

(but for this paragraph) there is not full recognition of gain on such transfer, the excess (if any) of—

“(A) the fair market value of the property transferred, over

“(B) its adjusted basis,

shall be treated as gain from the sale or exchange of such property and shall be recognized notwithstanding any other provision of law. Proper adjustment shall be made to the basis of any such property for gain recognized under the preceding sentence.

“(c) DEFINITIONS.—For purposes of this section—

“(1) COMMON PARENT.—The term ‘common parent’ means the common parent of the affiliated group which included the domestic corporation referred to in subsection (a)(1).

“(2) QUALIFIED EXCESS LOSS ACCOUNT.—The term ‘qualified excess loss account’ means any excess loss account (within the meaning of the consolidated return regulations) to the extent such account is attributable—

“(A) to taxable years beginning before January 1, 1988, and

“(B) to periods during which the domestic corporation was subject to an income tax of a foreign country on its income on a residence basis or without regard to whether such income is from sources in or outside of such foreign country.

The amount of such account shall be determined as of immediately after the transaction referred to in subsection (a) and without, except as provided in subsection (b), diminution for any future adjustment.

“(3) NET AMOUNT.—The net amount of any item of income is the amount of such income reduced by allowable deductions as determined under the rules of section 954(b)(5) of the 1986 Code.

“(4) SECOND SAME COUNTRY CORPORATION MAY BE TREATED AS DOMESTIC CORPORATION IN CERTAIN CASES.—If—

“(A) another foreign corporation acquires from the common parent stock of the foreign corporation referred to in subsection (a) after the transaction referred to in subsection (a),

“(B) both of such foreign corporations are subject to the income tax of the same foreign country on a residence basis, and

“(C) such common parent complies with such reporting requirements as the Secretary of the Treasury or his delegate may prescribe for purposes of this paragraph,

such other foreign corporation shall be treated as a domestic corporation in determining whether the foreign corporation referred to in subsection (a) is a member of the affiliated group referred to in subsection (a) (and the rules of subsection (b) shall apply (i) to any gain of such other foreign corporation on any disposition of such stock, and (ii) to any other income of such other foreign corporation except to the extent it establishes to the satisfaction of the Secretary of the Treasury or his delegate that such income is not attributable to property acquired from the foreign corporation referred to in subsection (a)).”

#### SPECIAL RULE FOR DISPOSITION OF STOCK OF SUBSIDIARY

Pub. L. 99-514, title VI, §647, Oct. 22, 1986, 100 Stat. 2294, provided that: “If for a taxable year of an affiliated group filing a consolidated return ending on or before December 31, 1987, there is a disposition of stock of a subsidiary (within the meaning of Treasury Regulation section 1.1502-19), the amount required to be included in income with respect to such disposition under Treasury Regulation section 1.1502-19(a) shall, notwithstanding such section, be included in income ratably over the 15-year period beginning with the taxable year in which the disposition occurs. The preceding sentence shall apply only if such subsidiary was incorporated on December 24, 1969, and is a participant in a mineral joint venture with a corporation organized under the laws of the foreign country in which the joint venture mineral project is located.”

## § 1503. Computation and payment of tax

### (a) [General rule]<sup>1</sup>

In any case in which a consolidated return is made or is required to be made, the tax shall be determined, computed, assessed, collected, and adjusted in accordance with the regulations under section 1502 prescribed before the last day prescribed by law for the filing of such return.

**[(b) Repealed. Pub. L. 94-455, title X, § 1052(c)(5), Oct. 4, 1976, 90 Stat. 1648]**

### (c) Special rule for application of certain losses against income of insurance companies taxed under section 801

#### (1) In general

If an election under section 1504(c)(2) is in effect for the taxable year and the consolidated taxable income of the members of the group not taxed under section 801 results in a consolidated net operating loss for such taxable year, then under regulations prescribed by the Secretary, the amount of such loss which cannot be absorbed in the applicable carry-back periods against the taxable income of such members not taxed under section 801 shall be taken into account in determining the consolidated taxable income of the affiliated group for such taxable year to the extent of 35 percent of such loss or 35 percent of the taxable income of the members taxed under section 801, whichever is less. The unused portion of such loss shall be available as a carryover, subject to the same limitations (applicable to the sum of the loss for the carryover year and the loss (or losses) carried over to such year), in applicable carryover years.

