529.1186 to reflect this change of sponsorship.

Following this change of sponsorship, Nicholas Piramal India Ltd. UK is no longer the sponsor of an approved application. In addition, Piramal Healthcare Ltd. is not currently listed in the animal drug regulations as a sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for Nicholas Piramal India Ltd. UK to add entries for Piramal Healthcare Ltd.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 529

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1) alphabetically add an entry for ''Piramal Healthcare Ltd.'' and remove the entry for ''Nicholas Piramal India Ltd. UK''; and in the table in paragraph (c)(2) remove the entry for ''066112'' and numerically add an entry for ''065085'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	

Firm name and address	Drug labeler code
Piramal Healthcare Ltd., Piramal Tower, Ganpatrao Kadam Marg, Lower Parel, Mumbai - 400 013, India	065085
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
065085	Piramal Healthcare Ltd., Piramal Tower, Ganpatrao Kadam Marg, Lower Parel, Mumbai - 400 013, India
* * * * *	

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.1186 [Amended]

■ 4. In § 529.1186, in paragraph (b), remove ''066112'' and in its place add ''065085''.

Dated: December 17, 2009.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E9–30590 Filed 12–24–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9476]

RIN 1545–BI62; RIN 1545–BG39

Apportionment of Tax Items Among the Members of a Controlled Group of Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance to corporations that are component members of a controlled group of corporations and to consolidated groups filing life-nonlife Federal income tax returns. They provide guidance to component members regarding the apportionment of tax benefit items and the amount and type of information they are required to submit with their returns.

DATES: *Effective Date:* These regulations are effective on *December 28, 2009.*

Applicability Date: For dates of applicability, see §§ 1.1502–43(e), 1.1502–47(t), 1.1561–1(d), 1.1561–2(f) and 1.1561–3(d). In accordance with section 7805(b)(1), respective portions of this Treasury decision are applicable to consolidated Federal income tax returns due on or after December 21, 2009 or to taxable years beginning on or after December 21, 2009, as the case may be.

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

SUPPLEMENTARY INFORMATON:

Background

On December 22, 2006, the IRS and the Treasury Department published several temporary regulations, including temporary regulations under sections 1502 and 1561. See TD 9304 (71 FR 76904), 2007–1 CB 423. Also on December 22, 2006, the IRS and the Treasury Department issued a notice of proposed rulemaking cross-referencing those temporary regulations. See REG–161919–05 (71 FR 76955), 2007–1 CB 463. For administrative reasons, these regulations were relocated in REG–113688–09. See TD 9451 (74 FR 25147), 2009–23 IRB 1060.

On December 26, 2007, the IRS and the Treasury Department published several temporary regulations, including an additional temporary regulation under section 1561. See TD 9369 (72 FR 72929), 2008–6 IRB 394. Also on December 26, 2007, the IRS and the Treasury Department issued a notice of proposed rulemaking cross-referencing those temporary regulations. See REG–104713–07 (72 FR 72970), 2008–6 IRB 409.

Explanation of Provisions

This Treasury decision adopts the proposed regulations (§§ 1.1502–43, 1.1502–47, 1.1561–0, 1.1561–1, 1.1561–2 and 1.1561–3) with no substantive changes. However, this Treasury decision makes clarifying changes to §§ 1.1561–2 and 1.1561–3. These changes are discussed in the following portion of this preamble.

1. *Only the Positive Taxable Income or Positive Alternative Minimum Taxable Income of the Component Members of a Controlled Group of Corporations Shall Be Combined for Purposes of Determining the Amount of*

the Additional Tax Imposed by Section 11(b)(1) and the Reduction in the Alternative Minimum Tax Exemption Amount Under Section 55(d)(3), Respectively.

Section 1561(a) provides that in computing the amount of additional tax imposed by section 11(b)(1) (the additional tax), and the phase-out of the alternative minimum tax exemption amount under section 55(d)(3) (the exemption amount), the component members of a controlled group of corporations (as defined in section 1563) shall, as a first step, combine their taxable incomes (or alternative minimum taxable incomes) for their tax years that include the same December 31st date. This taxable income (or alternative minimum taxable income) is for the entire tax year of a component member, even if it was not a member of the group for each day of that tax year. In the case of the determination of the additional tax, the calculation is limited to the taxable incomes of those component members to which any part of the tax bracket amounts are apportioned.

