Section 1502.—Regulations

26 CFR 1.1502–9: Consolidated overall foreign losses and separate limitation losses.

T.D. 8833

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 602

Consolidated Returns—Consolidated Overall Foreign Losses and Separate Limitation Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final consolidated return regulations relating to the treatment of overall foreign losses and separate limitation losses in the computation of the foreign tax credit limitation. The regulations replace existing guidance with respect to overall foreign losses and provide guidance with respect to separate limitation losses. These regulations affect consolidated groups that compute the foreign tax credit limitation or that dispose of property used in a foreign trade or business.

DATES: *Effective Date:* These regulations are effective August 11, 1999.

Applicability Dates: For dates of applicability of these regulations, see §§1.1502–9A(a)(1) and (b)(1) and 1.1502–9(e).

FOR FURTHER INFORMATION CONTACT: Trina Dang of the Office of Associate Chief Counsel (International), (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under the control number 1545–1634. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

The estimated annual burden per respondent is 1.5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service,** Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the **Office of Management and Budget,** Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained so long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 29, 1998, the IRS and Treasury published in the **Federal Register** (REG–106902–98, 63 F.R. 71589 [1999–8 I.R.B. 57]) a notice of proposed rulemaking modifying the rules relating to the treatment of overall foreign loss (OFL) accounts, and providing new rules relating to the treatment of separate limitation loss (SLL) accounts. The regulations proposed to replace the notional account method for allocating a group's consolidated OFL (COFL) account to a departing member of a group with an asset-based method for allocating both OFLs and SLLs. The regulations also proposed to modify the section 904(f)(3) and (5)(F) disposition rules in the case of intercompany transactions, and to provide computational rules and nomenclature for SLLs as well as OFLs.

A public hearing was held on February 17, 1999, and two written comments were received. One commentator recommended the retention of the notional account method because the asset-based method can result in the allocation of a portion of the COFL account to a departing member that did not contribute to the COFL account, a result that the commentator views as arbitrary. To alleviate the tension between the interest allocation and COFL rules, the commentator suggested amending the interest allocation rules instead of the COFL rules.

Treasury and the IRS recognize that, under the asset-based method, a portion of a COFL account can under certain circumstances be allocated to a member that did not directly contribute to the COFL account (because, for example, it was not a member of the group at the time the OFL arose). However, as noted in the preamble to regulations issued in January 1998 that eliminated the limitation on OFL recapture and foreign tax credit utilization with respect to separate return limitation years, any single member's economic "contribution" to a COFL account is difficult to measure since the expense allocation rules require interest and certain other expenses to be allocated to a member's income in separate limitation categories on the basis of the group's assets.

An asset-based method is not arbitrary because it associates a COFL account with assets that will produce income subject to recapture, thereby ensuring the recapture of the COFL account. As explained in the preamble to the proposed regulations, Treasury and the IRS believe that the asset-based method for allocating a COFL account harmonizes the COFL rules with the interest allocation provisions. Those provisions, as required by statute, are designed to prevent corporations from borrowing in ways that inappropriately minimize the amount of interest expense allocated against foreign-source income (thereby inflating the amount of foreign-source income that can be sheltered from U.S. tax by foreign tax credits).

The commentator also criticized the asset-based method for allocating COFL accounts as creating uncertainty and administrative burdens in determining the proper amount of a selling group's COFL account to be apportioned to a departing member at the time a member is acquired. Treasury and the IRS recognize that the asset-based method may result in greater uncertainty under certain circumstances. It is anticipated that a taxpayer acquiring a member of a consolidated group may address any uncertainties as to the proper allocation of a COFL account by entering into a tax indemnity or similar agreement. It is also noted that, even under the notional account method, a COFL account apportioned to a departing member cannot be determined with certainty at the time of the acquisition because the apportionment is made at the end of the taxable year during which the member departs the group. Treasury and the IRS recognize that the new rules may result in an increased burden for certain taxpayers, but have concluded that the possibility of an increased burden is not sufficient to warrant the retention of the notional account method in light of severe distortions created by the interaction of the notional account method and the interest expense allocation provisions.

Another commentator requested a transition rule under which the notional account method would continue to apply to a group's existing COFL account that would not be a part of the group's account had the asset-based allocation method been in effect in prior years. The commentator argued that a transition rule is necessary because taxpayers can be adversely affected by the transition from the old rules to the new rules.

