

(d) *Effective/applicability date.* This section applies to any tax year beginning on or after December 21, 2009. However, taxpayers may apply this section to any Federal income tax return filed on or after December 21, 2009. For tax years beginning before December 21, 2009, see §1.1561-3T as contained in 26 CFR part 1 in effect on April 1, 2009.

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

(a) *Controlled group of corporations—*
(1) *In general—*(i) *Types of controlled groups.* For purposes of sections 1561 through 1563, the term *controlled group of corporations* means any group of corporations which is—

(A) A *parent-subsidiary controlled group* (as defined in paragraph (a)(2) of this section);

(B) A *brother-sister controlled group* (as defined in paragraph (a)(3)(i) of this section);

(C) A *combined group* (as defined in paragraph (a)(4) of this section); or

(D) A *life insurance controlled group* (as defined in paragraph (a)(5) of this section).

(ii) *Special rules.* In determining whether a corporation is included in a controlled group of corporations, section 1563(b) and paragraph (b) of this section shall not be taken into account. For rules defining a component member of a controlled group of corporations, including rules defining an excluded member and an additional member, see section 1563(b) and paragraph (b) of this section.

(iii) *Cross reference.* For the exclusion of certain stock for purposes of applying the definitions contained in this paragraph, see section 1563(c) and §1.1563-2.

(2) *Parent-subsidiary controlled group—*
(i) *Definition.* The term *parent-subsidiary controlled group* means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(A) Stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the

common parent corporation, is owned (directly and with the application of §1.1563-3(b)(1), relating to options) by one or more of the other corporations; and

(B) The common parent corporation owns (directly and with the application of §1.1563-3(b)(1), relating to options) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

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

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

Example 2. Assume the same facts as in *Example 1.* Assume further that S owns stock possessing 80 percent of the total value of shares of all classes of stock of X Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, and X. The result would be the same if P, rather than S, owned the X stock.

Example 3. P Corporation owns 80 percent of the only class of stock of S Corporation and S, in turn, owns 40 percent of the only class of stock of X Corporation. P also owns 80 percent of the only class of stock of Y Corporation and Y, in turn, owns 40 percent of the only class of stock of X. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, X, and Y.

Example 4. P Corporation owns 75 percent of the only class of stock of Y and Z Corporations; Y owns all the remaining stock of Z; and Z owns all the remaining stock of Y. Since intercompany stockholdings are excluded (that is, are not treated as outstanding) for purposes of determining whether P owns stock possessing at least 80 percent of the voting power or value of at least one of the other corporations, P is treated as the owner of stock possessing 100 percent of the voting power and value of Y and of Z for purposes of paragraph (a)(2)(i)(B) of this section. Also, stock possessing 100 percent of the voting power and value of Y and Z is owned by the other corporations in the group within the meaning of paragraph (a)(2)(i)(A)

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of this section. (P and Y together own stock possessing 100 percent of the voting power and value of Z, and P and Z together own stock possessing 100 percent of the voting power and value of Y.) Therefore, P is the common parent of a parent-subsidiary controlled group of corporations consisting of member corporations P, Y, and Z.

(3) *Brother-sister controlled group*—(i) *Definition.* The term *brother-sister controlled group* means two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the rules contained in § 1.1563-3(b)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(ii) *Additional stock ownership requirement for purposes of certain other provisions of law.* For purposes of any provision of law (other than sections 1561 through 1563) that incorporates the section 1563(a) definition of a controlled group, the term *brother-sister controlled group* means two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own

(directly and with the application of the rules contained in § 1.1563-3(b)) stock possessing—

(A) At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each corporation (the 80 percent requirement);

(B) More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation (the more-than-50 percent identical ownership requirement); and

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

(iii) *Examples.* The principles of paragraph (a)(3)(ii) of this section may be illustrated by the following examples:

Example 1. (i) The outstanding stock of corporations P, W, X, Y, and Z, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	P (%)	W (%)	X (%)	Y (%)	Z (%)	Identical ownership
A	55	51	55	55	55	51. (45% in P and W).
B	45	49				
C			45			
D				45		
E					45	
Total	100	100	100	100	100	

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

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

Individuals	Corporations	
	X (%)	Y (%)
A	12	12
B	12	12
C	12	12
D	12	12
E	13	13
F	13	13
G	13	13
H	13	13
Total	100	100

(ii) Any group of five of the shareholders will own more than 50 percent of the stock in

each corporation, in identical holdings. However, X and Y are not members of a brother-sister controlled group because at least 80 percent of the stock of each corporation is not owned by the same five or fewer persons.

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

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

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

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

(iv) *Special rule if prior law applies.* Paragraph (a)(3)(ii) of this section, as amended by TD 8179, applies to taxable years ending on or after December 31,

1970. See, however, the transitional rule in paragraph (d) of this section.

(4) *Combined group—(i) Definition.* The term *combined group* means any group of three or more corporations if—

(A) Each such corporation is a member of either a parent-subsidiary controlled group of corporations or a brother-sister controlled group of corporations; and

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

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

Example 1. A, an individual, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporations X and Y. Y, in turn, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporation Z. X, Y, and Z are members of the same combined group since—

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

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

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

(5) *Life insurance controlled group—(i) Definition.* The term *life insurance controlled group* means two or more life insurance companies each of which is a member of a controlled group of corporations described in paragraph (a)(2), (a)(3)(i), or (a)(4) of this section and to which §1.1502-47(f)(6) does not apply. Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of a controlled group described in such paragraph (a)(2), (a)(3)(i), or (a)(4) of this section. For purposes of this section, the common parent of the controlled group described in paragraph (a)(2) of this section shall be referred to as the common parent of the life insurance controlled group.

(ii) *Examples.* The following examples illustrate the definition of a *life insurance controlled group*. In these examples, L indicates a life company, another letter indicates a nonlife company and each corporation uses the calendar year as its taxable year:

Example 1. Since January 1, 1999, corporation P has owned all the stock of corporations L₁ and Y, and L₁ has owned all the stock of corporation X. On January 1, 2005, Y acquired all of the stock of corporation L₂. Since L₁ and L₂ are members of a parent-subsidary controlled group of corporations, such companies are treated as members of a life insurance controlled group separate from the parent-subsidary controlled group consisting of P, X and Y. For purposes of this section, P is referred to as the common parent of the life insurance controlled group even though P is not a member of such group.

Example 2. The facts are the same as in *Example 1*, except that, beginning with the 2005 tax year, the P affiliated group elected to file a consolidated return and P made a section 1504(c)(2) election. Pursuant to paragraph (a)(5)(i) of this section, L₁ and L₂ are not members of a separate life insurance controlled group. Instead, P, X, Y, L₁ and L₂ constitute one controlled group. See §1.1502-47(f)(6).

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

tion, the voting rights possessed by the stock owned by the first shareholder may be considered to be possessed by the stock owned by such other shareholder if the result is that the corporation becomes a component member of a controlled group of corporations.

(b) *Component members*—(1) *In general*—(i) *Definition.* For purposes of sections 1561 through 1563, a corporation is with respect to its taxable year a component member of a controlled group of corporations for the group's testing date if such corporation—

(A) Is a member of such controlled group on such testing date and is not treated as an excluded member under paragraph (b)(2) of this section; or

(B) Is not a member of such controlled group on such testing date but is treated as an additional member under paragraph (b)(3) of this section.

(ii) *Member of a controlled group of corporations.* For purposes of sections 1561 through 1563, a member of a controlled group is a corporation connected with other member(s) of a controlled group under the stock ownership rules and the stock qualification rules set forth in section 1563. Under these rules, for a corporation to qualify as a component member of the group with respect to a group's December 31st testing date (or the short-year testing date for a short-year member), that corporation does not have to be a member of that group on that group's testing date. In addition, a corporation that is a member of a controlled group on the group's testing date does not necessarily qualify as a component member of that group with respect to that testing date.

