

termination occurs, and (ii) the taxable years of the other members of the affiliated group which include the last day of such taxable year of the common parent. An election, once terminated, is no longer effective. Accordingly, the termination is also effective with respect to the succeeding taxable years of the members of the group. However, the affiliated group may make a new election in accordance with the provisions of section 243(b)(2) and paragraph (c) of this section.

[T.D. 6992, 34 FR 817, Jan. 18, 1969]

§ 1.243-5 Effect of election.

(a) *General*—(1) *Corporations subject to restrictions and limitations.* If an election by an affiliated group under section 243(b)(2) is effective with respect to a taxable year of the common parent corporation, then each corporation (including the common parent corporation) which is a member of such group on each day of its matching taxable year shall be subject to the restrictions and limitations prescribed by paragraphs (b), (c), and (d) of this section for such taxable year. For purposes of this section, the term *matching taxable year* shall mean the taxable year of each member (including the common parent corporation) of an affiliated group which includes the last day of a particular taxable year of the common parent corporation for which an election by the affiliated group under section 243(b)(2) is effective. If a corporation is a member of an affiliated group on each day of a short taxable year which does not include the last day of a taxable year of the common parent corporation, and if an election under section 243(b)(2) is effective for such short year, see paragraph (g) of this section. In the case of taxable years beginning in 1963 and ending in 1964 for which an election under section 243(b)(2) is effective under paragraph (c)(4)(ii) of § 1.243-4, see paragraph (f)(9) of this section.

(2) *Members filing consolidated returns.* The restrictions and limitations prescribed by this section shall apply notwithstanding the fact that some of the corporations which are members of the electing affiliated group (within the meaning of section 243(b)(5)) join in the filing of a consolidated return. Thus,

for example, if an electing affiliated group includes one or more corporations taxable under section 11 of the Code and two or more insurance companies taxable under section 802 of the Code, and if the insurance companies join in the filing of a consolidated return, the amount of such companies' exemptions from estimated tax (for purposes of sections 6016 and 6655) shall be the amounts determined under paragraph (d)(5) of this section and not the amounts determined pursuant to the regulations under section 1502.

(b) *Multiple surtax exemption election*—(1) *General rule.* If an election by an affiliated group under section 243(b)(2) is effective with respect to a taxable year of the common parent corporation, then no corporation which is a member of such affiliated group on each day of its matching taxable year may consent (or shall be deemed to consent) to an election under section 1562(a)(1), relating to election of multiple surtax exemptions, which would be effective for such matching taxable year. Thus, each corporation which is a component member of the controlled group of corporations with respect to its matching taxable year (determined by applying section 1563(b) without regard to paragraph (2)(D) thereof) shall determine its surtax exemption for such taxable year in accordance with section 1561 and the regulations thereunder.

(2) *Special rule for certain insurance companies.* Under section 243(b)(6)(A), if the provisions of subparagraph (1) of this paragraph apply with respect to the taxable year of an insurance company subject to taxation under section 802 or 821, then the surtax exemption of such insurance company for such taxable year shall be determined by applying part II (section 1561 and following), subchapter B, chapter 6 of the Code, with respect to such insurance company and the other corporations which are component members of the controlled group of corporations (as determined under section 1563 without regard to subsections (a)(4) and (b)(2)(D) thereof) of which such insurance company is a member, without regard to section 1563(a)(4) (relating to certain insurance companies treated as a separate controlled group) and section

1563(b)(2)(D) (relating to certain insurance companies treated as excluded members).

