

§ 1552. Earnings and profits**(a) General rule**

Pursuant to regulations prescribed by the Secretary the earnings and profits of each member of an affiliated group required to be included in a consolidated return for such group filed for a taxable year shall be determined by allocating the tax liability of the group for such year among the members of the group in accord with whichever of the following methods the group shall elect in its first consolidated return filed for such a taxable year:

(1) The tax liability shall be apportioned among the members of the group in accordance with the ratio which that portion of the consolidated taxable income attributable to each member of the group having taxable income bears to the consolidated taxable income.

(2) The tax liability of the group shall be allocated to the several members of the group on the basis of the percentage of the total tax which the tax of such member if computed on a separate return would bear to the total amount of the taxes for all members of the group so computed.

(3) The tax liability of the group (excluding the tax increases arising from the consolidation) shall be allocated on the basis of the contribution of each member of the group to the consolidated taxable income of the group. Any tax increases arising from the consolidation shall be distributed to the several members in direct proportion to the reduction in tax liability resulting to such members from the filing of the consolidated return as measured by the difference between their tax liabilities determined on a separate return basis and their tax liabilities based on their contributions to the consolidated taxable income.

(4) The tax liability of the group shall be allocated in accord with any other method selected by the group with the approval of the Secretary.

(b) Failure to elect

If no election is made in such first return, the tax liability shall be allocated among the several members of the group pursuant to the method prescribed in subsection (a)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 371; Pub. L. 88-272, title II, §234(b)(8), Feb. 26, 1964, 78 Stat. 116; Pub. L. 94-455, title XIX, §§1901(a)(159), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1790, 1834.)

Editorial Notes**AMENDMENTS**

1976—Subsec. (a). Pub. L. 94-455, §§1901(a)(159), 1906(b)(13)(A), struck out “beginning after December 31, 1953, and ending after the date of enactment of this title” after “group filed for a taxable year”, and “or his delegate” after “Secretary” in two places.

1964—Subsec. (a)(3). Pub. L. 88-272 struck out “(determined without regard to the 2 percent increase provided by section 1503(a))”, before “based on their contributions”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by section 1901(a)(159) of Pub. L. 94-455 applicable with respect to taxable years beginning after

Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88-272, set out as a note under section 1503 of this title.

PART II—CERTAIN CONTROLLED CORPORATIONS

Sec.

1561. Limitation on accumulated earnings credit in the case of certain controlled corporations.
[1562. Repealed.]
1563. Definitions and special rules.
[1564. Repealed.]

Editorial Notes**AMENDMENTS**

2017—Pub. L. 115-97, title I, §13001(b)(6)(B), Dec. 22, 2017, 131 Stat. 2098, which directed amendment of the table of sections for part II of subchapter B of chapter 5 by substituting “Limitation on accumulated earnings credit in the case of certain controlled corporations” for “Limitations on certain multiple tax benefits in the case of certain controlled corporations” in item 1561, was executed to the table of sections for part II of subchapter B of this chapter to reflect the probable intent of Congress.

1990—Pub. L. 101-508, title XI, §11801(b)(12), Nov. 5, 1990, 104 Stat. 1388-522, struck out item 1564 “Transitional rules in the case of certain controlled corporations”.

1969—Pub. L. 91-172, title IV, §401(a)(3), (b)(2)(E), Dec. 30, 1969, 83 Stat. 600, 602, substituted “Sec. 1561. Limitations on certain multiple tax benefits in the case of certain controlled corporations.” for “Sec. 1561. Surtax exemptions in case of certain controlled corporations.”, and struck out item 1562, effective with respect to taxable years beginning after Dec. 31, 1974, and added item 1564.

1964—Pub. L. 88-272, title II, §235(a), Feb. 26, 1964, 78 Stat. 116, added designation of part II, and items 1561 to 1563.

§ 1561. Limitation on accumulated earnings credit in the case of certain controlled corporations**(a) In general**

The component members of a controlled group of corporations on a December 31 shall, for their taxable years which include such December 31, be limited for purposes of this subtitle to one \$250,000 (\$150,000 if any component member is a corporation described in section 535(c)(2)(B)) amount for purposes of computing the accumulated earnings credit under section 535(c)(2) and (3). Such amount shall be divided equally among the component members of such group on such December 31 unless the Secretary prescribes regulations permitting an unequal allocation of such amount.

