

considered to occur on the date the termination is made, and (ii) the termination of an election under section 1562(c) (2), (3), or (4) shall be considered to occur on the date the event causing termination occurs (for example, on the date a new member files a refusal to consent, or on the date a consolidated return is filed) unless the election is made after such date, in which case the termination shall be considered to occur on the date the election is made.

(d) *Manner of consenting.* A consent referred to in paragraph (b)(3) or (c) of this section shall be made by means of a statement, signed by any person who is duly authorized to act on behalf of the consenting corporation, stating that such corporation consents to the application of an election under section 1562(a)(1) with respect to its short period. Each such statement shall set forth the name, address, taxpayer account number, and taxable year of (1) each corporation which is a component member of the electing controlled group with respect to a short period falling between the preceding December 31 and the succeeding December 31, and (2) each corporation which is a component member of such group on either the preceding or succeeding December 31. Each consenting corporation shall file such statement with the district director with whom it files (or filed) its income tax return for the short period.

[T.D. 6845, 30 FR 9749, Aug. 5, 1965]

**§ 1.1562-7 Extension of statutory periods of limitation.**

(a)(1) Under section 1562(g)(1), the statutory period for assessment of any deficiency against a corporation which is a component member of a controlled group of corporations with respect to any taxable year, to the extent such deficiency is attributable to an election under section 1562(a)(1) or a termination by consent under section 1562(c)(1), shall not expire before the expiration of one year after the date such election or termination is made.

(2) Under section 1562(g)(2), the statutory period for allowing or making credit or refund of any overpayment of tax by a corporation which is a component member of a controlled group of

corporations with respect to any taxable year, to the extent such overpayment is attributable to an election under section 1562(a)(1) or a termination by consent under section 1562(c)(1), shall not expire before the expiration of one year after the date such election or termination is made.

(b) For purposes of this section, the deficiency or overpayment in tax attributable to an election under section 1562(a)(1) or a termination by consent under section 1562(c)(1) shall be that amount of the increase or decrease in tax over the amount previously determined (as defined in section 1314(a)) for any taxable year which results from the application or nonapplication of section 1562, as the case may be. In determining the amount of such increase or decrease, due regard shall be given to the effect of any change in the amount of the surtax exemption (or the application or nonapplication of the additional tax under section 1562(b)) on credits allowable for any taxable year. Thus, for example, as a result of such change it may be necessary to recompute the amount of the investment credit allowable under section 38 for a taxable year for which the election or termination is effective and for other taxable years affected, or treated as affected, by an investment credit carryback or carryover (as defined in section 46(b)) determined with reference to the taxable years with respect to which such election or termination is effective.

(c) The provisions of this section shall not be construed to:

(1) Shorten the period within which an assessment of a deficiency may otherwise be made or the credit or refund of an overpayment may otherwise be allowed or made, or

(2) Apply to a deficiency or overpayment for a taxable year if the tax liability for such taxable year has been compromised under section 7122, or is the subject of a closing agreement under section 7121.

[T.D. 6845, 30 FR 9750, Aug. 5, 1965]

**§ 1.1563-1 Definition of controlled group of corporations and component members.**

(a) *Controlled group of corporations—*  
(1) *In general.* For purposes of sections

1561 through 1563 and the regulations thereunder, the term “controlled group of corporations” means any group of corporations which is either a “parent-subsidary controlled group” (as defined in subparagraph (2) of this paragraph), a “brother-sister controlled group” (as defined in subparagraph (3) of this paragraph), a “combined group” (as defined in subparagraph (4) of this paragraph), or an “insurance group” (as defined in subparagraph (5) of this paragraph). For the exclusion of certain stock for purposes of applying the definitions contained in this paragraph, see section 1563(c) and § 1.1563-2.

(2) *Parent-subsidary controlled group.*

(i) The term “parent-subsidary controlled group” means one or more chains of corporations connected through stock ownership with a common parent corporation if:

(a) 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 shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (directly and with the application of paragraph (b)(1) of § 1.1563-3, relating to options) by one or more of the other corporations; and

(b) The common parent corporation owns (directly and with the application of paragraph (b)(1) of § 1.1563-3, relating to options) 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 shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(ii) The definition of a parent-subsidary controlled group of corporations may be illustrated by the following examples:

*Example (1).* P Corporation owns stock possessing 80 percent of the total combined voting power of all classes of stock entitled to vote of S Corporation. P is the common parent of a parent-subsidary controlled group consisting of member corporations P and S.