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

Example. Throughout 1965 corporation M owns all the stock of corporations L-1, L-2, S-1, and S-2. M is a domestic mutual insurance company subject to tax under section 821 of the Code, L-1 and L-2 are domestic life insurance companies subject to tax under section 802 of the Code, and S-1 and S-2 are domestic corporations subject to tax under section 11 of the Code. Each corporation uses the calendar year as its taxable year. M makes a valid election under section 243(b)(2) for the affiliated group consisting of M, L-1, L-2, S-1, and S-2. If part II, subchapter B, chapter 6 of the Code were applied with respect to the 1965 taxable years of the corporations without regard to section 243(b)(6)(A), the following would result: S-1 and S-2 would be treated as component members of a controlled group of corporations on such date; L-1 and L-2 would be treated as component members of a separate controlled group on such date; and M would be treated as an excluded member. However, since section 243(b)(6)(A) requires that part II of subchapter B be applied without regard to section 1563(a)(4) and (b)(2)(D), for purposes of determining the surtax exemptions of M, L-1, L-2, S-1, and S-2 for their 1965 taxable years, such corporations are treated for purposes of such part II as component members of a single controlled group of corporations on December 31, 1965. Moreover, by reason of having made the election under section 243(b)(2), M, L-1, L-2, S-1, and S-2 cannot consent to multiple surtax exemption elections under section 1562 which would be effective for their 1965 taxable years. Thus, such corporations are limited to a single \$25,000 surtax exemption for such taxable years (to be apportioned among such corporations in accordance with section 1561 and the regulations thereunder).

(c) *Foreign tax credit*—(1) *General.* If an election by an affiliated group under section 243(b)(2) is effective with respect to a taxable year of the common parent corporation, then:

(i) The credit under section 901 for taxes paid or accrued to any foreign country or possession of the United States shall be allowed to a corporation which is a member of such affiliated group for each day of its matching taxable year only if each other corporation which pays or accrues such foreign taxes to any foreign country or possession, and which is a member of

such group on each day of its matching taxable year, does not deduct such taxes in computing its tax liability for its matching taxable year, and

(ii) A corporation which is a member of such affiliated group on each day of its matching taxable year may use the overall limitation provided in section 904(a)(2) for such matching taxable year only if each other corporation which pays or accrues foreign taxes to any foreign country or possession, and which is a member of such group on each day of its matching taxable year, uses such limitation for its matching taxable year.

(2) *Consent of the Commissioner.* In the absence of unusual circumstances, a request by a corporation for the consent of the Commissioner to the revocation of an election of the overall limitation, or to a new election of the overall limitation, for the purpose of satisfying the requirements of subparagraph (1)(ii) of this paragraph will be given favorable consideration, notwithstanding the fact that there has been no change in the basic nature of the corporation's business or changes in conditions in a foreign country which substantially affect the corporation's business. See paragraph (d)(3) of §1.904-1.

(d) *Other restrictions and limitations*—

(1) *General rule.* If an election by an affiliated group under section 243(b)(2) is effective with respect to a taxable year of the common parent corporation, then, except to the extent that an apportionment plan adopted under paragraph (f) of this section for such taxable year provides otherwise with respect to a restriction or limitation described in this paragraph, the rules provided in subparagraphs (2), (3), (4), and (5) of this paragraph shall apply to each corporation which is a member of such affiliated group on each day of its matching taxable year for the purpose of computing the amount of such restriction or limitation for its matching taxable year. For purposes of this paragraph, each corporation which is a member of an electing affiliated group (including any member which joins in filing a consolidated return) shall be treated as a separate corporation for purposes of determining the amount of such restrictions and limitations.

(2) *Accumulated earnings credit*—(i) *General.* Except as provided in subdivision (ii) of this subparagraph, in determining the minimum accumulated earnings credit under section 535(c)(2) (or the accumulated earnings credit of a mere holding or investment company under section 535(c)(3) for each corporation which is a member of the affiliated group on each day of its matching taxable year, in lieu of the \$150,000 amount (\$100,000 amount in the case of taxable years beginning before January 1, 1975) mentioned in such sections there shall be substituted an amount equal to (a) \$150,000 (\$100,000 in the case of taxable years beginning before January 1, 1975), divided by (b) the number of such members.

