

§ 1.243-4

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

been paid out of the most recently accumulated earnings and profits of such corporation. A deficit in an earnings and profits account for any accounting period shall reduce the most recently accumulated earnings and profits for a prior accounting period in such account. If there are no accumulated earnings and profits in an earnings and profits account because of a deficit incurred in a prior accounting period, such deficit must be restored before earnings and profits can be accumulated in a subsequent accounting period. If a dividend is paid out of earnings and profits of a foreign corporation which maintains two or more accounts (established under the provisions of paragraph (b) of this section) with respect to two or more accounting periods ending on the same day, then the portion of such dividend considered as paid out of each account shall be the same proportion of the total dividend as the amount of earnings and profits in that account bears to the sum of the earnings and profits in all such accounts.

(d) *Illustration.* The application of the principles of this section in the determination of the amount of the dividends received deduction may be illustrated by the following example:

Example. On December 31, 1960, corporation X, a calendar-year corporation organized in the United States on January 1, 1958, consolidated with corporation Y, a foreign corporation organized on January 1, 1958, which used an annual accounting period based on the calendar year, to form corporation Z, a foreign corporation not engaged in trade or business within the United States. Corporation Z is a wholly-owned subsidiary of corporation M, a domestic corporation. On January 1, 1961, corporation Z's accumulated earnings and profits of \$31,000 are, under the provisions of paragraph (b) of this section, maintained in separate earnings and profits accounts containing the following amounts:

Earnings and profits accumulated for—	Domestic corp. X	Foreign corp. Y
1958	(\$1,000)	\$11,000
1959	10,000	9,000
1960	5,000	(3,000)

Corporation Z had earnings and profits of \$10,000 in each of the years 1961, 1962, and 1963 and makes distributions with respect to its stock to corporation M for such years in the following amounts:

1961	\$14,000
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1962	23,000
1963	16,000

(1) For 1961, a deduction of \$3,400 is allowable to M with respect to the \$14,000 distribution from Z, computed as follows:

(i) Dividend from current year earnings and profits (1961)	\$10,000
(ii) Dividend from earnings and profits of corporation X accumulated for 1960	4,000
(iii) Deduction: 85 percent of \$4,000 (the amount distributed from the accumulated earnings and profits of corporation X)	3,400

(2) For 1962, a deduction of \$6,970 is allowable to corporation M with respect to the \$23,000 distribution from corporation Z, computed as follows:

(i) Dividend from current year earnings and profits (1962)	\$10,000
(ii) Dividend from earnings and profits of corporation X accumulated for:	
1960	\$1,000
1959: \$9,000 (i.e., \$10,000 - \$1,000) divided by \$15,000 (i.e., \$9,000+\$9,000 - \$3,000) multiplied by \$12,000 (i.e., \$23,000 - \$11,000)	7,200
Total	8,200
(iii) Dividend from earnings and profits of corporation Y accumulated for:	
1959: \$6,000/\$15,000×\$12,000	4,800
(iv) Deduction: 85 percent of \$8,200 (the amount distributed from the accumulated earnings and profits of corporation X)	6,970

(3) For 1963, a deduction of \$1,530 is allowable to M with respect to the \$16,000 distribution from Z, computed as follows:

(i) Dividend from current year earnings and profits (1963)	\$10,000
(ii) Dividend from earnings and profits of corporation X accumulated for 1959:	
Earnings and profits remaining after 1962 distribution (i.e., \$9,000 - \$7,200)	1,800
(iii) Dividend from earnings and profits of corporation Y accumulated for 1959:	
Earnings and profits remaining after 1962 distribution (i.e., \$6,000 - \$4,800)	1,200
1958	8,000
(iv) Deduction: 85 percent of \$1,800 (the amount distributed from the accumulated earnings and profits of corporation X)	1,530

[T.D. 6830, 30 FR 8045, June 23, 1965]

§ 1.243-4 Qualifying dividends.

