

(c) *Definitions.* The following definitions apply for purposes of this section:

(1) *Applicable health benefits.* Applicable health benefits means applicable health benefits as defined in section 420(e)(1)(C).

(2) *Cost maintenance period.* Cost maintenance period means the cost maintenance period as defined in section 420(c)(3)(D).

(3) *Sale.* A sale of all or part of an employer's business means a sale or other transfer in connection with which the employees of a trade or business of the employer become employees of another person. In the case of such a transfer, the term *purchaser* means a transferee of the trade or business.

(d) *Examples.* The following examples illustrate the application of this section:

*Example 1.* (i) Employer W maintains a defined benefit pension plan that includes a 401(h) account and permits qualified transfers that satisfy section 420. The number of individuals receiving coverage for applicable health benefits as of the day before the first day of Year 1 is 100. In Year 1, Employer W makes a qualified transfer under section 420. There is no change in the number of individuals receiving health benefits during Year 1. As of the last day of Year 2, applicable health benefits are provided to 99 individuals, because 2 individuals became eligible for coverage due to retirement and 3 individuals died in Year 2. During Year 3, Employer W amends its health plan to eliminate coverage for 5 individuals, 1 new retiree becomes eligible for coverage and an additional 3 individuals are no longer covered due to their own decision to drop coverage. Thus, as of the last day of Year 3, applicable health benefits are provided to 92 individuals. During Year 4, Employer W amends its health plan to eliminate coverage under its health plan for 8 more individuals, so that as of the last day of Year 4, applicable health benefits are provided to 84 individuals. During Year 5, Employer W amends its health plan to eliminate coverage for 8 more individuals.

(ii) There is no significant reduction in retiree health coverage in either Year 1 or Year 2, because there is no reduction in health coverage as a result of employer action in those years.

(iii) There is no significant reduction in Year 3. The number of individuals whose health coverage ended during Year 3 by reason of employer action (amendment of the plan) is 5. Since the number of individuals receiving coverage for applicable health benefits as of the last day of Year 2 is 99, the employer-initiated reduction percentage for Year 3 is 5.05 percent (5/99), which is less than the 10 percent annual limit.

(iv) There is no significant reduction in Year 4. The number of individuals whose health coverage ended during Year 4 by reason of employer action is 8. Since the number of individuals receiving coverage for applicable health benefits as of the last day of Year 3 is 92, the employer-initiated

reduction percentage for Year 4 is 8.70 percent (8/92), which is less than the 10 percent annual limit. The sum of the employer-initiated reduction percentages for Year 3 and Year 4 is 13.75 percent, which is less than the 20 percent cumulative limit.

(v) In Year 5, there is a significant reduction under paragraph (b)(1)(ii) of this section. The number of individuals whose health coverage ended during Year 5 by reason of employer action (amendment of the plan) is 8. Since the number of individuals receiving coverage for applicable health benefits as of the last day of Year 4 is 84, the employer-initiated reduction percentage for Year 5 is 9.52 percent (8/84), which is less than the 10 percent annual limit. However, the sum of the employer-initiated reduction percentages for Year 3, Year 4, and Year 5 is 5.05 percent + 8.70 percent + 9.52 percent = 23.27 percent, which exceeds the 20 percent cumulative limit.

*Example 2.* (i) Employer X, a calendar year taxpayer, maintains a defined benefit pension plan that includes a 401(h) account and permits qualified transfers that satisfy section 420. X also provides lifetime health benefits to employees who retire from Division A as a result of a plant shutdown, no health benefits to employees who retire from Division B, and lifetime health benefits to all employees who retire from Division C. In 2000, X amends its health plan to provide coverage for employees who retire from Division B as a result of a plant shutdown, but only for the 2-year period coinciding with their severance pay. Also in 2000, X amends the health plan to provide that employees who retire from Division A as a result of a plant shutdown receive health coverage only for the 2-year period coinciding with their severance pay. A plant shutdown that affects Division A and Division B employees occurs in 2000. The number of individuals receiving coverage for applicable health benefits as of the last day of 2001 is 200. In 2002, Employer X makes a qualified transfer under section 420. As of the last day of 2002, applicable health benefits are provided to 170 individuals, because the 2-year period of benefits ends for 10 employees who retired from Division A and 20 employees who retired from Division B as a result of the plant shutdown that occurred in 2000.

(ii) There is no significant reduction in retiree health coverage in 2002. Coverage for the 10 retirees from Division A who lose coverage as a result of the end of the 2-year period is treated as having ended by reason of employer action, because coverage for those Division A retirees ended by reason of a plan amendment made after December 17, 1999. However, the terms of the health plan that limit coverage for employees who retired from Division B as a result of the 2000 plant shutdown (to the 2-year period) were adopted contemporaneously with the provision under which those employees became eligible for retiree coverage under the health plan. Accordingly, under the rule provided in paragraph (b)(4)(ii) of this section, coverage for those 20 retirees from Division B is not treated as having ended by reason of employer action. Thus, the number of individuals whose health benefits ended

by reason of employer action in 2002 is 10. Since the number of individuals receiving coverage for applicable health benefits as of the last day of 2001 is 200, the employer-initiated reduction percentage for 2002 is 5 percent (10/200), which is less than the 10 percent annual limit.

(e) *Regulatory effective date.* This section is applicable to transfers of excess pension assets occurring on or after December 18, 1999.

**David A. Mader,**

*Acting Deputy Commissioner of Internal Revenue.*

Approved: June 12, 2001.

