

Instructions for Schedule O (Form 1120)

(Rev. December 2008)



Department of the Treasury
Internal Revenue Service

Consent Plan and Apportionment Schedule for a Controlled Group

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

- Line 3 has 2 additional check boxes to address situations where an apportionment plan is terminated and the remaining members have either adopted or have not adopted a new apportionment plan.
- Line 4 has been simplified and now only applies when there is no change in the controlled group's status with respect to adopting, amending, or terminating an apportionment plan.
- New line 6a allows the corporation to elect to pay the highest rate of tax to avoid underpayment penalties. New line 6b allows members of the controlled group to elect to apportion the additional tax under section 11(b)(1) by using the FIFO method rather than the proportionate method (the default method).

General Instructions

Purpose of Schedule

Use Schedule O to report the apportionment of taxable income, income tax, and certain tax benefits between the members of a controlled group.

Also use this schedule to indicate that the member filing this return consents to and represents that all the other members of the controlled group:

- Are adopting an apportionment plan, effective for the current tax year,
- Are amending the current existing apportionment plan,
- Are terminating the existing apportionment plan and not adopting a new plan,
- Are terminating the current apportionment plan and adopting a new plan,
- Have no apportionment plan in effect and are not adopting an apportionment plan, or
- Already have an apportionment plan in effect.

Check the applicable box on page 1 of Schedule O.

Who Must File

A corporation must file Schedule O with its income tax return, amended return, or claim for refund for each tax year that the corporation is a component member of a controlled group, even if no apportionment plan is currently in effect.

By filing Schedule O, a component member is consenting to the adoption, amendment, or termination of an apportionment plan by the controlled group, and therefore, where applicable, the members are agreeing that certain tax benefits will be allocated among the members of that group according to the terms of that adopted or the amended plan. See *Completing and Filing Schedule O* on page 3.

If one or more of the component members of a controlled group are also members of a consolidated group, then the common parent of that consolidated group must file, as part of its consolidated income tax return, one Schedule O on behalf of the members of that consolidated group. No subsidiary of that consolidated group should file a Schedule O on its own behalf. The Schedule O should contain the required consolidated information for all members of the consolidated group. See *Identifying Information* on page 6.

Exception. If all of the members of a parent-subsidiary controlled group (that are required to file a U.S. tax return), join in filing the same consolidated tax return, then the parent of that group does not have to file a Schedule O on behalf of the group. In this case, Schedule J, line 1, of Form 1120 should not be checked.

Definitions and Special Rules

Types of Controlled Groups

Parent-subsidiary group. A parent-subsidiary group is one or more chains of corporations

connected through stock ownership with a common parent corporation if:

- Stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is directly or indirectly owned by one or more of the other corporations; and
- The common parent corporation directly or indirectly owns stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% 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.

For purposes of determining whether a corporation is a member of a parent-subsidiary controlled group of corporations within the meaning of section 1563(a)(1), stock owned by a corporation means:

- Stock owned directly by the corporation, and
- Stock constructively owned by that corporation through an application of section 1563(e)(1), (2), and (3).

Brother-sister group.

A brother-sister group generally is two or more corporations where the same five or fewer persons who are individuals, estates, or trusts directly or indirectly own stock possessing:

- At least 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of shares of all classes of the stock of each corporation (the 80% test), and
- More than 50% of the total combined voting power of all classes of stock entitled to vote or more than 50% 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 (the 50% test).

For purposes of allocating the following, a brother-sister group is defined using only the 50% test above.

- The taxable income brackets.
- The additional tax.
- The alternative minimum tax (AMT) exemption amount.
- The reduction of the AMT exemption amount.
- The accumulated earnings credit.

For purposes of determining whether a corporation is a member of a brother-sister controlled group of corporations within the meaning of section 1563(a)(2), stock owned by a person who is an individual, estate, or trust includes:

- Stock owned directly by such person, and
- Stock constructively owned through an application of section 1563(e).

