

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Alice H. Terzian-Ishkhans
Program Manager, Workload Development and Delivery (Large Business & International)
(CC:LB&I:ADCCI:CP&A:WD&D)

from: Robert H. Wellen
Associate Chief Counsel (Corporate)
(CC:CORP)

subject: Best Practices for Reviewing a Multi-Year Section 332 Liquidation

We are responding to the request of LB&I Workflow Coordination Liaison (WCL) for assistance in determining the Assessment Statute Expiration Date (ASED) for Form 952, *Consent to Extend the Time To Assess Tax Under Section 332(b)*.

We are also attaching an appendix that:

- Describes the tax consequences of a complete liquidation qualifying under section 332 of the Internal Revenue Code (Code);
- Describes the rules applicable to corporate subsidiaries intending to accomplish multi-year complete liquidations pursuant to sections 332(b) and 337(a), and offers recommendations to assist you in verifying that such transactions satisfy all the statutory and regulatory requirements for such liquidations; and
- Describes the tax consequences of a complete liquidation that ultimately fails to qualify under section 332.

This advice may not be used or cited as precedent.

I. Purpose of Form 952

Section 332 of the Code governs the tax consequences to a corporate shareholder (Parent) that receives, or is deemed to receive, distributions of property from an 80-percent-or-more owned subsidiary (Subsidiary) in complete cancellation or redemption of all of Subsidiary's stock, in accordance with a plan of liquidation.¹ If certain requirements are met, neither Parent nor Subsidiary recognizes gain or loss.

Section 332 permits Subsidiary to distribute all of its property in complete liquidation within one taxable year (the 1-year alternative)² or within three taxable years after the close of the taxable year during which it made the first of a series of distributions under the plan of liquidation (the multi-year alternative).³

A complete liquidation under the multi-year alternative presents challenges for assessment and collection of taxes if the purported liquidation ultimately does not qualify under section 332. The reason is that, ordinarily, income tax for a taxable year must be assessed within three years after the return is filed.⁴ Therefore, section 332(b) authorizes the Secretary to require Parent to post a bond, waive the statute of limitations on assessment, or both.⁵

One of the requirements under the multi-year alternative is that Parent file a waiver of the statute of limitations on assessment, on Form 952, for each of its taxable years that falls wholly or partly within the period of liquidation.⁶ Form 952 extends Parent's period of assessment for all income tax on issues that pertain to the section 332(b) liquidation.⁷ Thus, if, during the extended period of assessment, the Service finds that Parent is not entitled to nonrecognition of gain or loss with respect to property it received in a purported section 332 liquidation, the Service may recompute Parent's tax liability

¹ Section 346(a) provides that a distribution shall be treated as in "complete liquidation" of a corporation if the distribution is one of a series of distributions in redemption of all of the stock of the corporation pursuant to a plan.

² Section 332(b)(2), Treas. Reg. § 1.332-3.

³ Section 332(b)(3), Treas. Reg. § 1.332-4.

⁴ Section 6501(a); Treas. Reg. § 301.6501(a)-1. A return filed before the due date (without extensions) is considered filed on the last day prescribed by law or regulations for the filing of that return. Section 6501(b)(1). The period for assessment may be extended by agreement. Section 6501(c)(4).

⁵ Per IRM 4.2.1.19(4), Area Counsel should be contacted for help in determining whether to secure a bond and what the terms should be.

⁶ Treas. Reg. § 1.332-4(a)(2).

⁷ Per IRM 25.6.22.6.2.3.1(3), a statute extension under Form 952 is a restricted consent that relates only to the section 332 liquidation.

without regard to either section 332 or the carryover basis rules of section 334(b) for the following taxable years:

- Each taxable year that remains open and during which Parent received a distribution from Subsidiary in the purported section 332 liquidation,
- Each of the earlier taxable years for which Parent filed Form 952 and during which it received a distribution from Subsidiary in the purported section 332 liquidation,⁸ and
- Any future taxable years.

Section 332 is not an elective provision. If the requirements of section 332 are met, the liquidation is nontaxable. Filing Form 952 is a requirement for section 332 treatment in the case of a complete liquidation under the multi-year alternative. Thus, if Parent fails to file Form 952 for all the years that fall within the period of liquidation, the Service may deny nonrecognition treatment to a complete liquidation that otherwise would have qualified under section 332.

If the distributions made by Subsidiary do not qualify as made in complete liquidation under section 332, Parent will generally recognize gain or loss on the property it received from Subsidiary under sections 331 and 1001.⁹ Similarly, Subsidiary will generally recognize gain or loss on any property that it distributed to Parent under sections 336(a) and 1001.¹⁰ Any case in which Parent attempts to retrospectively render section 332 inapplicable to a complete liquidation solely due to its failure to file Form 952 should be coordinated with Area Counsel. Such cases should be closely scrutinized, and the reported tax treatment challenged when appropriate.

