

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.

RETROACTIVE TERMINATION OF ELECTIONS

Pub. L. 91-172, title IV, § 401(g), Dec. 30, 1969, 83 Stat. 604, authorized an affiliated group of corporations making a consolidated return for the taxable year which included Dec. 31, 1970, to terminate the election under section 1562 of this title with respect to any prior Dec. 31 which was included in a taxable year of any such corporations from which there was a net operating loss carryover to the 1970 consolidated return year and provided that the termination of such election was to be valid only if in accord with subsections (c)(1) and (e) of section 1562 of this title other than the requirement of making the termination prior to the expiration of the 3 year period specified in subsection (e) of section 1562 of this title.

§ 1563. Definitions and special rules

(a) Controlled group of corporations

For purposes of this part, the term “controlled group of corporations” means any group of—

(1) Parent-subsidiary controlled group

One or more chains of corporations connected through stock ownership with a common parent corporation if—

(A) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (within the meaning of subsection (d)(1)) by one or more of the other corporations; and

(B) the common parent corporation owns (within the meaning of subsection (d)(1)) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(2) Brother-sister controlled group

Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(3) Combined group

Three or more corporations each of which is a member of a group of corporations described in paragraph (1) or (2), and one of which—

(A) is a common parent corporation included in a group of corporations described in paragraph (1), and also

(B) is included in a group of corporations described in paragraph (2).

(4) Certain insurance companies

Two or more insurance companies subject to taxation under section 801 which are members of a controlled group of corporations described in paragraph (1), (2), or (3). Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group of corporations described in paragraph (1), (2), or (3).

(b) Component member

(1) General rule

For purposes of this part, a corporation is a component member of a controlled group of corporations on a December 31 of any taxable year (and with respect to the taxable year which includes such December 31) if such corporation—

(A) is a member of such controlled group of corporations on the December 31 included in such year and is not treated as an excluded member under paragraph (2), or

(B) is not a member of such controlled group of corporations on the December 31 included in such year but is treated as an additional member under paragraph (3).

(2) Excluded members

A corporation which is a member of a controlled group of corporations on December 31 of any taxable year shall be treated as an excluded member of such group for the taxable year including such December 31 if such corporation—

(A) is a member of such group for less than one-half the number of days in such taxable year which precede such December 31,

(B) is exempt from taxation under section 501(a) (except a corporation which is subject to tax on its unrelated business taxable income under section 511) for such taxable year,

(C) is a foreign corporation subject to tax under section 881 for such taxable year,

(D) is an insurance company subject to taxation under section 801 (other than an insurance company which is a member of a controlled group described in subsection (a)(4)), or

(E) is a franchised corporation, as defined in subsection (f)(4).

(3) Additional members

A corporation which—

(A) was a member of a controlled group of corporations at any time during a calendar year,

(B) is not a member of such group on December 31 of such calendar year, and

(C) is not described, with respect to such group, in subparagraph (B), (C), (D), or (E) of paragraph (2),

shall be treated as an additional member of such group on December 31 for its taxable year including such December 31 if it was a member of such group for one-half (or more) of the number of days in such taxable year which precede such December 31.

(4) Overlapping groups

If a corporation is a component member of more than one controlled group of corporations with respect to any taxable year, such corporation shall be treated as a component member of only one controlled group. The determination as to the group of which such corporation is a component member shall be made under regulations prescribed by the Secretary which are consistent with the purposes of this part.

(c) Certain stock excluded

(1) General rule

For purposes of this part, the term “stock” does not include—

(A) nonvoting stock which is limited and preferred as to dividends,

(B) treasury stock, and

(C) stock which is treated as “excluded stock” under paragraph (2).

