

for rules concerning the allocation and apportionment of deductions for charitable contributions. In the case of corporate taxpayers, transition rules set forth in § 1.861-13T provide for the gradual phase-in of certain provisions of this and the foregoing sections. \* \* \*

(3) *Expiration date.* The applicability of the paragraphs (a)(5)(ii), (b)(3), (e)(4), (f)(4)(i), and paragraph (g) *Example 17, Example 18, and Example 30* of this section, expires on or before July 31, 2009.

■ **Par. 8.** Section 1.6662-6T is amended by revising paragraph (d)(2)(ii)(B), first sentence to read as follows:

**§ 1.6662-6T Transactions between parties described in section 482 and net section 482 transfer price adjustments (temporary).**

\* \* \* \* \*

(d)(2)(ii)(B) A taxpayer's selection of the services cost method for certain services, described in § 1.482-9T(b), and its application of that method to a controlled services transaction will be considered reasonable for purposes of the specified method requirement only if the taxpayer reasonably allocated and apportioned costs in accordance with § 1.482-9T(k), reasonably concluded that the controlled services transaction meets the conditions of § 1.482-9T(b)(3), and reasonably concluded that the controlled services transaction is not described in § 1.482-9T(b)(2). \* \* \*

\* \* \* \* \*

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[FR Doc. E6-21908 Filed 12-21-06; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 5

[TD 9304]

RIN 1545-BF26

#### Guidance Necessary To Facilitate Business Electronic Filing Under Section 1561

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains temporary regulations that affect component members of controlled groups of corporations and consolidated groups filing life-nonlife Federal income tax returns. They provide guidance

regarding the apportionment of tax benefit items and the amount and type of information these members are required to submit with their returns. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These regulations are effective on December 22, 2006.

*Applicability Date:* For dates of applicability, see §§ 1.1502-43T(e)(1), 1.1502-47T(t)(1), 1.1561-1T(d)(1), 1.1561-2T(f)(1), 1.1561-3T(d)(1) and 1.1563-1T(e)(1). The applicability of these regulations will expire on December 21, 2009.

**FOR FURTHER INFORMATION CONTACT:** Grid Glycer, (202) 622-7930 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 1561(a) provides that the *component members of a controlled group of corporations* (as those terms are defined in section 1563) are limited to using the amounts of certain tax benefit items described therein in the same manner as if they were one corporation. Although section 1561(a) provides that these amounts shall generally be divided equally among those members, it also provides that if those members consent to adopt an apportionment plan, then, except as provided below, they will be permitted to allocate these amounts among themselves unequally. Section 1.1561-3(b) provides the procedural format by which those members may adopt an apportionment plan.

On May 26, 2006, the IRS and Treasury Department released temporary regulations (TD 9264), which, among other things, eliminated regulatory impediments to the electronic filing (e-filing) of many statements that corporate taxpayers were previously required to include on or with their Federal income tax returns. As noted in section 2.C. of the preamble to those regulations, § 1.1561-3(b) presents an impediment to the e-filing of that information which each member of a controlled group is required to provide with its Federal income tax return when it makes the consent provided therein. These temporary regulations remove that impediment and also clarify the amount and type of information that each member of such group is required to submit with its return, whether or not the group chooses to apportion unequally the specified tax benefit items among its

members. Thus, these regulations require each member of such group to provide the requisite information, whether or not it consents to adopt an apportionment plan, on a form (*i.e.*, Schedule O or any successor to that form) to be filed with each member's Federal income tax return for each taxable year for which it is a component member of a controlled group.

#### Explanation of Provisions

##### 1. Revision of the Regulations Under Section 1561

The IRS and Treasury Department are publishing temporary regulations under section 1561 for several reasons. First, the current regulations are outdated in that they refer to tax benefit items that are no longer listed in section 1561(a). Except as provided below, to minimize this issue in the future, the temporary regulations refer generically to the tax benefit items listed in section 1561(a) rather than refer specifically to those items by listing and describing each one.

Second, the current regulations do not provide guidance to taxpayers regarding how to allocate the amounts of the section 1561(a) tax benefit items among the component members of a controlled group of corporations which have an apportionment plan in effect. As a result, the IRS often can not determine whether taxpayers have correctly allocated these items. Thus, the temporary regulations refer to a new form (*i.e.*, Schedule O or any successor to that form) on which such members will provide information about these items.

Except as provided below, each component member of a controlled group must file this form every year with its Federal income tax return whether or not: (1) An apportionment plan is in effect, or (2) any change is made to the group's apportionment of its section 1561(a) tax benefit items from the previous year. However, whenever one or more of the component members of a controlled group of corporations are also members of a consolidated group, the parent of such consolidated group shall file one form on behalf of all of its members. That form shall contain all the information required for each such member.

Finally, § 1.1561-3(b) presents an impediment to e-filing where such members have consented to the adoption of an apportionment plan. That section requires each member of a controlled group to attach to its return, for each year following the adoption of the plan, a copy of its signed consent to such plan. As explained in TD 9264,

that signature requirement presents an impediment to e-filing. These temporary regulations eliminate this impediment and provide that the form will be the mechanism by which such member adopts (and also amend or terminate) such plan. Thus, each member of the group (that is not a member of a consolidated group) will file this form to consent to adopt a plan, even if it is a wholly-owned subsidiary of the group. Compare § 1.1561-3(b)(2)(i) (a wholly-owned subsidiary of a controlled group was not required to consent to adopt a plan because it was deemed to consent if all the component members of that group that are not wholly owned subsidiaries consent). Thus, these temporary regulations eliminate the deemed consent provision of § 1.1561-3(b)(2)(i).

### *2. Regulation Authorizing the Component Members of a Controlled Group To Apportion the Accumulated Earnings Credit Unequally if They Have an Apportionment Plan in Effect*

Section 1561(a) provides that the component members of a controlled group of corporations must divide the amount of the accumulated earnings credit (the credit) equally unless the Secretary prescribes regulations permitting an unequal allocation of that amount. However, § 1.1561-2(c) requires that they divide that amount equally. The IRS and Treasury Department have concluded that they no longer will require such members to divide that amount equally. Therefore, these temporary regulations now provide that the component members of a controlled group may choose to allocate the amount of that credit unequally among themselves if they have an apportionment plan in effect.

### *3. Revisions to § 1.1563-1*

#### *A. Reformatting the Regulation*

For the sake of consistency, the IRS and Treasury Department are reformatting § 1.1563-1 to conform it to current formatting conventions. It is not intended that any such reformatting constitute a substantive change. Moreover, the changes described in this paragraph of the preamble are only limited to formatting. Thus, for example, except for the changes described below, no examples in § 1.1563-1 have been updated to reflect current law. Such changes are beyond the scope of this project and will be addressed in a separate regulation project.