(ii) *Allocation of excess.* If, with respect to one or more members, the amount determined under subdivision (i) of this subparagraph exceeds the sum of (a) such member's accumulated earnings and profits as of the close of the preceding taxable year, plus (b) such member's earnings and profits for the taxable year which are retained (within the meaning of section 535(c)(1), then any such excess shall be subtracted from the amount determined under subdivision (i) of this sub-

paragraph and shall be divided equally among those remaining members of the affiliated group that do not have such an excess (until no such excess remains to be divided among those remaining members that have not had such an excess). The excess so divided among such remaining members shall be added to the amount determined under subdivision (i) with respect to such members.

(iii) *Apportionment plan not allowed.* An affiliated group may not adopt an apportionment plan, as provided in paragraph (f) of this section, with respect to the amounts computed under the provisions of this subparagraph.

(iv) *Example.* The provisions of this subparagraph may be illustrated by the following example;

Example. An affiliated group is composed of four member corporations, W, X, Y, and Z. The sum of the accumulated earnings and profits (as of the close of the preceding taxable year ending December 31, 1975) plus the earnings and profits for the taxable year ending December 31, 1976 which are retained is \$15,000, \$75,000, \$37,500, and \$300,000 in the case of W, X, Y, and Z, respectively. The amounts determined under this subparagraph for W, X, Y, and Z are \$15,000, \$48,750, \$37,500 and \$48,750, respectively, computed as follows:

	Component members			
	W	X	Y	Z
Earnings and profits	\$15,000	\$75,000	\$37,500	\$300,000
Amount computed under subpar. (1)	37,500	37,500	37,500	37,500
Excess	22,500	0	0	0
Allocation of excess		7,500	7,500	7,500
New excess			7,500	
Reallocation of new excess		3,750		3,750
Amount to be used for purposes of sec. 535(c) (2) and (3) ..	15,000	48,750	37,500	48,750

(3) *Mine exploration expenditures*—(i) *Limitation under section 615(a).* If the aggregate of the expenditures to which section 615(a) applies, which are paid or incurred by corporations which are members of the affiliated group on each day of their matching taxable years (during such taxable years) exceeds \$100,000, then the deduction (or amount deferrable) under section 615 for any such member for its matching taxable year shall be limited to an amount equal to the amount which bears the same ratio to \$100,000 as the amount deductible or deferrable by

such member under section 615 (computed without regard to this subdivision) bears to the aggregate of the amounts deductible or deferrable under section 615 (as so computed) by all such members.

(ii) *Limitation under section 615(c).* If the aggregate of the expenditures to which section 615(a) applies which are paid or incurred by the corporations which are members of such affiliated group on each day of their matching taxable years (during such taxable

years) would, when added to the aggregate of the amounts deducted or deferred in prior taxable years which are taken into account by such corporations in applying the limitation of section 615(c), exceed \$400,000, then section 615 shall not apply to any such expenditure so paid or incurred by any such member to the extent such expenditure would exceed the amount which bears the same ratio to (a) the amount, if any, by which \$400,000 exceeds the amounts so deducted or deferred in prior years, as (b) such member's deduction (or amount deferrable) under section 615 (computed without regard to this subdivision) for such expenditures paid or incurred by such member during its matching taxable year, bears to (c) the aggregate of the amounts deductible or deferrable under section 615 (as so computed) by all such members during their matching taxable years.

(iii) *Treatment of corporations filing consolidated returns.* For purposes of making the computations under subdivisions (i) and (ii) of this subparagraph, a corporation which joins in the filing of a consolidated return shall be treated as if it filed a separate return.

(iv) *Estimate of exploration expenditures.* If, on the date a corporation (which is a member of an affiliated group on each day of its matching taxable year) files its income tax return for such taxable year, it cannot be determined whether or not the \$100,000 limitation prescribed by subdivision (i) of this subparagraph, or the \$400,000 limitation prescribed by subdivision (ii) of this subparagraph, will apply with respect to such taxable year, then such member shall, for purposes of such return, apply the provisions of such subdivisions (i) and (ii) with respect to such taxable year on the basis of an estimate of the aggregate of the exploration expenditures by all such members of the affiliated group for their matching taxable years. Such estimate shall be made on the basis of the facts and circumstances known at the time of such estimate. If an estimate is used by any such member of the affiliated group pursuant to this subdivision, and if the actual expenditures by all such members differ from the estimate, then each such member shall file as soon as possible an original

or amended return reflecting an amended apportionment (either pursuant to an apportionment plan adopted under paragraph (f) of this section or pursuant to the application of the rule provided by subdivision (i) or (ii) of this subparagraph) based upon such actual expenditures.

