

the portion of the consolidated net capital loss attributable to such member; and

(4) The portion of any consolidated net capital loss carryover or carryback attributable to such member which is absorbed in the taxable year.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980]

**§ 1.1502-28T Consolidated section 108 (temporary).**

(a) *In general.* This section sets forth rules for the application of section 108(a) and the reduction of tax attributes pursuant to section 108(b) when a member of the group realizes discharge of indebtedness income that is excluded from gross income under section 108(a) (excluded COD income).

(1) *Application of section 108(a).* Section 108(a)(1)(B) is applied separately to each member that realizes excluded COD income. Therefore, the limitation of section 108(a)(3) on the amount of discharge of indebtedness income that is treated as excluded COD income is determined based on the assets (including stock and securities of other members) and liabilities (including liabilities to other members) of only the member that realizes excluded COD income.

(2) *Reduction of tax attributes attributable to the debtor—(i) In general.* With respect to a member that realizes excluded COD income in a taxable year, the tax attributes attributable to that member (and its direct and indirect subsidiaries to the extent required by section 1017(b)(3)(D) and paragraph (a)(3) of this section), including basis of assets and losses and credits arising in separate return limitation years, shall be reduced as provided in sections 108 and 1017 and this section. Basis of subsidiary stock, however, shall not be reduced below zero.

(ii) *Consolidated tax attributes attributable to a member.* For purposes of this section, the amount of a consolidated tax attribute that is attributable to a member shall be determined pursuant to the principles of § 1.1502-21T(b)(2)(iv). In addition, if the member is a member of a separate return limitation year subgroup, the amount of a tax attribute that arose in a separate return

limitation year that is attributable to that member shall also be determined pursuant to the principles of § 1.1502-21T(b)(2)(iv).

(3) *Look-through rules—(i) Priority of section 1017(b)(3)(D).* If a member treats stock of a subsidiary as depreciable property pursuant to section 1017(b)(3)(D), the basis of the depreciable property of such subsidiary shall be reduced pursuant to section 1017(b)(3)(D) prior to the application of paragraph (a)(3)(ii) of this section.

(ii) *Application of additional look-through rule.* If the basis of stock of a member (the lower-tier member) that is owned by another member is reduced pursuant to section 108, section 1017, and paragraph (a)(2) of this section (but not as a result of treating subsidiary stock as depreciable property pursuant to section 1017(b)(3)(D)), solely for purposes of sections 108 and 1017 and this section other than paragraphs (a)(4) and (b)(1) of this section, the lower-tier member shall be treated as realizing excluded COD income. The amount of such excluded COD income shall be the amount of such basis reduction. Accordingly, the tax attributes attributable to such lower-tier member shall be reduced as provided in sections 108 and 1017 and this section. To the extent that the excluded COD income realized by the lower-tier member pursuant to this paragraph (a)(3) does not reduce a tax attribute attributable to the lower-tier member, such excluded COD income shall not be applied to reduce tax attributes attributable to any member under paragraph (a)(4) of this section.

(4) *Reduction of certain tax attributes attributable to other members.* To the extent that, pursuant to paragraph (a)(2) of this section, the excluded COD income is not applied to reduce the tax attributes attributable to the member that realizes the excluded COD income, after the application of paragraph (a)(3) of this section, such amount shall be applied to reduce the remaining consolidated tax attributes of the group as provided in section 108 and this section. Such amount also shall be applied to reduce the tax attributes attributable to members that arose (or are treated as arising) in a separate return limitation year to the extent that the member that realizes excluded COD income

is a member of the separate return limitation year subgroup with respect to such attribute if a SRLY limitation applies to the use of such attribute. In addition, such amount shall be applied to reduce the tax attributes attributable to members that arose in a separate return year or that arose (or are treated as arising) in a separate return limitation year if no SRLY limitation applies to the use of such attribute. The reduction of each tax attribute pursuant to the three preceding sentences shall be made in the order prescribed in section 108 and pursuant to the principles of § 1.1502-21T(b)(1). Except as otherwise provided in this paragraph (a)(4), a tax attribute that arose in a separate return year or that arose (or is treated as arising) in a separate return limitation year is not subject to reduction pursuant to this paragraph (a)(4). Basis in assets is not subject to reduction pursuant to this paragraph (a)(4). Finally, to the extent that the realization of excluded COD income by a member pursuant to paragraph (a)(3) does not reduce a tax attribute attributable to such lower-tier member, such excess shall not be applied to reduce tax attributes attributable to any member pursuant to this paragraph (a)(4).