#### *B. Updating the Definition of a Brother-Sister Controlled Group*

Section 900 of the American Jobs Creation Act of 2004, Pub. L. 108-357, 118 Stat. 1418 (the 2004 amendment), revised the definition of a brother-sister controlled group in section 1563(a)(2). Prior to this 2004 amendment, commonly owned corporations qualified as a brother-sister controlled group if five or fewer persons who are individuals, estates, or trusts own (within the meaning of section 1563(d)(2)) stock possessing: (A) At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each corporation (the 80 percent requirement) and (B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation (the more-than-50 percent requirement).

The 2004 amendment eliminated the 80 percent requirement from the section 1563(a)(2) definition of a brother-sister controlled group. As a result, for purposes of section 1561, corporations are component members of a brother-sister controlled group if just the more-than-50 percent requirement is satisfied. However, for all other provisions of law that incorporate the section 1563(a) definition of a brother-sister controlled group, both the more-than-50 percent requirement and the 80 percent requirement must be satisfied in order to qualify as a brother-sister controlled group. See section 1563(f)(5). Therefore, these temporary regulations reflect this change.

These temporary regulations apply to tax years beginning on or after the date they are published in the **Federal Register**. However, the above described 2004 amendment to section 1563(a)(2) is effective for tax years beginning after October 22, 2004.

#### *C. Clarifying That an S Corporation Is Treated as an Excluded Member of a Controlled Group Under Current Law*

Section 1.1561-1(c)(1) provides that, for purposes of sections 1561 and 1563, the term *corporation* includes an electing small business corporation and refers to § 1.1563-1(b)(2)(ii)(c) for the treatment of such a corporation as an excluded member of a controlled group of corporations. Specifically, § 1.1563-1(b)(2)(ii)(c) provides that only an

electing small business corporation which is not subject to the tax imposed by section 1378 will be treated as an excluded member.

Section 1378, as in effect when § 1.1563-1(b)(2)(ii)(c) was published (old section 1378), taxed the income of an electing small business corporation if its income exceeded a certain threshold. That income was taxed at the lower of the rate determined under section 1201(a) or section 11. Thus, when such corporation was subject to tax under section 11, it was appropriate to treat such corporation as a component member of a controlled group for purposes of allocating its section 11 tax benefit amount.

Old section 1378 was ultimately repealed as part of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085). Thus, § 1.1563-1(b)(2)(ii)(c) became obsolete.

Under current law, an S corporation (the successor to an electing small business corporation) is generally subject to tax at the entity level under only two provisions: (1) Section 1374, which imposes tax on certain recognized built-in gain, and (2) section 1375, which imposes tax on passive investment income under certain circumstances. However, in both cases, the amount of tax imposed on an S corporation is computed by applying the highest rate of tax specified in section 11(b). See sections 1374(b)(1) and 1375(a). Thus, under either of these provisions, no portion of any of the lower tax bracket amounts of section 11(b) could be allocated to such a corporation.

In other instances, an S corporation is partially liable for taxes that were imposed on the income of its predecessor C corporation that it must now recapture. See, e.g., sections 167(g), 460(b), 1363(d) and 1371(d)(2). However, these recapture taxes are not being imposed on an S corporation's own income.

Since an S corporation is not *currently* subject to any tax to which either the tax bracket amounts of section 11(b) apply, or any other tax benefit item to which section 1561(a) applies, it is appropriate to treat that corporation as an excluded member of a controlled group.

These temporary regulations clarify that only to the extent that a particular tax (and thus a particular tax benefit item to which section 1561(a) applies) to an S corporation is that type of corporation treated as a component member of the group. This general reference to a tax that applies to an S corporation is intended to avoid the issue in § 1.1563-1(b)(2)(ii)(c) of

referring to a particular Code section that later became obsolete (*i.e.*, old section 1378).

**D. Clarifying That the Life Insurance Company Provisions Do Not Apply to the Controlled Group Rules Where That Type of Company Is a Member (Whether Eligible or Ineligible) of a Life-Nonlife Affiliated Group for the Consolidated Return Year for Which a Section 1504(c)(2) Election Is Effective**

The current regulations under section 1563 describe the treatment of life insurance companies under the controlled group rules. Section 1.1563-1(a)(5) provides that two or more life insurance companies that are members of a controlled group are treated as a distinct controlled group of corporations composed only of life insurance companies. Section 1.1563-1(b)(2)(ii)(e) defines a life insurance company as an excluded member unless that type of company is a member of a separate life insurance company controlled group described in § 1.1563-1(a)(5).

Section 1504(c)(2) provides that if an affiliated group includes any domestic life insurance companies that would otherwise not be treated as includible members of the group, then, except as provided therein, the common parent of such group may elect (pursuant to regulations prescribed by the Secretary) to treat all such companies as includible corporations. Paragraph (f)(6) of § 1.1502-47 implements section 1504(c)(2) as it relates to section 1563.

These temporary regulations provide that if one or more life insurance companies are members (whether eligible or ineligible) of an affiliated group for the consolidated return year for which a section 1504(c)(2) election is effective, then those members are not treated as either excluded members of the controlled group or as members of a separate life insurance controlled group. *See* § 1.1502-47(f)(6). Rather, any eligible members are treated as members of the consolidated group, and any ineligible members are treated, along with the eligible and includible members of the consolidated group, as members of a life-nonlife controlled group.

These temporary regulations apply to tax years beginning on or after the date they are published in the **Federal Register**. However, paragraph (f)(6) of § 1.1502-47 applies to tax years of consolidated groups beginning on or after January 1, 1982. *See* TD 7877.

**4. Revisions to Two Consolidated Return Regulations**

**A. § 1.1502-43**

Section 1.1502-43 provides rules for calculating the consolidated accumulated earnings tax. Section 1.1502-43(d) is currently reserved. These temporary regulations clarify that if the consolidated group is part of a controlled group then section 1561 applies in determining the amount of that credit.

These temporary regulations apply to consolidated return years for which a return is due (without extensions) after the date it is published in the **Federal Register**. However, pursuant to the Tax Reform Act of 1969, Pub. L. 91-172, 78 Stat. 116, the accumulated earnings credit became a full tax benefit item under section 1561(a) for tax years beginning after December 31, 1974.

