This document is scheduled to be published in the Federal Register on 07/08/2020 and available online at **federalregister.gov/d/2020-14427**, and on **govinfo.gov**

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-125716-18]

RIN 1545-BP27

Consolidated Net Operating Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; partial withdrawal of a notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking contains proposed amendments to the consolidated return regulations under section 1502 of the Internal Revenue Code (Code). The proposed regulations provide guidance implementing recent statutory amendments to section 172 and withdraw and re-propose certain sections of proposed regulations issued in prior notices of proposed rulemaking relating to the absorption of consolidated net operating loss carryovers and carrybacks. In addition, the proposed regulations update regulations applicable to consolidated groups that include both life insurance companies and other companies to reflect statutory changes. These proposed regulations would affect corporations that file consolidated returns.

DATES: Written or electronic comments and requests for a public hearing must be received by August 31, 2020. Requests for a public hearing must be submitted as prescribed in the **"Comments and Requests for a Public Hearing"** section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-125716-18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically (and, to the extent practicable, any comment submitted on paper) to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG-125716-18), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Justin O. Kellar at (202) 317-6720, Gregory J. Galvin at (202) 317-3598, or William W. Burhop at (202) 317-5363; concerning submission of comments or requests for a public hearing, Regina Johnson at (202) 317-5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations to permit consolidated groups that acquire new members that were members of another consolidated group to elect to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 of the Code for certain losses attributable to the acquired members. The text of those temporary regulations also serves as the text of §1.1502-

21(b)(3)(ii)(C) and (D) of these proposed regulations. The proposed and temporary regulations affect corporations that file consolidated returns.

Background

These proposed regulations revise the Income Tax Regulations (26 CFR part 1) under section 1502 of the Code. Section 1502 authorizes the Secretary of the Treasury or his delegate (Secretary) to prescribe regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (consolidated group) to reflect clearly the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability. See §1.1502-1(h) (defining the term “consolidated group”). For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code that would apply if the corporations composing the consolidated group filed separate returns. Terms used in the consolidated return regulations generally are defined in §1.1502-1.

These proposed revisions implement certain statutory amendments made by Public Law 115-97, 131 Stat. 2054 (December 22, 2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). Specifically, section 13302 of the TCJA amended section 172 of the Code, relating to net operating loss (NOL) deductions, and sections 13511 through 13519 of the TCJA amended subchapter L of chapter 1 of the Code (subchapter L), relating to the taxation of insurance companies. These proposed regulations also implement further statutory amendments to section 172 of the Code made by the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, 134 Stat. 281 (March 27, 2020) (CARES Act). Additionally, these proposed regulations

update regulations under section 1502 concerning consolidated groups that include life insurance companies and other companies (life-nonlife groups) to implement amendments under prior tax legislation.

I. Net Operating Loss Deductions

Prior to amendment by the TCJA, section 172(a) allowed a taxpayer to use its aggregate NOL carryovers and carrybacks to a taxable year to offset all taxable income in the taxable year, and section 172(b)(1) generally permitted taxpayers to carry back NOLs two years and carry over NOLs 20 years. The TCJA amended section 172 to provide new NOL deduction rules based on (i) the type of entity generating the NOL or using an NOL to offset income, or (ii) the character of the loss giving rise to an NOL. The CARES Act extended the carryback period for NOLs arising in a taxable year beginning after December 31, 2017, and before January 1, 2021. See part I.A of this Background. Both the TCJA and the CARES Act also made other changes to section 172 that are not pertinent to this notice of proposed rulemaking.

A. General NOL rules

As amended by section 13302(a)(1) of the TCJA and section 2303(a)(1) of the CARES Act, section 172(a)(2) of the Code allows an NOL deduction for a taxable year beginning after December 31, 2020, in an amount equal to the sum of two factors. The first factor is the aggregate amount of NOLs arising in taxable years beginning before January 1, 2018 (pre-2018 NOLs), that are carried to such taxable year. The second factor is the lesser of (i) the aggregate amount of NOLs arising in taxable years beginning after December 31, 2017 (post-2017 NOLs), that are carried to such taxable year, or (ii) 80 percent of the excess (if any) of (I) taxable income computed without

regard to any deductions under sections 172, 199A, and 250 of the Code, over (II) the aggregate amount of pre-2018 NOLs carried to the taxable year (this latter calculation, the 80-percent limitation). The 80-percent limitation does not apply to taxable years beginning before January 1, 2021. See section 172(a)(1). For any such taxable year, section 172(a)(1) allows an NOL deduction equal to the aggregate amount of NOL carryovers and carrybacks to such year. See id. Moreover, the 80-percent limitation does not apply to limit the use of pre-2018 NOLs. See section 172(a)(2)(A).

Section 13302(b) of the TCJA amended section 172(b) to generally eliminate NOL carrybacks but permit post-2017 NOLs to be carried over indefinitely. Section 2303(b) of the CARES Act further amended section 172(b) to require (unless waived under section 172(b)(3)) a five-year carryback for NOLs arising in taxable years beginning after December 31, 2017, and before January 1, 2021. See section 172(b)(1)(D)(i).

B. Special NOL rules for nonlife insurance companies

Section 13302(d) of the TCJA added sections 172(b)(1)(C) and 172(f), which provide special rules for insurance companies other than life insurance companies, as defined in section 816(a) (nonlife insurance companies, which commonly are referred to as property and casualty insurance companies or P&C companies). Under section 172(f), the 80-percent limitation does not apply to nonlife insurance companies. Therefore, taxable income of nonlife insurance companies may be fully offset by NOL deductions. In addition, under sections 172(b)(1)(C) and (b)(1)(D)(i), losses of nonlife insurance companies arising in taxable years beginning after December 31, 2020, may be carried back two years and carried over 20 years. (As noted in part I.A of this

Background, losses arising in taxable years beginning after December 31, 2017, and before January 1, 2021, are carried back five years.) Thus, for taxable years beginning after December 31, 2020, the operative rules under section 172 effectively apply to nonlife insurance companies in the same manner as those rules applied prior to enactment of the TCJA.

C. Special NOL rules for farming losses

Section 13302(c) of the TCJA amended the special rules for farming losses set forth in sections 172(b)(1)(F) and 172(h), as in effect prior to enactment of the TCJA. For purposes of section 172, a "farming loss" is the lesser of (i) the amount that would be the NOL for the taxable year if only income and deductions attributable to farming businesses (as defined in section 263A(e)(4) of the Code) were taken into account, or (ii) the amount of the NOL for that taxable year. See section 172(b)(1)(B)(ii). Under sections 172(b)(1)(B)(i) and (b)(1)(D)(i)(II), any portion of an NOL for a taxable year beginning after December 31, 2020, that is characterized as a farming loss is treated as an NOL that is carried back two years and, as provided in section 172(b)(1)(A)(ii)(II), is carried over indefinitely. Farming losses arising in taxable years beginning after December 31, 2017, and before January 1, 2021, are carried back five years. Section 172(b)(1)(D)(i).

II. Insurance Company Provisions

The TCJA also made several changes to subchapter L (which addresses the taxation of insurance companies) that are relevant to this notice of proposed rulemaking. First, sections 13511(a) and 13511(b) of the TCJA (i) struck section 805(b)(4), which generally denied life insurance companies the NOL deduction provided

in section 172, and (ii) made a conforming amendment by striking section 810, which provided a deduction for operations losses for life insurance companies. As a result, effective for taxable years beginning after December 31, 2017, life insurance companies are entitled to an NOL deduction under the general rules of section 172. Second, section 13001(b)(2)(A) of the TCJA struck section 1201, which imposed a minimum tax on capital gains. Third, section 13514(a) of the TCJA struck section 815, which provided continued deferral of tax on policyholders surplus accounts. Fourth, under section 13514(d) of the TCJA, stock life insurance companies must pay the tax imposed by section 801 on the balance of any policyholders surplus accounts (determined as of the close of such company's last taxable year beginning before January 1, 2018) ratably over the first eight taxable years beginning after December 31, 2017.

Additionally, section 2303(b) of the CARES Act added a special rule for life insurance companies. Section 172(b)(1)(D)(iii) provides that, in the case of a life insurance company, if an NOL is carried back under section 172(b)(1)(D)(i)(I) to a life insurance company taxable year beginning before January 1, 2018, such NOL carryback shall be treated in the same manner as an operations loss carryback (within the meaning of section 810 as in effect before its repeal) of such company to such taxable year.

Because the repeal of section 810 is effective for losses arising in taxable years beginning after December 31, 2017, operations loss carryovers from taxable years beginning before January 1, 2018, continue to be allowed as deductions in taxable years beginning after December 31, 2017, in accordance with section 810 as in effect

before its repeal by the TCJA. See Staff of the Joint Comm. on Tax'n, 115th Cong., General Explanation of Public Law 115-97, at 226 (Dec. 2018).

Final regulations applicable to life-nonlife groups under §1.1502-47 were published in the **Federal Register** on March 18, 1983. See 48 FR 11441 (March 18, 1983) (current life-nonlife regulations). In the years that followed that publication, other legislation also significantly altered the taxation of insurance companies.

Explanation of Provisions

I. Overview

These proposed regulations provide guidance for consolidated groups regarding the application of the 80-percent limitation, as originally enacted as part of the TCJA and subsequently amended by the CARES Act. These proposed regulations also provide guidance regarding the application of the NOL carryback provisions following enactment of the TCJA and the CARES Act. In addition, the proposed regulations withdraw and re-propose certain sections of proposed regulations issued under section 1502 in prior notices of proposed rulemaking that relate to the absorption of NOL carrybacks and carryovers. See part II of this Explanation of Provisions for a further discussion.

These proposed regulations also update §1.1502-47 to reflect certain changes to the insurance company rules made by the CARES Act, the TCJA, and prior tax legislation. See part III of this Explanation of Provisions for a further discussion. The Treasury Department and the IRS continue to study other issues pertinent to life-nonlife groups for purposes of potential future guidance.

II. Amendments to §1.1502-21

A. In general

Under section 172, as amended by the TCJA and the CARES Act, NOLs generated by certain members of a consolidated group (that is, nonlife insurance companies), as well as NOLs generated by certain business activity within a consolidated group (that is, farming losses), are subject to different rules than other NOLs in taxable years beginning after December 31, 2020. The proposed regulations implement these statutory rules with regard to affiliated groups of corporations that file consolidated returns.

B. Application of the 80-percent limitation

1. In General

Section 1.1502-21(a) defines the consolidated net operating loss (CNOL) deduction for any consolidated return year as "the aggregate of the net operating loss carryovers and carrybacks to the year." This section specifies that "[t]he net operating loss carryovers and carrybacks consist of (1) [a]ny CNOLs . . . of the consolidated group; and (2) [a]ny net operating losses of the members arising in separate return years." NOL carryovers and carrybacks to a consolidated return year are determined under the principles of section 172 and §1.1502-21. See §1.1502-21(b)(1). For example, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose. See id.

As discussed in part I.A of the Background, the 80-percent limitation on the use of post-2017 NOLs to offset taxable income (other than taxable income of nonlife insurance companies) applies to taxable years beginning after December 31, 2020. Consistent with longstanding provisions in §1.1502-21(b)(1), these proposed regulations

generally implement the 80-percent limitation on a consolidated group basis by limiting a group's deduction of post-2017 NOLs for any such taxable year to the lesser of (1) the aggregate amount of post-2017 NOLs carried to such year, or (2) 80 percent of the excess (if any) of the group's consolidated taxable income (CTI) (computed without regard to any deductions under sections 172, 199A, and 250) over the aggregate amount of pre-2018 NOLs carried to such year. Thus, the amount allowed as a deduction for a particular consolidated return year beginning after December 31, 2020, equals the sum of (1) pre-2018 NOLs carried to that year (see section 172(a)(2)(A)), and (2) post-2017 NOLs carried to that year after applying the 80-percent limitation (see section 172(a)(2)(B)). Additionally, the proposed regulations provide special rules applicable to consolidated groups that include at least one nonlife insurance company, as well as rules applicable to losses arising in a separate return limitation year (SRLY).

2. Application of the 80-Percent Limitation to Groups Comprised of Nonlife Insurance Companies, Members Other than Nonlife Insurance Companies, or Both

Application of the 80-percent limitation depends on the status of the entity whose income is being offset, rather than on the status of the entity whose loss is being absorbed. As noted in part I.B of the Background, section 172(f) provides that the 80-percent limitation does not apply when the taxable income of a nonlife insurance company is offset by an NOL carryback or carryover.

To implement the special rules under section 172 regarding income of nonlife insurance companies, these proposed regulations clarify that application of the 80-percent limitation within a consolidated group to post-2017 NOLs (post-2017 CNOL deduction limit) depends on the status of the entity that generated the income being offset in a consolidated return year beginning after December 31, 2020. Therefore, if a

group is comprised solely of members other than nonlife insurance companies during a consolidated return year beginning after December 31, 2020, the post-2017 CNOL deduction limit for the group for that year is determined by applying the 80-percent limitation to all of the group's consolidated taxable income for that year. In contrast, if a group is comprised solely of nonlife insurance companies during a consolidated return year beginning after December 31, 2020, the post-2017 CNOL deduction limit for the group for that year simply equals the group's CTI less the aggregate amount of pre-2018 NOLs carried to that year.

A two-factor computation is required if a consolidated group is comprised of both nonlife insurance companies and other members in a consolidated return year beginning after December 31, 2020. In general, under these proposed regulations, the post-2017 CNOL deduction limit for the group would equal the sum of two amounts.

The first amount relates to the income of those members that are not nonlife insurance companies (residual income pool). This amount equals the lesser of (i) the aggregate amount of post-2017 NOLs carried to that year, or (ii) 80 percent of the excess of the group's CTI for that year (determined without regard to income, gain, deduction, or loss of members that are nonlife insurance companies and without regard to any deductions under sections 172, 199A, and 250) over the aggregate amount of pre-2018 NOLs carried to that year that are allocated to the positive net income of members other than nonlife insurance companies.

The second amount relates to the income of those members that are nonlife insurance companies (nonlife income pool). This amount equals 100 percent of the group's CTI for the year (determined without regard to any income, gain, deduction, or

loss of members that are not nonlife insurance companies), less the aggregate amount of pre-2018 NOLs carried to that year that are allocated to the positive net income of nonlife insurance company members.

For purposes of computing the foregoing amounts, pre-2018 NOLs are allocated pro rata between the two types of income pools in the group (that is, the income pool for nonlife insurance companies and the income pool for all other members, respectively). This allocation is based on the relative amounts of positive net income in each pool in the particular consolidated return year.

For example, assume that P, PC1, and PC2 are members of a calendar-year consolidated group (P Group). PC1 and PC2 are nonlife insurance companies, and P is a holding company. In 2017, the P Group has a CNOL of $10 (that is, a pre-2018 NOL). In 2021, P has income of $50, PC1 has income of $70, and PC2 has a loss of $20. Therefore, the P Group has $100 of CTI in 2021. In 2022, the P Group has a $100 CNOL (all of which is attributable to PC1 and PC2) that is carried back to 2021. Under sections 172(a)(2)(B) and 172(f), the P Group's 2022 CNOL would offset P's 2021 income subject to the 80-percent limitation, but it would offset PC1's 2021 income without limitation.

The total amount allowed as a CNOL deduction in the P Group's 2021 consolidated return year equals the aggregate amount of pre-2018 NOLs carried to that year plus the P Group's post-2017 CNOL deduction limit for that year. The P Group has $10 of pre-2018 NOLs carried to 2021. Under section 172(a)(2)(A) and §1.1502-21(b)(1), this loss would offset $10 of the P Group's 2021 income.

Under these proposed regulations, the P Group's post-2017 CNOL deduction limit for its 2021 consolidated return year is equal to the sum of the following two amounts. The first amount reflects the application of the 80-percent limitation to P's income (that is, the residual income pool). This amount is $36, which equals the lesser of (i) the aggregate amount of the P Group's post-2017 NOLs carried to its 2021 consolidated return year ($100), or (ii) the product obtained by multiplying 80 percent by $45 (the excess of $50 (P's 2021 income) over $5 (the pro rata amount of pre-2018 NOLs allocated to P's income)).

The second amount reflects the application of section 172(f) to the income of PC1 and PC2 (that is, the nonlife income pool). This amount is $45, which is obtained by subtracting $5 (the pro rata amount of pre-2018 NOLs allocated to the income of PC1 and PC2) from $50 (PC1's 2021 income of $70 - PC2's 2021 loss of $20).

Thus, the P Group has a CNOL deduction of $91 for 2021, which includes (1) the aggregate amount of pre-2018 NOLs carried to 2021 ($10), plus (2) the P Group's post-2017 deduction limit ($36 + $45 = $81). The P Group has $9 of CTI in 2021 and carries over the remaining $19 of its 2022 CNOL ($100 - $81) to future taxable years.

If a group's nonlife insurance company members have net income for a particular consolidated return year beginning after December 31, 2020, and its other members have a net loss for that year (or vice-versa), these proposed regulations modify the foregoing computation to ensure that the group's post-2017 CNOL deduction limit for that year is not overstated. If the group's nonlife insurance company members have a loss for the consolidated return year and its other members have income for that year, the group's post-2017 CNOL deduction limit equals the lesser of (i) the aggregate

amount of post-2017 CNOLs carried to the year, or (ii) 80 percent of the excess of the group's CTI (determined without regard to any deductions under sections 172, 199A, and 250) over the aggregate amount of pre-2018 NOLs carried to that year. That is, because none of the group's net income has been produced by the group's P&C insurance operations, the 80-percent limitation will apply to all CTI for the year. Conversely, if the group's nonlife insurance company members have income for the consolidated return year and its other members have a loss for that year, the group's post-2017 CNOL deduction limit equals the group's CTI less the aggregate amount of pre-2018 NOLs carried to that year. That is, because all net income of the group has been produced by the operation of members that are nonlife insurance companies (whose income is not subject to the 80-percent limitation), all CTI for the year may be offset by post-2017 CNOL deductions.