(v) *Amount apportioned under apportionment plan.* If an electing affiliated group adopts an apportionment plan as provided in paragraph (f) of this section with respect to the limitation under section 615(a) or 615(c), then the amount apportioned under such plan to any corporation which is a member of such group may not exceed the amount which such member could have deducted (or deferred) under section 615 had such affiliated group not filed an election under section 243(b)(2).

(4) *Small business deductions of life insurance companies.* In the case of a life insurance company taxable under section 802 which is a member of such affiliated group on each day of its matching taxable year, the small business deduction under sections 804(a)(4) and 809(d)(10) shall not exceed an amount equal to \$25,000 divided by the number of life insurance companies taxable under section 802 which are members of such group on each day of their matching taxable years.

(5) *Estimated tax—(i) Exemption from estimated tax.* Except as otherwise provided in subdivision (ii) of this subparagraph, the exemption from estimated tax (for purposes of estimated tax filing requirements under section 6016 and the addition to tax under section 6655 for failure to pay estimated tax) of each corporation which is a member of such affiliated group on each day of its matching taxable year shall be (in lieu of the \$100,000 amount specified in section 6016(a) and (b)(2)(A) and in section 6655(d)(1) and (e)(2)(A) an amount equal to \$100,000 divided by the number of such members.

(ii) *Nonapplication to certain taxable years beginning in 1963 and ending in 1964.* For purposes of this section, if a corporation has a taxable year beginning in 1963 and ending in 1964 the last day of the eighth month of which falls on or before April 10, 1964, then (notwithstanding the fact that an election under section 243(b)(2) is effective for

such taxable year) subdivision (i) of this subparagraph shall not apply to such corporation for such taxable year. Thus, such corporation shall be entitled to a \$100,000 exemption from estimated tax for such taxable year. Also, with respect to a taxable year described in the first sentence of this subdivision, any such corporation shall not be considered to be a member of the affiliated group for purposes of determining the number of members referred to in subdivision (i) of this subparagraph.

(iii) *Examples.* The provisions of subdivision (i) of this subparagraph may be illustrated by the following examples:

Example 1. Corporation P owns all the stock of corporation S-1 on each day of 1965. On March 1, 1965, P acquires all the stock of corporation S-2. Corporations P, S-1, and S-2 file separate returns on a calendar year basis. On March 31, 1965, the affiliated group consisting of P, S-1, and S-2 anticipates making an election under section 243(b)(2) for P's 1965 taxable year. If the affiliated group does make a valid election under section 243(b)(2) for P's 1965 year, under subdivision (i) of this subparagraph the exemption from estimated tax of P for 1965, and the exemption from estimated tax of S-1 for 1965, will be (assuming an apportionment plan is not filed pursuant to paragraph (f) of this section) an amount equal to \$50,000 ($\$100,000 \div 2$). (Since S-2 is not a member of the affiliated group on each day of 1965, S-2's exemption from estimated tax will be determined for the year 1965 without regard to subdivision (i) of this subparagraph, whether or not the affiliated group makes the election under section 243(b)(2).) P and S-1 file declarations of estimated tax on April 15, 1965, on such basis and make payments with respect to such declarations on such basis. Thus, if the affiliated group does make a valid election under section 243(b)(2) for P's 1965 year, P and S-1 will not incur (as a result of the application of subdivision (i) of this subparagraph to their 1965 years) additions to tax under section 6655 for failure to pay estimated tax.