**B. § 1.1502-47**

Section 1.1502-47 provides rules for a life-nonlife consolidated group to calculate its consolidated taxable income. Paragraph (s) of § 1.1502-47 requires a consolidated group to provide a notation on the face of its return identifying it as a life-nonlife return. This requirement presents an impediment to e-filing. These temporary regulations remove the impediment by deleting the requirement to provide that notation.

**5. Deleting Obsolete Regulations**

As part of this Treasury decision, the IRS and Treasury Department are deleting numerous obsolete regulations. This effort is part of an ongoing process to remove those types of regulations from the Code of Federal Regulations (the CFR). Therefore, the following regulations are deleted from the CFR: § 1.342-1, 1.371-1 through 1.371-2, 1.372-1, 1.374-1 through 1.374-4, 1.1018-1, 1.1562-0 through 1.1562-7, 1.1564-1 and 5.1561-1.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to

section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

**Drafting Information**

The principal author of these regulations is Grid Glycer, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects**

**26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**26 CFR Part 5**

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR parts 1 and 5 are amended as follows:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

Section 1.1502-43T also issued under 26 U.S.C. 1502. \* \* \*

Section 1.1561-2T also issued under 26 U.S.C. 1561. \* \* \*

**§ 1.108-1 [Removed]**

■ **Par. 2.** Section 1.108-1 is removed and reserved.

**§ 4.342-1 [Removed]**

■ **Par. 3.** Section 1.342-1 is removed.

**§ 1.371-1 [Removed]**

■ **Par. 4.** Section 1.371-1 is removed.

**§ 1.371-2 [Removed]**

■ **Par. 5.** Section 1.371-2 is removed.

**§ 1.372-1 [Removed]**

■ **Par. 6.** Section 1.372-1 is removed.

**§ 1.374-1 [Removed]**

■ **Par. 7.** Section 1.374-1 is removed.

**§ 1.374-2 [Removed]**

■ **Par. 8.** Section 1.374-2 is removed.

**§ 1.374-3 [Removed]**

■ **Par. 9.** Section 1.374-3 is removed.

**§ 1.374-4 [Removed]**

■ **Par. 10.** Section 1.374-4 is removed.

**§ 1.924(a)–1T [Amended]**

■ **Par. 10A.** For each entry in the “Location” column of the following

table, remove the language in the “Remove” column and add the language in the “Add” column in its place:

Location	Remove	Add
The fifth sentence of § 1.924(a)–1T(j)(2)(i) .....	a statement .....	completing the form ( <i>i.e.</i> , Schedule O or any successor to that form).
The fifth sentence of § 1.924(a)–1T(j)(2)(i) .....	§ 1.1561–3(b) .....	§ 1.1561–3T.
The sixth sentence of § 1.924(a)–1T(j)(2)(i) .....	§ 1.1561–3(c) .....	§ 1.1561–3T(a).

**§ 1.1018–1 [Removed]**

■ **Par. 11.** Section 1.1018–1 is removed.

■ **Par. 12.** Section 1.1502–43 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

**§ 1.1502–43 Consolidated accumulated earnings tax.**

\* \* \* \* \*

(d) [Reserved]. For further guidance, see § 1.1502–43T(d).

(e) [Reserved]. For further guidance, see § 1.1502–43T(e)(1).

■ **Par. 13.** Section 1.1502–43T is added to read as follows:

**§ 1.1502–43T Consolidated accumulated earnings tax (temporary).**

(a) through (c) [Reserved]. For further guidance, see § 1.1502–43(a) through (c).

(d) *Consolidated accumulated earnings credit—(1) In general.* [Reserved]

(2) *Special rule if consolidated group part of controlled group.* If a consolidated group is treated as a component member of a controlled group, or if each member of a consolidated group is treated as a component member of a controlled group, see section 1561 for determining the portion of the accumulated earnings credit to be allocated to such group or to such members.

(e) *Effective date—(1) Applicability date.* This section applies to any consolidated Federal income tax return due (without extensions) after December 22, 2006. However, a consolidated group may apply this section to any consolidated Federal income tax return filed on or after December 22, 2006.

(2) *Expiration date.* The applicability of this section will expire on December 21, 2009.

■ **Par. 14.** Section 1.1502–47 is amended by revising paragraph (s) and adding paragraph (t) to read as follows:

**§ 1.1502–47 Consolidated returns by life-nonlife groups.**

\* \* \* \* \*

(s) [Reserved]. For further guidance, see § 1.1502–47T(s).

(t) [Reserved]. For further guidance, see § 1.1502–47T(t)(1).

■ **Par. 15.** Section 1.1502–47T is amended by revising paragraph (s) and adding paragraph (t) to read as follows:

**§ 1.1502–47T Consolidated returns by life-nonlife groups (temporary).**

\* \* \* \* \*

(s) *Filing requirements.* Nonlife consolidated taxable income or loss under paragraph (h) of § 1.1502–47 shall be determined on a separate Form 1120 or 1120–PC, and consolidated partial LICTI under paragraph (j) of § 1.1502–47 shall be determined on a separate Form 1120–L. The consolidated return shall be made on a separate Form 1120, 1120–PC, or 1120–L filed by the common parent (if the group includes a life company), which shows the set-offs under paragraphs (g), (m), and (n) of § 1.1502–47 and clearly indicates on the face of the return that it is a life-nonlife consolidated return (if the group includes a life company). See also § 1.1502–75(j), relating to statements and schedules for subsidiaries.

(t) *Effective date—(1) Applicability date.* Paragraph (s) of this section applies to any consolidated Federal income tax return due (without extensions) after December 22, 2006. However, a consolidated group may apply paragraph (s) of this section to any consolidated Federal income tax return filed on or after December 22, 2006.

(2) *Expiration date.* The applicability of paragraph (s) of this section will expire on December 21, 2009.

■ **Par. 16.** Section 1.1502–90 is amended by:

- 1. Removing and reserving the entry for § 1.1502–95(e)(8).
- 2. Removing and reserving the entry for § 1.1502–95(f).
- 3. Reserving an entry for § 1.1502–95(g).
- 4. Adding entries for § 1.1502–95T. The additions read as follows:

**§ 1.1502–90 Table of contents.**

\* \* \* \* \*

**§ 1.1502–95 Rules on ceasing to be a member of a consolidated group (or loss subgroup).**

\* \* \* \* \*

(g) [Reserved].