(b) Certain short taxable years

If a corporation has a short taxable year which does not include a December 31 and is a component member of a controlled group of corporations with respect to such taxable year, then for purposes of this subtitle, the amount to be used in computing the accumulated earnings credit under section 535(c)(2) and (3) of such corporation for such taxable year shall be the amount

specified in subsection (a) with respect to such group, divided by the number of corporations which are component members of such group on the last day of such taxable year. For purposes of the preceding sentence, section 1563(b) shall be applied as if such last day were substituted for December 31.

(Added Pub. L. 88-272, title II, § 235(a), Feb. 26, 1964, 78 Stat. 116; amended Pub. L. 91-172, title IV, § 401(a)(1), Dec. 30, 1969, 83 Stat. 599; Pub. L. 94-12, title III, §§ 303(c)(1), 304(b), Mar. 29, 1975, 89 Stat. 44, 45; Pub. L. 94-164, § 4(d)(1), Dec. 23, 1975, 89 Stat. 974; Pub. L. 94-455, title IX, § 901(c)(1), title XIX, §§ 1901(b)(1)(J)(v), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1607, 1791, 1834; Pub. L. 95-600, title III, § 301(b)(19), title VII, § 703(j)(7), Nov. 6, 1978, 92 Stat. 2823, 2941; Pub. L. 97-34, title II, § 232(b)(3), Aug. 13, 1981, 95 Stat. 250; Pub. L. 97-248, title II, § 259(b), (c), Sept. 3, 1982, 96 Stat. 539; Pub. L. 98-369, div. A, title I, § 66(b), title II, § 211(b)(21), July 18, 1984, 98 Stat. 585, 756; Pub. L. 99-499, title V, § 516(b)(3), Oct. 17, 1986, 100 Stat. 1771; Pub. L. 99-514, title VII, § 701(e)(2), Oct. 22, 1986, 100 Stat. 2342; Pub. L. 100-647, title II, § 2004(l), Nov. 10, 1988, 102 Stat. 3606; Pub. L. 104-188, title I, § 1703(f), Aug. 20, 1996, 110 Stat. 1876; Pub. L. 113-295, div. A, title II, § 221(a)(12)(H), Dec. 19, 2014, 128 Stat. 4038; Pub. L. 115-97, title I, §§ 12001(b)(16), 13001(b)(6)(A), Dec. 22, 2017, 131 Stat. 2094, 2098.)

Editorial Notes

AMENDMENTS

2017—Pub. L. 115-97, § 13001(b)(6)(A), amended section generally. Prior to amendment, section related to limitations on certain multiple tax benefits in the case of certain controlled corporations.

Subsec. (a). Pub. L. 115-97, § 12001(b)(16)(B), struck out at end “In applying section 55(d)(3), the alternative minimum taxable income of all component members shall be taken into account and any decrease in the exemption amount shall be allocated to the component members in the same manner as under paragraph (3).”

Subsec. (a)(3). Pub. L. 115-97, § 12001(b)(16)(A), struck out par. (3) which read as follows: “one \$40,000 exemption amount for purposes of computing the amount of the minimum tax.”

2014—Subsec. (a). Pub. L. 113-295, § 221(a)(12)(H)(ii), substituted “and the amount specified in paragraph (3)” for “, the amount specified in paragraph (3), and the amount specified in paragraph (4)” in concluding provisions.

Subsec. (a)(2) to (4). Pub. L. 113-295, § 221(a)(12)(H)(i), inserted “and” at end of par. (2), substituted a period for “, and” at end of par. (3), and struck out par. (4) which read as follows: “one \$2,000,000 amount for purposes of computing the tax imposed by section 59A.”

1996—Subsec. (a). Pub. L. 104-188 in closing provisions substituted “last 2 sentences” for “last sentence” in two places.