**Mark A. Weinberger,**

*Assistant Secretary of the Treasury (Tax Policy).*

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8949]

RIN 1545-AY80

#### Special Aggregate Stock Ownership Rules

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the aggregation of stock ownership in a corporation of members of a consolidated group. These regulations reflect a technical correction enacted in section 311(c) of the Community Renewal Tax Relief Act of 2000, that, in substance, provides that the special aggregate stock ownership rules shall apply for purposes of section 732(f) of the Code. These final regulations may affect all consolidated groups.

**DATES:** *Effective Date:* June 19, 2001.

**FOR FURTHER INFORMATION CONTACT:** Frances L. Kelly or David H. Kessler, (202) 622-7770 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 1502 of the Internal Revenue Code of 1986 (Code). Section 1.1502-34 generally provides that, for purposes of the consolidated return regulations, the stock ownership of all members of a consolidated group in another corporation is aggregated in determining the application of certain

Code provisions, including section 332(b)(1), in a consolidated return year.

Section 538 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170, 113 Stat. 1939) (the 1999 Act) enacted section 732(f) on December 17, 1999. With certain exceptions, section 732(f) generally provides that if (1) a corporate partner of a partnership receives a distribution from that partnership of stock in another corporation, (2) the corporate partner has control of the distributed corporation immediately after the distribution or at any time thereafter, and (3) the partnership's adjusted basis in such stock immediately before the distribution exceeded the corporate partner's adjusted basis in such stock immediately after the distribution, then an amount equal to such excess shall reduce the basis of the property held by the distributed corporation at such time.

On December 21, 2000, Congress enacted section 311(c) of the Community Renewal Tax Relief Act of 2000 (Public Law 106–554, 114 Stat. 2763) (the 2000 Act), a technical correction to section 538 of the 1999 Act. Section 311(c) of the 2000 Act states “[t]he reference to section 332(b)(1) of the Internal Revenue Code of 1986 in Treasury Regulation section 1.1502–34 shall be deemed to include a reference to section 732(f) of such Code.” The Conference Report states that the rule in the consolidated return regulations (§ 1.1502–34) aggregating stock ownership for purposes of section 332 (relating to a complete liquidation of a subsidiary that is a controlled corporation) also applies for purposes of section 732(f) (relating to basis adjustments to assets of a controlled corporation received in a partnership distribution). H.R. Conf. Rep. No. 1033, 106th Cong., 2d Sess. 1022 (2000).

Section 311(d) of the 2000 Act provides that section 311(c) of the 2000 Act takes effect as if included in the provisions of the 1999 Act to which it relates. Thus, the effective date of section 311(c) of the 2000 Act is the same as that for section 538(a) of the 1999 Act, which is contained in section 538(b) of the 1999 Act.

#### Explanation of Provisions

These final regulations conform § 1.1502–34 to a technical correction enacted in section 311(c) of the 2000 Act and add a regulation under section 732 reflecting that correction. These regulations reflect this statutory provision clarifying that the stock aggregation rules under § 1.1502–34 apply for purposes of section 732(f).

Because section 311(d) of the 2000 Act provides that section 311(c) of the 2000 Act shall take effect as if it had been included in the provisions of the 1999 Act, the effective date provisions of section 538(b) of the 1999 Act apply to these regulations. Section 538(b) generally provides that the amendments made by section 538(a) of the 1999 Act apply to distributions made after July 14, 1999. In the case of a corporation that was a partner in a partnership as of July 14, 1999, the amendments made by section 538(a) of the 1999 Act apply to distributions made (or treated as made) to that partner from that partnership after June 30, 2001. In the case of any such distribution made after December 17, 1999, and before July 1, 2001, the rule of the preceding sentence does not apply unless that partner makes an election to have the rule apply to the distribution on the partner's income tax return for the year in which the distribution occurs.

#### Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Because no notice of proposed rulemaking is required for this final regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

This final rule merely conforms § 1.1502–34 to the statutory amendment made by section 311(c) of the 2000 Act. Pursuant to 5 U.S.C. 553, it is determined that prior notice and comment are unnecessary and contrary to the public interest. For the same reason, good cause exists for not delaying the effective date of this final rule.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*.  
Section 1.732–3 also issued under 26 U.S.C. 732(f). \* \* \*  
Section 1.1502–34 also issued under 26 U.S.C. 1502. \* \* \*

**Par. 2.** Section 1.732–3 is added to read as follows:

#### § 1.732–3 Corresponding adjustment to basis of assets of a distributed corporation controlled by a corporate partner.

The determination of whether a corporate partner has control of a distributed corporation for purposes of section 732(f) shall be made by applying the special aggregate stock ownership rules of § 1.1502–34.

#### § 1.1502–34 [Amended]

**Par. 3.** In § 1.1502–34, the first sentence is amended by adding “732(f),” immediately after “351(a),”.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: June 8, 2001.

**Mark A. Weinberger,**

*Assistant Secretary of the Treasury.*

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Part 256

RIN: 1010–AC74

#### Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf—Definition of Affected State

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule eliminates the definition of “Affected State” in Subpart B, Oil and Gas Leasing Program. The definition of “Affected State” in Subpart A will apply to the entire Part 256, eliminating the need for unaffected coastal States to participate in the preparation of a 5-year program, unless they so choose.

**EFFECTIVE DATE:** The rule is effective June 19, 2001.

**FOR FURTHER INFORMATION CONTACT:** Ralph Ainger or Jane Roberts at (703) 787–1215.

**SUPPLEMENTARY INFORMATION:** On December 15, 2000, we published a Notice of Proposed Rulemaking (NPR) (65 FR 78432), titled “Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf—Definition of Affected State,” which proposed to remove 30 CFR 256.14. The comment period closed February 13, 2001. We received one comment from a coastal State. This final rule removes the regulation at 30 CFR 256.14. This rule