Combined group. A combined controlled group is three or more corporations each of which is a member of either a parent-subsidiary group or a brother-sister group, and at least one of which is both the common parent of a parent-subsidiary group and also a member of a brother-sister group.

Life insurance companies. Two or more life insurance companies subject to tax under section 801 which are members of any of the three broad categories of controlled groups of corporations: parent-subsidiary, brother-sister, or combined group will be treated as a controlled group of corporations separate from any other type of controlled group to which these corporations would, otherwise, qualify if they were not life insurance companies. The life insurance companies that comprise a life insurance controlled group do not have to be in an affiliated ownership relationship with each other. However, this rule does not apply to any life insurance company that is a member (whether eligible or ineligible) of a life-nonlife affiliated group for which a section 1504(c)(2) election is in effect. Instead, an eligible life insurance company will be treated as a member of a life-nonlife consolidated group, and an ineligible life insurance company will be treated as a member of a life-nonlife controlled group (deemed to constitute a parent-subsidiary controlled group).

See section 1563 and the related regulations for additional details regarding the definition of a controlled group.

Component Member

A corporation qualifies as a component member of a controlled group of corporations, for a tax year, if the corporation:

- Is not a member of the controlled group on the applicable December 31 testing date (defined on page 3), of the group, but is treated as an additional member (defined below), or
- Is a member of the controlled group on the applicable December 31 testing date and is not treated as an excluded member (defined below).

If a controlled group has an apportionment plan in effect and some of the members of that controlled group join in filing a consolidated return, then the members of that consolidated group are treated, together, as if they were a single member of the controlled group. If a controlled group does not have an apportionment plan in effect, and some of the members of that group join in filing a consolidated return, then each member of that consolidated group will be treated as a separate member of the controlled group.

Additional Member

A member of a controlled group, who was not a member of that group on the applicable December 31 testing date, is treated as an additional member with respect to its tax year and treated as a component member, if the corporation:

- Was a member of the controlled group at any time during a calendar year,
- Was not a member of the controlled group on that testing date,
- Was a member of the controlled group for at least one-half the number of days of its testing period, and
- Is not an excluded member (defined next).

Any member of a controlled group that is treated as an additional member is also treated as a component member of that group.

Excluded Member

A corporation is treated as an excluded member of a controlled group of corporations on the December 31 testing date for its tax year that includes that December 31 testing date, if the corporation is:

- A member of such group for less than one-half the number of days in its testing period,
- Exempt from tax under section 501(a) (except a corporation which is subject to tax on its unrelated

business taxable income) for such year,

- A foreign corporation not subject to tax under section 882(a) for such tax year,
- A life insurance company subject to tax under section 801 other than either a life insurance company which is a member of a life insurance controlled group or a life insurance company which is a member (whether eligible or ineligible) of a life-nonlife affiliated group for which a section 1504(c)(2) election is in effect, or
- An S corporation, as defined in section 1361.

Although an excluded member is not treated as a component member, its status as a member of a controlled group continues.

Exception. A corporation that was (1) included in a controlled group at any time during its tax year, (2) was not included in that controlled group on the group's December 31 testing date, and (3) was not included in the controlled group for at least one-half the number of days of its testing period, is not treated either as an additional member or as an excluded member. As a result, that corporation does not qualify as a component member, because it is not treated as an additional member or as an excluded member.

Example. For years prior to 2008 Corporation X has been a member of controlled group XYZ. Corporation X is on a calendar tax year. On February 28, 2008, Corporation X was sold to an unrelated party. Corporation X remained in existence throughout its entire 2008 calendar year. For the period from January 1, 2008, through February 29, 2008, Corporation X is not a member of that controlled group which includes Corporations Y and Z and which has a testing date of December 1, 2008. Corporations Y and Z therefore are not required to include any information about Corporation X in their respective 2008 Schedule O's, filed with their 2008 income tax returns.

Overlapping Groups

If a corporation is a component member of more than one controlled group of corporations with respect to any tax year, that corporation will 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.

