

CONSOLIDATED TAX RETURNS

FOURTH EDITION

Tax Planning and Compliance
For Consolidated Groups

BY

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Current updates prepared by Editorial staff

2025 Edition

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2025 Highlights

- Validity of regulations (§ 6:4)
- Dual consolidated losses (§ 10:10)
- Treatment of consolidated group as single U.S. shareholder (§ 13:45)
- Corporate stock repurchase excise tax (§ 14:21)
- Corporate Alternative Minimum Tax (§ 22:1)
- Updated statutes, regulations, administrative guidance, and case law throughout.

About the Author

Lawrence M. Axelrod graduated from Stuyvesant High School in New York City and attended the State University of New York at Stony Brook during the quiet years, 1967 through 1971. After waiting tables during a year's respite from academia, he enrolled in the University of Southern California Law Center. Upon graduation, he joined the tax department of a large accounting firm which suffered from the delusion that he could be made a CPA. In 1977, following a year and a half of tax practice, with emphasis in estate planning, Larry went to work for the Office of Chief Counsel, Legislation and Regulations Division, of the IRS in Washington, DC. In light of his estate planning experience, the IRS assigned him to the Corporate Branch where he drafted regulations on investment credit for movies and bad-debt deductions for thrifts, in addition to regulations on consolidated returns. The Tax Court declared his regulations under section 593 invalid on three occasions—and three times was reversed. During his tenure at the IRS, he received an MLT degree from Georgetown University Law Center.

In 1981, having served his commitment with the Service, Larry joined the Washington Service Center of Touche Ross. In 1985, he was admitted to the partnership.

For 20 years he conducted a two-day consolidated return seminar for public participants willing to fork over the tuition. Beginning in 2007, he assumed responsibility for updating and re-writing portions of this treatise.

From 1987 to 1988, he was chairman of the ABA Tax Section Committee on Affiliated and Related Corporations. He is the author of numerous articles on consolidated return issues, including "The Supreme Court, Consolidated Returns, and 10-Year Carrybacks" which was cited in Justice Souter's 2001 opinion in *United Dominion Industries, Inc.* Also, his article on consolidated AMT was cited in Judge Cohen's opinion for the Tax Court in *State Farm Insurance Co. v. Commissioner*. His 1997 article, "Are Consolidated Returns Obsolete," exploring the differences and similarities between a single-member LLC and a subsidiary in a consolidated group, was among the articles selected for republication by Tax Notes in 2012 to commemorate the magazine's 40th anniversary.

In May 2008, to the lament of his clients, partners, and the tax community in general, Larry retired from Deloitte Tax to pursue a life of relative leisure. After eight months, however, he heard the clarion call of public service and returned to the IRS as Special Counsel to the Associate Chief Counsel (Corporate) but returned to private practice in 2016.

Preface

Sir Isaac Newton observed that if he saw farther than others, it was because he had stood on the shoulders of giants. This book is the work-product of a multi-generation of law professors, accountants and lawyers. The current author salutes those giants upon whose shoulders he stands in putting his name on this book.

The first edition of Consolidated Tax Returns was released in 1959. Written by Fred W. Peel, and published by Clark Boardman Callaghan, it was the first treatise on this important area of the tax law. The total text of the first edition ran under 300 pages. In 1964, Fred added an 88 page cumulative supplement. Over the years, Fred prepared the second edition (1972) and, for the third edition in 1984, was assisted by Bill Huber and Dennis Lubozynski.

In 1959, a consolidated return was a rarely elected option for affiliated groups due in most part to the 2% additional tax on consolidated taxable income imposed upon groups electing the privilege. With the repeal of the additional tax in 1964, the election, not surprisingly, became considerably more popular. With the new popularity came the inevitable ingenuity of tax practitioners to devise transactions that maximized tax savings opportunities. Thus came the transaction described in *Henry C. Beck Builders, Inc.*, in which the taxpayer employed the then carryover basis rules for intercompany transactions and the rules of pre-1982 section 334(b)(2), which allowed for a tax-free basis step-up for a corporation's assets equal to the basis of the corporation's stock in the hands of a purchaser, provided the corporation liquidated within two years of its purchase. The result of the interaction of these rules allowed the taxpayer to avoid a corporate level tax on its income. In response, the IRS and Treasury in 1966 began drafting the modern era of consolidated return regulations with the promulgation of new intercompany transaction regulations and a wholesale revision of other sections of the consolidated return regulations. In 1972, the next major wave of revised consolidated return regulations hit the street.

With the repeal of the General Utilities doctrine in 1986, consolidated return regulations again became a focus of planning opportunities for creative tax practitioners. In response, the Treasury Department began the process of revising the regulations to work in harmony with the statutory changes to subchapter C of the Code. Thus, in 1990 Treasury issued the first loss disallowance regulation, which turned out to be a fiasco that took 18 years to resolve. In 1994, the investment adjustment and earnings and profits sections of the consolidated return regulations were revised, with related changes to the excess loss account regulations, the group structure change regulations, the taxable year regulations, and the anti-circular basis regulations. 1995 saw the adoption of a fundamental revision of the intercompany transactions rules. In 1999, the SRLY regulations were revised and new regulations applying the rules of section 382 to consolidated groups were issued. Throughout these years, Bill and Dennis made their contribution to this work.

In 2007, I was entrusted with the honor of updating the book with a Fourth Edition. I added a new chapter on cancellation of indebtedness to reflect new regulations, and a new chapter on LLCs. I also revised the chapters on intercompany transactions, obligations of members, investment adjustments, earnings and profits, section 382, excess loss accounts, and taxable years of members. Following the promulgation of the unified loss rules in 2008, I added a chapter describing those rules.

The Tax Cuts and Jobs Act (TCJA) placed greater restrictions on the deductibility of interest, eliminated the corporate minimum tax and limited the use of NOL carryovers to 80 percent of taxable income. The Act eliminated the carry back of net operating losses from taxable years beginning after 2017. The elimination seemed justified as a means to prevent NOL in taxable years when the tax rate was 21 percent from being carried back and used to offset income that was taxed at 35 percent. In the 2019-20 edition of this book I stated in the Preface that I was not eliminating the discussion of consolidated NOL carrybacks because I believed the carryback provisions “may not be dead, but merely sleeping. Come the next recession, however, Congress can play Prince Charming and reawaken those slumbering rules as a means to rescue financially troubled corporations without the politically less palatable and transparent payment of a direct subsidy or bailout.”

In March 2020, in response to the economic disruption inflicted by the corona-19 virus, Congress passed and the President signed the Coronavirus Aid Relief, and Economic Security (CARES) Act. The CARES Act amended section 172 to allow taxpayers with NOLs arising in 2018, 2019, and 2020 to carry those NOLs back for five preceding years. Accordingly, the relevance of the discussion in this book of the consolidated NOLs carryback rules has been resurrected.

For this edition, I am indebted to George Johnson of the IRS Office of Chief Counsel for his meticulous edits and to my wife, Ruth Axelrod, for her review of the new material as well as her invaluable support.

As I have said in prior editions, comments on both substance and style from any reader of this volume are most welcome as I continue this never-ending labor of love in keeping this work current.

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