guidance, see § 1.1502-21(b)(3)(iii) and (b)(3)(iv).

(b)(3)(v) *Losses treated as expired under § 1.1502-35T(f)(1).* No loss treated as expired by § 1.1502-35T(f)(1) may be carried over to any consolidated return year of the group.

(c)(1) through (c)(2)(vi) [Reserved]. For further guidance, see § 1.1502-21(c)(1) through (c)(2)(vi).

(vii) *Corporations that leave a SRLY subgroup.* If a loss member ceases to be affiliated with a SRLY subgroup, the amount of the member's remaining SRLY loss from a specific year is determined pursuant to the principles of § 1.1502-21(b)(2)(ii)(A) and § 1.1502-21T(b)(2)(iv).

(c)(2)(viii) through (h)(5) [Reserved]. For further guidance, see § 1.1502-21(c)(2)(viii) through (h)(5).

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

(7) [Reserved]. For further guidance, see § 1.1502-21(h)(7).

(8) *Losses treated as expired under § 1.1502-35T(f)(1).* Paragraph (b)(3)(v) of this section is effective for losses treated as expired under § 1.1502-35T(f)(1) on and after March 7, 2002, and no later than March 11, 2006.

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