**§ 1.1502–95T Rules on ceasing to be a member of a consolidated group (or loss subgroup) (temporary).**

- (a) through (e)(7) [Reserved].
- (e)(8) Reporting requirements.
- (i) Common Parent.
- (ii) Former Member.
- (iii) Exception.
- (f) Filing the election to apportion the section 382 limitation and net unrealized built-in gain.
  - (1) Form of the election to apportion.
  - (i) Statement.
  - (ii) Agreement.
  - (2) Signing the agreement.
  - (3) Filing of the election.
  - (i) Filing by the common parent.
  - (ii) Filing by the former member.
  - (4) Revocation of election.
  - (g) Effective date.
    - (1) Applicability date.
    - (2) Expiration date.

**§ 1.1561–0 [Removed]**

■ **Par. 17.** Section 1.1561–0 is removed.

**§ 1.1561–1 [Removed]**

■ **Par. 18.** Section 1.1561–1 is removed.

■ **Par. 19.** Section 1.1561–1T is added to read as follows:

**§ 1.1561–1T General rules regarding certain tax benefits available to the component members of a controlled group of corporations (temporary).**

(a) *In general.* (1) Part II (section 1561 and following) of subchapter B of chapter 6 of the Internal Revenue Code (part II) provides rules to limit the amounts of certain specified tax benefit items of component members of a controlled group of corporations on a December 31, for their taxable years which include such December 31. The component members of such a group shall be limited for purposes of subtitle A of the Code to the amounts of certain items, set forth in section 1561(a), as if they were one corporation. Certain other tax items also set forth in section 1561(a) (*e.g.*, the additional tax imposed by section 11(b)(1) and the section 55(d)(3) phase out of the alternative minimum tax exemption amount) will be determined by combining the taxable income of all such members and then allocating the amount of such items among such members.

(2) For certain definitions (including the definition of a *controlled group of corporations* and a *component member*) and special rules for purposes of this part II see section 1563.

(b) *Special rules.* (1) For purposes of this part II, the term *corporation* includes a small business corporation (as defined in section 1361). However, for the treatment of such a corporation as an *excluded member* of a controlled group of corporations see § 1.1563-1(b)(2)(ii)(C).

(2) In the case of corporations electing a 52-53-week taxable year under section 441(f)(1), the provisions of this part II shall be applied in accordance with the special rule of section 441(f)(2)(A). See § 1.441-2.

(c) *Tax avoidance.* The provisions of this part II do not delimit or abrogate any principle of law established by judicial decision, or any existing provisions of the Code, such as sections 269, 482, and 1551, which have the effect of preventing the avoidance or evasion of income taxes.

(d) *Effective date—(1) Applicability date.* This section applies to any taxable year beginning on or after December 22, 2006. However, taxpayers may apply this section to any Federal income tax return filed on or after December 22, 2006.

(2) *Expiration date.* The applicability of this section will expire on December 21, 2009.

■ **Par. 20.** Section 1.1561-2 is amended by removing and reserving paragraphs (a) and (b), revising paragraph (c), removing and reserving paragraph (d), and adding paragraph (f) to read as follows:

**§ 1.1561-2 Determination of amount of tax benefits.**

\* \* \* \* \*

(c) [Reserved]. For further guidance, see § 1.1561-2T(c).

\* \* \* \* \*

(f) [Reserved]. For further guidance, see § 1.1561-2T(f)(1).

■ **Par. 21.** Section 1.1561-2T is added to read as follows:

**§ 1.1561-2T Determination of amount of tax benefits (temporary).**

(a) through (b) [Reserved].

(c) *Accumulated earnings credit.* The component members of a controlled group of corporations may allocate the amount of the accumulated earnings credit unequally if they have an apportionment plan in effect.

(d) [Reserved].

(e) [Reserved]. For further guidance, see § 1.1561-2(e).

(f) *Effective date—(1) Applicability date.* This section applies to any taxable

year beginning on or after December 22, 2006. However, taxpayers may apply this section to any Federal income tax return filed on or after December 22, 2006.

(2) *Expiration date.* The applicability of this section will expire on December 21, 2009.

**§ 1.1561-3 [Removed]**

■ **Par. 22.** Section 1.1561-3 is removed.

■ **Par. 23.** Section 1.1561-3T is added to read as follows:

**§ 1.1561-3T Allocation of the section 1561(a) tax items (temporary).**

(a) *Filing of form—(1) In general.* For each taxable year that a corporation is a component member of the same controlled group of corporations on a December 31, for its taxable year that includes such December 31, such corporation and all other component members of such group must each file the required form (*i.e.*, Schedule O or any successor to that form) with each Federal income tax return. Each such corporation must file that form with its return whether or not—

(i) An apportionment plan is in effect; or

(ii) Any change is made in the group's apportionment of its section 1561(a) tax benefit items from the previous year.

(2) *Exception for component members that are members of a consolidated group.* If one or more of the component members of a controlled group of corporations are also members of a consolidated group, the parent of such consolidated group shall file only one form on behalf of all of such members. Such form shall contain the information required for each such member.

(b) *No apportionment plan in effect.* If the component members of a controlled group of corporations do not have an apportionment plan in effect, the amounts of the section 1561(a) items must be divided equally among all such members. For purposes of the preceding sentence, if any component members of a controlled group of corporations are also members of a consolidated group, such members will each be treated as a separate component member of the controlled group.

(c) *Apportionment plan in effect—(1) Adoption of plan.* The component members of a controlled group of corporations consent to the adoption (or amendment) of an apportionment plan by checking the box to that effect on such form. For purposes of this paragraph (c)—

(i) An apportionment plan that is adopted (including a plan that has been amended) continues in effect until it is terminated;

(ii) A consolidated group is treated as one component member of such group; and

(iii) The members must allocate the amounts of the section 1561(a) items between or among themselves as described in the plan.

(2) *Limitation on adopting a plan—(i) Sufficient statute of limitations period.* The members may only adopt or amend such a plan if there is at least one year remaining in the statutory period (including any extensions thereof) for the assessment of a deficiency against every member the tax liability of which would be increased by the adoption of such a plan.

(ii) *Insufficient statute of limitations period.* If any member cannot satisfy the requirement of paragraph (c)(2)(i) of this section, the members may not adopt or amend such a plan unless the member not satisfying such requirement has entered into an agreement with the Internal Revenue Service to extend the statute of limitations for the limited purpose of assessing any deficiency against such member attributable to the adoption of such a plan.

(3) *Termination of plan.* An apportionment plan that is in effect for the component members of a controlled group with respect to a particular December 31 is terminated with respect to a succeeding December 31 if—

(i) Each member of such group consents to the termination of such a plan for such succeeding December 31 by checking the box to that effect on its form;

(ii) The controlled group ceases to remain in existence (within the meaning of section 1563(a)) during the calendar year ending on such succeeding December 31;

(iii) Any corporation which was a component member of such group on the particular December 31 is not a component member of such group on such succeeding December 31; or

(iv) Any corporation which was not a component member of such group on the particular December 31 is a component member of such group on such succeeding December 31.