(2) Stock treated as “excluded stock”

(A) Parent-subsidiary controlled group

For purposes of subsection (a)(1), if a corporation (referred to in this paragraph as “parent corporation”) owns (within the meaning of subsections (d)(1) and (e)(4)), 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock in another corporation (referred to in this paragraph as “subsidiary corporation”), the following stock of the subsidiary corporation shall be treated as excluded stock—

(i) stock in the subsidiary corporation held by a trust which is part of a plan of deferred compensation for the benefit of the employees of the parent corporation or the subsidiary corporation,

(ii) stock in the subsidiary corporation owned by an individual (within the meaning of subsection (d)(2)) who is a principal stockholder or officer of the parent corporation. For purposes of this clause, the term “principal stockholder” of a corporation means an individual who owns (within the meaning of subsection (d)(2)) 5 percent or more of the total combined voting power of all classes of stock entitled to vote or 5 percent or more of the total value of shares of all classes of stock in such corporation,

(iii) stock in the subsidiary corporation owned (within the meaning of subsection (d)(2)) by an employee of the subsidiary corporation if such stock is subject to conditions which run in favor of such parent (or subsidiary) corporation and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock, or

(iv) stock in the subsidiary corporation owned (within the meaning of subsection (d)(2)) by an organization (other than the parent corporation) to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled di-

rectly or indirectly by the parent corporation or subsidiary corporation, by an individual, estate, or trust that is a principal stockholder (within the meaning of clause (ii) of the parent corporation, by an officer of the parent corporation, or by any combination thereof.

(B) Brother-sister controlled group

For purposes of subsection (a)(2), if 5 or fewer persons who are individuals, estates, or trusts (referred to in this subparagraph as “common owners”) own (within the meaning of subsection (d)(2)), 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of all classes of stock in a corporation, the following stock of such corporation shall be treated as excluded stock—

(i) stock in such corporation held by an employees’ trust described in section 401(a) which is exempt from tax under section 501(a), if such trust is for the benefit of the employees of such corporation,

(ii) stock in such corporation owned (within the meaning of subsection (d)(2)) by an employee of the corporation if such stock is subject to conditions which run in favor of any of such common owners (or such corporation) and which substantially restrict or limit the employee’s right (or if the employee constructively owns such stock, the direct owner’s right) to dispose of such stock. If a condition which limits or restricts the employee’s right (or the direct owner’s right) to dispose of such stock also applies to the stock held by any of the common owners pursuant to a bona fide reciprocal stock purchase arrangement, such condition shall not be treated as one which restricts or limits the employee’s right to dispose of such stock, or

(iii) stock in such corporation owned (within the meaning of subsection (d)(2)) by an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such corporation, by an individual, estate, or trust that is a principal stockholder (within the meaning of subparagraph (A)(ii)) of such corporation, by an officer of such corporation, or by any combination thereof.

(d) Rules for determining stock ownership

(1) Parent-subsidiary controlled group

For purposes of determining whether a corporation is a member of a parent-subsidiary controlled group of corporations (within the meaning of subsection (a)(1)), stock owned by a corporation means—

(A) stock owned directly by such corporation, and

(B) stock owned with the application of paragraphs (1), (2), and (3) of subsection (e).

(2) Brother-sister controlled group

For purposes of determining whether a corporation is a member of a brother-sister controlled group of corporations (within the

meaning of subsection (a)(2)), stock owned by a person who is an individual, estate, or trust means—

(A) stock owned directly by such person, and

(B) stock owned with the application of subsection (e).

(e) Constructive ownership

(1) Options

If any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(2) Attribution from partnerships

Stock owned, directly or indirectly, by or for a partnership shall be considered as owned by any partner having an interest of 5 percent or more in either the capital or profits of the partnership in proportion to his interest in capital or profits, whichever such proportion is the greater.

(3) Attribution from estates or trusts

(A) Stock owned, directly or indirectly, by or for an estate or trust shall be considered as owned by any beneficiary who has an actuarial interest of 5 percent or more in such stock, to the extent of such actuarial interest. For purposes of this subparagraph, the actuarial interest of each beneficiary shall be determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary and the maximum use of such stock to satisfy his rights as a beneficiary.

(B) Stock owned, directly or indirectly, by or for any portion of a trust of which a person is considered the owner under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners) shall be considered as owned by such person.

(C) This paragraph shall not apply to stock owned by any employees’ trust described in section 401(a) which is exempt from tax under section 501(a).

