

shall be signed by a responsible company official and shall include all of the following information:

- (i) Actual quantity shipped;
- (ii) Actual date shipped; and
- (iii) DEA export permit number.

(7) The controlled substance will be reexported from the first country to the second country (or second countries) no later than 180 days after the controlled substance was exported from the United States.

(8) Shipments that have been exported from the United States and are refused by the consignee in either the first or second country, or are otherwise unacceptable or undeliverable, may be returned to the registered exporter in the United States upon authorization of the Administration. In these circumstances, the exporter in the United States shall file a written request for the return of the controlled substances to the United States with a brief summary of the facts that warrant the return, along with a completed DEA Form 357, Application for Import Permit, with the Drug Enforcement Administration, Import/Export Unit, Washington, DC 20537. The Administration will evaluate the request after considering all the facts as well as the exporter's registration status with the Administration. If the exporter provides sufficient documentation, the Administration will issue an import permit for the return of these drugs, and the exporter can then obtain an export permit from the country of original importation. The substance may be returned to the United States only after affirmative authorization is issued in writing by the Administration.

(e) In considering whether to grant an application for a permit under paragraphs (c) and (d) of this section, the Administration shall consider whether the applicant has previously obtained such a permit and, if so, whether the applicant complied fully with the requirements of this section with respect to that previous permit.

■ 3. Section 1312.23 is amended by revising paragraphs (a) and (f) to read as follows:

**§ 1312.23 Issuance of export permit.**

(a) The Administrator may authorize exportation of any controlled substance listed in Schedule I or II or any narcotic controlled substance listed in Schedule III or IV if he finds that such exportation is permitted by subsections 1003(a), (b), (c), (d), or (f) of the Act (21 U.S.C. 953(a), (b), (c), (d), or (f)).

\* \* \* \* \*

(f) No export permit shall be issued for the exportation, or reexportation, of any controlled substance to any country

when the Administration has information to show that the estimates or assessments submitted with respect to that country for the current period, under the Single Convention on Narcotic Drugs, 1961, or the Convention on Psychotropic Substances, 1971, have been, or, considering the quantity proposed to be imported, will be exceeded. If it shall appear through subsequent advice received from the International Narcotics Control Board of the United Nations that the estimates or assessments of the country of destination have been adjusted to permit further importation of the controlled substance, an export permit may then be issued if otherwise permissible.

Dated: December 5, 2007.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control.*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9369]

RIN 1545-BG40

#### Calculating and Apportioning the Section 11(b)(1) Additional Tax under Section 1561 for Controlled Groups.

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document removes the final regulation for § 1.1561-2, amends §§ 1.1561-2T and 1.1563-1T, and adds § 1.1502-47T. These temporary regulations affect component members of a controlled group of corporations and consolidated groups filing life-nonlife Federal income tax returns. These temporary regulations provide guidance for calculating and apportioning between component members any amount of additional tax and any reduction in the amount exempted from the alternative minimum tax. These temporary regulations also update and clarify the allocation of tax-benefit items in the case in which a component member has a short taxable year not including a December 31st date. Finally, these temporary regulations provide explanations of two concepts: a group's testing date and a member's testing period for use in determining which members of the

group and which taxable years of those members are subject to the controlled group rules. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

**DATES:** *Effective Date:* These temporary regulations are effective on *December 26, 2007*.

*Applicability Dates:* For the dates of applicability, see §§ 1.1502-47T(t)(1), 1.1561-2T(f)(1) and 1.1563-1T(e)(1). The applicability of these temporary regulations will expire on December 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** Grid Glycer, (202) 622-7930 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

*A. Summary of Limitations on Controlled Groups of Corporations Regarding Lower Tax Brackets and Alternative Minimum Tax Exemption Amounts*

Section 1561(a) of the Internal Revenue Code (Code) provides that the *component members of a controlled group of corporations* (as those terms are defined in section 1563) are limited for their taxable years which include the same December 31st date to an amount of each of the tax-benefit items listed therein to which a corporation that is not a component member of a controlled group is entitled. Two of those items are the section 11(b)(1) tax-bracket amounts and the section 55(d)(2) exemption from the alternative minimum tax (the "exemption amount"). See section 1561(a)(1) and (a)(3). Each of these two Code provisions requires reductions in calculating the amounts of each of these two tax-benefit items after the taxpayer has passed certain thresholds. The "additional taxes" under section 11(b)(1) serve to reduce a corporation's use of the lower tax brackets after certain specified threshold levels of income are reached. Section 55(d)(3) requires reductions to the amount exempted from the alternative minimum tax.

*B. The Additional Taxes Imposed by Section 11(b)(1) and the Alternative Minimum Tax Exemption Amount*

In general, section 11(b)(1) provides for a graduated income tax rate structure for taxing the income of a corporation. The income tax rates imposed on a corporation's income increase with each higher bracketed range of taxable income. The following chart shows the various tax rates imposed on a

corporation and the ranges of taxable income that are subject to each of these tax rates:

Rate of tax	Range of taxable income subject to a rate of tax
15% .....	\$50,000 (first \$50,000 of corporation's taxable income).
25% .....	\$25,000 (\$75,000 – \$50,000).
34% .....	\$9,925,000 (\$10,000,000 – \$75,000).
35% .....	> \$10,000,000.