The question has arisen whether a component member that incurs a loss for a tax year may apply that loss to reduce the amount of the combined taxable income (or combined alternative minimum taxable income) of the controlled group for purposes of determining the amount of the additional tax or the reduction in the exemption amount, respectively. This Treasury decision clarifies that, for these purposes, only the positive taxable incomes (or positive alternative minimum taxable incomes) of those component members can be combined.

Only if the members of an affiliated group of corporations, as defined in section 1504, elect to file a consolidated return, as defined in section 1502, may these members offset their income and losses in determining their consolidated Federal income tax liability. See, for example, *Woolford Realty Co.* v. *Rose,* 286 U.S. 319 (1932). Since the members of a controlled group have not elected to file a consolidated return (even if such controlled group meets the section 1504 definition of an affiliated group), they may not offset their income and losses in determining their combined Federal income tax liability. Hence, they cannot offset such income and losses to determine their combined additional tax liability or their combined alternative minimum taxable income for purposes of determining the reduction in the exemption amount.

2. *A Component Member That Has a Short Taxable Year That Does Not Include a December 31st Date Calculates Its Additional Tax and Alternative Minimum Tax Liability on Just Its Own Income.*

Section 1561(b) and § 1.1561–2(e) provide rules for apportioning the tax bracket amounts and accumulated earnings credit to a member with a short taxable year that does not include a December 31st date (a short-year member). However, § 1.1561–2(e) does not provide guidance to a short-year member for determining its additional tax liability. This Treasury decision clarifies that such a member determines its additional tax liability on its own income for such short taxable year. Further, such income is not combined with the taxable incomes of the other component members of the same controlled group for purposes of determining the additional tax liability of such other component members.

In addition, for purposes of a short-year member determining its alternative minimum tax liability, this Treasury decision includes a reference to section 443(d). Section 443(d) provides that if a taxpayer has a return of less than 12 months (whether or not the tax year of that taxpayer includes a December 31st date), its alternative minimum tax liability is determined on an annualized basis.

3. *Clarification of the Rules Under Which an Apportionment Plan Is Terminated.*

Section 1.1561–3(c)(3) provides the circumstances under which an apportionment plan is terminated. Paragraphs (iii) and (iv) of § 1.1561–3(c)(3) of the proposed regulations provided:

(iii) Any corporation which was a component member of such group on the particular December 31 is not a component member of such group on such succeeding December 31; or

(iv) Any corporation which was not a component member of such group on the particular December 31 is a component member of such group on such succeeding December 31.

It is often not feasible for the members of a controlled group to know for the current tax year whether a corporation will or will not be a component member of such group for the succeeding tax year. Accordingly, this Treasury decision clarifies these paragraphs by rewriting them to refer to the previous tax year and the current tax year, instead of the succeeding tax year. In addition, this Treasury decision clarifies that the fact that a corporation is joining or leaving a consolidated group, when such consolidated group is treated collectively as constituting one component member of the controlled group, will not serve to affect the ongoing status of such controlled group, provided that, after that corporation has either left or joined such consolidated group, such consolidated group remains in existence within the meaning of § 1.1502–75(d).

The IRS and the Treasury Department received no written or electronic comments from the public in response to the notice of proposed rulemaking and no public hearing was requested or held.

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 these regulations. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Grid Glyer, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of 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 is amended by adding entries in numerical order and removing the entries for §§ 1.1502–43T and 1.1561–2T to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–43 also issued under 26 U.S.C. 1502. * * *

Section 1.1561–2 also issued under 26 U.S.C. 1561. * * *

§ 1.924(a)–1T [Amended]

■ **Par. 2.** Section 1.924(a)–1T (j)(2)(i), fifth sentence, is amended by removing the language ''§ 1.1561–3T'' and adding ''§ 1.1561–3'' in its place.

■ **Par. 3.** Section 1.924(a)–1T (j)(2)(i), sixth sentence, is amended by removing

the language ''§ 1.1561–3T(a)'' and adding ''§ 1.1561–3'' in its place.

■ **Par. 4.** Section 1.1502–43 is amended by revising paragraphs (d) and (e) to read as follows:

§ 1.1502–43 Consolidated accumulated earnings tax.

* * * * *

(d) *Consolidated accumulated earnings credit*—(1) *In general.* [Reserved]

(2) *Special rule if a consolidated group is part of a controlled group.* If a consolidated group is treated collectively as being one component member of a controlled group, or if each member of a consolidated group is treated as being a separate component member of a controlled group, see section 1561 for determining the portion of the accumulated earnings credit to be allocated to such group or to such members.