*Example (2).* Assume the same facts as in example (1). Assume further that S owns stock possessing 80 percent of the total value of shares of all classes of stock of T Corporation. P is the common parent of a parent-

subsidary controlled group consisting of member corporations P, S, and T. The result would be the same if P, rather than S, owned the T stock.

*Example (3).* L Corporation owns 80 percent of the only class of stock of M Corporation and M, in turn, owns 40 percent of the only class of stock of O Corporation. L also owns 80 percent of the only class of stock of N Corporation and N, in turn, owns 40 percent of the only class of stock of O. L is the common parent of a parent-subsidary controlled group consisting of member corporations L, M, N, and O.

*Example (4).* X Corporation owns 75 percent of the only class of stock of Y and Z Corporations; Y owns all the remaining stock of Z; and Z owns all the remaining stock of Y. Since intercompany stockholdings are excluded (that is, are not treated as outstanding) for purposes of determining whether X owns stock possessing at least 80 percent of the voting power or value of at least one of the other corporations, X is treated as the owner of stock possessing 100 percent of the voting power and value of Y and of Z for purposes of subdivision (i)(b) of this subparagraph. Also, stock possessing 100 percent of the voting power and value of Y and Z is owned by the other corporations in the group within the meaning of subdivision (i)(a) of this subparagraph. (X and Y together own stock possessing 100 percent of the voting power and value of Z, and X and Z together own stock possessing 100 percent of the voting power and value of Y.) Therefore, X is the common parent of a parent-subsidary controlled group of corporations consisting of member corporations X, Y, and Z.

(3) *Brother-sister controlled group.* (i) The term “brother-sister controlled group” means two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the rules contained in paragraph (b) of § 1.1563-3) stock possessing:

(a) 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 shares of all classes of the stock of each corporation; and

(b) 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 shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

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The five or fewer persons whose stock ownership is considered for purposes of the 80 percent requirement must be the same persons whose stock ownership is considered for purposes of the more-than-50 percent requirement.

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

*Example (1).* The outstanding stock of corporations P, Q, R, S, and T, which have only one class of stock outstanding is owned by the following unrelated individuals:

CORPORATIONS						
Individuals	Corporations					Identical ownership
	P	Q	R	S	T	
A .....	55%	51%	55%	55%	55%	51%. (45% in P & Q).
B .....	45%	49%	.....	.....	.....	
C .....	.....	.....	45%	.....	.....	.....
D .....	.....	.....	.....	45%	.....	
E .....	.....	.....	.....	.....	45%	
Total	100%	100%	100%	100%	100%	

Corporations P and Q are members of a brother-sister controlled group of corporations. Although the more-than-50 percent identical ownership requirement is met for all 5 corporations, corporations R, S, and T are not members because at least 80 percent of the stock of each of those corporations is not owned by the same 5 or fewer persons whose stock ownership is considered for purposes of the more-than-50 percent identical ownership requirement.

*Example (2).* The outstanding stock of corporations U and V, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	Corporations	
	U (percent)	V (percent)
A .....	12	12
B .....	12	12
C .....	12	12
D .....	12	12
E .....	13	13
F .....	13	13
G .....	13	13
H .....	13	13
Total .....	100	100

Any group of five of the shareholders will own more than 50 percent of the stock in each corporation, in identical holdings. However, U and V are not members of brother-sister controlled group because at least 80

percent of the stock of each corporation is not owned by the same five or fewer persons.

*Example (3).* Corporation X and Y each have two classes of stock outstanding, voting common and non-voting common. (None of this stock is excluded from the definition of stock under section 1563(c).) Unrelated individuals A and B own the following percentages of the class of stock entitled to vote (voting) and of the total value of shares of all classes of stock (value) in each of corporations X and Y:

Individuals	Corporations	
	X	Y
A .....	100% voting, 60% value.	75% voting, 60% value.
B .....	0% voting, 10% value	25% voting, 10% value.

No other shareholder of X owns (or is considered to own) any stock in Y. X and Y are a brother-sister controlled group of corporations. The group meets the more-than-50 percent ownership requirements because A and B own more than 50 percent of the total value of shares of all classes of stock of X and Y in identical holdings. (The group also meets the more-than-50 percent ownership requirement because of A's voting stock ownership.) The group meets the 80 percent requirement because A and B own at least 80 percent of the total combined voting power of all classes of stock entitled to vote.