#### (2) Losses of recent nonlife affiliates

Notwithstanding the provisions of paragraph (1), a net operating loss for a taxable year of a member of the group not taxed under section 801 shall not be taken into account in determining the taxable income of a member taxed under section 801 (either for the taxable year or as a carryover or carryback) if such taxable year precedes the sixth taxable year such members have been members of the same affiliated group (determined without regard to section 1504(b)(2)).

### (d) Dual consolidated loss

#### (1) In general

The dual consolidated loss for any taxable year of any corporation shall not be allowed to reduce the taxable income of any other member of the affiliated group for the taxable year or any other taxable year.

#### (2) Dual consolidated loss

For purposes of this section—

##### (A) In general

Except as provided in subparagraph (B), the term “dual consolidated loss” means any net operating loss of a domestic corporation which is subject to an income tax of a foreign country on its income without regard to whether such income is from

<sup>1</sup> Subsec. (a) heading editorially supplied.

sources in or outside of such foreign country, or is subject to such a tax on a residence basis.

**(B) Special rule where loss not used under foreign law**

To the extent provided in regulations, the term “dual consolidated loss” shall not include any loss which, under the foreign income tax law, does not offset the income of any foreign corporation.

**(3) Treatment of losses of separate business units**

To the extent provided in regulations, any loss of a separate unit of a domestic corporation shall be subject to the limitations of this subsection in the same manner as if such unit were a wholly owned subsidiary of such corporation.

**(4) Income on assets acquired after the loss**

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this subsection by contributing assets to the corporation with the dual consolidated loss after such loss was sustained.

**(e) Special rule for determining adjustments to basis**

**(1) In general**

Solely for purposes of determining gain or loss on the disposition of intragroup stock and the amount of any inclusion by reason of an excess loss account, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year (and in determining the amount in such account)—

(A) such earnings and profits shall be determined as if section 312 were applied for such taxable year (and all preceding consolidated years of the member with respect to such group) without regard to subsections (k) and (n) thereof, and

(B) earnings and profits shall not include any amount excluded from gross income under section 108 to the extent the amount so excluded was not applied to reduce tax attributes (other than basis in property).

**(2) Definitions**

For purposes of this subsection—

**(A) Intragroup stock**

The term “intragroup stock” means any stock which—

(i) is in a corporation which is or was a member of an affiliated group of corporations, and

(ii) is held by another corporation which is or was a member of such group.

Such term includes any other property the basis of which is determined (in whole or in part) by reference to the basis of stock described in the preceding sentence.

**(B) Consolidated year**

The term “consolidated year” means any taxable year for which the affiliated group makes a consolidated return.

**(C) Application of section 312(n)(7) not affected**

The reference in paragraph (1) to subsection (n) of section 312 shall be treated as not including a reference to paragraph (7) of such subsection.

**(3) Adjustments**

Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of paragraph (1)—

(A) in the case of any property acquired by the corporation before consolidation, for the difference between the adjusted basis of such property for purposes of computing taxable income and its adjusted basis for purposes of computing earnings and profits, and

(B) in the case of any property, for any basis adjustment under section 50(c).

**(4) Elimination of election to reduce basis of indebtedness**

Nothing in the regulations prescribed under section 1502 shall permit any reduction in the amount otherwise included in gross income by reason of an excess loss account if such reduction is on account of a reduction in the basis of indebtedness.

**(f) Limitation on use of group losses to offset income of subsidiary paying preferred dividends**

**(1) In general**

In the case of any subsidiary distributing during any taxable year dividends on any applicable preferred stock—

(A) no group loss item shall be allowed to reduce the disqualified separately computed income of such subsidiary for such taxable year, and

(B) no group credit item shall be allowed against the tax imposed by this chapter on such disqualified separately computed income.

