

Instructions for Schedule O (Form 1120) (Rev. February 2008)



Department of the Treasury
Internal Revenue Service

(Use with the December 2006 Schedule O (Form 1120))

Consent Plan and Apportionment Schedule for a Controlled Group

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

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 Schedule O to indicate that all members of the controlled group:

- Are not adopting an apportionment plan,
- Already have an apportionment plan in effect,
- Are amending a previously adopted apportionment plan,
- Are adopting an apportionment plan, or
- Are terminating the existing apportionment plan.

Who Must File

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

By filing this schedule, the corporation consents to the adoption or amendment of an apportionment plan by the controlled group and to the allocation of certain tax benefits to the members of the controlled group. The apportionment plan (including an amended plan) remains in effect until it is terminated. See sections 1561 and 1563 and the related regulations for more information.

If a member of a controlled group is a consolidated group, then the common parent of the consolidated group can file one Schedule O for all the members of the consolidated group. That Schedule O should contain the consolidated information for all members of the consolidated

group. See *Identifying Information* on page 3 of these instructions.

If all of the members of a parent-subsidary controlled group are included in the same consolidated return, then the parent of the parent-subsidary group does not have to file a separate Schedule O for the controlled group.

Schedule O is not required to be filed if:

- All members of the controlled group, who are required to file a U.S. tax return, join in filing a consolidated return. Form 1120, Schedule J, Line 1, should not be checked.
- The corporation is a subsidiary that joins in filing a consolidated return. Only the parent is required to file Schedule O.
- The corporation (or consolidated group) is part of a controlled group with a tax year that began before December 22, 2006.

Definitions and Special Rules

Types of Controlled Groups

Parent-subsidary group. A parent-subsidary 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-subsidary 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 owned with the application of section 1563(e)(1), (2), and (3).

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

1. 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, and
2. 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.

For purposes of determining and allocating the following, the definition of brother-sister group does not include (1) above.

- Taxable income brackets,
- Accumulated earnings credit,
- Alternative minimum tax exemption amount,
- Phaseout of the alternative minimum tax exemption amount, or
- The additional tax.

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 means:

- Stock owned directly by such person, and
- Stock owned with the application of section 1563(e).

Combined group. A combined group is three or more corporations each of which is a member of a parent-subsidiary group or a brother-sister group, and one of which is:

- A common parent corporation included in a group of corporations in a parent-subsidiary group, and also
- Included in a group of corporations in a brother-sister group.

Life insurance companies. Two or more insurance companies subject to tax under section 801 which are members of a parent-subsidiary, brother-sister, or combined group of a controlled group of corporations, will be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group of corporations as a parent-subsidiary, brother-sister, or combined group. However, this provision 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, such life insurance company will be treated as a member of the life-nonlife controlled group (a deemed parent-subsidiary controlled group).

Component Member

A corporation is a component member of a controlled group of corporations on December 31 of any tax year (and with respect to the tax year which includes such December 31) if the corporation:

- Is a member of such controlled group of corporations on the December 31 included in the year and is not treated as an excluded member (defined below), or
- Is not a member of the controlled group of corporations on the December 31 included in such year but is treated as an additional member (defined below).

If any component members of a controlled group of corporations are also members of a consolidated group, such members will be treated as separate component members of the controlled group.

Excluded Members

A corporation which is a member of a controlled group of corporations on December 31 of any tax year will be treated as an excluded member of

such group for the tax year including such December 31 if such corporation is:

- A member of such group for less than one-half the number of days in such tax year which precedes such December 31;
- Exempt from tax under section 501(a) (except a corporation which is subject to tax on its unrelated business taxable income under section 511) for such tax year;
- A foreign corporation not subject to tax under section 882(a) for such tax year;
- An insurance company subject to tax under section 801 (other than an insurance company which is a member of a controlled group (see *Types of Controlled Groups* on page 1 of these instructions));
- A franchised corporation, as defined in section 1563(b)(2)(E); or
- An S corporation, as defined in section 1361.

In determining how many days a corporation has been a member of a controlled group, the group must take into account the day it is sold or liquidated, but does not take into account either: (a) the day such corporation is acquired or created, or (b) the December 31 of such corporation's tax year.

Additional Members

A corporation (other than an S 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 section 1563(b)(2)(B),(C),(D), or (E), will be treated as an additional member of such group for its tax year including such December 31 if it was a member of such group for one-half or more of the number of days in the tax year which precedes such December 31.

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

The term "stock" does not include:

- 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) in the case of a parent-subsidiary controlled group or section 1563(c)(2)(B) in the case of a brother-sister controlled group.

Apportionment Plans

An apportionment plan is an agreement adopted by the members of a controlled group to apportion specified tax benefits, such as the tax bracket amounts, among the members of that group. By contrast, a tax sharing arrangement is a private contractual arrangement, separate from the tax return elections and related filing, under which the members of a consolidated group commit to compensate each other for the interaction of their tax attributes.

An apportionment plan is amended if the same members (for example, no component members have left or joined the group during the tax year) provide for a different apportionment of the tax benefit items among themselves.

Unequal Apportionment Plan.

Members of a controlled group can elect an unequal apportionment plan and divide the taxable income brackets as they want. If any members are also members of a consolidated group, the consolidated group will be treated as one component member of the controlled group for purposes of apportionment. There is no need for consistency among taxable income brackets. The controlled group may apportion all, some, or none of the taxable income bracket amounts between its members. However, the total amount for all members cannot be more than the total amount in each taxable income bracket.

Equal Apportionment Plan. If no apportionment plan is adopted or in effect, members of a controlled group must divide the amount in each taxable income bracket equally among themselves (regardless of whether any member is a member of a consolidated group). For example, Controlled Group AB consists of Corporation A and Corporation B. They do not elect an apportionment plan. Therefore, each corporation is entitled to:

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

See the instructions for Parts II and III on pages 3 and 4 of these instructions.