Excluded Stock

To be a member of a controlled group, a corporation cannot be connected through stock ownership based on “excluded stock”. Exclude stock includes:

- Nonvoting stock which is limited and preferred as to dividends,
- Treasury stock, and
- Stock which is treated as excluded stock under section 1563(c)(2)(A) for a parent-subsidiary controlled group or section 1563(c)(2)(B) for a brother-sister controlled group.

Testing Date

Each member of a controlled group qualifies as a component member of that group on an applicable December 31 testing date. That date determines the tax year of each of the component members that will be subjected to the specified tax benefit limitations. Each member of the group uses the December 31 testing date included within that member’s tax year as its testing date (whether such member is on a calendar or a fiscal tax year). However, if a component member of a controlled group has a short tax year that does not include a December 31 date, then the last day of that short tax year will be deemed as constituting that December 31 testing date for that member. See *Certain short tax years* later. Each member of a controlled group will apply those limitations to that tax year that is governed by the applicable December 31 testing date applied to that group.

Testing Period

The testing period is the time period for determining whether a particular member of a controlled group qualifies either as a component member, or as an excluded member. The testing period begins on the first day of that member’s tax year and ends on the day before its testing date, but for a component member having a short tax year not including a December 31 date, the last day of its short tax year is deemed to function as the December 31 testing date for that member only. For a member on a full fiscal tax year, the portion of its tax year beginning on the December 31 testing date and ending on the last day of its tax year is not taken into account for determining its status either as a component member or as an excluded member. In determining

how many days comprise a member’s testing period, the group takes into account the day that the member is sold or liquidated, but does not take into account either the day that such member is acquired or created, or the member’s December 31 testing date.

Apportionment Plans

An apportionment plan is an agreement between the component members of a controlled group of corporations for apportioning certain corporate tax benefits among the members of that group, such as the apportioning of bracketed income amounts entitled to different tax rates. By contrast, a tax sharing agreement is an agreement entered into between members of an affiliated group of corporations who have joined in the filing of a consolidated tax return. Such an agreement generally provides that the members of the affiliated group will compensate each other for certain tax benefits incurred by members separately and shared by all members on the consolidated tax return.

An apportionment plan becomes effective for a controlled group when it is adopted by all the component members of that group for their tax years which tax years are subjected to the same December 31 testing date. Once the members of a controlled group adopt an apportionment plan, it remains in effect until it is amended or terminated.

An apportionment plan is amended when the same component members (for example, when no component members have left or joined the group during their testing periods governed by the applicable, December 31 testing date) make any different apportionment of the specified tax benefit items among themselves.

An apportionment plan is terminated when each component member (including an additional member) of the controlled group consents or is deemed to consent to the termination of that plan. Each such member is deemed to have consented to the termination of the plan for a tax year if:

- The controlled group ceased to remain in existence as of the testing date of that tax year,
- A corporation that was a component member of the group on the testing date in the preceding tax year is not a component member on

the testing date in the current tax year, or

- A corporation that was not a component member of the group on the testing date in the preceding tax year is a component member on the testing date in the current tax year.

Exception. If the members of a consolidated return group are treated as if they are one component member, then changes in the members belonging to that consolidated group (as long as that consolidated group remains in existence) will not terminate the group’s apportionment plan.

Completing and Filing Schedule O

The filing of a Schedule O by a component member provides the required information as to the status of the group’s apportionment plan. Such information must indicate, when applicable, whether all the component members of the controlled group are adopting, amending, or terminating an apportionment plan. If all such members complete the required written agreement setting forth the terms of the adopted or amended apportionment plan (or an agreement to terminate a previously adopted plan), then each member of that group may rely on this agreement as the basis for representing on its Schedule O that the other component members of the group have also consented to adopting, amending, or terminating the apportionment plan. The agreement must be signed by a person authorized to sign on behalf of each component member of the controlled group and retained. None of the members are required to attach this agreement or a copy of it to their federal income tax returns. Each member must keep as part of its records either the original or a copy of the signed agreement. The agreement must contain the group’s apportionment methodology (for example, percentages) for each tax benefit item that is apportioned.

