

for the year with respect to the film. At the close of 1979, the amount P is at risk in S's activity is \$300. If S has no gain or loss in 1980, and there are no contributions from or distributions to P, at the close of 1980 P's amount at risk in S's activity will be \$180.

Example. (2). P forms S-1 with a capital contribution of \$1 on January 1, 1980. On February 1, 1980, S-1 borrows \$100 with full recourse and contributes all \$101 to its newly formed subsidiary S-2. S-2 uses the proceeds to explore for natural oil and gas resources. S-2 incurs neither gain nor loss from its explorations during the taxable year. As of December 31, 1980, P is at risk in the exploration activity of S-2 only to the extent of \$1.

(f) *Effective date.* This section applies to consolidated return years ending on or after December 31, 1979.

[T.D. 7685, 45 FR 16484, Mar. 14, 1980]

§5.1561-1 Taxable years of component members of controlled group of corporations that include December 31, 1978.

(a) *In general.* This section prescribes a regulation for applying sections 301 (a) and (b) (19), and 106, of the Revenue Act of 1978 (the Act) in the case of certain taxable years of component members of a controlled group of corporations (as defined in section 1563 of the Internal Revenue Code). The section applies only to taxable years that include December 31, 1978, and only if the taxable year of at least one component member ends in 1979.

(b) *Background.* Section 301(a) of the Act amends section 11 of the Code (relating to tax imposed on corporations) to provide for taxable income brackets that are subject to tax at rates less than the maximum rate of 46 percent. Section 301(b)(19) of the Act amends section 1561(a) of the Code (relating to limitations on certain multiple tax benefits in the case of certain controlled corporations) to limit the component members of a controlled group to an aggregate amount in each bracket which does not exceed the maximum amount in such bracket to which a corporation which is not a component member of a controlled group is entitled. Section 106 of the Act amends section 21 of the Code (relating to effect of changes in rate of tax) to provide that the amendments made by section 301 of the Act shall be treated as a change in

a rate of tax. Since the amendments made by section 301 of the Act are effective for taxable years beginning after December 31, 1978, under the amendment to section 21 the effective date of the change in rate of tax is January 1, 1979.

(c) *No apportionment plan in effect.* If no apportionment plan (see §1.1561-3 of the Income Tax Regulations) is in effect with respect to December 31, 1978, the single \$50,000 surtax exemption available before January 1, 1979, and the single bracket amounts available after December 31, 1978, shall be equally divided among the component members of the controlled group on December 31, 1978. In the case of a controlled group which includes component members that join in the filing of a consolidated return and other component members that do not join in the filing of such a return, each component member of the group (including each component member that joins in filing the consolidated return) shall be treated as a separate corporation for purposes of equally apportioning the \$50,000 surtax exemption in effect before January 1, 1979, and the bracket amounts in effect after December 31, 1978. In such a case, the surtax exemption and bracket amounts of the corporations filing the consolidated return shall be the sum of the amount apportioned to each component member that joins in filing the consolidated return.

(d) *Apportionment plan.* (1) If one or more component members of the controlled group have a calendar taxable year and if an apportionment plan is adopted under §1.1561-3 apportioning the entire \$50,000 surtax exemption available for 1978 to such calendar-year members, then the amount in each taxable income bracket available for fiscal-year members is zero. If only a part of the \$50,000 surtax exemption is apportioned to calendar-year members, then a proportionate part of the \$25,000 amount in each taxable income bracket is available for the fiscal-year members. For example, if \$30,000 ($\frac{3}{5}$ of \$50,000) is apportioned to calendar-year members, $\frac{3}{5}$ of the \$25,000 amount in each bracket, or \$10,000, as well as the remaining $\frac{2}{5}$ of the 1978 surtax exemption, is available to the fiscal-year members.

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(2) The amount in each taxable income bracket available to fiscal-year members may be apportioned among such members in any manner the controlled group may select. For example, the available amount in the first bracket (subject to a 17-percent rate) may be allocated to one member, the amount in the second bracket (subject to a 20-percent rate) may be allocated to another member, and so on. Moreover, the available amount in each bracket may be divided among the members in any manner the group may select.

(3) In computing 1978 tentative taxes under section 21, the total surtax exemption available to fiscal-year members for 1978 must be divided among such members in the same proportion as the sum of the available amount in each bracket is divided among them. Thus, if the sum of the available bracket amounts is \$100,000 (i.e., \$25,000 in each bracket), and if corporation X is apportioned 30 percent, or \$30,000, of this amount (regardless of which brackets corporation X may select), then 30 percent of the surtax exemption available to the fiscal-year members for 1978 (i.e., 30 percent of \$50,000, or \$15,000) must be apportioned to corporation X.

