

paragraph (b)(1)(i) of this section, if P is treated as disposing of a share of S's stock as a result of the application of § 1.1502-19(c)(1)(iii)(B), the aggregate amount of its excess loss account in the shares of S's stock that P takes into account as income or gain from the disposition shall not exceed the amount of S's indebtedness that is discharged that is neither included in gross income nor treated as tax-exempt income under § 1.1502-32T(b)(3)(ii)(C)(1). If more than one share of S's stock has an excess loss account, such excess loss accounts shall be taken into account pursuant to the preceding sentence, to the extent possible, in a manner that equalizes the excess loss accounts in S's shares that have an excess loss account.

(iii) *Treatment of disposition.* Except as provided in § 1.1502-19(b)(4), the disposition is treated as a sale or exchange for purposes of determining the character of the income or gain.

(b)(2) through (h)(2)(i) [Reserved]. For further guidance, see § 1.1502-19(b)(2) through (h)(2)(i).

(h)(2)(ii) *Application of special limitation.* If P was treated as disposing of stock of S because S was treated as worthless as a result of the application of § 1.1502-19(c)(1)(iii)(B) after August 29, 2003 and in a consolidated return year beginning on or after January 1, 1995, the amount of P's income, gain, deduction, or loss, and the stock basis reflected in that amount, are determined or redetermined with regard to paragraph (b)(1)(ii) of this section. If P was treated as disposing of stock of S because S was treated as worthless as a result of the application of § 1.1502-19(c)(1)(iii)(B) on or before August 29, 2003 and in a consolidated return year beginning on or after January 1, 1995, the group may determine or redetermine the amount of P's income, gain, deduction, or loss, and the stock basis reflected in that amount with regard to paragraph (b)(1)(ii) of this section.

(h)(2)(iii) through (h)(3) [Reserved]. For further guidance, see § 1.1502-19(h)(2)(iii) through (h)(3).

■ **Par. 4.** Section 1.1502-21 is amended as follows:

■ 1. Paragraphs (b)(2)(iv) and (c)(2)(vii) are revised.

■ 2. Paragraphs (h)(6) and (h)(7) are redesignated as paragraphs (h)(7) and (h)(8).

■ 3. New paragraph (h)(6) is added.

■ 4. Newly designated paragraph (h)(8) is revised.

The revision and additions read as follows:

#### § 1.1502-21 Net operating losses.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) [Reserved]. For further guidance, see § 1.1502-21T(b)(2)(iv).

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(vii) [Reserved]. For further guidance, see § 1.1502-21T(c)(2)(vii).

\* \* \* \* \*

(h) \* \* \*

(6) [Reserved]. For further guidance, see § 1.1502-21T(h)(6).

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(8) [Reserved]. For further guidance, see § 1.1502-21T(h)(8).

■ **Par. 5.** Section 1.1502-21T is amended as follows:

■ 1. Paragraphs (b)(1) through (b)(3)(ii)(B) are revised.

■ 2. Paragraphs (c) through (h)(7) are revised.

■ 3. Paragraph (h)(8) is added.

The revisions and addition read as follows:

#### § 1.1502-21T Net operating losses (temporary).

\* \* \* \* \*

(b) \* \* \* (1) *Carryovers and carrybacks generally.* The net operating loss carryovers and carrybacks to a taxable year are determined under the principles of 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, the amount of any CNOL absorbed by the group in any year is apportioned among members based on the percentage of the CNOL 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, e.g., 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 § 1.1502-21(c)(1)(iii), *Example 2*, for an illustration of pro rata absorption of losses subject to a SRLY limitation. See paragraph (b)(3)(v) of this section regarding the treatment of any loss that is treated as expired under § 1.1502-35T(f)(1).

(2) (i) through (iii) [Reserved]. For further guidance, see § 1.1502-21(b)(2) (i) through (iii).

(iv) *Operating rules—(A) Amount of CNOL attributable to a member.* The amount of a CNOL that is attributable to a member shall equal the product of the CNOL and the percentage of the CNOL attributable to such member.

(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 attributable to a member shall equal the separate net operating loss of the member for the year of the loss divided by the sum of the separate net operating losses for that year of all members having such losses. 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 taxable year (whether or not absorbed by the member).

(2) *Special rule.* If during a taxable year either a member realizes discharge of indebtedness income that is excluded from gross income under section 108(a) and such amount reduces any portion of the CNOL attributable to such member pursuant to section 108 and § 1.1502-28T, or a member that had a separate net operating loss for the year of the CNOL ceases to be a member, the percentage of the CNOL attributable to each member as of the first day of the following taxable year shall be recomputed. In addition, if a portion of the CNOL attributable to a member for a taxable year is carried back to a separate return year, the percentage of the CNOL attributable to each member as of the first day of the taxable year following the taxable year of the CNOL shall be recomputed. In each case, such recomputed percentage shall equal the unabsorbed CNOL attributable to the member on the first day of the following taxable year divided by the sum of the unabsorbed CNOL attributable to all of the members on the first day of the following taxable year. For purposes of the preceding sentence, a CNOL that is reduced pursuant to section 108 and § 1.1502-28T or that is otherwise permanently disallowed or eliminated shall be treated as absorbed.

(b)(2)(v) through (b)(3)(ii)(B) [Reserved]. For further guidance, see § 1.1502-21(b)(2)(v) through (b)(3)(ii)(B).

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(c)(1) through (c)(2)(vi) [Reserved]. For further guidance, see § 1.1502-21(c)(1) through (c)(2)(vi).

(vii) *Corporations that leave a SRLY subgroup.* If a loss member ceases to be affiliated with a SRLY subgroup, the amount of the member's remaining