II. Computing Parent's Extended Period of Assessment

For each taxable year for which Parent files Form 952, Form 952 extends Parent's (but not Subsidiary's) period of assessment for at least an additional four years. During this extended period, the Service may assess tax that relates to the liquidation. The extended period begins on the expiration of the usual limitation on assessment under

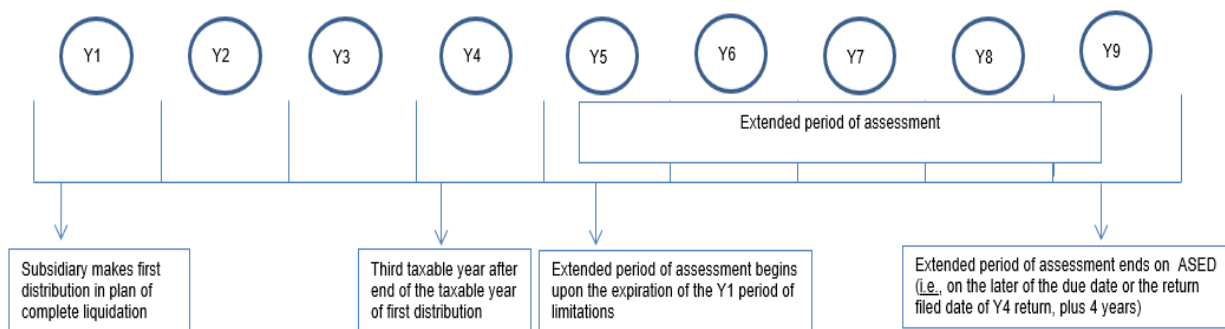
⁸ Section 332(b)(3); Treas. Reg. § 1.332-4(b).

⁹ For guidance on liquidations that also qualify as a reorganization within the meaning of section 368(a)(1), see Appendix, footnotes A6 and A7. Parent should file Form 952 regardless of whether section 331 or the reorganization provisions apply to distributions made by Subsidiary to minority shareholders.

¹⁰ Parent's failure to file Form 952 disqualifies both Parent and Subsidiary from tax-free treatment under section 332. Thus, if Parent fails to file Form 952 for any of its taxable years that fall within the period of liquidation, Subsidiary will recognize gain or loss on all property that it distributes to Parent in the purported liquidation. However, see Appendix, footnotes A6 and A7, for guidance on liquidations that also qualify as reorganizations within the meaning of section 368(a)(1).

section 6501(a) (*i.e.*, three years from the later of the due date (without extensions) or the date the return is filed). The extended period ends four years after the later of (i) the due date of Parent’s return for the third taxable year beginning after the end of the taxable year of the first liquidating distribution (without extensions)¹¹ or (ii) the date on which that return is filed.¹² The extended period ends four years later (referred to as the ASED).

The following diagram illustrates this rule¹³:



Under the multi-year alternative, Subsidiary may have up to almost four years to complete the liquidation because the multi-year period begins after the close of the taxable year in which it makes its first distribution. For example, assume that Parent and Subsidiary are both calendar year taxpayers, and that Subsidiary makes its first distribution pursuant to a plan of liquidation on January 1 of Year 1. Subsidiary has until December 31 of Year 4 to complete its final distribution. For each of the taxable years for which Parent files Form 952, the form will extend Parent’s period of assessment until four years after the later of the date on which its Year 4 return is due without extensions (April 15, Year 5) or the date on which that return is filed, and ending on the ASED (in Year 9).¹⁴ Thus, regardless of when Subsidiary makes its final distribution (*i.e.*, in Year

¹¹ The term “third taxable year” refers to Subsidiary’s taxable year (see Appendix, footnote A12). If Parent and Subsidiary have different taxable years, please contact our Office for further assistance.

¹² Pursuant to section 6501(c)(4)(A), if a taxpayer and the Service consent to extend the usual three-year period of limitations on assessment, the Service may assess tax “any time prior to the expiration date of the period agreed upon.” Therefore, notwithstanding the reference to the beginning date on the current version of Form 952, the Service may assess tax that relates to the section 332 liquidation for the taxable year for which Form 952 is filed at any time from the date the original period of limitations expires until the expiration of the extended period.

¹³ This diagram assumes that Parent and Subsidiary have the same taxable year. See *also* Appendix, footnote A21.

¹⁴ In the case of a fiscal year taxpayer, section 6072(a) provides that the due date of the return (without extensions) is the 15th day of the fourth month following the close of the fiscal year. For ease of discussion, the examples in this memorandum assume that both Subsidiary and Parent are calendar year taxpayers, unless otherwise noted.

2, 3, or 4), the extended period of assessment for **each** year for which Parent filed Form 952 begins on the later of when Subsidiary's Year 4 return is due or when Subsidiary files its Year 4 return and ends on the ASED.

III. Issues related to establishing the ASED

What if Parent has not yet filed its return for the third taxable year beginning after the end of the taxable year of the first liquidating distribution?

The specific question posed by WCL focused on the proper ASED for Form 952 if Parent has not yet filed its return for its third taxable year beginning after the end of the taxable year of the first liquidating distribution.

For example, assume that Subsidiary makes its first distribution pursuant to a plan of liquidation in Year 1 and its final distribution in Year 2. Parent filed Form 952 for Years 1 and 2 because those years fell within the period of liquidation. The Service can therefore establish that Parent's period of assessment for Years 1 and 2 is extended until four years after the date on which Parent's Year 4 return is due, without extensions (*i.e.*, April 15, Year 9) or, if later, the date on which that return is filed. Without having yet received the Year 4 return, the Service is able to establish only that the ASED should be determined using the due date of the Year 4 return or later.

Assume further that, with an extension, Parent's Year 4 return was due on October 15 of Year 5 and that Parent filed its Year 4 return on October 3 of Year 5. The period of assessment is extended for a period ending four years after the later of the original due date (April 15) and the date that the return is filed (October 3).¹⁵ Thus, the Service is now able to establish that the extended period of assessment ends on October 3 of Year 9.