Section 11(b)(1) also imposes additional tax on the corporation's taxable income where its income exceeds two designated income thresholds. This additional tax is designed to reduce the tax benefit that a corporation derives from having some of its income taxed at a lower rate.

For example, if a corporation's taxable income exceeds \$100,000 (but is not greater than \$15 million), the total amount of the additional tax is the lesser of (1) the amount of 5 percent of the excess over \$100,000 or (2) \$11,750. This \$11,750 amount represents the maximum tax benefit available to a corporation from having all of the first \$75,000 of its taxable income taxed at the 15 and 25 percent tax rates rather than at a 34 percent tax rate. Similarly, if a corporation's taxable income exceeds \$15 million, there is a further additional tax equal to the lesser of (1) the amount of 3 percent of the excess over \$15 million, or (2) \$100,000. This \$100,000 amount represents the maximum tax benefit available to a corporation from having all of the first \$10 million of its taxable income taxed at the 34 percent tax rate rather than at a 35 percent tax rate.

Section 55(d)(3) provides that a taxpayer's exemption amount shall be phased out (but not below zero) as the taxpayer's alternative minimum taxable income increases.

### C. The Controlled Group Rules

Under section 1561(a), the component members of a controlled group, with regard to taxable years containing a particular December 31st "testing date," are collectively limited to using one full amount of certain tax-benefit items. As noted above, one of the tax benefits so limited is the benefit of the lower tax brackets. Another is the \$40,000 amount for exemption from the alternative minimum tax. Section 1561(a) generally provides that the lower tax brackets and the \$40,000 exemption from alternative minimum tax are divided equally among the component members of the controlled group unless the group

adopts an apportionment plan that provides for an unequal allocation.

Section 1563(a) defines the four types of controlled groups. The two most common are parent-subsidiary (defined in section 1563(a)(1)) and brother-sister (defined in section 1563(a)(2)).

Under section 1563(b), a corporation is a component member of a controlled group for a given taxable year if it was a member of such group on the December 31st date of its taxable year for at least one-half the number of days of its taxable year that precedes that December 31st date. In addition, pursuant to section 1563(b)(3), a corporation is treated as a component member of a controlled group if it was a member of such group during a calendar year, although not on December 31st, but was a member of such group for at least one-half the number of days of its taxable year that precede that December 31st date (referred to as an "additional member"). Conversely, pursuant to section 1563(b)(2), a corporation which is a member of a controlled group of corporations on December 31st of any taxable year is treated as an excluded member of the controlled group (with regard to that December 31st testing date), if such corporation is a member of such group for less than one-half the number of days in its taxable year which precede such December 31st. The December 31st date of a specified calendar year will be referred to as the group's testing date. The December 31st testing date is used for determining which taxable years of which members will be subject to the limitation rules imposed by, for example, section 1561(a). Furthermore, the total number of days of a member's taxable year that precede a specified December 31st testing date will be referred to as that member's "testing period."

Section 1561(a) provides that in computing the amount of additional tax imposed by section 11(b)(1), and the phase-out of the exemption amount under section 55(d)(3), the component members shall, as a first step, combine their taxable incomes. Most controlled groups will easily be able to compute the total of their members' taxable incomes and determine whether this sum exceeds the applicable income thresholds. Therefore, it is unnecessary to provide any regulatory guidance with regard to such determination. However, the IRS and the Treasury Department recognize that various situations exist where a component member may encounter difficulties with obtaining the information needed to calculate its entitlement to the benefit of a lower bracket or its obligation to pay

additional taxes. For the benefit of taxpayers that confront such problems, several such situations are discussed below and illustrated in the examples of the regulation, although they are not addressed in the text of these temporary regulations.

Section 1561(a) provides that the taxable income of all of the component members of a controlled group of corporations for the taxable years which are subjected to the same December 31st testing date shall be taken into account, that is, added together, for the purpose of determining whether any member owes the additional tax imposed by section 11(b)(1) as well as for determining what portion of that additional tax is to be allocated to each member. As in the case of the additional tax, section 1561(a) provides that the alternative minimum taxable income 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 taken into account, that is, added together, for the purpose of determining the reduction (under section 55(d)(3)) to the exemption amount as set forth in section 55(d)(2). Section 1561(a) further provides that the additional taxes, as well as the reduction to the exemption amount, shall each be apportioned among those members in the same manner that the corresponding tax-benefit item is apportioned. However, the current regulations do not provide any guidance on how to calculate and apportion these reductions to these two tax-benefit items.

### Explanation of Provisions

#### A. Allocation of the Benefit Recapture Items

Given that the additional taxes must be apportioned among the component members in the same manner as the tax-bracket amounts, these temporary regulations provide two methods for apportioning the amount of those additional taxes among the component members: the "proportionate method" and the first-in-first-out ("FIFO") method. Under the proportionate method, the additional tax is allocated to any component member to whom a tax-bracket amount was apportioned in the same proportion as the portion of the tax benefit from that tax bracket which was allocated to that member bears to the total tax-benefit amount provided to all members from the use of that tax bracket. These tax benefits are attributable to the tax savings to the members of the group resulting from having ranges of income (tax-bracket amounts) being taxed at lower rates,

instead of the higher tax rates to which income of the group is subject. The text of the regulations sets out the steps for applying this method. Under the FIFO method, the first dollars of the additional tax are to be allocated proportionately to each member to whom a tax-bracket amount was apportioned, starting with the lowest tax bracket and continuing on successively to each next higher tax bracket until the entire amount of the additional tax has been fully apportioned among the members. For example, under the FIFO method of apportionment, the first \$9,500 of additional tax liability of a controlled group would be apportioned entirely to the member(s) that were apportioned the 15 percent tax bracket. Unless the component members of a controlled group elect to use the FIFO method, they are required to use the proportionate method in apportioning the additional taxes among the component members.