(a) *Definition of qualifying dividends—*
 (1) *General.* For purposes of section 243(a)(3), the term *qualifying dividends* means dividends received by a corporation if:

(i) At the close of the day the dividends are received, such corporation is a member of the same affiliated group of corporations (as defined in paragraph (b) of this section) as the corporation distributing the dividends,

(ii) An election by such affiliated group under section 243(b)(2) and paragraph (c) of this section is effective for the taxable years of its members which include such day, and

(iii) The dividends are distributed out of earnings and profits specified in subparagraph (2) of this paragraph.

(2) *Earnings and profits.* The earnings and profits specified in this subparagraph are earnings and profits of a taxable year of the distributing corporation (or a predecessor corporation) which satisfies each of the following conditions:

(i) Such year must end after December 31, 1963;

(ii) On each day of such year the distributing corporation (or the predecessor corporation) and the corporation receiving the dividends must have been members of the affiliated group of which the distributing corporation and the corporation receiving the dividends are members on the day the dividends are received; and

(iii) An election under section 1562 (relating to the election of multiple surtax exemptions) was never effective (or is no longer effective pursuant to section 1562(c)) for such year.

(3) *Special rule for insurance companies.* Notwithstanding the provisions of subparagraph (2) of this paragraph, if an insurance company subject to taxation under section 802 or 821 distributes a dividend out of earnings and profits of a taxable year with respect to which the company would have been a component member of a controlled group of corporations within the meaning of section 1563 were it not for the application of section 1563(b)(2)(D), such dividend shall not be treated as a qualifying dividend unless an election under section 243(b)(2) is effective for such taxable year.

(4) *Predecessor corporations.* For purposes of this paragraph, a corporation shall be considered to be a predecessor corporation with respect to a distributing corporation if the distributing corporation succeeds to the earnings and profits of such corporation, for example, as the result of a transaction to which section 381(a) applies. A distributing corporation shall, for purposes of this section, maintain, in respect of each predecessor corporation, a sepa-

rate account for earnings and profits to which it succeeds, and such earnings and profits shall be considered to be earnings and profits of the predecessor's taxable year in which the earnings and profits were accumulated.

(5) *Mere change in form.* (i) For purposes of subparagraph (2)(ii) of this paragraph, the affiliated group in existence during the taxable year out of the earnings and profits of which the dividend is distributed shall not be considered as a different group from that in existence on the day on which the dividend is received merely because:

(a) The common parent corporation has undergone a mere change in identity, form, or place of organization (within the meaning of section 368(a)(1)(F)), or

(b) A newly organized corporation (the "acquiring corporation") has acquired substantially all of the outstanding stock of the common parent corporation (the "acquired corporation") solely in exchange for stock of such acquiring corporation, and the stockholders (immediately before the acquisition) of the acquired corporation, as a result of owning stock of the acquired corporation, own (immediately after the acquisition) all of the outstanding stock of the acquiring corporation.

If a transaction described in the preceding sentence has occurred, the acquiring corporation shall be treated as having been a member of the affiliated group for the entire period during which the acquired corporation was a member of such group.

(ii) For purposes of subdivision (i) (b) of this subparagraph, if immediately before the acquisition:

(a) The stockholders of the acquired corporation also owned all of the outstanding stock of another corporation (the "second corporation"), and

(b) Stock of the acquired corporation and of the second corporation could be acquired or transferred only as a unit (hereinafter referred to as the "limitation on transferability"), then the second corporation shall be treated as an acquired corporation and such second corporation shall be treated as having been a member of the affiliated group for the entire period (while such group

was in existence) during which the limitation on transferability was in existence, and if the second corporation is itself the common parent corporation of an affiliated group (the "second group") any other member of the second group shall be treated as having been a member of the affiliated group for the entire period during which it was a member of the second group while the limitation on transferability existed. For purposes of (a) of this subdivision and subdivision (i)(b) of this subparagraph, if the limitation on transferability of stock of the acquired corporation and the second corporation is achieved by using a voting trust, then the stock owned by the trust shall be considered as owned by the holders of the beneficial interests in the trust.