1988—Subsec. (a). Pub. L. 100-647 substituted “section 11(b)(1)” for “section 11(b)” in par. (1) and in penultimate sentence.

1986—Subsec. (a). Pub. L. 99-514 added par. (3), and in concluding provisions, substituted “amounts specified in paragraph (1) (and the amount specified in paragraph (3))” for “amounts specified in paragraph (1)” and inserted “In applying section 55(d)(3), the alternative minimum taxable income of all component members shall be taken into account and any decrease in the exemption amount shall be allocated to the component members in the same manner as under paragraph (3).”

Pub. L. 99-499, in subsec. (a) as amended by Pub. L. 99-514 above, added par. (4), and in concluding provi-

sions substituted “, the amount specified in paragraph (3), and the amount specified in paragraph (4)” for “(and the amount specified in paragraph (3)).”

1984—Subsec. (a). Pub. L. 98-369, § 211(b)(21)(A), inserted “and” at end of par. (1), substituted a period for the comma at end of par. (2), struck out par. (3) which read as follows: “one \$25,000 amount for purposes of computing the limitation on the small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and”, struck out par. (4) which read as follows: “one \$1,000,000 amount (adjusted as provided in section 809(f)(3) for purposes of computing the limitation under paragraph (1) or (2) of section 809(f).”, and substituted “paragraph (2)” for “paragraphs (2), (3), and (4)” in concluding provisions.

Pub. L. 98-369, § 66(b), inserted provision that notwithstanding paragraph (1), in applying last sentence of section 11(b) to such component members, the taxable income of all such component members shall be taken into account and any increase in tax under the last sentence shall be divided among such component members in the same manner as amounts under paragraph (1).

Subsec. (b). Pub. L. 98-369, § 211(b)(21)(B), inserted “and” at end of par. (1), struck out par. (3) which read as follows: “the amount to be used in computing the limitation on the small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and”, struck out par. (4) which read as follows: “the amount (adjusted as provided in section 809(f)(3)) to be used in computing the limitation under paragraph (1) or (2) of section 809(f).”, and substituted “or (2)” for “, (2), (3), or (4)” in concluding provisions.

1982—Subsec. (a). Pub. L. 97-248, § 259(b), added par. (4) and inserted reference to par. (4) in text following par. (4).

Subsec. (b). Pub. L. 97-248, § 259(c), added par. (4) and inserted reference to subsec. (a)(4) in text following par. (4).

1981—Subsec. (a)(2). Pub. L. 97-34 substituted “\$250,000 (\$150,000 if any component member is a corporation described in section 535(c)(2)(B))” for “\$150,000”.

1978—Subsec. (a). Pub. L. 95-600, § 301(b)(19)(A), in par. (1) substituted “amounts in each taxable income bracket in the tax table in section 11(b) which do not aggregate more than the maximum amount in such bracket to which a corporation is not a component member of a controlled group is entitled” for “the surtax exemption under section 11(d)” and in provisions following par. (3) substituted “amounts” for “amount” in two places and struck out provision that in applying section 11(b)(2), the first \$25,000 of taxable income and the second \$25,000 of taxable income each be allocated among the component members of a controlled group of corporations in the same manner as the surtax exemption is allocated.

Subsec. (b)(1). Pub. L. 95-600, § 301(b)(19)(B), substituted “the amount in each taxable income bracket in the tax table in section 11(b)” for “the surtax exemption under section 11(d)”.

Subsec. (b)(3). Pub. L. 95-600, § 703(j)(7), substituted for “804(a)(3)” for “804(a)(4)”.

1976—Subsec. (a). Pub. L. 94-455, §§ 901(c)(1), 1906(b)(13)(A), inserted “In applying section 11(b)(2), the first \$25,000 of taxable income and the second \$25,000 of taxable income shall each be allocated among the component members of a controlled group of corporations in the same manner as the surtax exemption is allocated” after “unequal allocation of such amounts” and struck out “or his delegate” after “Secretary” in two places.

Subsec. (a)(3). Pub. L. 94-455, § 1901(b)(1)(J)(v), substituted “804(a)(3)” for “804(a)(4)” after “under sections”.

