

§ 1.1502-43

26 CFR Ch. I (4-1-02 Edition)

	1983	1984	1985
NT .....	0	40	(40)

(b) At the close of 1983, T's tentative taxable income is \$100. For 1985, however, the group has a consolidated net operating loss of \$40, all of which is attributable to NT's functionally related activities and which is carried back to 1983. However, T's tentative taxable income for 1983 is not reduced under paragraph (f)(1)(iv) of this section, since, under paragraph (f)(4)(iv) of this section, NT's 1984 income attributable to functionally related activities of \$40 is netted against that \$40 carryback.

*Example (4).* (a) In 1983, corporations T1, T2, NT1, and NT2 are formed. For calendar years 1983, 1984, and 1985, the affiliated group consisting of T1, T2, NT1, and NT2 filed a consolidated return. NT1 provided computer services to T1 as its sole activity. The tentative taxable income of each member (before the application of paragraph (f) of this section) is as follows:

	1983	1984	1985
T1 .....	(50)	100	30
T2 .....	(50)	(80)	(25)
NT1 .....	(50)	(40)	(99)
NT2 .....	120	30	100

(b) For 1983, the group has a consolidated net operating loss of \$30, apportioned \$10 each to T1, T2, and NT1 under §1.1502-79A(a)(3). For 1984, the only thrift with tentative taxable income greater than zero (before applying paragraph (f) of this section) is T1. That tentative taxable income of \$100 is first reduced to \$20 by T2's \$80 1984 loss under paragraph (f)(1)(i) of this section. Next, T1's remaining tentative taxable income of \$20 is reduced to \$10 by the portions attributable to T1 and T2 of the 1983 consolidated net operating loss carryover to 1984 under paragraph (f)(1)(ii) of this section. The sum of those portions is limited to \$10 (i.e., \$5 each) by paragraph (f)(4)(iii) of this section because 1984 consolidated taxable income available for absorption after a bad debt deduction under section 593(b) (other than paragraph (2) thereof) for each thrift member for that year is \$10. For that reason, paragraph (f)(4)(iii) of this section also prevents any further portion of that carryover from being taken into account in 1984 as a reduction under paragraph (f)(1) of this section. T1's remaining tentative taxable income of \$10 is reduced to zero, under paragraph (f)(1)(iii) of this section, by NT1's 1984 tentative taxable loss.

(c) For 1985, the only thrift with tentative taxable income greater than zero (before applying paragraph (f) of this section) is T1. T1's tentative taxable income for 1985 of \$30 is reduced to \$5 by T2's 1985 loss of \$25 under paragraph (f)(1)(i) of this section. Next, the

portions attributable to T1 and T2 of the consolidated net operating loss carryover from 1983 to 1985 for purposes of paragraph (f)(1)(ii) of this section must be determined. That determination is made without applying the rules for loss absorption in computing consolidated taxable income under §1.1502-21A(b)(3). Those portions are instead determined in 3 steps under paragraph (f)(4)(i) of this section. The first of those steps is to determine each of T1's and T2's attributable portions of the 1983 consolidated net operating loss which under §1.1502-79A(a)(3) is \$10 or \$20 for both thrifts. The second of those steps is to apply the anti-double counting rule under paragraph (h)(3)(iii) of this section to reduce that \$20 amount by the \$10 total of the two \$5 portions attributable to T1 and T2 of the consolidated net operating loss carryover from 1983 to 1984 taken into account as reductions to T1's tentative taxable income for 1984 under paragraph (f)(1)(ii) of this section. That leaves a \$10 total amount available to be taken into account as reductions to T1's remaining tentative taxable income of \$5 for 1985 under paragraph (f)(1)(ii) of this section. Under the third of those steps that \$10 amount, however, is limited, under the loss absorption limit of paragraph (f)(4)(iii) of this section, to the \$6 of the 1983 consolidated net operating loss carryover to 1985 which is absorbed in computing consolidated taxable income for 1985 since 1985 consolidated taxable income available for absorption after a bad debt deduction under section 593(b) (other than paragraph (2) thereof) for that year is \$6 (i.e., \$30+\$100-\$99-\$25). Because separate taxable income cannot be reduced below zero under paragraph (f)(1) of this section, T1's remaining tentative taxable income of \$5 is thus reduced to zero by the portions attributable to T1 and T2, respectively, of the consolidated net operating loss carryover from 1983 to 1985 under paragraph (f)(1)(ii) of this section.