The final regulations do not adopt this transition rule because of administrative and equity concerns. The rule would be difficult to administer because a taxpayer would be required to ascertain asset values of all members that departed the group (on the date that the member departed) going back a number of years in order to apply the asset-based allocation method. Additionally, keeping track of the grandfathered account on a prospective basis and distinguishing it from non-grandfathered accounts could add significant complexity.

Furthermore, it is not clear whether the commentator's suggested transition rule generally produces equitable results. Under the suggested transition rule, no portion of the group's COFL account that would not be a part of the group's account had the new rules applied in earlier years would be allocated to a departing member that has foreign assets but that does not have a notional account. Treasury and the IRS are not convinced that it would be more equitable for the group to bear the burden of the COFL account under these circumstances.

A question has been raised regarding whether the asset-based method for allocating COFL accounts to a departing member also applies to an affiliated group that does not file a consolidated return. Because the interest expense allocation rules apply to affiliated groups, these rules can result under certain circumstances in the creation of OFL accounts in members with no foreign assets. Section 904(i) is an anti-abuse rule intended to prevent an affiliated group from circumventing the consolidated return rules to avoid the foreign tax credit limitation provisions. Under §1.904(i)–1, each member of an affiliated group determines its taxable income for each separate limitation income category under section 904(d) and then combines those amounts to determine one amount of income for the group in each income category. The consolidated return regulations that apply the principles of sections 904(f) and 907(c)(4) will then be applied to the combined amounts in each separate category as if all affiliates were members of a single consolidated group. By reason of the section 904(i) regulations, the asset-based method for allocating the appropriate portion of a group's COFL account to a departing member applies to an affiliated group of corporations that does not file returns on a consolidated basis.

A question has also been raised as to whether the tax book value of assets is affected for purposes of COFL apportionment if a member's departure from a group causes the group to take into account in computing consolidated taxable income gain or loss on assets transferred in intercompany transactions. To prevent apportionment of a disproportionate amount of the COFL account to a departing member, §1.1502–9(c)(2)(ii) of the final regulations clarifies that the computation of the tax book value of assets for purposes of such apportionment shall be determined without regard to previously deferred gain or loss that is taken into account as a result of the member's departure from the group (because, for example, of the acceleration rule under §1.1502–13(d)).

After full consideration of all questions and comments, the proposed regulations published in the **Federal Register** on December 29, 1998 (REG–106902–98, 63 F.R. 71589) are adopted by this Treasury decision without substantive amendment.

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory impact analysis is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect corporations filing consolidated federal income tax returns that have overall foreign losses or separate limitation losses. Available data indicates that many consolidated return filers are large companies (not small businesses). In addition, the data indicates that an insubstantial number of consolidated return filers that are smaller companies have overall foreign losses or separate limitation losses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of this regulation is Trina Dang of the Office of Associate Chief Counsel (International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.1502–9T and by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.1502–9 also issued under 26 U.S.C. 1502. * * *
Section 1.1502–9A also issued under 26 U.S.C. 1502. * * *

Par. 2. In §1.1502–3T, paragraph (c)(4), the first sentence is amended by removing the language "1.1502–9T(b)-(1)(v)" and adding "1.1502–9A(b)(1)(v)" in its place, and revising the last sentence to read as follows:

§1.1502–3T Consolidated investment credit (temporary).

* * * * *

(c) * * *

(4) * * * However, a consolidated group making the election provided in §1.1502–9A(b)(1)(vi) (electing not to apply §1.1502–9A(b)(1)(v) to years beginning before January 1, 1998) may nevertheless choose to apply all such paragraphs other than §1.1502–9A(b)(1)(v) for all relevant years.

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Par. 3. Immediately following §1.1504–4 an undesignated center heading is added to read as follows:

REGULATIONS APPLICABLE FOR TAX YEARS FOR WHICH A RETURN IS DUE ON OR BEFORE AUGUST 11, 1999

Par. 4. Section 1.1502–9 is redesignated as §1.1502–9A and transferred under the new undesignated center heading set out in Par. 3. above.

Par. 5. Newly designated §1.1502–9A is amended by:

1. Revising the section heading.
2. Redesignating the paragraph heading and text of paragraph (a) as the paragraph heading and text of paragraph (a)(2).
3. Adding a new paragraph heading for paragraph (a), and new paragraphs (a)(1), (b)(1)(v) and (b)(1)(vi).

The revisions and additions read as follows:

§1.1502–9A Application of overall foreign loss recapture rules to corporations filing consolidated returns due on or before August 11, 1999.