(d) *Effective date—(1) Applicability date.* This section applies to any taxable year beginning on or after December 22, 2006. However, taxpayers may apply this section to any Federal income tax return filed on or after December 22, 2006.

(2) *Expiration date.* The applicability of this section will expire on December 21, 2009.

**§ 1.1562-0 [Removed]**

■ **Par. 24.** Section 1.1562-0 is removed.

**§ 1.1562-1 [Removed]**

■ **Par. 25.** Section 1.1562-1 is removed.

**§ 1.1562-2 [Removed]**

■ **Par. 26.** Section 1.1562-2 is removed.

**§ 1.1562-3 [Removed]**

■ **Par. 27.** Section 1.1562-3 is removed.

**§ 1.1562-4 [Removed]**

■ **Par. 28.** Section 1.1562-4 is removed.

**§ 1.1562-5 [Removed]**

■ **Par. 29.** Section 1.1562-5 is removed.

**§ 1.1562-6 [Removed]**

■ **Par. 30.** Section 1.1562-6 is removed.

**§ 1.1562-7 [Removed]**

■ **Par. 31.** Section 1.1562-7 is removed.

**§ 1.1563-1 [Removed]**

■ **Par. 32.** Section 1.1563-1 is removed.

■ **Par. 33.** Section 1.1563-1T is amended by revising paragraphs (a), (b), (c)(1), (c)(2)(iv), (d) and (e) to read as follows:

**§ 1.1563-1T Definition of controlled group of corporations and component members (temporary).**

(a) *Controlled group of corporations—*  
(1) *In general.* For purposes of sections 1561 through 1563, the term *controlled group of corporations* means any group of corporations which is either a *parent-subsidiary controlled group* (as defined in paragraph (a)(2) of this section), a *brother-sister controlled group* (as defined in paragraph (a)(3)(i) of this section), a *combined group* (as defined in paragraph (a)(4) of this section), or a *life insurance controlled group* (as defined in paragraph (a)(5) of this section). For the exclusion of certain stock for purposes of applying the definitions contained in this paragraph, see section 1563(c) and § 1.1563-2.

(2) *Parent-subsidiary controlled group.* (i) The term *parent-subsidiary controlled group* means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(A) Stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (directly and with the application of § 1.1563-3(b)(1), relating to options) by one or more of the other corporations; and

(B) The common parent corporation owns (directly and with the application of § 1.1563-3(b)(1), relating to options) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(ii) The definition of a parent-subsidiary controlled group of corporations may be illustrated by the following examples:

*Example 1.* P Corporation owns stock possessing 80 percent of the total combined voting power of all classes of stock entitled to vote of S Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P and S.

*Example 2.* Assume the same facts as in *Example 1.* Assume further that S owns stock possessing 80 percent of the total value of shares of all classes of stock of T Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, and T. The result would be the same if P, rather than S, owned the T stock.

*Example 3.* L Corporation owns 80 percent of the only class of stock of M Corporation and M, in turn, owns 40 percent of the only class of stock of O Corporation. L also owns 80 percent of the only class of stock of N Corporation and N, in turn, owns 40 percent of the only class of stock of O. L is the common parent of a parent-subsidiary controlled group consisting of member corporations L, M, N, and O.

*Example 4.* X Corporation owns 75 percent of the only class of stock of Y and Z Corporations; Y owns all the remaining stock of Z; and Z owns all the remaining stock of Y. Since intercompany stockholdings are excluded (that is, are not treated as outstanding) for purposes of determining whether X owns stock possessing at least 80 percent of the voting power or value of at least one of the other corporations, X is treated as the owner of stock possessing 100 percent of the voting power and value of Y and of Z for purposes of paragraph (a)(2)(i)(B) of this section. Also, stock possessing 100 percent of the voting power and value of Y and Z is owned by the other corporations in the group within the meaning of paragraph (a)(2)(i)(A) of this section. (X and Y together own stock possessing 100 percent of the voting power and value of Z, and X and Z together own stock possessing 100 percent of the voting power and value of Y.) Therefore, X is the common parent of a parent-subsidiary controlled group of corporations consisting of member corporations X, Y, and Z.

(3) *Brother-sister controlled group—*(i) *In general.* The term *brother-sister controlled group* means two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the rules contained in § 1.1563-3(b)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(ii) *Additional stock ownership requirement for purposes of certain other provisions of law.* For purposes of any provision of law (other than sections 1561 through 1563) that incorporates the section 1563(a) definition of a controlled group, the term *brother-sister controlled group* means two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the rules contained in § 1.1563-3(b)) stock possessing—

(A) At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each corporation (the 80 percent requirement);

(B) More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation (the more-than-50 percent identical ownership requirement); and

(C) The five or fewer persons whose stock ownership is considered for purposes of the 80 percent requirement must be the same persons whose stock ownership is considered for purposes of the more-than-50 percent identical ownership requirement.

(iii) *Examples.* The principles of paragraph (a)(3)(ii) of this section may be illustrated by the following examples:

*Example 1.* (i) The outstanding stock of corporations P, Q, R, S, and T, which have only one class of stock outstanding is owned by the following unrelated individuals:

CORPORATIONS

Individuals	P (percent)	Q (percent)	R (percent)	S (percent)	T (percent)	Identical ownership
A .....	55	51	55	55	55	51. (45% in P & Q).
B .....	45	49	.....	.....	.....	
C .....	.....	.....	45	.....	.....	
D .....	.....	.....	.....	45	.....	
E .....	.....	.....	.....	.....	45	
<b>Total</b> .....	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	

(ii) Corporations P and Q are members of a brother-sister controlled group of corporations. Although the more-than-50 percent identical ownership requirement is met for all 5 corporations, corporations R, S, and T are not members because at least 80 percent of the stock of each of those corporations is not owned by the same 5 or fewer persons whose stock ownership is considered for purposes of the more-than-50 percent identical ownership requirement.

*Example 2.* (i) The outstanding stock of corporations U and V, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	Corporations	
	U (percent)	V (percent)
A .....	12	12
B .....	12	12
C .....	12	12
D .....	12	12
E .....	13	13
F .....	13	13
G .....	13	13
H .....	13	13
<b>Total</b> .....	<b>100</b>	<b>100</b>

(ii) Any group of five of the shareholders will own more than 50 percent of the stock

in each corporation, in identical holdings. However, U and V are not members of a brother-sister controlled group because at least 80 percent of the stock of each corporation is not owned by the same five or fewer persons.

