

Example 13. Corporation V is a cash receipts and disbursements method taxpayer with a July 1 through June 30 taxable year. In the taxable year ending June 30, 1980, the aggregate unemployment insurance wages paid by V were \$150,000. In calendar year 1979 the aggregate unemployment insurance wages paid by Corporation V were \$110,000. Corporation V's qualified first-year wages are limited to 30 percent of the aggregate unemployment insurance wages paid by it in calendar year 1979 or \$33,000 (30 percent of \$110,000), even though the aggregate unemployment insurance wages paid by it in the taxable year ending June 30, 1980, were \$150,000.

Example 14. Assume the same facts as in example 13, except that all dates are 3 years later. Since the limitation on qualified first-year wages does not apply to taxable years beginning after December 31, 1981, Corporation V's qualified first-year wages are \$150,000.

Example 15. M operates a retail store as a sole proprietor. N and O, both members of a targeted group, first began work for M on January 1, 1979. M paid N total qualified first-year wages of \$6,000 in 1979. Three thousand one hundred dollars of those wages were for services in M's retail store, and \$2,900 of those wages were for services as M's maid. M paid O total qualified first-year wages of \$6,000 in 1979. Three thousand dollars of those wages were for services in M's store and \$3,000 of those wages were for services as M's chauffeur. M has an allowable credit of \$3,000 in 1979 on all \$6,000 of qualified first-year wages paid to N because more than one-half of the remuneration paid by M to N was for services in M's trade or business. M may not take into account the wages paid to O because not more than one-half of the remuneration paid by M to O was for services in M's trade or business. Accordingly, M may not claim a credit on wages paid to O.

[T.D. 8062, 50 FR 45998, Nov. 6, 1985]

TAX SURCHARGE

§ 1.52-1 Trades or businesses that are under common control.

(a) *Apportionment of jobs credit among members of a group of trades or businesses that are under common control—(1) Targeted jobs credit.* (i) In the case of a group of trades or businesses that are under common control (within the meaning of paragraph (b) of this section) at any time during the calendar year, the amount of the targeted jobs credit (computed under section 51 as if all the organizations that are under common control are one trade or business) under section 4-1B must be appor-

tioned among the members of the group on the basis of each member's proportionate share of the wages giving rise to such credit. If the group of trades or businesses that are under common control have different taxable years, the credit shall be computed as if all the organizations have the same taxable year as the organization for which a determination of the proportionate share of the credit is being made. For taxable years beginning before January 1, 1982, the amount of the qualified first-year wages cannot exceed 30 percent of the aggregate unemployment insurance wages paid by the group of trades or businesses under common control during the calendar year ending in the taxable year of the organization for which a determination of the proportionate share of the credit is being made. The limitations in section 53 and the regulations thereunder apply to each organization individually (although, in applying these limitations, an affiliated group of corporations electing to make a consolidated return shall be treated as one organization).

(ii) The application of the subparagraph may be illustrated by the following examples:

Example 1. (a) Corporation M and its three subsidiaries, Corporations N, O, and P, are a group of businesses that are under common control and each uses the cash receipts and disbursements method of accounting and has a calendar year taxable year. Corporations M, N, O, and P paid out the following amounts in unemployment insurance wages, qualified first-year wages and qualified second-year wages during 1980.

	Unemployment insurance wages	Qualified 1st-Year wages	Qualified 2d-year wages
Corporation:			
M	\$600,000	\$184,000	\$75,000
N	300,000	85,000	90,000
O	360,000	120,000	115,000
P	24,000	24,000	0
Total	1,284,000	413,000	280,000

(b) Since Corporations M, N, O, and P are under common control, the amount of qualified first-year wages paid by the group is limited to 30 percent of the aggregate unemployment insurance wages paid by the group in the calendar year ending in the group's

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taxable year. Since the qualified first-year wages of \$413,000 exceeds 30% of the aggregate unemployment insurance wages, the group is limited to qualified first-year wages of \$385,200 (30% of \$1,284,000). The amount of the targeted jobs credit attributable to qualified first-year wages is equal to \$192,600 (50% of \$385,200). The amount of the credit attributable to qualified second-year wages is equal to \$70,000 (25% of \$280,000).