*Example (4).* Assume the same facts as in example (3) except that the value of the stock owned by A and B is not more than 50 percent of the total value of shares of all classes of stock of each corporation in identical holdings. X and Y are not a brother-sister controlled group of corporations. The group meets the more-than-50 percent ownership requirement because A owns more than 50 percent of the total combined voting power of the voting stock of each corporation. For purposes of the 80 percent requirement, B's voting stock in Y cannot be combined with A's voting stock in Y since B, who does not own any voting stock in X, is not a person whose ownership is considered for purposes of the more-than-50 percent requirement. Because no other shareholder owns stock in both X and Y, these other shareholders' stock ownership is not counted towards meeting either the more-than-50 percent ownership requirement or the 80-percent ownership requirement.

(iii) Paragraph (a)(3) of this section, as amended, by T.D. 8179 applies to taxable years ending on or after December 31, 1970. See, however, the transitional rule in paragraph (d) of this section.

(4) *Combined group.* (i) The term “combined group” means any group of three or more corporations, if:

(a) Each such corporation is a member of either a parent-subsidary controlled group of corporations or a brother-sister controlled group of corporations, and

(b) At least one of such corporations is the common parent of a parent-subsidary controlled group and also is a member of a brother-sister controlled group.

(ii) The definition of a combined group of corporations may be illustrated by the following examples:

*Example (1).* Smith, an individual, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporations X and Y. Y, in turn, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporation Z. Since:

(a) X, Y, and Z are each members of either a parent-subsidary or brother-sister controlled group of corporations, and

(b) Y is the common parent of a parent-subsidary controlled group of corporations consisting of Y and Z, and also is a member of a brother-sister controlled group of corporations consisting of X and Y,

X, Y, and Z are members of the same combined group.

*Example (2).* Assume the same facts as in example (1), and further assume that corporation X owns 80 percent of the total value of shares of all classes of stock of corporation T, X, Y, Z, and T are members of the same combined group.

(5) *Insurance group.* (i) The term “insurance group” means two or more insurance companies subject to taxation under section 802 each of which is a member of a controlled group of corporations described in subparagraph (2), (3), or (4) of this paragraph. Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group described in such subparagraph (2), (3), or (4). For purposes of this section and § 1.1562-5, the common parent of the controlled group described in subparagraph (2) of this paragraph shall be referred to as the common parent of the insurance group.

(ii) The definition of an insurance group may be illustrated by the following example:

*Example.* Corporation P owns all the stock of corporation I which, in turn, owns all the stock of corporation X. P also owns all the stock of corporation Y which, in turn, owns all the stock of corporation J. I and J are life insurance companies subject to taxation under section 802 of the Code. Since I and J are members of a parent-subsidary controlled group of corporations, such companies are treated as members of an insurance group separate from the parent-subsidary controlled group consisting of P, X, and Y. For purposes of this section and § 1.1562-5, P is referred to as the common parent of the insurance group even though P is not a member of such group.

(6) *Voting power of stock.* For purposes of § 1.1562-5, this section, and §§ 1.1563-2 and 1.1563-3, in determining whether the stock owned by a person (or persons) possesses a certain percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, consideration will be given to all the facts and circumstances of each case. A share of stock will generally be considered as possessing the voting power accorded to such share by the corporate charter, by-laws, or share certificate. On the other hand, if there is any agreement, whether express or implied, that a shareholder will not vote his stock in a corporation, the formal voting rights possessed by his stock may be disregarded in determining the percentage of the total combined voting power possessed by the stock owned by other shareholders in the corporation, if the result is that the corporation becomes a component member of a controlled group of corporations. Moreover, if a shareholder agrees to vote his stock in a corporation in the manner specified by another shareholder in the corporation, the voting rights possessed by the stock owned by the first shareholder may be considered to be possessed by the stock owned by such other shareholder if the result is that the corporation becomes a component member of a controlled group of corporations.