Apportionment of Tax Benefit Items

Apportionment plan in effect. If the members of a controlled group have an apportionment plan in effect, they must apportion the specified, tax-benefit items, such as the tax bracket amounts, according to the terms of that plan. The component members of a group are not required to apportion equally any tax benefit item among each of them. Nor is any

component member required to adopt the same method of apportionment for each tax benefit item. A group therefore may apportion all, some or none, of amount of any these tax benefit items to a member. However, except for a member with a short tax year that does not include a December 31 testing date, the total amount of a tax benefit item apportioned to all the members of the group cannot be more than the total amount of a tax item that would be allowed to a corporation that is not subject to the limitations imposed on the members of a controlled group. See *Special Allocation Rule for a Short Tax Year* later in these instructions.

No apportionment plan in effect. If no apportionment plan is adopted or in effect, the members of a controlled group must divide the amount of any tax benefit item equally among themselves (without regard to whether any members are also members of a consolidated return group). For example, the Controlled Group AB consists of Corporation A and Corporation B. They do not have an apportionment plan in effect. Therefore, corporations A and B are entitled to allocate the tax-bracketed, income amounts between them in the following manner:

- \$25,000 each to A and B (one-half of \$50,000) on Part II, column (c),
- \$12,500 each to A and B (one-half of \$25,000) on Part II, column (d), and
- \$4,962,500 each to A and B (one-half of \$9,925,000 on Part II, column (e)).

Special allocation rules for a short tax year. A special apportionment rule applies to certain tax benefit items (the tax bracket amount and the accumulated earnings credit), if a component member (including an additional member) has a short tax year that does not include a December 31 date. A corporation's tax year will end before the last day of its annual tax year and will have a short tax year if:

- The corporation is sold to a consolidated group, or
- The corporation is liquidated, including a deemed liquidation resulting from a section 338 election.

Example. Corporation X is a member of the XYZ Controlled Group and has a calendar tax year. On May 31, 2008, Corporation X is liquidated. Corporation X has a short tax year that begins on January 1, 2008, and ends on May 31, 2008. Corporation X

therefore applies the special allocation rule to the tax bracket amount and the accumulated earnings credit.

Note. This rule does not affect the amount of the tax benefit items apportioned to the other members with regard to their tax years governed by the applicable, December 31 testing date.

In determining the amount of a tax benefit item apportioned to a member for its short tax year, a short year member cannot use the apportionment method, which is described in the group's current apportionment plan. Rather, the short-year member must divide the full amount of the tax benefit item by the number of component members in the controlled group as of the last day of that member's short tax year. That amount is the amount of that tax benefit item to be allocated to that member (and only to that member). The remaining members will, in accordance with the terms of their apportionment plan, apportion a full amount of each specified tax benefit item between those corporations who are the component members of the group as of the ensuing December 31 testing date.

See section 1561 and the related regulations for additional details regarding apportionment plans and a listing of some of the tax benefit items.

Exceptions. This special apportionment rule does not apply if a component member has a short tax year that includes the December 31 testing date in its short tax year. For example, Corporation Y is a fiscal year taxpayer with a tax year ending on September 30. On January 31, 2008, Corporation Y is liquidated. Corporation Y's tax year beginning on October 1, 2007, and ending on January 31, 2008, is not a short tax year within the meaning of section 1561(b). Thus, the normal apportionment rules apply.

This special allocation rule also does not apply if a member of a controlled group has a short tax year and is a member of a consolidated group. Instead, such corporation's income for the short tax year is included in the consolidated return filed by the consolidated group for that corporation's tax year.

Additional Tax Liability Under Section 11(b)(1)

In order to determine a component member's liability for additional tax (under section 11(b)(1)) all the component members of a controlled group, for their tax years that are subjected to the same December 31 testing date, must:

- Combine their taxable incomes from such tax years,
- Determine the amount of the additional tax imposed by section 11(b)(1) by applying the appropriate tax rate (defined later in these instructions) to the amount of such combined taxable income, and
- Apportion that amount among the members by applying the proportionate method (defined later in these instructions), unless all of those members instead elect to apply the FIFO method (defined later in these instructions).