(e) *Corporations affected.* The provisions of section 1561 may reduce the surtax exemption or bracket amounts of any corporation which is a compo-

nent member of a controlled group of corporations and which is subject to the tax imposed by section 11, or by any other provision of subtitle A of the Code if the tax under such other provisions is computed by reference to the tax imposed by section 11. Such other provisions include, for example, sections 511(a)(1), 594, 802, 831, 852, 857, 882, 1201, and 1378.

(f) *Example.* This section may be illustrated by the following example:

Example. Corporations X, Y, and Z are component members of a controlled group of corporations on December 31, 1978. X has taxable income of \$10,000 for the taxable year ending December 31, 1978. Y has taxable income of \$60,000 for the taxable year ending June 30, 1979. Z has taxable income of \$90,000 for the taxable year ending September 30, 1979. The group files an apportionment plan under § 1.1561-3 apportioning \$10,000 (i.e., 1/6 of \$50,000) to X, the calendar-year member. Therefore, 1/6 of the amount in each bracket, or \$20,000, is available to Y and Z, the fiscal-year members. Under the plan, Y is apportioned the entire amount in the first bracket and \$10,000 of the amount in the second bracket. Z is apportioned \$10,000 of the amount in the second bracket and the entire amount in the third and fourth brackets. Therefore, Y is apportioned \$30,000, or 1/2 of the total available amount in the four brackets, and Z is apportioned \$50,000, or 5/6 of the total available amount. The tax liabilities of Y and Z for their taxable years ending in 1979 are computed as follows: (Computation of X's tax liability for 1978, using a surtax exemption of \$10,000, is not shown.)

1979 TENTATIVE TAX		Y
Taxable income		\$60,000
Tax on amount in first bracket: 17 percent of \$20,000		3,400
Tax on amount in second bracket: 20 percent of \$10,000		2,000
Tax on remaining income: 46 percent of \$30,000		13,800
1979 tentative tax		19,200
		Z
Taxable income		90,000
Tax on amount in second bracket: 20 percent of \$10,000		2,000
Tax on amount in third bracket: 30 percent of \$20,000		6,000
Tax on amount in fourth bracket: 40 percent of \$20,000		8,000
Tax on remaining income: 46 percent of \$40,000		18,400
1979 tentative tax		34,400
1978 TENTATIVE TAX		Y
Taxable income		60,000

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1978 TENTATIVE TAX		
Normal tax:		
20 percent of \$7,500 (3% of \$20,000)		1,500
22 percent of \$52,500		11,550
		13,050
Surtax:		
Taxable income	\$60,000	
Surtax exemption	15,000 (3% of \$40,000)	
	\$45,000	
	× 26 percent	11,700
1978 tentative tax		24,750
		Z
Taxable income		90,000
Normal tax:		
20 percent of \$12,500 (3% of \$20,000)		2,500
22 percent of \$77,500		17,050
		19,500
Surtax:		
Taxable income	\$90,000	
Surtax exemption	25,000 (3% of \$40,000)	
	\$65,000	
	× 26 percent	16,900
1978 tentative tax		36,450
The 1978 and 1979 tentative taxes are apportioned as follows:		
Corporation Y:		
1978—184/365 of \$24,750		12,477
1979—181/365 of \$19,200		9,521
Total tax for taxable year		21,998
Corporation Z:		
1978—92/365 of \$36,450		9,187
1979—273/365 of \$34,400		25,729
Total tax for taxable year		34,916

[T.D. 7583, 44 FR 872, Jan. 4, 1979]

§ 5.6411-1 Tentative refund under claim of right adjustment.

(a) *Effective date.* This section applies to applications for tentative refunds filed after November 5, 1978, under section 6411(d).

(b) *In general.* Section 6411(d) allows taxpayers to apply for a tentative refund of amounts treated under section 1341(b)(1) as an overpayment of tax under a claim of right adjustment. This section contains rules for filing an application for this tentative refund. The computation of amounts treated as an overpayment must be made in accordance with section 1341 and the regulations under that section.

(c) *Method of applying for tentative refund—(1) In general.* For a corporation, the application is made by filing Form 1139. For taxpayers other than corporations, the application is made by filing Form 1045. The application must be

made by filing those forms even if the taxpayer is not applying for a tentative carryback adjustment under section 6411(a). If the taxpayer files the form to apply for the section 6411(d) tentative refund only, it may disregard those lines on the form used to compute the section 6411(a) carryback adjustment. If the taxpayer has a carryback of a net operating loss, credit, or capital loss for the taxable year (determined without the deduction described in section 1341(a)(2)) and applies for both the section 6411(a) tentative carryback adjustment and the section 6411(d) tentative refund, an ordering rule applies. The taxpayer must take into account any adjustments made in applying for the tentative carryback adjustment under section 6411(a) before determining the amount of the overpayment for which an application under section 6411(d) is being made. The taxpayer