

§ 1.1561-3

26 CFR Ch. I (4-1-04 Edition)

and § 1.1563-1 as if the last day of such short period were a December 31 occurring after December 31, 1974.

(2) The provisions of this paragraph may be illustrated by the following examples:

Example (1). On January 2, 1975, corporation X transfers cash to newly formed corporation Y (which begins business on that date) and receives all of the stock of Y in return. X also owns all of the stock of corporation Z on each day of 1974 and 1975. X uses the calendar year as its taxable year and Z uses a fiscal year ending on March 31. Y adopts a fiscal year ending on June 30 as its annual accounting period, and, therefore, files a return for the short taxable year beginning on January 2, 1975, and ending on June 30, 1975. On June 30, 1975, Y is a component member of a parent-subsidiary controlled group of corporations of which X, Y, and Z are component members. Accordingly, the surtax exemption of Y for the short taxable year ending on June 30, 1975, is \$16,666.67 (\$50,000÷3). On December 31, 1975, X, Y, and Z are component members of a parent-subsidiary controlled group of corporations. Accordingly, the surtax exemption of each such corporation for its taxable year including December 31, 1975 (i.e., X's calendar year ending December 31, 1975, Z's fiscal year ending March 31, 1976, and Y's fiscal year ending June 30, 1976) is \$16,666.67 (\$50,000÷3), or, if an apportionment plan is filed under § 1.1561-3, the amount apportioned pursuant to such plan.

Example (2). On January 1, 1975, corporation P owns all of the stock of corporations S-1, S-2, and S-3. P, S-1, S-2, and S-3 file separate returns on a calendar year basis. On July 31, 1975, S-1 is liquidated and therefore files a return for the short taxable year beginning on January 1, 1975, and ending on July 31, 1975. On August 31, 1975, S-2 is liquidated and therefore files a return for the short taxable year beginning on January 1, 1975, and ending on August 31, 1975. On July 31, 1975, S-1 is a component member of a parent-subsidiary controlled group of corporations of which P, S-1, S-2, and S-3 are component members. Accordingly, the surtax exemption under section 11(d) of S-1 for the short taxable year ending on July 31, 1975, is \$12,500 (\$50,000÷4). On August 31, 1975, S-2 is a component member of a parent-subsidiary controlled group of corporations of which P, S-2, and S-3 are component members. Accordingly, the surtax exemption of S-2 for the short taxable year ending on August 31, 1975, is \$16,666.67 (\$50,000÷3). On December 31, 1975, P and S-3 are component members of a parent-subsidiary controlled group of corporations. Accordingly, the surtax exemption of each such corporation for the calendar year 1975 is \$25,000 (\$50,000÷2), or, if an apportionment plan is filed under § 1.1561-3,

the amount apportioned pursuant to such plan.

[T.D. 7528, 42 FR 64695, Dec. 28, 1977]

§ 1.1561-3 Apportionment of surtax exemption.

(a) *In general.* (1) In the case of corporations which are component members of a controlled group of corporations on a December 31, the single \$50,000 surtax exemption under section 11(d) may be apportioned among such members (for the taxable year of each such member which includes such December 31) if all such members consent, in the manner provided in paragraph (b) of this section, to an apportionment plan with respect to such December 31. Such plan shall provide for the apportionment of a fixed dollar amount to one or more of such members, but in no event shall the sum of the amounts so apportioned exceed \$50,000. An apportionment plan shall not be considered as adopted with respect to a particular December 31 until each component member which is required to consent to the plan under paragraph (b)(1) of this section filed the original of a statement described in such paragraph (or, the original of a statement incorporating its consent is filed on its behalf). In the case of a return filed before a plan is adopted, the surtax exemption for purposes of such return shall be equally apportioned in accordance with the rules provided in § 1.1561-2(a)(1)(i). (If a valid apportionment plan is adopted after the return is filed and within the time prescribed by subparagraph (2) of this paragraph, such return should be amended (or a claim for refund should be made) to reflect the change from equal apportionment.)

(2) A controlled group may adopt an apportionment plan with respect to a particular December 31 only if, at the time such plan is sought to be adopted, there is at least one year remaining in the statutory period (including any extensions thereof) for the assessment of a deficiency against any corporation the tax liability of which would be increased by the adoption of such plan. If there is less than one year remaining with respect to any such corporation, the director of the service center with which such corporation files its income

tax return will ordinarily, upon request, enter into an agreement to extend such statutory period for the limited purpose of assessing any deficiency against such corporation attributable to the adoption of such apportionment plan.