Combined taxable income. All the component members of a controlled group must combine their taxable incomes for their tax years that are subjected to the same December 31 testing date. Each corporation that is a component member (which includes additional members) of a controlled group must include its income for its entire tax year (their tax years that are subjected to the same December 31 testing date) in the calculation of the combined taxable income, even if it was not a member of the group for each day of that tax year.

Note. If a component member has subsequent positive adjustments to its taxable income (for example, the result of an IRS audit), for a tax year (the adjustment year), all the members of the controlled group for their tax years that share the same testing date as that adjustment year, must redetermine the amount of any additional tax imposed by section 11(b)(1) and pay that additional amount of tax owed. These corporations have this responsibility even if none of the corporations that were component members of the group in the adjustment year still remain as component members of the group.

Determining the amount of the section 11(b)(1) additional tax. After the members of a controlled group have determined their combined taxable income, those members must determine if they owe any additional tax liability imposed by

section 11(b)(1) in the following manner.

- If that combined taxable income exceeds \$100,000 (but is not greater than \$15,000,000), the total amount of the additional tax owed by such members is the lesser amount of 5% of such excess or \$11,750 (the 5% additional tax).

- If that combined taxable income exceeds \$15,000,000, the total amount for that additional tax liability is the lesser of 3% of such excess or \$100,000 (the 3% additional tax). Thus, a controlled group with a combined taxable income that exceeds \$15,000,000 will owe not only the 3% additional tax, but also the full amount of the 5% additional tax, or \$11,750. A controlled group with a combined taxable income that exceeds \$18,333,333 will owe the full amount of the additional tax, or \$111,750. That amount will be reflected in the group's aggregate income tax liability and is not required to be separately reported in Part III of this schedule, because in such instance the additional tax will not require any apportionment among the component members of the group.

Apportioning the additional tax under section 11(b)(1). The additional tax must be apportioned among the component members in the same manner as the applicable tax bracket amount is apportioned. Component members can use either the proportionate method or the FIFO method to apportion the additional tax imposed by section 11(b)(1). The component members are required to use the proportionate method unless all component members affirmatively elect to adopt the FIFO method by checking the box on line 6b. See *Line 6. Elections under section 1561* on page 7.

The 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 having availed itself of the lower tax brackets bears to the amount of the group's total tax-benefit amount inuring to the group from having availed themselves of those lower tax brackets. The tax-benefit amount that inures to a corporation from availing itself of 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 a higher tax rate to which it would otherwise be subject.

The steps for applying the proportionate method are as follows:

Step 1. The regular tax (not including the additional tax imposed by section 11(b)(1)) 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.

The maximum amount of tax that a corporation owes under the 15% tax bracket is \$7,500. The maximum amount of tax that a corporation owes under the 25% tax bracket is \$6,250. The maximum amount of tax that a corporation owes under the 34% tax bracket is \$3,374,500.

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 a particular member from using its portion of this tax bracket.

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.

Step 4. The percentage calculated under Step 3 is multiplied by the amount of the group's additional tax as imposed by section 11(b)(1). The amount determined under this Step 4 equals the amount of the additional tax apportioned to such member for that tax bracket.

Step 5. If a component member is liable for regular tax (not including the additional tax imposed by section 11(b)(1)) under more than one tax bracket, that member must calculate the amount of additional tax with respect to each tax bracket to be apportioned to that member.

Accordingly, steps 1 through 4 must be applied for each tax bracket applicable to that member. The sum of all the amounts of additional tax apportioned to a member from each tax bracket, to which that member is subject, is the total amount of the additional tax apportioned to that member.