(b) *Special rules*—(1) *Multiple debtor members*—(i) *Reduction of tax attributes attributable to debtor members prior to reduction of consolidated tax attributes*. If in a single taxable year multiple members realize excluded COD income, paragraphs (a)(2) and (3) of this section shall apply with respect to the excluded COD income of each such member prior to the application of paragraph (a)(4) of this section.

(ii) *Reduction of higher-tier debtor's tax attributes*. If in a single taxable year multiple members realize excluded COD income and one such member is a higher-tier member of another such member, paragraphs (a)(2) and (3) of this section shall be applied with respect to the excluded COD income of the higher-tier member before such paragraphs are applied to the excluded COD income of the other such member. A member (the first member) is a higher-tier member of another member (the second member) if the first member is the common parent or investment ad-

justments under § 1.1502-32 or § 1.1502-32T with respect to the stock of the second member would affect investment adjustments with respect to the stock of the first member.

(iii) *Reduction of additional tax attributes*. If more than one member realizes excluded COD income that has not been applied to reduce a tax attribute attributable to such member (the remaining COD amount) and the remaining tax attributes available for reduction under paragraph (a)(4) of this section are less than the aggregate of the remaining COD amounts, after the application of paragraph (a)(2) of this section, each such member's remaining COD amount shall be applied on a pro rata basis (based on the relative remaining COD amounts), pursuant to paragraph (a)(4) of this section, to reduce such remaining available tax attributes.

(2) *Election under section 108(b)(5)*. Any member that realizes excluded COD income may make the election described in section 108(b)(5). The election is made separately for each member. Therefore, an election may be made for one member that realizes excluded COD income (either actually or pursuant to paragraph (a)(3) of this section) while another election, or no election, may be made for another member that realizes excluded COD income (either actually or pursuant to paragraph (a)(3) of this section). See § 1.108-4 for rules relating to the procedure for making an election under section 108(b)(5).

(3) *Limitation of section 1017(b)(2)*. The limitation of section 1017(b)(2) on the reduction in basis of property shall be applied by reference to the aggregate of the basis of the property held by the member that realizes excluded COD income, not the aggregate of the basis of the property held by all of the members of the group, and the liabilities of such member, not the aggregate liabilities of all of the members of the group.

(4) *Application of section 1245*. Notwithstanding section 1017(d)(1)(B), a reduction of the basis of subsidiary stock is treated as a deduction allowed for depreciation only to the extent that the amount by which the basis of the subsidiary stock is reduced exceeds the

total amount of the attributes attributable to such subsidiary that are reduced pursuant to the subsidiary's consent under section 1017(b)(3)(D) or as a result of the application of paragraph (a)(3)(ii) of this section.

(5) *Reduction of basis of intercompany obligations.* See § 1.1502-13T(g)(3)(ii)(B)(3) and (4) for special rules related to the application of the matching and acceleration rules of § 1.1502-13 when the basis of an intercompany obligation is reduced pursuant to sections 108 and 1017 and paragraph (a)(2) or (3) of this section.

(6) *Taking into account of excess loss account—(i) Determination of inclusion.* [Reserved]

(ii) *Timing of inclusion.* To the extent an excess loss account in a share of stock of a subsidiary that realizes excluded COD income is required to be taken into account as a result of the application of § 1.1502-19(c)(1)(iii)(B), such amount shall be included on the group's tax return for the taxable year that includes the date on which the subsidiary realizes such excluded COD income.