(e) *Effective/applicability date.* This section applies to any consolidated Federal income tax return due (without extensions) on or after December 21, 2009. However, a consolidated group may apply this section to any consolidated Federal income tax return filed on or after December 21, 2009. For returns due before December 21, 2009, see § 1.1502–43T as contained in 26 CFR part 1 in effect on April 1, 2009.

§ 1.1502–43T [Removed]

■ **Par. 5.** Section 1.1502–43T is removed.

■ **Par. 6.** Section 1.1502–47 is amended by revising paragraphs (s) and (t) to read as follows:

§ 1.1502–47 Consolidated returns by life-nonlife groups.

* * * * *

(s) *Filing requirements*—(1) *In general.* To file a consolidated income tax return for a life-nonlife consolidated group, the common parent shall—

(i) File the applicable consolidated corporate income tax return: a Form 1120–L, ''U.S. Life Insurance Company Income Tax Return,'' where the common parent is a life insurance company; a Form 1120–PC, ''U.S. Property and Casualty Insurance Company Income Tax Return,'' where the common parent is an insurance company, other than a life insurance company; or a Form 1120, ''U.S. Corporation Income Tax Return,'' where the common parent is any other type of corporation;

(ii) Indicate clearly on the face of this return that such corporate tax return is a life-nonlife return;

(iii) Show any set offs required by paragraphs (g), (m), and (n) of this section;

(iv) Report separately the nonlife consolidated taxable income or loss, determined under paragraph (h) of this section, on a Form 1120 or 1120–PC (whether filed by the common parent or as an attachment to the consolidated return), as the case may be, of all nonlife members of the consolidated group; and

(v) Report separately the consolidated partial Life Insurance Company Taxable Income (as defined by paragraph (d)(3) of this section), determined under paragraph (j) of this section, on a Form 1120–L (whether filed by the common parent or as an attachment to the consolidated return), of all life members of the consolidated group.

(2) *Cross reference.* See § 1.1502–75(j), regarding the inclusion in a corporate tax return of the required statements and schedules for subsidiaries.

(t) *Effective/applicability date.* Paragraph (s) of this section applies to any consolidated Federal income tax return due (without extensions) on or after December 21, 2009. However, a consolidated group may apply paragraph (s) of this section to any consolidated Federal income tax return filed on or after December 21, 2009. For returns due before December 21, 2009, see § 1.1502–47T as contained in 26 CFR part 1 in effect on April 1, 2009.

§ 1.1502–47T [Removed]

■ **Par. 7.** Section 1.1502–47T is removed.

■ **Par. 8.** Section 1.1561–0 is added to read as follows:

§ 1.1561–0 Table of contents.

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

§ 1.1561–1 General rules regarding certain tax benefits available to the component members of a controlled group of corporations.

(a) In general.
(1) Limitation.
(2) Definitions.
(b) Special rules.
(1) S Corporation.
(2) 52–53-week taxable year.
(c) Tax avoidance.
(d) Effective/applicability date.

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

(a) Additional tax.
(1) Calculation.
(2) Apportionment.
(3) Examples.
(b) Reduction to the amount exempted from the alternative minimum tax.
(1) Calculation.
(2) Apportionment.
(3) Examples.
(c) Accumulated earnings credit.
(d) [Reserved].
(e) Short taxable year not including a December 31st date.
(1) General rule.
(2) Additional rules.
(3) Calculation of the additional tax.
(4) Calculation of the alternative minimum tax.
(5) Examples.
(f) Effective/applicability date.

§ 1.1561–3 Allocation of the section 1561(a) tax items.

(a) Filing of form.
(1) In general.
(2) Exception for component members that are members of a consolidated group.
(b) No apportionment plan in effect.
(c) Apportionment plan in effect.
(1) Adoption of plan.
(2) Limitation on adopting a plan.
(3) Termination of plan.
(d) Effective/applicability date.

§ 1.1561–0T [Removed]

■ **Par. 9.** Section 1.1561–0T is removed.

■ **Par. 10.** Section 1.1561–1 is added to read as follows:

§ 1.1561–1 General rules regarding certain tax benefits available to the component members of a controlled group of corporations.

(a) *In general*—(1)—*Limitation.* Part II (section 1561 and following) of subchapter B of chapter 6 of the Internal Revenue Code (Code) (part II) provides rules to limit the amounts of certain specified tax benefit items of component members of a controlled group of 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.

§ 1.1561–1T [Removed]

■ **Par. 11.** Section 1.1561–1T is removed.