(4) Attribution from corporations

Stock owned, directly or indirectly, by or for a corporation shall be considered as owned by any person who owns (within the meaning of subsection (d)) 5 percent or more in value of its stock in that proportion which the value of the stock which such person so owns bears to the value of all the stock in such corporation.

(5) Spouse

An individual shall be considered as owning stock in a corporation owned, directly or indirectly, by or for his spouse (other than a spouse who is legally separated from the individual under a decree of divorce whether interlocutory or final, or a decree of separate maintenance), except in the case of a corporation with respect to which each of the following conditions is satisfied for its taxable year—

(A) The individual does not, at any time during such taxable year, own directly any stock in such corporation;

(B) The individual is not a director or employee and does not participate in the man-

agement of such corporation at any time during such taxable year;

(C) Not more than 50 percent of such corporation's gross income for such taxable year was derived from royalties, rents, dividends, interest, and annuities; and

(D) Such stock in such corporation is not, at any time during such taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such stock and which run in favor of the individual or his children who have not attained the age of 21 years.

(6) Children, grandchildren, parents, and grandparents

(A) Minor children

An individual shall be considered as owning stock owned, directly or indirectly, by or for his children who have not attained the age of 21 years, and, if the individual has not attained the age of 21 years, the stock owned, directly or indirectly, by or for his parents.

(B) Adult children and grandchildren

An individual who owns (within the meaning of subsection (d)(2), but without regard to this subparagraph) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock in a corporation shall be considered as owning the stock in such corporation owned, directly or indirectly, by or for his parents, grandparents, grandchildren, and children who have attained the age of 21 years.

(C) Adopted child

For purposes of this section, a legally adopted child of an individual shall be treated as a child of such individual by blood.

(f) Other definitions and rules

(1) Employee defined

For purposes of this section the term "employee" has the same meaning such term is given by paragraphs (1) and (2) of section 3121(d).

(2) Operating rules

(A) In general

Except as provided in subparagraph (B), stock constructively owned by a person by reason of the application of paragraph (1), (2), (3), (4), (5), or (6) of subsection (e) shall, for purposes of applying such paragraphs, be treated as actually owned by such person.

(B) Members of family

Stock constructively owned by an individual by reason of the application of paragraph (5) or (6) of subsection (e) shall not be treated as owned by him for purposes of again applying such paragraphs in order to make another the constructive owner of such stock.

(3) Special rules

For purposes of this section—

(A) If stock may be considered as owned by a person under subsection (e)(1) and under

any other paragraph of subsection (e), it shall be considered as owned by him under subsection (e)(1).

(B) If stock is owned (within the meaning of subsection (d)) by two or more persons, such stock shall be considered as owned by the person whose ownership of such stock results in the corporation being a component member of a controlled group. If by reason of the preceding sentence, a corporation would (but for this sentence) become a component member of two controlled groups, it shall be treated as a component member of one controlled group. The determination as to the group of which such corporation is a component member shall be made under regulations prescribed by the Secretary which are consistent with the purposes of this part.

(C) If stock is owned by a person within the meaning of subsection (d) and such ownership results in the corporation being a component member of a controlled group, such stock shall not be treated as excluded stock under subsection (c)(2), if by reason of treating such stock as excluded stock the result is that such corporation is not a component member of a controlled group of corporations.

(4) Franchised corporation

If—

(A) a parent corporation (as defined in subsection (c)(2)(A)), or a common owner (as defined in subsection (c)(2)(B)), of a corporation which is a member of a controlled group of corporations is under a duty (arising out of a written agreement) to sell stock of such corporation (referred to in this paragraph as "franchised corporation") which is franchised to sell the products of another member, or the common owner, of such controlled group;

(B) such stock is to be sold to an employee (or employees) of such franchised corporation pursuant to a bona fide plan designed to eliminate the stock ownership of the parent corporation or of the common owner in the franchised corporation;

(C) such plan—

(i) provides a reasonable selling price for such stock, and

(ii) requires that a portion of the employee's share of the profits of such corporation (whether received as compensation or as a dividend) be applied to the purchase of such stock (or the purchase of notes, bonds, debentures or other similar evidence of indebtedness of such franchised corporation held by such parent corporation or common owner);

(D) such employee (or employees) owns directly more than 20 percent of the total value of shares of all classes of stock in such franchised corporation;

(E) more than 50 percent of the inventory of such franchised corporation is acquired from members of the controlled group, the common owner, or both; and

(F) all of the conditions contained in subparagraphs (A), (B), (C), (D), and (E) have been met for one-half (or more) of the num-

ber of days preceding the December 31 included within the taxable year (or if the taxable year does not include December 31, the last day of such year) of the franchised corporation,

then such franchised corporation shall be treated as an excluded member of such group, under subsection (b)(2), for such taxable year.