These temporary regulations also provide guidance in calculating and apportioning the reduction to the exemption amount. Specifically, they provide that any reduction to the exemption amount shall be apportioned to the component members in the same manner as the exemption amount.

#### *B. Apportioning Certain Tax-Benefit Items Where a Component Member Has a Short Taxable Year Not Including a December 31st Date*

Section 1561(b) provides that where a corporation has a short taxable year which does not include a December 31st date, but is a component member of a controlled group of corporations for such year (a "short-year member"), then, for purposes of subtitle A of the Code, the tax-benefit items described in section 1561(b) (the "section 1561(b) tax-benefit items") of such corporation for such year shall be the amount specified in section 1561(a) for that item, divided by the number of corporations which are component members of such group on the last day of that member's short taxable year. Thus, a short-year member is not permitted to be apportioned a different amount.

Section 1561(b) further provides that the rules of section 1563(b) shall be applied as if the last day of the short-year member's short taxable year were substituted for December 31st. Thus, the determination of whether a short-year member qualifies as a member of the group is determined by looking to its testing period, which begins on the first day of its taxable year and ends on the day before the last day of such short taxable year. See the discussion of

testing date and testing period in the following section of this preamble. Section 1.1561-2(e) interprets this provision.

These temporary regulations update and clarify the rules of current § 1.1561-2(e). It is not intended that any such updating and clarification constitute a substantive change.

#### *C. Definitions of a Group's Testing Date and a Member's Testing Period*

Section 1.1563-1T(b) defines component members and excluded members of controlled groups. These definitions depend upon whether a corporation was a member of a group on the December 31st of its taxable year (its "testing date") and was a member for at least one-half the number of days of its taxable year beginning on the first day of its taxable year and ending on December 30th of its taxable year (its "testing period").

These temporary regulations amend § 1.1563-1T(b) to provide explanations of the concepts: Testing date and testing period.

A testing date is defined as the date that a controlled group is required to use in determining which of its members and which of their taxable years will be subject to the controlled group rules. Generally, a group's testing date is the December 31st date included within all the members' taxable years, whether such corporations are 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 its short taxable year serves as the member's testing date.

A testing period is defined as the period of time that a member of a controlled group uses to determine its status as either a component member or an excluded member. The testing period begins on the first day of a member's taxable year and ends on the day before its testing date. Thus, in the case of a member on a fiscal taxable year, the portion of its taxable year beginning after December 31st and ending on the last day of its taxable year is not taken into account in determining its status as a component member or an excluded member.

#### *D. Information Sharing Among Controlled Group Members*

The IRS and the Treasury Department wish to note certain circumstances in which corporations may experience complications in applying the controlled group rules generally or with respect to tax brackets and the alternative minimum tax exemption amount in particular. As noted above,

no new rules are provided with respect to these situations, although they are illustrated in several examples in these temporary regulations. Because the controlled group rules apply to multiple corporations each filing its own return, the corporations must have access to sufficient information regarding the other members or potential members to comply with the rules. Taxpayers are alerted to their responsibilities to obtain this information. In certain situations, such information may have to be obtained from corporations that are no longer owned by related parties and taxpayers will need to make arrangements to ensure that they will have access to information that will enable them to meet their compliance obligations. Ideally, the corporations and their shareholders will take these issues into account when contemplating transfers of interests in the corporations to provide access to adequate information sharing afterwards.

For example, if a corporation in a group changes hands during or shortly after the end of a taxable year, the formerly related corporations in the selling group will need information from the sold corporation about its income levels under the regular and alternative minimum tax systems, and the sold corporation will need information about the formerly related selling group members.

In addition, if a corporation changes hands during a calendar year in a transaction that does not close the corporation's taxable year, events later in the year after the corporation is no longer related could affect the corporation's status as a member of the controlled group. For example, if the corporation changes hands early in the calendar year, the selling group might assume that the bulk of the testing period will fall after the sale and the corporation will not be a member for the year. However, if the corporation is liquidated by its new owners during the calendar year, the testing period for the year will be truncated and the corporation may be included for the taxable year in the selling controlled group because it was there for more than one-half of the now shorter testing period. The selling group will need to know that the sold corporation will now be treated as included in its group and the relevant data about its income for the taxable year.

Furthermore, events after the close of the taxable year, such as amended returns, audit adjustments or loss carrybacks, could affect the entitlement of other group members to tax benefits such as the lower brackets or the alternative minimum tax exemption

amount, as well as other issues that might affect whether the group members will be under the regular or alternative minimum tax. In this case, again, the various members of the controlled group in the earlier year will need to have adequate information sharing to comply with their responsibilities.