In formulating these proposed regulations, the Treasury Department and the IRS considered an alternative approach. Following the enactment of the TCJA and the CARES Act, section 172 provides special rules applicable to entities of different tax status, both with regard to the use of NOLs to offset income and with regard to the manner in which NOLs are carried over. This alternative approach would have required a group to first offset income and loss items within a pool of nonlife insurance companies and a pool of other members for all purposes of section 172 applicable to taxable years beginning after December 31, 2020. In other words, the alternative approach would have applied a pooling concept beyond merely determining the group's post-2017 CNOL deduction limit, but would have required a group's CTI to be allocated between the operations of its nonlife insurance company members, which can be offset

fully by CNOL deductions, and the operations of its other members subject to the 80-percent limitation. This alternative approach would also have applied similar rules to allocate CNOLs within groups including both nonlife insurance companies and other members to consistently identify the portions of CNOLs allocable to nonlife insurance company members, which are subject to different carryover rules than those of other members.

Specifically, this alternative approach would have adopted a threshold computational step under which the principles of §1.1502-21(b)(2)(iv)(B) would apply to offset the income and loss items solely among members that are nonlife insurance companies. The remaining members of the group would be subject to a parallel offset. Following this initial offsetting of pooled items, §1.1502-21(b)(2)(iv)(B) (or the principles of §1.1502-21(b)(2)(iv)(B), in the case of a group with CTI) would apply to allocate a post-2017 CNOL among all group members with taxable income. This approach contrasts with the historical application of §1.1502-21(b)(2)(iv)(B), under which a CNOL for a year is attributed pro rata to all members of a group that produce net loss, without first netting among entities of the same type. This historical approach developed before the enactment of the TCJA, and thus before special carryover rules applied to nonlife insurance companies.

The Treasury Department and the IRS request comments regarding the proposed regulations' methodology for computing a group's post-2017 CNOL deduction limit. The Treasury Department and the IRS also request comments regarding the alternative approach described in the preceding two paragraphs to identify the portion of

the CNOL to which the special carryback and carryover rules of section 172(b) (regarding nonlife insurance company losses) would apply.

3. Losses Arising in a SRLY

Generally, an unaffiliated corporation determines its taxable income by offsetting its NOLs against its income. In contrast, a consolidated group member generally offsets its NOLs against the income of all group members. See §§1.1502-11 and 1.1502-21. However, an exception to this general rule for consolidated groups applies to a group's use of NOLs incurred by a member (SRLY member) in a taxable year other than a year of the current group (that is, a separate return limitation year or SRLY). A SRLY member may carry its NOLs that arose in a SRLY into the consolidated group, but those NOLs can be absorbed by the group only to the extent that the SRLY member generates income on a separate-entity basis while a member of the group (that is, to the extent of the amount of net income generated by the SRLY member as a member of the group). See generally §1.1502-21(c)(1)(i) (setting forth the general SRLY limitation rule).

The SRLY rules attempt to replicate, to the extent possible, separate-entity usage of the SRLY attributes of the SRLY member. In other words, the SRLY regulations were designed to obtain an absorption result that varies as little as possible from the absorption that would have occurred if the SRLY member had not joined the consolidated group.

To approximate a SRLY member's absorption of NOLs on a separate-entity basis, the SRLY member's net contribution to the CTI of the group is measured cumulatively over the period during which the corporation is a member of the group by

using what is commonly referred to as a “cumulative register.” The cumulative register tracks the SRLY member’s net positive (or negative) contribution to the income of the group. See §1.1502-21(c)(1)(i). If the SRLY member has net positive income in a consolidated taxable year, the member’s cumulative register increases. See §1.1502-21(c)(1)(i)(A) and (C). In turn, if the losses of a SRLY member (including SRLY-limited NOL carryovers) are absorbed by the group, the SRLY member’s cumulative register decreases. See §1.1502-21(c)(1)(i)(B) and (C).

These proposed regulations would modify the cumulative register rules to reflect the application of the 80-percent limitation under section 172(a)(2)(B). Under the proposed regulations, as in current §1.1502-21, the full amount of the SRLY member’s current-year income (or current-year absorbed loss) increases (or decreases) the member’s cumulative register. However, when the cumulative register is reduced to account for the group’s absorption of any SRLY member’s NOLs that are subject to the 80-percent limitation (whether or not those losses are subject to the SRLY limitation), the amount of the reduction equals the full amount of income that would be necessary to support the deduction by the SRLY member.

For example, after absorption of any pre-2018 NOLs of a SRLY member, the SRLY member (other than a nonlife insurance company) would need to have $100 of remaining income to enable the group to absorb $80 of the SRLY member’s SRLY-limited post-2017 NOLs in a taxable year beginning after December 31, 2020 (that is, 80 percent of the excess of $100 over $0). Therefore, upon the group’s deduction of $80 of NOL (SRLY or otherwise) of the SRLY member, the cumulative register would be

reduced to reflect the full $100 of income, not just the $80 of losses absorbed by the group.

The Treasury Department and the IRS have determined that, without the adjustment described, the SRLY member would achieve a different result as a member of a group than as a stand-alone entity. Such result would be contrary to the objective of the SRLY rules, which attempt to replicate the hypothetical separate-entity treatment of the SRLY member. Therefore, the above-described adjustment would be necessary to ensure that the SRLY member achieves the same Federal income tax result as if the SRLY member continued to be a stand-alone entity.

For example, assume that P owns 79 percent of S, and that neither P nor S is a nonlife insurance company. In Year 1 (a taxable year beginning after December 31, 2020), S incurs an $800 NOL that it carries over into Year 2. S has no other NOL carryovers or carrybacks. In Year 2, S has $400 of income; accordingly, S's 80-percent limitation for Year 2 is $320 (that is, the lesser of $800 or 80 percent of the excess of $400 over $0). As a result, S may use $320 of its $800 Year 1 NOL to offset $320 of its $400 Year 2 income. Under section 172(b)(2), the amount of the $800 Year 1 NOL that is carried into Year 3 is the excess of the entire $800 NOL over $320, or $480. S's ability to use any portion of its remaining Year 1 NOL in Year 3 is dependent on its generation of additional taxable income in Year 3.

Now assume that, instead of S filing a separate return for Year 2, P acquires the remaining stock of S at the end of Year 1, and P and S file a consolidated return for Year 2. The P group has $1,000 of income in Year 2, of which S has $400. Thus, S's cumulative register increases from $0 to $400. Because S's $800 Year 1 NOL arose in

a SRLY, the absorption of this NOL in Year 2 is subject to both the SRLY limitation and the 80-percent limitation. Under the proposed regulations, the P group may use only $320 (that is, the lesser of $800 or 80 percent of the excess of $400 over $0) of S's Year 1 SRLY NOL to offset the P group's Year 2 income. Upon the absorption of $320 of S's Year 1 SRLY NOL, S's cumulative register is reduced by $400 (that is, the full amount of income necessary to support the $320 deduction of S's Year 1 SRLY NOL) to $0. The remainder of S's Year 1 SRLY NOL is carried over.

If S's cumulative register were not reduced by the full amount of income necessary to support the deduction, the P group's ability to use S's loss would exceed S's ability to use the loss if S had not joined the P group. As an illustration, assume further that, in Year 3, the P group has $200 of income, with no net amount of income or loss attributable to S. Because S's cumulative register would remain at $0, the P group would not be able to offset any of its $200 Year 3 income with S's Year 1 SRLY NOL. If S's cumulative register were reduced solely by the amount of the SRLY NOL deducted in Year 2 ($320), S would have $80 remaining in its cumulative register ($400 - $320), and the P group could absorb an additional $64 (that is, the lesser of $480 or 80 percent of the excess of $80 over $0) of S's remaining Year 1 SRLY NOL in Year 3. In contrast, if S had not joined the P group and had not generated any income in Year 3, it would not have been able to use any of its $480 remaining Year 1 SRLY NOL in Year 3. In other words, S would have been able to use a total of only $320 of its Year 1 SRLY NOL in Years 2 and 3.

Therefore, absent an adjustment to S's cumulative register to account for the 80-percent limitation, S would achieve a different result as a member of a consolidated

group than if S had remained a stand-alone entity. As explained earlier in this part II.B.3 of this Explanation of Provisions, such a result would be inconsistent with the purpose of the SRLY regime. See the preamble to TD 8823 published in the **Federal Register** July 2, 1999 (64 FR 36092).

C. Recomputation of amount of CNOL attributable to each member

Section 1.1502-21(b)(2)(i) generally provides that, if a group has a CNOL that is carried to another taxable year, the CNOL is apportioned among the group's members. For this purpose, §1.1502-21(b)(2)(iv) provides a fraction, the numerator of which is the separate NOL of each member for the consolidated return year of the loss (determined by taking into account only the member's items of income, gain, deduction, and loss), and the denominator of which is the sum of the separate NOLs of all members for that year.

If a member's portion of a CNOL is absorbed or reduced on a non-pro rata basis, the percentage of the CNOL attributable to each member must be recomputed to reflect the proper allocation of the remaining CNOL. For instance, if a portion of a CNOL allocable to a nonlife insurance company is carried back to and absorbed in a prior taxable year under the special rule for nonlife insurance companies that applies for taxable years beginning after December 31, 2020 (see part I.B of the Background), all or some portion of the CNOL allocable to the nonlife insurance company is reduced even though the portion of the CNOL allocable to other members remains untouched. Therefore, the allocation of the remaining CNOL must be recomputed.

Accordingly, these proposed regulations provide that, if a member's portion of a CNOL is absorbed or reduced on a non-pro rata basis, the percentage of the CNOL

attributable to each member is recomputed. The recomputed percentage of the CNOL attributable to each member equals the remaining CNOL attributable to the member at the time of the recomputation, divided by the sum of the remaining CNOL attributable to all of the remaining members at the time of the recomputation. In other words, if at the time of the recomputation a member's attributable portion of the group's remaining CNOL equals $20, and the sum of the remaining CNOL attributable to all of the group's remaining members equals $80, the recomputed percentage of the CNOL attributable to the member would equal 25 percent.

Proposed regulations (REG-101652-10) published in the **Federal Register** (80 FR 33211) on June 11, 2015 (2015 proposed regulations) contained a similar rule (see §1.1502-21(b)(2)(iv)(B)(2) of the 2015 proposed regulations). These proposed regulations withdraw proposed §1.1502-21(b)(2)(iv)(B)(2) of the 2015 proposed regulations and re-propose substantially similar language in new proposed §1.1502-21(b)(2)(iv)(B)(2).

D. Farming losses

For a taxable year beginning after December 31, 2020, section 172(b)(1)(B) permits the portion of a taxpayer's NOL for the taxable year that is a farming loss to be carried back two years. Under that provision, the term "farming loss" means the lesser of the amount that would be the NOL if only the income and deductions attributable to farming businesses (as defined in section 263A(e)(4)) were taken into account, or the amount of a taxpayer's NOL for the year.

Whereas the special nonlife insurance company rules in section 172 apply based on the status of the entity that generated the loss, the special farming loss carryback

rules in section 172 apply based on the character of the loss; that is, whether the loss resulted from farming activity. The special rule for farming losses creates a situation similar to that addressed in United Dominion Industries, Inc. v. United States, 532 U.S. 822 (2001), which involved the calculation within a consolidated group of a product liability loss (PLL). A PLL was a "special status loss" that was subject to a 10-year carryback period and that was equal to the aggregate of all members' product liability expenses (PLEs), limited by the NOL for the year. A consolidated group generally is treated as having a single, unitary CNOL for a taxable year (based on all items of income and loss in the group) that is allocated among members only for specified purposes, including carrybacks and carryovers to other taxable years. See §1.1502-21(e) (defining the term "CNOL"); §1.1502-11(a) (setting forth the general computation for determining CTI). Because the regulations under section 1502 did not allocate the CNOL for purposes of calculating the limitation on PLL, the Supreme Court held that the amount of a group's PLL was limited by the entire amount of the group's CNOL.

In a notice of proposed rulemaking (REG-140668-07) published in the **Federal Register** (77 FR 57452) on September 17, 2012 (2012 proposed regulations), the Treasury Department and the IRS provided rules regarding the apportionment of CNOLs that contain a component portion of a special status loss, such as a corporate equity reduction interest loss or a specified liability loss. Such losses, like farming losses and the PLLs that were considered in United Dominion, were subject to special carryback rules. The 2012 proposed regulations effectuated the holding in United Dominion that a group's CNOL, which is the limit on the amount of a group's special status losses, may be generated anywhere in the group. See 77 FR 57452, 57458. On

that basis, the 2012 proposed regulations apportioned such special status losses to each group member that generated a loss in the year in which the special status loss was incurred, regardless of whether any specific member had undertaken the activities that generated the expenses that effectively were granted special status. See id.

Consistent with the 2012 proposed regulations, these proposed regulations re-propose, in modified form, a specific rule regarding the apportionment of CNOLs that include farming losses arising in taxable years beginning after December 31, 2020, or other special status losses. See proposed §1.1502-21(b)(2)(iv)(D). (Due to the TCJA's removal of the corporate equity reduction interest loss provisions in former section 172(g), proposed §1.1502-21(b)(2)(iv)(D) does not contain explicit rules governing such losses.) Under proposed §1.1502-21(b)(2)(iv)(D), the portion of the CNOL constituting a special status loss is apportioned to each group member separately from the remainder of the CNOL under the method provided in §1.1502-21(b)(2)(iv). Consistent with the 2012 proposed regulations, this apportionment occurs without separate inquiry into whether a particular member actually incurred the special status loss. See 77 FR 57452, 57458. These proposed regulations withdraw §1.1502-21(b)(2)(iv)(C), as proposed in the 2012 proposed regulations. The Treasury Department and the IRS request comments regarding this approach.

E. Elections to waive portions of the five-year carryback period under section 172(b)(1)(D)(i)

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** add new paragraphs (b)(3)(ii)(C) and (D) to the regulations in §1.1502-21. The temporary regulations provide rules to permit consolidated groups that

acquire new members that were members of another consolidated group to elect to waive all or part of the pre-acquisition portion of an extended carryback period under section 172 for certain losses attributable to the acquired members. The text of those regulations also serves as the text of §1.1502-21(b)(3)(ii)(C) and (D) of these proposed regulations. The preamble to the temporary regulations explains the amendments.

III. Amendments to §1.1502-47

A. Overview

1. Legislative Background at the Time the Current Life-Nonlife Regulations Were Promulgated

The Life Insurance Company Income Tax Act of 1959, Public Law 86-69, 73 Stat. 112 (June 25, 1959), established a three-phase system of taxation for life insurance companies (also referred to as life companies). Under the first phase of this three-phase system (phase 1), a life company was taxed on the lesser of its taxable investment income (TII) or its gain from operations (GO). If a company's GO exceeded its TII, the company was taxed on 50 percent of such excess (phase 2). The other half of the GO in excess of TII was added, along with certain other items, to the policyholders surplus account, which was taxed when distributed to shareholders of a stock company (phase 3). Life companies also were permitted certain deductions that were unique to insurance companies, such as increases in reserves to the extent not funded out of the policyholders' share of investment income.

Prior to the enactment of the Tax Reform Act of 1976, Public Law 94-455, 90 Stat. 1520 (October 4, 1976) (1976 Act), life companies were prohibited from filing consolidated returns with nonlife companies, including both nonlife insurance

companies and other types of corporations. This prohibition resulted in part from historical differences between the taxation of life companies and nonlife companies.

Section 1507 of the 1976 Act (90 Stat. 1520, 1739-41) permitted life companies to consolidate with nonlife companies, subject to additional restrictions that do not apply to a regular consolidated group. Section 1503(c)(1) (as amended by the 1976 Act and subsequent tax legislation) provides that, if the nonlife company members of a life-nonlife group (nonlife members) have a loss for the taxable year, then under regulations to be issued by the Secretary, the amount of the loss that cannot be carried back and absorbed by the taxable income of the nonlife members can be taken into account in determining the CTI of the group only to the extent of the lesser of 35 percent of such loss or 35 percent of the taxable income of the life company members of the group (life members). Further, section 1503(c)(2) (as so amended) provides that the losses of a recent nonlife affiliate may not be used by a life company before the sixth taxable year the companies have been members of the same affiliated group.

2. Current Life-Nonlife Regulations

The current life-nonlife regulations adopted a subgroup method for computing a life-nonlife group's CTI. Under the subgroup method, the nonlife members and the life members generally are treated as if the members compose two separate consolidated groups, with certain exceptions (including intercompany transactions, as defined in §1.1502-13(b)(1)(i)). Thus, each of the life subgroup and the nonlife subgroup separately calculates its taxable income. Subgroup losses that are eligible to be carried back must be carried back to offset subgroup income in prior taxable years before being used to offset income of the other subgroup in the current taxable year, and subgroup

losses may not be carried back to offset income of the other subgroup in prior taxable years.

Further, a carryback of a subgroup loss may “bump” the loss of the other subgroup used in the carryback year (that is, the loss that is carried back may supplant a loss of the other subgroup in the carryback year). See §1.1502-47(a)(2)(ii). For example, assume that life subgroup losses were used to offset nonlife subgroup income in Year 1. If the nonlife subgroup incurs losses in Year 2 that are eligible to be carried back to Year 1, those Year 2 nonlife subgroup losses (rather than the Year 1 life subgroup losses) would be used to offset the nonlife subgroup’s income in Year 1. The “bumped” life subgroup losses from Year 1 then would be carried over to future taxable years.

3. Legislative Changes Regarding the Taxation of Insurance Companies Since Promulgation of the Current Life-Nonlife Regulations

The Deficit Reduction Act of 1984, Public Law 98-369, 98 Stat. 494 (July 18, 1984) (1984 Act), significantly altered the taxation of life companies. The 1984 Act replaced the three-phase system with a statutory mechanism similar to that used to calculate the Federal income tax liability of other corporate taxpayers. Specifically, section 801(a) imposes an income tax on the life insurance company taxable income (LICTI) of a life company, and section 801(b) defines “life insurance company taxable income” as life insurance gross income less life insurance deductions. The legislative history of the 1984 Act indicates that, in part, Congress changed the taxation of life companies in order to simplify the Code. See Staff of the Joint Comm. on Tax’n, 98th Cong., General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984, at 577 (December 31, 1984).

In turn, the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085 (October 22, 1986) (1986 Act), modified the taxation of nonlife insurance companies. Prior to the 1986 Act, nonlife insurance companies were permitted to defer unearned premium income while currently deducting the expenses associated with earning such income, which created a timing mismatch between the income and expenses of nonlife insurance companies. The 1986 Act addressed this mismatch by requiring a nonlife insurance company to reduce its deduction for unearned premium income by 20 percent. The 1986 Act also repealed special rates, deductions, and exemptions for small mutual insurance companies and added a single provision (section 831(b)) for both small mutual insurance companies and small stock insurance companies.

