does not apply. Under section 535(b)(2), there shall be allowed the aggregate charitable contributions of the members allowable under section 170, determined without section 170 (b)(2) and (d)(2).

(iii) Under section 535(b)(3), the deductions provided in §§1.1502–26 and 1.1502–27 are not allowed.

(iv) Under section 535(b)(4), the consolidated net operating loss deduction described in §§1.1502–21(a) or 1.1502–21A(a), as appropriate is not allowed.

(v) Under section 535(b)(5), there is allowed as a deduction the consolidated net capital loss, determined under §§1.1502–22(a) or 1.1502–22A(a), as appropriate .

(vi) Under section 535(b)(6), there is allowed as a deduction an amount equal to (A) the excess of the consolidated net long-term capital gain (determined under §§1.1502–22(a) or 1.1502–41A, as appropriate over the consolidated net short-term capital loss (determined under §§1.1502–22T(a) or 1.1502–41A, as appropriate), minus (B) the taxes attributable to this excess. This consolidated net short-term capital loss is determined without the consolidated net capital loss carryovers or carrybacks to the taxable year.

(vii) Under section 535(b)(7), the consolidated net capital loss carryovers and carrybacks are not allowed. See §§1.1502–22(b) or 1.1502–22A(b), as appropriate.

(viii) Sections 1.1502–15A (Limitations on built-in deductions not subject to §1.1502–15) and 1.1502–15 do not apply.

(3) *Personal holding company a member.* If a member is a personal holding company for the taxable year—

(i) [Reserved]

(ii) In applying paragraph (b)(2)(i) of this section, consolidated liability for tax (as determined under that paragraph (b)(2)(i)) is reduced by the portion thereof allocable to that member under section 1552(a) (1), (2), (3), or (4) (or §1.1502–33(d)), whichever is applicable. The consolidated foreign tax credit is computed by excluding the taxable income and any foreign taxes paid or accrued by that member, and foreign taxes deductible under §1.535–2(a)(2) do not include foreign taxes attributable to that member.

(c) *Consolidated dividends paid deduction*—(1) *General rule.* For purposes of this section, the consolidated dividends paid deduction is the aggregate of the members' deductions under section 561(a) (1) and (2). This deduction is determined by excluding deductions for dividends paid to other members.

(2) *Exception for certain personal holding companies.* [Reserved]

(3) *Dividends paid defined.* For purposes of this paragraph (c), "dividends paid" and "dividend (or portion thereof) paid" include amounts treated as dividends paid during the taxable year under sections 562(b)(1), 563, and 565 (relating respectively to liquidating distributions, dividends paid after year end, and consent dividends).

(4) *Examples.* This paragraph (c) can be illustrated by the following examples:

Example (1). Corporations P and S constitute an affiliated group which files a consolidated return on a calendar year basis for 1984 and 1985. P owns all of S's stock and two individuals own all of P's stock. Neither member of the group is a personal holding company for 1984. Assume that on December 15, 1984, S pays a dividend (as defined in section 316 (a)) of $2,000 to P, and P pays a dividend (as so defined) of $3,000 on January 15, 1985, to its individual shareholders. All dividends are paid in cash and are pro rata with no preference as to any shares or class of stock. For purposes of this paragraph (c), the consolidated dividends paid deduction for 1984 is $3,000, *i.e.,* the dividend paid on January 15, 1985, by P to its nonmember shareholders. See section 563 (a). The $2,000 dividend paid by S to P is not taken into account in computing the consolidated dividends paid deduction.

Example (2). [Reserved]

(d) *Consolidated accumulated earnings credit.* [Reserved]

[T.D. 7937, 49 FR 3462, Jan. 27, 1984, as amended by T.D. 8560, 59 FR 41674, Aug. 15, 1994; T.D. 8677, 61 FR 33324, June 27, 1996; T.D. 8560, 62 FR 12098, Mar. 14, 1997; T.D. 8823, 64 FR 36100, July 2, 1999]

§ 1.1502–44 Percentage depletion for independent producers and royalty owners.

(a) *In general.* The sum of the percentage depletion deductions for the taxable year for all oil or gas property owned by all members, plus any carryovers under section 613A(d)(1) or paragraph (d) of this section from a

prior taxable year, may not exceed 65 percent of the group's adjusted consolidated taxable income (under paragraph (b) of this section) for the consolidated return year.

(b) *Adjusted consolidated taxable income.* For purposes of this section, adjusted consolidated taxable income is an amount (not less than zero) equal to the group's consolidated taxable income determined without:

(1) Any depletion with respect to an oil or gas property (other than a gas property with respect to which the depletion allowance for all production is determined pursuant to section 613A(b)) for which percentage depletion would exceed cost depletion in the absence of the depletable quantity limitations contained in section 613A(c) (1) and (6) and the consolidated taxable income limitation contained in paragraph (a) of this section.

(2) Any consolidated net operating loss carryback to the consolidated return year under §§1.1502–21 or 1.1502-21A (as appropriate) and

(3) Any consolidated net capital loss carryback to the consolidated return year under §§1.1502–22 or 1.1502-22A (as appropriate).

(c) *Allocation to oil and gas properties.* The maximum amount allowable as a deduction under section 613A(c), after the application of paragraph (a) of this section, is allocated to properties held by members in accordance with the regulations under section 613A(d). Those regulations provide for an initial allocation and possible reallocation of the maximum allowable percentage depletion deduction among oil and gas properties. Thus, if, after the initial allocation, cost depletion exceeds the percentage depletion that would be allowable for a particular oil or gas property, cost depletion must be used for that property and the maximum amount of percentage depletion allowable as a deduction for the group is reallocated among only the remaining properties held by all members.

(d) *Carryover for disallowed amounts.* (1) If any amount is disallowed as a deduction for the taxable year by reason of section 613A(d)(1) or paragraph (a) of this section, the disallowed amount for each oil or gas property is treated as an amount allowed as a deduction under section 613A(c), for the following 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.

[T.D. 7725, 45 FR 65561, Oct. 3, 1980, as amended by T.D. 8677, 61 FR 33324, June 27, 1996; T.D. 8823, 64 FR 36100, July 2, 1999]

§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 802 or 821 (relating respectively to life insurance companies and to certain mutual 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 and mutual 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 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