The FIFO method. Under a first-in-first-out (FIFO) method for allocating the additional tax among the component members of the controlled group, the first dollars of additional tax (imposed by section

11(b)(1)) owed by the members of a controlled group are to be allocated proportionately to those members availing themselves of the lowest tax bracket (the first tax bracket), up to the amount of the tax benefit received by those members from having availed themselves of that tax bracket amount. Any remaining amount of unallocated additional tax is then allocated proportionately among the component members who avail themselves of the next higher tax bracket, and so on, until the entire amount of the additional tax has been fully apportioned among the component members. For example, the first \$9,500 of additional tax liability of a controlled group is apportioned entirely to the component members that availed themselves of the benefit of the 15% tax bracket.

Allocation of AMT Exemption Amount and the Reduction of the AMT Exemption Amount

In determining the alternative minimum tax (AMT) liability of a corporation, the amount of alternative minimum taxable income to which the AMT rate is applied is reduced by \$40,000 (the exemption amount). For a controlled group of corporations, the exemption amount must be apportioned among the component members of the group. That amount must be divided equally among the component members for those tax years, which are subjected to the same December 31 testing date, except where all the members have adopted an apportionment plan providing for an unequal apportionment of the exemption amount. If so, the component members of the group will apportion the exemption amount according to the terms of that apportionment plan. The \$40,000 exemption amount shall be reduced, but not below zero, as the amount of alternative minimum taxable income increases. For a controlled group of corporations, to compute the amount of this reduction to the AMT exemption amount, the AMT incomes of all component members must be combined in order to compute the amount of that reduction. This AMT exemption amount completely phases out when a controlled group's combined AMT income is at least \$310,000. This reduction to the AMT exemption will effectively be allocated to each of the component members to which the AMT exemption amount was

apportioned and will effectively be apportioned to the component members in the same manner as is the exemption amount.

Specific Instructions

Identifying Information

On page 1, enter the name and employer identification number (EIN) of the component member filing this Schedule O.

In Part II, line 1, column (a), enter the name and EIN, and, in column (b), enter the ending date of the tax year (Yr-Mo) of the member filing this Schedule O. In Part III and IV, column (a), enter only the name of the member filing this Schedule O. Enter the corresponding information for each of the other members of the controlled group on lines 2 through 10. If more space is needed, attach additional sheets.

TIP *If one or more component members are also members of a consolidated group, the parent of such consolidated group may file only one form Schedule O on behalf of all such members. Such form must contain the required information for each such member. See Temporary Regulations section 1.1561-3T(a)(2).*

Part I. Apportionment Plan Information

Line 1. Type of controlled group. A member of a controlled group must check the applicable box to indicate the type of group. For more information, see *Types of Controlled Groups* on page 1 of these instructions.

For a brother-sister controlled group, check box 1b whether that group meets the definition of a brother-sister group only by applying the 50% test or by applying both the 80% and 50% test.

Line 2. Member status. If a corporation was a member of the group for less than its entire taxable year, check box 2b and provide the required information. If the taxable year of this corporation does not include a December 31 date, a special apportionment rule applies. See *Special Allocation Rules for a Short Tax Year* on page 4.

Line 3. Consent and represent. If all the members consent to adopt an apportionment plan, check box 3a. By

checking box 3a, this corporation is consenting to the adoption of an apportionment plan and is also representing that the other members of the group are also consenting to the adoption of that plan.

If all the members consent to amend an apportionment plan, check box 3b. By checking box 3b this corporation is consenting to the amendment of an apportionment plan and is also representing that the other members of the group are consenting to the amendment of that plan.

However, to amend a plan both of the following conditions must be satisfied:

- The controlled group already has an apportionment plan in effect, and
- There has been no change in the component-member composition of the group from the previous taxable year.

If the component members of a group are either adopting a new apportionment plan or amending an existing apportionment plan that involves prior tax years of those component members, at least one year must remain on each of the statutes of limitations for assessing a tax deficiency against any of the component members of the group a for such prior tax years. See the instructions for line 5 below.

If all the members consent to terminate (or are deemed to have consented to the termination of) an apportionment plan:

- Check box 3c, if the remaining members choose not to adopt (or are not able to adopt) a new apportionment plan, or
- Check box 3d, if the remaining members choose to adopt a new apportionment plan.