(c) *Examples.* The principles of paragraphs (a) and (b) of this section are illustrated by the following examples. Unless otherwise indicated, no election under section 108(b)(5) has been made. The examples are as follows:

*Example 1.* (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1 and S2. P owns 80 percent of the stock of S1 and 100 percent of the stock of S2. In Year 1, the P group sustained a \$250 consolidated net operating loss. Under the principles of § 1.1502-21T(b)(2)(iv), of that amount, \$125 was attributable to P and \$125 was attributable to S1. On Day 1 of Year 2, S2 joined the P group. As of the beginning of Year 2, S2 had a \$50 net operating loss carryover from Year 1, a separate return limitation year. In Year 2, the P group sustained a \$200 consolidated net operating loss. Under the principles of § 1.1502-21T(b)(2)(iv), of that amount, \$90 was attributable to P, \$70 was attributable to S1, and \$40 was attributable to S2. In Year 3, S2 realized \$200 of excluded COD income from the discharge of non-intercompany indebtedness. After the discharge of this indebtedness, S2 had no liabilities. In that same year, the P group sustained a \$50 consolidated net operating loss, of which \$40 was attributable to S1 and \$10 was attributable to S2 under the principles of § 1.1502-21T(b)(2)(iv). As of the beginning of Year 4,

S2 had Asset A with a basis of \$40 and a fair market value of \$10.

(ii) *Analysis—(A) Reduction of tax attributes attributable to debtor.* Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S2 must first be reduced to take into account its excluded COD income in the amount of \$200.

(1) *Reduction of net operating losses.* Pursuant to section 108(b)(2)(A), the net operating loss and the net operating loss carryovers of S2 are reduced. Pursuant to section 108(b)(4)(B) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S2 under the principles of § 1.1502-21T(b)(2)(iv) are reduced first. Accordingly, the consolidated net operating loss for Year 3 is reduced by \$10, the portion of the consolidated net operating loss attributable to S2, to \$40. Then, again pursuant to section 108(b)(4)(B), S2's net operating loss carryover of \$50 from its separate return limitation year is reduced to \$0. Finally, the consolidated net operating loss carryover from Year 2 is reduced by \$40, the portion of that consolidated net operating loss carryover attributable to S2, to \$160.

(2) *Reduction of basis.* Following the reduction of the net operating loss and the net operating loss carryovers attributable to S2, S2 reduces its basis in its assets pursuant to section 1017 and § 1.1017-1. Accordingly, S2 reduces its basis in Asset A by \$40, from \$40 to \$0.

(B) *Reduction of remaining consolidated tax attributes.* The remaining \$60 of excluded COD income then reduces consolidated tax attributes pursuant to paragraph (a)(4) of this section. In particular, the remaining \$40 consolidated net operating loss for Year 3 is reduced to \$0. Then, the consolidated net operating loss carryover from Year 1 is reduced by \$20 from \$250 to \$230. Pursuant to paragraph (a)(4) of this section, a pro rata amount of the consolidated net operating loss carryover from Year 1 that is attributable to each of P and S1 is treated as reduced. Therefore, \$10 of the consolidated net operating loss carryover from Year 1 that is attributable to each of P and S1 is treated as reduced.

*Example 2.* (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1 and S2. P owns 100 percent of the stock of S1 and S1 owns 100 percent of the stock of S2. None of P, S1, or S2 has a separate return limitation year. In Year 1, the P group sustained a \$50 consolidated net operating loss. Under the principles of § 1.1502-21T(b)(2)(iv), of that amount, \$10 was attributable to P, \$20 was attributable to S1, and \$20 was attributable to S2. In Year 2, the P group sustained a \$70 consolidated net operating loss. Under the principles of § 1.1502-21T(b)(2)(iv), of that amount, \$30 was attributable to P, \$30 was attributable to S1, and

\$10 was attributable to S2. In Year 3, S1 realized \$170 of excluded COD income from the discharge of non-intercompany indebtedness. After the discharge of this indebtedness, S1 and S2 had no liabilities. In that same year, the P group sustained a \$50 consolidated net operating loss, of which \$10 was attributable to S1 and \$40 was attributable to S2 under the principles of §1.1502-21T(b)(2)(iv). As of the beginning of Year 4, S1's sole asset was the stock of S2, and S1 had a \$80 basis in the S2 stock. In addition, at the beginning of Year 4, S2 had an asset with a \$0 basis and a \$10 value.

(ii) *Analysis—(A) Reduction of tax attributes attributable to debtor.* Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S1 must first be reduced to take into account its excluded COD income in the amount of \$170.

(1) *Reduction of net operating losses.* Pursuant to section 108(b)(2)(A), the net operating loss and the net operating loss carryovers of S1 are reduced. Pursuant to section 108(b)(4)(B) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S1 under the principles of §1.1502-21T(b)(2)(iv) are reduced first. Accordingly, the consolidated net operating loss for Year 3 is reduced by \$10, the portion of the consolidated net operating loss for Year 3 attributable to S1, to \$40. Then, the consolidated net operating loss carryover from Year 1 is reduced by \$20, the portion of that consolidated net operating loss carryover attributable to S1, to \$30, and the consolidated net operating loss carryover from Year 2 is reduced by \$30, the portion of that consolidated net operating loss carryover attributable to S1, to \$40.