■ **Par. 12.** Section 1.1561–2 is added to read as follows:

§ 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 December31st 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% × $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% × $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, whether 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 parent-subsidiary 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 ⅓ 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_1, S_2 and S_3 (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_1 and S_2 are each entitled to 40% of the 15 percent tax-bracket amount ($20,000), and P and S_3 are each entitled to 10% of the 15 percent tax-bracket amount ($5,000). On May 31, 2007, S_1 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_2 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_3 each file a return for their 2007 calendar tax years.

(ii) *Apportionment of the 15 percent tax bracket to* S_1 for its short taxable year. On

May 31, 2007, S_1 is a component member of the P group composed of P, S_1, S_2 and S_3. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to S_1's short taxable year ending on June 30, 2007. Rather, S_1 is entitled to exactly ¼ of such bracket amount, or $12,500.

(iii) *Apportionment of the 15 percent tax bracket to* S_2 for its short taxable year. On July 31, 2007, S_2 is a component member of the P group composed of P, S_2 and S_3. Pursuant to paragraph (e)(1) of this section, the group may not apportion any amount of the 15 percent tax bracket to S_2's short taxable year ending on June 30, 2007. Rather, S_2 is entitled to exactly ⅓ of such bracket amount, or $16,667.

(iv) *Apportionment of the 15 percent tax bracket to P and* S_3 for each of their calendar tax years. On December 31st, 2007, P and S_3 are component members of the P group. Accordingly, for P and S_3'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_2 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_2 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_2 had liquidated.

(ii) *Controlled group analysis.* On April 30, 2007, the date of the sale of S_2, the P group reasonably expected that S_2 would be treated as an excluded member with respect to its December 31st, 2007 testing date. On that April 30th date, S_2 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_2's subsequent liquidation by the M–N group prior to December 31st, 2007, S_2 became a component member of the P group with respect to the P group's December 31st, 2007 testing date. With respect to that December 31st testing date, S_2 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_1, S_2 and S_3 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_2 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.

§ 1.1561–2T [Removed]

■ **Par. 13.** Section 1.1561–2T is removed.

■ **Par. 14.** Section 1.1561–3 is added to read as follows:

§ 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—

(i) An apportionment plan is in effect; or

(ii) Any change is made to the group's apportionment of its section 1561(a) tax benefit items from the previous year.

(2) *Exception for component members that are members of a consolidated group.* If any of the component members of a controlled group of corporations are also members of a consolidated group, the parent of such consolidated group shall file only one form on behalf of all such members. Such form shall contain the information required for each such member.

(b) *No apportionment plan in effect.* If the component members of a controlled group of corporations do not have an apportionment plan in effect, the amounts of the section 1561(a) items must be divided equally among all such members. For purposes of the preceding sentence, if any of the component members of a controlled group of corporations are also members of a consolidated group, such members will each be treated as a separate component member of the controlled group.

(c) *Apportionment plan in effect*—(1) *Adoption of plan.* The component members of a controlled group of corporations consent to the adoption (or amendment) of an apportionment plan by checking the box to that effect on such form. For purposes of this paragraph (c)—

(i) An apportionment plan that is adopted (including a plan that has been amended) continues in effect until it is terminated;

(ii) A consolidated group is treated collectively as one component member of such group. This treatment occurs even where a member of that consolidated group has joined or left the group, if after such corporation joins or leaves the consolidated group, that group remains in existence, pursuant to § 1.1502–75(d); and

(iii) The members must allocate the amounts of the section 1561(a) items between/among themselves as described in the plan.

(2) *Limitation on adopting a plan*—(i) *Sufficient statute of limitations period for making an assessment of tax.* The members may only adopt or amend such a plan if there is at least one year remaining in the statutory period (including any extensions thereof) for the assessment of a deficiency against every member the tax liability of which would be increased by the adoption of such a plan.

(ii) *Insufficient statute of limitations period for making an assessment of tax.* If any member cannot satisfy the requirement of paragraph (c)(2)(i) of this section, the members may not adopt or amend such a plan unless the member not satisfying such requirement has entered into an agreement with the Internal Revenue Service to extend the statute of limitations for the limited purpose of assessing any deficiency against such member attributable to the adoption of such a plan.

(3) *Termination of plan.* An apportionment plan that is in effect for the component members of a controlled group with respect to a preceding December 31st is terminated with respect to the current December 31st if—

(i) Each member of such group consents to the termination of such a plan for the current December 31st by

checking the box to that effect on its form;

(ii) The controlled group ceases to remain in existence (within the meaning of section 1563(a)) during the calendar year ending on the current December 31st;

(iii) Any corporation which was a component member of such group on the preceding December 31st is not a component member of such group on the current December 31st; or

(iv) Any corporation which was not a component member of such group on the preceding December 31st is a component member of such group on the current December 31st.