(a) *Scope*—(1) *Effective date*. This section applies only to consolidated return years for which the due date of the income tax return (without extensions) is on or before August 11, 1999.

(2) *In general.* * * *

(b) * * *

(1) * * *

(v) *Special effective date for SRLY limitation.* Except as provided in paragraph (b)(1)(vi) of this section, paragraphs (b)(1)(iii) and (iv) of this section apply only to consolidated return years for which the due date of the income tax return (without extensions) is on or before March 13, 1998. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, the rules of paragraph (b)(1)(ii) of this section shall apply to overall foreign losses from separate return years that are separate return limitation years. For purposes of applying paragraph (b)(1)(ii) of this section in such years, the group treats a member with a balance in an overall foreign loss account from a separate return limitation year on the first day of the first consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998, as a corporation joining the group on such first day. An overall foreign loss that is part of a net operating loss or net capital loss carryover from a separate return limitation year of a member that is absorbed in a consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998, shall be added to the appropriate consolidated overall foreign loss account in the year that it is absorbed. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, similar principles apply to overall foreign losses when there has been a consolidated return change of ownership (regardless of when the change of ownership occurred). See also §1.1502–3T(c)-(4) for an optional effective date rule (generally making this paragraph (b)(1)(v) applicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(vi) *Election to defer application of special effective date*. A consolidated group may elect not to apply paragraph (b)(1)(v) of this section to consolidated return years beginning before January 1, 1998. To make this election, a consolidated group must write "Election Pursuant to Notice 98–40" across the top of page 1 of an original or amended tax return for each consolidated return year subject to the election. For the first consolidated return year to which the overall foreign loss provisions of paragraph (b)(1)(v) of this section apply (i.e., the first year beginning on or after January 1, 1998), such consolidated group must write "Notice 98-40 Election in Effect in Prior Years" across the top of page 1 of the consolidated tax return for that year. For purposes of applying paragraph (b)(1)(ii) of this section with respect to such year, any member with a balance in an overall foreign loss account from a separate return limitation year on the first day of such year shall be treated as joining the group on such first day.

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Par. 6. New §1.1502–9 is added to read as follows:

§1.1502–9 Consolidated overall foreign losses and separate limitation losses.

(a) *In general.* This section provides rules for applying section 904(f) (including its definitions and nomenclature) to a group and its members. Generally, section 904(f) concerns rules relating to overall foreign losses (OFLs) and separate limitation losses (SLLs) and the consequences of such losses. As provided in section 904(f)(5), losses are computed separately in each category of income described in section 904(d)(1) (basket). Paragraph (b) of this section defines terms and provides computational and accounting rules, including rules regarding recapture. Paragraph (c) of this section provides rules that apply to OFLs and SLLs when a member becomes or ceases to be a member of a group. Paragraph (d) of this section provides a predecessor and successor rule. Paragraph (e) of this section provides effective dates.

(b) *Consolidated application of section 904(f).* A group applies section 904(f) for a consolidated return year in accordance with that section, subject to the following rules:

(1) *Computation of CSLI or CSLL and consolidated U.S. source income or loss.*

The group computes its consolidated separate limitation income (CSLI) or consolidated separate limitation loss (CSLL) for each basket under the principles of §1.1502–11 by aggregating each member's foreign-source taxable income or loss in such basket computed under the principles of §1.1502–12, and taking into account the foreign portion of the consolidated items described in §1.1502–11(a)-(2) through (8) for such basket. The group computes its consolidated U.S.-source taxable income or loss under similar principles.

(2) *Netting CSLLs, CSLIs, and consolidated U.S. source taxable income or loss.* The group applies section 904(f)(5) to determine the extent to which a CSLL for a basket reduces CSLI for another basket or consolidated U.S.-source taxable income.

(3) *CSLL and COFL accounts.* To the extent provided in section 904(f), the amount by which a CSLL for a basket (the loss basket) reduces CSLI for another basket (the income basket) shall result in the creation of (or addition to) a CSLL account for the loss basket with respect to the income basket. Likewise, the amount by which a CSLL for a loss basket reduces consolidated U.S.-source income will create (or add to) a consolidated overall foreign loss account (a COFL account).

(4) *Recapture of COFL and CSLL accounts.* In the case of a COFL account for a loss basket, section 904(f)(1) and (3) recharacterizes some or all of the foreign-source income in the loss basket as U.S.-source income. In the case of a CSLL account for a loss basket with respect to an income basket, section 904(f)(5)(C) and (F) recharacterizes some or all of the foreign-source income in the loss basket as foreign-source income in the income basket. The COFL account or CSLL account is reduced to the extent amounts are recharacterized with respect to such account.

