

in the S stock is reduced from \$200 to \$100 under the investment adjustment system. P's earnings and profits for 1989 are correspondingly reduced by \$100.

(e) *Effective dates*—(1) *General rule.* This section applies with respect to dispositions after January 6, 1987. For dispositions on or after November 19, 1990, however, this section applies only if the stock was deconsolidated (as that term is defined in §1.337(d)-2(b)(2)) before November 19, 1990, and only to the extent the disposition is not subject to §1.337(d)-2 or §1.1502-20.

(2) *Binding contract rule.* For purposes of this paragraph (e), if a corporation became a subsidiary pursuant to a binding written contract entered into before January 6, 1987, and in continuous effect until the corporation became a subsidiary, or a disposition was pursuant to a binding written contract entered into before March 9, 1990, and in continuous effect until the disposition, the date the contract became binding shall be treated as the date the corporation became a subsidiary or as the date of disposition.

(3) *Application of §1.1502-20T to certain transactions*—(i) *In general.* If a group files the certification described in paragraph (e)(3)(ii) of this section, it may apply §1.1502-20T (as contained in the CFR edition revised as of April 1, 1990), to all of its members with respect to all dispositions and deconsolidations by the certifying group to which §1.1502-20T otherwise applied by its terms occurring—

(A) On or after March 9, 1990 (but only if not pursuant to a binding contract described in §1.337(d)-1T(e)(2) (as contained in the CFR edition revised as of April 1, 1990) that was entered into before March 9, 1990); and

(B) Before November 19, 1990 (or thereafter, if pursuant to a binding contract described in §1.1502-20T(g)(3) that was entered into on or after March 9, 1990 and before November 19, 1990).

The certification under this paragraph (e)(3)(i) with respect to the application of §1.1502-20T to any transaction described in this paragraph (e)(3)(i) may not be withdrawn and, if the certification is filed, §1.1502-20T must be applied to all such transactions on all re-

turns (including amended returns) on which such transactions are included.

(ii) *Time and manner of filing certification.* The certification described in paragraph (e)(3)(i) of this section must be made in a separate statement entitled “[insert name and employer identification number of common parent] hereby certifies under §1.337(d)-1 (e)(3) that the group of which it is the common parent is applying §1.1502-20T to all transactions to which that section otherwise applied by its terms.” The statement must be signed by the common parent and filed with the group's income tax return for the taxable year of the first disposition or deconsolidation to which the certification applies. If the separate statement required under this paragraph (e)(3) is to be filed with a return the due date (including extensions) of which is before November 16, 1991, the statement may be filed with an amended return for the year of the disposition or deconsolidation that is filed within 180 days after September 13, 1991. Any other filings required under §1.1502-20T, such as the statement required under §1.1502-20T(f)(5), may be made with the amended return, regardless of whether §1.1502-20T permits such filing by amended return.

[T.D. 8319, 55 FR 49031, Nov. 26, 1990, as amended by T.D. 8364, 56 FR 47389, Sept. 19, 1991; 57 FR 53550, Nov. 12, 1992; T.D. 8560, 59 FR 41674, 41675, Aug. 15, 1994; T.D. 8597, 60 FR 36679, July 18, 1995]

§ 1.337(d)-1T [Reserved]

§ 1.337(d)-2 Loss limitation window period.

(a) *Loss disallowance*—(1) *General rule.* No deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

(2) *Definitions.* For purposes of this section—

(i) The definitions in §1.1502-1 apply.

(ii) *Disposition* means any event in which gain or loss is recognized, in whole or in part.

(3) *Coordination with loss deferral and other disallowance rules.* For purposes of this section, the rules of §1.1502-20(a)(3) apply, with appropriate adjustments to

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reflect differences between the approach of this section and that of § 1.1502-20.

(b) *Basis reduction on deconsolidation*—
(1) *General rule.* If the basis of a member of a consolidated group in a share of stock of a subsidiary exceeds its value immediately before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value. If both a disposition and a deconsolidation occur with respect to a share in the same transaction, paragraph (a) of this section applies and, to the extent necessary to effectuate the purposes of this section, this paragraph (b) applies following the application of paragraph (a) of this section.

(2) *Deconsolidation.* “Deconsolidation” means any event that causes a share of stock of a subsidiary that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

(3) *Value.* “Value” means fair market value.

(4) *Loss within 2 years after basis reduction*—(i) *In general.* If a share is deconsolidated and a direct or indirect disposition of the share occurs within 2 years after the date of the deconsolidation, a separate statement entitled “statement pursuant to § 1.337(d)-2(b)(4)” must be filed with the taxpayer’s return for the year of disposition. If the taxpayer fails to file the statement as required, no deduction is allowed for any loss recognized with respect to the disposition. If the separate statement is required to be filed with a return the due date (including extensions) of which is before January 16, 1991, or with a return due (including extensions) after January 15, 1991 but filed before that date, the statement may be filed with an amended return for the year of the disposition or with the taxpayer’s first subsequent return the due date (including extensions) of which is after January 15, 1991. A disposition after the 2-year period described in this paragraph (b)(4) that is pursuant to an agreement, option, or other arrangement entered into within the 2-year period is treated as a disposition within the 2-year period for purposes of this section.