(b) *Component members—(1) In general.* For purposes of sections 1561 through 1563 and the regulations thereunder, a corporation is a component member of a controlled group of corporations on a December 31 (and with respect to the taxable year which includes such December 31) if such corporation:

(i) Is a member of such controlled group on such December 31 and is not treated as an excluded member under subparagraph (2) of this paragraph, or

(ii) Is not a member of such controlled group on such December 31 but is treated as an additional member under subparagraph (3) of this paragraph.

(2) *Excluded members.* (i) A corporation, which is a member of a controlled group of corporations on the December 31 included within its taxable year, but was a member of such group for less than one-half of the number of days in such taxable year which precede such December 31, shall be treated as an excluded member of such group on such December 31.

(ii) A corporation which is a member of a controlled group of corporations on any December 31 shall be treated as an excluded member of such group on such date if, for its taxable year including such date, such corporation is:

(a) Exempt from taxation under section 501(a) (except a corporation which has unrelated business taxable income for such taxable year which is subject to tax under section 511) or 521,

(b) A foreign corporation not subject to taxation under section 882(a) for the taxable year,

(c) An electing small business corporation (as defined in section 1371(b)) not subject to the tax imposed by section 1378,

(d) A franchised corporation (as defined in section 1563(f)(4) and § 1.1563-4), or

(e) An insurance company subject to taxation under section 802 or 821, except that an insurance company taxable under section 802 which (without regard to this subdivision) is a component member of an insurance group described in paragraph (a)(5) of this section shall not be treated as an excluded member of such insurance group.

(iii) A corporation which has a taxable year ending on December 31, 1963, shall be treated as an excluded member of a controlled group on such date.

(3) *Additional members.* A corporation which:

(i) Is not a member of a controlled group of corporations on the December 31 included within its taxable year, and

(ii) Is not described, with respect to such taxable year, in subparagraph (2)(ii) (a), (b), (c), (d), or (e), or (2)(iii) of this paragraph,

shall be treated as an additional member of such group on such December 31 if it was a member of such group for one-half (or more) of the number of days in such taxable year which precede such December 31.

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

*Example (1).* Brown, an individual, owns all of the stock of corporations W and X on each day of 1964. W and X each uses the calendar year as its taxable year. On January 1, 1964, Brown also owns all the stock of corporation Y (a fiscal year corporation with a taxable year beginning on July 1, 1964, and ending on June 30, 1965), which stock he sells on October 15, 1964. On December 31, 1964, Brown purchases all the stock of corporation Z (a fiscal year corporation with a taxable year beginning on September 1, 1964, and ending on August 31, 1965). On December 31, 1964, W, X, and Z are members of the same controlled group. However, the component members of the group on such December 31 are W, X, and Y. Under subparagraph (2)(i) of this paragraph, Z is treated as an excluded member of the group on December 31, 1964, since Z was a member of the group for less than one-half of the number of days (29 out of 121 days) during the period beginning on September 1, 1964 (the first day of its taxable year) and ending on December 30, 1964. Under subparagraph (3) of this paragraph, Y is treated as an additional member of the group on December 31, 1964, since Y was a member of the group for at least one-half of the number of days (107 out of 183 days) during the period beginning on July 1, 1964 (the first day of its taxable year) and ending on December 30, 1964.

*Example (2).* On January 1, 1964, corporation P owns all the stock of corporation S, which in turn owns all the stock of corporation S-1. On November 1, 1964, P purchases all of the stock of corporation X from the public and sells all of the stock of S to the public. Corporation X owns all the stock of corporation Y during 1964. P, S, S-1, X, and Y file their returns on the basis of the calendar year. On December 31, 1964, P, X, and Y are members of a parent-subsidiary controlled group of corporations; also, corporations S and S-1 are members of a different parent-subsidiary controlled group on such date. However, since X and Y have been members of the parent-subsidiary controlled group of which P is the common parent for less than one-half the number of days during the period January 1 through December 30, 1964, they are not component members of such group on such date.

On the other hand, X and Y have been members of a parent-subsidiary controlled group of which X is the common parent for at least one-half the number of days during the period January 1 through December 30, 1964, and therefore they are component members of such group on December 31, 1964. Also since S and S-1 were members of the parent-subsidiary controlled group of which P is the common parent for at least one-half the number of days in the taxable years of each such corporation during the period January 1 through December 30, 1964, P, S, and S-1 are component members of such group on December 31, 1964.