In light of the example above, this Office recommends that the Service assume that the earliest possible date, April 15 of Year 9, will be the ASED, until it receives the Year 4 return. The Service should adjust the ASED to a later date if it subsequently learns that Parent filed its Year 4 return later than April 15 of Year 5. Because Parent filed Form 952 for Years 1 and 2, the extended period of assessment applies to Years 1 and 2. The usual three-year statute of limitations on assessment remains for all of Parent's other taxable years and for all of Subsidiary's taxable years, as well as for all issues other than those relating to section 332 in Parent's Years 1 and 2.¹⁶

¹⁵ Section 6501(a).

¹⁶ Section 6501(a); Treas. Reg. § 301.6501(a)-1. The period for assessment may be extended by agreement.

Does the same ASED apply to all taxable years for which Form 952 was filed?

It is our understanding that there has been some confusion about whether the ASED is identical for all taxable years for which Form 952 was filed.

This Office confirms that the ASED is the same for all taxable years during which Parent received a liquidating distribution from Subsidiary and for which it filed Form 952. Applied to the fact pattern above, the ASED is October 3 of Year 9 for Parent's Years 1 and 2.

What if there is uncertainty surrounding which taxable year Subsidiary made its first distribution pursuant to a plan of liquidation?

Form 952 does not require Parent to identify when Subsidiary made its first distribution pursuant to a plan of liquidation. WCL has made us aware that, in some cases, Parent may preemptively file Form 952 for a taxable year before the taxable year in which it receives the first liquidating distribution and/or fail to file Form 952 for the taxable year that includes the date of the first liquidating distribution. As a result, the Service may be uncertain about the taxable year in which Subsidiary made its first liquidating distribution, and this uncertainty creates further uncertainty as to the third taxable year beginning thereafter and the ASED. It is our understanding that the current practice is to treat the taxable year for which the initial Form 952 was filed as the year of the first liquidating distribution.

This Office recommends that current practice be modified. Without a thorough review of the initial Form 952, the Service may be limited in assessing a deficiency in later years. For example, assume Parent received liquidating distributions in Year 1 and Year 2, and that it filed Form 952 for Year 2 but not for Year 1. Without further inquiry, the Service would treat Year 2 as the taxable year of the first liquidating distribution and would extend Parent's period of assessment for Year 2 to the later of the due date or filed date of the Year 5 return (*i.e.*, April 15, Year 6 or the date the return is filed). Thus, the period of assessment would be extended for Year 2 but not for Year 1, and the ASED would be incorrectly based on the later of the due date or the filing date of the Year 5 return rather than the Year 4 return. More important, because Form 952 was not filed for Year 1, none of the distributions made by Subsidiary qualify as made in complete liquidation under section 332. Parent may cure its failure to timely file Form 952 for Year 1 by filing a late Form 952 for Year 1, so long as the statute of limitations on assessment for Year 1 has not yet expired.¹⁷ If Parent files a late Form 952 for Year 1, the period of assessment for both Year 1 and Year 2 will be extended until four years after the later of the due date or filed date of the Year 4 return.

¹⁷ See section 6501(c)(4)(A).

This Office encourages the Service to review thoroughly all information regarding the liquidation filed by both Parent and Subsidiary to ensure that the correct taxable year in which the first distribution pursuant to a plan of liquidation was made is identified. In addition to reviewing Parent's Forms 952, the Service employee assigned to the case should review Subsidiary's Form 966 and the accompanying plan of liquidation.¹⁸ The plan will state when the first distribution will be made and the Service employee should confirm that the first distribution was in fact made in that taxable year (and not in a prior taxable year). The Service employee should also review each statement that Parent has filed with its income tax returns.¹⁹

Finally, we note that a plan of liquidation may be adopted informally, before formal action by Subsidiary's board of directors. Distributions pursuant to such a plan may take place before a plan of liquidation is formally adopted.²⁰ Accordingly, this Office encourages the Service to review events that occur before the formal adoption of a plan of liquidation, to determine whether Form 952 should have been filed for a taxable year before the year in which the first distribution is purportedly made.

IV. Signature authority for executing Form 952

It is our understanding that WCL frequently receives questions about whether the proper individual executed Form 952 on behalf of Parent.²¹ As noted above, Parent must file Form 952 for each taxable year that falls wholly or partly within the period of liquidation. Sometimes, an officer of Parent is not the proper individual to execute and file Form 952 on behalf of Parent (for example, if Parent is a member, but not the common parent, of a consolidated group). Furthermore, certain circumstances or events may change which individual has the authority to sign Form 952 on behalf of Parent. This Office recommends confirming that the proper individual executed Form 952 on behalf of Parent for each taxable year:

¹⁸ Pursuant to section 6043(a), Subsidiary must file Form 966, *Corporate Dissolution or Liquidation*, and attach a certified copy of the plan of liquidation within 30 days of adopting the plan. Pursuant to Treas. Reg. § 1.332-4(a)(1), the plan of liquidation must include a statement showing the period within which the transfer of Subsidiary's property is to be completed. If the plan of liquidation is amended or supplemented after Subsidiary files Form 966, Subsidiary must file another Form 966 within 30 days after the amendment or supplement is adopted.