(5) *Intercompany transactions*—(i) *Nonapplication of section 904(f) disposition rules.* Neither section 904(f)(3) (in the case of a COFL account) nor (5)(F) (in the case of a CSLL account) applies at the time of a disposition that is an intercompany transaction to which §1.1502–13 applies. Instead, section 904(f)(3) and (5)(F) applies only at such time and only to the extent that the group is required under §1.1502–13 (without regard to section 904(f)(3) and (5)(F)) to take into account any intercompany items resulting from the disposition, based on the COFL or CSLL account existing at the end of the consolidated return year during which the group takes the intercompany items into account.

(ii) *Example.* Paragraph (b)(5)(i) of this section is illustrated by the following examples. The identity of the parties and the basic assumptions set forth in §1.1502–13(c)(7)(i) apply to the examples. Except as otherwise stated, assume further that the consolidated group recognizes no foreign-source income other than as a result of the transactions described. The examples are as follows:

Example 1. (i) On June 10, Year 1, S transfers nondepreciable property with a basis of $100 and a fair market value of $250 to B in a transaction to which section 351 applies. The property was predominantly used without the United States in a trade or business, within the meaning of section 904(f)(3). B continues to use the property without the United States. The group has a COFL account in the relevant loss basket of $120 as of December 31, Year 1.

(ii) Because the contribution from S to B is an intercompany transaction, section 904(f)(3) does not apply to result in any gain recognition in Year 1. See paragraph (b)(5)(i) of this section.

(iii) On January 10, Year 4, B ceases to be a member of the group. Because S did not recognize gain in Year 1 under section 351, no gain is taken into account in Year 4 under §1.1502–13(d). Thus, no portion of the group's COFL account is recaptured in Year 4. For rules requiring apportionment of a portion of the COFL account to B, see paragraph (c)(2) of this section.

Example 2. (i) The facts are the same as in paragraph (i) of *Example 1.* On January 10, Year 4, B sells the property to X for $300. As of December 31, Year 4, the group's COFL account is $40. (The COFL account was reduced between Year 1 and Year 4 due to unrelated foreign-source income taken into account by the group.)

(ii) B takes into account gain of $200 in Year 4. The $40 COFL account in Year 4 recharacterizes $40 of the gain as U.S. source. See section 904(f)(3).

Example 3. (i) On June 10, Year 1, S sells nondepreciable property with a basis of $100 and a fair market value of $250 to B for $250 cash. The property was predominantly used without the United States in a trade or business, within the meaning of section 904(f)(3). The group has a COFL account in the relevant loss basket of $120 as of December 31, Year 1. B predominately uses the property in a trade or business without the United States.

(ii) Because the sale is an intercompany transaction, section 904(f)(3) does not require the group to take into account any gain in Year 1. Thus, under paragraph (b)(5)(i) of this section, the COFL account is not reduced in Year 1.

(iii) On January 10, Year 4, B sells the property to X for $300. As of December 31, Year 4, the group's COFL account is $60. (The COFL account was reduced between Year 1 and Year 4 due to unrelated foreign-source income taken into account by the group.)

(iv) In Year 4, S's $150 intercompany gain and B's $50 corresponding gain are taken into account to produce the same effect on consolidated taxable income as if S and B were divisions of a single corporation. See §1.1502-13(c). All of B's $50 corresponding gain is recharacterized under section 904(f)(3). If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's $100 basis in the property and would have $200 of gain ($60 of which would be recharacterized under section 904(f)(3)), instead of a $50 gain. Consequently, S's $150 intercompany gain and B's $50 corresponding gain are taken into account, and $10 of S's gain is recharacterized under section 904(f)(3) as U.S. source to reflect the $10 difference between B's $50 recharacterized gain and the $60 recomputed gain that would have been recharacterized.

(c) *Becoming or ceasing to be a member of a group*—(1) *Adding separate accounts on becoming a member.* At the time that a corporation becomes a member of a group (a new member), the group adds to the balance of its COFL or CSLL account the balance of the new member's corresponding OFL account or SLL account. A new member's OFL account corresponds to a COFL account if the account is for the same loss basket. A new member's SLL account corresponds to a CSLL account if the account is for the same loss basket and with respect to the same income basket. If the group does not have a COFL or CSLL account corresponding to the new member's account, it creates a COFL or CSLL account with a balance equal to the balance of the member's account.

