

§ 1.1502-78 Tentative carryback adjustments.

(a) *General rule.* If a group has a consolidated net operating loss, a consolidated net capital loss, or a consolidated unused business credit for any taxable year, then any application under section 6411 for a tentative carryback adjustment of the taxes for a consolidated return year or years preceding such year shall be made by the common parent corporation for the carryback year (or substitute agent designated under § 1.1502-77(d) for the carryback year) to the extent such loss or unused business credit is not apportioned to a corporation for a separate return year pursuant to § 1.1502-21(b), 1.1502-22(b), or 1.1502-79(c). In the case of the portion of a consolidated net operating loss or consolidated net capital loss or consolidated unused business credit to which the preceding sentence does not apply and that is to be carried back to a corporation that was not a member of a consolidated group in the carryback year, the corporation to which such loss or credit is attributable shall make any application under section 6411. In the case of a net capital loss or net operating loss or unused business credit arising in a separate return year that may be carried back to a consolidated return year, after taking into account the application of § 1.1502-21(b)(3)(ii)(B) with respect to any net operating loss arising in another consolidated group, the common parent for the carryback year (or substitute agent designated under § 1.1502-77(d) for the carryback year) shall make any application under section 6411.

(b) *Special rules—(1) Payment of refund.* Any refund allowable under an application referred to in paragraph (a) of this section shall be made directly to and in the name of the corporation filing the application, except that in all cases where a loss is deducted from the consolidated taxable income or a credit is allowed in computing the consolidated tax liability for a consolidated return year, any refund shall be made directly to and in the name of the common parent corporation for the carryback year (or substitute agent designated under § 1.1502-77(d) for the carryback year). The payment of any

such refund shall discharge any liability of the Government with respect to such refund.

(2) *Several liability.* If a group filed a consolidated return for a taxable year for which there was an adjustment by reason of an application under section 6411, and if a deficiency is assessed against such group under section 6213(b)(3), then each member of such group shall be severally liable for such deficiency including any interest or penalty assessed in connection with such deficiency.

(3) *Groups that include insolvent financial institutions.* For further rules applicable to groups that include insolvent financial institutions, see § 301.6402-7 of this chapter.

(c) *Examples.* The provisions of paragraphs (a) and (b) of this section may be illustrated by the following examples:

Example (1). Corporations P, S, and S-1 filed a consolidated return for the calendar year 1966. P, S, and S-1 also filed a consolidated return for the calendar year 1969. The group incurred a consolidated net operating loss in 1969 attributable to S-1 which may be carried back to 1966 as a consolidated net operating loss carryback. If a tentative carryback adjustment is desired, P, the common parent for the carryback year, must file an application under section 6411 and any refund will be made to P.

Example (2). Assume the same facts as in example (1) except that P, S, and S-1 filed separate returns for the calendar year 1969, even though they were members of the same group for such year. P incurred a net operating loss in 1969 which may be carried back to 1966. If a tentative carryback adjustment is desired, P must file an application under section 6411 and any refund from such application will be made to P.

Example (3). Corporations X, Y, and Z filed a consolidated return for the calendar year 1966. Z ceased to be a member of the group in 1967. Z filed a separate return for 1968 while X and Y filed a consolidated return for such year. The group incurred a consolidated net operating loss in 1968 attributable to Y, which may be carried back to 1966. Z also incurred a net operating loss for 1968 which may be carried back to 1966. If a tentative carryback adjustment is claimed with respect to the consolidated net operating loss, X, the common parent, must file an application under section 6411. If a tentative carryback adjustment is desired with respect to Z's loss, X must file an application. Any refunds attributable to either application will be made to X. If an assessment is made

under section 6213(b)(3) to recover an excessive tentative allowance made with respect to calendar year 1966, X, Y, and Z are severally liable for such assessment.

Example (4). Corporations L and M filed a consolidated return for the calendar year 1966. Corporation N filed a separate return for such year. Later, N became a member of the group and filed a consolidated return with the group for the calendar year 1968. The group incurred a consolidated net operating loss in 1968 attributable to N which may be carried back to N's separate return for 1966. If a tentative carryback adjustment is desired, N must file an application under section 6411 and any refund will be made directly to N.

(d) *Adjustments of overpayments of estimated income tax.* If a group paid its estimated income tax on a consolidated basis, then any application under section 6425 for an adjustment of overpayment of estimated income tax shall be made by the common parent corporation. If the members of a group paid estimated income taxes on a separate basis, then any application under section 6425 shall be made by the member of the group which claims an overpayment on a separate basis. Any refund allowable under an application under section 6425 shall be made directly to and in the name of the corporation filing the application.

(e) *Time for filing application—(1) General rule.* The provisions of section 6411(a) apply to the filing of an application for a tentative carryback adjustment by a consolidated group.

(2) *Special rule for new members—(i) New member.* A new member is a corporation that, in the preceding taxable year, did not qualify as a member, as defined in §1.1502-1(b), of the consolidated group that it now joins.

(ii) *End of taxable year.* Solely for the purpose of complying with the twelve-month requirement for making an application for a tentative carryback adjustment under section 6411(a), the separate return year of a qualified new member shall be treated as ending on the same date as the end of the current taxable year of the consolidated group that the qualified new member joins.