1975—Subsec. (a)(1). Pub. L. 94-164 struck out “\$25,000” in par. (1) as par. (1) is in effect for taxable years ending after Dec. 31, 1975.

Pub. L. 94-12, § 303(c)(1), substituted “\$50,000” for “\$25,000”.

Subsec. (a)(2). Pub. L. 94-12, § 304(b), substituted “\$150,000” for “\$100,000”.

1969—Pub. L. 91-172 provided, with respect to taxable years beginning after Dec. 31, 1974, that a controlled group of corporations is limited to one \$25,000 surtax exemption under section 11(d), one \$100,000 amount for purposes of computing the accumulated earnings credit under section 535(c)(2) and (3), and one \$25,000 amount for purposes of computing the limitation on the small business deduction of life insurance companies under sections 804(a)(4) and 809(d)(10).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 12001(b)(16) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 12001(c) of Pub. L. 115-97, set out as a note under section 11 of this title.

Amendment by section 13001(b)(6)(A) of Pub. L. 115-97 applicable to transfers made after Dec. 31, 2017, see section 13001(c)(3) of Pub. L. 115-97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Amendment by Pub. L. 99-499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99-499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 66(b) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 66(c) of Pub. L. 98-369, set out as a note under section 11 of this title.

Amendment by section 211(b)(21) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE AND TERMINATION DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §263(a)(1), Sept. 3, 1982, 96 Stat. 541, provided that the amendment made by section 259(b), (c) of Pub. L. 97-248 is applicable to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 232(c) of Pub. L. 97-34, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(19) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978,

see section 301(c) of Pub. L. 95-600, set out as a note under section 11 of this title.

Amendment by section 703(j)(7) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as a note under section 46 of this title.

EFFECTIVE DATES OF 1976 AMENDMENT

Amendment by section 901(c)(1) of Pub. L. 94-455 applicable to taxable years ending after Dec. 31, 1975, see section 901(d) of Pub. L. 94-455, set out as a note under section 11 of this title.

Amendment by section 1901(b)(1)(J)(v) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENT

Amendment by Pub. L. 94-164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94-164, set out as a note under section 11 of this title.

Amendment by section 303(c)(1) of Pub. L. 94-12 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply for taxable years ending after Dec. 31, 1975, see section 305(b)(1) of Pub. L. 94-12, set out as a note under section 11 of this title.

Amendment by section 304(b) of Pub. L. 94-12 applicable to taxable years beginning after Dec. 31, 1974, see section 305(c) of Pub. L. 94-12, set out as an Effective Date of 1975 Amendment note under section 535 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title IV, §401(h), Dec. 30, 1969, 83 Stat. 604, provided that:

“(1) The amendments made by subsection (a) [amending this section and repealing section 1562 of this title] shall apply with respect to taxable years beginning after December 31, 1974.

“(2) The amendments made by subsection (b) [enacting section 1564 and amending sections 11, 535, 804, and 1562] shall apply with respect to taxable years beginning after December 31, 1969.

“(3) The amendments made by subsections (c), (d), (e), and (f) [amending sections 46, 48, 179, and 1563] shall apply with respect to taxable years ending on or after December 31, 1970.”

EFFECTIVE DATE

Section applicable with respect to taxable years ending after Dec. 31, 1963, see section 235(d) of Pub. L. 88-272, set out as an Effective Date of 1964 Amendment note under section 269 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(2) of Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, see section 1012(aa)(2) of Pub. L. 100-647, set out as a note under section 861 of this title.

[§ 1562. Repealed. Pub. L. 91-172, title IV, § 401(a)(2), Dec. 30, 1969, 83 Stat. 600]

Section, added Pub. L. 88-272, title II, §235(a), Feb. 26, 1964, 78 Stat. 117, amended Pub. L. 91-172, title IV, § 401(b)(2)(A), Dec. 30, 1969, 83 Stat. 602, set limits on the privilege of groups to elect multiple surtax exemptions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1974, see section 401(h)(1) of Pub. L. 91-172, set out as an Effective Date of 1969 Amendment note under section 1561 of this title.