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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9522]

RIN 1545-BG94

#### Clarification of Controlled Group Qualification Rules

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

**ACTION:** Final regulation.

**SUMMARY:** This document contains a final regulation that applies to a controlled group of corporations. The regulation clarifies that a corporation that satisfies the controlled group rules for stock ownership and qualification is a member of such group, without regard to its status as a component member.

**DATES:**

*Effective Date:* This regulation is effective on April 11, 2011.

*Applicability Date:* For date of applicability, see § 1.1563-1(e).

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

**SUPPLEMENTARY INFORMATION:**

#### Background and Explanation of Provisions

This document contains an amendment to 26 CFR part 1. On September 29, 2009, a notice of proposed rulemaking (NPRM) regarding the controlled group qualification rules under § 1.1563-1 was published in the **Federal Register** (REG-135005-07; 74 FR 49829). The NPRM proposed to amend § 1.1563-1 to clarify that a corporation described in section 1563(b) as an excluded member of a controlled group of corporations is nevertheless a member of the group. The NPRM further proposed to add an example demonstrating that a controlled group of corporations can consist solely of excluded members.

One comment was received and no public hearing was requested or held. The public comment concerned the treatment of gross receipts between members of a controlled group of corporations for purposes of section 41,

which provides a tax credit to taxpayers for increasing their research activities. In particular, the comment refers to CCA 200233011, dated May 1, 2002. In that CCA, the IRS Office of Chief Counsel concluded first that a domestic corporation and its majority-owned foreign subsidiaries should be treated as a single taxpayer for purposes of sections 41(f)(1)(A)(i), 41(f)(5) and 1563(a) because they were members of the same controlled group of corporations even though the foreign subsidiaries were treated as excluded members of the group.

Second, the IRS Office of Chief Counsel concluded that, given the particular facts and circumstances of that case, the taxpayer should exclude sales to its majority-owned foreign subsidiaries when computing gross receipts for purposes of determining its base amount under section 41(c). The commenter requested guidance on the facts and circumstances that caused the IRS Office of Chief Counsel to exclude such sales in computing gross receipts. The IRS and the Treasury Department believe that the requested guidance is outside the scope of the NPRM, which only involves the first issue addressed in the CCA, and is consistent with the conclusion of the CCA on that issue.

However, the final regulation makes one clarifying change. Paragraph (a)(1)(ii) of the proposed regulation states that in determining whether a corporation is included in a controlled group of corporations, section 1563(b) shall not be taken into account. Section 1563(b) defines a component member, including an excluded member and an additional member. Paragraph (a)(1)(ii) as now revised will also provide that the underlying regulation, § 1.1563-1(b), which defines a component member, shall not be taken into account in determining the members of a controlled group.

#### Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation and because this regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal author of this regulation is Grid Glycer of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in its 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 continues to read in part as follows:

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

■ **Par. 2.** Section 1.1563-1 is amended by:

■ **1.** Redesignating paragraph (a)(1)(ii) as paragraph (a)(1)(iii) and adding new paragraph (a)(1)(ii).

■ **2.** Adding *Example 4* to paragraph (b)(4).

■ **3.** Adding a sentence at the end of paragraph (e).

The additions read as follows:

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

(a) \* \* \*

(1) \* \* \*

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

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

*Example 4.* Individual A owns all of the stock of corporations X, Y and Z. Each of these corporations is an S corporation. X, Y, and Z are each members of a brother-sister controlled group, even though each such corporation is treated as an excluded member of such group. See § 1.1563-1(b)(2)(ii)(C).

\* \* \* \* \*

(e) *Effective/Applicability date.* \* \* \* Paragraph (a)(1)(ii) of this section

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

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: April 4, 2011.

**Michael Mundaca,**

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

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Parts 19 and 30

[Docket No. TTB-2008-0004; T.D. TTB-92a; Re: T.D. TTB-92]

RIN 1513-AA23

#### Revision of Distilled Spirits Plant Regulations; Corrections

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision; correction.

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau published a final rule revising its distilled spirits plant regulations in the **Federal Register** of February 16, 2011 (76 FR 9080). That final rule contained several typographical and textual errors. This document corrects those errors.

**DATES:** *Effective Date:* April 18, 2011.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Thiemann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20220; telephone 202-453-2265.

**SUPPLEMENTARY INFORMATION:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) recently published a final rule completely revising its distilled spirits plant regulations as contained in 27 CFR part 19. TTB published this final rule as T.D. TTB-92 in the **Federal Register** of February 16, 2011 (see 76 FR 9080). The final rule also amended cross-references to part 19 found in 27 CFR parts 1, 17, 24, 26, 28, 30 and 31. T.D. TTB-92 is effective on April 18, 2011.