(ii) *Contents of statement.* The statement required under paragraph (b)(4)(i) of this section must contain—

(A) The name and employer identification number (E.I.N.) of the subsidiary.

(B) The amount of prior basis reduction with respect to the stock of the subsidiary under paragraph (b)(1) of this section.

(C) The basis of the stock of the subsidiary immediately before the disposition.

(D) The amount realized on the disposition.

(E) The amount of the loss recognized on the disposition.

(c) *Allowable loss*—(1) *Application.* This paragraph (c) applies with respect to stock of a subsidiary only if—

(i) Before February 1, 1991, the consolidated group either—

(A) Disposes (in one or more transactions) of its entire equity interest in the subsidiary to persons not related to any member of the consolidated group within the meaning of section 267(b) or section 707(b)(1) (substituting “10 percent” for “50 percent” each place that it appears); or

(B) Sustains a worthless stock loss under section 165(g); and

(ii) A separate statement entitled “allowed loss under § 1.337(d)-2(c)” is filed in accordance with paragraph (c)(3) of this section.

(2) *General rule.* Loss is not disallowed under paragraph (a)(1) of this section and basis is not reduced under paragraph (b)(1) of this section to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset (including stock and securities). Loss or basis may be attributable to the recognition of built-in gain on the disposition of an asset by a prior group. For purposes of this section, gain recognized on the disposition of an asset is built-in gain to the extent attributable, directly or indirectly, in whole or in part, to any excess of value over basis that is reflected, before the disposition of the asset, in the basis of the share, directly or indirectly, in whole or in part, after applying section 1503(e) and other applicable provisions of the Code and regulations.

(3) *Contents of statement and time of filing.* The statement required under paragraph (c)(1)(ii) of this section must be filed with the taxpayer's return for the year of the disposition or deconsolidation, and must contain—

(i) The name and employer identification number (E.I.N.) of the subsidiary.

(ii) The basis of the stock of the subsidiary immediately before the disposition or deconsolidation.

(iii) The amount realized on the disposition and the amount of fair market value on the deconsolidation.

(iv) The amount of the deduction not disallowed under paragraph (a)(1) of this section by reason of this paragraph (c) and the amount of basis not reduced under paragraph (b)(1) of this section by reason of this paragraph (c).

(v) The amount of loss disallowed under paragraph (a)(1) of this section and the amount of basis reduced under paragraph (b)(1) of this section.

If the separate statement is required to be filed with a return the due date (including extensions) of which is before January 16, 1991, or with a return due (including extensions) after January 15, 1991 but filed before that date, the statement may be filed with an amended return for the year of the disposition or deconsolidation or with the taxpayer's first subsequent return the due date (including extensions) of which is after January 15, 1991.

(4) *Example.* The principles of paragraphs (a), (b), and (c) of this section are illustrated by the examples in §§1.337(d)-1(a) and 1.1502-20(a) (other than *Examples 3, 4, and 5*) and (b), with appropriate adjustments to reflect differences between the approach of this section and that of §1.1502-20, and by the following example. For purposes of the examples in this section, unless otherwise stated, the group files consolidated returns on a calendar year basis, the facts set forth the only corporate activity, and all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same for determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. *Investment adjustment system* means the rules of §1.1502-32.

Example. Loss offsetting built-in gain in a prior group. (i) P buys all the stock of T for \$50 in Year 1, and T becomes a member of the P group. T has 2 assets. Asset 1 has a basis of \$50 and a value of \$0, and asset 2 has a basis of \$0 and a value of \$50. T sells asset 2 during Year 3 for \$50, and recognizes a \$50 gain. Under the investment adjustment system, P's basis in the T stock increases to \$100 as a result of the recognition of gain. In year 5, all of the stock of P is acquired by the P1 group, and the former members of the P group become members of the P1 group. T then sells asset 1 for \$0, and recognizes a \$50 loss. Under the investment adjustment system, P's basis in the T stock decreases to \$50 as a result of the loss. T's assets decline in value from \$50 to \$40. P then sells all the stock of T for \$40 and recognizes a \$10 loss.