(6) *Source of distributions.* In determining from what year's earnings and profits a dividend is treated as having been distributed for purposes of this section, the principles of paragraph (a) of § 1.316-2 shall apply. A dividend shall be considered to be distributed, first, out of the earnings and profits of the taxable year which includes the date the dividend is distributed, second, out of the earnings and profits accumulated for the immediately preceding taxable year, third, out of the earnings and profits accumulated for the second preceding taxable year, etc. A deficit in an earnings and profits account for any taxable year shall reduce the most recently accumulated earnings and profits for a prior year in such account. If there are no accumulated earnings and profits in an earnings and profits account because of a deficit incurred in a prior year, such deficit must be restored before earnings and profits can be accumulated in a subsequent year. If a dividend is distributed out of separate earnings and profits accounts (established under the provisions of subparagraph (4) of this paragraph) for two or more taxable years ending on the same day, then the portion of such dividend considered as distributed out of each account shall be the same proportion of the total dividend as the amount of earnings and profits in that account bears to the sum of the earnings and profits in all such accounts.

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

Example 1. On March 1, 1965, corporation P, a publicly owned corporation, acquires all of the stock of corporation S and continues to hold the stock throughout the remainder of 1965 and all of 1966. P and S are domestic corporations which file separate returns on the basis of a calendar year. The affiliated group consisting of P and S makes an election under section 243(b)(2) which is effective for the 1966 taxable years of P and S. A multiple surtax exemption election under section 1562 is not effective for their 1965 taxable years. On February 1, 1966, S distributes \$50,000 with respect to its stock which is received by P on the same date. S had earnings and profits of \$40,000 for 1966 (computed without regard to distributions during 1966). S also had earnings and profits accumulated for 1965 of \$70,000. Since \$40,000 was distributed out of earnings and profits for 1966 and since each of the conditions prescribed in subparagraphs (1) and (2) of this paragraph is satisfied, P is entitled to a 100-percent dividends received deduction with respect to \$40,000 of the \$50,000 distribution. However, since \$10,000 was distributed out of earnings and profits accumulated for 1965, and since on each day of 1965 S and P were not members of the affiliated group of which S and P were members on February 1, 1966, \$10,000 of the \$50,000 distribution does not satisfy the condition specified in subparagraph (2)(ii) of this paragraph and thus does not qualify for the 100-percent dividends received deduction.

Example 2. Assume the same facts as in *Example 1*, except that corporation P acquires all the stock of corporation S on January 1, 1965, and sells such stock on November 1, 1966. Since \$10,000 is distributed out of earnings and profits for 1965, and since each of the conditions prescribed in subparagraphs (1) and (2) of this paragraph is satisfied, P is entitled to a 100-percent dividends received deduction with respect to \$10,000 of the \$50,000 distribution. However, since \$40,000 of the \$50,000 distribution was made out of earnings and profits of S for its 1966 taxable year, and on each day of such year S and P were not members of the affiliated group of which S and P were members on February 1, 1966, \$40,000 of the distribution does not satisfy the condition specified in subparagraph (2)(ii) of this paragraph and thus does not qualify for the 100-percent dividends received deduction.

Example 3. Assume the same facts as in *Example 1*, except that corporation P acquires all the stock of corporation S on January 1, 1965, and that a multiple surtax exemption election under section 1562 is effective for P's and S's 1965 taxable years. Further assume that the section 1562 election is terminated effective with respect to their 1966 taxable

years, and that an election under section 243(b) (2) is effective for such taxable years. Since \$10,000 of the February 1, 1966, distribution was made out of earnings and profits of S for its 1965 taxable year and since a multiple surtax exemption election is effective for such year, \$10,000 of the distribution does not satisfy the condition specified in subparagraph (2) (iii) of this paragraph and thus does not qualify for the 100-percent dividends received deduction. However, the portion of the distribution which was distributed out of earnings and profits of S's 1966 year (\$40,000) qualifies for the 100-percent dividends received deduction.