*Example (3).* Throughout 1964, corporation M owns all the stock of corporation F which, in turn, owns all the stock of corporations L-1, L-2, X, and Y. M is a domestic mutual insurance company subject to taxation under section 821, F is a foreign corporation not engaged in trade or business within the United States, L-1 and L-2 are domestic life insurance companies subject to taxation under section 802, and X and Y are domestic corporations subject to tax under section 11 of the Code. Each corporation uses the calendar year as its taxable year. On December 31, 1964, M, F, L-1, L-2, X, and Y are members of a parent-subsidiary controlled group of corporations. However, under subparagraph (2)(ii) of this paragraph, M, F, L-1, and L-2 are treated as excluded members of the group on December 31, 1964. Thus, on December 31, 1964, the component members of the parent-subsidiary controlled group of which M is the common parent include only X and Y. Furthermore, since subparagraph (2)(ii)(e) of this paragraph does not result in L-1 and L-2 being treated as excluded members of an insurance group, L-1 and L-2 are component members of an insurance group on December 31, 1964.

(5) *Application of constructive ownership rules.* For purposes of subparagraphs (2)(i) and (3) of this paragraph, it is necessary to determine whether a corporation was a member of a controlled group of corporations for one-half (or more) of the number of days in its taxable year which precede the December 31 falling within such taxable year. Therefore, the constructive ownership rules contained in paragraph (b) of § 1.1563-3 (to the extent applicable in making such determination) must be applied on a day-by-day basis. For example, if P Corporation owns all the stock of X Corporation on each day of 1964, and on December 30, 1964, acquires an option to purchase all the stock of Y Corporation (a calendar-year taxpayer which has been in existence on each day of 1964), the application of

paragraph (b)(1) of § 1.1563-3 on a day-by-day basis results in Y being a member of the brother-sister controlled group on only one day of Y's 1964 year which precedes December 31, 1964. Accordingly, since Y is not a member of such group for one-half or more of the number of days in its 1964 year preceding December 31, 1964, Y is treated as an excluded member of such group on December 31, 1964.

(c) *Overlapping groups—(1) In general.* If on a December 31 a corporation is a component member of a controlled group of corporations by reason of ownership of stock possessing at least 80 percent of the total value of shares of all classes of stock of the corporation, and if on such December 31 such corporation is also a component member of another controlled group of corporations by reason of ownership of other stock (that is, stock not used to satisfy the at-least-80-percent total value test) possessing at least 80 percent of the total combined voting power of all classes of stock of the corporation entitled to vote, then such corporation shall be treated as a component member only of the controlled group of which it is a component member by reason of the ownership of at least 80 percent of the total value of its shares.

(2) *Brother-sister controlled groups.* (i) If on a December 31, a corporation would, without application of this subparagraph, be a component member of more than one brother-sister controlled group on such date, such corporation shall be treated as a component member of only one such group on such date. Such a corporation may select which group in which it is to be included by filing an election as provided in this subparagraph. The election shall be in the form of a statement designating the group in which the corporation is to be included. The statement shall provide all the information with respect to stock ownership which is reasonably necessary to satisfy the Internal Revenue officer with whom it is filed that the corporation would, but for the election, be a component member of more than one controlled group. Once filed, the election is irrevocable and effective until such time that a change in the stock ownership of the corporation results in termination of

membership in the controlled group in which such corporation has been included.

(ii) Except as provided in subdivision (iii) of this subparagraph, the statement shall be signed by a person duly authorized to act on behalf of such corporation and shall be filed on or before the due date (including extension of time) for the filing of the income tax return of such corporation for the taxable year. However, in the case of an election with respect to December 31, 1970, the statement shall be considered as timely filed if filed on or before December 15, 1971. In the event no election is filed in accordance with the provisions of this subdivision, then the district director with audit jurisdiction of such corporation's return for the taxable year which includes such December 31 shall determine the group in which such corporation is to be included, and such determination shall be binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year.

(iii) If more than one corporation would, without application of this subparagraph, be a component member of more than one controlled group, a single statement shall be signed by persons duly authorized to act on behalf of each such corporation. Such statement shall designate the group in which each corporation is to be included. The statement shall be attached to the income tax return of the corporation that, among those corporations which would (without the application of this subparagraph) belong to more than one group, has the taxable year including such December 31 which ends on the earliest date. However, in the case of an election with respect to December 31, 1970, the statement may be filed by December 15, 1971, with the service center director with whom such corporation's return is filed for the taxable year which includes such December 31. In the event no election is filed in accordance with the provisions of this subdivision, then the district director with audit jurisdiction of such corporation's return for the taxable year that includes such December 31 shall determine the group in which each corporation is to be included, and such deter-

mination shall be binding for all subsequent years unless the corporations file a valid election with respect to any such subsequent year.

