

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)

with respect to a particular December 31.

(2) *Years for which effective.* (i) A valid election under section 1562(a)(1) by a controlled group of corporations with respect to a particular December 31 is effective with respect to:

(a) The taxable year of each component member of such group on such December 31 which includes such December 31, and

(b) Any succeeding taxable year of any corporation which is a component member of such group (or a successor group) on a succeeding December 31 included within any such succeeding taxable year.

Under section 1562(c) and § 1.1562-2, an election under section 1562(a)(1) may be terminated with respect to a December 31 referred to in either (a) or (b) of this subdivision. For years affected by termination, see paragraph (c) of § 1.1562-2.

(ii) For the application of an election under section 1562(a)(1) to certain short taxable years not including a December 31, see section 1562(f)(2) and § 1.1562-6.

(iii) The provisions of this subparagraph may be illustrated by the following example:

Example. Corporation P is the common parent of a parent-subsidiary controlled group of corporations of which corporations P, S-1, and S-2 are component members on December 31, 1964. On December 31, 1965, the controlled group of corporations consists of the same component members as on December 31, 1964, except that corporation S-3 is also a component member on December 31, 1965. On December 31, 1966, the controlled group of corporations consists of the same component members as on December 31, 1965, except that S-1 is no longer a component member on December 31, 1966. In January 1965, the controlled group makes a valid election under section 1562(a)(1) with respect to December 31, 1964. Under subdivision (i)(a) of this subparagraph, the election (unless terminated) is effective with respect to the taxable years of P, S-1, and S-2 which include December 31, 1964. Under subdivision (i)(b) of this subparagraph, the election (unless terminated) is also effective with respect to the taxable years of P, S-1, S-2, and S-3 which include December 31, 1965, and with respect to the taxable years of P, S-2, and S-3 which include December 31, 1966.

(b) *Effect of election—(1) General.* If an election under section 1562(a)(1) is effective with respect to a taxable year of a corporation, then:

(i) Section 1561 shall not apply to such corporation for such taxable year, but

(ii) The additional tax imposed by section 1562(b) shall apply to such corporation for such taxable year (except as otherwise provided in subparagraph (3) of this paragraph).

(2) *Additional tax.* The additional tax imposed by section 1562(b) is an amount equal to 6 percent of so much of a corporation's taxable income for the taxable year as does not exceed the amount of such corporation's surtax exemption for such taxable year. However, if a corporation computes its tax under section 1201 (relating to alternative tax) and is subject to the additional tax imposed by section 1562(b) for such taxable year, the additional tax applies only to an amount equal to the taxable income reduced by the excess of the net long-term capital gain over the net short-term capital loss for such taxable year (to the extent such amount does not exceed the amount of such corporation's surtax exemption for such taxable year).

(3) *Exceptions.* The additional tax imposed by section 1562(b) shall not apply to a corporation for any taxable year if:

(i) Such corporation is the only component member of a controlled group on the December 31 included within such taxable year which has taxable income for the taxable years including such date, or

(ii) Such corporation's surtax exemption is disallowed for such year under any provision of the Code. For purposes of this subdivision, if the component members of a controlled group of corporations on a December 31 are limited in the aggregate to a single \$25,000 surtax exemption for their taxable years which include such date, then the surtax exemption of each such component member shall be considered to be disallowed for such taxable year regardless of how the \$25,000 is allocated among such members. For example, if pursuant to the authority provided in section 269(b), the Commissioner allocates a single \$25,000 surtax exemption equally between two corporations which are the only component members of an electing controlled group of corporations, the surtax exemption of

each such corporation shall be considered to be disallowed.

The application of this subparagraph in respect of a taxable year of a component member of a controlled group of corporations does not constitute the termination of an election made under section 1562(a)(1). Accordingly, such election continues in effect for the subsequent taxable years of such corporation and the other corporations which are component members of the controlled group, unless the election is terminated under section 1562(c).

(4) *Taxable income defined.* For purposes of this paragraph, the term “taxable income” means:

(i) In the case of a corporation subject to tax under section 511(a) (relating to tax on unrelated business income of charitable, etc., organizations at corporation rates), its “unrelated business taxable income” (as defined in section 512),

(ii) In the case of a life insurance company, its “life insurance company taxable income” (as defined in section 802(b)),

(iii) In the case of a regulated investment company, its “investment company taxable income” (as defined in section 852(b)(2)),

(iv) In the case of a real estate investment trust, its “real estate investment trust taxable income” (as defined in section 857(b)(2)), and

(v) In the case of an electing small business corporation, its “taxable income” (as defined in section 1373(d)).

(5) *Tax treated as imposed by section 11, etc.* For purposes of applying other sections of the Code, if for a taxable year a corporation is subject to both the tax imposed by section 11 and to the additional tax imposed by section 1562(b), then the additional tax is treated as if it were imposed by section 11. If a corporation is subject to a tax imposed by any section of chapter 1 of the Code other than section 11 but such tax is computed by reference to section 11, the additional tax is treated for purposes of the Code as imposed by such other section. (For example, the tax imposed by section 831(a) is “computed as provided in section 11”; therefore if a corporation is subject to both the tax imposed by section 831(a) and the additional tax imposed by section 1562(b)

for any taxable year, the additional tax is treated as imposed by section 831(a) for such taxable year.) Accordingly, the credits against the tax imposed by chapter 1 of the Code allowable, for example, under sections 38 (relating to credit against tax for investment in certain depreciable property) and 33 (relating to credit for taxes of foreign countries and possessions of the United States) may be applied against the additional tax.

(6) *Special rules.* For purposes of sections 244 (relating to dividends received on certain preferred stock), 247 (relating to dividends paid on certain preferred stock of public utilities), 804 (a)(3) (relating to deduction for partially tax-exempt interest in the case of a life insurance company), and 922 (relating to special deduction for Western Hemisphere trade corporations), the normal tax rate referred to in such sections shall be determined without regard to the additional tax imposed by section 1562(b). For example, in the case of a corporation subject to the additional tax imposed by section 1562(b) for its taxable year ending December 31, 1965, the percentage computed under section 244(a)(2)(B) for such taxable year would be 48 percent.

[T.D. 6845, 30 FR 9744, Aug. 5, 1965, as amended by T.D. 6960, 33 FR 9302, June 25, 1968; T.D. 7181, 37 FR 8067, Apr. 25, 1972]

§ 1.1562-2 Termination of election.

(a) *In general.* An election under section 1562(a)(1) is terminated by any one of the occurrences described in paragraph (b) of this section. For years affected by termination, see paragraph (c) of this section.

(b) *Methods of termination—(1) Consent of the members.* An election may be terminated with respect to a particular December 31 by consent of the component members of a controlled group of corporations. A termination by consent 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 termination under paragraph (a)(1) of § 1.1562-3 gives its consent in the manner and within the time prescribed in such section. A termination by consent shall not be considered as made with respect to a