(c) The credit is apportioned among Corporations M, N, O, and P on the basis of their proportionate share of the qualified first-year wages or qualified second-year wages giving rise to the credit. Each corporation's share of the credit attributable to qualified first-year wages would be computed as follows:

M paid A \$2,500 of qualified first-year wages; Corporation N paid A \$1,500 of qualified first-year wages; Corporation O paid A \$3,000 of qualified first-year wages. Corporations M, N, and O paid A a total of \$7,000 of wages during 1980. Only \$6,000 of qualified first-year wages per year per employee may be taken into account for purposes of the credit. See §1.51-1(d)(1). Since Corporations M, N, and O are treated as a single employer under section 52(a), the maximum \$6,000 of qualified first-year wages paid A by the group must be apportioned among Corporations M, N, and O as follows:

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Each corporation's share of the credit attributable to qualified second-year wages is computed as follows:

Example 3. (a) Corporation Q and its two subsidiaries, Corporations R and S, are a group of businesses that are under common control and each uses the cash receipts and disbursements method of accounting. Corporation Q has a calendar year taxable year. Corporation R has a July 1 through June 30 taxable year. Corporation S has an October 1 through September 30 taxable year. For purposes of determining Corporation R's proportionate share of the credit, the credit is computed as if Corporations Q and S have the same taxable year as Corporation R. Accordingly, Corporation R would compute its share of the credit for its 1979-1980 taxable year as set forth below.

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	Unemployment insurance wages, 1979	Qualified wages paid from July 1, 1979, to June 30, 1980	
		1st year wages	2d year wages
Corporation:			
Q	\$500,000	\$150,000	\$80,000
R	300,000	110,000	50,000
S	100,000	25,000	10,000
Total	900,000	285,000	140,000

Example 2. Assume the facts in example 1 with these additional facts. A, a member of a targeted group, worked for more than one of the members of the controlled group in the taxable year. A first began work for Corporation M on January 1, 1980, and later worked for Corporations N and O during 1980. For services rendered by A during 1980, the following wages were paid to A: Corporation

(b) Since Corporations Q, R, and S are under common control, the amount of qualified first-year wages is limited to 30 percent of the aggregate unemployment insurance wages paid by the group during the calendar year ending in Corporation R's taxable year. Since the qualified first-year wages of \$285,000 exceeds 30 percent of the aggregate unemployment insurance wages, the group is

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limited to qualified first-year wages of \$270,000 (30% of \$900,000). The amount of the targeted jobs credit attributable to qualified first-year wages paid by members of the group during the period of the taxpayer's taxable year is \$135,000 (50% of \$270,000). The amount of the credit attributable to qualified second-year wages paid or incurred by members of the group during the period of the taxpayer's taxable year is \$35,000 (25% of \$140,000).

(c) The credit is apportioned to Corporation R on the basis of its proportionate share of the qualified first-year wages and qualified second-year wages giving rise to the credit. Corporation R's share of the credit attributable to qualified first-year wages is \$52,105.26

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Corporation R's share of the credit attributable to qualified second-year wages is \$12,500

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Corporation R's share of the credit for its 1979-1980 taxable year is \$64,605.26 (\$52,105.26+\$12,500).

(2) *New jobs credit.* In the case of a group of trades or businesses that are under common control at any time during the calendar year, the amount of the new jobs credit (computed under section 51 as if all the organizations that are under common control are one trade or business) under section 44B (as in effect prior to enactment of the Revenue Act of 1978) must be apportioned among the members of the group on the basis of each member's proportionate contribution to the increase in unemployment insurance wages for the entire group. The limitations in section 53 (as in effect prior to enactment of the Revenue Act of 1978) and the regulations thereunder apply to each organization individually (although, in applying these limitations, an affiliated group of corporations electing to make a consolidated return shall be treated as one organization). The application of this subparagraph may be illustrated by the following example:

Example. (a) Corporation T and its three subsidiaries, U, V, and W, are a group of businesses that are under common control and each has a calendar year taxable year. Corporations T, U, V, and W have paid out

the following amounts in unemployment insurance wages during 1976 and 1977:

	1976	1977	Increase in FUTA wages in 1977 over 1976
Corporation.			
T	\$1,000,000	\$1,015,000	+\$15,000
U	500,000	650,000	+150,000
V	600,000	580,000	-20,000
W	40,000	100,000	+60,000
Total	2,140,000	2,345,000	205,000

(b) Since all employees of trades or, businesses that are under common control are treated as employed by a single employer, the computations in section 51 are performed as if all the organizations which are under common control are one trade or business. Consequently, the amounts of the total unemployment insurance wages of the group in 1976 (*i.e.*, \$2,140,000) and 1977 (*i.e.*, \$2,345,000) are used to determine the increase in unemployment insurance wages in 1977 over the 1976 wage base. Since the amount equal to 102 percent of the 1976 unemployment insurance wages (\$2,182,800) is greater than the amount equal to 50 percent of the 1977 unemployment insurance wages (\$1,172,500), the increase in unemployment insurance wages in 1977 over the 1976 wage base is \$162,200 (\$2,345,000-\$2,182,800). The limitations in section 51(c), (d), and (g) (as in effect prior to enactment of the Revenue Act of 1978) must also be computed as though all the organizations under common control are one trade or business. For purposes of this example, it is assumed that none of those limitations reduce the amount of increase in unemployment insurance wages. As a result, the amount of the new jobs credit allowed to the group of business is \$81,100 (50% of \$162,200).

(c) The credit is apportioned among Corporations T, U, and W on the basis of their proportionate contributions to the increase in unemployment insurance wages. No credit would be allowed to Corporation V because it did not contribute to the increase in the group's unemployment insurance wages. Corporation T's share of the credit would be \$5,406.66

(\$81,100×(\$15,000+\$225,000
(\$81,100×(\$150,000+\$225,000))), *(i.e.,*
\$15,000+\$150,000+\$60,000)), Corporation U's
share would be \$54,066.67
(\$81,100×(\$150,000+\$225,000)), and Corporation
W's share would be \$21,626.67
(\$81,100×(\$60,000+\$225,000)).

(b) *Trades or businesses that are under common control.* For purposes of this section, the term "trades or businesses that are under common control" means any group of trades or businesses that is either a "parent-subsidiary group

under common control” as defined in paragraph (c) of this section, a “brother-sister group under common control” as defined in paragraph (d) of this section, or a “combined group under common control” as defined in paragraph (e) of this section. For purposes of this section and §§ 1.52-2 and 1.52-3, the term “organization” means a sole proprietorship, a partnership, a trust, an estate, or a corporation. An organization may be a member of only one group of trades or businesses under common control. If, without the application of this paragraph, an organization would be a member of more than one such group, that organization shall indicate in its timely filed return the group in which it is being included. If the organization does not so indicate, then the district director with audit jurisdiction of the organization’s return will determine the group in which the organization is to be included.

(c) *Parent-subsidiary group under common control—(1) In general.* The term “parent-subsidiary group under common control” means one or more chains of organizations conducting trades or businesses that are connected through ownership of a controlling interest with a common parent organization if—

(i) A controlling interest in each of the organizations, except the common parent organization, is owned (directly and with the application of § 1.414(c)-4(b)(1), relating to options) by one or more of the other organizations; and

(ii) The common parent organization owns (directly and with the application of § 1.414(c)-4(b)(1), relating to options) a controlling interest in at least one of the other organizations, excluding, in computing the controlling interest, any direct ownership interest by the other organizations.

(2) *Controlling interest defined.* For purposes of this paragraph, the term “controlling interest” means:

(i) In the case of a corporation, ownership of 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 the shares of all classes of stock of the corporation;

(ii) In the case of a trust or estate, ownership of an actuarial interest (de-

termined under paragraph (f) of this section) of more than 50 percent of the trust or estate;

(iii) In the case of a partnership, ownership of more than 50 percent of the profit interest or capital interest of the partnership; and

(iv) In the case of a sole proprietorship, ownership of the sole proprietorship.

(d) *Brother-sister group under common control—(1) In general.* The term “brother-sister group under common control” means two or more organizations conducting trades or businesses if—

(i) The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)-4(b)(1)), a controlling interest of each organization; and

(ii) Taking into account the ownership of each person only to the extent that person’s ownership is identical with respect to each organization, such persons are in effective control of each organization.