¹⁹ Pursuant to Treas. Reg. § 1.332-6(a), Parent must file a statement for each taxable year during which it received a distribution pursuant to a plan of liquidation. The statement must include the date of each distribution, the fair market value and basis of assets that have been or will be transferred, and a representation that the liquidation has been completed or that it has not been completed but Parent has timely filed a Form 952.

²⁰ Such cases should be coordinated with Area Counsel. See *also* Appendix, footnote A14.

²¹ The president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized to act, may sign Form 952 on behalf of a corporation. See Rev. Rul. 83-41, 1983-1 C.B. 349.

- If Parent is a member of a consolidated group, the agent for the consolidated group (usually the common parent) must file Form 952 on behalf of Parent.²² The individual signing Form 952 must have authority from that agent (usually an officer). If Parent files a petition in bankruptcy, the agent for the consolidated group must continue to file and sign Form 952 on behalf of Parent, regardless of whether Parent is a debtor in possession or the bankruptcy court appoints a trustee. Filing of a Form 952 will have the effect of extending the statute of limitations on assessment for all members of the consolidated group (but only with respect to issues relating to the section 332 liquidation).²³
- If Parent files a separate return, or is the agent for a consolidated group, and is designated as a debtor in possession in a bankruptcy proceeding, an officer authorized to sign Form 952 must continue to file and sign Form 952 on behalf of Parent. If the bankruptcy court appoints a trustee (that has filed Form 56, *Notice Concerning Fiduciary Relationship*), such trustee must sign and file Form 952 on behalf of Parent.
- If Parent is a foreign corporation, but not a “controlled foreign corporation” (CFC) within the meaning of section 957, and if any gain it would recognize from the receipt of a distribution from Subsidiary would be “effectively connected” with the conduct of the trade or business in the United States within the meaning of section 864(c) (ECI) (such that Parent is required to file Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*), Parent must file Form 952. The individual signing Form 952 (usually an officer) must have authority to sign Form 952.
- If Parent is a CFC with no ECI, each shareholder of Parent that is a “United States shareholder”, within the meaning of section 951(b), must file and sign Form 952. If the United States shareholder is a corporation rather than an individual, the individual signing Form 952 must have authority from that corporation (usually an officer). If the shareholder is neither an individual nor a corporation, the case should be coordinated with Area Counsel.
- If Parent dissolves or liquidates, the case should be coordinated with Area Counsel.

²² Treas. Reg. §§ 1.1502-77(d)(4), -77A, -77B(a)(2)(iv). If an adjustment is made with respect to Parent’s income, there would be a corresponding adjustment to the consolidated group’s tax liability.

²³ See footnote 7, above. If Subsidiary is a member of a consolidated group and its stock is owned by multiple members (“distributee members”), the distributee members’ interests in Subsidiary are aggregated for purposes of determining whether the 80-percent-or-more stock ownership requirement of section 332 is met. See Appendix, footnote A13. Accordingly, the agent for the consolidated group should file Form 952 on behalf of each distributee member. Because filing one form has the effect of extending the statute of limitations on assessment for all members of the consolidated group, the agent may attach a list of all distributee members to one Form 952 in lieu of filing multiple forms.

- If Parent merges with another corporation, and the other corporation survives the merger, the surviving corporation must sign and file Form 952 as a successor to Parent, if the surviving corporation is primarily liable, pursuant to applicable law (including, for example, by operation of a state merger statute), for the tax liability of Parent, as would normally be the case.²⁴
- If Parent's assets are acquired in a transaction qualifying as a reorganization within the meaning of section 368(a)(1)(C) or section 368(a)(1)(D) (but not a merger), the case should be coordinated with Area Counsel.²⁵

Section 25.6.22.6.2.3.1 of the Internal Revenue Manual provides further guidance.

This advice has been coordinated with LB&I Division Counsel and the Office of Associate Chief Counsel (Procedure & Administration), both of whom concur in the conclusions herein.

Please call Aglaia Ovtchinnikova or Gerald B. Fleming at 202-317-6975 if you have any further questions.

Sincerely,

Robert H. Wellen
Associate Chief Counsel (Corporate)

²⁴ If there is doubt about whether the surviving corporation is primarily liable for the tax liability of Parent, the case should be coordinated with Area Counsel.

²⁵ If Parent is a member of a consolidated group and its assets are acquired by a member of the same consolidated group, the agent of the group should continue filing Form 952.

TAX CONSEQUENCES OF A COMPLETE LIQUIDATION UNDER SECTION 332

Section 332 of the Code governs the tax consequences to a corporate shareholder (Parent) that receives a distribution upon the complete liquidation of an 80-percent-or-more owned subsidiary (Subsidiary).^{A1} If certain requirements (discussed below) are met, Parent does not recognize gain or loss on the liquidation of Subsidiary, pursuant to section 332(a). If a complete liquidation qualifies under section 332, Parent succeeds to Subsidiary's basis in the distributed property (section 334(b)) and to the carryover items that are listed in section 381(c) and certain other items.^{A2} Subsidiary generally does not recognize gain or loss on the distribution of any property to Parent pursuant to section 337(a).^{A3}

In contrast to the treatment of Parent, any minority shareholders' gain or loss is determined without regard to section 332. Thus, such shareholders generally recognize gain or loss on the receipt of any property from Subsidiary pursuant to section 1001.^{A4}

^{A1} Per section 332(b)(1), Parent must own at least 80 percent of the stock of Subsidiary, by both vote and value, on the date a plan of liquidation is adopted and at all times thereafter until the final distribution of property. For this purpose, stock does not count as stock if it is described in section 1504(a)(4), *i.e.*, if it is nonvoting, is limited and preferred as to dividends, does not participate in corporate growth to any significant extent, has redemption and liquidation rights which do not exceed its issue price, and is not convertible into another class of stock. For information on liquidation of corporations that are members of consolidated groups, see footnote A13, below.