Lastly, the TCJA made significant additional changes to the taxation of life insurance companies, and the CARES Act added a special rule for such companies in section 172(b)(1)(D)(iii). These changes are described in detail in part II of the Background.

B. Summary of proposed changes to §1.1502-47

As a result of changes in the taxation of insurance companies under the TCJA and prior legislation, various provisions in §1.1502-47 currently are outdated. Accordingly, to the extent preempted by statute, the current regulations have no application. These proposed regulations update §1.1502-47 by: (1) removing paragraphs implementing statutory provisions that have been repealed; (2) revising paragraphs implementing statutory provisions that have been substantially revised; (3) updating terminology and statutory references to account for other statutory changes; and (4) removing paragraphs that contain obsolete transition rules or that are no longer

applicable because the effective dates in the current life-nonlife regulations have passed.

1. Removal of Paragraphs Due to Repealed Statutory Provisions

Certain paragraphs in §1.1502-47 are no longer relevant to the calculation of life-nonlife CTI because of the repeal of the three-phase system by the 1984 Act and later amendments to the Code. Therefore, these proposed regulations remove numerous paragraphs including current §§1.1502-47(k) and (l), which provide rules for calculating consolidated TII and the consolidated GO or loss from operations (LO). These proposed regulations also remove (i) §1.1502-47(f)(7)(ii), which generally provides that the consolidated tax liability of a life-nonlife group includes the tax described by section 1201, and (ii) §1.1502-47(o), which provides rules for calculating the alternative tax imposed by section 1201 on consolidated capital gain. (As noted in part II of the Background, section 1201 was repealed by the TCJA.)

2. Updates Reflecting Substantially Revised Statutory Provisions

These proposed regulations also update §1.1502-47 to reflect changes to certain statutory provisions since the current life-nonlife regulations were promulgated. For example, these proposed regulations modify current §1.1502-47(f)(5) (relating to the dividends received deduction) to reflect changes by the 1986 Act to sections 805(a)(4) and 818(e)(2) (for life companies) and to reflect changes by the 1986 Act and the Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647, 102 Stat. 3342 (November 10, 1988), respectively, to sections 832(b)(5)(B) and (g) (for nonlife insurance companies). Under modified §1.1502-47(f)(5) (that is, proposed §1.1502-47(d)(5)), dividends received by an insurance company from another includible member

of the group are treated as if the group were not filing a consolidated return. To reflect the repeal of section 815 by the TCJA, these proposed regulations also remove current §1.1502-47(g)(3) (which provides that life-nonlife groups must include any amounts subtracted under section 815 from life members' policyholders surplus accounts).

Additionally, these proposed regulations update the rules relating to consolidated LICTI to reflect the repeal of the three-phase system by the 1984 Act and other changes to the taxation of life companies. These proposed regulations also move certain provisions in current §1.1502-47(k) (consolidated TII) and (l) (consolidated GO or LO) that remain applicable following the repeal of the three-phase system to revised paragraph (g), and they implement the special rule for life insurance companies in section 172(b)(1)(D)(iii) under the CARES Act.

3. Revisions to Account for Other Statutory Changes

These proposed regulations also update terminology and citations to the Code to reflect current law. For example, these proposed regulations remove references to section 821 and mutual insurance companies because the statutory provisions regarding mutual insurance companies were repealed by the 1986 Act. Additionally, these proposed regulations replace references to section 802 with references to section 801 because section 802 was repealed by the 1984 Act. Similarly, these proposed regulations replace references to the LO with references to the NOL deduction under section 172 to reflect the repeal of section 810 by the TCJA.

4. Removal of Obsolete Transition Rules and Other Rules that no Longer are Applicable

These proposed regulations propose the removal of transition rules regarding the implementation of the current life-nonlife regulations, since those transition rules apply

to carryovers that either have been absorbed or have expired. For example, the proposed regulations propose the removal of current §1.1502-47(h)(3) (setting forth transition rules for NOLs attributable to taxable years ending before January 1, 1981), current §1.1502-47(k)(6) (containing a similar rule for certain capital loss carryovers), and current §1.1502-47(e)(4) (granting certain life-nonlife groups permission to discontinue filing a consolidated return for the group's first taxable year for which the current life-nonlife regulations were effective).

These proposed regulations also would remove cross-references to certain prior-law regulations that are designated with an "A" because those regulations generally are applicable to years ending in 1999 or earlier. Additionally, these proposed regulations would remove cross-references to §1.1502-18 (relating to inventory adjustments) because that section does not apply to taxable years beginning after July 11, 1995.

Proposed Effective/Applicability Dates

The regulations in proposed §1.1502-21 generally are proposed to be applicable to losses arising in taxable years beginning after the date of publication in the **Federal Register** of a Treasury decision adopting these proposed rules as final regulations (Publication Date). The regulations in proposed §§1.1502-1 and 1.1502-47 generally are proposed to be applicable to taxable years beginning after the Publication Date. However, a taxpayer deducting post-2017 NOLs on (1) original returns, (2) amended returns, or (3) applications for tentative carryback adjustments, filed for taxable years beginning on or before the Publication Date, may rely on these proposed regulations concerning the Federal income tax treatment of post-2017 NOLs with regard to those

filings if the taxpayer relies on the proposed regulations in their entirety and in a consistent manner.

Special Analyses

I. Regulatory Planning and Review – Economic Analysis

Executive Orders 13563, 13771, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

These proposed regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs has designated the proposed regulations as significant under section 1(b) of the Memorandum of Agreement. Accordingly, OMB has reviewed the proposed regulations.

A. <u>Background and Need for Regulations</u>

In general, taxpayers whose deductions exceed their income generate a net operating loss (NOL), calculated under the rules of section 172. Section 172 also governs the use of NOLs generated in other years to offset taxable income in the current year. Regulations issued under the authority of section 1502 may be used to govern how section 172 applies to consolidated groups of C corporations. In general, a

consolidated group generates a combined NOL at an aggregate level (CNOL), with the CNOL generally equal to the loss generated from treating the consolidated group as a single entity. Under regulations promulgated prior to the Tax Cuts and Jobs Act (TCJA), the allowed CNOL deduction was equal to the lesser of the CNOL carryover or the combined taxable income of the group (before the CNOL deduction).

The TCJA and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) made several changes to section 172. First, the TCJA and the CARES Act disallowed the carry back of NOLs generated in taxable years beginning after 2020, except for farming losses and losses incurred by corporations that are insurance companies other than life insurance companies (nonlife insurance companies). Second, the TCJA and the CARES Act limited the NOL deduction in taxable years beginning after 2020 for NOLs generated in 2018 or later (post-2017 NOLs) to 80 percent of taxable income determined after the deduction for pre-2018 NOLs but before the deduction for post-2017 NOLs. This 80-percent limitation does not apply to nonlife insurance companies.

These proposed regulations implement the changes to section 172 in the context of consolidated groups. In particular, regulations are needed to address three issues related to consolidated groups that were not expressly addressed in the TCJA or the CARES Act. First, the proposed regulations describe how to determine the 80-percent limitation in the case of a "mixed" group – that is, a consolidated group containing nonlife insurance companies and other members. Second, the proposed regulations address the calculation and allocation of farming losses. Third, the proposed regulations implement the 80-percent limitation into existing regulations to determine the

CNOL deduction attributable to losses a member arising during periods in which that member was not part of that group. Part I.B of this Special Analyses describes the manner by which the proposed regulations addresses each of these issues.

Part I.B also describes an alternative approach that was contemplated by the Treasury Department and the IRS regarding the allocation of currently generated losses to nonlife insurance companies and other members. The Treasury Department and the IRS elected not to implement this approach.

B. Overview of the Proposed Regulations

In this part I.B the following terms are used. The term “P group” means a consolidated group of which P is the common parent. The term “P&C member” means a member of the P group that is a nonlife insurance company. The term “C member” means a member of the P group that is a corporation other than nonlife insurance company.

1. Application of 80-percent limitation in mixed groups

Under the statute, the general rule for determining the NOL deduction (for a taxable year beginning after December 31, 2020) effectively proceeds in two steps. First, the taxpayer deducts pre-2018 NOLs without limit. Second, the taxpayer deducts post-2017 NOLs up to 80 percent of the taxpayer’s taxable income (computed without regard to the deductions under sections 172, 199A, and 250) determined after the deduction of pre-2018 NOLs (but, naturally, before the deduction for post-2017 NOLs). However, this 80-percent limitation does not apply for corporations that are nonlife insurance companies.

The application of the 80-percent limitation to the P group is straightforward if (i) there are no pre-2018 NOLs and (ii) both classes of P&C members and C members have positive income before the CNOL deduction. In that case, these proposed regulations provide, quite naturally, that the CNOL limitation is determined by adding (i) the pre-CNOL income generated by the class of C members (C member income pool), determined by applying the 80-percent limitation, plus (ii) 100 percent of the pre-CNOL income generated by the class of P&C members (P&C member income pool). This latter treatment reflects the rule in section 172(f) that nonlife insurance companies are not subject to the 80-percent limitation.

One complication arises when the pre-CNOL C member income pool is positive and the pre-CNOL P&C income pool is negative, and the P group has positive combined pre-CNOL taxable income. In this case (where the pre-CNOL income is generated by C members, rather than P&C members), these proposed regulations provide that the post-2017 CNOL deduction limit is determined by applying the 80-percent limitation to the income of the P group. If the situation were reversed, such that the P group had positive combined taxable income but the pre-CNOL income is generated by P&C members, rather than the C members, the post-2017 CNOL deduction limit is equal to the income of the P group (that is, determined without regard to the 80-percent limitation). In essence, in these situations, the amount of the P group's income able to absorb a post-2017 CNOL carryover is defined by the member pool (that is, the C member income pool or the P&C member income pool) that is generating the income.

The other complication occurs when there is a pre-2018 NOL. In this situation, it matters whether the pre-2018 NOL is treated as reducing the amount of the C member income pool or reducing the amount of P&C member income pool. Consider the following example (Example 1). In Example 1, the P group carries $50 in pre-2018 NOLs and $1000 in post-2017 NOLs to 2021. In 2021, the P&C members and the C members, respectively, earn (pre-CNOL) income of $100. If the pre-2018 NOL were treated as solely reducing the amount of C member income pool, then the limitation for the post-2017 CNOL deduction would be $100 plus 80 percent of $50 ($100 minus $50), equal to $140. If the pre-2018 NOL were treated as solely reducing the amount of the P&C member income pool, then the post-2017 CNOL deduction limit for the P group would be $50 ($100 minus $50) plus 80 percent of $100, or $130.

These proposed regulations allocate the pre-2018 NOL pro-rata to the C member income pool and the P&C member income pool in proportion to their current-year income. In Example 1, $25 of the pre-2018 NOL would be allocated to the C member income pool and $25 to the P&C member income pool. Therefore, the post-2017 CNOL deduction limit for the P group would be $75 ($100 minus $25) plus 80 percent of $75 ($100 minus $25), or $135.

2. Farming losses

Section 172 provides NOLs arising in a taxable year beginning after December 31, 2020, may not be carried back to prior years, with two exceptions: (1) farming losses and (2) nonlife insurance company losses. Section 172(b)(1)(B) defines a “farming loss” as the smaller of the actual loss from farming activities in a given year (that is, the excess of the deductions in farming activities over income in farming activities) and the

total NOL generated in that year. This statutory provision means that if a taxpayer incurs a loss in farming activities but has overall income in other activities, the farming loss will be smaller than the loss in farming activities (and can possibly be zero).

Regulations were needed to clarify two issues that arise in the context of consolidated groups. First, these regulations clarify that the maximum amount of farming loss is the CNOL of the group rather than the NOL of the specific member generating the loss in farming activities. This approach closely follows regulations issued by the Treasury Department and the IRS in 2012 in an analogous setting.

Second, given the overlapping categories of carryback-eligible NOLs (farming losses and nonlife insurance companies), regulations are needed to allocate the farming loss to the various members to determine the total amount of CNOL that can be carried back. Consider the following example (Example 2). In Example 2, the P group consists of one C member and one P&C member. In 2021, the C member's only activity is farming and the C member incurs a loss of $30, while the P&C member incurs a loss of $10. The total farming loss is $30, since $30 is less than the P group CNOL of $40. If this farming loss were allocated entirely to the C member, then the total amount eligible for carryback would be $40 (that is, $30 for the farming loss and $10 for the loss incurred by the P&C member). By contrast, if the farming loss were allocated entirely to the P&C member, only $30 would be eligible to be carried back.

Again, following a similar rule as the 2012 regulations, these proposed regulations allocate the farming loss to each member of the group in proportion with their share of total losses, without regard to whether each member actually engaged in farming. In Example 2, this would allocate $7.50 (that is, one-fourth of $30) of the

farming loss to the P&C member and the remaining $22.50 (that is, three-fourths of $30) to the C member. Therefore, the P group would be allowed to carry back $32.50 total (that is, the $10 of loss generated by the P&C member and the $22.50 of farming losses allocated to the C member).

3. Separate Return Loss Year Limitation

To reduce “loss trafficking,” existing regulations under section 1502 limit the extent to which a consolidated group (that is, the P group) can claim a CNOL attributable to losses generated by some member (M) in years in which M was not a member. In particular, existing rules limit this amount of loss to the amount of the loss that would have been deductible had M remained a separate entity; that is, the rules are designed to preserve neutrality in loss use between being a separate entity or a member of a group. Existing rules operationalize this principle using the mechanic of a “cumulative register.” The cumulative register is equal to the (cumulative) amount of M’s income that is taken into account in the P group’s income. Income earned by M while a member of the P group increases the cumulative register, while losses (carried over or otherwise) taken into account by the group reduce the cumulative register. In general, the existing rules provide that M’s pre-group NOLs cannot offset the P group’s income when the cumulative register is less than or equal to zero.

The introduction of the 80-percent limitation in the TCJA and CARES Act necessitates an adjustment to this mechanism in order to retain this neutrality-in-loss-use property. In particular, these proposed regulations provide that any losses by M that are absorbed by the P group and subject to the 80-percent limitation cause a reduction to the register equal to the full amount of income needed to support that

deduction. The following example (Example 3) demonstrates why this adjustment is necessary. In Example 3, P and S are each corporations other than nonlife insurance companies (that is, they are subject to the 80-percent limitation). Suppose in 2021, S incurs a loss of $800, which is the only loss incurred by S. In 2022, S incurs income of $400. If S were not a member of a consolidated group, its 2022 NOL deduction would be limited to $320 (80 percent of $400). Suppose instead that P acquires S in 2022 and that P has separate income of $600 in 2022, so the consolidated group has $1000 in pre-CNOL income in 2022. Before claiming any CNOLs, S's cumulative register would increase to $400 in 2022. Without any additional rules, the $400 cumulative register would allow P to claim a CNOL of $400 (bringing the register down to zero), greater than what would have been allowed had S remained a separate entity. By contrast, requiring the register to be reduced by 125 percent of the NOL (as under the current NPRM) allows P to claim only a $320 CNOL, replicating the result if S were a separate entity.

4. Allocation of current losses to nonlife insurance companies

In general, under the TCJA and CARES Act, taxpayers may not carry back any losses generated in tax years beginning after 2020, with the exception of losses generated by nonlife insurance companies and farming losses. Existing regulations clarify that CNOLs are allocated to each member in proportion to the total loss. This allocation rule can be illustrated by example (Example 4). In Example 4, the C member has a current loss of $10 (in a tax year beginning in 2021 or later). The P&C members are corporations PC1 and PC2. PC1 has a gain of $40 and PC2 has a loss of $40. Assume that the P group does not engage in any farming activities. The CNOL for the

P group is $10. The $10 of CNOL is allocated to the C member and PC2 in proportion to their total losses. The C member has one-fifth of the total loss ($10 divided by $50) and PC2 has four-fifths. Therefore, under the existing regulations, the C member is allocated $2 ($10 times one-fifth) and PC2 is allocated $8 ($10 times four-fifths). In the end, $8 of the CNOL may be carried back in Example 4. The proposed regulations do not alter these existing regulations.

In formulating these proposed regulations, the Treasury Department and the IRS contemplated an alternative approach. Under this alternative, consolidated groups would be required to compute gain and loss by grouping P&C members and C members separately prior to allocating CNOL to members. The application of this approach can be seen by revisiting Example 4. Under this alternative approach, because the P&C members as a whole do not have a loss, no CNOL would be allocated to any P&C member regardless of the gain or loss of any of the individual P&C members. Thus, under the alternative approach, none of the $10 CNOL would be eligible for carryback in Example 4.

C. Economic Analysis

1. Baseline

In this analysis, the Treasury Department and the IRS assess the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

2. Summary of economic effects

The proposed regulations provide certainty and clarity to taxpayers regarding the treatment of NOLs under section 172 and the regulations under section 1502. In the

absence of such guidance, the chance that different taxpayers would interpret the statute and the regulations differently would be exacerbated. Similarly situated taxpayers might interpret those rules differently, with one taxpayer pursuing an economic opportunity that another taxpayer might decline to make because of different interpretations of the ability of losses to offset taxable income. If this second taxpayer's activity were more profitable, the resulting economic decisions are inefficient. Such situations are more likely to arise in the absence of guidance. While no guidance can curtail all differential or inaccurate interpretations of the statute, the regulations significantly mitigate the chance for differential or inaccurate interpretations and thereby increase economic efficiency.

To the extent that the specific provisions of the proposed regulations result in the acceleration or delay of the tax year in which taxpayers deduct an NOL relative to the baseline, those taxpayers may face a change in the present value of the after-tax return to new investment, particularly investment that may result in losses. The resulting changes in the incentives facing the taxpayer are complex and may lead the taxpayer either to increase, decrease, or leave unchanged the volume and risk level of its investment portfolio, relative to the baseline, in ways that depend on the taxpayer's stock of NOLs and the depreciation schedules and income patterns of investments they would typically consider, including whether the investment is subject to bonus depreciation. Because these elements are complex and taxpayer-specific and because the sign of the effect on investment is generally ambiguous, the Treasury Department and the IRS have not projected the specific effects on economic activity arising from the proposed regulations.