(5) Brother-sister controlled group definition for provisions other than this part

(A) In general

Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

“(2) Brother-sister controlled group

“Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

“(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

“(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.”

(B) Applicable provision

For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).

(Added Pub. L. 88-272, title II, §235(a), Feb. 26, 1964, 78 Stat. 120; amended Pub. L. 91-172, title IV, §401(c), (d), Dec. 30, 1969, 83 Stat. 602; Pub. L. 91-373, title I, §102(b), Aug. 10, 1970, 84 Stat. 696; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title II, §211(b)(22), July 18, 1984, 98 Stat. 757; Pub. L. 99-514, title X, §1024(c)(17), Oct. 22, 1986, 100 Stat. 2408; Pub. L. 100-647, title I, §1018(s)(3)(A), Nov. 10, 1988, 102 Stat. 3587; Pub. L. 108-357, title VIII, §900(a), (b), Oct. 22, 2004, 118 Stat. 1650.)

Editorial Notes

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-357, §900(a), substituted “possessing” for “possessing—”, struck out “(B)” before “more than 50 percent of the total combined voting power”, and struck out subpar. (A) which read as follows: “at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and”.

Subsec. (f)(5). Pub. L. 108-357, §900(b), added par. (5).
1988—Subsec. (d)(1)(B). Pub. L. 100-647 substituted “paragraphs (1), (2), and (3) of subsection (e)” for “subsection (e)(1)”.

1986—Subsec. (b)(2)(D). Pub. L. 99-514 struck out “or section 821” after “section 801”.

1984—Subsecs. (a)(4), (b)(2)(D). Pub. L. 98-369 substituted “section 801” for “section 802”.

1976—Subsecs. (b)(4), (f)(3)(B). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1970—Subsec. (f)(1). Pub. L. 91-373 substituted “by paragraphs (1) and (2) of section 2131(d)” for “in section 3306(i)”.

1969—Subsec. (a)(2). Pub. L. 91-172, §401(c), redesignated existing provisions with minor changes as par. (A) and added par. (B).

Subsec. (c)(2)(A)(iv). Pub. L. 91-172, §401(d)(1), added cl. (iv).

Subsec. (c)(2)(B). Pub. L. 91-172, §401(d)(2), substituted “5 or fewer persons who are individuals, estates, or trusts (referred to in this subparagraph as ‘common owners’) own” for “a person who is an individual, estate, or trust (referred to in this paragraph as ‘common owner’) owns” and in cl. (ii), substituted “any of such common owners”, “any of the common owners” for “such common owner” and “the common owner”, respectively and added cl. (iii).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §900(c), Oct. 22, 2004, 118 Stat. 1650, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1018(s)(3)(B), Nov. 10, 1988, 102 Stat. 3587, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 10, 1988].”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99-514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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 DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to taxable years ending on or after Dec. 31, 1970, see section 401(h)(3) of Pub. L. 91-172, set out as a note under section 1561 of this title.

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.

[§ 1564. Repealed. Pub. L. 101-508, title XI, § 11801(a)(38), Nov. 5, 1990, 104 Stat. 1388-521]

Section, added Pub. L. 91-172, title IV, §401(b)(1), Dec. 30, 1969, 83 Stat. 600; amended Pub. L. 94-455, title XIX, §1901(b)(1)(J)(vi), (21)(A)(ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1791, 1797, 1834, related to transitional rules in the case of certain controlled corporations.

Statutory Notes and Related Subsidiaries

SAVINGS PROVISION

For provisions that nothing in repeal by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of