Example 4. Assume the same facts as in *Example 1*, except that corporation P acquires all the stock of corporation S on January 1, 1965, and that S is a life insurance company subject to taxation under section 802. Accordingly, S would have been a member of a controlled group of corporations except for the application of section 1563(b)(2)(D). Since \$10,000 of the distribution was made out of earnings and profits of S for its 1965 taxable year, and since with respect to such year an election under section 243(b)(2) was not effective, \$10,000 of the distribution is not a qualifying dividend by reason of subparagraph (3) of this paragraph. On the other hand, the portion of the distribution which was distributed out of earnings and profits for S's 1966 year (\$40,000) does qualify for the 100-percent dividends received deduction because the distribution was out of earnings and profits of a year for which an election under section 243(b) (2) is effective, and because the other conditions specified in subparagraphs (1) and (2) of this paragraph are satisfied. However, if P were also a life insurance company subject to taxation under section 802, then subparagraph (3) of this paragraph would not result in the disqualification of the portion of the distribution made out of S's 1965 earnings and profits because S would be a component member of an insurance group of corporations (as defined in section 1563(a)(4)), consisting of P and S, with respect to its 1965 year.

Example 5. Corporation X owns all the stock of corporation Y from January 1, 1965, through December 31, 1969. X and Y are domestic corporations which file separate returns on the basis of a calendar year. On June 30, 1965, Y acquired all the stock of domestic corporation Z, a calendar year taxpayer, and on December 31, 1967, Y acquired the assets of Z in a transaction to which section 381(a) applied. A multiple surtax exemption election under section 1562, was not effective for any taxable year of X, Y, or Z, and an election under section 243(b)(2) is effective for the 1968 and 1969 taxable years of X and Y. On January 1, 1968, Y's accumulated earnings and profits are, under the provisions of subparagraph (4) of this paragraph,

maintained in separate earnings and profits accounts containing the following amounts:

Earnings and profits accumulated for	Corp	
	Y	Z
1964	\$60,000	\$40,000
1965	30,000	15,000
1966	(5,000)	2,000
1967	12,000	6,000

Corporation Y had earnings and profits of \$10,000 in each of the years 1968 and 1969, and made distributions during such years in the following amounts:

1968	\$29,000
1969	31,000

(i) The source of the 1968 distribution, determined in accordance with the rules of subparagraph (6) of this paragraph, is as follows:

(a) Dividend from Y's current year's earnings and profits (1968)	\$10,000
(b) Dividend from earnings and profits of Y accumulated for 1967	12,000
(c) Dividend from earnings and profits of Z accumulated for:	
1967	6,000
1966	1,000
	29,000

Since the 1968 dividend is considered paid out of earnings and profits of Y's 1968 and 1967 years, and Z's 1967 and 1966 years, and since each of these years satisfies each of the conditions specified in subparagraph (2) of this paragraph, X is entitled to a 100-percent dividends received deduction with respect to the entire 1968 distribution of \$29,000 from Y.

(ii) The source of the 1969 distribution of \$31,000, determined in accordance with the rules of subparagraph (6) of this paragraph, is as follows:

(a) Dividend from Y's current year's earnings and profits (1969)	\$10,000
(b) Dividend from earnings and profits of Z accumulated for 1966 (1966 earnings and profits remaining after 1968 distribution, i.e., \$2,000 - \$1,000)	1,000
(c) Dividend from earnings and profits of Y and Z accumulated for 1965:	
Corporation Y: \$25,000 (i.e., \$30,000 - \$5,000 deficit) divided by \$40,000 (i.e., the sum of the 1965 earnings and profits of Y and Z) multiplied by \$20,000 (the portion of the distribution from the 1965 earnings and profits of Y and Z)	12,500
Corporation Z: \$15,000 divided by \$40,000 multiplied by \$20,000	7,500
	31,000

The sum of the dividends from Y's 1969 year (\$10,000), Z's 1966 year (\$1,000), and Y's 1965 year (\$12,500), or \$23,500, qualifies for the 100-percent dividends received deduction. However, the dividends paid out of Z's 1965 year (\$7,500) do not qualify because on each day of 1965 Z and X were not members of the affiliated group of which Y (the distributing

corporation) and X (the corporation receiving the dividends) were members on the day in 1969 when the dividends were received by X.

(b) *Definition of affiliated group.* For purposes of this section and §1.243-5, the term *affiliated group* shall have the meaning assigned to it by section 1504(a), except that insurance companies subject to taxation under section 802 or 821 shall be treated as includible corporations (notwithstanding section 1504(b)(2)), and the provisions of section 1504(c) shall not apply.