(iv) The provisions of this subparagraph may be illustrated by the following examples (in which it is assumed that all the individuals are unrelated):

*Example (1).* On each day of 1970 all the outstanding stock of corporations M, N, and P is held in the following manner:

Individuals	Corporations		
	M	N	P
A .....	55%	40%	5%
B .....	40%	20%	40%
C .....	5%	40%	55%

Since the more-than-50-percent stock ownership requirement of section 1563(a)(2)(B) is met with respect to corporations M and N and with respect to corporations N and P, but not with respect to corporations M, N, and P, corporation N would, without the application of this subparagraph, be a component member on December 31, 1970, of overlapping groups consisting of M and N and of N and P. If N does not file an election in accordance with subdivision (ii) of this subparagraph, the district director with audit jurisdiction of N's return will determine the group in which N is to be included.

*Example (2).* On each day of 1970, all the outstanding stock of corporations S, T, W, X, and Z is held in the following manner:

Individuals	Corporations				
	S	T	W	X	Z
D .....	52%	52%	52%	52%	52%
E .....	40%	2%	2%	2%	2%
F .....	2%	40%	2%	2%	2%
G .....	2%	2%	40%	2%	2%
H .....	2%	2%	2%	40%	2%
I .....	2%	2%	2%	2%	40%

On December 31, 1970, the more-than-50-percent stock ownership requirement of section 1563(a)(2)(B) may be met with regard to any combination of the corporations but all five corporations cannot be included as component members of a single controlled group because the inclusion of all the corporations in a single group would be dependent upon taking into account the stock ownership of more than five persons. Therefore, if the corporations do not file a statement in accordance with subdivision (iii) of this subparagraph, the district director with audit jurisdiction of the return of the corporation whose taxable year ends on the earliest date will determine the group in which each corporation is to be included. The corporations

or the district director, as the case may be, may designate that three corporations be included in one group and two corporations in another, or that any four corporations be included in one group and that the remaining corporation not be included in any group.

(d) *Transitional rules*—(1) *In general.* Treasury decision 8179 amended paragraph (a)(3) of this section to revise the definition of a brother-sister controlled group of corporations. In general, those amendments are effective for taxable years ending on or after December 31, 1970.

(2) *Limited nonretroactivity.* (i) Under the authority of section 7805(b), the Internal Revenue Service will treat an old group as a brother-sister controlled group of corporations for purposes of applying sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of the Employment Retirement Income Security Act of 1974 (ERISA) in a plan year or taxable year beginning before March 2, 1988. To the extent necessary to prevent an adverse effect on any old member (or any other corporation), or on any plan or other entity described in such sections (including plans, etc., of corporations not part of such old group), that would result solely from the retroactive effect of the amendment to this section by T.D. 8179. An adverse effect includes the disqualification of a plan or the disallowance of a deduction or credit for a contribution to a plan. The Internal Revenue Service, however, will not treat an old member as a member of an old group to the extent that such treatment will have an adverse effect on that old member.

(ii) Section 7805(b) will not be applied pursuant to paragraph (d)(2)(i) of this section to treat an old member of an old group as a member of a brother-sister controlled group to prevent an adverse effect for a taxable year if, for that taxable year, that old member treats or has treated itself as not being a member of that old group for purposes of section 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 and title IV of ERISA for such taxable year (such as by filing, with respect to such taxable year, a return, amended return, or claim for credit or refund in

which the amount of any deduction, credit, limitation, or tax due is determined by treating itself as not being a member of the old group for purposes of those sections). However, the fact that one or more (but not all) of the old members do not qualify for section 7805(b) treatment because of the preceding sentence will not preclude that old member (or members) from being treated as a member of the old group under paragraph (d)(2)(i) of this section in order to prevent the disallowance of a deduction or credit of another old member (or other corporation) or to prevent the disqualification of, or other adverse effect on, another old member's plan (or other entity) described in the sections of the Code and ERISA enumerated in such paragraph.

