

IRC Section 1563(a)(2)

Election to be a Component Member of One Brother-Sister Controlled Group

Overview

On a December 31, a corporation may meet the requirements to be a component member of more than one brother-sister controlled group. However, a corporation can only be treated as a component member of one brother-sister controlled group on such date. Reg. §1.1563-1(c)(2) permits a corporation to elect the controlled group in which it is to be included. If more than one corporation would be a component member of more than one controlled group, a single statement shall be signed by authorized officers and shall designate the group in which each corporation is to be included.

In general, a "brother-sister controlled group" consists of two or more corporations connected through the stock ownership of noncorporate shareholders in which five or fewer individuals, estates, or trusts own:

- 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 all classes of stock of each corporation, 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.

If a corporation meets the requirements to be a component member of more than one brother-sister controlled group on a December 31 and fails to make an election under the provisions of Reg. §1.1563-1(c)(2), the district director with audit jurisdiction over the corporation's return for the taxable year which includes such December 31 will determine the controlled group in which the corporation is to be included. The district director's determination is binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year.

The election must include sufficient information to establish that the corporation would, but for the election, be a component member of more than one controlled group. Once the election is made, it is irrevocable and effective until a change in

the stock ownership of the corporation results in its termination of membership in the controlled group in which it has been included.

When to File

The election is made by attaching a statement to the corporation's income tax return for the taxable year in which it meets the requirements to be a component member in more than one brother-sister controlled group. If more than one corporation is included in the election, the statement must be attached to the income tax return of the corporation that, among those corporations which would belong to more than one group, has the taxable year including such December 31 which ends on the earliest date. The election must be made no later than the due date, including extensions, of the required corporation's return for such year.

Where to File

The election statement is attached to the corporation's timely filed return, which is mailed to the designated Internal Revenue Service Center.

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1. Code Section: 1563
2. Topic: Consolidated Returns; Corporations, S Corporations
3. Return Type: First Year, 1120, 1120S

Authorities

IRC §1563(a)(2); Reg. §1.1563-1(c)(2)