(c) *Election—(1) Manner and time of making election—(i) General.* The election provided by section 243(b)(2) shall be made for an affiliated group by the common parent corporation and shall be made for a particular taxable year of the common parent corporation. Such election may not be made for any taxable year of the common parent corporation for which a multiple surtax exemption election under section 1562 is effective. The election shall be made by means of a statement, signed by any person who is duly authorized to act on behalf of the common parent corporation, stating that the affiliated group elects under section 243(b)(2) for such taxable year. The statement shall be filed with the district director for the internal revenue district in which is located the principal place of business or principal office or agency of the common parent. The statement shall set forth the name, address, taxpayer account number, and taxable year of each corporation (including wholly-owned subsidiaries) that is a member of the affiliated group at the time the election is filed. The statement may be filed at any time, provided that, with respect to each corporation the tax liability of which for its matching taxable year of election (or for any subsequent taxable year) would be increased because of the election, at the time of filing there is at least 1 year remaining in the statutory period (including any extensions thereof) for the assessment of a deficiency against such corporation for such year. (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.

(ii) *Information statement by common parent.* If a corporation becomes a member of the affiliated group after the date on which the election is filed and during its matching taxable year of election, then the common parent shall file, within 60 days after such corporation becomes a member of the affiliated group, an additional statement containing the name, address, taxpayer account number, and taxable year of such corporation. Such additional statement shall be filed with the internal revenue officer with whom the election was filed.

(iii) *Definition of matching taxable year of election.* For purposes of this paragraph and paragraphs (d) and (e) of this section, the term *matching taxable year of election* shall mean the taxable year of each member (including the common parent corporation) of the electing affiliated group which includes the last day of the taxable year of the common parent corporation for which an election by the affiliated group is made under section 243(b)(2).

(2) *Consents by subsidiary corporations—(i) General.* Each corporation (other than the common parent corporation) which is a member of the electing affiliated group (including any member which joins in the filing of a consolidated return) at any time during its matching taxable year of election must consent to such election in the manner and time provided in subdivision (ii) or (iii) of this subparagraph, whichever is applicable.

(ii) *Wholly owned subsidiary.* If all of the stock of a corporation is owned by a member or members of the affiliated group on each day of such corporation's matching taxable year of election, then such corporation (referred to in this paragraph as a "wholly owned subsidiary") shall be deemed to consent to such election.

(iii) *Other members.* The consent of each member of the affiliated group (other than a wholly owned subsidiary) shall be made by means of a statement, signed by any person who is duly authorized to act on behalf of the consenting member, stating that such

member consents to the election under section 243(b)(2). The statement shall set forth the name, address, taxpayer account number, and taxable year of the consenting member and of the common parent corporation, and in the case of a statement filed after December 31, 1968, the identity of the internal revenue district in which is located the principal place of business or principal office or agency of the common parent corporation. The consent of more than one such member may be incorporated in a single statement. The statement (or statements) shall be attached to the election filed by the common parent corporation. The consent of a corporation that, after the date the election was filed and during its matching taxable year of election, either (a) becomes a member, or (b) ceases to be a wholly owned subsidiary but continues to be a member, shall be filed with the internal revenue officer with whom the election was filed and shall be filed on or before the date prescribed by law (including extensions of time) for the filing of the consenting member's income tax return for such taxable year, or on or before June 10, 1964, whichever is later.

(iv) *Statement attached to return.* Each corporation that consents to an election by means of a statement described in subdivision (iii) of this subparagraph should attach a copy of the statement to its income tax return for its matching taxable year of election, or, if such return has already been filed, to its first income tax return filed on or after the date on which the statement is filed. However, if such return is filed on or before June 10, 1964, a copy of such statement should be filed on or before June 10, 1964, with the district director with whom such return is filed. Each wholly owned subsidiary should attach a statement to its income tax return for its matching taxable year of election, or, if such return has already been filed, to its first income tax return filed on or after the date on which the statement is filed stating that it is subject to an election under section 243(b)(2) and the taxable year to which the election applies, and setting forth the name, address, taxpayer account number, and taxable year of the common parent corporation, and in the

case of a statement filed after December 31, 1968, the identity of the internal revenue district in which is located the principal place of business or principal office or agency of the common parent corporation. However, if the due date for such return (including extensions of time) is before June 10, 1964, such statement should be filed on or before June 10, 1964, with the district director with whom such return is filed.