The Treasury Department and the IRS project that any such effects will be small relative to the baseline. The effects are small because the regulations apply only to consolidated groups; in addition, several provisions of the proposed regulations apply only to the extent that a consolidated group contains a mix of member types. Moreover, the effects are small because: (i) for provisions of the proposed regulations that affect the deduction for pre-2018 NOLs, the effects are limited to the stock of the pre-2018 NOLs; and (ii) for provisions that affect the allowable rate of loss usage of post-2017 NOLs, the effect arises only from the 20 percentage point differential in the deduction for these NOLs. This latter effect in particular, to which the bulk of the provisions apply, is too small to substantially affect taxpayers' use of NOLs and thus too small to lead to meaningful changes in economic decisions.

The Treasury Department and the IRS have not provided quantitative estimates of the effects of these regulations relative to the baseline because they do not have readily available models that predict the effects of these tax treatments of consolidated group NOLs on the investments or other activities that consolidated groups might undertake. The Treasury Department and the IRS solicit comments on this analysis and on the economic effects of these proposed regulations, and particularly solicit data, models, or other evidence that could enhance the rigor with which the final regulations are developed.

3. Allocation of CNOLs to specific members of consolidated groups

The proposed regulations do not amend existing rules for the allocation of the CNOL within consolidated groups. The proposed regulations follow existing rules and allocate the CNOLs to each member of the group in proportion to the total loss.

The Treasury Department and the IRS considered an alternative approach that would have required groups to compute gain and loss at the subgroup level prior to allocating CNOL to members. Recall Example 4 in which the PC subgroup had no gain or loss but the C subgroup had a loss of $10. Under this alternative approach, because the PC subgroup as a whole does not have a loss, no CNOL would be allocated to any member in the PC group regardless of the gain or loss of any of the individual members of PC. Thus, in Example 4, none of the $10 CNOL would be eligible for carryback.

The Treasury Department and the IRS recognize that as a result of the TCJA and the CARES Act the adopted approach of allocating losses to each member may provide groups with a potential incentive, relative to the alternative approach, to split their C members into several corporations – some with loss and some with gain. In certain circumstances, such a strategy would effectively enable some share of the losses generated by the other C members to be carried back. This change in the business structure of consolidated groups may entail economic costs because, to the extent this strategy is pursued, it would result from tax-driven rather than market-driven considerations. The Treasury Department and the IRS project, however, that the adopted approach will have lower compliance costs for taxpayers, relative to the alternative approach, because it generally follows existing regulatory practice for allocating losses within a consolidated group.

The Treasury Department and the IRS have not attempted to estimate the economic consequences of either of these effects but project them to be small. The effects are projected to be small because (i) only a small number of taxpayers are likely to be affected; (ii) any reorganization that occurs due to the proposed regulations will

primarily be “on paper” and entail little or no economic loss; and (iii) the compliance burden of loss allocation, under either the proposed regulations or the alternative approach, is not high.

4. Affected Taxpayers

The Treasury Department and the IRS project that these regulations will primarily affect consolidated groups that contain at least one nonlife insurance member and at least one member that is not a nonlife insurance company. Based on data from 2015, the Treasury Department and the IRS calculate that there were 1,130 such consolidated groups. Approximately 460 of these groups were of “mixed loss” status, meaning that at least one nonlife insurance member had a gain and one other member had a loss, or vice versa.

II. Paperwork Reduction Act

For information regarding the collection of information in §1.1502-21(b)(3)(ii)(C) of these proposed regulations (including where to submit comments on this collection of information and on the accuracy of the estimated burden), please refer to the preamble to the temporary regulations under section 1502 published elsewhere in this issue of the **Federal Register**. This collection of information will be under Office of Management and Budget control number 1545-0123, the same control number as the collection of information in those temporary regulations, and the estimated burden of this collection of information is described in the preamble to those temporary regulations.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact

on a substantial number of small entities. This certification is based on the fact that these proposed regulations apply only to corporations that file consolidated Federal income tax returns, and that such corporations almost exclusively consist of larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120 (U.S. Corporation Income Tax Return). However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate amount of receipts provided on all Forms 1120. Therefore, these proposed regulations would not create additional obligations for, or impose an economic impact on, small entities. Accordingly, the Secretary certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2020, that threshold is approximately $156 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications, does not impose substantial direct compliance costs on state and local governments, and does not preempt state law within the meaning of the Executive Order.

Comments and Requests for a Public Hearing

Before the proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the "**ADDRESSES**" heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, and Notices cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at http://www.irs.gov.

Drafting Information

The principal authors of these proposed regulations are Justin O. Kellar, Gregory J. Galvin, and William W. Burhop of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

Partial Withdrawal of Notices of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 1502 and 7805, §1.1502-21(b)(2)(iv)(C) of the notice of proposed rulemaking (REG-140668-07) published in the **Federal Registe**r (77 FR 57451) on September 17, 2012 is withdrawn, and §1.1502-21(b)(2)(iv)(B) of the notice of proposed rulemaking (REG-101652-10) published in the **Federal Register** (80 FR 33211) on June 11, 2015 is withdrawn.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1502-1 is amended by adding paragraphs (k) and (l) to read as follows:

§1.1502-1 Definitions.

* * * * *

(k) Nonlife insurance company. The term nonlife insurance company means a member that is an insurance company other than a life insurance company, each as defined in section 816(a).

(l) Applicability date. Paragraph (k) of this section applies to taxable years beginning after [EFFECTIVE DATE OF FINAL RULE].

Par. 3. Section 1.1502-21 is amended by:

1. Revising paragraph (a).Redesignating paragraph (a) introductory text as paragraph (a)(1).

2. Revising paragraph (b)(1).

3. In paragraph (b)(2)(iv)(A), removing the language "shall equal the product of" with the language "equals the product obtained by multiplying", and adding in its place "such member" with the language "the member".

4. Revising paragraph (b)(2)(iv)(B).

5. Adding paragraphs (b)(2)(iv)(C) through (E).

6. Revising paragraph (b)(2)(v) introductory text.

7. In paragraph (b)(2)(v), redesignating Examples 1 through 3 as paragraphs (b)(2)(v)(A) through (C), respectively.

8. In newly redesignated paragraphs (b)(2)(v)(A) through (C), redesignating paragraphs (b)(2)(v)(A)(i) and (ii) as paragraphs (b)(2)(v)(A)(1) and (2), paragraphs

(b)(2)(v)(B)(i) and (ii) as paragraphs (b)(2)(v)(B)(1) and (2), and paragraphs (b)(2)(v)(C)(i) and (ii) as paragraphs (b)(2)(v)(C)(1) and (2).

9. Adding paragraphs (b)(2)(v)(D) through (G).

10. In paragraph (b)(3)(ii)(B), removing the language "§ 1.1502-21(b)(3)(ii)(B)(2)" and adding in its place "§1.1502-21(b)(3)(ii)(B)".

11. Revising paragraph (b)(3)(ii)(C).

12. Adding paragraph (b)(3)(ii)(D).

13. Revising paragraph (c)(1)(i) introductory text.

14. In paragraph (c)(1)(i)(C)(2), removing the language "and".

15. In paragraph (c)(1)(i)(D), removing the language "account." and adding in its place "account; and".

16. Adding paragraph (c)(1)(i)(E).

17. In paragraph (c)(1)(iii) introductory text, adding a new first sentence.

18. In paragraph (c)(1)(iii), designating Examples 1 through 5 as paragraphs (c)(1)(iii)(A) through (E), respectively.

19. In newly redesignated paragraphs (c)(1)(iii)(A) through (E), redesignating paragraphs (c)(1)(iii)(A)(i) through (iii) as paragraphs (c)(1)(iii)(A)(1) through (3), paragraphs (c)(1)(iii)(B)(i) through (vi) as paragraphs (c)(1)(iii)(B)(1) through (6), paragraphs (c)(1)(iii)(C)(i) through (iii) as paragraphs (c)(1)(iii)(C)(1) through (3), paragraphs (c)(1)(iii)(D)(i) through (iv) as paragraphs (c)(1)(iii)(D)(1) through (4), and paragraphs (c)(1)(iii)(E)(i) through (v) as paragraphs (c)(1)(iii)(E)(1) through (5).

20. In newly redesignated paragraph (c)(1)(iii)(C)(2), adding the language ", a taxable year that begins on January 1, 2021" after the language "at the beginning of Year 4".

21. Revising paragraphs (c)(1)(iii)(D)(2) through (4).

22. Adding paragraph (c)(1)(iii)(D)(5).

23. Revising paragraphs (c)(1)(iii)(E)(2) through (5).

24. Adding paragraphs (c)(1)(iii)(E)(6) and (c)(1)(iii)(F).

25. Revising paragraph (c)(2)(v).

26. In paragraph (c)(2)(viii) introductory text, adding a new first sentence.

27. In paragraph (c)(2)(viii), redesignating Examples 1 through 4 as paragraphs (c)(2)(viii)(A) through (D), respectively.

28. In newly redesignated paragraphs (c)(2)(viii)(A) through (D), redesignating paragraphs (c)(2)(viii)(A)(i) through (vii) as paragraphs (c)(2)(viii)(A)(1) through (7), paragraphs (c)(2)(viii)(B)(i) through (iv) as paragraphs (c)(2)(viii)(B)(1) through (4), paragraphs (c)(2)(viii)(C)(i) through (iii) as paragraphs (c)(2)(viii)(C)(1) through (3), and paragraphs (c)(2)(viii)(D)(i) and (ii) as paragraphs (c)(2)(viii)(D)(1) and (2).

29. In newly redesignated paragraphs (c)(2)(viii)(A)(3) through (7), the first sentence of each, adding the language ", including the limitation under paragraph (c)(1)(i)(E) of this section" after the language "under paragraph (c) of this section".

30. In newly redesignated paragraph (c)(2)(viii)(B)(1), the first sentence, adding the language ", none of which is a nonlife insurance company" after the language "S, T, P and M".

31. In newly redesignated paragraph (c)(2)(viii)(B)(1), the fourth sentence, adding the language "(a taxable year beginning after December 31, 2020)" after the language "Year 3".

32. Revising newly designated paragraph (c)(2)(viii)(B)(3).

33. Redesignating newly redesignated paragraph (c)(2)(viii)(B)(4) as paragraph (c)(2)(viii)(B)(5).

34. Adding a new paragraph (c)(2)(viii)(B)(4).

35. Revising newly redesignated paragraph (c)(2)(viii)(B)(5).

36. Adding paragraph (c)(2)(viii)(B)(6).

37. In paragraph (g)(5), redesignating Examples 1 through 9 as paragraphs (g)(5)(i) through (ix), respectively.

38. In newly redesignated paragraphs (g)(5)(i) through (ix), redesignating paragraphs (g)(5)(i)(i) through (iv) as paragraphs (g)(5)(i)(A) through (D), paragraphs (g)(5)(ii)(i) through (iv) as paragraphs (g)(5)(ii)(A) through (D), paragraphs (g)(5)(iii)(i) through (iii) as paragraphs (g)(5)(iii)(A) through (C), paragraphs (g)(5)(iv)(i) through (iv) as paragraphs (g)(5)(iv)(A) through (D), paragraphs (g)(5)(v)(i) through (iv) as paragraphs (g)(5)(v)(A) through (D), paragraphs (g)(5)(vi)(i) through (iv) as paragraphs (g)(5)(vi)(A) through (D), paragraphs (g)(5)(vii)(i) through (vi) as paragraphs (g)(5)(vii)(A) through (F), paragraphs (g)(5)(viii)(i) through (v) as paragraphs (g)(5)(viii)(A) through (E), and paragraphs (g)(5)(ix)(i) through (vii) as paragraphs (g)(5)(ix)(A) through (G).

39. Revising paragraph (h)(9).

40. Adding paragraph (h)(10).

The revisions and additions read as follows:

§1.1502-21 Net operating losses.

(a) Consolidated net operating loss deduction--(1) In general. Subject to any limitations under the Internal Revenue Code or this chapter (for example, the limitations under section 172(a)(2) and paragraph (a)(2) of this section), the consolidated net operating loss deduction (or CNOL deduction) for any consolidated return year is the aggregate of the net operating loss carryovers and carrybacks to the year. The net operating loss carryovers and carrybacks consist of—

(i) Any CNOLs (as defined in paragraph (e) of this section) of the consolidated group; and

(ii) Any net operating losses (or NOLs) of the members arising in separate return years.

(2) Application of section 172 for computing net operating loss deductions--(i) Overview. For purposes of §1.1502-11(a)(2) (regarding a CNOL deduction), the rules of section 172 regarding the use of net operating losses are taken into account as provided by this paragraph (a)(2) in calculating the consolidated taxable income of a group for a particular consolidated return year. More specifically, the aggregate amount of net operating losses arising in taxable years beginning before January 1, 2018 (pre-2018 NOLs) carried to a particular consolidated return year beginning after December 31, 2020, is added to the group's post-2017 CNOL deduction limit (as determined under this paragraph (a)(2)) for such year for purposes of determining the total CNOL deduction allowed for such year. See section 172(a)(2)(A) and (B).

(ii) Computation of the 80-percent limitation and special rule for nonlife insurance companies--(A) Determinations based on status of group members. If a portion of a CNOL arising in a taxable year beginning after December 31, 2017 (post-2017 CNOL), is carried back or carried over to a consolidated return year beginning after December 31, 2020, whether the members of the group include nonlife insurance companies, other types of corporations, or both determines whether section 172(a) (including the limitation described in section 172(a)(2)(B) (80-percent limitation)), section 172(f), or both, apply to the group for the consolidated return year.

(B) Determination of post-2017 CNOL deduction limit. The amount of post-2017 CNOLs that may be absorbed by one or more members of the group in a consolidated return year beginning after December 31, 2020 (post-2017 CNOL deduction limit) is determined under paragraph (a)(2)(iii) of this section by applying section 172(a)(2)(B) (that is, the 80-percent limitation), section 172(f) (that is, the special rule for nonlife insurance companies), or both, to the group's consolidated taxable income for that year.

(C) Inapplicability of 80-percent limitation. The 80-percent limitation does not apply to CNOL deductions taken in taxable years beginning before January 1, 2021, or to CNOLs arising in taxable years beginning before January 1, 2018 (that is, pre-2018 CNOLs). See section 172(a).

(iii) Computations under sections 172(a)(2)(B) and 172(f). This paragraph (a)(2)(iii) provides rules for applying sections 172(f) and 172(a)(2)(B) to consolidated return years beginning after December 31, 2020 (that is, for computing the post-2017 CNOL deduction limit). Section 172(f) applies to income of nonlife insurance company members, whereas section 172(a)(2)(B) applies to income of members that are not

nonlife insurance companies. Thus, this paragraph (a)(2)(iii) provides specific rules for groups with no nonlife insurance company members, only nonlife insurance company members, or a combination of nonlife insurance company members and other members.

(A) Groups without nonlife insurance company members. If no member of a group is a nonlife insurance company during a particular consolidated return year beginning after December 31, 2020, section 172(a)(2)(B) (that is, the 80-percent limitation) applies to all income of the group for that year. Therefore, the post-2017 CNOL deduction limit for the group for that year is the lesser of--

(1) The aggregate amount of post-2017 NOLs carried to that year; or

(2) The amount determined by multiplying--

(i) 80 percent, by

(ii) Consolidated taxable income for the group for that year (determined without regard to any deductions under sections 172, 199A, and 250) less the aggregate amount of pre-2018 NOLs carried to that year.

(B) Groups comprised solely of nonlife insurance companies. If a group is comprised solely of nonlife insurance companies during a particular consolidated return year beginning after December 31, 2020, section 172(f) applies to all income of the group for that year. Therefore, the post-2017 CNOL deduction limit for the group for that year equals consolidated taxable income less the aggregate amount of pre-2018 NOLs carried to that year.

(C) Groups that include both nonlife insurance companies and other corporations--(1) General rule. Except as provided in paragraph (a)(2)(iii)(C)(5) of this

section, if a group has at least one member that is a nonlife insurance company and at least one member that is not a nonlife insurance company during a particular consolidated return year beginning after December 31, 2020, the post-2017 CNOL deduction limit for the group for that year equals the sum of the amounts determined under paragraphs (a)(2)(iii)(C)(2) and (3) of this section.

(2) Residual income pool. The amount determined under this paragraph (a)(2)(iii)(C)(2) is the lesser of--

(i) The aggregate amount of post-2017 NOLs carried to a consolidated return year beginning after December 31, 2020, or

(ii) Eighty percent of the consolidated taxable income of the group for that year (determined without regard to any income, gain, deduction, or loss of members that are nonlife insurance companies and without regard to any deductions under sections 172, 199A, and 250) (residual income pool) after subtracting the aggregate amount of pre-2018 NOLs carried to that year that are allocated to the residual income pool under paragraph (a)(2)(iii)(C)(4) of this section (that is, by applying the 80-percent limitation). See section 172(a)(2)(B).

(3) Nonlife income pool. The amount determined under this paragraph (a)(2)(iii)(C)(3) is the consolidated taxable income of the group for a consolidated return year beginning after December 31, 2020 (determined without regard to any income, gain, deduction, or loss of members included in the computation under paragraph (a)(2)(iii)(C)(2) of this section) (nonlife income pool) less the aggregate amount of pre-2018 NOLs carried to that year that are allocated to the nonlife income pool under paragraph (a)(2)(iii)(C)(4) of this section. See section 172(f).

(4) Pro rata allocation of pre-2018 NOLs between pools of income. For purposes of paragraphs (a)(2)(iii)(C)(2) and (3) of this section, the aggregate amount of pre-2018 NOLs carried to any particular consolidated return year beginning after December 31, 2020, is prorated between the residual income pool and the nonlife income pool based on the relative amounts of positive income of those two pools. For example, if $30 of pre-2018 NOLs is carried over to a year in which the residual income pool contains $75 and the nonlife income pool contains $150, the residual income pool is allocated $10 of the pre-2018 NOLs ($30 x $75/($75 + $150), or $30 x 1/3), and the nonlife income pool is allocated the remaining $20 of pre-2018 NOLs ($30 x $150/($75+$150), or $30 x 2/3).