*Example 3.* (i) Corporations X and Y each have two classes of stock outstanding, voting common and non-voting common. (None of this stock is excluded from the definition of stock under section 1563(c).) Unrelated individuals A and B own the following percentages of the class of stock entitled to vote (voting) and of the total value of shares of all classes of stock (value) in each of corporations X and Y:

Individuals	Corporations	
	X	Y
A .....	100% voting, 60% value .....	75% voting, 60% value.
B .....	0% voting, 10% value .....	25% voting, 10% value.

(ii) No other shareholder of X owns (or is considered to own) any stock in Y. X and Y are a brother-sister controlled group of corporations. The group meets the more-than-50 percent identical ownership requirement because A and B own more than 50 percent of the total value of shares of all classes of stock of X and Y in identical holdings. (The group also meets the more-than-50 percent identical ownership requirement because of A's voting stock ownership.) The group meets the 80 percent requirement because A and B own at least 80 percent of the total combined voting power of all classes of stock entitled to vote.

*Example 4.* Assume the same facts as in *Example 3* except that the value of the stock owned by A and B is not more than 50 percent of the total value of shares of all classes of stock of each corporation in identical holdings. X and Y are not a brother-sister controlled group of corporations. The group meets the more-than-50 percent identical ownership requirement because A owns more than 50 percent of the total combined voting power of the voting stock of each corporation. For purposes of the 80 percent requirement, B's voting stock in Y cannot be combined with A's voting stock in Y since B, who does not own any voting stock in X, is not a person whose ownership is considered for purposes of the more-than-50 percent identical ownership requirement. Because no other shareholder owns stock in

both X and Y, these other shareholders' stock ownership is not counted towards meeting either the more-than-50 percent identical ownership requirement or the 80 percent ownership requirement.

(iv) *Special rule if prior law applies.* Paragraph (a)(3)(ii) of this section, as amended by TD 8179, applies to taxable years ending on or after December 31, 1970. See, however, the transitional rule in paragraph (d) of this section.

(4) *Combined group.* (i) The term *combined group* means any group of three or more corporations if—

(A) Each such corporation is a member of either a parent-subsidiary controlled group of corporations or a brother-sister controlled group of corporations; and

(B) At least one of such corporations is the common parent of a parent-subsidiary controlled group and also is a member of a brother-sister controlled group.

(ii) The definition of a combined group of corporations may be illustrated by the following examples:

*Example 1.* Smith, an individual, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporations X and Y. Y, in turn,

owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporation Z. X, Y, and Z are members of the same combined group since—

(i) X, Y, and Z are each members of either a parent-subsidiary or brother-sister controlled group of corporations; and

(ii) Y is the common parent of a parent-subsidiary controlled group of corporations consisting of Y and Z, and also is a member of a brother-sister controlled group of corporations consisting of X and Y.

*Example 2.* Assume the same facts as in *Example 1*, and further assume that corporation X owns 80 percent of the total value of shares of all classes of stock of corporation T. X, Y, Z, and T are members of the same combined group.

(5) *Life insurance controlled group.* (i) The term *life insurance controlled group* means two or more life insurance companies each of which is a member of a controlled group of corporations described in paragraph (a)(2), (a)(3)(i), or (a)(4) of this section and to which § 1.1502-47(f)(6) does not apply. Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of a controlled group described in such paragraph (a)(2), (a)(3)(i), or (a)(4). For purposes of

this section, the common parent of the controlled group described in paragraph (a)(2) of this section shall be referred to as the common parent of the life insurance controlled group.

(ii) The following examples illustrate the definition of a life insurance controlled group. In these examples, L indicates a life company, another letter indicates a nonlife company and each corporation uses the calendar year as its taxable year.

*Example 1.* Since January 1, 1999, corporation P has owned all the stock of corporations and Y, and L<sub>1</sub> has owned all the stock of corporation X. On January 1, 2005, Y acquired all of the stock of corporation L<sub>2</sub>. Since L<sub>1</sub> and L<sub>2</sub> are members of a parent-subsidiary controlled group of corporations, such companies are treated as members of a life insurance controlled group separate from the parent-subsidiary controlled group consisting of P, X and Y. For purposes of this section, P is referred to as the common parent of the life insurance controlled group even though P is not a member of such group.

*Example 2.* The facts are the same as in *Example 1*, except that, beginning with the 2005 tax year, the P affiliated group elected to file a consolidated return and P made a section 1504(c)(2) election. Pursuant to paragraph (a)(5)(i) of this section, L<sub>1</sub> and L<sub>2</sub> are not members of a separate life insurance controlled group. Instead, P, X, Y, L<sub>1</sub> and L<sub>2</sub> constitute one controlled group. See § 1.1502-47(f)(6).

(6) *Voting power of stock.* For purposes of this section, and §§ 1.1563-2 and 1.1563-3, in determining whether the stock owned by a person (or persons) possesses a certain percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, consideration will be given to all the facts and circumstances of each case. A share of stock will generally be considered as possessing the voting power accorded to such share by the corporate charter, by-laws, or share certificate. On the other hand, if there is any agreement, whether express or implied, that a shareholder will not vote his stock in a corporation, the formal voting rights possessed by his stock may be disregarded in determining the percentage of the total combined voting power possessed by the stock owned by other shareholders in the corporation, if the result is that the corporation becomes a component member of a controlled group of corporations. Moreover, if a shareholder agrees to vote his stock in a corporation in the manner specified by another shareholder in the corporation, the voting rights possessed by the stock owned by the first shareholder may be considered to be possessed by the stock owned by such other shareholder if the result is that the corporation becomes a

component member of a controlled group of corporations.

(b) *Component members*—(1) *In general.* For purposes of sections 1561 through 1563, a corporation is a component member of a controlled group of corporations on a December 31 (and with respect to the taxable year which includes such December 31) if such corporation—

(i) Is a member of such controlled group on such December 31 and is not treated as an excluded member under paragraph (b)(2) of this section; or

(ii) Is not a member of such controlled group on such December 31 but is treated as an additional member under paragraph (b)(3) of this section.

(2) *Excluded members.* (i) A corporation, which is a member of a controlled group of corporations on the December 31 included within its taxable year, but was a member of such group for less than one-half of the number of days in such taxable year which precede such December 31, shall be treated as an excluded member of such group on such December 31.

