

post-change year exceeds the consolidated taxable income that may be offset by pre-change attributes for any reason, including the application of the limitation of §1.1502-21(c), the amount of the excess is carried forward under section 382(b)(2) (relating to the carryforward of unused section 382 limitation).

[T.D. 8824, 64 FR 36153, July 2, 1999]

**§ 1.1502-94 Coordination with section 382 and the regulations thereunder when a corporation becomes a member of a consolidated group.**

(a) *Scope*—(1) *In general.* This section applies section 382 and the regulations thereunder to a corporation that is a new loss member of a consolidated group. A corporation is a new loss member if it—

(i) Carries over a net operating loss that arose (or is treated under §1.1502-21(c) as arising) in a SRLY with respect to the current group, and that is not described in §1.1502-91(d)(1); or

(ii) Has a net unrealized built-in loss (determined under paragraph (c) of this section immediately before it becomes a member of the current group by treating that day as a change date) that is not taken into account under §1.1502-91(d)(2) in determining whether two or more corporations compose a loss subgroup.

(2) *Successor corporation as new loss member.* A new loss member also includes any successor to a corporation that has a net operating loss carryover arising in a SRLY and that is treated as remaining in existence under §1.382-2(a)(1)(ii) following a transaction described in section 381(a).

(3) *Coordination in the case of a loss subgroup.* For rules regarding the determination of whether there is an ownership change of a loss subgroup with respect to a net operating loss or a net unrealized built-in loss described in §1.1502-91(d) (relating to the definition of loss subgroup) and the computation of a subgroup section 382 limitation following such an ownership change, see §§1.1502-92 and 1.1502-93.

(4) *End of separate tracking of certain losses.* If §1.1502-96(a) (relating to the end of separate tracking of attributes) applies to a new loss member, then, while that member remains a member

of the consolidated group, there is an ownership change with respect to its attributes described in §1.1502-96(a)(2) only if the consolidated group is a loss group and has an ownership change under §1.1502-92(b)(1)(i) (or that member has an ownership change under §1.1502-96(b) (relating to ownership changes of subsidiaries)). If, however, the new loss member has had an ownership change before §1.1502-96(a) applies, see §1.1502-96(c) for the continuing application of the section 382 limitation with respect to the member's pre-change losses.

(5) *Cross-reference.* See section 382(a) and §1.1502-96(c) for the continuing effect of an ownership change after a corporation becomes or ceases to be a member.

(b) *Application of section 382 to a new loss member*—(1) *In general.* Section 382 and the regulations thereunder apply to a new loss member to determine, on a separate entity basis, whether and to what extent a section 382 limitation applies to limit the amount of consolidated taxable income that may be offset by the new loss member's pre-change separate attributes. For example, if an ownership change with respect to the new loss member occurs under section 382 and the regulations thereunder, the amount of consolidated taxable income for any post-change year that may be offset by the new loss member's pre-change separate attributes shall not exceed the section 382 limitation as determined separately under section 382(b) with respect to that member for such year. If the post-change year includes the change date, section 382(b)(3)(A) is applied so that the section 382 limitation of the new loss member does not apply to the portion of the taxable income for such year that is allocable to the period in such year on or before the change date. See generally §1.382-6 (relating to the allocation of income and loss).

(2) *Adjustment to value.* Appropriate adjustments must be made to the extent necessary to prevent any duplication of the value of the stock of a member, even though corporations that do not file consolidated returns may not be required to make such an adjustment. For example, the principles of

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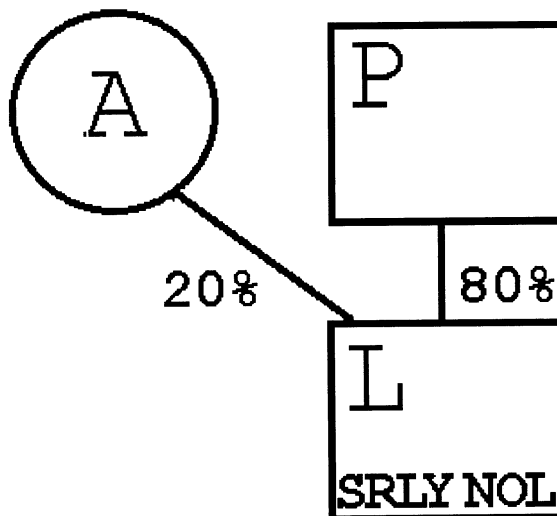
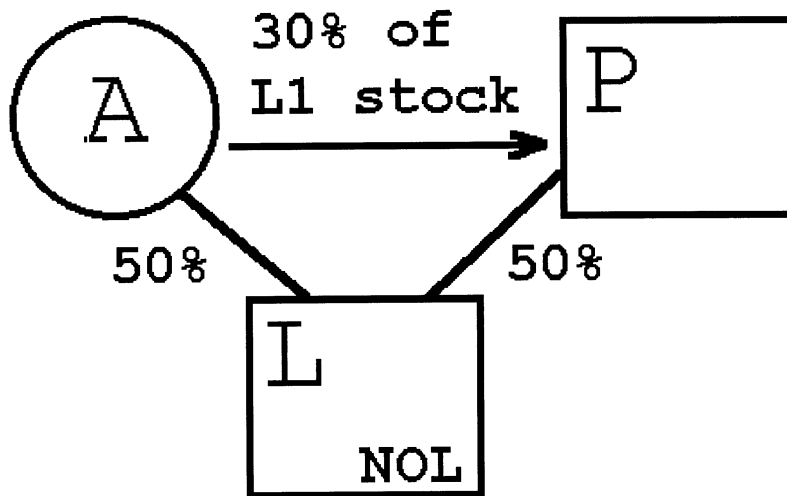
§1.1502-93(b)(2)(ii) (relating to adjustments to value) apply in determining the value of a new loss member.