Example 2. Assume the same facts as in *Example 1*, except that, on March 31, 1965, S-1 anticipates that it will incur a loss for its 1965 year. Accordingly, in anticipation of making an election under section 243(b)(2) for P's 1965 year and adopting an apportionment plan under paragraph (f) of this section, P computes its estimated tax liability for 1965 on the basis of a \$100,000 exemption, and S-1 computes its estimated tax liability for 1965 on the basis of a zero exemption. Assume S-1 incurs a loss for 1965 as antici-

pated. Thus, if P does make the election for 1965, and an apportionment plan is adopted apportioning \$100,000 to P and zero to S-1 (for their 1965 years), P and S-1 will not incur (as a result of the application of subdivision (i) of this subparagraph to their 1965 years) additions to tax under section 6655 for failure to pay estimated tax.

Example 3. Assume the same facts as in *Example 1*, except that P and S-1 file declarations of estimated tax on April 15, 1965, on the basis of separate \$100,000 exemptions from estimated tax for their 1965 years, and make payments with respect to such declarations on such basis. Assume that the affiliated group makes an election under section 243(b)(2) for P's 1965 year. Under subdivision (i) of this subparagraph, P and S-1 are limited in the aggregate to a single \$100,000 exemption from estimated tax for their 1965 years. The provisions of section 6655 will be applied to the 1965 year of P and the 1965 year of S-1 on the basis of a \$50,000 exemption from estimated tax for each corporation, unless a different apportionment of the \$100,000 amount is adopted under paragraph (f) of this section. Since the election was made under section 243(b)(2), regardless of whether or not the affiliated group anticipated making the election, P or S-1 (or both) may incur additions to tax under section 6655 for failure to pay estimated tax.

(e) *Effect of election for certain taxable years beginning in 1963 and ending in 1964.* If an election under section 243(b)(2) by an affiliated group is effective for a taxable year of a corporation under paragraph (c)(4)(ii) of § 1.243-4 (relating to election for certain taxable years beginning in 1963 and ending in 1964), and if such corporation is a member of such group on each day of such taxable year, then the restrictions and limitations prescribed by paragraphs (b), (c), and (d) of this section shall apply to all such members having such taxable years (for such taxable years). For purposes of this paragraph, such paragraphs shall be applied with respect to such taxable years as if such taxable years included the last day of a taxable year of the common parent corporation for which an election was effective under section 243(b)(2), *i.e.*, as if such taxable years were matching taxable years. For apportionment plans with respect to such taxable years, see paragraph (f) (9) of this section.

(f) *Apportionment plans—(1) In general.* In the case of corporations which are

members of an affiliated group of corporations on each day of their matching taxable years:

(i) The \$100,000 amount referred to in paragraph (d)(3)(i) of this section (relating to limitation under section 615(a)),

(ii) The amount determined under paragraph (d)(3)(ii)(a) of this section (relating to limitation under section 615(c)),

(iii) The \$25,000 amount referred to in paragraph (d)(4) of this section (relating to small business deduction of life insurance companies), and

(iv) The \$100,000 amount referred to in paragraph (d)(5)(i) of this section (relating to exemption from estimated tax), may be apportioned among such members (for such taxable years) if the common parent corporation files an apportionment plan with respect to such taxable years in the manner provided in subparagraph (4) of this paragraph, and if all other members consent to the plan, in the manner provided in subparagraph (5) or (6) of this paragraph (whichever is applicable). The plan may provide for the apportionment to one or more of such members, in fixed dollar amounts, of one or more of the amounts referred to in subdivisions (i), (ii), (iii), and (iv) of this subparagraph, but in no event shall the sum of the amounts so apportioned in respect to any such subdivision exceed the amount referred to in such subdivision. See also paragraph (d)(3)(v) of this section, relating to the maximum amount that may be apportioned to a corporation under this subparagraph with respect to exploration expenditures to which section 615 applies.

