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Chapter 6 of the Internal Revenue Code Relating to Consolidated
Returns, Submitted to the Internal Revenue Service August 27,
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American Institute of Certified Public Accountants. Committee on Federal Taxation

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COMMITTEE ON FEDERAL TAXATION
of the
AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Comments on Proposed Regulations Under Subchapter A of Chapter 6
of the Internal Revenue Code Relating to Consolidated Returns

Submitted to the Internal Revenue Service
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COMMITTEE ON FEDERAL TAXATION

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of the Internal Revenue Code Relating to Consolidated Returns

1

SECTION

1.1502-51(a)(2)(ii)

It is proposed that if an organization to which Section 593 applies or a cooperative organization (organizations described in Section 46(d)(1) which are includible corporations under section 1504(b) joins in the filing of a consolidated return, the \$25,000 amount described in section 46(a)(2) shall be apportioned equally among the members of the affiliated group joining in the consolidated return. This provision is inconsistent with provisions of the Regulations relating to the Investment Credit, particularly Proposed Regulations Sections 1.46-4(a) and 1.46-4(c) (relating to organizations to which Section 593 applies and cooperative organizations, respectively) which indicate that the rules of Proposed Regulations Section 1.46-1(f) apply with respect to the apportionment to such organizations -- that is, in any manner the members of the affiliated group elect.

The effect of Proposed Regulations Section 1.1502-51(a)(2)(ii) is to impose an unwarranted penalty on the filing of a consolidated return without legislative sanction. It should be amended to permit apportionment in accordance with Proposed Regulations Section 1.46-1(f).

2

1.1502-51(b)(7)(iii)

Similarly, this provision requires apportionment of the \$25,000 limitation equally for purposes of determining the limitation on investment credit carryovers and carrybacks from separate return years. The effect of this requirement is to permit inclusion in the consolidated unused credit of an amount less than that which would have been available to the corporation which brought the unused credit carryback or carryover into the consolidated group, had it not been a member of the consolidated group for the taxable year.

This limitation appears unwarranted and inconsistent with the consolidated operating loss carryover and carryback provisions.

2

1.1502-51(c)(2)(i)

It is proposed that, in general, a transfer of Section 38 property between members of an affiliated group during a consolidated return period does not constitute a disposition. However, it provides further that the rule is inapplicable unless the property was placed in service in a consolidated return period. The transfer should not be considered a disposition irrespective of the time of acquisition.