(3) *Pre-change separate attribute defined.* A pre-change separate attribute of a new loss member is—

- (i) Any net operating loss carryover of the new loss member described in paragraph (a)(1) of this section; and
- (ii) Any recognized built-in loss of the new loss member.

(4) *Examples.* The following examples illustrate the principles of this paragraph (b):

*Example 1. Basic case.* (i) A and P each own 50 percent of the L stock. On December 19, Year 6, P purchases 30 percent of the L stock from A for cash. L has net operating losses arising in Year 1 and Year 2 that it carries over to Year 6 and Year 7. The following is a graphic illustration of these facts:



(ii) L is a new loss member because it has net operating loss carryovers that arose in a SRLY with respect to the P group and L is not a member of a loss subgroup under

§1.1502-91(d). Under section 382 and the regulations thereunder, L is a loss corporation on December 19, Year 6, that day is a testing

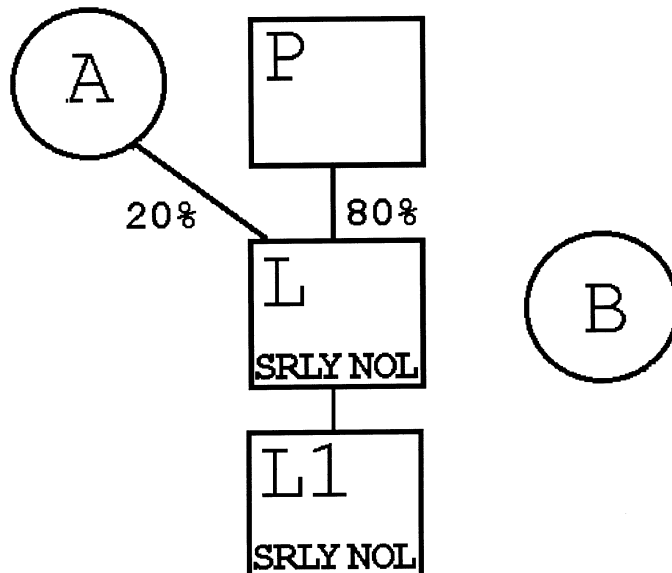
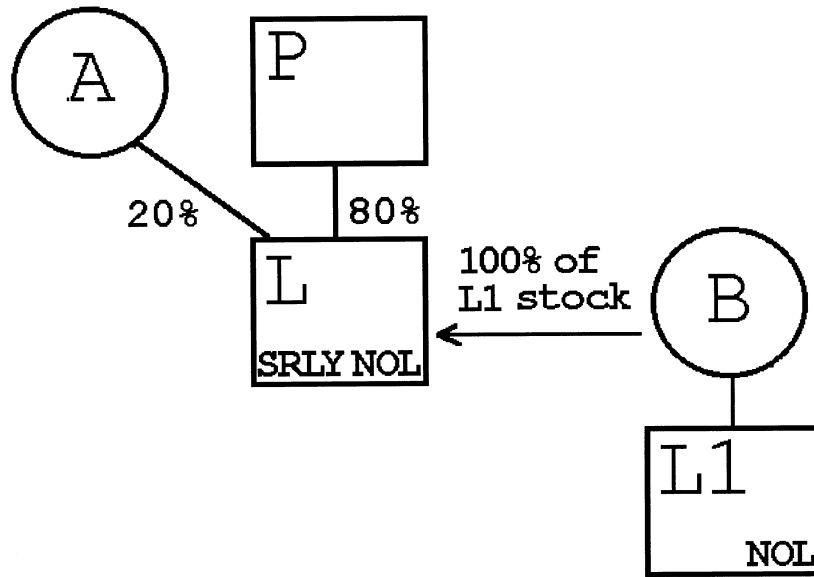
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date for L, and the testing period for L commences on December 20, Year 3.