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

§ 1.1561–3T [Removed]

■ **Par. 15.** Section 1.1561–3T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: December 17, 2009.

Michael Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–30547 Filed 12–22–09; 4:15 pm]

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AB20

Offset of Tax Refund Payments To Collect Past-Due, Legally Enforceable Nontax Debt

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury, Financial Management Service (FMS), is amending its regulation governing the centralized offset of tax refund payments to collect nontax debts owed to the United States. The amendment authorizes the offset of Federal tax refunds irrespective of the amount of time the debt has been outstanding.

DATES: This rule is effective December 28, 2009.

FOR FURTHER INFORMATION CONTACT: Thomas Dungan, Senior Policy Analyst, at (202) 874–6660, or Tricia Long, Senior Counsel, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

I. Background

The Food, Conservation and Energy Act of 2008, Public Law 110–234, Section 14219, 22 Stat. 923 (2008) (''the Act'') amended the Debt Collection Act of 1982 (as amended by the Debt Collection Improvement Act of 1996) to authorize the offset of Federal nontax payments (for example, contract and salary payments) to collect delinquent Federal debt without regard to the amount of time the debt has been delinquent. Prior to this change, nontax payments could be offset only to collect debt that was delinquent for a period of less than ten years.

There is no similar time limitation in the statutes authorizing offset of Federal tax refund payments to collect Federal nontax debts (*see* 26 U.S.C. 6402(a) and 31 U.S.C. 3720A). However, Treasury had imposed a time limitation on collection of debts by tax refund offset in order to create uniformity in the way that it offset payments. Now that the ten-year limitation has been eliminated for the offset of nontax payments, the rationale for including a ten-year limitation for the offset of tax refund payments no longer applies. Therefore, on June 11, 2009, Treasury issued a notice of proposed rulemaking proposing to remove the limitations period by explicitly stating that no time limitation shall apply. *See* 74 FR 27730. The proposed rule explained that by removing the time limitation, all Federal nontax debts, including debts that were ineligible for collection by offset prior to the removal of the limitations period, may now be collected by tax refund offset.

Additionally, to avoid any undue hardship, Treasury proposed the addition of a notice requirement applicable to debts that were previously ineligible for collection by offset because they had been outstanding for more than ten years. For such debts, creditor agencies must certify to FMS that a notice of intent to offset was sent to the debtor after the debt became ten years delinquent. This notice of intent to offset is meant to alert the debtor that any debt the taxpayer owes to the United States may now be collected by offset, even if it is greater than ten years delinquent. It also allows the debtor additional opportunities to dispute the debt, enter into a repayment agreement or otherwise avoid offset. This requirement will apply even in a case where notice was sent prior to the debt becoming ten years old. This requirement applies only with respect to debts that were previously ineligible for collection by offset because of the previous time limitation. Accordingly, it does not apply with respect to debts that could be collected by offset without regard to any time limitation prior to this regulatory change—for example, Department of Education student loan debts.

II. Discussion of Comments

Public Comments

FMS published a Notice of Proposed Rulemaking with request for comments on June 11, 2009 at 74 FR 27730. Accordingly, FMS is issuing this Final Rule after a review of the comments received.

FMS received two comments on the proposed rule. One commenter expressed general support for the rule.

The second commenter questioned whether the rule should be promulgated if the rule extended the time limitation on the collection of debts owed to entities receiving Federal financial relief in times of economic crisis. The commenter expressed concern that such a rule would have a larger negative impact on the economy than indicated in the notice of proposed rulemaking. This rule, however, only applies to the collection of nontax debts owed to the United States. It does not apply to debts owed to private entities receiving Federal assistance. Therefore, this rule will not have the effect anticipated by the commenter.

FMS did not make any changes to the proposed rule based on the comments received.

III. Regulatory Analysis

Special Analysis

FMS has determined that good cause exists to make this final rule effective upon publication without providing the 30-day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. Treasury has been collecting delinquent Federal nontax through tax refund offset since 1986. This final rule only provides guidance that is expected to facilitate Federal agencies' participation in the tax refund offset program with respect to debts that were outstanding more than ten years prior to the effective date of this rule. Therefore, FMS believes that good cause exists, and that it is in