(iii) *Additional concepts used in applying the controlled group rules.*

(A) The term *testing date* means the date used for determining the status of controlled group members as either component members or excluded members. That testing date is then also used to determine which taxable years of those component members are to be subjected to the controlled group rules. Generally, a member's testing date is the December 31st date included within that member's taxable year, whether such member is on a calendar or fiscal taxable year. However, if a component member of a controlled group has a

short taxable year that does not include a December 31st date, then the last day of that short taxable year becomes that member's testing date.

(B) The term *testing period* means the time period used for determining the status of controlled group members as either component members or excluded members. The testing period begins on the first day of a member's taxable year and ends on the day before its testing date. (Generally, the testing date is December 31st, but for a component member having a short taxable year not ending on December 31st, the testing date for the short taxable year of that member (and only that member) becomes the last day of that member's short taxable year.) Thus, for a member on a fiscal taxable year, the portion of its taxable year beginning on December 31st and ending on the last day of its taxable year is not taken into account for determining its status as a component member or an excluded member.

(2) *Excluded members*—(i) *Temporal test*. A corporation, which is a member of a controlled group of corporations on the group's testing date, a date included within that member's taxable year, but who was a member of such group for less than one-half of the number of days of its testing period, shall be treated as an excluded member of such group for that group's testing date.

(ii) *Qualification test*. A corporation which is a member of a controlled group of corporations on a testing date shall be treated as an excluded member of such group on such date if, for its taxable year including such date, such corporation is—

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

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

(C) An S corporation (as defined in section 1361) for purposes of any tax benefit item described in section 1561(a) to which it is not subject;

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

(E) An insurance company subject to taxation under section 801, unless such insurance company (without regard to this paragraph (b)(2)(ii)(E)) is a component member of a life insurance controlled group described in paragraph (a)(5)(i) of this section or unless § 1.1502-47(f)(6) applies (which treats a life insurance company, for which a section 1504(c)(2) election is effective, as a member (whether eligible or ineligible) of a life-nonlife affiliated group).

(3) *Additional members*. A corporation shall be treated as an additional member of a controlled group of corporations, that is, an additional component member, on the group's testing date if it—

(i) Is not a member of such group on such date;

(ii) Is not described, with respect to such taxable year, in paragraph (b)(2)(ii)(A), (b)(2)(ii)(B), (b)(2)(ii)(C), (b)(2)(ii)(D), or (b)(2)(ii)(E) of this section; and

(iii) Was a member of such group for one-half (or more) of the number of days in its testing period.

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

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

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

Example 3. Throughout 1964, corporation M owns all the stock of corporation F which, in turn, owns all the stock of corporations L₁, L₂, X, and Y. M is a domestic mutual insurance company subject to taxation under section 821, F is a foreign corporation not engaged in a trade or business within the United States, L₁ and L₂ are domestic life insurance companies subject to taxation under section 802, and X and Y are domestic corporations subject to tax under section 11 of the Code. Each corporation uses the calendar year as its taxable year. On December 31, 1964, M, F, L₁, L₂, X, and Y are members of a parent-subsidary controlled group of corporations. However, under paragraph (b)(2)(ii) of this section, M, F, L₁, and L₂ are treated as excluded members of the group on December 31, 1964. Thus, on December 31, 1964, the component members of the parent-subsidary controlled group of which M is the common parent include only X and Y.

Furthermore, since paragraph (b)(2)(ii)(E) of this section does not result in L₁ and L₂ being treated as excluded members of a life insurance controlled group, L₁ and L₂ are component members of a life insurance controlled group on December 31, 1964.

Example 4. Individual A owns all of the stock of corporations X, Y and Z. Each of these corporations is an S corporation. X, Y, and Z are each members of a brother-sister

controlled group, even though each such corporation is treated as an excluded member of such group. See § 1.1563-1(b)(2)(ii)(C).