(2) *Apportionment of consolidated account to departing member*—(i) *In general.* A group apportions to a member that ceases to be a member (a departing member) a portion of each COFL and CSLL account as of the end of the year during which the member ceases to be a member and after the group makes the additions or reductions to such account required under paragraphs (b)(3), (b)(4) and (c)(1) of this section (other than an addition under paragraph (c)(1) of this section attributable to a member becoming a member after the departing member ceases to be a member). The group computes such portion under paragraph (c)(2)(ii) of this section, as limited by paragraph (c)(2)(iii) of this section. The departing member carries such portion to

its first separate return year after it ceases to be a member. Also, the group reduces each account by such portion and carries such reduced amount to its first consolidated return year beginning after the year in which the member ceases to be a member. If two or more members cease to be members in the same year, the group computes the portion allocable to each such member (and reduces its accounts by such portion) in the order that the members cease to be members.

(ii) *Departing member's portion of group's account.* A departing member's portion of a group's COFL or CSLL account for a loss basket is computed based upon the member's share of the group's assets that generate income subject to recapture at the time that the member ceases to be a member. Under the characterization principles of §§1.861–9T(g)(3) and 1.861–12T, the group identifies the assets of the departing member and the remaining members that generate foreign-source income (foreign assets) in each basket. The assets are characterized based upon the income that the assets are reasonably expected to generate after the member ceases to be a member. The member's portion of a group's COFL or CSLL account for a loss basket is the group's COFL or CSLL account, respectively, multiplied by a fraction, the numerator of which is the value of the member's foreign assets for the loss basket and the denominator of which is the value of the foreign assets of the group (including the departing member) for the loss basket. The value of the foreign assets is determined under the asset valuation rules of §1.861–9T(g)(1) and (2) using either tax book value or fair market value under the method chosen by the group for purposes of interest apportionment as provided in §1.861–9T(g)(1)(ii). For purposes of this paragraph (c)(2)(ii), §1.861–9T(g)(2)(iv) (assets in intercompany transactions) shall apply, but §1.861–9T(g)(2)(iii) (adjustments for directly allocated interest) shall not apply. If the group uses the tax book value method, the member's portions of COFL and CSLL accounts are limited by paragraph (c)(2)(iii) of this section. In addition, for purposes of this paragraph (c)(2)(ii), the tax book value of assets transferred in intercompany transactions shall be determined without regard to previously deferred gain or loss that is taken into account by the group as a result of the transaction in which the member ceases to be a member. The assets should be valued at the time the member ceases to be a member, but values on other dates may be used unless this creates substantial distortions. For example, if a member ceases to be a member in the middle of the group's consolidated return year, an average of the values of assets at the beginning and end of the year (as provided in §1.861–9T(g)(2)) may be used or, if a member ceases to be a member in the early part of the group's consolidated return year, values at the beginning of the year may be used, unless this creates substantial distortions.

(iii) *Limitation on member's portion for groups using tax book value method.* If a group uses the tax book value method of valuing assets for purposes of paragraph (c)(2)(ii) of this section and the aggregate of a member's portions of COFL and CSLL accounts for a loss basket (with respect to one or more income baskets) determined under paragraph (c)(2)(ii) of this section exceeds 150 percent of the actual fair market value of the member's foreign assets in the loss basket, the member's portion of the COFL or CSLL accounts for the loss basket shall be reduced (proportionately, in the case of multiple accounts) by such excess. This rule does not apply if the departing member and all other members that cease to be members as part of the same transaction own all (or substantially all) the foreign assets in the loss basket.

(iv) *Determination of values of foreign assets binding on departing member.* The group's determination of the value of the member's and the group's foreign assets for a loss basket is binding on the member, unless the Commissioner concludes that the determination is not appropriate. The common parent of the group must attach a statement to the return for the taxable year that the departing member ceases to be a member of the group that sets forth the name and taxpayer identification number of the departing member, the amount of each COFL or CSLL for each loss basket that is apportioned to the departing member under this paragraph (c)(2), the method used to determine the value of the member's and the group's foreign assets in each such loss basket, and the value of the member's and the group's foreign assets in each such loss basket. The common parent must also furnish a copy of the statement to the departing member.