After its publication, TTB found that T.D. TTB-92 contained several typographical and textual errors in the revised regulations in part 19 and a textual error in an amendatory instruction for part 31. This document corrects those errors.

Specifically, typographical errors are corrected in T.D. TTB-92 in the part 19 table of contents listing for § 19.26 (“Alternate” rather than “lternate”), in the “Authority” citation at the beginning of the part (“5121-5124” rather than “5121, 5122-5124”), and in the section heading for § 19.603 (“§ 19.603” rather than “§ 10.603”). In § 19.1, in the definition of “Lot identification number,” the cross-reference to “27 CFR 19.485” is corrected to read “§ 19.485” for consistency with other internal part 19 cross references. Also in § 19.1, the definitions of “Kind” and “Package identification number” are corrected to use the new part 19 section numbers contained in T.D. TTB-92 rather than section numbers from the version of part 19 being replaced.

In § 19.454(a), TTB is correcting “SDA” to read “denatured spirits” in order to clarify that denatured spirits, including specially denatured spirits and completely denatured alcohol, withdrawn free of tax under 27 CFR part 20 may be returned to bonded premises in accordance with § 19.454. In § 19.454(e), TTB is correcting “SDA” to read “specially denatured spirits” in order to clarify that specially denatured spirits, including specially denatured alcohol and specially denatured rum, withdrawn free of tax for export under 27 CFR part 28 may be returned to bonded premises in accordance with § 19.454.

Also, as described in T.D. TTB-92, TTB intends to require serial numbers on certain records to either commence with the number “1” each calendar or fiscal year or otherwise be unique and not repeated. These numbering options are incorporated into the recordkeeping requirements contained in § 19.618, Gauge record, and § 19.620, Transfer record—consignor’s responsibility. However, the option to use a unique, non-repeated number was inadvertently left out of § 19.599, Bottling and packing records. TTB is therefore correcting § 19.599(b) to conform to the similar recordkeeping requirements found in §§ 19.618 and 19.620.

In addition, the amendatory instruction updating a cross-reference to part 19 in 27 CFR part 30 was incorrectly phrased. When referring to the existing text of § 30.31(d), the amendatory instructions in T.D. TTB-92 should have used the phrase “27 CFR 19.383” rather than merely “§ 19.383.”

#### Corrections

In the final rule document numbered FR Doc. 2011-1956 beginning on page 9080 in the **Federal Register** issue of Wednesday, February 16, 2011, make the following corrections:

1. On page 9090, in the third column, in the part 19 table of contents, the listing “19.26 lternate methods or procedures.” is corrected to read “19.26 Alternate methods or procedures.”

2. On page 9094, in the second column, in the authority citation for 27 CFR part 19, in the fourth line, the number phrase “5121, 5122-5124” is corrected to read “5121-5124”.

#### § 19.1 [Corrected]

■ 3. On page 9095, in the third column, in the definition of “Kind,” the cross-reference to “§ 19.597” is corrected to read “§ 19.487”.

■ 4. On page 9096, in the first column, in the definition of “Lot identification number,” the cross-reference to “27 CFR 19.485” is corrected to read “§ 19.485”.

■ 5. On page 9096, in the first column, in the definition of “Package identification number,” the cross-reference to “27 CFR 19.595” is corrected to read “§ 19.490”.

#### § 19.454 [Corrected]

■ 6. On page 9140, in the first column of the table (titled “Type of product”), in paragraph (a), the sentence “SDA withdrawn free of tax under part 20 of this chapter” is corrected to read “Denatured spirits withdrawn free of tax under part 20 of this chapter”.

■ 7. On page 9140, in the first column of the table (titled “Type of product”), in paragraph (e), the sentence “SDA withdrawn free of tax for export under part 28 of this chapter” is corrected to read “Specially denatured spirits withdrawn free of tax for export under part 28 of this chapter”.

#### § 19.599 [Corrected]

■ 8. On page 9152, in the second column, in § 19.599, in paragraph (b), the text “Serial number of the record (beginning with “1” at the start of each calendar or fiscal year)” is corrected to read “Serial number of the record (which must commence with “1” at the start of each calendar or fiscal year, or be a unique identifying number that is not repeated)”.

#### § 19.603 [Corrected]

■ 9. On page 9153, in the first column, the section heading “§ 10.603, Liquor bottle records” is corrected to read “§ 19.603, Liquor bottle records”.

#### § 30.31 [Corrected]

■ 10. On page 9171, in the third column, in paragraph 16, in the amendatory instructions for § 30.31, the phrase “the reference to ‘§ 19.383’” is corrected to read “the reference to ‘27 CFR 19.383’ of this chapter”.