With regard to box 3c, the remaining members will not be able to adopt a new apportionment plan if, for example, such component members have left the group.

If box 3c or 3d is checked, complete Parts II, III, and IV under the following circumstances.

- When a corporation who is joining or leaving the group still qualifies as a component member (including as an additional member) for its tax year, complete the above-mentioned parts of this schedule according to the terms of any applicable apportionment plan, or
- When a corporation who is joining or leaving the group will not qualify as a component member (including as an additional member) for its tax year then, following the corporation's

name in column (a), enter the notation "(E)" for excluded member. In Part II, column (b), enter the ending date of the tax year (YY-MM) and enter "0" in the remaining columns, as are applicable. The remaining component members of the group will apportion the various tax items according to terms of any newly adopted apportionment plan, in the event a new apportionment plan is adopted by those remaining members.

Note. Do not check more than one box on line 3. If a corporation does not adopt an apportionment plan, amend a previous apportionment plan, or terminate an existing apportionment plan, skip line 3 and go to line 4.

Line 4. Status of apportionment plan. Check the applicable box to indicate the status of any apportionment plan of the controlled group.

- Check box 4a, if the controlled group does not have an apportionment plan in effect and is not adopting one.
- Check box 4b, if the controlled group already has an apportionment plan in effect and is not amending or terminating this plan.

If box 4a is checked and no apportionment plan is in effect and no plan is adopted, then the component members must share all tax benefits equally and tax benefit information is to be reported in Parts II, III and IV.

Line 5. Statute of limitations. An apportionment plan may not be adopted or amended for a tax year of a component member unless there is at least one year remaining in the statutory period (including any extensions) for assessing a deficiency against the corporation for that tax year, but only where the tax liability for such tax year of that corporation would be increased by adopting such plan.

If there is less than one year remaining in the statutory period, the corporation must have entered into an agreement with the IRS extending the statutory period for the limited purpose of assessing any deficiency against that corporation for a tax year affected by the adoption or the amendment of an apportionment plan. See Temporary Regulations section 1.1561-3T(c)(2).

Line 6. Elections under section 1561. The component members of a controlled group must determine their additional tax liability as imposed by

section 11(b)(1), for their tax years that are subjected to the same December 31 testing date by combining their taxable incomes for such tax years and then apportioning the additional tax among such component members in the same manner that the tax brackets were so allocated. See *Computation and Apportionment of a Controlled Group's Additional Tax Liability under Section 11(b)(1)* beginning on page 4.

If a corporation does not know the combined taxable income of the members of its group (for example, because the members are on substantially different taxable years), it can avoid underpayment of tax by applying the maximum tax rate of 35% to the entire amount of its taxable income. If the corporation later determines its tax liability is less, it may file a claim for refund of overpayment. A corporation choosing to compute its tax liability by applying the maximum 35% rate to the entire amount of its taxable income should check box 6a. Further, a corporation checking box 6a does not have to provide taxable income or tax apportionment information with respect to the other members of the group.

The controlled group may elect to apportion their additional tax liability under the FIFO method, rather than the proportionate method. To make this election, each member of the group must check box 6b.

If the members do not check box 6b, they will be required to apportion their additional tax liability using the proportionate method of allocation.

Part II. Taxable Income Apportionment

Enter each member's share of the taxable income used from each tax bracket, as is applicable. The component members of a controlled group, collectively, are entitled to one \$50,000, one \$25,000 and one \$9,925,000 taxable income bracket amount (in that order) for columns (c), (d), and (e). See *Apportionment Plan* earlier in these instructions.

Column (c). Enter the lesser of the corporation's taxable income (as shown on Form 1120, page 1, line 30, or on the comparable line of the corporation's income tax return) or the corporation's computed share of the \$50,000 bracket.

Column (d). Enter the lesser of the corporation's taxable income (as shown on Form 1120, page 1, line 30,

or on the comparable line of the corporation's income tax return) minus the amount entered for this corporation in column (c) or the corporation's computed share of the \$25,000 bracket.