#### E. Consolidated Return Amendment

Section 1.1502-47 provides rules for a life-nonlife consolidated group to calculate its consolidated taxable income. Paragraph (s) of § 1.1502-47 previously required a consolidated group to clearly indicate "by notation" on the face of its return that it is a life-nonlife consolidated return. This requirement presented an impediment to e-filing. Accordingly, as part of TD 9304, the IRS and the Treasury Department amended § 1.1502-47(s) and published § 1.1502-47T(s) to remove this impediment by deleting the requirement that it indicate this "by notation." However, § 1.1502-47T(s) was inadvertently removed from the Code of Federal Regulations by TD 9342 when other portions of § 1.1502-47T were published as final regulations. These temporary regulations republish § 1.1502-47T(s).

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of this regulation is Grid Glycer, Office of Associate Chief Counsel (Corporate). The other author of and principal reviewer for this regulation is Steven J. Hankin, Office of Associate Chief Counsel (Corporate). Other personnel from the IRS and the Treasury Department, however, participated in its development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.1502-47T also issued under 26 U.S.C. 1502. \* \* \*

■ **Par. 2.** Section 1.1502-47T is added to read as follows:

#### § 1.1502-47T Consolidated returns by life-nonlife groups (temporary).

(a) through (r) (Reserved). For further guidance, see § 1.1502-47(a) through (r).

(s) *Filing requirements.* Nonlife consolidated taxable income or loss under paragraph (h) of § 1.1502-47 shall be determined on a separate Form 1120 "U.S. Corporation Income Tax Return" or 1120-PC, "U.S. Property and Casualty Insurance Company Income Tax Return", and consolidated partial Life Insurance Company Taxable Income [defined in § 1.1502-47(d)(3)] under paragraph (j) of § 1.1502-47 shall be determined on a separate Form 1120-L "U.S. Life Insurance Company Income Tax Return". The consolidated return shall be made on a separate Form 1120, 1120-PC, or 1120-L filed by the common parent (if the group includes a life company), which shows the set-offs under paragraphs (g), (m), and (n) of § 1.1502-47 and clearly indicates on the face of the return that it is a life-nonlife consolidated return (if the group includes a life company). See also § 1.1502-75(j), relating to statements and schedules for subsidiaries.

(t) *Effective date*—(1) *Applicability date.* Paragraph (s) of this section applies to any consolidated Federal income tax return due (without extensions) after *December 26, 2007*. However, a consolidated group may apply paragraph (s) of this section to any consolidated Federal income tax return filed on or after *December 26, 2007*.

(2) *Expiration date.* The applicability of paragraph (s) of this section will expire on December 21, 2010.

■ **Par. 3.** Section 1.1561-0T is added to read as follows:

#### § 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.

#### § 1.1561-2 [Removed]

■ **Par. 4.** Section 1.1561-2 is removed.

■ **Par. 5.** Section 1.1561-2T is amended by revising the heading, adding paragraphs (a) and (b), and revising paragraphs (e) and (f) to read as follows:

#### § 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 remaining amount of additional tax is then allocated proportionately among the component members who use the next higher tax bracket, and so on, until the entire amount of the additional tax has been fully apportioned among the members. For example, the first \$9,500 of the additional tax liability of a controlled group is apportioned entirely to the member(s) that availed themselves of the benefit of the 15 percent tax bracket.

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

*Example 1.* (i) *Facts.* A controlled group of corporations consists of three members: X, Y and Z. X owns all the stock of Y and Z. Each corporation files its separate return on a calendar year basis. For calendar year 2007, the component members of the controlled group have an apportionment plan in effect. The members apportioned 80% of the 15 percent tax-bracket amount (\$40,000) to X and the remaining 10% (\$10,000) to Y. The members apportioned 100% of the 25 percent tax-bracket amount (\$25,000) to Y. However, these members have not adopted the FIFO method for apportioning the additional taxes. Therefore, they must follow the proportionate method. For 2007, X had taxable income (TI) of \$40,000, Y had TI of \$60,000 and Z had TI of \$100,000. Thus the total TI of the group is \$200,000.

(ii) *Calculating the tax from the tax brackets and the tax benefit derived from such tax.* (A) *Regular tax of group subjected to a 15 percent tax rate.* (1) *Calculating the group's tax which resulted from applying a 15 percent tax rate.* The amount of tax under the 15 percent tax bracket is \$7,500 ( $15\% \times \$50,000$ ).

(2) *The tax-benefit amount inuring to the group from using the 15 percent tax bracket.* A tax benefit inures to those members of the group who avail themselves of the 15 percent tax bracket. That tax benefit results from having the first \$50,000 of its income taxed at the 15 percent tax rate, instead of at the 34 percent tax rate. Thus, the tax-benefit amount inuring to this group from using the 15 percent tax bracket is \$9,500 ( $\$17,000 (34\% \times \$50,000) \text{ minus } \$7,500 (15\% \times \$50,000)$ ).

(B) *Regular tax of group subjected to a 25 percent tax rate.* (1) *Calculating the group's tax which resulted from applying a 25 percent tax rate.* The amount of tax under the 25 percent tax bracket is \$6,250 ( $25\% \times \$25,000 (\$75,000 - \$50,000)$ ).