(2) *Time for adopting plan.* An affiliated group may adopt an apportionment plan with respect to the matching taxable years of its members only if, at the time such plan is sought to be adopted, there is at least 1 year remaining in the statutory period (including any extensions thereof) for the assessment of a deficiency against any corporation the tax liability of which for any taxable year would be increased by the adoption of such plan. (If there is less than 1 year remaining with respect to any taxable year, the district director for the internal revenue district in which is located the principal

place of business or principal office or agency of the corporation will ordinarily, upon request, enter into an agreement to extend such statutory period for assessment and collection of deficiencies.)

(3) *Years for which effective.* A valid apportionment plan with respect to matching taxable years of members of an affiliated group shall be effective for such matching taxable years, and for all succeeding matching taxable years of such members, unless the plan is amended in accordance with subparagraph (8) of this paragraph or is terminated. Thus, the apportionment plan (including any amendments thereof) has a continuing effect and need not be renewed annually. An apportionment plan with respect to a particular taxable year of the common parent shall terminate with respect to the taxable years of the members of the affiliated group which include the last day of a succeeding taxable year of the common parent if:

(i) Any corporation which was a member of the affiliated group on each day of its matching taxable year which included the last day of the particular taxable year of the common parent is not a member of such group on each day of its taxable year which includes the last day of such succeeding taxable year of the common parent, or

(ii) Any corporation which was not a member of such group on each day of its taxable year which included the last day of the particular taxable year of the common parent is a member of such group on each day of its taxable year which includes the last day of such succeeding taxable year of the common parent.

An apportionment plan, once terminated, is no longer effective. Accordingly, unless a new apportionment plan is filed and consented to (or the section 243(b)(2) election is terminated) the amounts referred to in subparagraph (1) of this paragraph will be apportioned among the corporations which are members of the affiliated group on each day of their matching taxable years in accordance with the rules provided in paragraphs (d)(3)(i), (d)(3)(ii), (d)(4), and (d)(5)(i) of this section.

(4) *Filing of plan.* The apportionment plan shall be in the form of a statement filed by the common parent corporation with the district director for the internal revenue district in which is located the principal place of business or principal office or agency of such common parent. The statement shall be signed by any person who is duly authorized to act on behalf of the common parent corporation and shall set forth the name, address, internal revenue district, taxpayer account number, and taxable year of each member to whom the common parent could apportion an amount under subparagraph (1) of this paragraph (or, in the case of an apportionment plan referred to in subparagraph (9) of this paragraph, each member to whom the common parent could apportion an amount under such subparagraph) and the amount (or amounts) apportioned to each such member under the plan.

(5) *Consent of wholly owned subsidiaries.* If all the stock of a corporation which is a member of the affiliated group on each day of its matching taxable year is owned on each such day by another corporation (or corporations) which is a member of such group on each day of its matching taxable year, such corporation (hereinafter in this paragraph referred to as a "wholly owned subsidiary") shall be deemed to consent to the apportionment plan. Each wholly owned subsidiary should attach a copy of the plan filed by the common parent corporation to an income tax return, amended return, or claim for refund for its matching taxable year.

(6) *Consent of other members.* The consent of each member (other than the common parent corporation and wholly owned subsidiaries) to an apportionment plan shall be in the form of a statement, signed by any person who is duly authorized to act on behalf of the member consenting to the plan, stating that such member consents to the plan. The consent of more than one such member may be incorporated in a single statement. The statement (or statements) shall be attached to the apportionment plan filed by the common parent corporation. The consent of any such member which, after the date the apportionment plan was filed and dur-

ing its matching taxable year referred to in subparagraph (1) of this paragraph, ceases to be a wholly owned subsidiary but continues to be a member, shall be filed with the district director with whom the apportionment plan is filed (as soon as possible after it ceases to be a wholly owned subsidiary). Each consenting member should attach a copy of the apportionment plan filed by the common parent to an income tax return, amended return, or claim for refund for its matching taxable year which includes the last day of the taxable year of the common parent corporation for which the apportionment plan was filed.