(5) *Application of constructive ownership rules.* For purposes of paragraphs (b)(2)(i) and (b)(3)(iii) of this section, it is necessary to determine whether a corporation was a member of a controlled group of corporations for one-half (or more) of the number of days in its taxable year which precede the December 31st falling within such taxable year. Therefore, the constructive ownership rules contained in § 1.1563-3(b) (to the extent applicable in making such determination) must be applied on a day-by-day basis. For example, if P Corporation owns all the stock of X Corporation on each day of 1964, and on December 30, 1964, acquires an option to purchase all the stock of Y Corporation (a calendar-year taxpayer which has been in existence on each day of 1964), the application of § 1.1563-3(b)(1) on a day-by-day basis results in Y being a member of the brother-sister controlled group on only one day of Y's 1964 year which precedes December 31, 1964. Accordingly, since Y is not a member of such group for one-half or more of the number of days in its 1964 year preceding December 31, 1964, Y is treated as an excluded member of such group on December 31, 1964.

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

(2) *Brother-sister controlled groups—(i) One corporation.* If on a December 31st,

a corporation would, without the application of this paragraph (c)(2), be a component member of more than one brother-sister controlled group on such date, the corporation will be treated as a component member of only one such group on such date. Such corporation may elect the group in which it is to be included by including on or with its income tax return for the taxable year that includes such date a statement entitled, "STATEMENT TO ELECT CONTROLLED GROUP PURSUANT TO §1.1563-1(c)(2)." This statement must include—

(A) A description of each of the controlled groups in which the corporation could be included. The description must include the name and employer identification number of each component member of each such group and the stock ownership of the component members of each such group; and

(B) The following representation: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF CORPORATION] ELECTS TO BE TREATED AS A COMPONENT MEMBER OF THE [INSERT DESIGNATION OF GROUP].

(ii) *Multiple corporations.* If more than one corporation would, without the application of this paragraph (c)(2), be a component member of more than one controlled group, those corporations electing to be component members of the same group must file a single statement. The statement must contain the information described in paragraph (c)(2)(i) of this section, plus the names and employer identification numbers of all other corporations designating the same group. The original statement must be included on or with the original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such return) of the corporation that, among those corporations which would (without the application of this paragraph (c)(2)) belong to more than one group, has the taxable year including such December 31st which ends on the earliest date. That corporation must provide a copy of the statement to each other corporation included in the statement and represent in its statement that it has done so. Either the original or a copy of the statement must be retained by each corporation

as part of its records. See §1.6001-1(e) of this chapter.

(iii) *Election.* (A) An election filed under this paragraph (c)(2) is irrevocable and effective until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(B) In the event no election is filed in accordance with the provisions of this paragraph (c)(2), then the Internal Revenue Service will determine the group in which such corporation is to be included. Such determination will be binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(iv) *Examples.* The provisions of this paragraph (c)(2) may be illustrated by the following examples (in which it is assumed that all the individuals are unrelated):

Example 1. (i) On each day of 1970 all the outstanding stock of corporations X, Y, and Z is held in the following manner:

Individuals	Corporations		
	X (%)	Y (%)	Z (%)
A	55	40	5
B	40	20	40
C	5	40	55

(ii) Since the more-than-50 percent identical ownership requirement of section 1563(a)(2) is met with respect to corporations X and Y and with respect to corporations Y and Z, but not with respect to corporations X, Y, and Z, corporation Y would, without the application of this paragraph (c)(2), be a component member on December 31, 1970, of overlapping groups consisting of X and Y and of Y and Z. If Y does not file an election in accordance with paragraph (c)(2)(i) of this section, the Internal Revenue Service will determine the group in which Y is to be included.