(5) Exception. The post-2017 CNOL deduction limit for the group for a consolidated return year is determined under this paragraph (a)(2)(iii)(C)(5) if the amounts computed under paragraphs (a)(2)(iii)(C)(2) and (3) of this section for that year are not both positive.

(i) Positive residual income pool and negative nonlife income pool. This paragraph (a)(2)(iii)(C)(5)(i) applies if the amount computed under paragraph (a)(2)(iii)(C)(2) of this section for the residual income pool is positive and the amount computed under paragraph (a)(2)(iii)(C)(3) of this section for the nonlife income pool is negative. If this paragraph (a)(2)(iii)(C)(5)(i) applies, the post-2017 CNOL deduction limit for the group for a consolidated return year equals the lesser of the aggregate amount of post-2017 NOLs carried to that year, or 80 percent of the consolidated taxable income of the entire group (determined without regard to any deductions under sections 172, 199A, and 250) after subtracting the aggregate amount of pre-2018 NOLs

carried to that year (that is, by applying the 80-percent limitation). See section 172(a)(2)(B).

(ii) Positive nonlife income pool and negative residual income pool. If the amount computed under paragraph (a)(2)(iii)(C)(3) of this section for the nonlife income pool is positive and the amount computed under paragraph (a)(2)(iii)(C)(2) of this section for the residual income pool is negative, the post-2017 CNOL deduction limit for the group for a consolidated return year equals the consolidated taxable income of the entire group less the aggregate amount of pre-2018 NOLs carried to that year. See section 172(f).

(b) * * *

(1) Carryovers and carrybacks generally. The net operating loss carryovers and carrybacks to a taxable year are determined under the principles of, and are subject to any limitations under, section 172 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. In addition, except as otherwise provided in this section, the amount of any CNOL absorbed by the group in any year is apportioned among members based on the percentage of the CNOL eligible for carryback or carryover that is attributable to each member as of the beginning of the year. The percentage of the CNOL attributable to a member is determined pursuant to paragraph (b)(2)(iv)(B) of this section. Additional rules provided under the Internal Revenue Code or regulations also apply. See, for example, section 382(l)(2)(B) (if losses are carried

from the same taxable year, losses subject to limitation under section 382 are absorbed before losses that are not subject to limitation under section 382). See paragraph (c)(1)(iii) of this section, Example 2, for an illustration of pro rata absorption of losses subject to a SRLY limitation.

(2) * * *

(iv) * * *

(B) Percentage of CNOL attributable to a member--(1) In general. Except as provided in paragraph (b)(2)(iv)(B)(2) of this section, the percentage of the CNOL for the consolidated return year attributable to a member equals the separate net operating loss of the member for the consolidated return year divided by the sum of the separate net operating losses for that year of all members having such losses for that year. For this purpose, the separate net operating loss of a member is determined by computing the CNOL by reference to only the member's items of income, gain, deduction, and loss, including the member's losses and deductions actually absorbed by the group in the consolidated return year (whether or not absorbed by the member).

(2) Recomputed percentage. If, for any reason, a member's portion of a CNOL is absorbed or reduced on a non-pro rata basis (for example, under §1.1502-11(b) or (c), paragraph (b)(2)(iv)(C) of this section, §1.1502-28, or §1.1502-36(d), or as the result of a carryback to a separate return year), the percentage of the CNOL attributable to each member is recomputed. In addition, if a member with a separate net operating loss ceases to be a member, the percentage of the CNOL attributable to each remaining member is recomputed. The recomputed percentage of the CNOL attributable to each member equals the remaining CNOL attributable to the member at the time of the

recomputation divided by the sum of the remaining CNOL attributable to all of the remaining members at the time of the recomputation. For purposes of this paragraph (b)(2)(iv)(B)(2), a CNOL that is permanently disallowed or eliminated is treated as absorbed.

(C) Net operating loss carryovers and carrybacks--(1) General rules. Subject to the rules regarding allocation of special status losses under paragraph (b)(2)(iv)(D) of this section--

(i) Nonlife insurance companies. The portion of a CNOL attributable to any members of the group that are nonlife insurance companies is carried back or carried over under the rules in section 172(b) applicable to nonlife insurance companies.

(ii) Corporations other than nonlife insurance companies. The portion of a CNOL attributable to any other members of the group is carried back or carried over under the rules in section 172(b) applicable to corporations other than nonlife insurance companies.

(2) Recomputed percentage. For rules governing the recomputation of the percentage of a CNOL attributable to each remaining member if any portion of the CNOL attributable to a member is carried back under section 172(b)(1)(B) or (C) and absorbed on a non-pro rata basis, see paragraph (b)(2)(iv)(B)(2) of this section.

(D) Allocation of special status losses. The amount of the group's CNOL that is determined to constitute a farming loss (as defined in section 172(b)(1)(B)) or any other net operating loss that is subject to special carryback or carryover rules (special status loss) is allocated to each member separately from the remainder of the CNOL based on the percentage of the CNOL attributable to the member, as determined under

paragraph (b)(2)(iv)(B) of this section. This allocation is made without regard to whether a particular member actually incurred specific expenses or engaged in specific activities required by the special status loss provisions. This paragraph (b)(2)(iv)(D) applies only with regard to losses for which the special carryback or carryover rules are dependent on the type of expense generating the loss, rather than on the special status of the entity to which the loss is allocable. See section 172(b)(1)(C) and paragraph (b)(2)(iv)(C)(1)(i) of this section (applicable to losses of nonlife insurance companies). This paragraph (b)(2)(iv)(D) does not apply to farming losses incurred by a consolidated group in any taxable year beginning after December 31, 2017, and before January 1, 2021.

(E) Coordination with rules for life-nonlife groups under §1.1502-47. For groups that include at least one member that is a life insurance company and for which an election is in effect under section 1504(c)(2), see §1.1502-47.

(v) Examples. For purposes of the examples in this paragraph (b)(2)(v), unless otherwise stated, all groups file consolidated returns, all corporations have calendar taxable years, all losses are farming losses within the meaning of section 172(b)(1)(B)(ii), all taxable years begin after December 31, 2020, the facts set forth the only corporate activity, value means fair market value and the adjusted basis of each asset equals its value, all transactions are with unrelated persons, and the application of any limitation or threshold under section 382 is disregarded. The principles of this paragraph (b) are illustrated by the following examples:

* * * * *

(D) Example 4: Allocation of a CNOL arising in a consolidated return year beginning after December 31, 2020. (1) P is the common parent of a consolidated group

that includes S. Neither P nor S is a nonlife insurance company. The P group also includes nonlife insurance companies PC1, PC2, and PC3. In the P group's 2021 consolidated return year, all members except S have separate net operating losses, and the P group's CNOL in that year is $40. No member of the P group engages in farming activities. See section 172(b)(1)(B)(ii).

(2) Under paragraphs (b)(1) and (b)(2)(iv)(B)(1) of this section, for purposes of carrying losses to other taxable years, the P group's $40 CNOL is allocated pro rata among the group members that have separate net operating losses. Under paragraph (b)(2)(iv)(C) of this section, those respective portions of the CNOL attributable to PC1, PC2, and PC3 (that is, members that are nonlife insurance companies) are carried back to each of the two preceding taxable years and then carried over to each of the 20 subsequent taxable years. See section 172(b)(1)(C). The portion attributable to P (which is not a nonlife insurance company) may not be carried back but is carried over to future years. See section 172(b)(1)(A).

(E) Example 5: Allocation of a CNOL arising in a consolidated return year beginning before January 1, 2021. The facts are the same as in paragraph (b)(2)(v)(D)(1) of this section, except that the P group incurred the CNOL during the P group's 2020 consolidated return year. The allocation among the P group members of the CNOL described in paragraph (b)(2)(v)(D)(2) of this section would be the same. However, those respective portions of the CNOL attributable to PC1, PC2, and PC3 (that is, members that are nonlife insurance companies) will be carried back to each of the five preceding taxable years and then carried over to each of the 20 subsequent taxable years. See section 172(b)(1)(C) and section 172(b)(1)(D)(i). The portion attributable to P (which is not a nonlife insurance company) will be carried back to each of the five preceding taxable years and then carried over to future years. See section 172(b)(1)(A) and section 172(b)(1)(D)(i).

(F) Example 6: CNOL deduction and application of section 172. (1) P (a type of corporation other than a nonlife insurance company) is the common parent of a consolidated group that includes PC1 (a nonlife insurance company). P and PC1 were both incorporated in Year 1 (a year beginning after December 31, 2020). In Year 1, P and PC1 have separate taxable income of $20 and $25, respectively. As a result, the P group has Year 1 consolidated taxable income of $45. In Year 2, P has separate taxable income of $24, and PC1 has a separate taxable loss of $40. Thus, the P group has a Year 2 CNOL of $16. No member of the P group engages in farming activities. See section 172(b)(1)(B)(ii).

(2) Under paragraph (b)(2)(iv)(B) of this section, the P group's Year 2 CNOL is entirely attributable to PC1, a nonlife insurance company. Therefore, under section 172(b)(1)(C)(i), the P group may carry back to Year 1 all $16 of its Year 2 CNOL.

(3) Under paragraph (a)(2)(ii) of this section, the amount of the Year 2 CNOL that may be used by the P group in Year 1 is determined by taking into account the status (nonlife insurance company or other type of corporation) of the member that has

separate taxable income composing in whole or in part the P group's consolidated taxable income. Because the P group includes both a nonlife insurance company member and a member that is not a nonlife insurance company, paragraph (a)(2)(iii)(C) of this section applies to determine the computation of the post-2017 CNOL deduction limit for the group for Year 1. Therefore, the 80-percent limitation is applied to the residual income pool, which consists of the taxable income of P, a type of corporation other than a nonlife insurance company. Under the 80-percent limitation, the amount of P's Year 1 income that may be offset by the P group's Year 2 CNOL is $16, which equals the lesser of the aggregate amount of post-2017 NOLs carried to Year 1 ($16), or 80 percent of the excess of P's taxable income for that year ($20) over the aggregate amount of pre-2018 NOLs allocable to P ($0), which also is $16 (80 percent x ($20 - $0)). See paragraph (a)(2)(iii)(C)(2) and (4) of this section. PC1 is a nonlife insurance company to which section 172(f), rather than the 80-percent limitation, applies. Therefore, the amount of PC1's Year 1 income that may be offset by the P group's Year 2 CNOL is $25, which equals the excess of PC1's taxable income for Year 1 ($25) over the aggregate amount of pre-2018 NOLs allocable to PC1 ($0). See paragraph (a)(2)(iii)(C)(3) and (4) of this section.

(4) Based on the analysis set forth in paragraph (b)(2)(v)(F)(3) of this section, the P group's post-2017 CNOL deduction limit for Year 1 is $41 ($16 + $25). Because the P group's Year 2 CNOL is $16, this amount would offset the Year 1 income of the P group.

(G) Example 7: Pre-2018 and post-2017 CNOLs. (1) P is the common parent of a consolidated group. No member of the P group is a nonlife insurance company or is engaged in a farming business, and no member of the P group has a loss that is subject to a SRLY limitation. The P group had the following consolidated taxable income or CNOL for the following taxable years:

Table 1 to paragraph (b)(2)(v)(G)(1)

2014	2015	2016	2017	2018	2019	2020	2021
$60	$0	$0	($90)	$30	($40)	($100)	$120

(2) Under section 172(a)(1), all $30 of the P group's 2018 consolidated taxable income is offset by the 2017 CNOL carryover without limitation. The remaining $60 of the P group's 2017 CNOL is carried over to 2021 under section 172(b)(1)(A)(ii)(I).

(3) Under section 172(b)(1)(D)(i)(I), the P group's $40 2019 CNOL is carried back to the five taxable years preceding the year of the loss. Thus, the P group's $40 2019 CNOL is carried back to offset $40 of its 2014 consolidated taxable income.

(4) Under section 172(a)(2) and paragraph (a)(2)(i) of this section, the P group's CNOL deduction for 2021 equals the aggregate amount of pre-2018 NOLs carried to 2021 plus the group's post-2017 CNOL deduction limit. The P group has $60 of pre-2018 NOLs carried to 2021 ($90 - $30). Because no member of the P group is a nonlife

insurance company, paragraph (a)(2)(iii)(A) of this section applies to determine the computation of the group's post-2017 CNOL deduction limit for 2021. See also section 172(a)(2)(B). Therefore, the post-2017 CNOL deduction limit of the P group for 2021 is $48, which equals the lesser of the aggregate amount of post-2017 NOLs carried to 2021 ($100), or 80 percent of the excess of the P group's consolidated taxable income for that year computed without regard to any deductions under sections 172, 199A, and 250 ($120) over the aggregate amount of pre-2018 NOLs carried to 2021 ($60) (that is, 80 percent x $60). Thus, the P group's CNOL deduction for 2021 equals $108 ($60 pre-2018 NOLs carried to 2021 + $48 post-2017 CNOL deduction limit). See section 172(a)(2) and paragraph (a)(2)(i) of this section. The P group offsets $108 of its $120 of 2021 consolidated taxable income, resulting in $12 of consolidated taxable income in 2021. The remaining $52 of the P group's 2020 CNOL ($100 - $48) is carried over to future taxable years. See section 172(b)(1)(A)(ii)(II).

(3) * * *

(ii) * * *

(C) [The text of proposed §1.1502-21(b)(3)(ii)(C) is the same as the text of §1.1502-21T(b)(3)(ii)(C) published elsewhere in this issue of the **Federal Register**.]

(D) [The text of proposed §1.1502-21(b)(3)(ii)(D) is the same as the text of §1.1502-21T(b)(3)(ii)(D) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) * * *

(1) * * *

(i) General rule. Except as provided in paragraph (g) of this section (relating to an overlap with section 382), the aggregate of the net operating loss carryovers and carrybacks of a member (SRLY member) arising (or treated as arising) in SRLYs (SRLY NOLs) that are included in the CNOL deductions for all consolidated return years of the group under paragraph (a) of this section may not exceed the aggregate consolidated taxable income for all consolidated return years of the group determined by reference to

only the member's items of income, gain, deduction, and loss (cumulative register). For this purpose—

* * * * *

(E) If a limitation on the amount of taxable income that may be offset under section 172(a) (see paragraph (a)(2) of this section) applies in a taxable year to a member whose carryovers or carrybacks are subject to a SRLY limitation (SRLY member), the amount of net operating loss subject to a SRLY limitation that is available for use by the group in that year is limited to the percentage of the balance in the cumulative register that would be available for offset under section 172(a) if the SRLY member filed a separate return and reported as taxable income in that year the amount contained in the cumulative register. For example, assume that a consolidated group has a SRLY member that is a corporation other than a nonlife insurance company, and that the SRLY member has a SRLY NOL that arose in a taxable year beginning after December 31, 2017 (post-2017 NOL). The group's consolidated taxable income for a consolidated return year beginning after December 31, 2020 is $200, but the cumulative register has a positive balance of only $120 (and no other net operating loss carryovers or carrybacks are available for the year). Because the SRLY limitation would be $96 ($120 x 80 percent), only $96 of SRLY loss may be used, rather than $160 ($200 x 80 percent). In addition, to the extent that this paragraph (c)(1)(i)(E) applies, the cumulative register is decreased by the full amount of income required under section 172(a) to support the amount of SRLY NOL absorption. See, for example, paragraph (c)(1)(iii)(A) and (B) of this section for examples illustrating the application of this rule.

* * * * *

(iii) * * * For purposes of the examples in this paragraph (c)(1)(iii), no corporation is a nonlife insurance company and, unless otherwise specified, all taxable years begin after December 31, 2020, and all CNOLs arise in taxable years beginning after December 31, 2020. * * *

(A) * * *

(2) T's $100 net operating loss carryover from Year 1 arose in a SRLY. See §1.1502-1(f)(2)(iii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, the $100 net operating loss carryover is subject to the SRLY limitation in paragraph (c)(1) of this section. The positive balance of the cumulative register of T for Year 2 equals the consolidated taxable income of the P group determined by reference to only T's items, or $70. However, due to the 80-percent limitation and the application of paragraph (c)(1)(i)(E) of this section, the SRLY limitation is $56 ($70 x 80 percent). No losses from equivalent years are available, and the P group otherwise has sufficient consolidated taxable income to support the CNOL deduction ($300 x 80 percent = $240). Therefore, $56 of the SRLY net operating loss is included under paragraph (a) of this section in the P group's CNOL deduction for Year 2. Although only $56 is absorbed, the cumulative register of T is reduced by $70, the full amount of income necessary to support the $56 deduction after taking into account the 80-percent limitation ($70 x 80 percent = $56).

* * * * *

(B) * * *

(2) P's Year 1, Year 2, and Year 3 are not SRLYs with respect to the P group. See §1.1502-1(f)(2)(i). Thus, P's $40 net operating loss arising in Year 1 and $120 net operating loss arising in Year 3 are not subject to the SRLY limitation under paragraph (c) of this section. Although the P group has $160 of taxable income in Year 4, the 80-percent limitation reduces the P group's net operating loss deduction in that year to $128 ($160 x 80 percent). Under the principles of section 172, paragraph (b) of this section requires that P's $40 loss arising in Year 1 be the first loss absorbed by the P group in Year 4. Absorption of this loss leaves $88 ($128 - $40) of the P group's Year 4 consolidated taxable income available for offset by loss carryovers.

(3) T's Year 2 and Year 3 are SRLYs with respect to the P group. See §1.1502-1(f)(2)(ii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, T's $50 net operating loss arising in Year 2 and $60 net operating loss arising in Year 3 are subject to the SRLY limitation. The positive balance of the cumulative register of T for Year 4 equals the P group's consolidated taxable income determined by reference to only T's items, or $70. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, T's SRLY limitation is $56

($70 x 80 percent). Therefore, the P group can absorb up to $56 of T's SRLY net operating losses in Year 4. Under the principles of section 172, T's $50 SRLY net operating loss from Year 2 is included under paragraph (a) of this section in the P group's CNOL deduction for Year 4. After absorption of this loss, under paragraph (c)(1)(i) of this section, $6 of SRLY limit remains in Year 4 ($56 - $50). Further, the total amount of Year 4 consolidated taxable income available for offset by other loss carryovers under section 172(a) is $38 ($88 - $50).