^{A2} Section 381(a)(1). If multiple members of a consolidated group ("distributee members") receive distributions in a liquidation to which section 332 applies, such members succeed to and take into account the items of Subsidiary (including items described in section 381(c), but excluding intercompany items under § 1.1502-13) as provided by special rules in Treas. Reg. § 1.1502-80(g).

^{A3} However, pursuant to section 337(b)(2), Subsidiary recognizes gain if Parent is a tax-exempt organization (other than a farmers' cooperative), unless the property is used by Parent in an activity the income from which is subject to the tax on unrelated trade or business income immediately after the distribution and is permitted to recognize any loss because the loss disallowance provision of section 336(d)(3) does not apply. If Parent is a foreign corporation, see section 367(e)(2) and the corresponding regulations.

Pursuant to sections 336 and 337(c), Subsidiary recognizes gain (and loss allowed under section 336(d)) on any property distributed to a shareholder other than the specific 80-percent distributee member, even if that other shareholder is also a member of the same consolidated group. However, if Subsidiary is a member of a consolidated group, gain or loss on distributions to other members is not necessarily taken into account at the time of the liquidation. See Treas. Reg. § 1.1502-13(j)(9) Example (6) (finding an 80-percent distributee) and Example (7) (finding no 80-percent distributee).

^{A4} Treas. Reg. § 1.332-5. However, see footnote A7, below.

Likewise, pursuant to sections 336(a), and 336(d)(3), Subsidiary recognizes gain but not loss on the distribution of any property to minority shareholders.^{A5}

Sometimes, a complete liquidation that qualifies under section 332 also qualifies as a reorganization within the meaning of section 368(a)(1). In such a case, the nonrecognition provisions of sections 332(a) and 337(a), to the extent applicable, override the reorganization rules with respect to distributions to Parent.^{A6} Because section 332 does not apply to minority shareholders, the reorganization rules apply to distributions to such shareholders. Accordingly, minority shareholders recognize no gain or loss under sections 336(c) and 361(c)(4), and Subsidiary recognizes no gain or loss pursuant to sections 361(a) and 361(c)(1).^{A7}

If a transaction does not qualify under either section 332 or section 368(a)(1), it may constitute a complete liquidation to which section 331 applies. In such a case, pursuant to sections 331(a) and 1001, Parent recognizes gain or loss on the property it receives from Subsidiary (as do as any minority shareholders). Similarly, pursuant to sections 336(a) and 1001, Subsidiary recognizes gain or loss on the distribution of any property to Parent and minority shareholders.

Certain events following a complete liquidation (that otherwise would qualify under either section 331 or section 332) may cause the complete liquidation to be recharacterized. For example, a complete liquidation of Subsidiary followed by a transfer of all or part of its assets to another corporation may be recharacterized as a

^{A5} However, see footnote A7, below.

^{A6} Treas. Reg. § 1.332-2(d). Accordingly, Parent's gain or loss in its Subsidiary stock is not recognized, and its basis in the Subsidiary assets received is the same as it was in the hands of Subsidiary under section 334(b)(1). The consequences to Parent would have been the same if the reorganization rules had applied.

^{A7} Treas. Reg. § 1.332-2(d). For example, assume that Parent owns 85 percent of the stock of Subsidiary, while U (an unrelated party) owns the remaining 15 percent. Subsidiary has no liabilities. Parent, Subsidiary, and U enter a plan of reorganization whereby Subsidiary transfers all its assets to Parent; Parent issues stock to U in an amount equal to 15 percent of the fair market value of Subsidiary; and Subsidiary liquidates and distributes all of its property to Parent. The transaction qualifies under section 368(a)(1)(C). Pursuant to Treas. Reg. § 1.332-2(d), the distributions by Subsidiary to Parent are treated as in complete liquidation under section 332; accordingly, section 332(a) applies to Parent and section 337(a) applies to Subsidiary.

In contrast, the distributions by Subsidiary to U are treated as made in an upstream reorganization under section 368(a)(1)(C). Accordingly, Subsidiary recognizes no gain or loss on the transfer of its assets under section 361(a), but any built-in gain or loss in the transferred assets is preserved in its basis in the Parent stock received. Subsidiary recognizes no gain or loss on the distribution of Parent stock under section 361(c)(1). Under section 354, U's basis and holding period in the Parent stock is the same as it was in its Subsidiary stock.

tax-free reorganization^{A8} or as a taxable distribution which does not constitute a complete liquidation.^{A9}

If there is doubt about whether the transaction qualifies, or continues to qualify, as a complete liquidation under section 332, please contact our Office for assistance.