(2) *The tax-benefit amount inuring to the group from using the 25 percent tax bracket.* A tax benefit inures to those members of the group who avail themselves of the 25 percent tax bracket. That tax benefit results from having \$25,000 of its income taxed at the 25 percent tax rate, instead of at the 34 percent tax rate. Thus, the tax-benefit amount inuring to this group from using the 25 percent tax bracket is \$2,250 ( $\$8,500 (34\% \times \$25,000) \text{ minus } \$6,250 (25\% \times \$25,000)$ ).

(C) *Regular tax of group subjected to a 34 percent tax rate.* (1) *Calculating the group's tax which resulted from applying a 34 percent tax rate.* The amount of tax under the 34 percent tax bracket is \$42,500 ( $34\% \times \$125,000 (\$200,000 \text{ (total TI)} - \$75,000 \text{ (amount taxed at lower rates)})$ ).

(2) *The tax-benefit amount inuring to the group from using the 34 percent tax bracket.* The group's total TI of \$200,000 is less than the \$15,000,000 income threshold for imposing any 3 percent additional tax on the group. Therefore, there is no tax benefit inuring to the members of this group for using the 34 percent tax bracket.

(D) *The computation of the additional tax.* Since the combined TI of the group exceeds \$100,000, a 5 percent additional tax is imposed on the group. That 5 percent additional tax is the lesser amount of 5 percent of the group's taxable income exceeding \$100,000 or \$11,750. Five percent of that excess amount of taxable income is \$5,000 ( $5\% \times \$100,000 (\$200,000 - \$100,000)$ ). Since \$5,000 is less than \$11,750, the group's 5 percent additional tax is \$5,000.

(iii) *Apportioning the amount of additional tax to each applicable tax bracket.* (A) *The apportioned tax under each bracket.* The amount of tax owed by each member under each tax bracket pursuant to the apportionment plan is as follows:

Name of component member	Amount of tax owed under the 15% tax bracket	Amount of tax owed under the 25% tax bracket	Amount of tax owed under the 34% tax bracket
X .....	\$6,000	0	0
Y .....	\$1,500	\$6,250	\$8,500
Z .....	0	0	\$34,000

(B) *Apportioning the 5 percent additional tax among the component members of the controlled group.* Since the group did not elect to adopt the FIFO method of apportionment, it is required to apportion the \$5,000 of its 5 percent additional tax pursuant to the proportionate method in the following manner:

(1) *Amount of the additional tax apportioned to X.* Pursuant to the plan, X was liable for \$6,000 of the group's \$7,500 regular tax (80%) owed under the 15 percent tax bracket (and X is not liable for any regular tax under any higher tax bracket). See *Step 1* of paragraph (a)(2)(ii)(A) of this section. X's portion of the group's tax benefit which it derived from using the 15 percent tax rate is \$7,600 ( $0.8 \times \$9,500$ ). See *Step 2*. The tax benefit inuring to the entire group from using the 15 percent and 25 percent tax brackets is \$11,750 (\$9,500 (from the 15 percent tax bracket) + \$2,250 (from the 25 percent tax bracket)). So, X's percentage portion of the group's total tax benefit is \$7,600/\$11,750 (64.68%). See *Step 3*. Thus, X's allocated portion of the 5 percent additional tax from using the 15 percent tax bracket is \$3,234 ( $0.6468 \times \$5,000$ ). See *Step 4*.

(2) *Amount of the additional tax apportioned to Y.* (i) *Regular tax apportioned to Y from using the 15 percent tax bracket.* Pursuant to the plan, Y was liable for the remaining \$1,500 of the group's \$7,500 regular tax (20%) owed under the 15 percent tax bracket. See *Step 1*. Y's portion of the group's tax benefit which it derived from using the 15 percent tax rate is \$1,900 ( $\$9,500 - \$7,600$ , or  $0.2 \times \$9,500$ ). See *Step 2*. So, Y's percentage portion of the group's total tax benefit is \$1,900/\$11,750 (16.17%). See *Step 3*. Thus, Y's allocated portion of the 5 percent additional tax from using the 15 percent tax bracket is \$809 ( $0.1617 \times \$5,000$ ). See *Step 4*.

(ii) *Regular tax apportioned to Y from using the 25 percent tax bracket.* Pursuant to the plan, Y was liable for 100% of the group's regular tax owed under the 25 percent tax bracket, an amount of \$6,250. See *Step 1*. Y is, therefore, entitled to 100% of the group's tax benefit which it derived from using this tax bracket, an amount of \$2,250. See *Step 2*. So, Y's percentage portion of the group's total tax benefit is \$2,250/\$11,750 (19.15%). See *Step 3*. Thus, Y's allocated portion of the 5 percent additional tax from using the 25 percent tax bracket is \$957 ( $0.1915 \times \$5,000$ ). See *Step 4*. Y's total allocated portion of the additional tax is \$1,766 (\$809 + \$957). See *Step 5*.

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1*, except that on August 31, 2007, X of the X-Y-Z controlled group sold all of the stock of Z to M of the M-N

controlled group, a pair of corporations unrelated to the X-Y group. Pursuant to the terms of the sales agreement, the members of the M-N group properly notified the members of the X-Y group on a timely basis that Z's taxable income for its 2007 taxable year, as based on the group's December 31st testing date, was \$100,000.