(4) P and T each carry over net operating losses to Year 4 from a taxable year ending on the same date (that is, Year 3). The losses carried over from Year 3 total $180. However, the remaining Year 4 SRLY limit is $6. Therefore, the total amount of loss available for absorption is $126 ($120 allocable to P and $6 allocable to T). Under paragraph (b) of this section, the losses available for absorption that are carried over from Year 3 are absorbed on a pro rata basis, even though one loss arises in a SRLY and the other loss does not. Thus, $36.19 of P's Year 3 loss is absorbed ($120/($120 + $6)) x $38 = $36.19. In addition, $1.81 of T's Year 3 loss is absorbed ($6/($120 + $6)) x $38 = $1.81.

(5) After deduction of T's SRLY net operating losses in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. A total of $51.81 of SRLY net operating losses were absorbed in Year 4 ($50 + $1.81). After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $64.76 ($64.76 x 80 percent = $51.81). Therefore, the cumulative register of T is decreased by $64.76, and $5.24 remains in the cumulative register ($70 - $64.76).

(6) P carries its remaining $83.81 ($120 - $36.19) Year 3 net operating loss and T carries its remaining $58.19 ($60 - $1.81) Year 3 net operating loss over to Year 5. Assume that, in Year 5, the P group has $90 of consolidated taxable income (computed without regard to the CNOL deduction). The P group's consolidated taxable income determined by reference to only T's items is a CNOL of $4. Therefore, the positive balance of the cumulative register of T in Year 5 equals $1.24 ($5.24 - $4). Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, T's SRLY limitation is $0.99 ($1.24 x 80 percent). For Year 5, the total amount of Year 5 consolidated taxable income available for offset by loss carryovers as a result of the 80-percent limitation is $72 ($90 x 80 percent). Under paragraph (b) of this section, the losses carried over from Year 3 are absorbed on a pro rata basis, even though one loss arises in a SRLY and the other loss does not. Therefore, $71.16 of P's Year 3 loss is absorbed (($83.81/($83.81 + $0.99)) x $72 = $71.16). In addition, $0.83 of T's Year 3 losses is absorbed (($0.99/($83.81 + $0.99)) x $72 = $0.83).

* * * * *

(D) * * *

(2) Under §1.1502-15(a), T's $100 of ordinary loss in Year 3 constitutes a built-in loss that is subject to the SRLY limitation under paragraph (c) of this section. The amount of the limitation is determined by treating the deduction as a net operating loss carryover from a SRLY. The built-in loss is therefore subject to both a SRLY limitation and the 80-percent limitation for Year 3. The built-in loss is treated as a net operating loss carryover solely for purposes of determining the extent to which the loss is not allowed by reason of the SRLY limitation, and for all other purposes the loss remains a loss arising in Year 3. See §1.1502-21(c)(1)(i)(D). Consequently, under paragraph (b) of this section, the built-in loss is absorbed by the P group before the net operating loss carryover from Year 1 is absorbed. The positive balance of the cumulative register of T for Year 3 equals the P group's consolidated taxable income determined by reference to only T's items, or $60. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 3 is $48 ($60 x 80 percent). Therefore, $48 of the built-in loss is absorbed by the P group. None of T's $100 SRLY net operating loss carryover from Year 1 is allowed.

(3) After deduction of T's $48 SRLY built-in loss in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $60 ($60 x 80 percent = $48). Therefore, the cumulative register of T is decreased by $60, and zero remains in the cumulative register ($60 - $60).

(4) Under §1.1502-15(a), the $52 balance of the built-in loss that is not allowed in Year 3 because of the SRLY limitation and the 80-percent limitation is treated as a $52 net operating loss arising in Year 3 that is subject to the SRLY limitation because, under paragraph (c)(1)(ii) of this section, Year 3 is treated as a SRLY. The built-in loss is carried to other years in accordance with the rules of paragraph (b) of this section. The positive balance of the cumulative register of T for Year 4 equals $40 (zero from Year 3 + $40). Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 4 is $32 ($40 x 80 percent). Therefore, under paragraph (c) of this section, $32 of T's $100 net operating loss carryover from Year 1 is included in the CNOL deduction under paragraph (a) of this section in Year 4.

(5) After deduction of T's $32 SRLY net operating loss in Year 4, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $40 ($40 x 80 percent = $32). Therefore, the cumulative register is decreased by $40, and zero remains in the cumulative register ($40 - $40).

(E) * * *

(2) For Year 2, the P group computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group determines its ability to use its capital loss carryover before it determines its ability to use its ordinary loss carryover. Under section 1212, because the P group has no Year 2 capital gain, it cannot absorb any capital losses in Year 2. T's Year 1 net capital loss and the P group's Year 2 consolidated net capital loss (all of which is attributable to T) are carried over to Year 3.

(3) The P group's ability to deduct net operating losses in Year 2 is subject to the 80-percent limitation, based on the P group's consolidated taxable income for the year. Thus, the group's limitation for Year 2 is $72 ($90 x 80 percent). However, use of the Year 1 net operating loss also is subject to the SRLY limitation. The positive balance of the cumulative register of T applicable to SRLY net operating losses for Year 2 equals the P group's consolidated taxable income determined by reference to only T's items, or $60. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 2 is $48 ($60 x 80 percent). Therefore, only $48 of T's Year 1 SRLY net operating loss is absorbed by the P group in Year 2. T carries over its remaining $52 of its Year 1 loss to Year 3.

(4) After deduction of T's SRLY net operating losses in Year 2, the net operating loss cumulative register is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. The P group deducted $48 of T's SRLY net operating losses in Year 2. After taking into account the 80-percent limitation, the amount of taxable income necessary to support this deduction is $60 ($60 x 80 percent = $48). Therefore, the net operating loss cumulative register of T is decreased by $60, and zero remains in the net operating loss cumulative register ($60 - $60).

(5) For Year 3, the P group again computes separate SRLY limits for each of T's SRLY carryovers from Year 1. The group has consolidated net capital gain (without taking into account a net capital loss carryover deduction) of $30. Under §1.1502-22(c), the aggregate amount of T's $50 capital loss carryover from Year 1 that is included in computing the P group's consolidated net capital gain for all years of the group (in this case, Years 2 and 3) may not exceed $30 (the aggregate consolidated net capital gain computed by reference only to T's items, including losses and deductions actually absorbed (that is, $30 of capital gain in Year 3)). Thus, the P group may include $30 of T's Year 1 capital loss carryover in its computation of consolidated net capital gain for Year 3, which offsets the group's capital gains for Year 3. T carries over its remaining $20 of its Year 1 capital loss to Year 4. Therefore, the capital loss cumulative register of T is decreased by $30, and zero remains in the capital loss cumulative register ($30 - $30). Further, because the net operating loss cumulative register includes all taxable income of T included in the P group, as well as all absorbed losses of T (including capital items), a zero net increase occurs in the net operating loss cumulative register. The P group carries over the Year 2 consolidated net capital loss to Year 4.

(6) The P group's ability to deduct net operating losses in Year 3 is subject to the 80-percent limitation, based on the P group's consolidated taxable income for the year. Thus, the P group's taxable income for Year 3 that can be offset, before use of net operating losses, is $40 (80 percent x the sum of zero capital gain, after use of the capital loss carryover, plus $50 of ordinary income). However, use of the Year 1 net operating loss also is subject to the SRLY limitation. The positive balance of the cumulative register of T applicable to SRLY net operating losses for Year 3 equals the P group's consolidated taxable income determined by reference only to T's items, or $40. This amount equals the sum obtained by adding the zero carryover from Year 2, a net

inclusion of zero from capital items implicated in Year 3 ($30 - $30), and $40 of taxable income in Year 3. Under paragraph (c)(1)(i)(E) of this section, after taking into account the 80-percent limitation, the SRLY limitation for Year 3 is $32 ($40 x 80 percent). Therefore, only $32 of the Year 1 net operating loss is absorbed by the P group in Year 3. T carries over its remaining $20 of its Year 1 loss to Year 4.

(F) Example 6: Pre-2018 NOLs and post-2017 NOLs. (1) Individual A owns P. On January 1, 2017, A forms T. P and T are calendar-year taxpayers. In 2017, T sustains a $100 net operating loss that is carried over. During 2018, 2019, and 2020, T deducts a total of $90 of its 2017 net operating loss against its taxable income, and T carries over the remaining $10 of its 2017 net operating loss. In 2021, T sustains a net operating loss of $50. On December 31, 2021, P acquires all the stock of T, and T becomes a member of the P group. The P group has $300 of consolidated taxable income in 2022 (computed without regard to the CNOL deduction). Such consolidated taxable income would be $70 if determined by reference to only T's items. The P group has no other SRLY net operating loss carryovers or CNOL carryovers.

(2) T's remaining $10 of net operating loss carryover from 2017 and its $50 net operating loss carryover from 2021 are both SRLY losses in the P group. See §1.1502-1(f)(2)(iii). P's acquisition of T was not an ownership change as defined by section 382(g). Thus, T's net operating loss carryovers are subject to the SRLY limitation in paragraph (c)(1) of this section. The SRLY limitation for the P group's 2022 consolidated return year is consolidated taxable income determined by reference to only T's items, or $70.

(3) Because T's oldest (2017) carryover was sustained in a year beginning before January 1, 2018, its use is not subject to limitation under section 172(a)(2)(B). Therefore, all $10 of T's 2017 SRLY net operating loss (that is, a pre-2018 NOL) is included under paragraph (a) of this section in the P group's CNOL deduction for 2022. After deduction of T's $10 SRLY net operating loss from 2017, the cumulative register of T is reduced on a dollar-for-dollar basis, pursuant to paragraph (c)(1)(i) of this section. Therefore, the cumulative register of T is decreased by $10, and $60 remains in the cumulative register ($70 - $10).

(4) The P group's deduction of T's 2021 net operating loss is subject to both a SRLY limitation and the 80-percent limitation under section 172(a)(2)(B). Therefore, the total limitation on the use of T's 2021 net operating loss in the P group is $48 (the remaining cumulative register of $60 x 80 percent). No losses from equivalent years are available, and the P group otherwise has sufficient consolidated taxable income to support the CNOL deduction ($290 x 80 percent = $232). Therefore, $48 of T's 2021 SRLY net operating loss is included under paragraph (a) of this section in the P group's CNOL deduction for 2022. The remaining $2 of T's 2021 SRLY net operating loss ($50 - $48) is carried over to the P group's 2023 consolidated return year.

(5) After deduction of T's $48 SRLY NOL in 2022, the cumulative register of T is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the

80-percent limitation, the amount of income necessary to support this deduction is $60 ($60 x 80 percent = $48). Therefore, the cumulative register of T is decreased by $60, and zero remains in the cumulative register ($60 - $60).

(2) * * *

(v) Coordination with other limitations. This paragraph (c)(2) does not allow a net operating loss to offset income to the extent inconsistent with other limitations or restrictions on the use of losses, such as a limitation based on the nature or activities of members. For example, a net operating loss may not offset income in excess of any limitations under section 172(a) and paragraph (a)(2) of this section. Additionally, any dual consolidated loss may not reduce the taxable income to an extent greater than that allowed under section 1503(d) and §§ 1.1503(d)–1 through 1.1503(d)–8. See also § 1.1502–47(k) (relating to preemption of rules for life-nonlife groups).

* * * * *

(viii) * * * For purposes of the examples in this paragraph (c)(2)(viii), no corporation is a nonlife insurance company or has any farming losses. * * *

* * * * *

(B) * * *

(3) In Year 4, the M group has $10 of consolidated taxable income (computed without regard to the CNOL deduction for Year 4). That consolidated taxable income would be $45 if determined by reference only to the items of P, S, and T, the members included in the SRLY subgroup with respect to P's loss carryover. Therefore, the positive balance of the cumulative register of the P SRLY subgroup for Year 4 equals $45 and, due to the application of the 80-percent limitation under paragraph (c)(2)(v) of this section, the SRLY subgroup limitation under this paragraph (c)(2) is $36 ($45 x 80 percent). However, the M group has only $10 of consolidated taxable income in Year 4. Thus, due to the 80-percent limitation and the application of paragraph (b)(1) of this section, the M group's deduction of all net operating losses in Year 4 is limited to $8 ($10 x 80 percent). As a result, the M group deducts $8 of P's SRLY net operating loss carryover, and the remaining $37 is carried over to Year 5.

(4) After deduction of $8 of P's SRLY net operating loss in Year 4, the cumulative register of the P SRLY subgroup is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $10 ($10 x 80 percent = $8). Therefore, the cumulative register of the P SRLY subgroup is decreased by $10, and $35 remains in the cumulative register ($45 - $10).

(5) In Year 5, the M group has $100 of consolidated taxable income (computed without regard to the CNOL deduction for Year 5). None of P, S, or T has any items of income, gain, deduction, or loss in Year 5. Although the members of the P SRLY subgroup do not contribute to the $100 of consolidated taxable income in Year 5, the positive balance of the cumulative register of the P SRLY subgroup for Year 5 is $35 and, due to the application of the 80-percent limitation under paragraph (c)(2)(v) of this section, the SRLY subgroup limitation under this paragraph (c)(2) is $28 ($35 x 80 percent). Because of the 80-percent limitation and the application of paragraph (b)(1) of this section, the M group's deduction of net operating losses in Year 5 is limited to $80 ($100 x 80 percent). Because the $28 of net operating loss available to be absorbed is less than 80 percent of the M group's consolidated taxable income, $28 of P's SRLY net operating loss is absorbed in Year 5, and the remaining $9 ($37 - $28) is carried over to Year 6.

(6) After deduction of $28 of P's SRLY net operating loss in Year 5, the cumulative register of the P SRLY subgroup is adjusted pursuant to paragraph (c)(1)(i)(E) of this section. After taking into account the 80-percent limitation, the amount of income necessary to support this deduction is $35 ($35 x 80 percent = $28). Therefore, the cumulative register of the P SRLY subgroup is decreased by $35, and zero remains in the cumulative register ($35 - $35).

* * * * *

(h) * * *

(9) [The text of proposed §1.1502-21(h)(9) is the same as the text of §1.1502-21T(h)(9) published elsewhere in this issue of the **Federal Register**.]

(10) The rules of paragraphs (a), (b)(1), (b)(2)(iv), and (c)(1)(i)(E) of this section apply to losses arising in taxable years beginning after [the date the Treasury decision adopting these rules as final regulations is published in the **Federal Register]**.

Par. 4. Section 1.1502-47 is amended by:

1. Revising paragraphs (a)(2)(i) and (ii).

2. Removing paragraph (a)(3).

3. Redesignating paragraph (a)(4) as paragraph (a)(3).

4. Removing paragraph (j).

5. Redesignating paragraph (n) as paragraph (j).

6. Redesignating paragraph (b) as paragraph (n).

7. Redesignating paragraph (t) as paragraph (n)(3).

8. Removing paragraph (c).

9. Redesignating paragraph (d) as paragraph (b).

10. Revising newly redesignated paragraph (b)(1).

11. Removing newly redesignated paragraph (b)(2).

12. Redesignating newly redesignated paragraphs (b)(3) through (14) as paragraphs (b)(2) through (13), respectively.

13. Revising newly redesignated paragraphs (b)(2), (3), (4), (9), (10), and (12).

14. In newly redesignated paragraph (b)(13), designating Examples 1 through 14 as paragraphs (b)(13)(i) through (xiv), respectively.

15. In newly redesignated paragraph (b)(13)(i), adding a new last sentence.

16. Revising newly redesignated paragraph (b)(13)(ii).

17. Removing newly redesignated paragraph (b)(13)(xiv).

18. Redesignating paragraph (e) as paragraph (c).

19. Removing newly redesignated paragraphs (c)(4) and (5).

20. Redesignating paragraph (c)(6) as paragraph (c)(4).

21. Redesignating paragraph (f) as paragraph (d).

22. Revising newly redesignated paragraph (d)(5).

23. Removing the last sentence of newly redesignated paragraph (d)(6).

24. Removing newly redesignated paragraph (d)(7)(ii).

25. Redesignating paragraph (d)(7)(iii) as paragraph (d)(7)(ii) and revising it.

26. Redesignating paragraph (g) as paragraph (e).

27. In newly redesignated paragraph (e)(2), removing the language “partial” each place it appears.

28. Removing newly redesignated paragraph (e)(3).

29. Redesignating paragraph (h) as paragraph (f).

30. Revising newly redesignated paragraph (f)(2)(iii).

31. In newly designated paragraph (f)(2)(v), removing the language “partial” each place it appears.

32. In newly designated paragraph (f)(2)(v), adding a new last sentence.

33. Revising newly designated paragraph (f)(2)(vi) and (vii).

34. Removing newly designated paragraph (f)(3).

35. Redesignating newly designated paragraph (f)(4) as paragraph (f)(3).

36. Revising newly redesignated paragraph (f)(3)(ii).

37. Adding a new paragraph (g).

38. Redesignating paragraph (k)(5) introductory text as paragraph (g)(3)(ii), and redesignating paragraphs (k)(5)(i) through (iv) as paragraphs (g)(3)(ii)(A) through (D), respectively.

39. Removing newly redesignated paragraphs (g)(3)(ii)(C) and (D).

40. Removing paragraphs (k) and (l).

41. Redesignating paragraph (m) as paragraph (h).

42. In newly redesignated paragraph (h), removing the language “partial” each place it appears.

43. In newly redesignated paragraph (h)(2)(ii), adding a new last sentence.

44. In newly redesignated paragraph (h)(3)(iv), adding a new last sentence.

45. In newly redesignated paragraph (h)(3)(ix), removing the last two sentences.

46. Removing newly redesignated paragraph (h)(4).

47. Redesignating newly redesignated paragraph (h)(5) as paragraph (h)(4).

48. Revising newly redesignated paragraph (h)(4) introductory text.

49. In newly redesignated paragraph (h)(4), redesignating Examples 1 through 6 as paragraphs (h)(4)(i) through (vi).

50. Revising newly designated paragraphs (h)(4)(ii) and (iii).

51. Removing newly designated paragraphs (h)(4)(v) and (vi).

52. In newly redesignated paragraph (j)(2)(iii), removing the language “, and “section 812(b)(3)” and adding in its place “section 172(b)(3)(C)”.

53. Removing newly redesignated paragraph (j)(2)(v).

54. Redesignating newly redesignated paragraph (j)(2)(vi) as paragraph (j)(2)(v).

55. Revising newly redesignated paragraph (j)(3).

56. In newly redesignated paragraph (n)(3), removing the language “Effective/applicability date” and adding the language “Filing requirements effective dates” in its place.

