

million is owed to X Bank by its customers. Bank X's indebtedness is \$20 million (\$100 million total indebtedness less \$80 million owed to the X Bank by its customers) and its assets are \$35 million (\$115 million total assets less \$80 million owed to the bank by its customers). If its annual interest to be paid or incurred is \$5 million, such amount is reduced by \$4 million. Thus, X Bank's annual interest to be paid or incurred is \$1 million.

*Example 2.* Assume the same facts as in *Example 1*. X Bank has earnings and profits of \$23 million for the 3-year period used to determine projected earnings. In computing the average annual earnings, the \$23 million amount will be reduced by \$12 million (three times the \$4 million reduction of interest in *Example 1*, assuming that the reduction was the same for each year). Thus X Bank's earnings and profits for such 3-year period are \$11 million (\$23 million total earnings and profits less \$12 million reduction).

(h) *Statement to be attached to return.* In any case where any corporation claims a deduction in excess of \$5 million for interest paid or incurred during the taxable year on obligations issued to provide consideration for acquisitions described in section 279(b)(1) of stock in, or assets of, an acquired corporation, the corporation shall attach to its return for such taxable year a statement which includes the particular provisions of section 279 and, in sufficient detail, the facts establishing that such obligations were not corporate acquisition indebtedness, or that the amount of the deduction for interest on its corporate acquisition indebtedness did not exceed the amount of interest which may be deducted on such obligations under section 279(a).

[T.D. 7262, 38 FR 5847, Mar. 7, 1973]

**§ 1.279-6 Application of section 279 to certain affiliated groups.**

(a) *In general.* Under section 279(g), in any case in which the issuing corporation is a member of an affiliated group, the application of section 279 shall be determined by treating all of the members of the affiliated group in the aggregate as the issuing corporation, except that the ratio of debt to equity of, projected earnings of, and the annual interest to be paid or incurred by any corporation (other than the issuing corporation determined without regard to this paragraph) shall be included in the determinations required under section 279(b)(4) as of any day only if such

corporation is a member of the affiliated group on such day, and, in determining projected earnings of such corporation under section 279(c)(3), there shall be taken into account only the earnings and profits of such corporation for the period during which it was a member of the affiliated group. The total amount of an affiliated member's assets, indebtedness, projected earnings, and interest to be paid or incurred will enter into the computation required by this section, irrespective of any minority ownership in such member.

(b) *Aggregate money and other assets.* In determining the aggregate money and all the other assets of the affiliated group, the money and all the other assets of each member of such group shall be separately computed and such separately computed amounts shall be added together, except that adjustments shall be made, as follows:

(1) There shall be eliminated from the aggregate money and all the other assets of the affiliated group intercompany receivables as of the date described in section 279(c)(1);

(2) There shall be eliminated from the total assets of the affiliated group any amount which represents stock ownership in any member of such group;

(3) In any case where gain or loss is not recognized on transactions between members of an affiliated group under paragraph (d)(3) of this section, the basis of any asset involved in such transaction shall be the transferor's basis;

(4) The basis of property in a transaction to which § 1.1502-13 applies is the basis of the property determined under that section; and

(5) There shall be eliminated from the money and all the other assets of the affiliated group any other amount which, if included, would result in a duplication of amounts in the aggregate money and all the other assets of the affiliated group.

(c) *Aggregate indebtedness.* For purposes of applying section 279(c), in determining the aggregate indebtedness of an affiliated group of corporations the total indebtedness of each member of such group shall be separately determined, and such separately determined

## § 1.279-7

amounts shall be added together, except that there shall be eliminated from such total indebtedness as of the date described in section 279(c)(1):

(1) The amount of intercompany accounts payable,

(2) The amount of intercompany bonds or other evidences of indebtedness, and

(3) The amount of any other indebtedness which, if included, would result in a duplication of amounts in the aggregate indebtedness of such affiliated group.

(d) *Aggregate projected earnings.* In the case of an affiliated group of corporations (whether or not such group files a consolidated return under section 1501), the aggregate projected earnings of such group shall be computed by separately determining the projected earnings of each member of such group under paragraph (d) of § 1.279-5, and then adding together such separately determined amounts, except that:

(1) A dividend (a distribution which is described in section 301(c)(1) other than a distribution described in section 243(c)(1)) distributed by one member to another member shall be eliminated, and

(2) In determining the earnings and profits of any member of an affiliated group, there shall be eliminated any amount of interest income received or accrued, and of interest expense paid or incurred, which is attributable to intercompany indebtedness,

(3) No gain or loss shall be recognized in any transaction between members of the affiliated group, and

(4) Members of an affiliated group who file a consolidated return shall not apply the provisions of § 1.1502-18 dealing with inventory adjustments in determining earnings and profits for purposes of this section.

(e) *Aggregate interest to be paid or incurred.* For purposes of section 279(c)(4), in determining the aggregate annual interest to be paid or incurred by an affiliated group of corporations, the annual interest to be paid or incurred by each member of such affiliated group shall be separately calculated under paragraph (e) of § 1.279-5, and such separately calculated amounts shall be added together, except that any amount of annual interest to be paid or

## 26 CFR Ch. I (4-1-04 Edition)

incurred on any intercompany indebtedness shall be eliminated from such aggregate interest.

[T.D. 7262, 38 FR 5850, Mar. 5, 1973, as amended by T.D. 8560, 59 FR 41675, Aug. 15, 1994; T.D. 8597, 60 FR 36679, July 18, 1995]

### § 1.279-7 Effect on other provisions.

Under section 279(j), no inference is to be drawn from any provision in section 279 and the regulations thereunder that any instrument designated as a bond, debenture, note, or certificate or other evidence of indebtedness by its issuer represents an obligation or indebtedness of such issuer in applying any other provision of this title. Thus, for example, an instrument, the interest on which is not subject to disallowance under section 279 could, under section 385 and the regulations thereunder, be found to constitute a stock interest, so that any amounts paid or payable thereon would not be deductible.

[T.D. 7262, 38 FR 5851, Mar. 5, 1973]

### § 1.280B-1 Demolition of structures.

(a) *In general.* Section 280B provides that, in the case of the demolition of any structure, no deduction otherwise allowable under chapter 1 of subtitle A shall be allowed to the owner or lessee of such structure for any amount expended for the demolition or any loss sustained on account of the demolition, and that the expenditure or loss shall be treated as properly chargeable to the capital account with respect to the land on which the demolished structure was located.

(b) *Definition of structure.* For purposes of section 280B, the term *structure* means a building, as defined in § 1.48-1(e)(1), including the structural components of that building, as defined in § 1.48-1(e)(2).

(c) *Effective date.* This section is effective for demolitions commencing on or after December 30, 1997.

[T.D. 8745, 62 FR 67726, Dec. 30, 1997]

### § 1.280C-1 Disallowance of certain deductions for wage or salary expenses.

If an employer elects to claim the targeted jobs credit under section 44B (as amended by the Revenue Act of