(3) *Election of general nonretroactivity.* In the case of a taxable year ending on or after December 31, 1970, and before March 2, 1988. An old group will be treated as a brother-sister controlled group of corporations for all purposes of the Code for such taxable year if—

(i) Each old member files a statement consenting to such treatment for such taxable year with the District Director having audit jurisdiction over its return within six months after March 2, 1988, and

(ii) No old member (A) files or has filed, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating any old member as not a member of the old group or (B) treats the employees of all members of the old group as not being employed by a single employer for purposes of sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of ERISA for such taxable year.

(4) *Definitions.* For purposes of this paragraph (d) of this section—

(i) An "old group" is a brother-sister controlled group of corporations, determined by applying paragraph (a)(3) of this section as in effect before the amendments made by Treasury decision 8179, that is not a brother-sister controlled group of corporations, determined by applying paragraph (a)(3) of this section as amended by such Treasury decision, and



(ii) An “old member” is any corporation that is a member of an old group.

(5) *Election to choose between membership in more than one controlled group.* If—

(i) An old member has filed an election under paragraph (c)(2) of this section to be treated as a component member of an old group for a December 31 before March 2, 1988, and

(ii) That corporation would (without regard to such paragraph) be a component member of more than one brother-sister controlled group (not including an old group) on the December 31, that corporation may make an election under that paragraph by filing an amended return on or before September 2, 1988. This paragraph (d)(5) does not apply to a corporation that is treated as a member of an old group under paragraph (d)(3) of this section.

(6) *Refunds.* See section 6511(a) for period of limitation on filing claims for credit or refund.

[T.D. 6845, 30 FR 9751, Aug. 5, 1965, as amended by T.D. 6960, 33 FR 9302, June 25, 1968; T.D. 7181, 37 FR 8068, Apr. 25, 1972; T.D. 7293, 38 FR 32803, Nov. 28, 1973; T.D. 8179, 53 FR 6612, Mar. 2, 1988; 53 FR 8302, Mar. 14, 1988]

#### § 1.1563-2 Excluded stock.

(a) *Certain stock excluded.* For purposes of sections 1561 through 1563 and the regulations thereunder, the term “stock” does not include:

(1) Nonvoting stock which is limited and preferred as to dividends, and

(2) Treasury stock.

(b) *Stock treated as excluded stock—(1) Parent-subsidiary controlled group.* If a corporation (hereinafter in this paragraph referred to as “parent corporation”) owns 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in another corporation (hereinafter in this paragraph referred to as “subsidiary corporation”), the provisions of subparagraph (2) of this paragraph shall apply. For purposes of this subparagraph, stock owned by a corporation means stock owned directly plus stock owned with the application of the constructive ownership rules of paragraph (b) (1) and (4) of § 1.1563-3, relating to options and attribution from corpora-

tions. In determining whether the stock owned by a corporation possesses the requisite percentage of the total combined voting power of all classes of stock entitled to vote of another corporation, see paragraph (a)(6) of § 1.1563-1.

(2) *Stock treated as not outstanding.* If the provisions of this subparagraph apply, then for purposes of determining whether the parent corporation or the subsidiary corporation is a member of a parent-subsidiary controlled group of corporations within the meaning of paragraph (a)(2) of § 1.1563-1, the following stock of the subsidiary corporation shall, except as otherwise provided in paragraph (c) of this section, be treated as if it were not outstanding:

(i) *Plan of deferred compensation.* Stock in the subsidiary corporation held by a trust which is part of a plan of deferred compensation for the benefit of the employees of the parent corporation or the subsidiary corporation. The term “plan of deferred compensation” shall have the same meaning such term has in section 406(a)(3) and the regulations thereunder.

(ii) *Principal stockholders and officers.* Stock in the subsidiary corporation owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563-3) by an individual who is a principal stockholder or officer of the parent corporation. A principal stockholder of the parent corporation is an individual who owns (directly and with the application of the rules contained in paragraph (b) of § 1.1563-3) 5 percent or more of the total combined voting power of all classes of stock entitled to vote or 5 percent or more of the total value of shares of all classes of stock of the parent corporation. An officer of the parent corporation includes the president, vice-presidents, general manager, treasurer, secretary, and comptroller of such corporation, and any other person who performs duties corresponding to those normally performed by persons occupying such positions.

(iii) *Employees.* Stock in the subsidiary corporation owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563-3) by