

taxable year, 182 days, bears to 365. See §1.382-5(c).

*Example 2. No apportionment required for consolidated pre-change attribute.* (i) P, the common parent of a consolidated group, forms L. For Year 1, L has an operating loss of \$70 that is not absorbed and is included in the group's consolidated net operating loss that is carried over to subsequent years. On January 1 of Year 3, A buys all of the P stock and the P group has an ownership change. The consolidated section 382 limitation based on the value of the P stock is \$10.

(ii) On April 13 of Year 4, P sells all of the stock of L to B and, under §1.1502-20(g), elects to reattribute to itself \$45 of L's net operating loss carryover. Following the reattribution, the \$45 portion of the Year 1 net operating loss carryover retains its character as a pre-change consolidated attribute, and remains subject to so much of the \$10 consolidated section 382 limitation as P does not elect to apportion to L under §1.1502-95(c).

(e) *Time and manner of making election under §1.1502-91(d)(4)*—(1) *In general.* This paragraph (e) prescribes the time and manner of making the election under §1.1502-91(d)(4), relating to treating two or more corporations as treating the section 1504(a)(1) requirement of §1.1502-91(d)(1)(ii) and (d)(2)(ii) as satisfied.

(2) *Election statement.* An election under §1.1502-91(d)(4) must be made by the common parent. The election must be made in the form of the following statement: "THIS IS AN ELECTION UNDER §1.1502-91(d)(4) TO TREAT THE FOLLOWING CORPORATIONS AS MEETING THE REQUIREMENTS OF §1.1502-91 (d)(1)(ii) AND (d)(2)(ii) IMMEDIATELY AFTER THEY BECAME MEMBERS OF THE GROUP." [List separately the name of each corporation, its E.I.N., and the date that it became a member of the group]. If separate elections are being made for corporations that became members at different times or that were acquired from different affiliated groups, provide a separate statement and list for each election.

(3) The election statement must be filed by the common parent with its income tax return for the consolidated return year in which the members with respect to which the election is made become members of the group. Such election must be filed on or before the

due date for such income tax return, including extensions.

(4) An election made under this paragraph (e) is irrevocable.

[T.D. 8824, 64 FR 36170, July 2, 1999]

**§ 1.1502-97 Special rules under section 382 for members under the jurisdiction of a court in a title 11 or similar case. [Reserved]**

**§ 1.1502-98 Coordination with section 383.**

The rules contained in §§1.1502-91 through 1.1502-96 also apply for purposes of section 383, with appropriate adjustments to reflect that section 383 applies to credits and net capital losses. For example, subgroups with respect to the carryover of general business credits, minimum tax credits, unused foreign tax, and net capital loss are determined by applying the principles of §1.1502-91(d)(1). Similarly, in the case of net capital losses, general business credits, and excess foreign taxes that are pre-change attributes, §1.383-1 applies the principles of §§1.1502-91 through 1.1502-96. For example, if a loss group has an ownership change under §1.1502-92 and has a carryover of unused general business credits from a pre-change consolidated return year to a post-change consolidated return year, the amount of the group's regular tax liability for the post-change year that can be offset by the carryover cannot exceed the consolidated section 383 credit limitation for that post-change year, determined by applying the principles of §§1.383-1(c)(6) and 1.1502-93 (relating to the computation of the consolidated section 382 limitation).

[T.D. 8824, 64 FR 36174, July 2, 1999, as amended by T.D. 8884, 65 FR 33760, May 25, 2000]

**§ 1.1502-99 Effective dates.**

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section, §§1.1502-91 through 1.1502-96 and §1.1502-98 apply to any testing date on or after June 25, 1999. Sections 1.1502-94 through 1.1502-96 also apply to a corporation that becomes a member of a group or ceases to be a member of a group (or loss subgroup) on any date on or after June 25, 1999.