57. Adding paragraph (n)(4).

58. Removing paragraphs (o) and (p).

59. Redesignating paragraphs (q), (r), and (s) as paragraphs (k), (l), and (m), respectively.

59. In the following table, for each section designated or redesignated under these proposed regulations (as indicated in the second column), removing the language in the third column and adding the language in the fourth column with the frequency indicated in the fifth column:

Paragraph	Redesignation	Remove	Add	Frequency
1.1502-47(a)(1)	N/A	section 802 or 821 (relating respectively to life insurance companies and to certain mutual insurance companies)	section 801 (relating to life insurance companies)	Once
1.1502-47(a)(1)	N/A	life insurance companies and mutual insurance companies may	life insurance companies may	Once
1.1502-47(a)(1)	N/A	composition and its consolidated tax	composition, its consolidated taxable income (or loss), and its consolidated tax	Once
1.1502-47(a)(4)	1.1502-47(a)(3)	§§ 1.1502-1 through 1.1502-80	§§1.1502-0 through 1.1502-100	Once
1.1502-47(a)(4)	1.1502-47(a)(3)	844	848	Once
1.1502-47(b)	1.1502-47(n)	Effective dates	Effective/applicability dates	Once
1.1502-47(b)(1)	1.1502-47(n)(1)	paragraph (b)(2)	paragraph (n)(2) and (3)	Once

1.1502-47(b)(2)(i)	1.1502-47(n)(2)(i)	Paragraph (d)(12)(v)	Paragraph (b)(11)(v)	Once
1.1502-47(d)(12)(i)(A), (d)(12)(i)(C), (d)(12)(i)(D), (d)(12)(iii), (d)(12)(iv), (d)(12)(v), (d)(12)(v)(B), (d)(12)(v)(C), (d)(12)(v)(D), (d)(12)(vi), (d)(12)(vii), and (d)(12)(viii)(F)	1.1502-47(b)(11)(i)(A), (b)(11)(i)(C), (b)(11)(i)(D), (b)(11)(iii), (b)(11)(iv), (b)(11)(v), (b)(11)(v)(B), (b)(11)(v)(C), (b)(11)(v)(D), (b)(11)(vi), (b)(11)(vii), and (b)(11)(viii)(F), respectively	(d)(12)	(b)(11)	Each place it appears
1.1502-47(d)(12)(iii)	1.1502-47(b)(11)(iii)	subdivision (iii)	paragraph (b)(11)(iii)	Once
1.1502-47(d)(12)(iv)	1.1502-47(b)(11)(iv)	subdivision (iv)	paragraph (b)(11)(iv)	Once
1.1502-47(d)(12)(v)(B)	1.1502-47(b)(11)(v)(B)	(i.e., sections 11, 802, 821, or 831)	(for example, section 11, section 801, or section 831)	Once
1.1502-47(d)(12)(vi)	1.1502-47(b)(11)(vi)	subdivision (vi)	paragraph (b)(11)(vi)	Once
1.1502-47(d)(12)(vii)	1.1502-47(b)(11)(vii)	return year and even	return year even	Once
1.1502-47(d)(12)(viii)(A)	1.1502-47(b)(11)(viii)(A)	(i.e., total reserves in section 801(c))	(that is, total reserves in section 816(c), as modified by section 816(h))	Once
1.1502-47(d)(12)(viii)(D) and (F)	1.1502-47(b)(11)(viii)(D) and (F), respectively	subdivision (viii)	paragraph (b)(11)(viii)	Once

1.1502-47(d)(14)	1.1502-47(b)(13)	Illustrations	Examples	Once
1.1502-47(d)(14)	1.1502-47(b)(13)	paragraph (d)	paragraph (b)	Once
1.1502-47(d)(14), Example 1	1.1502-47(b)(13)(i)	1913	2012	Once
1.1502-47(d)(14), Examples 2 through 4, 8, 10, and 12	1.1502-47(b)(13)(ii) through (iv), (viii), (x), and (xii), respectively	1974	2012	Each place it appears
1.1502-47(d)(14), Examples 1 through 3	1.1502-47(b)(13)(i) through (iii), respectively	1980	2018	Each place it appears
1.1502-47(d)(14), Examples 1 through 5 and 8 through 13	1.1502-47(b)(13)(i) through (v) and (viii) through (xiii), respectively	1982	2020	Each place it appears
1.1502-47(d)(14), Examples 5 through 7 and 9	1.1502-47(b)(13)(v) through (vii) and (ix), respectively	1983	2021	Each place it appears
1.1502-47(d)(14), Examples 2 through 5 and 8 through 12	1.1502-47(b)(13)(ii) through (v) and (viii) through (xii), respectively	(d)(12)	(b)(11)	Each place it appears
1.1502-47(d)(14), Examples 2, 3, and 12	1.1502-47(b)(13)(ii), (iii), and (xii), respectively	stock casualty	nonlife insurance	Each place it appears

1.1502-47(d)(14), Example 3	1.1502-47(b)(13)(iii)	subparagraph (d)(12)(v)(B) and (E)	paragraph (b)(11)(v)(B) and (D)	Once
1.1502-47(d)(14), Example 3	1.1502-47(b)(13)(iii)	e.g.	for example	Once
1.1502-47(d)(14), Example 5	1.1502-47(b)(13)(v)	i.e.	in other words	Once
1.1502-47(d)(14), Example 12	1.1502-47(b)(13)(xii)	casualty	nonlife insurance	Once
1.1502-47(e)(1)	1.1502-47(c)(1)	life company or an ineligible mutual company.	life company.	Once
1.1502-47(e)(3)	1.1502-47(c)(3)	§ 1.1502-75(c) and paragraph (e)(4) of this section,	§1.1502-75(c),	Once
1.1502-47(f)(3)	1.1502-47(d)(3)	1981	2019	Each place it appears
1.1502-47(f)(3)	1.1502-47(d)(3)	1982	2020	Each place it appears
1.1502-47(f)(3)	1.1502-47(d)(3)	applying §§ 1.1502-13, 1.1502-18, and 1.1502-19	applying §§1.1502-13 and 1.1502-19	Once
1.1502-47(f)(7)(i)	1.1502-47(d)(7)(i)	paragraph (g)	paragraph (e)	Once
1.1502-47(f)(7)(i)	1.1502-47(d)(7)(i)	sections 802(a), 821(a), and 831(a)	sections 801(a) and 831(a)	Once
1.1502-47(g)	1.1502-47(e)	three	two	Once
1.1502-47(g)(1)	1.1502-47(e)(1)	paragraph (h)	paragraph (f)	Once

1.1502-47(g)(1)	1.1502-47(e)(1)	paragraph (n)	paragraph (j)	Once
1.1502-47(g)(1)	1.1502-47(e)(1)	paragraph (g)(1)	paragraph (e)(1)	Once
1.1502-47(g)(2)	1.1502-47(e)(2)	paragraph (j)	paragraph (g)(1)	Once
1.1502-47(g)(2)	1.1502-47(e)(2)	paragraph (m)	paragraph (h)	Once
1.1502-47(g)(2)	1.1502-47(e)(2)	paragraph (g)(2)	paragraph (e)(2)	Once
1.1502-47(h)(1)	1.1502-47(f)(1)	paragraph (h)	paragraph (f)	Once
1.1502-47(h)(1)	1.1502-47(f)(1)	includes separate mutual insurance company taxable income (as defined in section 821(b)) and insurance company taxable income	includes insurance company taxable income	Once
1.1502-47(h)(2)(i)	1.1502-47(f)(2)(i)	§§ 1.1502-21 or 1.1502-21A (as appropriate), the rules in this subparagraph (2)	§1.1502-21, the rules in this paragraph (f)(2)	Once
1.1502-47(h)(2)(ii)	1.1502-47(f)(2)(ii)	§§ 1.1502-21(A)(f) or 1.1502-21(e) (as appropriate)	§1.1502-21(e)	Once
1.1502-47(h)(2)(iv)	1.1502-47(f)(2)(iv)	year beginning after December 31, 1981, §§ 1.1502-21A or 1.1502-21 (as appropriate)	year, §1.1502-21	Once
1.1502-47(h)(2)(iv)	1.1502-47(f)(2)(iv)	nonlife loss	nonlife subgroup loss	Once
1.1502-	1.1502-	subparagraph (2)	paragraph (f)(2)	Once

47(h)(2)(v)	47(f)(2)(v)			
1.1502- 47(h)(4)(i)	1.1502- 47(f)(3)(i)	§§ 1.1502-22 or 1.1502-22A (as appropriate)	§1.1502-22	Once
1.1502- 47(h)(4)(i)	1.1502- 47(f)(3)(i)	subparagraph (4)	paragraph (f)(3)	Once
1.1502- 47(h)(4)(i)	1.1502- 47(f)(3)(i)	§§ 1.1502-22 or 1.1502-22A(a) (as appropriate)	§1.1502-22	Once
1.1502- 47(h)(4)(iii)	1.1502- 47(f)(3)(iii)	§§ 1.1502–22A(b)(1) or 1.1502-22(b)	§1.1502-22(b),	Once
1.1502- 47(h)(4)(iii)(A)	1.1502- 47(f)(3)(iii)(A)	allowed under section 822(c)(6) or section 832(c)(5),	allowed under section 832(c)(5),	Once
1.1502-47(k)(5)	1.1502- 47(g)(3)(ii)	§ § 1.1502-22 or 1.1502-22A (as appropriate)	§1.1502-22	Once
1.1502-47(k)(5)	1.1502- 47(g)(3)(ii)	this subparagraph (5)	this paragraph (g)(3)(ii)	Once
1.1502- 47(k)(5)(ii)	1.1502- 47(g)(3)(ii)(B)	paragraph (k)(5)	paragraph (g)(3)(ii)	Once
1.1502-47(m)	1.1502-47(h)	paragraph (g)	paragraph (e)	Each place it appears
1.1502-47(m)	1.1502-47(h)	paragraph (h)	paragraph (f)	Each place it appears
1.1502-47(m)	1.1502-47(h)	paragraph (l)	paragraph (g)	Each place it appears
1.1502-47(m)	1.1502-47(h)	paragraph (m)	paragraph (h)	Each place it appears
1.1502-	1.1502-	§§ 1502-21 or	§1.1502-21	Once

47(m)(2)(ii)	47(h)(2)(ii)	1.1502-21A (as appropriate)		
1.1502-47(m)(2)(ii)	1.1502-47(h)(2)(ii)	§§ 1.1502-22 or 1.1502-22A (as appropriate)	§1.1502-22	Once
1.1502-47(m)(3)(i)	1.1502-47(h)(3)(i)	But see subdivision (ix) of this paragraph (m)(3)	But see paragraph (h)(3)(ix) of this section	Once
1.1502-47(m)(3)(i)	1.1502-47(h)(3)(i)	arising in separate return years ending after December 31, 1980,	arising in separate return years	Once
1.1502-47(m)(3)(i)	1.1502-47(h)(3)(i)	and 1.1502-22 (or §§ 1.1502-21A and 1.1502-22A, as appropriate).	and 1.1502-22.	Once
1.1502-47(m)(3)(iii)	1.1502-47(h)(3)(iii)	consolidated LO	life consolidated net operating loss	Once
1.1502-47(m)(3)(v)	1.1502-47(h)(3)(v)	GO or TII	taxable income	Once
1.1502-47(m)(3)(v)	1.1502-47(h)(3)(v)	LICTI (as determined under paragraph (j) of this section) for any	LICTI for any	Once
1.1502-47(m)(3)(vi)(A)	1.1502-47(h)(3)(vi)(A)	subparagraph (3)	paragraph (h)(3)	Once
1.1502-47(m)(3)(vii)(A)	1.1502-47(h)(3)(vii)(A)	notwithstanding § 1.1502-21A(b)(3)(ii) or 1.1502-21(b),	notwithstanding §1.1502-21(b),	Once
1.1502-	1.1502-	taxable income	taxable income	Once

47(m)(3)(vii)(A)	47(h)(3)(vii)(A)	for that year.	for that year, subject to the limitation in section 172(a).	
1.1502-47(m)(3)(vii)(B)	1.1502-47(h)(3)(vii)(B)	(A) of this subdivision (vii)	paragraph (h)(3)(vii)(A) of this section	Once
1.1502-47(m)(3)(viii)	1.1502-47(h)(3)(viii)	section 172(b)(3)(C)	section 172(b)(3)	Once
1.1502-47(m)(3)(ix)	1.1502-47(h)(3)(ix)	243(b)(2)	243(b)(3)	Once
1.1502-47(m)(3)(ix)	1.1502-47(h)(3)(ix)	return year ending after December 31, 1980,	return year,	Once
1.1502-47(m)(3)(x)	1.1502-47(h)(3)(x)	LICTI (as defined in paragraph (j) of this section) in the particular	LICTI in the particular	Once
1.1502-47(m)(3)(xii)	1.1502-47(h)(3)(xii)	carryback of a consolidated LO	carryback of a life consolidated net operating loss	Once
1.1502-47(m)(3)(xii)	1.1502-47(h)(3)(xii)	(2) or (4)	(2) or (3)	Once
1.1502-47(m)(5), Examples 1 through 4	1.1502-47(h)(4)(i) through (iv), respectively	1982	2021	Each place it appears
1.1502-47(m)(5), Examples 1 through 4	1.1502-47(h)(4)(i) through (iv), respectively	i.e.	that is	Each place it appears
1.1502-47(m)(5), Example 1	1.1502-47(h)(4)(i)	paragraph (d)(13)	paragraph (b)(12)	Once

1.1502-47(m)(5), Example 1	1.1502-47(h)(4)(i)	attributable to I (an ineligible member)	attributable to I (an ineligible member that is not a nonlife insurance company)	Once
1.1502-47(m)(5), Example 1	1.1502-47(h)(4)(i)	of this section. The result would be	of this section and section 172(a). The result would be	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	of this section or under § 1.1502-15A.	of this section.	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	taxable income is $35	taxable income is $32.5	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	30%	35%	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	(15)	(17.5)	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	(65)	(67.5)	Once
1.1502-47(m)(5), Example 4	1.1502-47(h)(4)(iv)	(85)	(82.5)	Once
1.1502-47(n)	1.1502-47(j)	consolidated LO	life consolidated net operating loss and consolidated operations loss carryovers	Each place it appears
1.1502-47(n)(1)	1.1502-47(j)(1)	paragraph (g)(1)	paragraph (e)(1)	Once
1.1502-47(n)(1)	1.1502-47(j)(1)	paragraph (n)(2)	paragraph (j)(2)	Once

		of this section	of this section, subject to the rules and limitations in paragraph (j)(3) of this section	
1.1502-47(n)(1)	1.1502-47(j)(1)	consolidated net capital loss (as determined under paragraph (l)(4) of this section).	consolidated net capital loss.	Once
1.1502-47(n)(2)	1.1502-47(j)(2)	paragraph (h)	paragraph (f)	Once
1.1502-47(n)(2)	1.1502-47(j)(2)	paragraphs (m)(2) and (3)	paragraphs (h)(2) and (3)	Once
1.1502-47(n)(2)(ii)	1.1502-47(j)(2)(ii)	consolidated partial LICTI	consolidated LICTI	Once
1.1502-47(n)(2)(iii)	1.1502-47(j)(2)(iii)	"paragraph (l)" or "paragraph (j)"	"paragraph (g)"	Once
1.1502-47(n)(2)(iii)	1.1502-47(j)(2)(iii)	paragraph (h)	paragraph (f)	Once
1.1502-47(n)(2)(iv)	1.1502-47(j)(2)(iv)	Paragraphs (m)(3)(vi), (vii), (x), and (xi)	Paragraphs (h)(3)(vi), (vii), (x), and (xi)	Once
1.1502-47(q)	1.1502-47(k)	1.1502-80	1.1502-100	Once
1.1502-47(q)	1.1502-47(k)	paragraph (m)(3)(vi)	paragraph (h)(3)(vi)	Once
1.1502-47(q)	1.1502-47(k)	§§ 1.1502-21A(b)(3) and 1.1502-79A(a)(3) (or § 1.1502-21, as appropriate)	§1.1502-21	Once
1.1502-47(r)	1.1502-47(l)	partial LICTI (or LO)	LICTI (or life consolidated net operating loss)	Once

1.1502-47(r)	1.1502-47(l)	§§ 1.1502-0 - 1.1502-80	§§1.1502-0 through 1.1502-100	Once
1.1502-47(s)(1)(iii)	1.1502-47(m)(1)(iii)	paragraphs (g), (m), and (n)	paragraphs (e), (h), and (j)	Once
1.1502-47(s)(1)(iv)	1.1502-47(m)(1)(iv)	paragraph (h)	paragraph (f)	Once
1.1502-47(s)(1)(v)	1.1502-47(m)(1)(v)	consolidated partial Life	consolidated Life	Once
1.1502-47(s)(1)(v)	1.1502-47(m)(1)(v)	(as defined by paragraph (d)(3) of this section), determined under paragraph (j) of this section,	or life consolidated net operating loss	Once
1.1502-47(t)	1.1502-47(n)(3)	Paragraph (s)	Paragraph (m)	Once
1.1502-47(t)	1.1502-47(n)(3)	paragraph (s)	paragraph (m)	Once

The additions and revisions read as follows:

§1.1502-47 Consolidated returns by life-nonlife groups.

(a) * * *

(2) General method of consolidation--(i) Subgroup method. The regulations adopt a subgroup method to determine consolidated taxable income. One subgroup is the group's nonlife companies. The other subgroup is the group's life insurance companies. Initially, the nonlife subgroup computes nonlife consolidated taxable income and the life subgroup computes consolidated LICTI. A subgroup's income may in effect be reduced by a loss of the other subgroup, subject to the limitations in sections 172 and 1503(c). The life subgroup losses consist of life consolidated net operating loss, consolidated operations loss carryovers from taxable years beginning before January 1, 2018

(consolidated operations loss carryovers), and life consolidated net capital loss. The nonlife subgroup losses consist of nonlife consolidated net operating loss and nonlife consolidated net capital loss. Consolidated taxable income is therefore defined in pertinent part as the sum of nonlife consolidated taxable income and consolidated LICTI, reduced by life subgroup losses and/or nonlife subgroup losses.

