

Stock Treated As “Excluded Stock”

Income Tax Regulations (ITR)

1.1563-2(b)

Parent-Subsidiary Controlled Group.

1.1563-2(b)(1)

If a corporation (hereinafter in this paragraph referred to as “parent corporation”) owns 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 (hereinafter in this paragraph referred to as “subsidiary corporation”), the provisions of subparagraph (2) of this paragraph shall apply. For purposes of this subparagraph, stock owned by a corporation means stock owned directly plus stock owned with the application of the constructive ownership rules of paragraph (b)(1) and (4) of § 1.1563-3, relating to options and attribution from corporations. In determining whether the stock owned by a corporation possesses the requisite percentage of the total combined voting power of all classes of stock entitled to vote of another corporation, see paragraph (a)(6) of § 1.1563-1.

Stock Treated As Not Outstanding.

1.1563-2(b)(2)

If the provisions of this subparagraph apply, then for purposes of determining whether the parent corporation or the subsidiary corporation is a member of a parent-subsidiary controlled group of corporations within the meaning of paragraph (a)(2) of § 1.1563-1, the following stock of the subsidiary corporation shall, except as otherwise provided in paragraph (c) of this section, be treated as if it were not outstanding:

Plan Of Deferred Compensation.

1.1563-2(b)(2)(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. The term “plan of deferred compensation” shall have the same meaning such term has in section 406(a)(3) and the regulations thereunder.

Principal Stockholders And Officers.

1.1563-2(b)(2)(ii)

Stock in the subsidiary corporation owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563-3) by an individual who is a principal stockholder or officer of the parent corporation. A principal stockholder of the parent corporation is an individual who owns (directly and with the application of the rules contained in paragraph (b) of § 1.1563-3) 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 of the parent corporation. An officer of the parent corporation includes the president, vice-presidents, general manager, treasurer, secretary, and comptroller of such corporation, and any other person who performs duties corresponding to those normally performed by persons occupying such positions.

Employees.

1.1563-2(b)(2)(iii)

Stock in the subsidiary corporation owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563-3) by an employee of the subsidiary corporation if such stock is subject to conditions 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 and which run in favor of the parent or subsidiary corporation. In general, any condition which extends, directly or indirectly, to the parent corporation or the subsidiary corporation preferential rights with respect to the acquisition of the employee's (or direct owner's) stock will be considered to be a condition described in the preceding sentence. It is not necessary, in order for a condition to be considered to be in favor of the parent corporation or the subsidiary corporation, that the parent or subsidiary be extended a discriminatory concession with respect to the price of the stock. For example, a condition whereby the parent corporation is given a right of first refusal with respect to any stock of the subsidiary corporation offered by an employee for sale is a condition which substantially restricts or limits the employee's right to dispose of such stock and runs in favor of the parent corporation. Moreover, any legally enforceable condition which prohibits the employee from disposing of his stock without the consent of the parent (or a subsidiary of the parent) will be considered to be a substantial limitation running in favor of the parent corporation.

Controlled Exempt Organization.

1.1563-2(b)(2)(iv)

Stock in the subsidiary corporation owned (directly and with the application of the rules contained in paragraph (b) of § 1.1563-3) by an organization (other than the parent corporation):

1.1563-2(b)(2)(iv)(a)

To which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies, and