(7) *Members of group filing consolidated return—(i) General rule.* Except as provided in subdivision (ii) of this subparagraph, if the members of an affiliated group of corporations include one or more corporations taxable under section 11 of the Code and one or more insurance companies taxable under section 802 or 821 of the Code and if the affiliated group includes corporations which join in the filing of a consolidated return, then, for purposes of determining the amount to be apportioned to a corporation under an apportionment plan adopted under this paragraph, the corporations filing the consolidated return shall be treated as a single member.

(ii) *Consenting to an apportionment plan.* For purposes of consenting to an apportionment plan under subparagraphs (5) and (6) of this paragraph, if the members of an affiliated group of corporations include corporations which join in the filing of a consolidated return, each corporation which joins in filing the consolidated return shall be treated as a separate member.

(8) *Amendment of plan.* An apportionment plan, which is effective for the matching taxable years of members of an affiliated group, may be amended if an amended plan is filed (and consented to) within the time and in accordance with the rules prescribed in this paragraph for the adoption of an original plan with respect to such taxable years.

(9) *Certain taxable years beginning in 1963 and ending in 1964.* In the case of corporations which are members of an affiliated group of corporations on each

day of their taxable years referred to in paragraph (e) of this section:

(i) The \$100,000 amount referred to in paragraph (d)(3)(i) of this section (relating to limitation under section 615(a)),

(ii) The amount determined under paragraph (d)(3)(ii)(a) of this section (relating to limitation under section 615(c)),

(iii) The \$25,000 amount referred to in paragraph (d)(4) of this section (relating to small business deduction of life insurance companies), and

(iv) The \$100,000 amount referred to in paragraph (d)(5)(i) of this section (relating to exemption from estimated tax), may be apportioned among such members (for such taxable years) if an apportionment plan is filed (and consented to) with respect to such taxable years in accordance with the rules provided in subparagraphs (2), (4), (5), (6), (7), and (8) of this paragraph. For purposes of this subparagraph, such subparagraphs shall be applied as if such taxable years included the last day of a taxable year of the common parent corporation, i.e., as if such taxable years were matching taxable years. An apportionment plan adopted under this subparagraph shall be effective only with respect to taxable years referred to in paragraph (e) of this section. The plan may provide for the apportionment to one or more of such members, in fixed dollar amounts, of one or more of the amounts referred to in subdivisions (i), (ii), (iii), and (iv) of this subparagraph, but in no event shall the sum of the amounts so apportioned in respect of any such subdivision exceed the amount referred to in such subdivision. See also paragraph (d)(3)(v) of this section, relating to the maximum amount that may be apportioned to a corporation under an apportionment plan described in this subparagraph with respect to exploration expenditures to which section 615 applies.

(g) *Short taxable years*—(1) *General*. If:

(i) The return of a corporation is for a short period (ending after December 31, 1963) on each day of which such corporation is a member of an affiliated group,

(ii) The last day of the common parent's taxable year does not end with or within such short period, and

(iii) An election under section 243(b)(2) by such group is effective under paragraph (c) (4) (i) of § 1.243-4 for the taxable year of the common parent within which falls such short period, then the restrictions and limitations prescribed by section 243(b)(3) shall be applied in the manner provided in subparagraph (2) of this paragraph.

(2) *Manner of applying restrictions*. In the case of a corporation described in subparagraph (1) of this paragraph having a short period described in such subparagraph:

(i) Such corporation may not consent to an election under section 1562, relating to election of multiple surtax exemptions, which would be effective for such short period;

(ii) The credit under section 901 shall be allowed to such corporation for such short period if, and only if, each corporation, which pays or accrues foreign taxes and which is a member of the affiliated group on each day of its taxable year which includes the last day of the common parent's taxable year within which falls such short period, does not deduct such taxes in computing its tax liability for its taxable year which includes such last day;

(iii) The overall limitation provided in section 904(a)(2) shall be allowed to such corporation for such short period if, and only if, each corporation, which pays or accrues foreign taxes and which is a member of the affiliated group on each day of its taxable year which includes the last day of the common parent's taxable year within which falls such short period, uses such limitation for its taxable year which includes such last day;