(ii) Subgroup loss. A subgroup loss does not actually affect the computation of nonlife consolidated taxable income or consolidated LICTI. It merely constitutes a bottom-line adjustment in reaching consolidated taxable income. Furthermore, the amount of a subgroup's loss, if any, that is eligible to be carried back to a prior taxable year first must be carried back against income of the same subgroup before it may be used as a setoff against the other subgroup's income in the taxable year the loss arose. (See sections 172(b)(1) and 1503(c)(1); see also §1.1502-21(b)). The carryback of losses from one subgroup may not be used to offset income of the other subgroup in the year to which the loss is to be carried. This carryback of one subgroup's loss may "bump" the other subgroup's loss that, in effect, previously reduced the income of the first subgroup. The subgroup's loss that is bumped in appropriate cases may, in effect, reduce a succeeding year's income of either subgroup. This approach gives the group the tax savings of the use of losses, but the bumping rule assures that, insofar as possible, life deductions will be matched against life income and nonlife deductions against nonlife income.

* * * * *

(b) * * *

(1) Life company. The term life company means a life insurance company as defined in section 816 and subject to tax under section 801. Section 816 applies to each company separately.

(2) Life insurance company taxable income. The term life insurance company taxable income or LICTI has the meaning provided in section 801(b).

(3) Group. The term group has the meaning provided in §1.1502-1(a). Unless otherwise indicated in this section, a group's composition is determined without regard to section 1504(b)(2).

(4) Member. The term member has the meaning provided in §1.1502-1(b). A life company is tentatively treated as a member for any taxable year for purposes of determining if it is an eligible corporation under paragraph (b)(10) of this section and, therefore, if it is an includible corporation under section 1504(c)(2). If such a company is eligible and includible (under section 1504(c)(2)), it will actually be treated as a member of the group.

* * * * *

(9) Separate return year. The term separate return year has the meaning provided in §1.1502-1(e). For purposes of this paragraph (b)(9), the term group is defined with regard to section 1504(b)(2) for years in which an election under section 1504(c)(2) is not in effect. Thus, a separate return year includes a taxable year for which that election is not in effect.

(10) Separate return limitation year. Section 1.1502-1(f)(2) provides exceptions to the definition of the term separate return limitation year. For purposes of applying those exceptions to this section, the term group is defined without regard to section

1504(b)(2), and the definition in this paragraph (b)(10) applies separately to the nonlife subgroup in determining nonlife consolidated taxable income under paragraph (f) of this section and to the life subgroup in determining consolidated LICTI under paragraph (g) of this section. Paragraph (h)(3)(ix) of this section defines the term separate return limitation year for purposes of determining whether the losses of one subgroup may be used against the income of the other subgroup.

* * * * *

(12) Ineligible corporation. A corporation that is not an eligible corporation is ineligible. If a life company is ineligible, it is not treated under section 1504(c)(2) as an includible corporation. Losses of a nonlife member arising in years when it is ineligible may not be used under section 1503(c)(2) and paragraph (g) of this section to set off the income of a life member. If a life company is ineligible and is the common parent of the group (without regard to section 1504(b)(2)), the election under section 1504(c)(2) may not be made.

(13) * * *

(i) * * * S_2 must file its own separate return for 2020.

(ii) Example 2. Since 2012, L1 has been a life company owning all the stock of L2. In 2018, L1 transfers assets to S1, a new nonlife insurance company subject to taxation under section 831(a). For 2020, only L1 and L2 are eligible corporations. The tacking rule in paragraph (b)(11)(v) of this section does not apply in 2020 because the old corporation (L1) and the new corporation (S1) do not have the same tax character.

* * * * *

(d) * * *

* * * * *

(5) Dividends received deduction--(i) Dividends received by insurance company. Dividends received by an eligible member insurance company, taxed under either section 801 or section 831, from another eligible member of the group are treated for Federal income tax purposes as if the group did not file a consolidated return. See sections 818(e)(2) and 805(a)(4) for rules regarding a member taxed under section 801, and see sections 832(g) and 832(b)(5)(B) through (E) for rules regarding a member taxed under section 831.

(ii) Other dividends. Dividends received from a life company member of the group that are not subject to paragraph (d)(5)(i) of this section are not included in gross income of the distributee member. See section 1504(c)(2)(B)(i). If the distributee corporation is a nonlife insurance company subject to tax under section 831, the rules of section 832(b)(5)(E) apply.

* * * * *

(7) * * *

(ii) Any taxes described in §1.1502-2 (other than in §1.1502-2(a)(1), (a)(6), and (a)(7)).

* * * * *

(f) * * *

(2) * * *

(iii) Carrybacks. The portion of the nonlife consolidated net operating loss for the nonlife subgroup described in paragraph (f)(2)(vi) of this section, if any, that is eligible to be carried back to prior taxable years under §1.1502-21 is carried back to the appropriate years (whether consolidated or separate) before the nonlife consolidated

net operating loss may be used as a nonlife subgroup loss under paragraphs (e)(2) and (h) of this section to set off consolidated LICTI in the year the loss arose. The election under section 172(b)(3) to relinquish the entire carryback period for the net operating loss of the nonlife subgroup may be made by the agent for the group within the meaning of §1.1502-77.

(v) * * * For limitations on the use of nonlife carryovers to offset nonlife consolidated taxable income or consolidated LICTI, see §1.1502-21(a).

(vi) Portion of nonlife consolidated net operating loss that is carried back to prior taxable years. The portion of the nonlife consolidated net operating loss that (absent an election to waive carrybacks) is carried back to the two preceding taxable years is the sum of the nonlife subgroup's farming loss (within the meaning of section 172(B)(1)(b)(ii)) and the amount of the subgroup's net operating loss that is attributable to nonlife insurance companies (as determined under §1.1502-21). For rules governing the absorption of net operating loss carrybacks, including limitations on the amount of net operating loss carrybacks that may be absorbed in prior taxable years, see §1.1502-21(b).

(vii) Example. P, a holding company that is not an insurance company, owns all of the stock of S, a nonlife insurance company, and L1, a life insurance company. L1 owns all of the stock of L2, a life insurance company. Both L1 and L2 satisfy the eligibility requirements of §1.1502-47(b)(11). Each corporation uses the calendar year as its taxable year and none of P, S, L1 or L2 are engaged in a farming business (within the meaning of section 263A(e)(4)). For 2021, the group first files a consolidated return for which the election under section 1504(c)(2) is effective. P and S filed consolidated

returns for 2019 and 2020. In 2021, the P-S group sustains a nonlife consolidated net operating loss that is attributable entirely to S (see §1.1502-21(b)). The election in 2020 under section 1502(c)(2) does not result under paragraph (d)(1) of this section in the creation of a new group or the termination of the P-S group. The loss is carried back to the consolidated return years 2019 and 2020 of P and S. Pursuant to §1.1502-21(b), the loss may be used to offset S's income in 2019 and 2020 without limitation, and the loss may be used to offset P's income in those years, subject to the limitation in section 172(a) (see §1.1502-21(b)). The portion of the loss not absorbed in 2019 and 2020 may serve as a nonlife subgroup loss in 2021 that may set off the consolidated LICTI of L1 and L2 under paragraphs (e)(2) and (h) of this section.

(3) * * *

(ii) Additional principles. In applying §1.1502-22 to nonlife consolidated net capital loss carryovers and carrybacks, the principles set forth in paragraph (f)(2)(iii) through (v) of this section for applying §1.1502-21 to nonlife consolidated net operating loss carryovers and carrybacks also apply, without regard to the limitation in paragraph (f)(2)(vi) of this section.

* * * * *

(g) Consolidated LICTI--(1) General rule. Consolidated LICTI is the consolidated taxable income of the life subgroup, computed under §1.1502-11 as modified by this paragraph (g).

(2) Life consolidated net operating loss deduction--(i) In general. In applying §1.1502-21, the rules in this paragraph (g)(2) apply in determining for the life subgroup

the life net operating loss and the portion of the life net operating loss carryovers and carrybacks to the taxable year.

(ii) Life CNOL. The life consolidated net operating loss is determined under §1.1502-21(e) by treating the life subgroup as the group.

(iii) Carrybacks--(A) General rule. The portion of the life consolidated net operating loss for the life subgroup, if any, that is eligible to be carried back under §1.1502-21 is carried back to the appropriate years (whether consolidated or separate) before the life consolidated net operating loss may be used as a life subgroup loss under paragraphs (e)(1) and (j) of this section to set off nonlife consolidated taxable income in the year the loss arose. The election under section 172(b)(3) to relinquish the entire carryback period for the consolidated net operating loss of the life subgroup may be made by the common parent of the group.

(B) Special rule for life consolidated net operating losses arising in 2018, 2019, or 2020. If a life consolidated net operating loss arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, is carried back to a life insurance company taxable year beginning before January 1, 2018, then such life consolidated net operating loss is treated as an operations loss carryback (within the meaning of section 810, as in effect prior to its repeal) of such company to such taxable year.

(iv) Subgroup rule. In determining the portion of the life consolidated net operating loss that is absorbed when the loss is carried back to a consolidated return year, §1.1502-21 is applied by treating the life subgroup as the group. Therefore, the absorption is determined without taking into account any nonlife subgroup losses that

were previously reported on a consolidated return as setting off life consolidated taxable income for the year to which the life subgroup loss is carried back.

(v) Carryovers. The portion of the life consolidated net operating loss that is not absorbed in a prior year as a carryback, or as a life subgroup loss that set off nonlife consolidated taxable income for the year the loss arose, constitutes a life carryover under this paragraph (g)(2) to reduce consolidated LICTI before that portion may constitute a life subgroup loss that sets off nonlife consolidated taxable income for that particular year. For limitations on the use of nonlife carryovers to offset nonlife consolidated taxable income or consolidated LICTI, see §1.1502-21(b).

(3) Life consolidated capital gain net income or loss--(i) [Reserved]

* * * * *

(h) * * *

(2) * * *

(ii) * * * Additionally, the amount of consolidated LICTI that may be offset by nonlife consolidated net operating loss carryovers may be subject to limitation (see section 172 and §1.1502-21(a)).

* * * * *

(3) * * *

(iv) * * * The amount of consolidated LICTI that may be offset by nonlife consolidated net operating loss carryovers may be subject to limitation (see section 172 and §1.1502-21(a)).

* * * * *

(4) Examples. The following examples illustrate the principles of this paragraph (h). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)), and each corporation uses the calendar year as its taxable year.

* * * * *

(ii) Example 2. (A) The facts are the same as in paragraph (h)(4)(i) of this section, except that, for 2021, S's separate net operating loss is $200. Assume further that L's consolidated LICTI is $200. Under paragraph (h)(3)(vi) of this section, the offsettable nonlife consolidated net operating loss is $100 (the nonlife consolidated net operating loss computed under paragraph (f)(2)(ii) of this section ($200), reduced by the separate net operating loss of I ($100)). The offsettable nonlife consolidated net operating loss that may be set off against consolidated LICTI in 2021 is $35 (35 percent of the lesser of the offsettable $100 or consolidated LICTI of $200). See section 1503(c)(1) and paragraph (h)(3)(x) of this section. S carries over a loss of $65, and I carries over a loss of $100, to 2022 under paragraph (f)(2) of this section to be used against nonlife consolidated taxable income (consolidated net operating loss ($200) less amount used in 2020 ($35). Under paragraph (h)(2)(ii) of this section, the offsettable nonlife consolidated net operating loss that may be carried to 2022 is $65 ($100 minus $35). The facts and results are summarized in the following table.

Table 1 to paragraph (h)(4)(ii)(A)

(Dollars omitted)

		Facts	Offsettable	Limit	Unused Loss
		(a)	(b)	(c)	(d)
1	P	100			
2	S	(200)	(100)		(65)
3	I	(100)			(100)
4	Nonlife Subgroup	(200)	(100)	(100)	(165)
5	L	200	200		
6	35% of lower of line 4(c) or 5(c)			35	
7	Unused offsettable loss				(65)

(B) Accordingly, under paragraph (e) of this section, consolidated taxable income is $165 (line 5(a) minus line 6(c)).

(iii) Example 3. The facts are the same as in paragraph (h)(4)(ii) of this section, with the following additions for 2022. The nonlife subgroup has nonlife consolidated taxable income of $50 (all of which is attributable to I) before the nonlife consolidated net operating loss deduction under paragraph (f)(2) of this section. Consolidated LICTI is $100. Under paragraph (f)(2) of this section, $50 of the nonlife consolidated net operating loss carryover ($165) is used in 2022 and, under paragraph (h)(3)(vi) and (vii) of this section, the portion used in 2021 is attributable to I, the ineligible nonlife member. Accordingly, the offsettable nonlife consolidated net operating loss from 2021 under paragraph (h)(3)(ii) of this section is $65, the unused loss from 2020. The offsettable nonlife consolidated net operating loss in 2022 is $22.75 (35 percent of the lesser of the offsettable loss of $65 or consolidated LICTI of $100). Accordingly, under paragraph (e) of this section, consolidated taxable income is $77.25 (consolidated LICTI of $100 minus the offsettable loss of $22.75).

* * * * *

(j) * * *

(3) Examples. The following examples illustrate the principles of this paragraph (j). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)), and each corporation uses the calendar year as its taxable year.

(i) Example 1. P, S, L1 and L2 constitute a group that elects under section 1504(c)(2) to file a consolidated return for 2021. In 2021, the nonlife subgroup consolidated taxable income is $100 and there is $20 of nonlife consolidated net capital loss that cannot be carried back under paragraph (f) of this section to taxable years (whether consolidated or separate) preceding 2021. The nonlife subgroup has no carryover from years prior to 2021. The life consolidated net operating loss is $150, which under paragraph (g) of this section includes life consolidated capital gain net income of $25. Since life consolidated capital gain net income is zero for 2021, the nonlife capital loss offset is zero. However, $100 of life consolidated net operating loss sets off the $100 nonlife consolidated taxable income in 2021. The life subgroup carries under paragraph (g)(2) of this section to 2022 $50 of the life consolidated net operating loss ($150 minus $100). The $50 carryover will be used in 2022 (subject to the limitation in section 172(a)) against life subgroup income before it may be used in 2022 to setoff nonlife consolidated taxable income.

(ii) Example 2. The facts are the same as in paragraph (j)(3)(i) of this section, except that, for 2021, the nonlife consolidated taxable income is $150 (this amount is

entirely attributable to S and includes nonlife consolidated capital gain net income of $50), consolidated LICTI is $200, and a life consolidated net capital loss is $50. Assume that the $50 life consolidated net capital loss sets off the $50 nonlife consolidated capital gain net income. Consolidated taxable income under paragraph (e) of this section is $300 (nonlife consolidated taxable income ($150) minus the setoff of the life consolidated net capital loss ($50), plus consolidated LICTI ($200)).

(iii) Example 3. The facts are the same as in paragraph (j)(3)(ii) of this section, except that, for 2022, the nonlife consolidated net operating loss is $150. This entire amount is attributable to S; thus, it is eligible to be carried back to 2021 against nonlife consolidated taxable income under paragraph (f)(2) of this section and §1.1502-21(b). If P, the common parent, does not elect to relinquish the carryback under section 172(b)(3), the entire $150 will be carried back, reducing 2021 nonlife consolidated taxable income to zero and nonlife consolidated capital gain net income to zero. Under paragraph (h)(3)(xii) of this section, the setoff in 2021 of the nonlife consolidated capital gain net income ($50) by the life consolidated net capital loss ($50) is restored. Accordingly, the 2021 life consolidated net capital loss may be carried over by the life subgroup to 2022. Under paragraph (e) of this section, after the carryback, consolidated taxable income for 2021 is $200 (nonlife consolidated taxable income ($0) plus consolidated LICTI ($200)).

(iv) Example 4. The facts are the same as in paragraph (j)(3)(iii) of this section, except that P elects under section 172(b)(3)to relinquish the carryback of $150 arising in 2022. The setoff in Example 2 is not restored. However, the offsettable nonlife consolidated net operating loss for 2022 (or that may be carried over from 2022) is zero. See paragraph (h)(3)(viii) of this section. Nevertheless, the $150 nonlife consolidated net operating loss may be carried over to be used by the nonlife group.

(v) Example 5. P owns all of the stock of S1 and of L1. On January 1, 2017, L1 purchases all of the stock of L2. For 2021, the group elects under section 1504(c)(2) to file a consolidated return. For 2021, L1 is an eligible corporation under paragraph (c)(11) of this section but L2 is ineligible. Thus, L1 but not L2 is a member for 2021. For 2021, L2 sustains a net operating loss, which cannot be carried back (see section 172(b)). For 2021, L2 is treated under paragraph (d)(6) of this section as a member of a controlled group of corporations under section 1563 with P, S, and L1. For 2022, L2 is eligible and is included on the group's consolidated return. L2's net operating loss for 2021 that may be carried to 2022 is not treated under paragraph (b)(10) of this section as having been sustained in a separate return limitation year for purposes of computing consolidated LICTI of the L1-L2 life subgroup for 2022. Furthermore, the portion of L2's net operating loss not used under paragraph (g)(2) of this section against life subgroup income in 2022 may be included in offsettable life consolidated net operating loss under paragraph (j)(2) and (h)(3)(i) of this section that reduces in 2022 nonlife consolidated taxable income (subject to the limitation in section 172(a)) because L2's loss in 2021 was not sustained in a separate return limitation year under paragraph (j)(2) and (h)(3)(ix)(A) of this section or in a separate return year (2021) when an election was not in effect under section 1504(c)(2) or section 243(b)(2).

* * * * *

(n) * * *

(4) The rules of paragraphs (a)(2)(i), (a)(2)(ii), (b)(1) through (b)(4), (b)(9), (b)(10), (b)(12), (b)(13)(ii), (d)(5)(i), (d)(5)(ii), (d)(7)(ii), (f)(2)(iii), (f)(2)(vi), (f)(2)(vii), (f)(3)(ii), (g), (h)(4)(ii), (h)(4)(iii), and (j)(3) of this section apply to taxable years beginning after [EFFECTIVE DATEE OF FINAL RULE].

Douglas W. O'Donnell

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2020-14427 Filed: 7/2/2020 4:15 pm; Publication Date: 7/8/2020]