(2) *Reduction of basis.* Following the reduction of the net operating loss and the net operating loss carryovers attributable to S1, S1 reduces its basis in its assets pursuant to section 1017 and §1.1017-1. Accordingly, S1 reduces its basis in the stock of S2 by \$80, from \$80 to \$0.

(3) *Tiering down of stock basis reduction.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S2 is treated as realizing \$80 of excluded COD income. Accordingly, the consolidated net operating loss for Year 3 is reduced by an additional \$40, the portion of the consolidated net operating loss for Year 3 attributable to S2, to \$0. Then, the consolidated net operating loss carryover from Year 1 is reduced by \$20, the portion of that consolidated net operating loss carryover attributable to S2, to \$10. Then, the consolidated net operating loss carryover from Year 2 is reduced by \$10, the portion of that consolidated net operating loss carryover attributable to S2, to \$30. S2's remaining \$10 of excluded COD income does not reduce consolidated tax attributes attributable to P or S1 under paragraph (a)(4) of this section.

(B) *Reduction of remaining consolidated tax attributes.* Finally, pursuant to paragraph (a)(4) of this section, S1's remaining \$30 of excluded COD income reduces the remaining consolidated tax attributes. In particular, the remaining \$10 consolidated net operating loss carryover from Year 1 is reduced by \$10 to \$0, and the remaining \$30 consolidated net operating loss carryover from Year 2 is reduced by \$20 to \$10.

*Example 3.* (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1, S2, and S3. P owns 100 percent of the stock of S1, S1 owns 100 percent of the stock of S2, and S2 owns 100 percent of the stock of S3. In Year 1, the P group sustained a \$150 consolidated net operating loss. Under the principles of §1.1502-21T(b)(2)(iv), of that amount, \$50 was attributable to S2, and \$100 was attributable to S3. In Year 2, the P group sustained a \$50 consolidated net operating loss. Under the principles of §1.1502-21T(b)(2)(iv), of that amount, \$40 was attributable to S1 and \$10 was attributable to S2. In Year 3, S1 realized \$170 of excluded COD income from the discharge of non-intercompany indebtedness. After the discharge of this indebtedness, S1, S2, and S3 had no liabilities. In that same year, the P group sustained a \$50 consolidated net operating loss, of which \$10 was attributable to S1, \$20 was attributable to S2, and \$20 was attributable to S3 under the principles of §1.1502-21T(b)(2)(iv). At the beginning of Year 4, S1's only asset was the stock of S2, with a basis of \$120, and S2's only asset was the stock of S3 with a basis of \$180 and a value of \$10. None of P, S1, or S2 had a separate return limitation year.

(ii) *Analysis—Reduction of tax attributes attributable to debtor.* Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S1 must first be reduced to take into account its excluded COD income in the amount of \$170.

(A) *Reduction of net operating losses.* Pursuant to section 108(b)(2)(A), the net operating loss and the net operating loss carryovers of S1 are reduced. Pursuant to section 108(b)(4)(B) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S1 under the principles of §1.1502-21T(b)(2)(iv) are reduced first. Pursuant to section 108(b)(4)(B), S1's net operating loss for the taxable year of the discharge is reduced first. Accordingly, the consolidated net operating loss for Year 3 is reduced by \$10, the portion of the consolidated net operating loss attributable to S1, to \$40. Then, again pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 2 is reduced by \$40, the portion of that consolidated net operating loss carryover attributable to S1, to \$10.

(B) *Reduction of basis.* Following the reduction of the net operating loss and the net operating loss carryovers attributable to S1, S1 reduces its basis in its assets pursuant to section 1017 and §1.1017-1. Accordingly, S1 reduces its basis in the stock of S2 by \$120, from \$120 to \$0.