Column (e). Enter the lesser of the corporation's taxable income (as shown on Form 1120, page 1, line 30, or on the comparable line of the corporation's income tax return) minus the amounts entered for this corporation in columns (c) and (d), or the corporation's computed share of the \$9,925,000 bracket.

Column (f). Enter taxable income (Form 1120, page 1, line 30, or the comparable line of the corporation's income tax return) minus the amounts entered for this corporation in columns (c) through (e).

Column (g). Enter the taxable income amounts for each component member in columns (c) through (f). Total the amounts of allocated taxable income for each column (c) through (f) and in column (g) provide cross total amounts for the allocated taxable income amounts of each component member. Each total in Part II, column (g), for each component member must agree with Form 1120, page 1, line 30, or the comparable line of such component member's income tax return.

Note. If a corporation has a loss, enter zero in columns (c) through (g).

Part III. Income Tax Apportionment

Column (b). Multiply the taxable income amount in Part II, column (c) by 15% (0.15) and enter the result here.

Column (c). Multiply the taxable income amount in Part II, column (d) by 25% (0.25) and enter the result here.

Column (d). Multiply the taxable income amount in Part II, column (e) by 34% (0.34) and enter the result here.

Column (e). Multiply the taxable income amount in Part II, column (f) by 35% (0.35) and enter the result here.

Column (f) and (g). A corporation's share of any additional tax liability as imposed by section 11(b)(1) is determined as explained in *Determining the amount of the section 11(b)(1) additional tax* earlier in these instructions.

Column (h). Enter here the total apportioned income tax for each

component member. Combine all the amounts of apportioned tax of each member, as shown in columns (b) through (g).

Part IV. Other Apportionments

Brother-sister controlled group. For purposes of apportioning those items described at the top of columns (b) through (d), determine the members of a brother-sister controlled group, using only the 50% test as provided in section 1563(a)(2). For purposes of apportioning the item described in column (e) and the catch all other items described in column (f), determine the members of a brother-sister controlled group using both the 50% and 80% tests as provided in section 1563(f)(5). See *Brother-sister group* earlier in these instructions.

Column (a). If a corporation qualifies as a member of a brother-sister controlled group, solely because it satisfies just the 50% ownership affiliation test, insert the notation "(50)" after that corporation's name. If a corporation is a component member of that group because it satisfies both the 50% and 80% ownership affiliation test, then insert the notation "(80)" after that corporation's name.

Column (b). The component members of a controlled group may allocate the \$250,000 accumulated earnings credit unequally if they adopt an apportionment plan or have an apportionment plan in effect.

Note. If any component member of a controlled group is the type of service corporation described in section 535(c)(2)(B), the amount to be apportioned among the component members is \$150,000 (rather than \$250,000).

Column (c). The component members of a controlled group may allocate the \$40,000 AMT exemption amount unequally if they adopt an apportionment plan or have an apportionment plan in effect.

Column (d). The component members of a controlled group must apportion the reduction to the AMT exemption amount to the same corporations, and in the same proportions, as the AMT exemption amount was apportioned in Column (c). If the combined AMTI of the members of the group is at least \$310,000, the corporation is not required to complete columns (c) and

(d) of Part IV, since the exemption amount phases out at \$310,000. See *Allocation of AMT Exemption Amount and the Reduction of the AMT Exemption Amount* earlier in these instructions.

Column (e). For purposes of determining whether the component members of a controlled group are subject to penalty or failure to pay the correct amount of estimated tax (section 6655(g)), those component members of a controlled group must

combine their taxable incomes for their taxable years that were subjected to the same December 31 testing date. If that amount is at least \$1 million for any tax year during the testing period (as defined in section 6655(g)(2)(B)(i)), those members must then divide that \$1 million amount equally unless they have an apportionment plan in effect.

Column (f). Enter each component member's share of any other tax

benefit items not included in columns (b) through (e).

Note. Do not include on the Schedule O an apportionment among the component members for any expensing amount, made by election, with regard to certain depreciable property. Report this apportionment as required under section 179. See Regulations section 1.179-2(b)(7).