Specific Instructions

Identifying Information

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

In Parts II, III, and IV, enter the name and EIN (if applicable) of the member filing this Schedule O on line 1. Enter the name and EIN (if applicable) of the other members of the controlled group on lines 2 through 10. Attach additional sheets if more space is needed. If several component members are also members of a consolidated group, then with respect to those members, provide only the name, EIN (and if necessary the tax year) of the common parent of the group (and not of the other members of that consolidated group). 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.

Line 3. Check box 3a to adopt an apportionment plan. Check box 3b if the controlled group has a plan in place and all members agree to amend the plan. Check box 3c to terminate the current plan. A voluntary termination occurs when the controlled group agrees to terminate the current apportionment plan. Automatic termination occurs when a member of the controlled group leaves the group, a new member joins the controlled group, or the controlled group ceases to be in existence.

Note. Do not check more than one box on line 3.

Skip line 3 if:

- The controlled group already has an apportionment plan in place and is not amending this plan or terminating the plan, or
- The controlled group is not adopting a plan (all members share equally in the apportionment).

Line 4. Status of apportionment plan. Check the applicable box to indicate the status of the controlled group's apportionment plan. If the group is adopting an apportionment plan or amending the current apportionment plan for a prior tax year, there must be at least one year remaining on the statute of limitations for each member of the group for assessing any resulting deficiency. See the instructions for line 5, below.

If box 4a is checked and no apportionment plan is in effect and none is adopted, then all tax benefits are shared equally among the members and reported in Parts II, III, and IV.

Note. The corporation is required to provide information regarding the status of the group's apportionment plan. In connection with the information provided, the corporation may be required to indicate whether all of the component members of the controlled group are adopting, amending, or terminating an apportionment plan. If all the members of a controlled group complete a written agreement setting forth the terms of the adopted or amended apportionment plan (or an agreement to terminate the previously adopted plan), each member of the group may rely on this agreement as a basis for its answers. The agreement must be signed by an authorized person on behalf of each component member of the controlled group. Do not attach the agreement. Each member must keep as part of its records either the original or a copy of such agreement. The agreement should contain the group's apportionment methodology (for example, percentages) for each tax benefit item.

Line 5. Statute of limitations. An apportionment plan may not be adopted for a particular tax year unless there is at least one year remaining in the statutory period (including any extensions) for assessing a deficiency against the corporation, the tax liability of which 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 attributable to the adoption of the apportionment plan. See Temporary Regulations section 1.1561-3T(c)(2).

Part II. Taxable Income Apportionment

Enter each member's share of each taxable income bracket as applicable. Members of a controlled group are entitled to one \$50,000, one \$25,000, and one \$9,925,000 taxable income bracket amount (in that order) on columns (c), (d), and (e). See *Equal Apportionment Plan* and *Unequal Apportionment Plan* on page 2 of these instructions.

Column (c). Enter taxable income (Form 1120, page 1, line 30, or the comparable line of the corporation's income tax return) or the corporation's share of the \$50,000 taxable income bracket, whichever is less.

Column (d). Enter taxable income (Form 1120, page 1, line 30, or the comparable line of the corporation's income tax return) minus the corporation's share of column (c) or the corporation's share of the \$25,000 taxable income bracket, whichever is less.

Column (e). Enter taxable income (Form 1120, page 1, line 30, or the comparable line of the corporation's income tax return) minus the corporation's share of columns (c) and (d) or the corporation's share of the \$9,925,000 taxable income bracket, whichever is less.

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

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

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

Part III. Income Tax Apportionment

Members of a controlled group are treated as one group to figure the applicability of the additional 5% tax

and the additional 3% tax. If an additional tax applies, each member will pay that tax based on the part of the amount used in each taxable income bracket to reduce that member's tax. See section 1561(a).

Column (f). If the taxable income of the controlled group exceeds \$100,000, enter each member's share of the smaller of: 5% of the taxable income in excess of \$100,000, or \$11,750.

Column (g). If the taxable income of the controlled group exceeds \$15 million, enter each member's share of the smaller of: 3% of the taxable income in excess of \$15 million, or \$100,000.

Part IV. Other Apportionments

Brother-sister controlled group. In allocating the apportionments described in columns (b) through (d) for a brother-sister controlled group, use only the 50% controlled test as provided in section 1563(a)(2). For the apportionment described in column (e) and in general any apportionment allocated in column (f),

use both the 50% and 80% tests as provided in section 1563(f)(5). See *Brother-sister group* on page 1 of these instructions.

Column (a). If a component member is a member of a brother-sister controlled group solely because it satisfies the 50% control test, then after such member's name add the notation "(50)." If a component member is a member of the group because it satisfies both the 50% and 80% control tests, then after such member's name add the notation "(80)."

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

If any component member of the controlled group is a corporation described in section 535(c)(2)(B), the amount to be apportioned among the component members is \$150,000 (rather than \$250,000). See section 1561(a)(2).

Columns (c) and (d). In applying the \$40,000 AMT exemption amount, the alternative minimum taxable income of all component members shall be taken into account. Any decrease in the exemption amount shall be allocated to the component members of the group in the same manner as the exemption amount was allocated to the members. See sections 55(d)(2) and 1561(a).

Column (e). Members of a controlled group that are large corporations, as defined in section 6655(g)(2), must divide the \$1 million amount among themselves under the rules of section 1561.

Column (f). Enter each member's share of any other tax benefits not included in columns (b) through (e). Do not include the apportionment of the election to expense certain depreciable property on this schedule. Rather, report the apportionment as required under section 179. See Regulations section 1.179-2(b)(7).