**(2) Group items**

For purposes of this subsection—

**(A) Group loss item**

The term “group loss item” means any of the following items of any other member of the affiliated group which includes the subsidiary:

(i) Any net operating loss and any net operating loss carryover or carryback under section 172.

(ii) Any loss from the sale or exchange of any capital asset and any capital loss carryover or carryback under section 1212.

**(B) Group credit item**

The term “group credit item” means any credit allowable under part IV of subchapter A of chapter 1 (other than section 34) to any other member of the affiliated group which includes the subsidiary and any carryover or carryback of any such credit.

**(3) Other definitions**

For purposes of this subsection—

**(A) Disqualified separately computed income**

The term “disqualified separately computed income” means the portion of the sep-

arately computed taxable income of the subsidiary which does not exceed the dividends distributed by the subsidiary during the taxable year on applicable preferred stock.

**(B) Separately computed taxable income**

The term “separately computed taxable income” means the separate taxable income of the subsidiary for the taxable year determined—

- (i) by taking into account gains and losses from the sale or exchange of a capital asset and section 1231 gains and losses,
- (ii) without regard to any net operating loss or capital loss carryover or carryback, and
- (iii) with such adjustments as the Secretary may prescribe.

**(C) Subsidiary**

The term “subsidiary” means any corporation which is a member of an affiliated group filing a consolidated return other than the common parent.

**(D) Applicable preferred stock**

The term “applicable preferred stock” means stock described in section 1504(a)(4) in the subsidiary which is—

- (i) issued after November 17, 1989, and
- (ii) held by a person other than a member of the same affiliated group as the subsidiary.

**(4) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection, including regulations—

- (A) to prevent the avoidance of this subsection through the transfer of built-in losses to the subsidiary,
- (B) to provide rules for cases in which the subsidiary owns (directly or indirectly) stock in another member of the affiliated group, and
- (C) to provide for the application of this subsection where dividends are not paid currently, where the redemption and liquidation rights of the applicable preferred stock exceed the issue price for such stock, or where the stock is otherwise structured to avoid the purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 367; Pub. L. 86-780, §2, Sept. 14, 1960, 74 Stat. 1011; Pub. L. 88-272, title II, §234(a), (b)(1), (2), Feb. 26, 1964, 78 Stat. 113; Pub. L. 94-455, title X, §§1031(b)(4), 1052(c)(5), title XV, §1507(b)(3), title XIX, §1901(b)(1)(Y), Oct. 4, 1976, 90 Stat. 1623, 1648, 1740, 1792; Pub. L. 98-369, div. A, title II, §211(b)(19), July 18, 1984, 98 Stat. 756; Pub. L. 99-514, title XII, §1249(a), Oct. 22, 1986, 100 Stat. 2584; Pub. L. 100-203, title X, §1022(a)(1), Dec. 22, 1987, 101 Stat. 1330-410; Pub. L. 100-647, title I, §1012(u), title II, §2004(j)(1)(A), (2), (3)(A), Nov. 10, 1988, 102 Stat. 3528, 3604, 3605; Pub. L. 101-239, title VII, §§7201(a), 7207(a), 7821(c), Dec. 19, 1989, 103 Stat. 2328, 2337, 2424; Pub. L. 101-508, title XI, §§11802(f)(4), 11813(b)(25), Nov. 5, 1990, 104 Stat. 1388-530, 1388-555.)

AMENDMENTS

1990—Subsec. (c)(1). Pub. L. 101-508, §11802(f)(4), struck out at end “For taxable years ending with or

within calendar year 1981, ‘25 percent’ shall be substituted for ‘35 percent’ each place it appears in the first sentence of this subsection. For taxable years ending with or within calendar year 1982, ‘30 percent’ shall be substituted for ‘35 percent’ each place it appears in that sentence.”