(iii) *Qualified new member.* A new member of a consolidated group qualifies for purposes of the provisions of this paragraph (e)(2) if, immediately prior to becoming a new member, either—

(A) It was the common parent of a consolidated group; or

(B) It was not required to join in the filing of a consolidated return.

(iv) *Examples.* The provisions of this paragraph (e)(2) may be illustrated by the following examples:

Example 1. Individual A owns 100 percent of the stock of X, a corporation that is not a member of a consolidated group and files separate tax returns on a calendar year basis. On January 31 of year 1, X becomes a member of the Y consolidated group, which also files returns on a calendar year basis. X is a qualified new member as defined in paragraph (e)(2)(iii)(B) of this section because, immediately prior to becoming a new member of the Y consolidated group, X was not required to join in the filing of a consolidated return. As a result of its becoming a new member of Group Y, X's separate return for the short taxable year (January 1 of year 1 through January 31 of year 1) is due September 15 of year 2 (with extensions). See §1.1502-76(c). Group Y's consolidated return is also due September 15 of year 2 (with extensions). See §1.1502-76(c). Solely for the purpose of complying with the twelve-month requirement for making an application for a tentative carryback adjustment under section 6411(a), X's taxable year for the separate return year is treated as ending on December 31 of year 1. X's application for a tentative carryback adjustment is therefore due on or before December 31 of year 2.

Example 2. Assume the same facts as in *Example 1* except that immediately prior to becoming a new member of Group Y, X was a member of the Z consolidated group. Because X was required to join in the filing of the consolidated return for Group Z, X is not a qualified new member as defined in paragraph (e)(2)(iii) of this section. X's items for the one-month period will be included in the consolidated return for Group Z. Group Z's application for a tentative carryback adjustment, if any, continues to be due within 12 months of the end of its taxable year, which is not affected by X's change in status as a new member of Group Y.

(f) *Effective date—(1) In general.* This section applies to taxable years to which a loss or credit may be carried back and for which the due date (without extensions) of the original return is after June 28, 2002, except that the provisions of paragraph (e)(2) apply for applications by new members of consolidated groups for tentative carryback

adjustments resulting from net operating losses, net capital losses, or unused business credits arising in separate return years of new members that begin on or after January 1, 2001.

(2) *Prior law.* For taxable years to which a loss or credit may be carried back and for which the due date (without extensions) of the original return is on or before June 28, 2002, see §1.1502-78 in effect prior to June 28, 2002, as contained in 26 CFR part 1 revised April 1, 2002.

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§ 1.1502-79 Separate return years.

(a) *Carryover and carryback of consolidated net operating losses to separate return years.* For losses arising in consolidated return years beginning before January 1, 1997, see §1.1502-79A(a). For later years, see §1.1502-21(b).

(b) *Carryover and carryback of consolidated net capital loss to separate return years.* For losses arising in consolidated return years beginning before January 1, 1997, see §1.1502-79A(b). For later years, see §1.1502-22(b).

(c) *Carryover and carryback of consolidated unused investment credit to separate return years—(1) In general.* If a consolidated unused investment credit can be carried under the principles of section 46(b) and paragraph (b) of §1.1502-3 to a separate return year of a corporation (or could have been so carried if such corporation were in existence) which was a member of the group in the year in which such unused credit arose, then the portion of such consolidated unused credit attributable to such corporation (as determined under subparagraph (2) of this paragraph) shall be apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) under the principles of §1.1502-21(b) (or §§1.1502-79A(a)(1) and (2), as appropriate) and shall be an investment credit carryover or carryback to such separate return year.

(2) *Portion of consolidated unused investment credit attributable to a member—*

(i) *Investment credit carryback.* In the case of a consolidated unused credit which is an investment credit carryback, the portion of such consolidated unused credit attributable to a member of the group is an amount equal to such consolidated unused credit multiplied by a fraction, the numerator of which is the credit earned of such member for the consolidated unused credit year, and the denominator of which is the consolidated credit earned for such unused credit year.

(ii) *Investment credit carryover.* In the case of a consolidated unused credit which is an investment credit carryover, the portion of such consolidated unused credit attributable to a member of the group is an amount equal to such consolidated unused credit multiplied by a fraction, the numerator of which is the credit earned with respect to any section 38 property placed in service in the consolidated unused credit year and owned by such member (whether or not placed in service by such member) at the close of the last day as of which the taxable income of such member is included in a consolidated return filed by the group, and the denominator of which is the consolidated credit earned for such unused credit year.

(d) *Carryover and carryback of consolidated unused foreign tax—(1) In general.* If a consolidated unused foreign tax can be carried under the principles of section 904(d) and paragraph (e) of §1.1502-4 to a separate return year of a corporation (or could have been so carried if such corporation were in existence) which was a member of the group in the year in which such unused foreign tax arose, then the portion of such consolidated unused foreign tax attributable to such corporation (as determined under subparagraph (2) of this paragraph) shall be apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) under the principles of §1.1502-21(b) (or §§1.1502-79A(a)(1) and (2), as appropriate) and shall be deemed paid or accrued in such separate return year to the extent provided in section 904(d).