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

Individuals	Corporations				
	V	W	X	Y	Z
D	52	52	52	52	52
E	40	2	2	2	2
F	2	40	2	2	2

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Individuals	Corporations				
	V	W	X	Y	Z
G	2	2	40	2	2
H	2	2	2	40	2
I	2	2	2	2	40

(ii) On December 31, 1970, the more-than-50 percent identical ownership requirement of section 1563(a)(2) may be met with regard to any combination of the corporations but all five corporations cannot be included as component members of a single controlled group because the inclusion of all the corporations in a single group would be dependent upon taking into account the stock ownership of more than five persons. Therefore, if the corporations do not file a statement in accordance with paragraph (c)(2)(ii) of this section, the Internal Revenue Service will determine the group in which each corporation is to be included. The corporations or the Internal Revenue Service, as the case may be, may designate that three corporations be included in one group and two corporations in another, or that any four corporations be included in one group and that the remaining corporation not be included in any group.

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

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

member as a member of an old group to the extent that such treatment will have an adverse effect on that old member.

(ii) *Old member of old group.* Section 7805(b) will not be applied pursuant to paragraph (d)(2)(i) of this section to treat an old member of an old group as a member of a brother-sister controlled group to prevent an adverse effect for a taxable year if, for that taxable year, that old member treats or has treated itself as not being a member of that old group for purposes of sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 and title IV of ERISA for such taxable year (such as by filing, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating itself as not being a member of the old group for purposes of those sections). However, the fact that one or more (but not all) of the old members do not qualify for section 7805(b) treatment because of the preceding sentence will not preclude that old member (or members) from being treated as a member of the old group under paragraph (d)(2)(i) of this section in order to prevent the disallowance of a deduction or credit of another old member (or other corporation) or to prevent the disqualification of, or other adverse effect on, another old member's plan (or other entity) described in the sections of the Code and ERISA enumerated in such paragraph.

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

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

(ii) No old member—

(A) Files or has filed, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction,

credit, limitation, or tax due is determined by treating any old member as not a member of the old group; or

(B) Treats the employees of all members of the old group as not being employed by a single employer for purposes of sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of ERISA for such taxable year.

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

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

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

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

(i) *In general.* A corporation may make an election under paragraph (c)(2) of this section by filing an amended return on or before September 2, 1988 if—

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

(B) That corporation would (without regard to such paragraph (c)(2)) be a component member of more than one brother-sister controlled group (not including an old group) on December 31st.

(ii) *Exception.* This paragraph (d)(5) does not apply to a corporation that is treated as a member of an old group under paragraph (d)(3) of this section.

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

(e) *Effective/applicability date.* This section applies to taxable years beginning on or after May 26, 2009. However, taxpayers may apply this section to taxable years beginning before May 26, 2009. For taxable years beginning before May 26, 2009, see §1.1563-1T as contained in 26 CFR part 1 in effect on April 1, 2009. Paragraph (a)(1)(ii) of this

section applies to taxable years beginning on or after April 11, 2011.

[T.D. 9451, 74 FR 25148, May 27, 2009, as amended by T.D. 9522, 76 FR 19907, Apr. 11, 2011]

§ 1.1563-2 Excluded stock.

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

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

(2) Treasury stock.

(b) *Stock treated as excluded stock—(1) Parent-subsidiary controlled group.* If a corporation (hereinafter in this paragraph referred to as “parent corporation”) owns 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in another corporation (hereinafter in this paragraph referred to as “subsidiary corporation”), the provisions of subparagraph (2) of this paragraph shall apply. For purposes of this subparagraph, stock owned by a corporation means stock owned directly plus stock owned with the application of the constructive ownership rules of paragraph (b) (1) and (4) of §1.1563-3, relating to options and attribution from corporations. In determining whether the stock owned by a corporation possesses the requisite percentage of the total combined voting power of all classes of stock entitled to vote of another corporation, see paragraph (a)(6) of §1.1563-1.

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

(i) *Plan of deferred compensation.* Stock in the subsidiary corporation held by a trust which is part of a plan of deferred compensation for the benefit of the employees of the parent corporation or the subsidiary corporation.