(C) *Tiering down of stock basis reduction to S2.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S2 is treated as realizing \$120 of excluded COD income. Pursuant to section 108(b)(2)(A), therefore, the net operating loss and net operating loss carryovers of S2 are reduced. Pursuant to section 108(b)(4)(B) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S2 under the principles of §1.1502-21T(b)(2)(iv) are reduced. Pursuant to section 108(b)(4)(B), S2's net operating loss for the taxable year of the discharge is reduced. Accordingly, the consolidated net operating loss for Year 3 is further reduced by \$20, the portion of the consolidated net operating loss attributable to S2, to \$20. Then, again pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 1 is reduced by \$50, the portion of that consolidated net operating loss carryover attributable to S2, to \$100. Then, again pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 2 is further reduced by \$10, the portion of that consolidated net operating loss carryover attributable to S2, to \$0. Following the reduction of the net operating loss and the net operating loss carryovers attributable to S2, S2 reduces its basis in its assets pursuant to section 1017 and §1.1017-1. Accordingly, S2 reduces its basis in its S3 stock by \$40 to \$140.

(D) *Tiering down of stock basis reduction to S3.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S3 is treated as realizing \$40 of excluded COD income. Pursuant to section 108(b)(2)(A), therefore, the net operating loss and the net operating loss carryovers of S3 are reduced. Pursuant to section 108(b)(4)(B) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S3 under the principles of §1.1502-21T(b)(2)(iv) are reduced. Pursuant to section 108(b)(4)(B), S3's net operating loss for the taxable year of the discharge is reduced. Accordingly, the consolidated net operating loss for Year 3 is further reduced by \$20, the portion of the consolidated net operating loss attributable to S3, to \$0. Then, again pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 1 is reduced by \$20, the lesser of the portion of that consolidated net operating loss carryover attributable to S3 and the remaining excluded COD income, to \$80.

*Example 4.* (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1, S2, and S3. P owns 100 percent of the stock of each of S1 and S2. Each of S1 and S2 owns stock of S3 that represents 50 percent of the value of the stock of S3. In Year 1, the P group sustained a \$160 consolidated net operating loss. Under the principles of §1.1502-21T(b)(2)(iv), of that amount, \$10 was attributable to P, \$50 was attributable to S2, and \$100 was attributable to S3. In Year 2, the P group sustained a \$110 consolidated net operating loss. Under the principles of §1.1502-21T(b)(2)(iv), of that amount, \$40 was attributable to S1 and \$70 was attributable to S2. In Year 3, S1 realized \$200 of excluded COD income from the discharge of non-intercompany indebtedness, and S2 realized \$270 of excluded COD income from the discharge of non-intercompany indebtedness. After the discharge of this indebtedness, S1, S2, and S3 had no liabilities. In that same year, the P group sustained a \$50 consolidated net operating loss, of which \$10 was attributable to S1, \$20 was attributable to S2, and \$20 was attributable to S3 under the principles of §1.1502-21T(b)(2)(iv). At the beginning of Year 4, S1's basis in its S3 stock was \$60, S2's basis in its S3 stock was \$120, and S3 had one asset with a basis of \$200 and a value of \$10. None of P, S1, S2, or S3 had a separate return limitation year.

(ii) *Analysis—Reduction of tax attributes attributable to debtors.* Pursuant to paragraph (b)(1)(i) of this section, the tax attributes attributable to each of S1 and S2 are reduced pursuant to paragraph (a)(2) of this section, and the tax attributes attributable to S3 are reduced pursuant to paragraph (a)(3) of this section so as to reflect a reduction of S1's and S2's basis in the stock of S3 prior to the application of paragraph (a)(4) to reduce additional tax attributes. Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S1 and S2 must be reduced to take into account their excluded COD income.

(A) *Reduction of net operating losses generally.* Pursuant to section 108(b)(2)(A), the net operating losses and the net operating loss carryovers of S1 and S2 are reduced. Pursuant to section 108(b)(4)(B) and paragraph (a) of this section, the net operating losses and the net operating loss carryovers attributable to S1 and S2 under the principles of §1.1502-21T(b)(2)(iv) are reduced first.

(B) *Reduction of net operating losses attributable to S1.* Pursuant to section 108(b)(4)(B), S1's net operating loss for the taxable year of the discharge is reduced. Accordingly, the consolidated net operating loss for Year 3 is reduced by \$10, the portion of the consolidated net operating loss attributable to S1, to \$40. Then, again pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 2 is reduced by \$40,

the portion of that consolidated net operating loss carryover attributable to S1, to \$70.

