

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

particular December 31 until each corporation which is required to consent to the termination 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).

(2) *Refusal by new member to consent.*

(i) If on a December 31 a controlled group of corporations which has made an election under section 1562(a)(1) includes a new member which files a statement that it does not consent to the election with respect to such December 31, then such election shall terminate with respect to such date. Such statement shall be signed by any person who is duly authorized to act on behalf of the new member, and shall be attached to the income tax return of such new member for its taxable year which includes such December 31, filed on or before the date prescribed by law (including extensions of time) for the filing of such return. The statement shall set forth the name, address, taxpayer account number, and taxable year of each corporation which was a component member of the controlled group on such December 31. In the event of a termination under this subparagraph, each component member of the controlled group on such December 31 (other than such new member) should, within 30 days after such new member files the statement of refusal to consent, file notification of the termination with the district director with whom it filed (or will file) an income tax return for its taxable year which includes such December 31.

(ii) For purposes of subdivision (i) of this subparagraph, a corporation shall be considered to be a new member of a controlled group of corporations on a December 31 if such corporation:

(a) Is a component member of such group on such December 31, and

(b) Was not a member of such group on the January 1 immediately preceding such December 31.

(3) *Consolidated returns.* (i) If any corporation which is a component member of a controlled group of corporations on a December 31 joins, or is required to join, in the filing of a consolidated return for its taxable year which includes such date, then an election

under section 1562(a)(1) which is effective with respect to preceding taxable years of component members of the group shall terminate with respect to such December 31. In the event of a termination under this subparagraph, each component member of the controlled group on such December 31 which does not join in the filing of a consolidated return for the taxable year which includes such date, should, within 30 days after such consolidated return is filed, file notification of the termination with the district director with whom it filed (or will file) an income tax return for its taxable year which includes such December 31.

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

Example. On each day of 1964 and 1965, Brown, an individual, owns all the stock of corporations M and P. Corporation P, in turn, owns all the stock of corporation S. Each corporation files a separate return for its taxable year ending on December 31, 1964. On April 30, 1965, the controlled group of corporations consisting of M, P, and S makes an election under section 1562(a)(1) with respect to December 31, 1964. On March 15, 1966, P and S join in the filing of a consolidated return for their taxable years ending December 31, 1965, and M files a separate return for its taxable year ending on such date. Under this subparagraph, the election by the controlled group with respect to December 31, 1964, is terminated with respect to December 31, 1965. On or before April 14, 1966, M should file notification of the termination with the district director with whom it filed its income tax return for 1965.

(4) *Controlled group no longer in existence.* If a controlled group of corporations is considered as going out of existence with respect to a particular December 31 under paragraph (b) of § 1.1562-5, and if there is no successor group in respect of such controlled group under the rules provided in paragraph (c) of such section, then an election under section 1562(a)(1) with respect to such controlled group shall terminate with respect to such December 31.

(c) *Effect of termination.* A termination under subparagraph (1), (2), (3), or (4) of paragraph (b) of this section is effective with respect to the December 31 referred to in such subparagraph. An election, once terminated, is no longer

effective. Thus, a termination is effective with respect to the taxable year of each component member of a controlled group of corporations which includes such December 31 and with respect to all succeeding taxable years of each corporation which is a component member of such group (or a successor group). Moreover, after a termination, the controlled group (and any successor group) may not make a new election except as provided in section 1562(d) and § 1.1562-4.

[T.D. 6845, 30 FR 9745, Aug. 5, 1965]

§ 1.1562-3 Consents to election and termination.

(a) *Consents required*—(1) *General.* An election under paragraph (a)(1) of § 1.1562-1, or a termination by consent under paragraph (b)(1) of § 1.1562-2, may be made by a controlled group of corporations with respect to a particular December 31 only if each corporation, which was a component member of such group (or a successor group) on any December 31 falling within the period beginning on the particular December 31 and ending on the most recently past December 31, consents to the election or termination within the time prescribed in paragraph (b) of this section and in the manner prescribed in paragraph (c) of this section. Such election or termination may be made with respect to a particular December 31 whether or not the electing or terminating group ceases to remain in existence under the principles of paragraph (a) of § 1.1562-5 before such election or termination is made. In the case of an election with respect to December 31, 1963, if each corporation which is required to consent to the election under the rules provided in Treasury Decision 6733, approved May 11, 1964 (29 FR 6320, C.B. 1964-1 (Part 1), 635) gives its consent in the manner provided in such Treasury Decision before December 31, 1964, then a valid election under section 1562(a)(1) shall be considered to have been made with respect to December 31, 1963.

(2) *Examples.* The provisions of subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). P Corporation is the common parent of a parent-subsidiary controlled group of which corporations P, S-1, and S-2

are component members on December 31, 1965. On December 31, 1966, the controlled group 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. On December 31, 1967, the controlled group of corporations consists of the same component members as on December 31, 1966, except that corporation S-3 is also a component member on December 31, 1967. In January 1968, the controlled group desires to make an election under section 1562(a)(1) with respect to December 31, 1965. Such election may be made only if P, S-1 (even though S-1 was not a component member of the group on December 31, 1966, or December 31, 1967), S-2, and S-3 (even though S-3 was not a component member of the group on December 31, 1965, or December 31, 1966) consent to the election.

Example (2). Assume the same facts as in example (1) and further assume that in January 1968, the controlled group makes a valid election with respect to December 31, 1965. If, in July 1968, the controlled group desires to terminate the election with respect to December 31, 1966, P, S-2, and S-3 must consent to the termination.

(b) *Time for consents*—(1) *Consents to election.* The consent of each component member of a controlled group of corporations which is required with respect to an election for a particular December 31, shall be made at any time after such December 31 and before the expiration of 3 years after the date on which the income tax return, for the taxable year of the component member of the group on such December 31 which has the taxable year ending first on or after such date, is required to be filed (determined without regard to any extensions of time for the filing of such return). See section 1562(e)(1).

(2) *Consents to termination.* The consent of each component member of a controlled group of corporations which is required with respect to a termination for a particular December 31, shall be made at any time after such December 31 and before the expiration of 3 years after such date. See section 1562(e)(2).

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

Example (1). The component members of a controlled group of corporations on December 31, 1965, consist of 2 calendar-year corporations, X and Y. The group desires to make an election under section 1562(a)(1)