(ii) *Controlled group analysis.* On December 31, 2007, X and Y are members of the selling controlled group and M, N, and Z are members of the buying controlled group. However, pursuant to section 1563(b)(3), Z is treated as an additional member of the X-Y group on December 31, 2007, since it was a member for at least one-half the number of days (243 out of 364) during the period beginning on January 1 and ending on December 30, 2007. Conversely, pursuant to section 1563(b)(2)(A), Z is treated as an excluded member of the M-N controlled group. Therefore, on December 31, 2007, X, Y, and Z qualify as component members of the selling group, and only M and N qualify as component members of the buying group.

(iii) *Additional tax analysis.* With regard to X and Y's 2007 taxable years, X and Y together owed \$5,000 of additional tax, as calculated in *Example 1*. X's allocated portion of the additional tax is \$3,234, as calculated in the manner set forth in *Example 1*. Y's allocated portion of the additional tax is \$1,766, also as calculated in the manner set forth in *Example 1*.

*Example 3.* (i) *Facts.* The facts are the same as in *Example 2*, except that in 2012, pursuant to an IRS audit, Z's 2007 taxable income was redetermined. It was adjusted by an income increase of \$10,000. Pursuant to the terms of the sales agreement, the members of the M-N group timely notified the members of the X-Y group of Z's income adjustment.

(ii) *Additional tax analysis.* For 2007 the X-Y-Z group owed a revised additional tax in the amount of \$5,500, allocated as follows: \$3,557.40 to X and \$1,942.60 to Y. X and Y each filed an amended 2007 tax return to report their portions of the \$500 increase to the group's additional tax. Pursuant to their apportionment plan for allocating their regular tax, and as a result of defaulting to the proportionate method for allocating the group's additional tax, X reported \$323.40 as its share of the group's increase to its additional tax and Y reported \$176.60 as its share of the group's increase to its additional tax.

*Example 4.* The facts are the same as in *Example 1*, except that the members elected in their apportionment plan to adopt the FIFO method for apportioning the additional tax. Under the FIFO method, the 5 percent

additional tax amount of \$5,000 will be apportioned entirely to those members who would benefit from using the 15 percent tax bracket, by reason that \$5,000 of the group's additional tax is less than \$9,500, which is the full tax-benefit amount inuring to a controlled group from having a 15 percent tax rate applied to the full income bracket subject to that rate. Since X derived 80 percent of the group's tax benefit by its use of the 15 percent tax bracket, its share of the group's 5 percent additional tax is \$4,000 ( $80\% \times \$5,000$ ), and Y's share of the group's 5 percent additional tax is, therefore, \$1,000, which is the remaining amount of the group's 5 percent additional tax, attributable to the 15 percent tax bracket.

(b) *Reduction to the amount exempted from the alternative minimum tax—* (1) *Calculation.* The alternative minimum taxable incomes for all the taxable years of the component members of a controlled group of corporations subjected to the same December 31st testing date shall be taken into account in calculating the reduction set forth in section 55(d)(3) to the amount exempted from the alternative minimum tax exemption (the exemption amount).

(2) *Apportionment.* Any reduction to the exemption amount shall be apportioned to the component members of a controlled group in the same manner that the amount of the exemption (provided in section 55(d)(2)) to the alternative minimum tax was allocated under section 1561(a). For rules to apportion the section 55(d)(2) exemption amount among the component members of a controlled group, see § 1.1561-3T(b) or (c).

(3) *Example.* (i) *Facts.* A controlled group of corporations consists of three members: X, Y, and Z. X owns all of the stock of Y and Z. Each corporation files its separate return on a calendar year basis. For calendar year 2007, the component members of this controlled group have an apportionment plan in effect. The group has chosen to apportion the entire section 55(d)(2) exemption amount of \$40,000 to Z. For 2007, X had alternative minimum taxable income (AMTI) of \$40,000, Y had AMTI of \$60,000 and Z had AMTI of \$100,000. Thus the total AMTI of the group is \$200,000.

(ii) *Calculating the reduction to the exemption amount.* Section 55(d)(3)(A) provides that the section 55(d)(2) exemption amount shall be reduced by an amount equal to 25 percent of the amount by which the AMTI of a corporation exceeds \$150,000. For the purpose of computing the group's AMTI, the AMTI of each of the component members, for their taxable years that have the same December 31st testing date, shall be taken into account. In accordance with these provisions, the \$40,000 exemption amount is

reduced by \$12,500 (25% × \$50,000 (\$200,000 – \$150,000)). Pursuant to the group's allocation plan, the entire \$12,500 reduction to the exemption amount is allocated to Z. Thus, after such allocation, Z's \$40,000 exemption amount is reduced to \$27,500 (\$40,000 – \$12,500).

\* \* \* \* \*

(e) *Short taxable years not including a December 31st date*—(1) *General rule.* If a corporation has a short taxable year not including a December 31st testing date and, after applying the rules of section 1561(b) and paragraph (e)(2)(i) of this section, it qualifies as a component member of the group with respect to its short taxable year (short-year member), then, for purposes of subtitle A of the Internal Revenue Code, the amount of any tax-benefit item described in section 1561(b) allocated to that component member's short taxable year shall be the amount specified in section 1561(a) for that item, divided by the number of corporations which are component members of that group on the last day of that component member's short taxable year. The component members of such group may not apportion, by their apportionment plan, an amount of such tax-benefit item to any short-year member that differs from an amount based on equal apportionment.