(C) *Reduction of net operating losses attributable to S2.* Pursuant to section 108(b)(4)(B), S2's net operating loss for the taxable year of the discharge is reduced. Accordingly, the consolidated net operating loss for Year 3 is further reduced by \$20, the portion of the consolidated net operating loss attributable to S2, to \$20. Then, pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 1 is reduced by \$50, the portion of that consolidated net operating loss carryover attributable to S2, to \$110. Then, again pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 2 is further reduced by \$70, the portion of that consolidated net operating loss carryover attributable to S2, to \$0.

(D) *Reduction of basis.* Following the reduction of the net operating losses and the net operating loss carryovers attributable to S1 and S2, S1 and S2 must reduce their basis in their assets pursuant to section 1017 and § 1.1017-1. Accordingly, S1 reduces its basis in the stock of S3 by \$60, from \$60 to \$0, and S2 reduces its basis in the stock of S3 by \$120, from \$120 to \$0.

(E) *Tiering down of basis reduction.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S3 is treated as realizing \$180 of excluded COD income. Pursuant to section 108(b)(2)(A), therefore, the net operating loss and the net operating loss carryovers of S3 are reduced, in the order indicated by section 108(b)(4)(B). Pursuant to paragraph (a)(2) of this section the consolidated net operating loss and any consolidated net operating loss carryovers that are attributable to S3 under the principles of § 1.1502-21T(b)(2)(iv) are reduced. Accordingly, the consolidated net operating loss for Year 3 is further reduced by \$20, the portion of the consolidated net operating loss attributable to S3, to \$0. Then, the consolidated net operating loss carryover from Year 1 is reduced by \$100, the portion of that consolidated net operating loss carryover attributable to S3, to \$10. Following the reduction of the net operating loss and the net operating loss carryover attributable to S3, S3 reduces its basis in its asset pursuant to section 1017 and § 1.1017-1. Accordingly, S3 reduces its basis in its asset by \$60, from \$200 to \$140.

(F) *Reduction of remaining consolidated tax attributes.* Finally, pursuant to paragraph (a)(4) of this section, the remaining \$90 of S1's excluded COD income and the remaining \$10 of S2's excluded COD income reduce the remaining consolidated tax attributes. In particular, the remaining \$10 consolidated net operating loss carryover from Year 1 is reduced by \$10 to \$0. Because that amount is less than the aggregate amount of remaining

excluded COD income, such income is applied on a pro rata basis to reduce the remaining consolidated tax attributes. Accordingly, \$9 of S1's remaining excluded COD income and \$1 of S2's remaining excluded COD income is applied to reduce the remaining consolidated net operating loss carryover from Year 1. Consequently, of S1's excluded COD income of \$200, only \$119 is applied to reduce tax attributes, and, of S2's excluded COD income of \$270, only \$261 is applied to reduce tax attributes.

(d) *Effective dates.* (1) This section, other than paragraphs (a)(4), (b)(4), (b)(5), and (b)(6) of this section, applies to discharges of indebtedness that occur after August 29, 2003.

(2) Paragraph (a)(4) of this section applies to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a taxable year the original return for which is due (without regard to extensions) after December 11, 2003. However, groups may apply paragraph (a)(4) of this section to discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before December 11, 2003. For discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before December 11, 2003, paragraph (a)(4) of this section shall apply as in effect on August 29, 2003.

(3) Paragraphs (b)(4), (b)(5), and (b)(6)(ii) of this section apply to discharges of indebtedness that occur after August 29, 2003, but only if the discharge occurs during a taxable year the original return for which is due (without regard to extensions) after March 12, 2004. However, groups may apply paragraphs (b)(4), (b)(5), and (b)(6) of this section to discharges of indebtedness that occur after August 29, 2003, and during a taxable year the original return for which is due (without regard to extensions) on or before March 12, 2004.

[T.D. 9089, 68 FR 52492, Sept. 4, 2003, as amended by T.D. 9098, 68 FR 69025, Dec. 11, 2003; T.D. 9117, 69 FR 12071, Mar. 15, 2004]

BASIS, STOCK OWNERSHIP, AND  
EARNINGS AND PROFITS RULES**§ 1.1502-30 Stock basis after certain triangular reorganizations.**

(a) *Scope.* This section provides rules for determining the basis of the stock of an acquiring corporation as a result of a triangular reorganization. The definitions and nomenclature contained in § 1.358-6 apply to this section.