(b) *Special rules*—(1) *Election to treat subgroup parent requirement as satisfied.* Section 1.1502-91(d)(4), §1.1502-91(d)(7), Example 4, §1.1502-92(b)(1)(iii), §1.1502-92(b)(2), Example 5, the last two sentences of §1.1502-95(b)(3), §1.1502-95(d)(2)(i), and §1.1502-96(e)(all of which relate to the election under §1.1502-91(d)(4) to treat the loss subgroup parent requirement as satisfied) apply to corporations that become members of a consolidated group in taxable years for which the due date of the income tax return (without extensions) is after June 25, 1999.

(2) *Principal purpose of avoiding a limitation.* The third sentence of §1.1502-91(d)(5) (relating to members excluded from a loss subgroup) applies to corporations that become members of a consolidated group on or after June 25, 1999.

(3) *Ceasing to be a member of a loss subgroup*—(i) *Ownership change of a loss subgroup.* Section 1.1502-95(d)(2)(ii) and §1.1502-95(d)(3), Example 3 apply to corporations that cease to bear a relationship described in section 1504(a)(1) to a loss subgroup parent in taxable years for which the due date of the income tax return (without extensions) is after June 25, 1999.

(ii) *Expiration of 5-year period.* Section 1.1502-95(d)(2)(iii) applies with respect to the day after the last day of any 5 consecutive year period described in that section that ends in a taxable year for which the due date of the income tax return (without extensions) is after June 25, 1999.

(4) *Reattribution of net operating loss carryovers under §1.1502-20(g).* Section 1.1502-96(d) applies to reattributions of net operating loss carryovers (or capital loss carryovers) in taxable years for which the due date of the income tax return (without extensions) is after June 25, 1999; except that the election under §1.1502-96(d)(5) (relating to an election to reattribute section 382 limitation) can be made with any election under §1.1502-20(g)(4) to reattribute to the common parent a net operating loss or net capital loss that is timely filed on or after June 25, 1999.

(5) *Election to apportion net unrealized built-in gain.* In the case of corporations that cease to be members of a loss group (or loss subgroup) before June 25,

1999 in a taxable year for which the due date of the income tax return (without extensions) is after June 25, 1999, §1.1502-95(a), (b), (c), and (f) apply to those corporations if the common parent makes the election described in the second sentence of paragraph (c)(1) of §1.1502-95 in the time and manner prescribed in paragraph (f) of §1.1502-95.

(c) *Testing period may include a period beginning before June 25, 1999*—

(1) *In general.* A testing period for purposes of §§1.1502-91 through 1.1502-96 and 1.1502-98 may include a period beginning before June 25, 1999. Thus, for example, in applying §1.1502-92(b)(1)(i) (relating to the determination of an ownership change of a loss group), the determination of the lowest percentage of ownership interest of any 5-percent shareholder of the common parent during a testing period ending on a testing date occurring on or after June 25, 1999 takes into account the period beginning before June 25, 1999, except to the extent that the period is more than 3 years before the testing date or is otherwise before the beginning of the testing period. See §1.1502-92(b)(1).

(2) *Transition rule for net unrealized built-in loss.* A loss group (or loss subgroup) that has a net unrealized built-in loss on a testing date on or after June 25, 1999 may apply §1.1502-91A(g) (and §1.1502-96A(a) as it relates to §1.1502-91A(g)) for the period ending on the day before June 25, 1999 to determine under §1.382-2T(d)(ii)(A) the earliest date that its testing period begins (treating the day before June 25, 1999 as the end of a taxable year.) Thus, for example, if a consolidated group with no net operating losses has a net unrealized built-in loss determined under §1.1502-91(g) on a testing date after June 25, 1999, but, under §1.1502-91A(g), does not have a net unrealized built-in loss for the period ending on the day before June 25, 1999, the group's testing period begins no earlier than June 25, 1999.

[T.D. 8824, 64 FR 36174, July 2, 1999]

#### § 1.1502-100 Corporations exempt from tax.

(a) *In general*—(1) *Computation of tax liability.* The tax liability for a consolidated return year of a group of two or