Subsec. (e)(3)(B). Pub. L. 101-508, §11813(b)(25), substituted “section 50(c)” for “section 48(q)”.

1989—Subsec. (e)(2)(A)(ii). Pub. L. 101-239, §7821(c), substituted “another corporation which is or was a member” for “another member”.

Subsec. (e)(4). Pub. L. 101-239, §7207(a), added par. (4).

Subsec. (f). Pub. L. 101-239, §7201(a), added subsec. (f).

1988—Subsec. (d)(3), (4). Pub. L. 100-647, §1012(u), added pars. (3) and (4).

Subsec. (e)(1). Pub. L. 100-647, §2004(j)(1)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: “Solely for purposes of determining gain or loss on the disposition of intragroup stock, in determining the adjustments to the basis of such intragroup stock on account of the earnings and profits of any member of an affiliated group for any consolidated year—”.

Subsec. (e)(2)(C). Pub. L. 100-647, §2004(j)(3)(A), added subpar. (C).

Subsec. (e)(3). Pub. L. 100-647, §2004(j)(2), added par. (3).

1987—Subsec. (e). Pub. L. 100-203 added subsec. (e).

1986—Subsec. (d). Pub. L. 99-514 added subsec. (d).

1984—Subsec. (c). Pub. L. 98-369, §211(b)(19)(A), (C), substituted “section 801” for “section 802” in heading, and wherever appearing in text.

Subsec. (c)(1). Pub. L. 98-369, §211(b)(19)(B), struck out provision that for purposes of this subsection, in determining the taxable income of each insurance company subject to tax under section 802, section 802(b)(3) would not be taken into account.

1976—Subsec. (a). Pub. L. 94-455, §1052(c)(5), struck out subsec. (a) designation.

Subsec. (b). Pub. L. 94-455, §1052(c)(5), struck out subsec. (b) which provided for a special rule for application of foreign tax credit when overall limitation applies.

Subsec. (b)(1). Pub. L. 94-455, §1031(b)(4), struck out “and if for the taxable year an election under section 904(b)(1) (relating to election of overall limitation on foreign tax credit) is in effect” after “section 921”.

Subsec. (b)(3)(C). Pub. L. 94-455, §1901(b)(1)(Y), struck out subpar. (C) which defined “consolidated taxable income”.

Subsec. (c). Pub. L. 94-455, §1507(b)(3), added subsec. (c).

1964—Subsec. (a). Pub. L. 88-272, §234(a), struck out provisions which increased the tax imposed under section 11(c), or section 831, by 2% of the consolidated taxable income of the affiliated group of includible corporations, and defined “consolidated taxable income”.

Subsec. (b). Pub. L. 88-272, §234(b)(1), (2), redesignated subsec. (d) as (b), and substituted references to section 7701 for references to former subsection (c) of this section, in subpar. (A), and definition of “consolidated taxable income” for provisions relating to the computation of tax, for purposes of par. (1)(A), on the portion of consolidated taxable income attributable to any corporation, without regard to the increase of 2% as in subsec. (a), in subpar. (C). Former subsec. (b), which limited the 2% increase in subsec. (a) in cases where the affiliated group included one or more Western Hemisphere trade corporations or one or more regulated public utilities, to the amount by which the consolidated taxable income of the affiliated group exceed the income attributable to such corporations and utilities, was struck out.

Subsec. (c). Pub. L. 88-272, §234(b)(1), struck out subsec. (c) which defined regulated public utility. See section 7701(a)(33) of this title.

Subsec. (d). Pub. L. 88-272, §234(b)(1), redesignated subsec. (d) as (b).

1960—Subsec. (d). Pub. L. 86-780 added subsec. (d).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(25) of Pub. L. 101-508 applicable to property placed in service after Dec. 31,

1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

## EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, §7201(b), Dec. 19, 1989, 103 Stat. 2329, provided that:

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to taxable years ending after November 17, 1989.

