

election (or request for the Commissioner's approval of a method under paragraph (a)(4) of this section) shall be made within the time prescribed by law for filing the consolidated return for the first taxable year beginning after December 31, 1965 (including extensions thereof), or within 60 days after July 3, 1968, whichever is later. Such new election shall be made by attaching a statement to the consolidated return for the first taxable year beginning after December 31, 1965, or if such election is made within the time prescribed above but after such return is filed, by filing a statement with the internal revenue officer with whom such return was filed.

(d) *Failure to elect.* If a group fails to make an election in its first consolidated return, or any other election, in accordance with paragraph (c) of this section, the method prescribed under paragraph (a)(1) of this section shall be applicable and shall be binding upon the group in the same manner as if an election had been made to so allocate.

(e) *Definitions.* Except as otherwise provided in this section, the terms used in this section shall have the same meaning as provided in the regulations under section 1502.

(f) *Example.* The provisions of this section may be illustrated by the following example:

*Example.* Corporation P is the common parent owning all of the stock of corporations S1 and S2, members of an affiliated group. A consolidated return is filed for the taxable year ending December 31, 1966, by P, S1, and S2. For 1966 such corporations had the following taxable incomes or losses computed in accordance with paragraph (a)(1)(ii) of this section:

P.....	0
S1.....	\$2,000
S2.....	(1,000)

The group has not made an election under paragraph (c) of this section or paragraph (d) of § 1.1502-33. Accordingly, the method of allocation provided by paragraph (a)(1) of this section is in effect for the group. Assuming that the consolidated taxable income is equal to the sum of the members taxable income and losses, or \$1,000, the tax liability of the group for the year (assuming a 22-percent rate) is \$220, all of which is allocated to S1. S1 accordingly reduces its earnings and profits in the amount of \$220, irrespective of who actually pays the tax liability. If S1 pays the \$220 tax liability there will be no further ef-

fect upon the income, earnings and profits, or the basis of stock of any member. If, however, P pays the \$220 tax liability (and such payment is not in fact a loan from P to S1), then P shall be treated as having made a contribution to the capital of S1 in the amount of \$220. On the other hand, if S2 pays the \$220 tax liability (and such payment is not in fact a loan from S2), then S2 shall be treated as having made a distribution with respect to its stock to P in the amount of \$220, and P shall be treated as having made a contribution to the capital of S1 in the amount of \$220.

[T.D. 6962, 33 FR 9655, July 3, 1968, as amended by T.D. 7825, 42 FR 64694, Dec. 28, 1977; T.D. 7728, 45 FR 72650, Nov. 3, 1980; T.D. 8560, 59 FR 41675, Aug. 15, 1994; T.D. 8597, 60 FR 36680, July 18, 1995; T.D. 8677, 61 FR 33325, June 27, 1996]

CERTAIN CONTROLLED CORPORATIONS

§ 1.1561-0 Effective date.

(a) *Taxable years beginning after December 31, 1974.* The provisions of §§ 1.1561-1 through 1.1561-3 apply only to taxable years beginning after December 31, 1974.

(b) *Taxable years beginning before January 1, 1975.* The provisions of §§ 1.1561-1A through 1.1561-3A apply only to taxable years beginning before January 1, 1975.

[T.D. 7528, 42 FR 64694, Dec. 28, 1977]

§ 1.1561-1 Limitations on certain multiple tax benefits in the case of certain controlled corporations.

(a) *In general.* Part II (section 1561 and following), subchapter B, chapter 6 of the Code, provides rules relating to certain controlled corporations. In general, section 1561 provides that the component members of a controlled group of corporations on a December 31, for their taxable years which include such December 31, shall be limited for purposes of subtitle A to:

(1) One surtax exemption under section 11(d),

(2) One \$150,000 amount for purposes of computing the accumulated earnings credit under section 535(c) (2) and (3), and

(3) One \$25,000 amount for purposes of computing the limitation on the small business deduction of life insurance companies under sections 804(a)(4) and 809 (d)(10).

For certain definitions (including the definition of a “controlled group of corporations” and a “component member”) and special rules for purposes of part II of subchapter B, see section 1563 and the regulations thereunder.

(b) *Tax avoidance.* The provisions of part II, subchapter B, chapter 6 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.

(c) *Special rules.* (1) For purposes of sections 1561 and 1563 and the regulations thereunder, the term “corporation” includes an electing small business corporation (as defined in section 1371 (b)). However, for the treatment of an electing small business corporation as an excluded member of a controlled group of corporations, see paragraph (b)(2)(ii) of § 1.1563-1.

(2) In the case of corporations electing a 52-53-week taxable year under section 441(f)(1), the provisions of sections 1561 and 1563 and the regulations thereunder shall be applied in accordance with the special rule section 441(f)(2)(A). See § 1.441-2.

[T.D. 7528, 42 FR 64694, Dec. 28, 1977, as amended by T.D. 8996, 67 FR 35012, May 17, 2002]

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

(a) *Surtax exemption.* (1) If a corporation is a component member of a controlled group of corporations on December 31, the surtax exemption under section 11(d) of such corporation for the taxable year which includes such December 31 shall be an amount equal to:

(i) \$50,000 divided by the number of corporations which are component members of such group on such December 31, or

(ii) If an apportionment plan is adopted under § 1.1561-3 which is effective with respect to such taxable year such portion of \$50,000 as is apportioned to such member in accordance with such plan.

(2) In the case of a controlled group of corporations which includes component members which join in the filing of a consolidated return and other com-

ponent members which do not join in the filing of such a return, and where there is no apportionment plan effective under § 1.1561-3 apportioning the \$50,000 amount among the component members filing the consolidated return and the other component members of the controlled group, each component member of the controlled group, (including each component member which joins in filing the consolidated return) shall be treated as a separate corporation for purposes of equally apportioning the \$50,000 amount under subparagraph (1)(i) of this paragraph. In such case, the surtax exemption of the corporations filing the consolidated return shall be the sum of the amounts apportioned to each component member which joins in filing the consolidated return.

(3) The provisions of section 1561 may reduce the surtax exemption of any corporation which is a component member of a controlled group or corporations and which is subject to the tax imposed by section 11, or by any other provision of subtitle A of the Code if the tax under such other provisions is computed by reference to the amount of the surtax exemption provided by section 11. Such other provisions include, for example, sections 511(a)(1), 594, 802, 831, 852, 857, 882, 1201, and 1378.

(4) This paragraph (a) shall not apply with respect to any component member of a controlled group of corporations on a December 31 if one or more component members of such controlled group has a taxable year including such December 31 which ends after December 31, 1978. Rules pertaining to the apportionment of the surtax exemption with respect to component members of controlled groups of corporations to which this paragraph does not apply are reserved.

(5) The application of this paragraph may be illustrated by the following examples:

*Example (1).* Corporations W, X, Y, and Z are component members of a controlled group of corporations on December 31, 1975, and each corporation files its income tax return on the basis of a calendar year. For their taxable years ending on December 31, 1975, W and X each incurs a net operating loss; Y has \$5,250 of taxable income; and Z