(3) *Information statement by member.* If a corporation becomes a member of the affiliated group during a taxable year that begins after the last day of the common parent corporation's matching taxable year of election, then (unless such election has been terminated) such corporation should attach a statement to its income tax return for such taxable year stating that it is subject to an election under section 243(b)(2) for such taxable year and setting forth the name, address, taxpayer account number, and taxable year of the common parent corporation, and the identity of the internal revenue district in which is located the principal place of business or principal office or agency of the common parent corporation. In the case of an affiliated group that made an election under the rules provided in Treasury Decision 6721, approved April 8, 1964 (29 FR 4997, C.B. 1964-1 (Part 1), 625), such statement shall be filed, on or before March 15, 1969, with the district director for the internal revenue district in which is located such member's principal place of business or principal office or agency.

(4) *Years for which election effective—*
(i) *General rule.* An election under section 243(b)(2) by an affiliated group shall be effective:

(a) In the case of each corporation which is a member of such group at any time during its matching taxable year of election, for such taxable year, and

(b) In the case of each corporation which is a member of such group at any time during a taxable year ending after the last day of the common parent's taxable year of election but which does not include such last day, for such taxable year, unless the election is terminated under section 243(b)(4) and paragraph (e) of this section. Thus, the

election has a continuing effect and need not be renewed annually.

(ii) *Special rule for certain taxable years ending in 1964.* In the case of a taxable year of a member (other than the common parent corporation) of the affiliated group (a) which begins in 1963 and ends in 1964, and (b) for which an election is not effective under subdivision (i)(a) of this subparagraph, if an election under section 243(b)(2) is effective for the taxable year of the common parent corporation which includes the last day of such taxable year of such member, then such election shall be effective for such taxable year of such member if such member files a separate consent with respect to such taxable year. However, in order for a dividend distributed by such member during such taxable year to meet the requirements of section 243(b)(1), an election under section 243(b)(2) must be effective for the taxable year of each member of the affiliated group which includes the date such dividend is received. See section 243(b)(1)(A) and paragraph (a)(1) of this section. Accordingly, if the dividend is to qualify for the 100-percent dividends received deduction under section 243(a)(3), a consent must be filed under this subdivision by each member of the affiliated group with respect to its taxable year which includes the day the dividend is received (unless an election is effective for such taxable year under subdivision (i)(a) of this subparagraph). For purposes of this subdivision, a consent shall be made by means of a statement meeting the requirements of subparagraph (2)(iii) of this paragraph, and shall be attached to the election made by the common parent corporation for its taxable year which includes the last day of the taxable year of the member with respect to which the consent is made. A copy of the statement should be filed, within 60 days after such election is filed by the common parent corporation, with the district director with whom the consenting member filed its income tax return for such taxable year.

(iii) *Examples.* The provisions of subdivision (ii) of this subparagraph, relating to the special rule for certain taxable years ending in 1964, may be illustrated by the following examples:

Example 1. P Corporation owns all the stock of S-1 Corporation on each day of 1963, 1964, and 1965. P uses the calendar year as its taxable year and S-1 uses a fiscal year ending June 30 as its taxable year. P makes an election under section 243(b)(2) for 1964. Since S-1 is a wholly owned subsidiary for its taxable year ending June 30, 1965, it is deemed to consent to the election. However, in order for the election to be effective with respect to S-1's taxable year ending June 30, 1964, a statement specifying that S-1 consents to the election with respect to such taxable year and containing the information required in a statement of consent under subparagraph (2)(iii) of this paragraph must be attached to the election.