“(2) BINDING CONTRACT EXCEPTION.—For purposes of section 1503(f)(3)(D) of the Internal Revenue Code of 1986, stock issued after November 17, 1989, pursuant to a written binding contract in effect on November 17, 1989, and at all times thereafter before such issuance, shall be treated as issued on November 17, 1989.

“(3) SPECIAL RULE WHEN SUBSIDIARY LEAVES GROUP.—If, by reason of a transaction after November 17, 1989, a corporation ceases to be, or becomes, a member of an affiliated group, the stock of such corporation shall be treated, for purposes of section 1503(f)(3)(D) of such Code, as issued on the date of such cessation or commencement, unless such transaction is of a kind which would not result in the recognition of any deferred intercompany gain under the consolidated return regulations by reason of the acquisition of the entire group.

“(4) RETIRED STOCK.—

“(A) Except as provided in subparagraph (B), if stock issued before November 18, 1989, (or described in paragraph (2)), is retired or acquired after November 17, 1989, by the corporation or another member of the same affiliated group, such stock shall be treated, for purposes of section 1503(f)(3)(D) of such Code, as issued on the date of such retirement or acquisition.

“(B) Subparagraph (A) shall not apply to any retirement or acquisition pursuant to an obligation to reissue under a binding written contract in effect on November 17, 1989, and at all times thereafter before such retirement or acquisition.

“(5) AUCTION RATE PREFERRED.—For purposes of section 1503(f)(3)(D) of such Code, auction rate preferred stock shall be treated as issued when the contract requiring the auction became binding.

“(6) SPECIAL RULE FOR CERTAIN AUCTION RATE PREFERRED.—For purposes of section 1503(f)(3)(D) of the Internal Revenue Code of 1986, any auction rate preferred stock shall be treated as issued before November 18, 1989, if—

“(A) a subsidiary was incorporated before July 10, 1989 for the special purpose of issuing such stock,

“(B) a rating agency was retained before July 10, 1989, and

“(C) such stock is issued before the date 30 days after the date of the enactment of this Act [Dec. 19, 1989].”

Pub. L. 101-239, title VII, §7207(b), Dec. 19, 1989, 103 Stat. 2337, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to dispositions after July 10, 1989, in taxable years ending after such date.

“(2) BINDING CONTRACT.—The amendment made by subsection (a) shall not apply to any disposition pursuant to a written binding contract in effect on July 10, 1989, and at all times thereafter before such disposition.”

Amendment by section 7821 of Pub. L. 101-239 effective as if included in the provision of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 7823 of Pub. L. 101-239, set out as a note under section 26 of this title.

## EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(u) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the

provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 2004(j)(1)(A), (2), (3)(A) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

## EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, §10222(a)(2), Dec. 22, 1987, 101 Stat. 1330-410, as amended by Pub. L. 100-647, title II, §2004(j)(1)(B), Nov. 10, 1988, 102 Stat. 3604, provided that:

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by paragraph (1) [amending this section] shall apply to any intragroup stock disposed of after December 15, 1987. For purposes of determining the adjustments to the basis of such stock, such amendment shall be deemed to have been in effect for all periods whether before, on, or after December 15, 1987.

“(B) EXCEPTION.—The amendment made by paragraph (1) shall not apply to any intragroup stock disposed of after December 15, 1987, and before January 1, 1989, if such disposition is pursuant to a written binding contract, governmental order, letter of intent or preliminary agreement, or stock acquisition agreement, in effect on or before December 15, 1987.

“(C) TREATMENT OF CERTAIN EXCESS LOSS ACCOUNTS.—

“(i) IN GENERAL.—If—

“(I) any disposition on or before December 15, 1987, of stock resulted in an inclusion of an excess loss account (or would have so resulted if the amendments made by paragraph (1) had applied to such disposition), and

“(II) there is an unrecaptured amount with respect to such disposition,

the portion of such unrecaptured amount allocable to stock disposed of in a disposition to which the amendment made by paragraph (1) applies shall be taken into account as negative basis. To the extent permitted by the Secretary of the Treasury or his delegate, the preceding sentence shall not apply to the extent the taxpayer elects to reduce its basis in indebtedness of the corporation with respect to which there would have been an excess loss account.