(3)(i) The amount apportioned to a component member of a controlled group of corporations in an apportionment plan adopted with respect to a particular December 31 shall constitute such member's surtax exemption for its taxable year including the particular December 31, and for all taxable years of such members including succeeding December 31's, unless the apportionment plan is amended in accordance with paragraph (c) of this section or is terminated under subdivision (ii) of this subparagraph. Thus, the apportionment plan (including any amendments thereof) has a continuing effect and need not be renewed annually.

(ii) If an apportionment plan is adopted with respect to a particular December 31, such plan shall terminate with respect to a succeeding December 31, if:

(a) The controlled group ceases to remain in existence during the calendar year ending on such succeeding December 31,

(b) 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

(c) 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.

An apportionment plan, once terminated with respect to a December 31, is no longer effective. Accordingly, unless a new apportionment plan is adopted, the surtax exemption of the component members of the controlled group for their taxable years which include such December 31 and all December 31's thereafter will be determined in accordance with the rules provided in paragraph (a)(1)(i) of § 1.1561-2.

(iii) For purposes of subdivision (ii) (a)—(a) A parent-subsidiary controlled group of corporations shall be considered as remaining in existence as long

as its common parent corporation remains as a common parent.

(b) A brother-sister controlled group of corporations shall be considered as remaining in existence as long as the requirements of paragraph (a)(3)(i) of § 1.1563-1 continue to be satisfied with respect to at least two corporations, taking into account the stock ownership of only those five or fewer persons whose stock ownership was taken into account at the time the apportionment plan adopted by the component members of such group first became effective.

(c) A combined group of corporations shall be considered as remaining in existence as long as the brother-sister controlled group of corporations referred to in paragraph (a)(4)(i) of § 1.1563-1 in respect of such combined group remains in existence (within the meaning of (b) of this subdivision), and at least one such corporation is a common parent of a parent-subsidiary controlled group of corporations referred to in such paragraph (a)(4)(i).

(d) If, by reason of paragraph (a)(5)(i) of § 1.1563-1, two or more insurance companies subject to taxation under section 802 are treated as an insurance group separate from any corporations which are members of a controlled group described in paragraph (a) (2), (3), or (4) of § 1.1563-1, such insurance group shall be considered as remaining in existence as long as the controlled group described in paragraph (a) (2), (3), or (4) of such section, as the case may be, remains in existence (within the meaning of (a), (b), or (c) of this subdivision), and there are at least two insurance companies which satisfy the requirements of paragraph (a)(5)(i) of such section.

(iv) If an apportionment plan is terminated with respect to a particular December 31 by reason of an occurrence described in subdivision (ii) (b) or (c) of this subparagraph, each corporation which is a component member of the controlled group on such particular December 31 should, on or before the date it files its income tax return for the taxable year which includes such particular December 31, notify the service center with which it files such return of such termination. If an apportionment plan is terminated with respect

to a particular December 31 by reason of an occurrence described in subdivision (ii)(a) of this subparagraph, each corporation which was a component member of the controlled group on the preceding December 31 should, on or before the date it files its income tax return for the taxable year which includes such particular December 31, notify the service center with which it files such return of such termination.

(b) *Consents to plan.* (1)(i) The consent of a component member (other than a wholly-owned subsidiary) to an apportionment plan with respect to a particular December 31 shall be made by means of a statement, signed by any person who is duly authorized to act on behalf of the consenting member, stating that such member consents to the apportionment plan with respect to such December 31. The statement shall set forth in the name, address, taxpayer account number, and taxable year of the consenting component member, the amount apportioned to such member under the plan, and the service center where the original of the statement is to be filed. The consent of more than one component member may be incorporated in a single statement. The original of a statement of consent shall be filed with the service center with which the component member of the group on such December 31 which has the taxable year ending first on or after such date filed its return for such taxable year. (If two or more component members have the same such taxable year, a statement of consent may be filed with the service center with which the return for any such taxable year is filed.) The original of a statement of consent shall have attached thereto information (referred to in this paragraph as "group identification") setting forth the name, address, taxpayer account number, and taxable year of each component member of the controlled group on such December 31 (including wholly-owned subsidiaries) and the amount apportioned to each such member under the plan. If more than one original statement is filed, a statement may incorporate the group identification by reference to the name, address, taxpayer account number, and taxable year of a component member of the group which has at-

tached such group identification to the original of its statement.