(2) *Additional rules.* For purposes of paragraph (e)(1) of this section—

(i) Section 1563(b) shall be applied as if the last day of the taxable year of a short-year member were substituted for December 31, and

(ii) The term *short taxable year* does not include any portion of a taxable year of a corporation for which its income is required to be included in a consolidated return under § 1.1502–76.

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

*Example 1. Formation of a new member of a controlled group.* (i) *Facts.* On January 2, 2007, corporation X transfers cash to newly formed corporation Y (which begins business on that date) and receives all of the stock of Y in return. X also owns all of the stock of corporation Z on each day of 2006 and 2007. X, Y, and Z have an apportionment plan in effect, apportioning the 15 percent tax-bracket amount as follows: 40% (\$20,000) to each of X and Y and 20% (\$10,000) to Z. X, Y, and Z each file a separate return with respect to the group's December 31st 2007 testing date. X is on a calendar taxable year and Z is on a fiscal taxable year ending on March 31. Y adopts a fiscal year ending on June 30 and timely files a tax return for its short taxable year beginning on January 2, 2007, and ending on June 30, 2007.

(ii) *Y's short taxable year.* On June 30, 2007, Y is a component member of a parent-subsidary controlled group of corporations composed of X, Y and Z. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to Y's short taxable year ending on June 30, 2007. Rather, Y is entitled to exactly  $\frac{1}{3}$  of such bracket amount, or \$16,667.

(iii) *The members' subsequent taxable years.* On December 31, 2007, X, Y and Z are

component members of a parent-subsidary controlled group of corporations. For their taxable years that include December 31, 2007 (X's calendar year ending December 31, 2007, Z's fiscal year ending March 31, 2008 and Y's fiscal year ending June 30, 2008), X, Y and Z apportion among themselves the full amount of all of the applicable tax brackets pursuant to their apportionment plan. For example, 40% of the 15 percent tax-bracket amount, or \$20,000, was apportioned to each of X and Y, and the remaining 10%, or \$10,000, was apportioned to Z.

*Example 2. Allocation of tax bracket to a liquidated member of a controlled group having a short taxable year.* (i) *Facts.* On January 1, 2007, corporation P owns all of the stock of corporations S<sub>1</sub>, S<sub>2</sub> and S<sub>3</sub> (the P group). Each of these four component members of the P group, with respect to the group's December 31, 2007 testing date, files its separate return on a calendar year basis. These members have an apportionment plan in effect (the P group plan) under which S<sub>1</sub> and S<sub>2</sub> are each entitled to 40% of the 15 percent tax-bracket amount (\$20,000), and P and S<sub>3</sub> are each entitled to 10% of the 15 percent tax-bracket amount (\$5,000). On May 31, 2007, S<sub>1</sub> liquidates and therefore files a return for the short taxable year beginning on January 1, 2007, and ending on May 31, 2007. On July 31, 2007, S<sub>2</sub> liquidates and therefore files a return for the short taxable year beginning on January 1, 2007 and ending on July 31, 2007. P and S<sub>3</sub> each file a return for their 2007 calendar taxable years.

(ii) *Apportionment of the 15 percent tax bracket to S<sub>1</sub> for its short taxable year.* On May 31, 2007, S<sub>1</sub> is a component member of the P group composed of P, S<sub>1</sub>, S<sub>2</sub> and S<sub>3</sub>. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to S<sub>1</sub>'s short taxable year ending on June 30, 2007. Rather, S<sub>1</sub> is entitled to exactly  $\frac{1}{4}$  of such bracket amount, or \$12,500.

(iii) *Apportionment of the 15 percent tax bracket to S<sub>2</sub> for its short taxable year.* On July 31, 2007, S<sub>2</sub> is a component member of the P group composed of P, S<sub>2</sub> and S<sub>3</sub>. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to S<sub>2</sub>'s short taxable year ending on June 30, 2007. Rather, S<sub>2</sub> is entitled to exactly  $\frac{1}{3}$  of such bracket amount, or \$16,667.

(iv) *Apportionment of the 15 percent tax bracket to P and S<sub>3</sub> for each of their calendar taxable years.* On December 31, 2007, P and S<sub>3</sub> are component members of the P group. Accordingly, for P and S<sub>3</sub>'s 2007 calendar taxable year, they are each apportioned \$25,000 of the 15 percent tax bracket, pursuant to the applicable P group plan.

*Example 3. Liquidation of member after its transfer to another controlled group.* (i) *Facts.* The facts are the same as in *Example 2*, except that P, on April 30, 2007, sold all of the stock of S<sub>2</sub> to the M-N controlled group. At the time of the sale, M and N are both unrelated to any members of the P group. As in *Example 2*, S<sub>2</sub> liquidates on July 31, 2007, and therefore files a tax return for its short taxable year beginning on January 1, 2007, and ending on July 31, 2007. Pursuant to the

sales agreement, the N-M group timely notified P that S<sub>2</sub> had liquidated.

