

corporations for their tax years which include a particular December 31st date, or, in the case of a short taxable year member (see section 1561(b) and § 1.1561-2(e)), the date substituted for that December 31st date. The amount of the tax items enumerated in section 1561(a) available to any of the component members of a controlled group shall be determined for purposes of subtitle A of the Code as if the component members were a single corporation. Certain other tax items also set forth in section 1561(a) (for example, the additional tax imposed by section 11(b)(1) and the section 55(d)(3) phase out of the alternative minimum tax exemption amount) will be determined by combining the positive taxable income or positive alternative minimum taxable income of the component members of such a group and then allocating the amount of such items among those members.

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

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

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

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

(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 § 1.1561-3(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 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;

(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 this 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 this 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 \$42,500 (34% × \$125,000 (\$200,000 (total TI) – \$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 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 × \$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 × \$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 × \$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 × \$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 × \$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 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 additional member of the X–Y group on December 31st 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 31st, 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 tax 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 re-determined. 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 of the component

members of a controlled group of corporations 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 (the exemption amount). For purposes of the preceding sentence, *alternative minimum taxable income* means the positive alternative minimum 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.

(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 § 1.1561-3(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. 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 (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 ( $25\% \times \$50,000$  ( $\$200,000 - \$150,000$ )). 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).

(c) *Accumulated earnings credit.* The component members of a controlled group of corporations are permitted to allocate the amount of the accumulated earnings credit unequally if they have an apportionment plan in effect.

(d) [Reserved]

(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 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 an apportionment plan, an amount of such tax-benefit item to any short-year member that differs from equal apportionment of that item.

(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 31st; and

(ii) The term short taxable year does not refer to any portion of a tax year of a corporation for which its income is required to be included in a consolidated return pursuant to § 1.1502-76(b).

(3) *Calculation of the additional tax.* A short-year member (as defined in paragraph (e)(1) of this section) for its short taxable year calculates its additional tax liability imposed by section 11(b)(1) only on its own income, and therefore the subsequent calculation of the additional tax liability with regard to the remaining members of the group will not include the income of this short-year member.

(4) *Calculation of the alternative minimum tax.* If a component member has a tax year of less than 12 months, wheth-

er or not such tax year includes a December 31st date, see section 443(d) for the annualization method required for calculating the alternative minimum tax.

(5) *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 tax year and Z is on a fiscal tax 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 parentsubsidiary 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 tax years.* On December 31st, 2007, X, Y and Z are component members of a parent-subsidiary controlled group of corporations. For their tax years that include December 31st, 2007 (X's calendar year ending December 31st, 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. Allocating a tax bracket to the short taxable year of a liquidated member of a controlled group—*(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 31st, 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 tax 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 ¼ 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 ¼ 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 tax years.* On December 31st, 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 tax 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 31st, 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 tax year preceding December 31st, 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 31st, 2007, S<sub>2</sub> became a component member of the P group with respect to the P group's December 31st, 2007 testing date. With respect to that De-

cember 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 tax 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 tax 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 tax year and Z is on a fiscal tax year beginning October 1 and ending September 30. On January 2, 2007, Z liquidates. Because Z's final tax year (beginning on October 1, 2006 and ending on January 2, 2007) includes a December 31st date, that is, December 31, 2006, it is therefore not subject to the short taxable year rule provided by 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 31st, 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/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 § 1.1561-2T as contained in 26 CFR part 1 in effect on April 1, 2009.

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### § 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 component member of the same controlled group of corporations on a December 31st (its testing date), or, in the case of a short-year member (see section 1561(b) and § 1.1561-2(e)), the date substituted for that December 31st date (its testing date), such corporation and all the other component members of such group each must file the required form (that is, Schedule O or any successor form) with the Federal income tax return for that component member's tax year that includes a particular testing date. Each such corporation must file that form with its return whether or not—