Example 2. Assume the same facts as in *Example 1*, except that P also owns all the stock of S-2 Corporation on each day of 1963, 1964, and 1965. S-2 uses a fiscal year ending May 31 as its taxable year. If S-1 distributes a dividend to P on January 15, 1964, the dividend may qualify under section 243(a)(3) only if S-1 and S-2 both consent to the election made by P for 1964 with respect to their taxable years ending in 1964.

Example 3. Assume the same facts as in *Example 1*, except that P uses a fiscal year ending on January 31 as its taxable year and makes an election under subparagraph (1) of this paragraph for its taxable year ending January 31, 1964. Since S-1's taxable year beginning in 1963 and ending in 1964 includes January 31, 1964, the last day of P's taxable year for which the election was made, the election is effective under subdivision (i)(a) of this subparagraph, for S-1's taxable year ending June 30, 1964. Accordingly, the special rule of subdivision (ii) of this subparagraph has no application.

(d) *Effect of election.* For restrictions and limitations applicable to corporations which are members of an electing affiliated group on each day of their taxable years, see § 1.243-5.

(e) *Termination of election—(1) In general.* An election under section 243(b)(2) by an affiliated group may be terminated with respect to any taxable year of the common parent corporation after the matching taxable year of election of the common parent corporation. The election is terminated as a result of one of the occurrences described in subparagraph (2) or (3) of this paragraph. For years affected by termination, see subparagraph (4) of this paragraph.

(2) *Consent of members—(i) General.* An election may be terminated for an affiliated group by its common parent corporation with respect to a taxable

year of the common parent corporation provided each corporation (other than the common parent) that was a member of the affiliated group at any time during its taxable year that includes the last day of such year of the common parent (the "matching taxable year of termination") consents to such termination. The statement of termination may be filed by the common parent corporation at any time, provided that, with respect to each corporation the tax liability of which for its matching taxable year of termination (or for any subsequent taxable year) would be increased because of the termination, at the time of filing there is at least 1 year remaining in the statutory period (including any extensions thereof) for the assessment of a deficiency against such corporation for such year. (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 agreement to extend such statutory period for assessment and collection of deficiencies.)

(ii) *Statements filed after December 31, 1968.* With respect to statements of termination filed after December 31, 1968:

(a) The statement shall be filed with the district director for the internal revenue district in which is located the principal place of business or principal office or agency of the common parent corporation;

(b) The statement shall be signed by any person who is duly authorized to act on behalf of the common parent corporation and shall state that the affiliated group terminates the election under section 243(b)(2) for such taxable year;

(c) The statement shall set forth the name, address, taxpayer account number, and taxable year of each corporation (including wholly owned subsidiaries) which is a member of the affiliated group at the time the termination is filed; and

(d) The consents to the termination shall be given in accordance with the rules prescribed in paragraph (c)(2) of this section, relating to manner and

time for giving consents to an election under section 243(b)(2).

(3) *Refusal by new member to consent—*

(i) *Manner of giving refusal.* If any corporation which is a new member of an affiliated group with respect to a taxable year of the common parent corporation (other than the matching taxable year of election of the common parent corporation) files a statement that it does not consent to an election under section 243(b)(2) with respect to such taxable year, then such election shall terminate with respect to such taxable year. Such statement shall be signed by any person who is duly authorized to act on behalf of the new member, and shall be filed with the timely filed income tax return of such new member for its taxable year within which falls the last day of such taxable year of the common parent corporation. In the event of a termination under this subparagraph, each corporation (other than such new member) that is a member of the affiliated group at any time during its taxable year which includes such last day should, within 30 days after such new member files the statement of refusal to consent, notify the district director of such termination. Such notification should be filed with 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.

(ii) *Corporation considered as new member.* For purposes of subdivision (i) of this subparagraph, a corporation shall be considered to be a new member of an affiliated group of corporations with respect to a taxable year of the common parent corporation if such corporation:

(a) Is a member of the affiliated group at any time during such taxable year of the common parent corporation, and

(b) Was not a member of the affiliated group at any time during the common parent corporation's immediately preceding taxable year.

(4) *Effect of termination.* A termination under subparagraph (2) or (3) of this paragraph is effective with respect to (i) the common parent corporation's taxable year referred to in the particular subparagraph under which the

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