The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization must be the same persons whose ownership is considered for purposes of the effective control requirement.

(2) *Controlling interest defined.* For purposes of this paragraph, the term “controlling interest” means:

(i) In the case of a corporation, ownership of 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 the shares of all classes of stock of the corporation;

(ii) In case of a trust or estate, ownership of an actuarial interest (determined under paragraph (f) of this section) of a least 80 percent of the trust or estate;

(iii) In the case of a partnership, ownership of at least 80 percent of the profit interest or capital interest of the partnership; and

(iv) In the case of a sole proprietorship, ownership of the sole proprietorship.

(3) *Effective control defined.* For purposes of this paragraph “effective control” means:

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(i) In the case of a corporation, ownership of 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 the shares of all classes of stock of the corporation;

(ii) In the case of a trust or estate, ownership of an actuarial interest (determined under paragraph (f) of this section) of more than 50 percent of the trust or estate;

(iii) In the case of a partnership, ownership of more than 50 percent of the profit interest or capital interest of the partnership; and

(iv) In the case of a sole proprietorship, ownership of the sole proprietorship.

(e) *Combined group under common control.* The term “combined group under common control” means a group of three or more organizations, in which (1) each organization is a member of either a parent-subsidiary group under common control or brother-sister group under common control, and (2) at least one organization is the common parent organization of a parent-subsidiary group under common control and also a member of a brother-sister group under common control.

(f) *Actuarial interest.* For purposes of this section, the actuarial interest of each beneficiary of a trust or estate shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of the beneficiary. The factors and method prescribed in § 20.2031-7 or, for certain prior periods, 20.2031-7A of this chapter (Estate Tax Regulations) for use in ascertaining the value of an interest in property for estate tax purposes will be used to determine a beneficiary’s actuarial interest.

(g) *Exclusion of certain interests and stock in determining control.* In determining control under this paragraph, the term “interest” and the term “stock” do not include an interest that is treated as not outstanding under § 1.414(c)-3. In addition, the term “stock” does not include treasury stock or nonvoting stock that is limited and preferred regarding dividends.

(h) *Transitional rule—(1) In general.* Paragraph (d) of this section, as amended by T.D. 8179, applies to all

taxable years to which section 52(b) applies.

(2) *Election.* In the case of taxable years ending before March 2, 1988.

(i) If, pursuant to paragraph (b) of this section, an organization indicated in a timely filed return that it chose to be a member of a brother-sister group under common control, and it is not a member of such group because of the amendments to paragraph (d) of this section made by T.D. 8179 such organization may make the choice described in paragraph (b) of this section by filing an amended return on or before September 2, 1988 if such organization would otherwise still be a member of more than one group of trades or businesses under common control, and

(ii) If an organization—

(A) Is a member of a brother-sister group of trades or businesses under common control under § 1.52-1(d)(1) as in effect before amendment by T.D. 8179 (“old group”), for such taxable year, and

(B) Is not such a member for such taxable year because of the amendments made by such Treasury decision, such organization (whether or not a corporation) nevertheless will be treated as a member of such old group if all the organizations (whether or not corporations) that are members of the old group meet all the requirements of § 1.1563-1(d)(3) with respect to such taxable year.

(Secs. 44B, 381, and 7805 of the Internal Revenue Code of 1954 (92 Stat. 2834, 26 U.S.C. 44B); 91 Stat. 148, 26 U.S.C. 381(c)(26); 68A Stat. 917, 26 U.S.C. 7805)

[T.D. 7553, 43 FR 31322, July 21, 1978, as amended by T.D. 7921, 48 FR 52904, Nov. 23, 1983; T.D. 7955, 49 FR 19975, May 11, 1984; T.D. 8179, 53 FR 6605, Mar. 2, 1988; 53 FR 8302, Mar. 14, 1988; 53 FR 16408, May 9, 1988; T.D. 8540, 59 FR 30102, June 10, 1994]

§ 1.52-2 Adjustments for acquisitions and dispositions.

(a) *General rule.* The provisions in this section only apply to the computation of the new jobs credit. If, after December 31, 1975, an employer acquires the major portion of a trade or business or the major portion of a separate unit of a trade or business, then, for purposes of computing the new jobs credit for any calendar year ending