(b) *General rules*—(1) *Forward triangular merger, triangular C reorganization, or triangular B reorganization.* *P* adjusts its basis in the stock of *S* as a result of a forward triangular merger, triangular C reorganization, or triangular B reorganization under § 1.358-6(c) and (d), except that § 1.358-6(c)(1)(ii) and (d)(2) do not apply. Instead, *P* adjusts such basis by taking into account the full amount of—

(i) *T* liabilities assumed by *S* or the amount of liabilities to which the *T* assets acquired by *S* are subject, and

(ii) The fair market value of any consideration not provided by *P* pursuant to the plan of reorganization.

(2) *Reverse triangular merger.* If *P* adjusts its basis in the *T* stock acquired as a result of a reverse triangular merger under § 1.358-6(c)(2)(i) and (d), § 1.358-6(c)(1)(ii) and (d)(2) do not apply. Instead, *P* adjusts such basis by taking into account the full amount of—

(i) *T* liabilities deemed assumed by *S* or the amount of liabilities to which the *T* assets deemed acquired by *S* are subject, and

(ii) The fair market value of any consideration not provided by *P* pursuant to the plan of reorganization.

(3) *Excess loss accounts.* Negative adjustments under this section may exceed *P*'s basis in its *S* or *T* stock. The resulting negative amount is *P*'s excess loss account in its *S* or *T* stock. See § 1.1502-19 for rules treating excess loss accounts as negative basis, and treating references to stock basis as including references to excess loss accounts.

(4) *Application of other rules of law.* The rules for this section are in addition to other rules of law. See § 1.1502-80(d) for the non-application of section 357(c) to *P*.

(5) *Examples.* The rules of this paragraph (b) are illustrated by the following examples. For purposes of these

examples, *P*, *S*, and *T* are domestic corporations, *P* and *S* file consolidated returns, *P* owns all of the only class of *S* stock, the *P* stock exchanged in the transaction satisfies the requirements of the applicable triangular reorganization provisions, the facts set forth the only corporate activity, and tax liabilities are disregarded.

*Example 1. Liabilities.* (a) *Facts.* *T* has assets with an aggregate basis of \$60 and fair market value of \$100. *T*'s assets are subject to \$70 of liabilities. Pursuant to a plan, *P* forms *S* with \$5 of cash (which *S* retains), and *T* merges into *S*. In the merger, the *T* shareholders receive *P* stock worth \$30 in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358-6, *P* adjusts its \$5 basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358-6(c)(1)(ii) does not apply. Thus, *P* adjusts its basis in the *S* stock by -\$10 (the aggregate adjusted basis of *T*'s assets decreased by the amount of liabilities to which the *T* assets are subject). Consequently, as a result of the reorganization, *P* has an excess loss account of \$5 in its *S* stock.

*Example 2. Consideration not provided by P.* (a) *Facts.* *T* has assets with an aggregate basis of \$10 and fair market value of \$100 and no liabilities. *S* is an operating company with substantial assets that has been in existence for several years. *P* has a \$5 basis in its *S* stock. Pursuant to a plan, *T* merges into *S* and the *T* shareholders receive \$70 of *P* stock provided by *P* pursuant to the plan of reorganization and \$30 of cash provided by *S* in exchange for their *T* stock. The transaction is a reorganization to which sections 368(a)(1)(A) and (a)(2)(D) apply.

(b) *Basis adjustment.* Under § 1.358-6, *P* adjusts its \$5 basis in the *S* stock as if *P* had acquired the *T* assets with a carryover basis under section 362 and transferred these assets to *S* in a transaction in which *P* determines its basis in the *S* stock under section 358. Under the rules of this section, the limitation described in § 1.358-6(d)(2) does not apply. Thus, *P* adjusts its basis in the *S* stock by -\$20 (the aggregate adjusted basis of *T*'s assets decreased by the fair market value of the consideration provided by *S*). As a result of the reorganization, *P* has an excess loss account of \$15 in its *S* stock.

(c) *Appreciated asset.* The facts are the same as in paragraph (a) of this *Example 2*, except that in the reorganization *S* provides an asset with a \$20 adjusted basis and \$30 fair