taxable year under section 441(f)(1), the provisions of this part II shall be applied in accordance with the special rule of section 441(f)(2)(A). See §1.441–2.

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

(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 §1.1561–1T as contained in 26 CFR part 1 in effect on April 1, 2009.

[T.D. 9476, 74 FR 68532, Dec. 28, 2009]

§ 1.1561–2 Special rules for allocating reductions of certain section 1561(a) tax-benefit items.

(a) Additional tax—(1) Calculation—(i) In general. For the purpose of determining the amount, if any, of the additional tax imposed by section 11(b)(1) (the additional tax), the taxable incomes of all of the component members of a controlled group of corporations shall be combined to determine whether either of the income thresholds for imposing the additional tax have been attained.

(ii) Special rules. For purposes of paragraph (a)(1)(i) of this section—

(A) Component member means a corporation that is apportioned some part of any applicable tax bracket amount; and

(B) Taxable income means the positive taxable income of a component member for its entire tax year (even if it was not a member of the group for each day of that tax year) that includes the same December 31st testing date, which is also applicable to the other component members of that same controlled group.

(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 may 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 it 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;
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(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 subject 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% × $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 the group from using the 15 percent tax bracket is $9,500 ($17,000 (34% × $50,000) minus $7,500 (15% × $50,000)).

(B) Regular tax of group subject 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% × $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 the group from using the 25 percent tax bracket is $2,250 ($8,500 (34% × $25,000) minus $6,250 (25% × $25,000)).

(C) Regular tax of group subject 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 $12,250 (34% × $125,000 ($200,000 – $75,000) (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% × $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
Example 1. (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 $1,766 ($809 + $957). See Step 5.

(ii) Additional tax analysis. With regard to X and Y’s 2007 tax years, X and Y together owed $5,000 of additional tax, as calculated in Example 1. Y’s 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 tax year, as based on the group’s December 31st testing date, was $100,000.

(ii) Controlled group analysis. On December 31st, 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 excluded member of the M–N controlled group. Therefore, on December 31st, 2007, X and Y 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. 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

<table>
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<th>Name of component member</th>
<th>Amount of tax owed under the 15% tax bracket</th>
<th>Amount of tax owed under the 25% tax bracket</th>
<th>Amount of tax owed under the 34% tax bracket</th>
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</table>
§ 1.1561–3

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Allocation of the section 1561(a) tax items.

(a) Filing of form—(1) In general. For each tax year that a corporation is a member of the same controlled group of corporations, its tax return for that year shall be filed on Schedule O or any successor form with the Federal income tax return for that member's tax year that includes a particular testing date. Each such corporation must file that form with its return whether or not—

(i) An apportionment plan is in effect; or

(ii) The corporation is a member of a controlled group of corporations, see §1.1561–3(b) or (c).

(3) Examples. The provisions of this paragraph (b) may be illustrated by the following example:

Example. (i) Facts. A controlled group of corporations consists of three members, X, Y and Z. Each corporation files its separate return on a calendar year basis. For calendar year 2007, 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 (but not below zero) 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 tax 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 apportionment 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).

[T.D. 9476, 74 FR 68533, Dec. 28, 2009]

§ 1.1561–3

Allocation of the section 1561(a) tax items.

(a) Filing of form—(1) In general. For each tax year that a corporation is a member of the same controlled group of corporations, its tax return for that year shall be filed on Schedule O or any successor form with the Federal income tax return for that member's tax year that includes a particular testing date. Each such corporation must file that form with its return whether or not—

(i) An apportionment plan is in effect; or

(ii) The corporation is a member of a controlled group of corporations, see §1.1561–3(b) or (c).

(3) Examples. The provisions of this paragraph (b) may be illustrated by the following example:

Example. (i) Facts. A controlled group of corporations consists of three members, X, 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 (but not below zero) 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 tax 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 apportionment 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).

[T.D. 9476, 74 FR 68533, Dec. 28, 2009]