(ii) A corporation which is a member of a controlled group of corporations on any December 31 shall be treated as an excluded member of such group on such date if, for its taxable year including such date, such corporation is—

(A) Exempt from taxation under section 501(a) (except a corporation which is subject to tax on its unrelated business taxable income under section 511) or 521 for such taxable year;

(B) A foreign corporation not subject to taxation under section 882(a) for the taxable year;

(C) An S corporation (as defined in section 1361) for purposes of any tax benefit item described in section 1561(a) to which it is not subject;

(D) A franchised corporation (as defined in section 1563(f)(4) and § 1.1563-4); or

(E) An insurance company subject to taxation under section 801, unless such insurance company (without regard to this paragraph (b)(2)(ii)(E)) is a component member of a life insurance controlled group described in paragraph (a)(5)(i) of this section or unless § 1.1502-47(f)(6) applies (which treats a life insurance company, for which a section 1504(c)(2) election is effective, as a member (whether eligible or ineligible) of a life-nonlife affiliated group).

(3) *Additional members.* A corporation shall be treated as an additional member of a controlled group of corporations on the December 31 included within its taxable year if it—

(i) Is not a member of such group on such December 31;

(ii) Is not described, with respect to such taxable year, in paragraph (b)(2)(ii)(A), (B), (C), (D), or (E) of this section; and

(iii) Was a member of such group for one-half (or more) of the number of days in such taxable year which precede such December 31.

(4) Examples. The provisions of this paragraph may be illustrated by the following examples:

*Example 1.* Brown, an individual, owns all of the stock of corporations W and X on each day of 1964. W and X each uses the calendar year as its taxable year. On January 1, 1964, Brown also owns all the stock of corporation Y (a fiscal year corporation with a taxable year beginning on July 1, 1964, and ending on June 30, 1965), which stock he sells on October 15, 1964. On December 1, 1964, Brown purchases all the stock of corporation Z (a fiscal year corporation with a taxable year beginning on September 1, 1964, and ending on August 31, 1965). On December 31, 1964, W, X, and Z are members of the same controlled group. However, the component members of the group on such December 31 are W, X, and Y. Under paragraph (b)(2)(i) of this section, Z is treated as an excluded member of the group on December 31, 1964, since Z was a member of the group for less than one-half of the number of days (29 out of 121 days) during the period beginning on September 1, 1964 (the first day of its taxable year) and ending on December 30, 1964. Under paragraph (b)(3) of this section, Y is treated as an additional member of the group on December 31, 1964, since Y was a member of the group for at least one-half of the number of days (107 out of 183 days) during the period beginning on July 1, 1964 (the first day of its taxable year) and ending on December 30, 1964.

*Example 2.* On January 1, 1964, corporation P owns all the stock of corporation S, which in turn owns all the stock of corporation S-1. On November 1, 1964, P purchases all of the stock of corporation X from the public and sells all of the stock of S to the public. Corporation X owns all the stock of corporation Y during 1964. P, S, S-1, X, and Y file their returns on the basis of the calendar year. On December 31, 1964, P, X, and Y are members of a parent-subsidiary controlled group of corporations; also, corporations S and S-1 are members of a different parent-subsidiary controlled group on such date. However, since X and Y have been members of the parent-subsidiary controlled group of which P is the common parent for less than one-half the number of days during the period January 1 through December 30, 1964, they are not component members of such group on such date. On the other hand, X and Y have been members of a parent-subsidiary controlled group of which X is the common parent for at least one-half the number of days during the period January 1 through December 30, 1964, and therefore they are component members of such group on December 31, 1964. Also since S and S-1 were members of the parent-subsidiary controlled group of which P is the common parent for at least



one-half the number of days in the taxable years of each such corporation during the period January 1 through December 30, 1964. P, S, and S-1 are component members of such group on December 31, 1964.

*Example 3.* Throughout 1964, corporation M owns all the stock of corporation F which, in turn, owns all the stock of corporations L-1, L-2, X, and Y. M is a domestic mutual insurance company subject to taxation under section 821, F is a foreign corporation not engaged in a trade or business within the United States, L-1 and L-2 are domestic life insurance companies subject to taxation under section 802, and X and Y are domestic corporations subject to tax under section 11 of the Code. Each corporation uses the calendar year as its taxable year. On December 31, 1964, M, F, L-1, L-2, X, and Y are members of a parent-subsidiary controlled group of corporations. However, under paragraph (b)(2)(ii) of this section, M, F, L-1, and L-2 are treated as excluded members of the group on December 31, 1964. Thus, on December 31, 1964, the component members of the parent-subsidiary controlled group of which M is the common parent include only X and Y. Furthermore, since paragraph (b)(2)(ii)(E) of this section does not result in L-1 and L-2 being treated as excluded members of a life insurance controlled group, L-1 and L-2 are component members of a life insurance controlled group on December 31, 1964.

(5) *Application of constructive ownership rules.* For purposes of

paragraphs (b)(2)(i) and (3) of this section, it is necessary to determine whether a corporation was a member of a controlled group of corporations for one-half (or more) of the number of days in its taxable year which precede the December 31 falling within such taxable year. Therefore, the constructive ownership rules contained in § 1.1563-3(b) (to the extent applicable in making such determination) must be applied on a day-by-day basis. For example, if P Corporation owns all the stock of X Corporation on each day of 1964, and on December 30, 1964, acquires an option to purchase all the stock of Y Corporation (a calendar-year taxpayer which has been in existence on each day of 1964), the application of § 1.1563-3(b)(1) on a day-by-day basis results in Y being a member of the brother-sister controlled group on only one day of Y's 1964 year which precedes December 31, 1964.

Accordingly, since Y is not a member of such group for one-half or more of the number of days in its 1964 year preceding December 31, 1964, Y is treated as an excluded member of such group on December 31, 1964.

(c) *Overlapping groups—(1) In general.* If on a December 31 a

corporation is a component member of a controlled group of corporations by reason of ownership of stock possessing at least 80 percent of the total value of shares of all classes of stock of the corporation, and if on such December 31 such corporation is also a component member of another controlled group of corporations by reason of ownership of other stock (that is, stock not used to satisfy the at-least-80 percent total value test) possessing at least 80 percent of the total combined voting power of all classes of stock of the corporation entitled to vote, then such corporation shall be treated as a component member only of the controlled group of which it is a component member by reason of the ownership of at least 80 percent of the total value of its shares.