REQUIREMENTS OF A SECTION 332 LIQUIDATION

1) Distributions must be made within a defined period

One of the requirements under section 332 is that the distribution of all of Subsidiary's property in complete liquidation be made either:

within Subsidiary's taxable year (1-year alternative)^{A10} or

within three taxable years after the close of Subsidiary's taxable year during which it made the first of a series of distributions under the plan of liquidation (multi-year alternative).^{A11}

The taxable year referred to in the 1-year and multi-year alternatives is the taxable year of Subsidiary, not the taxable year of Parent.^{A12}

^{A8} For example, the transfer of Subsidiary's assets and liabilities to Parent may qualify as a reorganization within the meaning of section 368(a)(1)(A) or 368(a)(1)(C), and the transfer by Parent to another corporation may be protected by section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).

^{A9} Treas. Reg. § 1.331-1(c). See e.g., Rev. Rul. 76-429, 1976-2 C.B. 97. It is also possible that a liquidation-reincorporation transaction may not satisfy the requirements for complete liquidation treatment and instead the corporation holding the reincorporated assets is treated as an alter ego of the corporation that purportedly liquidated. See e.g., *Telephone Answering Service Co. v. Commissioner*, 63 T.C. 423 (1974), *aff'd without opinion* 546 F.2d (4th Cir. 1976), *cert. denied* 431 US 914 (1977).

^{A10} Section 332(b)(2), Treas. Reg. § 1.332-3.

^{A11} Section 332(b)(3), Treas. Reg. § 1.332-4.

^{A12} Rev. Rul. 76-317, 1976-2 C.B. 98. For example, assume that Parent is a calendar year taxpayer; Subsidiary's tax year ends on September 30; and Subsidiary makes its first distribution pursuant to a plan of liquidation on May 1 of Year 1. Under the 1-year alternative, Subsidiary must distribute all of its property to Parent by September 30 of Year 1. Under the multi-year alternative, Subsidiary must distribute all of its property to Parent by September 30 of Year 4.

2) Certain facts must be established for both the 1-year alternative and the multi-year alternative

The following facts must be established for the distributions by Subsidiary to be in complete liquidation under section 332:

a) Facts with respect to Parent

- Parent^{A13} owned stock in Subsidiary that meets the requirements of section 1504(a)(2) (see footnote A1) at all times from the date Subsidiary adopted the plan of liquidation^{A14} to the date of the final distribution of property.^{A15} See Part II of Form 851, *Affiliation Schedule*, to verify this requirement if Parent and Subsidiary are members of the same consolidated group.
- Parent did not claim a section 165(g) loss for worthless securities with respect to its Subsidiary stock.^{A16} See Part III, Question (d) of Form 851 to verify this requirement if Parent and Subsidiary are members of the same consolidated group.

b) Facts with respect to Subsidiary

- Subsidiary was solvent when it adopted the plan of liquidation.^{A17}

^{A13} Per Treas. Reg. § 1.1502-34, if Subsidiary is a member of a consolidated group and its stock is owned by multiple members, then the members' interests in Subsidiary are aggregated for purposes of determining whether the section 332 80-percent-or-more stock ownership requirement is met. In this situation, the term "Parent" refers to all the members of a consolidated group that own stock in Subsidiary.

^{A14} Section 332(b)(2) provides that adoption by the shareholders of a resolution authorizing the distribution of all the assets of the subsidiary in complete cancellation or redemption of stock is considered an adoption of a plan of liquidation. However, actions by Parent or Subsidiary (including entering into negotiations or agreements) prior to the formal shareholder adoption of the plan could be interpreted as indicating a prior informal adoption of a plan of liquidation. See Rev. Rul. 75-521, 1975-2 C.B. 120; Rev. Rul. 70-106, 1970-1 C.B. 70; and Rev. Rul. 65-235, 1965-2 C.B. 88. If there is doubt regarding whether Subsidiary adopted a plan of complete liquidation, the case should be coordinated with Area Counsel.

^{A15} Section 332(b)(1); Treas. Reg. § 1.332-2(a).

^{A16} Treas. Reg. § 1.332-2(b).

^{A17} See e.g., *H.G. Hill Stores, Inc. v. Commissioner*, 44 B.T.A. 1182 (1941), *acq.*, 1942-2 C.B. 9 (holding that the predecessor to section 332 did not apply because the corporation's liabilities exceeded the fair market value of its assets and so it had nothing to distribute to its stockholders). See also Rev. Rul. 59-296, 1959-2 C.B. 87, *amplified by* Rev. Rul. 70-489, 1970-2 C.B. 53, *superseded by* Rev. Rul. 2003-125, 2003-2 C.B. 1243.

- Subsidiary ceased to be a going concern, and its activities were merely for the purpose of winding up its affairs, paying its debts, and distributing any remaining balance to its shareholders, from the date it adopted the plan of liquidation to the date of the final distribution of property.^{A18}
- Subsidiary distributed its assets to holders of all classes of its stock, including common stock.¹⁹

3) Additional facts with respect to Parent must be established for the multi-year alternative

The following additional facts must be established for the distributions by Subsidiary to be in complete liquidation under section 332 for the multi-year alternative:

- For each of Parent's (not Subsidiary's) taxable years that falls wholly or partly within the period of liquidation,^{A20} Parent filed Form 952 for each taxable year by

^{A18} Treas. Reg. § 1.332-2(c). Failure to dissolve Subsidiary under state law does not disqualify the transaction for non-recognition treatment under section 332 if Subsidiary is de facto liquidated. A de facto liquidation occurs when a corporation disposes of all or most of its operating assets, terminates its regular business activities, becomes a mere shell (a corporation in name and semblance only) without real corporate substance, serving no real corporate purposes and having no valid or compelling reason for continuing its existence, even though not formally dissolved. Rev. Rul. 61-191, 1961-2 C.B. 251. Regardless of whether Subsidiary dissolves under state law, if a significant portion of Subsidiary's assets are transferred to another corporation, the purported liquidation may not qualify as a complete liquidation. See footnotes A8 and A9, above.