(v) *Anti-abuse rule.* If a corporation becomes a member and ceases to be a member, and a principal purpose of the corporation becoming and ceasing to be a member is to transfer the corporation's OFL account or SLL account to the group or to transfer the group's COFL or CSLL account to the corporation, appropriate adjustments will be made to eliminate the benefit of such a transfer of accounts. Similarly, if any member acquires assets or disposes of assets (including a transfer of assets between members of the group and the departing member) with a principal purpose of affecting the apportionment of accounts under paragraph (c)(2)(i) of this section, appropriate adjustments will be made to eliminate the benefit of such acquisition or disposition.

(vi) *Examples.* The following examples illustrate this paragraph (c):

Example 1. (i) On November 6, Year 1, S, a member of the P group, a consolidated group with a calendar consolidated return year, ceases to be a member of the group. On December 31, Year 1, the P group has a $40 COFL account for the general limitation basket, a $20 CSLL account for the general limitation basket (i.e., the loss basket) with respect to the passive basket (i.e., the income basket), and a $10 CSLL account for the shipping income basket (i.e., the loss basket) with respect to the passive basket (i.e., the income basket). No member of the group has foreign-source income or loss in Year 1. The group apportions its interest expense according to the tax book value method.

(ii) On November 6, Year 1, the group identifies S's assets and its own assets (including S's assets) expected to produce foreign general limitation income. Use of end-of-the-year values will not create substantial distortions in determining the relative values of S's and the group's relevant assets on November 6, Year 1. The group determines that S's relevant assets have a tax book value of $2,000 and a fair market value of $2,200. Also, the group's relevant assets (including S's assets) have a tax book value of $8,000. On November 6, Year 1, S has no assets expected to produce foreign shipping income.

(iii) Under paragraph (c)(2)(ii) of this section, S takes a $10 COFL account for the general limitation basket ($40 × $2000/$8000) and a $5 CSLL account for the general limitation basket with respect to the passive basket ($20 × $2000/$8000). S does not take any portion of the shipping income basket CSLL account. The limitation described in paragraph (c)(2)(iii) of this section does not apply because the aggregate of the COFL and CSLL accounts for the general limitation basket that are apportioned to S ($15) is less than 150 percent of the actual fair market value of S's general limitation foreign assets ($2,200 × 150%).

Example 2. (i) Assume the same facts as in *Example 1,* except that the fair market value of S's general limitation foreign assets is $4 as of November 6, Year 1.

(ii) Under paragraph (c)(2)(iii) of this section, S's COFL and CSLL accounts for the general limitation basket must be reduced by $9, which is the excess of $15 (the aggregate amount of the accounts apportioned under paragraph (c)(2)(ii) of this section) over $6 (150 percent of the $4 actual fair market value of S's general limitation foreign assets). S thus takes a $4 COFL account for the general limitation basket ($10 – ($9 × $10/$15)) and a $2 CSLL account for the general limitation basket with respect to the passive basket ($5 – ($9 × $5/$15)).

(d) *Predecessor and successor.* A reference to a member includes, as the context may require, a reference to a predecessor or successor of the member. See §1.1502-1(f).

(e) *Effective dates.* This section applies to consolidated return years for which the due date of the income tax return (without extensions) is after August 11, 1999. However, paragraph (b)(5) of this section (intercompany transactions) is not applicable for intercompany transactions that occur before January 28, 1999. A group applies the principles of §1.1502–9A(e) to a disposition which is an intercompany transaction to which §1.1502–13 applies and that occurs before January 28, 1999. Also, paragraph (c)(2) of this section (apportionment of consolidated account to departing member) is not applicable for members ceasing to be members of a group before January 28, 1999. A group applies the principles of §1.1502–9A (rather than paragraph (c)(2) of this section) to determine the amount of a consolidated account that is apportioned to a member that ceases to be a member of the group before January 28, 1999 (and reduces its consolidated account by such apportioned amount) before applying paragraph (c)(2) of this section to members that cease to be members on or after January 28, 1999.

§1.1502–9T [Removed]

Par. 7. Section 1.1502–9T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par 9. In §602.101, paragraph (b) is amended in the table by removing the current entry for 1.1502–9 and adding new entries for 1.1502–9 and 1.1502–9A to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1502–9	1545–1634
* * * * *	
1.1502–9A	1545–0121
* * * * *	

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved July 16, 1999.

Donald C. Lubick,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on August 10, 1999, 8:45 a.m., and published in the issue of the Federal Register for August 11, 1999, 64 F.R. 43613)

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 1999. See Rev. Rul. 99–37, page 336.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 1999. See Rev. Rul. 99–37, page 336.