(Sec. 1502, 7805, Internal Revenue Code of 1954 (68A Stat. 367 and 917; 26 U.S.C. 1502 and 7805))

[T.D. 7637, 44 FR 46841, Aug. 9, 1979, as amended by T.D. 7815, 47 FR 11516, Mar. 17, 1982; T.D. 7876, 48 FR 11258, Mar. 17, 1983; 48 FR 13165, Mar. 30, 1983; T.D. 8677, 61 FR 33324, June 27, 1996; T.D. 8823, 64 FR 36100, July 2, 1999]

**§ 1.1502-43 Consolidated accumulated earnings tax.**

(a) *Group subject to tax—(1) General rule.* For a group filing a consolidated return for the taxable year, the accumulated earnings tax under section 531 is imposed on consolidated accumulated taxable income (as defined in

paragraph (b) of this section). This tax applies to any group that is formed or availed of to avoid or prevent the imposition of the individual income tax on the shareholders of either any of its members or any other corporation by permitting earnings and profits to accumulate instead of dividing or distributing them. Section 531 and this section do not apply to a group that is treated as a “personal holding company” under section 542(a)(1) as a result of the application of section 542(b)(1). Special rules are provided in this section for other groups which include one or more personal holding companies.

(2) *Evidence of purpose to avoid income tax.* (i) Under section 533(a), the fact that the group’s earnings and profits are permitted to accumulate beyond the reasonable needs of its business is determinative of the purpose to avoid the income tax with respect to shareholders, unless the group by the preponderance of the evidence proves to the contrary.

(ii) The fact that a group is a mere holding or investment group is prima facie evidence of the group’s purpose to avoid the income tax with respect to the shareholders. The activities of a member which is a personal holding company are not taken into account in determining if the group is a mere holding or investment group.

(3) *Earnings and profits.* For purposes of this paragraph (a) and paragraph (d) of this section, the following rules apply:

(i) If no member of the group is a personal holding company, the group’s earnings and profits are the aggregate of the earnings and profits (or deficit) of each corporation that is a member at the close of the taxable year, determined in accordance with §1.1502-33.

(ii) Earnings and profits resulting from the application of §1.1502-33(b) are not taken into account.

(iii) Earnings and profits resulting from the disposition of a member’s stock are determined without regard to the stock basis adjustments under §§1.1502-32 and 1.1502-33(c)(1).

(4) *Reasonable needs of the business.* The reasonable needs of the group’s business include the reasonable needs of the business of any corporation

(other than a personal holding company) that is a member at the close of the taxable year. Thus, the earnings and profits of one member may be accumulated with respect to the reasonable business needs of another member. If under §1.537-3(b) the business of a nonmember corporation is considered the business of a member, then the earnings and profits of any member may be accumulated with respect to such nonmember’s reasonable business needs.

(5) *Burden of proof.* The notification described in section 534(b) and the statement described in section 534(c) are made to or by the common parent corporation in accordance with §1.1502-77.

(b) *Consolidated accumulated taxable income—(1) In general.* “Consolidated accumulated taxable income” is the group’s consolidated taxable income determined under §1.1502-11 adjusted in the manner provided in paragraph (b)(2) of this section, minus the sum of—

(i) The consolidated dividends paid deduction determined under paragraph (c) of this section and

(ii) The consolidated accumulated earnings credit determined under paragraph (d) of this section.

(2) *Adjustments to consolidated taxable income.* For purposes of paragraph (b)(1) of this section, consolidated taxable income is adjusted as follows:

(i) Under section 535(b)(1), the deduction for taxes is the excess of—

(A) The consolidated liability for tax determined without §1.1502-2 (b) through (d) and without the foreign tax credit provided by section 33, over

(B) The consolidated foreign tax credit determined pursuant to §1.1502-4. Foreign taxes deductible under §1.535-2(a)(2) are also allowed as a deduction under section 535(b)(1).

(ii) The consolidated charitable contributions deduction under §1.1502-24 does not apply. Under section 535(b)(2), there shall be allowed the aggregate charitable contributions of the members allowable under section 170, determined without section 170 (b)(2) and (d)(2).