If Subsidiary makes a "check-the-box" election pursuant to Treas. Reg. § 301.7701-3(c)(1)(i) on Form 8832, *Entity Classification Election*, it is deemed to distribute all of its assets and liabilities to Parent pursuant to Treas. Reg. § 301.7701-3(g)(1)(iii). If Subsidiary is taxed as a corporation and converts under state law to a business entity other than a corporation, it is similarly deemed to distribute its assets and liabilities to Parent. If Subsidiary had not previously adopted a multi-year plan of liquidation, then a deemed distribution pursuant to the "check-the-box-election" will qualify under the 1-year alternative.

^{A19} If, for example, Subsidiary has both preferred and common stock outstanding, and the satisfaction of the preferred stock claim leaves no property to be distributed with respect to the common stock, then section 332 does not apply with respect to the common stock and Parent may be entitled to a section 165(g) loss for worthless securities, *i.e.*, the common stock. See *Spaulding Bakeries Inc. v. Commissioner*, 27 T.C. 684 (1957), *aff'd*, 252 F.2d 293 (2d Cir., 1958) (holding that the predecessor of section 332 did not apply where a distribution in liquidation of a wholly owned subsidiary was made only with respect to nonvoting preferred stock because there were insufficient assets to make a distribution with respect to common stock); *H.K. Porter Co. v. Commissioner*, 87 T.C. 689 (1986) (holding that section 332 did not apply where the assets of a wholly owned subsidiary were insufficient to satisfy the claim of the parent's preferred stock and permitting an ordinary loss with respect to the common stock and a long-term capital loss with respect to the preferred stock).

^{A20} As used in this memorandum, the term "period of liquidation" refers to the period beginning with the taxable year in which Subsidiary makes its first distribution pursuant to the plan of liquidation and ending upon the final distribution of property (and does not exceed the timeframe established by the one-year or multi-year alternative, as applicable).

the due date (including extensions) of its income tax return (a “timely filed” form).^{A21}

- If Parent failed to timely file Form 952 for a taxable year that falls wholly or partly within the period of liquidation, Parent filed Form 952 for that taxable year before the statute of limitations on assessment expired (a “late filed” form).^{A22}

4) Additional recommendations with respect to Subsidiary

For both the 1-year and multi-year alternatives, this Office recommends that the Service verify the following facts, even though their absence may not disqualify the distributions by Subsidiary from being made in complete liquidation under section 332:

- Subsidiary filed Form 966 within 30 days of adopting the plan of liquidation.^{A23} A Service employee may confirm whether Subsidiary filed the form by requesting a transcript of the Business Master File (BMF) from the Integrated Data Retrieval System (IDRS).
- Subsidiary attached a certified copy of the plan of liquidation to Form 966 and the plan includes a statement showing the period within which the transfer or transfers of its property to Parent are to be completed.^{A24} For approximately one

^{A21} Treas. Reg. § 1.332-4(a)(2). For example, assume that Parent is a calendar year taxpayer and Subsidiary’s tax year ends on September 30. Subsidiary makes its first distribution pursuant to a plan of liquidation on December 1, Year 1 and its final distribution on December 1, Year 3. From Subsidiary’s perspective, it made the first liquidating distribution in its Year 2 and the final distribution in its Year 4. From Parent’s perspective, it received the first liquidating distribution in its Year 1 and the final liquidating distribution in its Year 3. Because Parent must file Form 952 for each tax year or part of a tax year that falls within the liquidation period, Parent must file Form 952 for its Years 1, 2, and 3 (even if Parent received no liquidating distributions during its Year 2, because Year 2 falls within the period of liquidation). If Subsidiary instead made its final distribution on December 1, Year 2, Parent must file Form 952 for its Years 1 and 2 return (but not for its Year 3 return, because Year 3 falls outside the period of liquidation).

While Treas. Reg. § 1.332-4(a)(2) directs Parent to file Form 952 “with the district director of internal revenue at the time of filing its return,” the instructions to Form 952 direct Parent to file Form 952 with the Ogden Submission Processing Center by the due date of its return. Because district directors no longer exist under the current structure of the Internal Revenue Service, the instructions to the form should be followed.

^{A22} Section 6501(c)(4)(A). For example, assume that Parent received a liquidating distribution from Subsidiary in 2015, but failed to file a Form 952 by the due date for its 2015 income tax return. Parent may satisfy the requirement to file Form 952 for its 2015 taxable year by filing Form 952 before the statute of limitations on assessment for 2015 expires.

^{A23} Section 6043(a).

^{A24} Treas. Reg. § 1.332-4(a)(1).

year, the form is stored in alphabetical order (based on corporation name) by received/processed date in the Files Area within W&I, Submission Processing. After one year, the form is stored at a Federal Records Center (FRC) and the Service employee may request a copy of the form from IDRS using Command Code (CC) ESTABD (Definer D for "Document").