(2) *Brother-sister controlled groups.*

\* \* \* \* \*

(iv) The provisions of this paragraph (c)(2) may be illustrated by the following examples (in which it is assumed that all the individuals are unrelated):

*Example 1.* (i) On each day of 1970 all the outstanding stock of corporations M, N, and P is held in the following manner:

Individuals	Corporations		
	M (percent)	N (percent)	P (percent)
A .....	55	40	5
B .....	40	20	40
C .....	5	40	55

(ii) Since the more-than-50 percent identical ownership requirement of section 1563(a)(2) is met with respect to corporations M and N and with respect to corporations N and P, but not with respect to corporations M, N, and P, corporation N would, without

the application of this paragraph (c)(2), be a component member on December 31, 1970, of overlapping groups consisting of M and N and of N and P. If N does not file an election in accordance with paragraph (c)(2)(i) of this section, the Internal Revenue Service will

determine the group in which N is to be included.

*Example 2.* (i) On each day of 1970, all the outstanding stock of corporations S, T, W, X, and Z is held in the following manner:

Individuals	Corporations				
	S	T	W	X	Z
D .....	52	52	52	52	52
E .....	40	2	2	2	2
F .....	2	40	2	2	2
G .....	2	2	40	2	2
H .....	2	2	2	40	2
I .....	2	2	2	2	40

(ii) On December 31, 1970, the more-than-50 percent identical ownership requirement of section 1563(a)(2) may be met with regard to any combination of the corporations but all five corporations cannot be included as component members of a single controlled group because the inclusion of all the corporations in a single group would be dependent upon taking into account the

stock ownership of more than five persons. Therefore, if the corporations do not file a statement in accordance with paragraph (c)(2)(ii) of this section, the Internal Revenue Service will determine the group in which each corporation is to be included. The corporations or the Internal Revenue Service, as the case may be, may designate that three corporations be included in one group and

two corporations in another, or that any four corporations be included in one group and that the remaining corporation not be included in any group.

(d) *Transitional rules—(1) In general.* Treasury decision 8179 amended paragraph (a)(3)(ii) of this section to revise the definition of a brother-sister

controlled group of corporations. In general, those amendments are effective for taxable years ending on or after December 31, 1970.

(2) *Limited nonretroactivity.* (i) Under the authority of section 7805(b), the Internal Revenue Service will treat an old group as a brother-sister controlled group corporations for purposes of applying sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of the Employment Retirement Income Security Act of 1974 (ERISA) in a plan year or taxable year beginning before March 2, 1988, to the extent necessary to prevent an adverse effect on any old member (or any other corporation), or on any plan or other entity described in such sections (including plans, etc., of corporations not part of such old group), that would result solely from the retroactive effect of the amendment to this section by TD 8179. An adverse effect includes the disqualification of a plan or the disallowance of a deduction or credit for a contribution to a plan. The Internal Revenue Service, however, will not treat an old member as a member of an old group to the extent that such treatment will have an adverse effect on that old member.

(ii) Section 7805(b) will not be applied pursuant to paragraph (d)(2)(i) of this section to treat an old member of an old group as a member of a brother-sister controlled group to prevent an adverse effect for a taxable year if, for that taxable year, that old member treats or has treated itself as not being a member of that old group for purposes of sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 and Title IV of ERISA for such taxable year (such as by filing, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating itself as not being a member of the old group for purposes of those sections). However, the fact that one or more (but not all) of the old members do not qualify for section 7805(b) treatment because of the preceding sentence will not preclude that old member (or members) from being treated as a member of the old group under paragraph (d)(2)(i) of this section in order to prevent the disallowance of a deduction or credit of another old member (or other corporation) or to prevent the disqualification of, or other adverse effect on, another old member's plan (or other entity) described in the sections of

the Code and ERISA enumerated in such paragraph.

(3) *Election of general nonretroactivity.* In the case of a taxable year ending on or after December 31, 1970, and before March 2, 1988, an old group will be treated as a brother-sister controlled group of corporations for all purposes of the Code for such taxable year if—

(i) Each old member files a statement consenting to such treatment for such taxable year with the District Director having audit jurisdiction over its return within six months after March 2, 1988; and

(ii) No old member—

(A) Files or has filed, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating any old member as not a member of the old group; or

(B) Treats the employees of all members of the old group as not being employed by a single employer for purposes of sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of ERISA for such taxable year.

(4) *Definitions.* For purposes of this paragraph (d)—

(i) An *old group* is a brother-sister controlled group of corporations, determined by applying paragraph (a)(3)(ii) of this section as in effect before the amendments made by Treasury decision 8179, that is not a brother-sister controlled group of corporations, determined by applying paragraph (a)(3)(ii) of this section as amended by such Treasury decision; and

(ii) An *old member* is any corporation that is a member of an old group.

(5) *Election to choose between membership in more than one controlled group.* If—

(i) An old member has filed an election under paragraph (c)(2) of this section to be treated as a component member of an old group for a December 31 before March 2, 1988; and

(ii) That corporation would (without regard to such paragraph) be a component member of more than one brother-sister controlled group (not including an old group) on the December 31, that corporation may make an election under that paragraph by filing an amended return on or before September 2, 1988. This paragraph (d)(5) does not apply to a corporation that is treated as a member of an old group under paragraph (d)(3) of this section.

(6) *Refunds.* See section 6511(a) for period of limitation on filing claims for credit or refund.

(e) *Effective date.*—(1) *Applicability date.* Paragraphs (a), (b), (c)(1), (c)(2)(iv) and (d) of this section apply to taxable years beginning on or after December 22, 2006. However, taxpayers may apply these paragraphs to any Federal income tax return filed on or after December 22, 2006. Paragraphs (c)(2)(i) through (iii) of this section apply to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of paragraphs (a), (b), (c)(1), (c)(2)(iv) and (d) of this section will expire on December 21 2009. The applicability of paragraphs (c)(2)(i) through (iii) of this section will expire on May 26, 2009.

#### § 1.1563–3 [Amended]

■ **Par. 34.** In § 1.1563–3, at the end of paragraph (d)(3) *Example 3*, add the phrase “for purposes of paragraph (a)(3)(ii) of § 1.1563–1T”.

#### § 1.1564–1 [Removed]

■ **Par. 35.** Section 1.1564–1 is removed.

### PART 5—TEMPORARY INCOME TAX REGULATIONS UNDER THE REVENUE ACT OF 1978

■ **Par. 36.** The authority citation for part 5 continues to read as follows:

*Authority:* 26 U.S.C. 7805.

#### § 5.1561–1 [Removed]

■ **Par. 37.** Section 5.1561–1 is removed.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 12, 2006.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 06–9758 Filed 12–21–06; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 31

[TD 9278]

RIN 1545–BB31, 1545–AY38, 1545–BC52

#### Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Stewardship Expense; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.