

§ 1.1561-0T

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CERTAIN CONTROLLED CORPORATIONS

§ 1.1561-0T Table of contents (temporary).

This section lists the table of contents for §§ 1.1561-1T through 1.1561-3T.

§ 1.1561-1T General rules regarding certain tax benefits available to the component members of a controlled group of corporations (temporary).

- (a) In general.
- (b) Special rules.
- (c) Tax avoidance.
- (d) Effective date.
- (1) Applicability date.
- (2) Expiration date.

§ 1.1561-2T Special rules for allocating reductions to certain Section 1561(a) tax-benefit items (temporary).

- (a) Additional tax.
 - (1) Calculation.
 - (2) Apportionment.
 - (i) General rule.
 - (ii) Apportionment methods.
 - (A) Proportionate method.
 - (B) FIFO method.
- (3) Examples.
- (b) Reduction to the amount exempted from the alternative minimum tax.
 - (1) Calculation.
 - (2) Apportionment.
 - (3) Example.
- (c) Accumulated earnings credit.
- (d) Reserved.
- (e) Short taxable year not including a December 31st date.
 - (1) General rule.
 - (2) Additional rules.
 - (3) Examples.
- (f) Effective date.
 - (1) Applicability dates.
 - (i) Paragraphs (a) and (b) of this section.
 - (ii) Paragraph (c) of this section.
 - (iii) Paragraph (e) of this section.
 - (2) Expiration dates.

§ 1.1561-3T Allocation of the section 1561(a) tax items (temporary).

- (a) Filing of form.
 - (1) In general.
 - (2) Exception for component members that are members of consolidated group.
- (b) No apportionment plan in effect.
- (c) Apportionment plan in effect.
 - (1) Adoption of plan.
 - (2) Limitation on adopting a plan.
 - (i) Sufficient statute of limitations period.
 - (ii) Insufficient statute of limitations period.
 - (3) Termination of plan.
- (d) Effective date.
 - (1) Applicability date.
 - (2) Expiration date.

[T.D. 9369, 72 FR 72932, Dec. 26, 2007]

§ 1.1561-1T General rules regarding certain tax benefits available to the component members of a controlled group of corporations (temporary).

(a) *In general.* (1) Part II (section 1561 and following) of subchapter B of chapter 6 of the Internal Revenue Code (part II) provides rules to limit the amounts of certain specified tax benefit items of component members of a controlled group of corporations on a December 31, for their taxable years which include such December 31. The component members of such a group shall be limited for purposes of subtitle A of the Code to the amounts of certain items, set forth in section 1561(a), as if they were one corporation. Certain other tax items also set forth in section 1561(a) (e.g., the additional tax imposed by section 11(b)(1) and the section 55(d)(3) phase out of the alternative minimum tax exemption amount) will be determined by combining the taxable income of all such members and then allocating the amount of such items among such members.

(2) For certain definitions (including the definition of a *controlled group of corporations* and a *component member*) and special rules for purposes of this part II see section 1563.

(b) *Special rules.* (1) For purposes of this part II, the term *corporation* includes a small business corporation (as defined in section 1361). However, for the treatment of such a corporation as an *excluded member* of a controlled group of corporations see § 1.1563-1(b)(2)(ii)(C).

(2) In the case of corporations electing a 52-53-week taxable year under section 441(f)(1), the provisions of this part II shall be applied in accordance with the special rule of section 441(f)(2)(A). See § 1.441-2.

(c) *Tax avoidance.* The provisions of this part II do not delimit or abrogate any principle of law established by judicial decision, or any existing provisions of the Code, such as sections 269, 482, and 1551, which have the effect of preventing the avoidance or evasion of income taxes.

(d) *Effective date*—(1) *Applicability date.* This section applies to any taxable year beginning on or after December 22, 2006. However, taxpayers may

apply this section to any Federal income tax return filed on or after December 22, 2006.

(2) *Expiration date.* The applicability of this section will expire on December 21, 2009.

[T.D. 9304, 71 FR 76907, Dec. 22, 2006]

§ 1.1561-2T Special rules for allocating reductions to certain section 1561(a) tax-benefit items (temporary).

(a) *Additional tax—* (1) *Calculation.* For the purpose of determining the amount, if any, of the additional tax imposed by section 11(b)(1), the taxable incomes of all of the component members of a controlled group of corporations for the taxable years that include the same December 31st date shall be combined for determining whether either of the income thresholds for imposing an additional tax have been attained.

(2) *Apportionment—* (i) *General rule.* Any additional tax determined under paragraph (a)(1) of this section shall be apportioned among such members in the same manner as the corresponding tax bracket of section 11(b)(1) is apportioned. For rules to apportion the section 11(b)(1) tax brackets among the component members of a controlled group, see § 1.1561-3T(b) or (c).

(ii) *Apportionment methods.* Unless the component members of a controlled group elect to use the first-in-first-out (FIFO) method described in paragraph (a)(2)(ii)(B) of this section, such members are required to apportion the amount of the additional tax using the proportionate method described in paragraph (a)(2)(ii)(A) of this section. These component members can elect the FIFO method by specifically adopting such method in their apportionment plan.

(A) *Proportionate method.* Under the proportionate method, the additional tax is allocated to each component member in the same proportion as the portion of the tax-benefit amount that inured to a member from utilizing lower tax brackets bears to the amount of the group's total tax-benefit amount inuring to the group from utilizing those lower tax brackets. The tax-benefit amount that inures to a corporation from using a particular tax bracket

is the tax savings that such corporation realizes from having a portion of its taxable income taxed at the lower rate attributed to that tax bracket instead of the high tax rates to which it would otherwise be subject. The steps for applying the proportionate method of allocation are as follows:

(1) *Step 1.* The regular tax (not including the additional tax) owed by a component member under a particular tax bracket is divided by the total tax owed by all component members under that tax bracket;

(2) *Step 2.* The percentage calculated under *Step 1* is multiplied by the total tax-benefit amount inuring to all the members of the group from their use of this tax bracket. This computed amount equals the portion of the group's tax-benefit amount that inured to such member from using its portion of this tax bracket;

(3) *Step 3.* The amount determined under *Step 2* is divided by the total tax-benefit amount, inuring to all the component members of the group from using all the tax brackets to which any component member's income was subject;

(4) *Step 4.* The percentage calculated under *Step 3* is multiplied by the amount of the group's additional tax. The amount determined under this *Step 4* equals the amount of the additional tax apportioned to such member for that tax bracket; and

(5) *Step 5.* If a component member is liable for regular tax (not including the additional tax) under more than one tax bracket, that member must calculate the amount of the additional tax apportioned to it with respect to each tax bracket. Accordingly, steps 1 through 4 must be applied for each tax bracket applicable to that member. The sum of all the apportioned amounts of additional tax from each tax bracket for which the member is subject is the total amount of the additional tax apportioned to that member.

(B) *FIFO method.* Under the FIFO method, the first dollars of the additional tax are to be allocated proportionately to the members starting with the lowest tax bracket (that is, the first tax bracket), up to the amount of the tax benefit inuring to those members from using that tax bracket. Any