“(ii) SPECIAL RULES.—For purposes of this subparagraph—

“(I) UNRECAPTURED AMOUNT.—The term ‘unrecaptured amount’ means the amount by which the inclusion referred to in clause (i)(I) would have been increased if the amendment made by paragraph (1) and [had] applied to the disposition.

“(II) COORDINATION WITH BINDING CONTRACT EXCEPTION.—A disposition shall be treated as occurring on or before December 15, 1987, if the amendment made by paragraph (1) does not apply to such disposition by reason of subparagraph (B).”

## EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XII, §1249(b), Oct. 22, 1986, 100 Stat. 2585, provided that: “The amendment made by subsection (a) [amending this section] shall apply to net operating losses for taxable years beginning after December 31, 1986.”

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(4) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, see section 1031(c) of Pub. L. 94-455, set out as a note under section 904 of this title.

Amendment by section 1052(c)(5) of Pub. L. 94-455 effective with respect to taxable years beginning after Dec. 31, 1979, see section 1052(d) of Pub. L. 94-455, set out as a note under section 170 of this title.

Amendment by section 1507(b)(3) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1980, see section 1507(c) of Pub. L. 94-455, set out as a note under section 1504 of this title.

Amendment by section 1901(b)(1)(Y) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88-272, title II, §234(c), Feb. 26, 1964, 78 Stat. 116, provided that: "The amendments made by subsections (a) and (b) [amending this section and sections 12, 172, 904, 1341, 1552, and 7701 of this title] shall apply with respect to taxable years beginning after December 31, 1963."

#### EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-780 applicable to taxable years beginning after Dec. 31, 1960, see section 4 of Pub. L. 86-780, set out as a note under section 904 of this title.

#### SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

### § 1504. Definitions

#### (a) Affiliated group defined

For purposes of this subtitle—

##### (1) In general

The term "affiliated group" means—

(A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if—

(B)(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and

(ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

##### (2) 80-percent voting and value test

The ownership of stock of any corporation meets the requirements of this paragraph if it—

(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

##### (3) 5 years must elapse before reconsolidation

###### (A) In general

If—

(i) a corporation is included (or required to be included) in a consolidated return filed by an affiliated group, and

(ii) such corporation ceases to be a member of such group,

with respect to periods after such cessation, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

#### (B) Secretary may waive application of subparagraph (A)

The Secretary may waive the application of subparagraph (A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

#### (4) Stock not to include certain preferred stock

For purposes of this subsection, the term "stock" does not include any stock which—

(A) is not entitled to vote,

(B) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent,

(C) has redemption and liquidation rights which do not exceed the issue price of such stock (except for a reasonable redemption or liquidation premium), and

(D) is not convertible into another class of stock.

#### (5) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including (but not limited to) regulations—

(A) which treat warrants, obligations convertible into stock, and other similar interests as stock, and stock as not stock,

(B) which treat options to acquire or sell stock as having been exercised,

(C) which provide that the requirements of paragraph (2)(B) shall be treated as met if the affiliated group, in reliance on a good faith determination of value, treated such requirements as met,

(D) which disregard an inadvertent ceasing to meet the requirements of paragraph (2)(B) by reason of changes in relative values of different classes of stock,

(E) which provide that transfers of stock within the group shall not be taken into account in determining whether a corporation ceases to be a member of an affiliated group, and

(F) which disregard changes in voting power to the extent such changes are disproportionate to related changes in value.

#### (b) Definition of "includible corporation"

As used in this chapter, the term "includible corporation" means any corporation except—

(1) Corporations exempt from taxation under section 501.

(2) Insurance companies subject to taxation under section 801.

(3) Foreign corporations.

(4) Corporations with respect to which an election under section 936 (relating to posses-