(iii) P's purchase of L stock does not cause an ownership change of L on December 19, Year 6, with respect to the net operating loss carryovers from Year 1 and Year 2 under section 382 and §1.382-2T. The use of the loss carryovers, however, is subject to limitation under §1.1502-21(c).

*Example 2. Multiple new loss members.* (i) The facts are the same as in *Example 1*, and, on December 31, Year 6, L purchases all the stock of L1 from B for cash. L1 has a net operating loss of \$40 arising in Year 3 that it carries over to Year 7. The following is a graphic illustration of these facts:



(ii) L1 is a new loss member because it has a net operating loss carryover from Year 3 that arose in a SRLY with respect to the P group and L1 is not a member of a loss subgroup under § 1.1502-91(d)(1).

(iii) L's purchase of all the stock of L1 causes an ownership change of L1 on December 31, Year 6, under section 382 and §1.382-2T. Accordingly, a section 382 limitation based on the value of the L1 stock immediately before the ownership change limits the amount of consolidated taxable income of the P group for any post-change year that may be offset by L1's loss from Year 3.

(iv) L1's ownership change upon becoming a member of the P group is an ownership change described in §1.1502-96(a). Thus, starting on January 1, Year 7, the P group no longer separately tracks owner shifts of the stock of L1 with respect to L1's loss from Year 3, and the P group is a loss group because L1's Year 3 loss is treated as a loss described in §1.1502-91(c).

*Example 3. Ownership changes of new loss members.* (i) The facts are the same as in Example 2, and, on July 30, Year 7, C purchases all the stock of P for cash.

(ii) L is a new loss member on July 30, Year 7, because its Year 1 and Year 2 losses arose in SRLYs with respect to the P group and it is not a member of a loss subgroup under §1.1502-91(d)(1). The testing period for L commences on August 1, Year 4. C's purchase of all the P stock causes an ownership change of L on July 30, Year 7, under section 382 and §1.382-2T with respect to its Year 1 and Year 2 losses. Accordingly, a section 382 limitation based on the value of the L stock immediately before the ownership change limits the amount of consolidated taxable income of the P group for any post-change year that may be offset by L's Year 1 and Year 2 losses. See §1.1502-21(c) for rules relating to an additional limitation.

(iii) The P group is a loss group on July 30, Year 7, because it is entitled to use L1's loss from Year 3, and such loss is no longer treated as a loss of a new loss member starting the day after L1's ownership change on December 31, Year 6. See §§1.1502-96(a) and 1.1502-91(c)(2). C's purchase of all the P stock causes an ownership change of P, and therefore the P loss group, on July 30, Year 7, with respect to L1's Year 3 loss. Accordingly, a consolidated section 382 limitation based on the value of the P stock immediately before the ownership change limits the amount of consolidated taxable income of the P group for any post-change year that may be offset by L1's Year 3 loss.

(c) *Built-in gains and losses.* As the context may require, the principles of §§1.1502-91(g) and (h) and 1.1502-93(c) (relating to built-in gains and losses) apply to a new loss member on a separate entity basis. See §1.1502-91(g)(4). See §1.1502-13 (including *Example 10* of §1.1502-13(c)(7)) for rules relating to the treatment of intercompany transactions.

(d) *Information statements.* The common parent of a consolidated group that has a new loss member subject to paragraph (b)(1) of this section during a consolidated return year must file the information statement required by §1.382-2T(a)(2)(ii) because of any owner shift, equity structure shift, or other transaction described in §1.382-2T(a)(2)(i). Instead of filing a separate statement for each new loss member, the common parent may file a single statement described in §1.382-2T(a)(2)(ii) with respect to the stock ownership of the common parent (which is treated as a loss corporation). In addition to the information concerning stock ownership of the common parent, the single statement must identify each new loss member and state which new loss members, if any, have had ownership changes during the consolidated return year. The new loss member is, however, required to maintain the records necessary to determine if it has an ownership change. This paragraph (d) applies with respect to the attributes of a new loss member until an event occurs which ends separate tracking under §1.1502-96(a). After that time, the information statement described in §1.1502-92(e)(1) must be filed with respect to these attributes.

[T.D. 8824, 64 FR 36155, July 2, 1999]

**§ 1.1502-95 Rules on ceasing to be a member of a consolidated group (or loss subgroup).**

(a) *In general*—(1) *Consolidated group.* This section provides rules for applying section 382 on or after the day that a member ceases to be a member of a consolidated group (or loss subgroup). The rules concern how to determine whether an ownership change occurs with respect to losses of the member, and how a consolidated section 382 limitation (or subgroup section 382 limitation) and a loss group's (or loss subgroup's) net unrealized built-in gain or loss is apportioned to the member. As the context requires, a reference in this section to a loss group, a member, or a corporation also includes a reference to a loss subgroup, and a reference to a consolidated section 382 limitation also includes a reference to a subgroup section 382 limitation.