In addition, for the multi-year alternative, this Office recommends that the Service request that Subsidiary execute Form 872, *Consent to Extend the Time to Assess Tax*, on issues that pertain to the section 332(b) liquidation for each taxable year during which it makes a liquidating distribution to Parent on issues that pertain to the section 332(b) liquidation.^{A25} Form 952 extends Parent's, but not Subsidiary's, period of assessment. If the Service determines that Parent is not entitled to nonrecognition of gain or loss with respect to property it received in a purported section 332 liquidation, the Service may recompute Parent's tax liability for years that otherwise would be closed absent Form 952, but not Subsidiary's. Form 872 would permit the Service to make corresponding computations to Subsidiary's tax liability.

The Service cannot compel Subsidiary to execute Form 872. Therefore, unless Subsidiary consents to extend its period of assessment, the ordinary three-year statute of limitations on assessment will apply to each year falling within the period of the purported section 332 liquidation.^{A26} It would be appropriate then that the Service immediately issue a notice of deficiency with respect to such years upon discovering that the liquidation does not qualify under section 332.

TAX CONSEQUENCES OF FAILING TO QUALIFY UNDER SECTION 332

Because Subsidiary may have up to almost four years to complete the liquidation under the multi-year alternative, the Service may be precluded from assessing tax due if the liquidation ultimately fails to qualify under section 332(b)(3) and Parent has not filed Form 952 for each of the taxable years falling wholly or partly within the purported period of liquidation. Due to the duration of the period within which distributions could qualify for nonrecognition treatment under the multi-year alternative, it is critical that the Service verify that Parent filed Form 952 for each taxable year that falls wholly or partly within the period of the purported section 332 liquidation.

The following example illustrates this point. Assume that Parent acquired 80 of the 200 outstanding shares of Subsidiary for \$80 on Date 1 (first block) and acquired the remaining 120 shares for \$360 on Date 2 (second block). In Year 1 (a taxable year that began after Dates 1 and 2), Subsidiary adopted a plan of complete liquidation pursuant

^{A25} If Subsidiary is a member of a consolidated group, the agent for the consolidated group (usually the common parent) should file Form 952 on behalf of Subsidiary.

^{A26} If Parent and Subsidiary are members of the same consolidated group, the need to obtain a Form 872 to extend Subsidiary's statute of limitations on assessment is obviated, as Form 952 will extend all group members' statute of limitations on assessment on issues pertaining to the purported section 332 liquidation.

to which it would make its first distribution in Year 1 and its final distribution by Year 4. Subsidiary intended the liquidation to qualify under the multi-year alternative. In Year 1, when Subsidiary had no liabilities, Subsidiary sold all its assets for \$1,000 and recognized no gain. In each of Years 1, 2, 3, and 4, Subsidiary distributed \$200 to Parent pursuant to the plan of complete liquidation. Parent reported the distributions as qualifying under section 332. Subsidiary made its final liquidating distribution of \$200 in Year 5.

The liquidating distributions described above do not qualify under section 332(b) because the final distribution in Year 5 occurred after the defined period described in section 332(b)(3). Instead, Parent must recognize gain or loss on the property it received from Subsidiary pursuant to sections 331(a) and 1001. Assume that, at the time of each distribution, Subsidiary had no liabilities, Subsidiary had neither current nor accumulated earnings and profits (E&P), and Parent's adjusted basis in each of its blocks of stock in Subsidiary was its cost.^{A27} Parent should amend its returns for each of Years 1, 2, 3, 4, and 5 to reflect the following amounts of gain:

	Year 1 \$200 Distribution	Year 2 \$200 Distribution	Year 3 \$200 Distribution	Year 4 \$200 Distribution	Year 5 \$200 Distribution
First block (\$80 basis)	(recovery of \$80 basis)	\$80 gain	\$80 gain	\$80 gain	\$80 gain
Second block (\$360 basis)	(recovery of \$120 basis)	(recovery of \$120 basis)	(recovery of \$120 basis)	\$120 gain	\$120 gain
Total	-	\$80 gain	\$80 gain	\$200 gain	\$200 gain

Assume the same facts as above, but that instead of making its final liquidating distribution of \$200 in Year 5, Subsidiary instead retained the cash. The distributions made in Years 1 through 4 do not qualify under either section 331 or section 332(b) because Subsidiary did not completely liquidate. Instead, section 301 applies to the distributions, and Parent's tax liability is recomputed as of the time of the actual distributions.^{A28} Parent should amend its returns for each of Years 1, 2, 3, and 4 to reflect the following amounts of gain:

^{A27} If Subsidiary had generated gain and E&P on the asset sale in Year 1, the results in the table below would be different and would depend on whether Parent and Subsidiary filed a consolidated return.

^{A28} Parent may owe interest on any taxes due resulting from disqualification, which accrues from the due date of each return (without extensions) for the years in which the distributions were made. See sections 6601 and 6621.

	Year 1 \$200 Distribution	Year 2 \$200 Distribution	Year 3 \$200 Distribution	Year 4 \$200 Distribution
First block (\$80 basis)	(recovery of \$80 basis)	\$80 gain	\$80 gain	\$80 gain
Second block (\$360 basis)	(recovery of \$120 basis)	(recovery of \$120 basis)	(recovery of \$120 basis)	\$120 gain
Total	-	\$80 gain	\$80 gain	\$200 gain

In each case described above, the Service may be unable to assess tax for earlier years in the purported liquidation if the period of assessment has expired and Parent has not consented to extending it by filing Form 952.