(ii) Each component member of the group on such December 31 (other than wholly-owned subsidiaries) should attach a copy of its consent (or a copy of the statement incorporating its consent) to the income tax return, amended return, or claim for refund filed with its service center for the taxable year including such date. Such copy shall either have attached thereto information on group identification or shall incorporate such information by reference to the name, address, taxpayer account number, and taxable year of a component member of the group which has attached such information to its income tax return, amended return, or claim for refund filed with the same service center for the taxable year including such date.

(2)(i) Each component member of a controlled group which is a wholly-owned subsidiary of such group with respect to a December 31 shall be deemed to consent to an apportionment plan with respect to such December 31, provided each component member of the group which is not a wholly-owned subsidiary consents to the plan. For purposes of this section, a component member of a controlled group shall be considered to be a wholly-owned subsidiary of the group with respect to a December 31 if, on each day preceding such date during its taxable year which includes such date, all of its stock is owned directly by one or more corporations which are component members of the group on such December 31.

(ii) Each wholly-owned subsidiary of a controlled group with respect to a December 31 should attach a statement containing the information which is required to be set forth in a statement of consent to an apportionment plan with respect to such December 31 to the income tax return, amended return, or claim for refund filed with its service center for the taxable year which includes such date. Such statement should either have attached thereto information on group identification or incorporate such information by reference to the name, address, taxpayer account number, and taxable year of a component member of the group which

has attached such information to its income tax return, amended return, or claim for refund filed with the same service center for the taxable year including such date.

(c) *Amendment of plan.* An apportionment plan adopted with respect to a December 31 by a controlled group of corporations may be amended with respect to such December 31, or with respect to any succeeding December 31 for which the plan is effective under paragraph (a)(3) of this section. An apportionment plan must be amended with respect to a particular December 31 and the amendments to the plan shall be effective only if adopted in accordance with the rules prescribed in this section for the adoption of an original plan with respect to such December 31.

(d) *Component members filing consolidated returns.* If the component members of a controlled group of corporations on a December 31 include corporations which join in the filing of a consolidated return, the corporations filing the consolidated return shall be treated as a single component member for purposes of this section. Thus, for example, only one consent, executed by the common parent, to an apportionment plan filed pursuant to this section is required on behalf of the component members filing the consolidated return.

[T.D. 7528, 42 FR 64697, Dec. 28, 1977; 43 FR 4603, Feb. 3, 1978]

§ 1.1562-0 Effective date.

The provisions of §§ 1.1562-1 through 1.1562-7 apply only to taxable years beginning before January 1, 1975.

(Secs. 1561(a), (83 Stat. 599; 26 U.S.C. 1561 (a)) and 7805 (68A Stat. 917; 26 U.S.C. 7805, of the Internal Revenue Code))

[T.D. 7528, 42 FR 64702, Dec. 28, 1977]

§ 1.1562-1 Privilege of controlled group to elect multiple surtax exemptions.

(a) *Election—(1) In general.* (i) Under section 1562(a)(1) a controlled group of corporations has the privilege of electing to have each of its component members make its returns without regard to section 1561 (relating to single surtax exemption in the case of a con-

trolled group of corporations). The election shall be made with respect to a particular December 31 and shall be valid only if each corporation which is required to consent to the election under the provisions of paragraph (a)(1) of § 1.1562-3 gives its consent in the manner and within the time prescribed in such section. An election shall not be considered as made with respect to a particular December 31 until each corporation which is required to consent to the election under paragraph (c)(1) of § 1.1562-3 files the original of a statement described in such paragraph (or, the original of a statement incorporating its consent is filed on its behalf). Accordingly, for purposes of returns filed before an election is made, the surtax exemption of component members of a controlled group of corporations shall be determined in accordance with section 1561 and the regulations thereunder. (If a valid election is made after the return is filed and within the time prescribed in § 1.1562-3, such return should be amended (or a claim for refund should be made) to reflect the change in the amount of the surtax exemption (and the imposition of the additional tax) resulting from the election.)

(ii) An election once made with respect to a particular December 31 may not thereafter be withdrawn unless such election is terminated with respect to such December 31 in accordance with the provisions of section 1562(c) and § 1.1562-2.

(iii) An election under section 1562(a)(1) may be made by a controlled group of corporations with respect to any December 31 (after December 31, 1962), unless:

(a) A component member of such group on such December 31 joins, or is required to join, in the filing of a consolidated return for its taxable year which includes such date, or

(b) Such controlled group is not eligible to make an election with respect to such December 31 by reason of section 1562(d).

See also section 243(b)(3)(A), relating to effect of election of 100-percent dividends received deduction, which may prevent a controlled group from making an election under section 1562(a)(1)