(ii) *Controlled group analysis.* On April 30, 2007, the date of the sale of S<sub>2</sub>, the P group reasonably expected that S<sub>2</sub> would be treated as an excluded member with respect to its December 31, 2007 testing date. On that April 30th date, S<sub>2</sub> had been a member of the P group for less than one-half the number of days of what it expected would be a full 2007 calendar taxable year preceding December 31, 2007 (120 days (January 1–April 30) out of 364 days (January 1–December 30)). Yet, as a result of S<sub>2</sub>'s subsequent liquidation by the M-N group prior to December 31, 2007, S<sub>2</sub> became a component member of the P group with respect to the P group's December 31, 2007 testing date. With respect to that December 31st testing date, S<sub>2</sub> thus was a member of the P group for more than one-half of the number of days of its taxable year ending on July 31, 2007, which days proceeded December 31st 2007 (120 days (January 1–April 30 of 2007) out of 211 days (January 1–July 30 of 2007)). The allocation of the 15 percent tax-bracket amount to the P group members is determined in the same manner as in *Example 2* and, therefore, the bracket amounts allocated to P, S<sub>1</sub>, S<sub>2</sub> and S<sub>3</sub> are the same as determined in *Example 2*. The allocation of the bracket amounts would be the same if, at the time P sold all of the S<sub>2</sub> stock, the parties had made a section 338(h)(10) election.

*Example 4. Short taxable year including a December 31st date.* Corporation X owns all of the stock of corporations Y and Z. X, Y and Z each file separate returns. X and Y are on a calendar taxable year and Z is on a fiscal taxable year beginning October 1 and ending September 30. On January 2, 2007, Z liquidates. Because Z's final taxable year (beginning on October 1, 2006 and ending on January 2, 2007) includes a December 31st date, that is, December 31, 2006, it is not subject to the short taxable year rule of section 1561(b) and paragraph (e) of this section. Accordingly, Z is a component member of the X-Y-Z group, for the group's December 31, 2006 testing date. Thus, the rules of this paragraph (e) do not limit the amount of any of the tax-benefit items of section 1561(a) available to Z or to this controlled group.

(f) *Effective date*—(1) *Applicability dates*—(i) *Paragraphs (a) and (b) of this section.* Paragraphs (a) and (b) of this section apply to any taxable year beginning after December 31, 2007. However, taxpayers may apply paragraphs (a) and (b) of this section to any Federal income tax return filed on or after December 26, 2007, provided that all of the component members of a controlled group of corporations apply such paragraphs (a) and (b).

(ii) *Paragraph (c) of this section.* Paragraph (c) of this section applies to any taxable year beginning on or after December 22, 2006. However, taxpayers may apply paragraph (c) of this section to any Federal income tax return filed on or after December 22, 2006, provided



that all of the component members of a controlled group of corporations apply such paragraph (c).

(iii) *Paragraph (e) of this section.* Paragraph (e) of this section applies to any taxable year beginning on or after December 26, 2007. However, taxpayers may apply paragraph (e) of this section to any Federal income tax return filed on or after December 26, 2007.

(2) *Expiration dates.* The applicability of paragraph (c) of this section will expire on December 21, 2009. The applicability of paragraphs (a), (b) and (e) of this section will expire on December 21, 2010.

■ **Par. 6.** Section 1.1563-1T is amended by revising the heading and paragraphs (b)(1), (b)(2)(i), (b)(2)(ii) introductory text, (b)(3), and (e) to read as follows:

**§ 1.1563-1T Definition of controlled group of corporations and component members and related concepts (temporary).**

\* \* \* \* \*

(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 the above 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) *Testing date* is 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; and

(B) *Testing period* is 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 after 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) 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) 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—

\* \* \* \* \*

(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), (C), (D), or (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.

\* \* \* \* \*

(e) *Effective date*—(1) *Applicability date.* Paragraph (b) of this section applies to any taxable year beginning on or after December 26, 2007. However, taxpayers may apply paragraph (b) of this section to any Federal income tax return filed on or after December 26, 2007. Paragraphs (a) and (b) (as contained in 26 CFR part 1 in effect on April 1, 2007), and paragraphs (c)(1), (c)(2)(iv) and (d) of this section apply to taxable years beginning on or after December 22, 2006. However, taxpayers may apply the paragraphs described in the preceding sentence to any Federal income tax return filed on or after December 22, 2006. Paragraphs (c)(2)(i) through (iii) of this section apply to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of paragraph (b) of this section will expire on December 21, 2010. The applicability of paragraphs (a) and (b) (as contained in 26 CFR part 1 in effect on April 1, 2007), and paragraphs (c)(1), (c)(2)(iv) and (d) of this section will expire on December 21, 2009. The applicability of paragraphs (c)(2)(i) through (iii) of this section will expire on May 26, 2009.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 17, 2007.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E7-24874 Filed 12-21-07; 8:45 am]

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**DEPARTMENT OF JUSTICE**

**Bureau of Alcohol, Tobacco, Firearms, and Explosives**

**27 CFR Part 447**

[Docket No. ATF-9F; AG Order No. 2922-2007]

**RIN 1140-AA29**

**U.S. Munitions Import List and Import Restrictions Applicable to Certain Countries (2005R-5P)**

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), Department of Justice.

**ACTION:** Final rule.

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**SUMMARY:** This final rule conforms the regulations in 27 CFR Part 447 to the revised International Traffic in Arms