(iii) Under section 535(b)(3), the deductions provided in §§1.1502-26 and 1.1502-27 are not allowed.

(iv) Under section 535(b)(4), the consolidated net operating loss deduction described in §§1.1502-21(a) or 1.1502-21A(a), as appropriate is not allowed.

(v) Under section 535(b)(5), there is allowed as a deduction the consolidated net capital loss, determined under §§1.1502-22(a) or 1.1502-22A(a), as appropriate.

(vi) Under section 535(b)(6), there is allowed as a deduction an amount equal to (A) the excess of the consolidated net long-term capital gain (determined under §§1.1502-22(a) or 1.1502-41A, as appropriate over the consolidated net short-term capital loss (determined under §§1.1502-22T(a) or 1.1502-41A, as appropriate), minus (B) the taxes attributable to this excess. This consolidated net short-term capital loss is determined without the consolidated net capital loss carryovers or carrybacks to the taxable year.

(vii) Under section 535(b)(7), the consolidated net capital loss carryovers and carrybacks are not allowed. See §§1.1502-22(b) or 1.1502-22A(b), as appropriate.

(viii) Sections 1.1502-15A (Limitations on built-in deductions not subject to §1.1502-15) and 1.1502-15 do not apply.

(3) *Personal holding company a member.* If a member is a personal holding company for the taxable year—

(i) [Reserved]

(ii) In applying paragraph (b)(2)(i) of this section, consolidated liability for tax (as determined under that paragraph (b)(2)(i)) is reduced by the portion thereof allocable to that member under section 1552(a) (1), (2), (3), or (4) (or §1.1502-33(d)), whichever is applicable. The consolidated foreign tax credit is computed by excluding the taxable income and any foreign taxes paid or accrued by that member, and foreign taxes deductible under §1.535-2(a)(2) do not include foreign taxes attributable to that member.

(c) *Consolidated dividends paid deduction—(1) General rule.* For purposes of this section, the consolidated dividends paid deduction is the aggregate of the members' deductions under section 561(a) (1) and (2). This deduction is determined by excluding deductions for dividends paid to other members.

(2) *Exception for certain personal holding companies.* [Reserved]

(3) *Dividends paid defined.* For purposes of this paragraph (c), “dividends paid” and “dividend (or portion thereof) paid” include amounts treated as dividends paid during the taxable year under sections 562(b)(1), 563, and 565 (relating respectively to liquidating distributions, dividends paid after year end, and consent dividends).

(4) *Examples.* This paragraph (c) can be illustrated by the following examples:

*Example (1).* Corporations P and S constitute an affiliated group which files a consolidated return on a calendar year basis for 1984 and 1985. P owns all of S's stock and two individuals own all of P's stock. Neither member of the group is a personal holding company for 1984. Assume that on December 15, 1984, S pays a dividend (as defined in section 316 (a)) of \$2,000 to P, and P pays a dividend (as so defined) of \$3,000 on January 15, 1985, to its individual shareholders. All dividends are paid in cash and are pro rata with no preference as to any shares or class of stock. For purposes of this paragraph (c), the consolidated dividends paid deduction for 1984 is \$3,000, *i.e.*, the dividend paid on January 15, 1985, by P to its nonmember shareholders. See section 563 (a). The \$2,000 dividend paid by S to P is not taken into account in computing the consolidated dividends paid deduction.

*Example (2)* [Reserved]

(d) *Consolidated accumulated earnings credit.* [Reserved]

[T.D. 7937, 49 FR 3462, Jan. 27, 1984, as amended by T.D. 8560, 59 FR 41674, Aug. 15, 1994; T.D. 8677, 61 FR 33324, June 27, 1996; T.D. 8560, 62 FR 12098, Mar. 14, 1997; T.D. 8823, 64 FR 36100, July 2, 1999]

**§1.1502-44 Percentage depletion for independent producers and royalty owners.**

(a) *In general.* The sum of the percentage depletion deductions for the taxable year for all oil or gas property owned by all members, plus any carryovers under section 613A(d)(1) or paragraph (d) of this section from a prior taxable year, may not exceed 65 percent of the group's adjusted consolidated taxable income (under paragraph (b) of this section) for the consolidated return year.

(b) *Adjusted consolidated taxable income.* For purposes of this section, adjusted consolidated taxable income is an amount (not less than zero) equal to