

SRLY loss from a specific year is determined pursuant to the principles of § 1.1502–21(b)(2)(ii)(A) and § 1.1502–21T(b)(2)(iv).

(c)(2)(viii) through (h)(5) [Reserved]. For further guidance, see § 1.1502–21(c)(2)(viii) through (h)(5).

(6) *Certain prior periods.* Paragraphs (b)(1), (b)(2)(iv), and (c)(2)(vii) of this section shall only apply to taxable years the original return for which the due date (without extensions) is after August 29, 2003. For taxable years the original return for which the due date (without extensions) is on or before August 29, 2003, see paragraphs (b)(1), (b)(2)(iv), and (c)(2)(vii) of § 1.1502–21 and paragraph (b)(1) of § 1.1502–21T as contained in 26 CFR part 1 revised April 1, 2003.

(7) [Reserved]. For further guidance, see § 1.1502–21(h)(7).

(8) *Losses treated as expired under § 1.1502–35T(f)(1).* Paragraph (b)(3)(v) of this section is effective for losses treated as expired under § 1.1502–35T(f)(1) on and after March 7, 2002, and no later than March 11, 2006.

■ **Par. 6.** Section 1.1502–28T is added to read as follows:

§ 1.1502–28T Consolidated section 108 (temporary).

(a) *In general.* This section sets forth rules for the application of section 108(a) and the reduction of tax attributes pursuant to section 108(b) when a member of the group realizes discharge of indebtedness income that is excluded from gross income under section 108(a) (excluded COD income).

(1) *Application of section 108(a).* Section 108(a)(1)(B) is applied separately to each member that realizes excluded COD income. Therefore, the limitation of section 108(a)(3) on the amount of discharge of indebtedness income that is treated as excluded COD income is determined based on the assets (including stock and securities of other members) and liabilities (including liabilities to other members) of only the member that realizes excluded COD income.

(2) *Reduction of tax attributes attributable to the debtor—(i) In general.* With respect to a member that realizes excluded COD income in a taxable year, the tax attributes attributable to that member (and its direct and indirect subsidiaries to the extent required by section 1017(b)(3)(D) and paragraph (a)(3) of this section), including basis of assets and losses and credits arising in separate return limitation years, shall be reduced as provided in sections 108 and 1017 and this section. Basis of subsidiary stock, however, shall not be reduced below zero.

(ii) *Consolidated tax attributes attributable to a member.* For purposes of this section, the amount of a consolidated tax attribute that is attributable to a member shall be determined pursuant to the principles of § 1.1502–21T(b)(2)(iv). In addition, if the member is a member of a separate return limitation year subgroup, the amount of a tax attribute that arose in a separate return limitation year that is attributable to that member shall also be determined pursuant to the principles of § 1.1502–21T(b)(2)(iv).

(3) *Look-through rules—(i) Priority of section 1017(b)(3)(D).* If a member treats stock of a subsidiary as depreciable property pursuant to section 1017(b)(3)(D), the basis of the depreciable property of such subsidiary shall be reduced pursuant to section 1017(b)(3)(D) prior to the application of paragraph (a)(3)(ii) of this section.

(ii) *Application of additional look-through rule.* If the basis of stock of a member (the lower-tier member) that is owned by another member is reduced pursuant to section 108, section 1017, and paragraph (a)(2) of this section (but not as a result of treating subsidiary stock as depreciable property pursuant to section 1017(b)(3)(D)), solely for purposes of sections 108 and 1017 and this section other than paragraphs (a)(4) and (b)(1) of this section, the lower-tier member shall be treated as realizing excluded COD income. The amount of such excluded COD income shall be the amount of such basis reduction. Accordingly, the tax attributes attributable to such lower-tier member shall be reduced as provided in sections 108 and 1017 and this section. To the extent that the excluded COD income realized by the lower-tier member pursuant to this paragraph (a)(3) does not reduce a tax attribute attributable to the lower-tier member, such excluded COD income shall not be applied to reduce tax attributes attributable to any member under paragraph (a)(4) of this section.

(4) *Reduction of certain tax attributes attributable to other members.* To the extent that, pursuant to paragraph (a)(2) of this section, the excluded COD income is not applied to reduce the tax attributes attributable to the member that realizes the excluded COD income, after the application of paragraph (a)(3) of this section, such amount shall be applied to reduce the remaining consolidated tax attributes of the group as provided in section 108 and this section. Such amount also shall be applied to reduce the tax attributes attributable to members that arose (or are treated as arising) in a separate return limitation year to the extent that

the member that realizes excluded COD income is a member of the separate return limitation year subgroup with respect to such attribute. The reduction of each tax attribute pursuant to the two preceding sentences shall be made in the order prescribed in section 108 and pursuant to § 1.1502–21T(b)(1). Except to the extent that the member that realizes excluded COD income is a member of the separate return limitation year subgroup with respect to a tax attribute that arose (or is treated as arising) in a separate return limitation year, such attribute is not subject to reduction pursuant to this paragraph (a)(4). In addition, basis in assets is not subject to reduction pursuant to this paragraph (a)(4). Finally, to the extent that the realization of excluded COD income by a member pursuant to paragraph (a)(3) does not reduce a tax attribute attributable to such lower-tier member, such excess shall not be applied to reduce tax attributes attributable to any member pursuant to this paragraph (a)(4).

(b) *Special rules—(1) Multiple debtor members—(i) Reduction of tax attributes attributable to debtor members prior to reduction of consolidated tax attributes.* If in a single taxable year multiple members realize excluded COD income, paragraphs (a)(2) and (3) of this section shall apply with respect to the excluded COD income of each such member prior to the application of paragraph (a)(4) of this section.

(ii) *Reduction of higher-tier debtor's tax attributes.* If in a single taxable year multiple members realize excluded COD income and one such member is a higher-tier member of another such member, paragraphs (a)(2) and (3) of this section shall be applied with respect to the excluded COD income of the higher-tier member before such paragraphs are applied to the excluded COD income of the other such member. A member (the first member) is a higher-tier member of another member (the second member) if the first member is the common parent or investment adjustments under § 1.1502–32 or § 1.1502–32T with respect to the stock of the second member would affect investment adjustments with respect to the stock of the first member.

(iii) *Reduction of additional tax attributes.* If more than one member realizes excluded COD income that has not been applied to reduce a tax attribute attributable to such member (the remaining COD amount) and the remaining tax attributes available for reduction under paragraph (a)(4) of this section are less than the aggregate of the remaining COD amounts, after the application of paragraph (a)(2) of this