(ii) P's basis in the T stock reflects both T's unrecognized gain and unrecognized loss with respect to its assets. The gain T recognizes on the disposition of asset 2 is built-in gain with respect to both the P and the P1 groups for purposes of paragraph (c)(2) of this section. In addition, the loss T recognizes on the disposition of asset 2 is built-in loss with respect to the P and P1 groups for purposes of paragraph (c)(2) of this section. T's recognition of the built-in loss while a member of the P1 group offsets the effect on T's stock basis of T's recognition of the built-in gain while a member of the P group. Thus, P's \$10 loss on the sale of the T stock is not attributable to the recognition of built-in gain, and the loss is therefore not disallowed under paragraph (c)(2) of this section.

(iii) The result would be the same if, instead of having a \$50 built-in loss in asset 2 when it becomes a member of the P group, T has a \$50 net operating loss carryover and the carryover is used by the P group.

(d) *Successors.* For purposes of this section, the rules and examples of §1.1502-20(d) apply, with appropriate adjustments to reflect differences between the approach of this section and that of §1.1502-20.

(e) *Anti-avoidance rules.* For purposes of this section, the rules and examples of §1.1502-20(e) apply, with appropriate adjustments to reflect differences between the approach of this section and that of §1.1502-20.

(f) *Investment adjustments and earnings and profits.* For purposes of this section, the rules and examples of §1.1502-20 (f) apply, with appropriate adjustments to reflect differences between the approach of this section and that of §1.1502-20.

(g) *Effective dates—(1) General rule.* Except as otherwise provided in this

paragraph (g), this section applies with respect to dispositions and deconsolidations on or after November 19, 1990, but only to the extent the disposition or deconsolidation is not subject to §1.1502-20. For this purpose, dispositions deferred under §§1.1502-13 and 1.1502-14 (as contained in the 26 CFR part 1 edition revised as of April 1, 1995) are deemed to occur at the time the deferred gain or loss is taken into account unless the stock was deconsolidated before November 19, 1990. If stock of a subsidiary became worthless during a taxable year including November 19, 1990, the disposition with respect to the stock is treated as occurring on the date the stock became worthless.

(2) *Binding contract rule.* For purposes of this paragraph (g), if a disposition or deconsolidation is pursuant to a binding written contract entered into before March 9, 1990, and in continuous effect until the disposition or deconsolidation, the date the contract became binding is treated as the date of the disposition or deconsolidation.

(3) *Application of §1.1502-20T to certain transactions—(i) In general.* If a group files the certification described in paragraph (g)(3)(ii) of this section, it may apply §1.1502-20T (as contained in the CFR edition revised as of April 1, 1990), to all of its members with respect to all dispositions and deconsolidations by the certifying group to which §1.1502-20T otherwise applied by its terms occurring—

(A) On or after March 9, 1990 (but only if not pursuant to a binding contract described in §1.337(d)-1T(e)(2) (as contained in the CFR edition revised as of April 1, 1990) that was entered into before March 9, 1990); and

(B) Before November 19, 1990 (or thereafter, if pursuant to a binding contract described in §1.1502-20T(g)(3) that was entered into on or after March 9, 1990 and before November 19, 1990).

The certification under this paragraph (g)(3)(i) with respect to the application of §1.1502-20T to any transaction described in this paragraph (g)(3)(i) may not be withdrawn and, if the certification is filed, §1.1502-20T must be applied to all such transactions on all re-

turns (including amended returns) on which such transactions are included.

(ii) *Time and manner of filing certification.* The certification described in paragraph (g)(3)(i) of this section must be made in a separate statement entitled “[insert name and employer identification number of common parent] hereby certifies under §1.337(d)-2(g)(3) that the group of which it is the common parent is applying §1.1502-20T to all transactions to which that section otherwise applied by its terms.” The statement must be signed by the common parent and filed with the group’s income tax return for the taxable year of the first disposition or deconsolidation to which the certification applies. If the separate statement required under this paragraph (g)(3) is to be filed with a return the due date (including extensions) of which is before November 16, 1991, the statement may be filed with an amended return for the year of the disposition or deconsolidation that is filed within 180 days after September 13, 1991. Any other filings required under §1.1502-20T, such as the statement required under §1.1502-20T(f)(5), may be made with the amended return, regardless of whether §1.1502-20T permits such filing by amended return.

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§ 1.337(d)-4 Taxable to tax-exempt.

(a) *Gain or loss recognition—(1) General rule.* Except as provided in paragraph (b) of this section, if a taxable corporation transfers all or substantially all of its assets to one or more tax-exempt entities, the taxable corporation must recognize gain or loss immediately before the transfer as if the assets transferred were sold at their fair market values. But see section 267 and paragraph (d) of this section concerning limitations on the recognition of loss.

(2) *Change in corporation’s tax status treated as asset transfer.* Except as provided in paragraphs (a)(3) and (b) of this section, a taxable corporation’s change in status to a tax-exempt entity will be treated as if it transferred all of its assets to a tax-exempt entity immediately before the change in status