(iv) The minimum accumulated earnings credit provided by section 535(c)(2) (or in the case of a mere holding or investment company, the accumulated earnings credit provided by section 535(c)(3)) allowable for such short period shall be the amount computed by dividing (a) the amount (if any) by which \$100,000 exceeds the aggregate of the accumulated earnings and profits of the corporations, which are members of the affiliated group on the last day of such short period, as of the close of their taxable years preceding the taxable year which includes the last day of such short period, by (b) the number of

§ 1.244-1

such members on the last day of such short period;

(v) The deduction allowable under section 615(a) for such short period shall be limited to an amount equal to \$100,000 divided by the number of corporations which are members of the affiliated group on the last day of such short period;

(vi) If the expenditures to which section 615(a) applies which are paid or incurred by such corporation during such short period would, when added to the aggregate of the amounts deducted or deferred (in taxable years ending before the last day of such short period) which are taken into account in applying the limitation of section 615(c) by corporations which are members of the affiliated group on the last day of such short period exceed \$400,000, then section 615 shall not apply to any such expenditure so paid or incurred by such corporation to the extent such expenditure would exceed an amount equal to (a) the amount (if any) by which \$400,000 exceeds the aggregate of the amounts so deducted or deferred in such taxable years (computed as if each member filed a separate return), divided by (b) the number of corporations in the group which have taxable years ending on such last day;

(vii) If such corporation is a life insurance company taxable under section 802, the small business deduction under sections 804(a)(4) and 809(d)(10) shall not exceed an amount equal to (a) \$25,000, divided by (b) the number of life insurance companies taxable under section 802 which are members of the affiliated group on the last day of such short period; and

(viii) The exemption from estimated tax (for purposes of estimated tax filing requirements under section 6016 and the addition to tax under section 6655 for failure to pay estimated tax) for such short period shall be an amount equal to \$100,000 divided by the number of corporations which are members of the affiliated group on the last day of such short period.

[T.D. 6992, 34 FR 821, Jan. 18, 1969, as amended by T.D. 7376, 40 FR 42745, Sept. 16, 1975]

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

§ 1.244-1 Deduction for dividends received on certain preferred stock.

A corporation is allowed a deduction under section 244 for dividends received on certain preferred stock of certain public utility corporations subject to taxation under chapter 1 of the Code. The deduction is allowable only for dividends received on the preferred stock of a public utility with respect to which the deduction for dividends paid provided in section 247 (relating to dividends paid on certain preferred stock of public utilities) is allowable to the distributing corporation.

§ 1.244-2 Computation of deduction.

(a) *General rule.* Section 244(a) provides a formula for the computation of the deduction for dividends received on the preferred stock of a public utility. For purposes of this computation, the normal tax rate referred to in section 244(a)(2)(B) shall be determined without regard to any additional tax imposed by section 1562(b). See section 1562(b)(4). The deduction computed under section 244(a) is subject to the limitation provided in section 246.

(b) *Qualifying dividends.* Section 244(b) provides that in the case of dividends received on the preferred stock of a public utility in taxable years ending after December 31, 1963, which are "qualifying dividends" (as defined in section 243(b)(1), but determined without regard to section 243(c)(4)), the computation of the deduction for dividends received shall be made by applying the formula provided by section 244(a) separately to such qualifying dividends. For such purposes, 100 percent shall be used in lieu of the 85 percent specified in section 244(a)(3).

(c) *Examples.* The computation of the deduction provided in section 244 may be illustrated by the following examples:

Example 1. Corporation X, which files its income tax returns on the calendar year basis, received in 1965 \$100,000 as dividends on the preferred stock of corporation Y, a public utility corporation which is subject to taxation under chapter 1 of the Code. The deduction provided in section 247 is allowable to Y, the distributing corporation, with respect to these dividends and they are not "qualifying dividends" (as defined in section 243(b)(1) but determined without regard to section 243(c)(4)). The corporation normal tax rate